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Author Name: Lakshay Mehta

Resolution Professional Anchor Of IBC

Lakshay Mehta

Insolvency and Bankruptcy Code 2016 was basically passed by the parliament to put to end or to control so many cases of the bad loans in India. So, this code has a provision to appoint the interim resolution professional. According to the Section 16(3) of the Insolvency and Bankruptcy Code 2016, the Adjudicating Authority has power to request the Insolvency and Bankruptcy Board of India (IBBI), so the IBBI will recommend the insolvency professional to act as Interim Resolution Professional (IRP) by submitting the application to the corporate insolvency process.

The main purpose of the Interim Resolution Professional is to conduct the insolvency process and it also includes the Resolution Professional which is defined under the section 5(27) of Insolvency and Bankruptcy Code, 2016. The Interim Resolution Professional must be the member of the Insolvency Professional Agency under the section 206 of the code and the Interim Resolution Professional must be registered with the Insolvency and Bankruptcy Board of India under the section 207 of code. So, the tenure of the Interim Resolution Professional should not exceed 30 days from the date of his appointment.

Who is Resolution Professional?

The Resolution Professional is the professional who has qualified the Insolvency Exam must be the member of the Insolvency Professional Agency under the section 206 of the code and the Resolution Professional must be registered with the Insolvency and Bankruptcy Board of India under the section 207 of code, it also includes the Interim Resolution Professional. The main task of resolution professional is to conduct the insolvency resolution process and to take necessary which are needed for the revival of the company.

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Appointment of Resolution Professional

Before the appointment of the Resolution Professional, the Interim Resolution Professional has been appointed until the constitution of the committee of the creditors and then the committee of the creditors appoint the Resolution Professional. So, as per the Section 7 of the Code the first meeting of the committee of the creditors shall be held within the seven days of the constitution of the committee of the creditors. The Committee of the creditors in its first meeting by majority i.e. not less than 66% of the voting shares shall appoint the Interim Resolution Professional, or any other Insolvency Professional to act as a Resolution Professional. In case Committee of the Creditors resolved to appoint any other Insolvency Professional to act as a Resolution Professional, so, it will file an application before the Adjudicating Authority for the appointment of proposed the RP. If the Board does not confirm the name of the proposed RP, then the Adjudicating Authority shall direct the interim resolution professional to continue as the RP, till the Board confirms the appointment of the Resolution Professional.

Basic qualifications for the Resolution Professional are;

1. Foremost, condition is to be citizen of India.
2. Person should be a major i.e. 18 years of the age.
3. Person should be mentally sound.
4. He should not be declared insolvent at any point of the time.
5. Not to have convicted of the offense which is derogatory to his moral code of conduct.

Eligibility for Appointment of Resolution Professional

The eligibility for appointment of the Resolution Professional is basically specified in the Regulation 3 of the Insolvency and Bankruptcy Board of India. The basic conditions are:

- A. Resolution Professional should not be a related party or the employee of company.
- B. Resolution Professional should fulfil the basic criteria of the Independent Director.
- C. Resolution Professional should make the closures which is specified in the code of the conduct.

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D. Resolution Professional should have access to the books which are basically specified in Regulation 4 of Insolvency and Bankruptcy Code of India.

Functions of Resolution Professional

1. The Management of Corporate Debtor- According to the Section 17 of the Insolvency and Bankruptcy Code, 2016 as it provides for vesting of the management of the affairs of the company in the hands of the Interim Resolution Professional but the debtor remains in the possession of the management of the entity during the resolution process, so during the resolution process the powers of corporate debtor has been suspended but same powers can be exercised by interim resolution professional. The powers of the interim resolution professional are subject to the approval by the committee of the creditors. In the resolution process the managing director who generally works under the supervision of Board of Director now works under the supervision of the Interim Resolution Professional.
2. Conducting Corporate Insolvency Process- According to Section 23 of Insolvency and Bankruptcy Code 2016 it states that the resolution professional shall conduct the entire corporate insolvency process and manages the corporate debtor and even after the expiry of period of Insolvency and Bankruptcy Code, he continues to manage the operations of the company until the order of the liquidator is passed.
3. Custody of Corporate Debtor- According to the Section 18 of Insolvency and Bankruptcy Code, 2016 to take control and the custody over which the debtor has the ownership rights.
4. Bringing Creditors Together- According to the Section 21 of Insolvency and Bankruptcy Code the interim resolution professional shall constitute the committee of the creditors after the collation of all the claims which are received against the corporate debtor. So, the committee of the creditors by the way of the majority vote decides the ultimate faith of the corporate debtor i.e. whether to resolve the insolvency or to liquidate the entity.
5. Management of Entity as Going Concern- According to the Section 20 of the Insolvency and Bankruptcy Code, 2016 interim resolution professional should manage the affairs of the corporate debtor as the going concern, so the interim resolution professional must do all such acts which is necessary for keeping the corporate debtors in the going concern phase.

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Duties of Resolution Professional

1. Appointment of Valuers- The first and the foremost duty of the resolution professional is the appointment of the two registered valuers within the seven days of his appointment to determine the liquid value and the fair value of the corporate debtor in accordance with the Regulation 35.
2. Preparing of Information Memorandum- According to the Section 29 of Insolvency and Bankruptcy Code, 2016 the resolution professional shall prepare the information memorandum in such a form i.e. electronic form which contains the relevant information which are specified by board for making the resolution plan.
3. Public Announcement- The public announcement shall be made by the interim resolution within the three days of his appointment. The public announcement should contain details regarding the corporate insolvency process and to invite the claimants to submit their claims within the prescribed time.
4. Appointment of Professionals- According to the Section 20(2)(a) of the Insolvency and Bankruptcy Code, 2016 it gives the power to interim resolution professional to appoint legal professionals or the accountants which are necessary for existence,
5. Preparing of Provisional List of Resolution Applicant- It is the duty of the resolution professional to issue the provisional list of the resolution applicants within the 10 days of the last date.

Judicial Pronouncements

1. Swiss Ribbons Private Ltd vs Union of India

In this case the Supreme Court held that the difference between operational creditors and the financial creditors were based on the intangible differentia and thus it is not violative of the Article 14 of the Constitution. This petition challenged the Section 12 A and Section 29 A of the Insolvency and Bankruptcy Code. The Section 12 A of the Code prescribes that the threshold of the 90% of the Committee of Creditors for allowing withdrawal of the resolution applicant. However, the Supreme Court did not see any difficulty with such high threshold and it upheld the validity of the section. So, the Supreme Court upheld the validity of Insolvency and Bankruptcy Code, 2016.

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2. Committee of Creditors of Essar Steel v. Satish Kumar Gupta

The main dispute in this case was that the Essar Steel owes Rs 54,000 crore to creditors in total i.e. (financial creditors and operational creditors). The company had been put on block under Insolvency and Bankruptcy Code, 2016 to recover the dues. The Ahmedabad Bench of National Company Law Tribunal (NCLT) in the year 2019, it approved Arcelor Mittal bid for the Essex Steel. Thus, the Mittal group offered a payment of Rs 42,000 crore to the financial creditors of Essex Steel and also the capital infusion of Rs 8,000 crore to financial creditors in next few years. The operational creditors opposed this bid as they were getting notional payment while 92.5% of the creditor's dues were paid, then the Appellate Branch of NCLT passed a judgment in which there should be equal distribution of funds between the financial creditors and operational creditors and the operational creditors was to be treated on par with financial creditors. This decision was challenged by the Committee of Creditors, so they have filed the petition against order passed by NCLAT. The Supreme Court overrules the judgment given by the NCLAT and said that Arcelor Mittal bid for the Essex Steel shall be accepted and the Supreme Court also says that the committee of creditors has the final say and their decision cannot be challenged unless the decision of COC is violating objectives of IBC.

Conclusion

The appointment of the Interim Resolution Professional and Resolution Professional has made things so easier for the insolvent entity. No doubt the role of the resolution professional is difficult as he has to bear so much pressure, and it has been tiresome also. So, the Resolution Professional now plays an important role in the insolvency procedures. No doubt that the Resolution Professional rules, and the duties given are excessive but that is the thing about the Resolution Professionals which set him apart from the most other professions.