

# IBBI suggests ground rules for Resolution Professionals, Committee of Creditors

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The Insolvency and Bankruptcy Board of India (IBBI) has come up with a charter of responsibilities for Insolvency Resolution Professionals (IRPs) and Committee of Creditors (CoC) so that stakeholders have a complete and clear understanding of their roles and responsibilities in a Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC).

This charter, which is not mandatory, has been prepared in consultation with the three insolvency professional agencies that have been set up by the CA Institute, the Institute of Company Secretaries and the Cost Accountants Institute.

"This charter is only indicative and meant for the sole purpose of educating the stake-



The charter of responsibilities seeks to avoid any duplication in the roles and responsibilities of an IRP and a CoC

holders," said an IBBI official.

While specifying their roles, the IBC does not envisage one assuming the role of the other.

It may be recalled that the Supreme Court had, in a recent decision, observed that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timeline prescribed by the IBC.

The legislature consciously has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority, the National Company Law Tribunal (NCLT), the apex court had ruled. "That is made non-justiciable," it said.

## Expert-take

Saurav Kumar, Partner at law firm Induslaw, said the charter of responsibilities is a beneficial step and will help to overcome any duplication in the roles and responsibilities between an IRP and the CoC, to smoothen the CIRP.

The Supreme Court has already clarified that an IRP is not required to provide his/her opinion on a resolution plan and has to bring such a resolution plan before the CoC

"Since the charter is only indicative and not mandatory, the Board appears to give primacy to the Code if there are differences between the two," Kumar added.

## Who can initiate CIRP

Meanwhile, the government has clarified who can represent a financial creditor and initiate a CIRP under the Code. So now a guardian, an executor or administrator of an estate of a financial creditor, a trustee (including debenture trustee) and a person duly authorised by the board of directors of a company can file an application for initiating CIRP on behalf of the financial creditor.

Sumit Naib, Director-Regulatory, Nangla Advisors (Andersen Global), said the move would address the existing ambiguity.

# Trustees too can approach IBC against corporate debtors: Govt

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**THE GOVERNMENT HAS** allowed trustees, estate administrators, persons authorised by a company's board of directors etc to initiate corporate insolvency resolution process (CIRP) against a corporate debtor before the NCLT, on behalf of financial creditors under the Insolvency and Bankruptcy Code (IBC), 2016.

In a notification, the ministry of corporate affairs (MCA) said "a guardian, an executor or administrator of an estate of a financial creditor, a trustee (including a debenture trustee) and a person duly authorised by board of directors of a company" may file an application for initiating CIRP against a corporate debtor before the adjudicating authority, on behalf of the financial creditor.

Analysts said the MCA notification helps clear the ambiguity regarding who can approach NCLT for CIRP.

Nangia Advisors (Andersen Global) director (Regulatory) Sumit Naib said, "It is important to note that this notification does not intend to amend any provision of the Act or the rules framed thereunder. Given the nature of the notification, it should be considered as a clarification issued by the ministry to address the ambiguity".