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Key Player in Corporate Insolvency: The Resolution Professional's Role Unraveled

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ABSTRACT:

This research paper delves into the intricate legal landscape surrounding the appointment, replacement, eligibility, and responsibilities of Resolution Professionals (RPs) within the framework of India's Insolvency and Bankruptcy Code (IBC). It meticulously examines the provisions of the IBC, coupled with relevant case law, to shed light on the pivotal role played by RPs in the Corporate Insolvency Resolution Process (CIRP). The paper highlights the criteria for replacing an RP, emphasizing the need for adherence to eligibility conditions and written consent. Furthermore, it delineates the multifaceted responsibilities of RPs, emphasizing their role as intermediaries between debtors and creditors, and their statutory duties and powers. The paper also clarifies the distinct roles of RPs and the Committee of Creditors (CoC) within the IBC framework. Through this comprehensive analysis, the paper offers a nuanced understanding of the dynamics and regulations governing RPs, enhancing clarity in the implementation of the IBC.

Keywords: Resolution Professional, CoC, IBC, CIRP.

INTRODUCTION:

Section 5(27)¹ of the IBC provides a definition for the term "resolution professional," designating this role as an insolvency professional responsible for overseeing the Corporate Insolvency Resolution Process (CIRP), which also encompasses the role of an Interim Resolution Professional (IRP).

The tenure of an IRP persists until they are officially confirmed as the Resolution Professional (RP) or replaced by a new RP, a process stipulated in Section 22 of the IBC.² According to Section 22, the IRP is obliged to convene the initial Committee of Creditors (CoC) meeting within seven days of the CoC's formation. During this gathering, the CoC must make a decisive

¹ The Insolvency and Bankruptcy Code, 2016, § 5(27), No. 31, Acts of Parliament, 2016 (India).

² The Insolvency and Bankruptcy Code, 2016, § 22, No. 31, Acts of Parliament, 2016 (India).

choice, contingent on a majority vote of at least 66 percent of the total voting shares, either to confirm the IRP as the RP or to select a different professional to assume the RP role.

In cases where the CoC, with the IRP's written consent, chooses to retain the IRP as the RP, it is incumbent upon them to communicate this resolution to the IRP, the Corporate Debtor (CD), and the Adjudicating Authority (AA).³ Conversely, if the CoC decides to replace the IRP, they are obligated to submit an application to the AA for the appointment of the proposed RP, along with the written consent of the prospective RP. Subsequently, the AA is mandated to forward the proposed RP's name to the Insolvency and Bankruptcy Board of India (IBBI), where the appointment is finalized from a pool of insolvency professionals maintained by the IBBI.

In the case of Punjab National Bank versus Mr. Kirah Shah⁴, who served as the Interim Resolution Professional (IRP) for ORG Informatics Ltd., the Adjudicating Authority (AA) pointed out that the application did not provide reasons for the replacement of the IRP. According to the established protocol, following the initial Committee of Creditors (CoC) meeting, an application should have been submitted under Section 22, but this step was omitted in this particular case. Subsequently, upon appeal, the National Company Law Appellate Tribunal (NCLAT) ruled that the CoC was not obliged to document any rationale for the replacement of the Resolution Professional (RP). Such a requirement could potentially trigger legal proceedings against the RP. The CoC, having made the decision to replace the RP with the support of 88 percent of the voting share, was shielded from interference by the AA unless it could be demonstrated that the CoC's decision was inherently flawed or beyond its jurisdiction.⁵

In the case of Bank of India Vs. M/s Nithin Nutritions Pvt. Ltd.⁶, alongside associated appeals, a noteworthy development occurred during the third meeting of the Committee of Creditors (CoC). During this meeting, the Interim Resolution Professional (IRP) was substituted with another individual assuming the role of the Resolution Professional (RP). Subsequently, the appellant initiated a formal application with the Adjudicating Authority (AA) seeking

³ *The report of the Bankruptcy Law Reforms Committee Volume I: Rationale ...* Available at: https://www.ibbi.gov.in/BLRCReportVol1_04112015.pdf (Accessed: 12 September 2023).

⁴ Punjab National Bank versus Mr. Kirah Shah CA (AT) (Ins) No. 749/2019

⁵ Punjab National Bank vs Kiran Shah Isp Of Org Informatics ... on 13 August, 2019, Bench: S.J. Mukhopadhyaya Chairperson, A.I.S. Cheema, Kanthi Narahari.

⁶ Bank of India Vs. M/s Nithin Nutritions Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 497 of 2020

confirmation of the new RP's appointment. However, the AA declined the application, citing a deviation from the prescribed procedures outlined in the Insolvency and Bankruptcy Code (IBC), as the CoC's decision took place in the third meeting, rather than the first, as stipulated by the IBC. Moreover, the AA noted that no explicit reasons were provided for not effecting the change in RP during the initial meeting. In response to an appeal contesting the AA's decision, the National Company Law Appellate Tribunal (NCLAT) made several critical observations. First, it underlined that neither Section 22 nor Section 27 of the IBC mandates the CoC to furnish specific justifications for their actions. The NCLAT reasoned that the nature of the relationship between the RP and the CoC hinges on trust and confidence. If such confidence is eroded, and the RP continues in their role, it can potentially lead to detrimental consequences for the Corporate Debtor (CD) due to strained relations between the IRP/RP and the CoC.

Furthermore, the NCLAT acknowledged the evolution of Section 16 of the IBC, originally stipulating a 30-day term for the IRP, which was subsequently modified with effect from June 6, 2018.⁷ Under the revised provision, the IRP's term extends until the date of the RP's appointment under Section 22. Additionally, referencing Regulation 17 of the Corporate Insolvency Resolution Process (CIRP) Regulations, the NCLAT highlighted that the IRP effectively transitions into the role of the RP by performing the RP's functions starting from the 40th day of the insolvency process. Given these statutory considerations, the NCLAT concluded that the CoC possesses the necessary authority to propose the replacement of the IRP, even in subsequent meetings, without the obligation to furnish specific justifications for this change.

Replacement and Eligibility of the RP:

Section 27⁸ of the IBC delineates the procedure for the Committee of Creditors (CoC) to effect the replacement of a Resolution Professional (RP). This provision stipulates that if, at any juncture during the Corporate Insolvency Resolution Process (CIRP), the CoC deems it necessary to replace the incumbent RP, they are empowered to do so by selecting another Insolvency Professional (IP). This decision hinges on securing a vote of at least 66 percent of the voting shares and necessitates the submission of a written consent form from the

⁷ M.K. RAJAGOPALAN versus DR. PERIASAMY PALANI GOUNDER & ANR.

⁸ The Insolvency and Bankruptcy Code, 2016, § 27, No. 31, Acts of Parliament, 2016 (India).

prospective RP. Subsequently, the CoC is obligated to submit the name of their chosen RP to the Adjudicating Authority (AA). The AA, in turn, forwards the nominated RP's name to the Insolvency and Bankruptcy Board of India (IBBI) for formal confirmation, following which the RP assumes the role in accordance with the procedures outlined in Section 16 of the IBC. It is imperative to note that only a registered IP holding the requisite authorization for appointment is eligible for designation as the RP. Furthermore, pursuant to Regulation 3 of the Corporate Insolvency Resolution Process (CIRP) Regulations, an IP can only be considered for appointment as an RP for a Corporate Debtor (CD) if the IP, along with all the partners and directors of the Insolvency Professional Entity (IPE) to which they are affiliated, maintain independence from the CD. This prerequisite is elucidated further in Module 3. Consequently, even in scenarios where the Interim Resolution Professional (IRP) is being replaced by another IP as the RP, the eligibility criteria remain applicable.

Moreover, in instances where the CoC opts to appoint the IRP as the RP, replace the IRP under Section 22⁹, or supplant the RP under Section 27¹⁰, they are obligated to secure the written consent of the nominated RP, as per the specifications delineated in Form AA of the Schedule to the CIRP Regulations.

Role and Responsibilities:

The Resolution Professional (RP) assumes a pivotal role in the administration of the Corporate Insolvency Resolution Process (CIRP), and their function is of paramount importance for the effective functioning of the resolution mechanism. Acting as a crucial intermediary, the RP serves as a liaison between the debtor and the creditors, playing a substantial role in harmonizing the interests of the Corporate Debtor (CD) with those of the creditors.

The RP is officially appointed as an officer of the Adjudicating Authority (AA) to oversee the resolution process and is endowed with various statutory obligations and powers, which will be further detailed below. In the execution of their duties and the exercise of their powers, it is imperative that the RP meticulously adheres to the provisions of the Insolvency and Bankruptcy Code (IBC) and the underlying rules, regulations, and guidelines. A key responsibility of the RP is to maintain transparency throughout the process, ensuring that all stakeholders are adequately informed. Simultaneously, the RP must navigate a delicate balancing act,

⁹ The Insolvency and Bankruptcy Code, *Supra* note 2, at 885.

¹⁰ The Insolvency and Bankruptcy Code, *Supra* note 6, at 885.

conducting the resolution process while safeguarding the interests of all stakeholders associated with the CD. Consequently, the necessity for specialized professionals to conduct Corporate Insolvency Resolution Processes (CIRPs) is indisputably paramount.

Section 23(1)¹¹ of the IBC stipulates that subject to Section 27¹², the RP assumes responsibility for the entire CIRP and the management of the CD's operations throughout the CIRP duration. Furthermore, it specifies that the RP continues to oversee the CD's operations even after the conclusion of the CIRP period until a definitive order is issued by the AA, either approving the resolution plan pursuant to Section 31(1)¹³ or appointing a liquidator in accordance with Section 34¹⁴.

Section 23(2)¹⁵ of the IBC establishes that the Resolution Professional (RP) is entrusted with exercising the powers and fulfilling the responsibilities that are vested in or conferred upon the Interim Resolution Professional (IRP) under Chapter II of the IBC.

In this regard:

In accordance with Section 17¹⁶ of the IBC, the RP assumes control over the management of the Corporate Debtor's (CD) affairs, wherein they wield the authority akin to that of the CD's board of directors or partners, depending on the CD's organizational structure. Furthermore, the RP possesses additional powers, duties, and authority as explicitly outlined in Section 17. In instances where an IRP continues its role as the RP, this seamless transition maintains the vesting of management authority and power. Conversely, when the IRP is replaced by another Insolvency Professional (IP) as the RP, the new RP inherits the management responsibilities of the CD, including the exercise of the board's or partners' powers, commencing from their appointment date as specified under Section 22. Endowed with these powers, the new RP is empowered to execute all actions that the IRP was authorized to undertake.

The duties originally designated to the IRP under Section 18¹⁷, to the extent that they have not yet been fulfilled by the IRP, become the responsibility of the RP. This includes actions such as taking control and custody of any assets owned by the CD and continuing to collate claims.

¹¹ The Insolvency and Bankruptcy Code, 2016, § 23(1), No. 31, Acts of Parliament, 2016 (India).

¹² The Insolvency and Bankruptcy Code, supra note 6, at 886.

¹³ The Insolvency and Bankruptcy Code, 2016, § 31(1), No. 31, Acts of Parliament, 2016 (India).

¹⁴ The Insolvency and Bankruptcy Code, 2016, § 34, No. 31, Acts of Parliament, 2016 (India).

¹⁵ The Insolvency and Bankruptcy Code, 2016, § 23(2), No. 31, Acts of Parliament, 2016 (India).

¹⁶ The Insolvency and Bankruptcy Code, 2016, § 17, No. 31, Acts of Parliament, 2016 (India).

¹⁷ The Insolvency and Bankruptcy Code, 2016, § 18, No. 31, Acts of Parliament, 2016 (India).

Furthermore, the provisions of Section 19 of the IBC¹⁸, which pertain to cooperation with the IRP, are also applicable to the RP. Additionally, the RP is obliged to manage the CD's operations as a going concern in accordance with the guidelines specified in Section 20 of the IBC.¹⁹

Furthermore, Section 25 of the IBC delineates the specific responsibilities entrusted to the Resolution Professional (RP)²⁰. Similar to the Interim Resolution Professional (IRP), the RP is charged with the duty to safeguard and uphold the assets of the Corporate Debtor (CD), which encompasses the continuous operation of the CD. As per Section 25(2)²¹ of the IBC, the RP is mandated to carry out the following actions for these purposes:

- Assume immediate custody and control over all of the CD's assets, encompassing its business records.
- Act as a representative and advocate on behalf of the CD in dealings with third parties and exercise the CD's rights in judicial, quasi-judicial, or arbitration proceedings.
- Secure interim financing, subject to the approval of the Committee of Creditors (CoC) as stipulated in Section 28 of the IBC.²²
- Appoint accountants, legal professionals, or other experts following the guidelines set forth by the Insolvency and Bankruptcy Board of India (IBBI).
- Maintain an updated record of claims.
- Convene and participate in all meetings of the CoC.
- Formulate the information memorandum in accordance with the provisions of Section 29 of the IBC.²³
- Extend invitations to prospective resolution applicants (PRAs) to submit resolution plans, contingent on their compliance with criteria established by the RP with the CoC's approval, considering the intricacy and magnitude of the CD's business operations, in addition to other conditions stipulated by the IBBI.
- Present all resolution plans during CoC meetings.

¹⁸ The Insolvency and Bankruptcy Code, 2016, § 19, No. 31, Acts of Parliament, 2016 (India).

¹⁹ The Insolvency and Bankruptcy Code, 2016, § 20, No. 31, Acts of Parliament, 2016 (India).

²⁰ The Insolvency and Bankruptcy Code, 2016, § 25, No. 31, Acts of Parliament, 2016 (India).

²¹ The Insolvency and Bankruptcy Code, 2016, § 25(2), No. 31, Acts of Parliament, 2016 (India).

²² The Insolvency and Bankruptcy Code, 2016, § 28, No. 31, Acts of Parliament, 2016 (India).

²³ The Insolvency and Bankruptcy Code, 2016, § 29, No. 31, Acts of Parliament, 2016 (India).

- Submit applications as necessary for the avoidance of transactions, aligning with the provisions set forth in Chapter III of the IBC.
- Execute any other actions as may be specified by the IBBI.

Insolvency Professionals (IPs) and Committees of Creditors (CoCs) are pivotal institutions held in high regard by the public within the framework of the Insolvency and Bankruptcy Code (IBC). The IBC, in conjunction with its regulations, has clearly defined the roles and obligations of both IPs and CoCs within the Corporate Insolvency Resolution Process (CIRP), even allocating certain shared responsibilities to them. When an IP serves as an Interim Resolution Professional (IRP) or Resolution Professional (RP), they are vested with a comprehensive array of statutory and legal duties and powers.

In this capacity, the IP assumes the authority of the board of directors of the Corporate Debtor (CD) undergoing resolution, effectively managing the CD's operations as an ongoing entity. Simultaneously, they are tasked with safeguarding the value of its assets and ensuring compliance with relevant laws on behalf of the CD. In essence, the IP oversees the entirety of the CIRP, and it is imperative for stakeholders to collaborate with them in the discharge of their functions. Upon admission into the CIRP due to a failure to service debt, the IBC transfers control of the CD to the creditors, who are collectively represented by the CoC to address the insolvency. The CoC holds the key to determining the fate of the CD and its stakeholders. Numerous actions under the IBC necessitate the approval of the CoC. They possess the authority to sanction a resolution plan after a thorough evaluation of its feasibility and viability. The Supreme Court has emphasized the paramount importance of the CoC's commercial judgment in approving or rejecting resolution plans in various legal precedents. Within this framework, specific areas exist where both the IP and the CoC have well-defined roles. Various actions outlined in Section 28²⁴ require the RP to seek prior approval from the CoC before execution. Moreover, the CoC is entrusted with the responsibility of reviewing the resolution plan under Section 30(4)²⁵ once it has been scrutinized and validated by the RP for compliance with Section 30(2).²⁶ It is noteworthy that the IBC while specifying these roles, does not envision a scenario where one entity assumes the functions of the other. Consequently, the RP is not obligated to provide their opinion on matters within the jurisdiction of the Financial

²⁴ The Insolvency and Bankruptcy Code, Supra note 20, at 888.

²⁵ The Insolvency and Bankruptcy Code, 2016, § 30(4), No. 31, Acts of Parliament, 2016 (India).

²⁶ The Insolvency and Bankruptcy Code, 2016, § 30(2), No. 31, Acts of Parliament, 2016 (India).

Creditors (FCs), nor are they required to approve or reject resolution plans in accordance with Section 30(4) of the IBC.

CONCLUSION:

"From my considered perspective, the research findings expound upon the profound significance that Resolution Professionals (RPs) hold within the intricate web of the Indian Insolvency and Bankruptcy Code (IBC). The paper, buttressed by an exhaustive analysis of pertinent jurisprudential precedents, serves to elucidate the rigorous criteria governing the replacement of RPs, thereby underscoring the imperative need for meticulous adherence to these conditions. Furthermore, it conspicuously delineates the multifarious spectrum of responsibilities that RPs shoulder, a facet critical not only for their intrinsic role as intermediaries between the debtors and creditors but also due to their statutory obligations and vested powers, ultimately reaffirming their indispensability in the resolution process.

Additionally, the paper accentuates the discernible demarcation of roles between RPs and the Committee of Creditors (CoC) within the overarching framework of the IBC. It becomes manifest that the CoC, wielders of considerable influence, are intrinsically situated at the fulcrum of the resolution process, whereas the RPs, endowed with distinct responsibilities and competencies, serve as the conduits through which the resolution process is navigated. Such meticulous and comprehensive scrutiny and understanding of these multifaceted dynamics not only serve to augment the proficiency of insolvency resolution mechanisms but also function as a cornerstone in fostering a robust ecosystem underpinned by trust and faith, thereby safeguarding the vested interests of all stakeholders involved."

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