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CHALLENGES FACED BY INSOLVENCY PROFESSIONALS IN CONDUCTING CIRP

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Introduction

The Corporate Insolvency Resolution Process (CIRP) within the framework of the Insolvency and Bankruptcy Code (IBC) of 2016 was designed with a creditor-focused insolvency resolution approach. It constituted a radical shift from the ineffective and obsolete insolvency systems of the past by placing insolvency professionals (IPs) at the centrepiece of the resolution. An IP's role is intricate as it encompasses the management of the distressed corporate debtors, protecting the creditors, arranging legal compliance, and enabling the resolution plan in the best possible manner to reduce scope for misuse and create transparency.

Even with the framework of the IBC in place, put into action, the CIRP comes with significant hurdles. In practice, there are problems with the sponsors (inertia, lack of cooperation), the creditors (differing opinions), and operational problems that often block processes that need to happen for the resolution of insolvency. Furthermore, regulatory formality along with boundary conflict among several bodies adds legal ambiguity and procrastination. The ethical question coupled with the conflict of interests makes the role of an IP more complex and creates scope for poor judgment and acts of malpractice. In addition to all these, there is certainly too much litigation through the courts which causes delays. Supervision and constant control from courts and appeal courts is also another insolvency hurdles for the over dependency on the courts to bring any resolution.

This chapter explores the major challenges faced by insolvency professionals in conducting CIRP, focusing on practical difficulties, regulatory hurdles, ethical concerns, and judicial oversight. Understanding these issues is crucial to enhancing the effectiveness of the IBC framework and ensuring that CIRP remains a viable mechanism for corporate revival and debt recovery.

Practical Difficulties in Implementing CIRP

- **Non-Cooperation from Promoters and Key Managerial Personnel**
  A notable problem that IPs face has often been the lack of cooperation from the promoters and key managerial. personnel (KMPs) of the corporate debtor. When CIRP commences, the management of the corporate debtor is suspended and all control is with the IRP or the RP as per IBC 17. Promoters and Directors tend to resist this changeover as they fear losing control of the company. Some promoters wilfully engage in non-cooperation by refusing to provide key financial documents, filing deceptive statements regarding the company's liabilities, and shifting the ownership of the assets so as to ensure that adequate resolution cannot be achieved.[1183]

  Such obstructions can be undermined by section 19 of IBC which provides that the existing management, employees,

[1183] Khaitan & Co, *Emerging Ideas on IBC* (October 2023) https://www.khaitanco.com/sites/default/files/2023-10/Emerging%20Ideas%20on%20IBC.pdf accessed 19 March 2025

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and promoters in the firm shall be required to assist the IP. The IP may seek NCLT orders that command assertive compliance if the stipulations of the mandated assistance are ignored. This type of legal action mostly results in waiting because acquiring tribunal orders and meeting the compliance has to be done and, and destroys the goal of the resolution that is time bound. The case of promoters having strong political or financial power makes enforcement much more difficult. The need for stricter implementation of Section 19 could also be seen in the case of Bhushan steel[1184], where there was a delay of 270 days due to non-cooperation from the promoter's end.

- **Lack of Consensus Among Creditors**
  CIRP processes require particular involvement on the part of creditors, particularly the financial creditors that form part of the Committee of Creditors (CoC). The CoC is the most critical decision-making entity within the CIRP, being able to either approve or reject the resolution plans, appoint or revoke the Resolution Professional, and make determinations of the corporate debtor's fate.

  It is, however, often time-consuming to build agreement between all the creditors. In resolving the plan, at least 66% of the voting capacity of the financial creditors must be obtained which is not always easy especially where shareholders have opposing view. For example, a secured creditor may prefer liquidation in order to recover more of their funds whilst an unsecured creditor may want a resolution that permits the business to continue operating. Divisions surfaced between creditors at home and abroad is also common, particularly when there are foreign lentors who have little knowledge of the laws governing insolvency in India.

  Additionally, in public sector banks, the decision-making process is often heavily laden with bureaucracy, requiring multiple votes at different levels within the organization before important decisions involving the CIRP can be made. These delays can push the CIRP timeline beyond the prescribed 330 days, increasing the likelihood of liquidation rather than successful resolution. The Jet Airways insolvency case[1185] is a key example of cases where such lack of consensus among the members of CoC was observed. The lack of valuation disagreements which prolonged the resolution period to 4 years emphasizing on the need of CoC training.

Regulatory Hurdles and Overlapping Jurisdictions

- **Multiplicity of Regulators and Conflicting Legal Frameworks**
  While the IBC was introduced as a comprehensive insolvency framework, CIRP proceedings still intersect with various other laws and regulatory bodies, creating overlapping jurisdictions and conflicting legal interpretations. Several regulatory agencies continue to exercise authority over different aspects of insolvency, including:

  1. Insolvency and Bankruptcy Board of India (IBBI) – The primary regulatory body for insolvency professionals, responsible for framing rules and monitoring professional conduct.
  2. National Company Law Tribunal (NCLT) – The adjudicating authority for CIRP cases, often

[1184] Bhushan Steel & Power Ltd. v. Tata Steel Ltd. (IB-07(PB)/2017)

[1185] State Bank of India v. Jet Airways (India) Ltd. CP (IB) No. 2205/MB/2019

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burdened with a huge backlog of cases, leading to procedural delays.[1186]

3. Securities and Exchange Board of India (SEBI) – Governs listed companies undergoing CIRP and imposes additional compliance requirements on companies seeking resolution.

4. Reserve Bank of India (RBI) – Plays a key role in insolvency cases involving non-banking financial companies (NBFCs) and regulated financial entities.

5. Competition Commission of India (CCI) – Required to approve mergers or acquisitions resulting from CIRP resolution plans.

The involvement of multiple regulators often leads to delays in approvals and conflicting regulatory mandates. For example, SEBI regulations require shareholder approval for significant corporate restructuring, while the IBC allows CoC-approved plans to bypass such approvals. This conflict creates legal uncertainty, resulting in prolonged litigation and stalled resolutions.

- **Delays Due to Procedural and Legal Bottlenecks**
  Despite the IBC prescribing a strict timeline of 330 days for CIRP completion, practical delays are common. These delays primarily result from:

  - Litigation by promoters challenging CIRP initiation, often under the pretext of disputing default claims.

  - Repeated adjournments in NCLT and NCLAT, leading to significant loss of time.

  - Appeals against CoC-approved resolution plans, especially by operational creditors who feel sidelined in the process.

  In cases where multiple legal proceedings are initiated across different forums, CIRP loses its time-bound nature, eroding the value of the corporate debtor. The delay often discourages potential resolution applicants, leading to increased instances of liquidation instead of revival.[1187]

Ethical Dilemmas and Conflicts of Interest in the Functioning of Insolvency Professionals: A Critical Analysis

The Insolvency and Bankruptcy Code, 2016 (IBC), entrusts Insolvency Professionals (IPs) with sweeping powers to manage corporate debtors, verify claims, and oversee the formulation and implementation of resolution plans. Given their pivotal role, the expectation is that IPs act with utmost integrity, impartiality, and diligence, balancing the interests of diverse stakeholders while ensuring compliance with legal norms. However, a closer examination of the current framework reveals that IPs often operate under conditions ripe for ethical dilemmas and conflicts of interest, which can undermine the fairness, transparency, and credibility of the insolvency resolution process.

1. **Appointment and Remuneration Controlled by Creditors: The Subtle Influence**
   One of the most structurally embedded ethical concerns arises from the appointment and remuneration process of IPs, controlled predominantly by the Committee of Creditors (CoC). While the creditor-in-control model under the IBC seeks to empower creditors in the resolution process, it inadvertently compromises the independence and neutrality of IPs. The CoC appoints the

[1186] Insolvency and Bankruptcy Board of India, 'Handbook on Ethics for Insolvency Professionals: Ethical and Regulatory Framework' (2021) https://ibclaw.in/wp-content/uploads/2019/09/Handbook-on-Ethics-for-Insolvency-Professionals-Ethical-and-IBBI.pdf accessed 15 March 2025.

[1187] Ibid

IRP, has the authority to replace them with another RP, and negotiates the fees payable to them.

This system creates an inherent conflict of interest. Since financial creditors (mainly banks) dominate the CoC, an IP may face subtle pressures to act in their favor, particularly when approving or rejecting claims, deciding on interim finance, or evaluating resolution plans. Operational creditors, employees, and minority stakeholders often have limited leverage in this equation, raising legitimate concerns regarding whether IPs can truly function impartially when their continuance and compensation depend on the CoC's approval.

The absence of statutory safeguards insulating IPs from such influence creates fertile ground for biased decision-making, where certain classes of creditors are prioritized over others, contrary to the IBC's objective of equitable treatment.

2. **Preferential Bias Towards Liquidation Over Resolution**

Another ethical dilemma arises from the fee structure and remuneration incentives associated with different stages of the insolvency process. It is noteworthy that the fees payable to IPs during liquidation proceedings are generally higher and more assured compared to those earned during CIRP. This creates a moral hazard, where an IP, consciously or unconsciously, may prefer the corporate debtor to move into liquidation rather than striving for revival through a resolution plan.

Although liquidation may sometimes be the only viable option, a system where IPs have a financial incentive to hasten liquidation dilutes the revival-centric intent of the IBC. It leads to questions about whether insolvency professionals are truly acting in the best interest of the corporate debtor and all stakeholders or prioritizing personal financial gain.

3. **Lack of Transparency in Disclosure of Potential Conflicts**

The regulatory framework does mandate that IPs must adhere to a Code of Conduct prescribed by the Insolvency and Bankruptcy Board of India (IBBI), which includes clauses related to independence, objectivity, and avoidance of conflicts of interest. However, in practice, enforcement of disclosure obligations remains weak.

Instances have been reported where IPs fail to disclose prior associations with creditors, resolution applicants, or corporate debtors. Given that many IPs come from backgrounds in law, finance, or consultancy, the possibility of past professional relationships influencing present decisions is significant. Yet, there is no publicly accessible, systematic mechanism where such disclosures are transparently available for scrutiny by stakeholders or regulatory bodies.

This lack of institutionalized disclosure norms reduces stakeholder confidence and undermines the perception of neutrality.

4. **Ethical Grey Areas in Verification and Admission of Claims**

One of the IP's core functions is to verify, admit, or reject creditor claims, a process critical for establishing voting shares in the CoC and determining the distribution under resolution plans. However, this responsibility also opens avenues for selective treatment or preferential verification, particularly under creditor pressure.

Given the discretion involved in scrutinizing documentation and financial data, the absence of standardized criteria or oversight in claim verification increases the risk of partiality or even manipulation, especially where large financial creditors hold sway. The lack of third-party review mechanisms for claim verification decisions leaves room for ethical lapses.

5. **The Problem of Dual Loyalties: IPs as Liquidators and RPs**

The current regulatory design allows the same professional to serve as an RP during CIRP and later as Liquidator if resolution fails. While this may offer continuity, it raises questions about dual loyalty and conflicting objectives. An IP who is aware that liquidation will likely secure higher remuneration may be tempted to give insufficient effort towards maximizing resolution outcomes.

Moreover, certain tactical decisions made by the IP during CIRP may be influenced by future liquidation considerations—introducing a conflict between short-term fiduciary duties and long-term personal gain.

6. **Recommendations for Strengthening Ethical Integrity[1188]**

Given the multi-dimensional ethical challenges outlined above, it becomes essential to rethink and strengthen the regulatory framework governing the conduct of Insolvency Professionals:

- Neutral Appointment System
  A major structural reform would involve establishing a neutral, randomized IP appointment mechanism, managed by the IBBI, minimizing CoC influence. An automated empanelment system, similar to court-appointed administrators in some jurisdictions, can ensure greater independence.

- Standardized Fee Structure
  The IBBI should introduce uniform fee slabs, linked to objective metrics such as asset size, number of creditors, and complexity of the case—removing negotiation discretion from CoC. This would eliminate the financial incentive to prefer liquidation over resolution and align professional incentives with statutory objectives. The need of a standardized and regulated fee structure was reiterated in the matter of Mukesh Mohan (2018)[1189], Insolvency Professional where an exorbitantly high fee was charged by the IP.

- Mandatory Public Disclosure of Conflicts
  IBBI regulations should require IPs to file detailed conflict-of-interest declarations at every key stage of CIRP, covering past and present associations with creditors, debtors, applicants, and CoC members. These disclosures must be publicly accessible on IBBI portals to promote transparency.

- Independent Review of Claims Verification
  A third-party audit mechanism for verification and admission of claims could be instituted, especially in large or sensitive cases. This would limit discretionary biases and ensure procedural fairness for all creditors.

- Segregation of RP and Liquidator Roles
  Statutory reforms could mandate that the RP and Liquidator roles must be performed by different professionals, ensuring that the objectives of CIRP and liquidation are not conflated or compromised by conflicting incentives.

[1188] Ishaan Saraswat, 'Resolving Bias of Resolution Professionals' (NLIU CBCL, 18 January 2023) https://cbcl.nliu.ac.in/insolvency-law/resolving-bias-of-resolution-professionals/ accessed 19 March 2025

[1189] Disciplinary Proceedings No. IBBI/Ref-Disc.Comm./07/2018, 23 August, 2018

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The ethical dilemmas and conflicts of interest inherent in the current insolvency framework present serious risks to the impartiality and integrity of Insolvency Professionals. While the IBC and IBBI regulations attempt to impose ethical standards, structural weaknesses in appointment procedures, remuneration models, disclosure obligations, and role continuity continue to create vulnerabilities.

A reimagined regulatory approach that addresses these systemic issues—through transparent appointments, standardized fees, public conflict disclosures, independent claim verification, and role segregation—will not only safeguard the credibility of IPs but also strengthen the overall effectiveness of the CIRP framework in India.

Critical Analysis of Operational and Regulatory Challenges Affecting Insolvency Professionals

The role of Insolvency Professionals (IPs) under the IBC is designed to facilitate a swift, transparent, and equitable resolution of financially distressed corporate entities. However, in practice, IPs face significant operational and regulatory challenges that often hinder the smooth functioning of the Corporate Insolvency Resolution Process (CIRP). These challenges not only impede the achievement of the IBC's objective of time-bound resolution but also affect the overall confidence in the insolvency framework.

One of the most pressing operational difficulties is the non-cooperation from promoters and existing management. Upon commencement of CIRP, the powers of the board of directors are suspended, and control is vested in the IRP/RP. However, it is common for promoters and key managerial personnel to actively withhold crucial financial records, conceal assets, or create legal obstructions to resist losing control of the company. Although Section 19 of the IBC mandates cooperation, enforcement remains a cumbersome process, often requiring the IP to approach the NCLT for specific orders—thereby leading to significant delays. Moreover, the current punitive measures for promoter non-cooperation are either insufficiently enforced or result in prolonged litigation, which detracts from the time-bound nature of CIRP.

Another critical challenge lies in the lack of consensus among creditors, especially financial creditors constituting the Committee of Creditors (CoC). Decision-making within the CoC requires a minimum of 66% approval for key actions, including resolution plan approval and appointment of the Resolution Professional. However, creditors often have divergent interests, leading to prolonged negotiations, deadlocks, or indecision, which impacts the pace of CIRP. Public sector banks, forming a large portion of CoC members, are further bound by bureaucratic and regulatory protocols requiring multiple internal approvals, compounding delays. [1190]

Additionally, IPs are often faced with the daunting task of keeping the corporate debtor functioning as a going concern during CIRP. This includes ensuring the continued operation of business activities, retaining employees, maintaining vendor relationships, and arranging interim financing. However, interim finance approval requires CoC consent, and in many cases, creditors are reluctant to approve substantial interim funding, fearing risk exposure. This hampers the IP's ability to stabilize the corporate debtor, ultimately reducing the debtor's market value and attractiveness to resolution applicants.

A further systemic challenge emerges from the overlapping jurisdictions and regulatory bottlenecks involving multiple authorities such as the NCLT, SEBI, RBI, and the Competition Commission of India (CCI). For instance, resolution plans involving significant shareholding changes or mergers require SEBI's compliance for listed companies, RBI's nod for NBFCs or financial entities, and CCI approval for anti-competitive concerns. The lack of a

[1190] Ashok Haldia, 'Insolvency Professionals Face Challenges with Statutory Authorities' *Goodreturns* (3 July 2024) https://www.goodreturns.in/news/insolvency-professionals-challenges-ibc-process-011-1355377.html accessed 19 March 2025.

streamlined coordination mechanism leads to duplicated scrutiny, conflicting legal requirements, and procedural delays, undermining the IBC's promise of efficiency.

Moreover, judicial bottlenecks exacerbate these challenges. Despite statutory deadlines, it is common for CIRP cases to stretch well beyond 330 days, primarily due to NCLT and NCLAT backlogs, repeated adjournments, and multiple appeals filed by disgruntled stakeholders. This not only diminishes the value of the corporate debtor's assets but also undermines stakeholder confidence in the insolvency resolution mechanism.

Conclusion

In conclusion, while the IBC and regulatory framework provide a solid foundation, the effectiveness of Insolvency Professionals is significantly compromised by these operational and regulatory challenges. Addressing these systemic inefficiencies is crucial to ensuring that CIRP achieves its objectives in a fair, transparent, and time-bound manner.

The role of insolvency professionals in CIRP is highly challenging, involving regulatory compliance, operational hurdles, ethical dilemmas, and legal uncertainties. Practical difficulties such as non-cooperation from promoters, lack of creditor consensus, and delays due to litigation often impede the effectiveness of CIRP. Moreover, conflicts between regulatory authorities, excessive judicial scrutiny, and conflicts of interest further complicate insolvency proceedings.

To ensure a stronger insolvency regime, it is essential to streamline regulatory approvals, strengthen oversight mechanisms for IPs, and enhance judicial efficiency. Strengthening these aspects will enable IPs to execute CIRP effectively, maximizing value for creditors while ensuring fair treatment of all stakeholders.

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