

ISSN: 2583-8725

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Quarterly Online and Print Edition

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**LEX SCRIPTA MAGAZINE OF  
LAW AND POLICY (VOL-4, ISSUE-1)**

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ISSN-2583-8725

Vol - IV, Issue - I

Published by INTEGRITY EDUCATION INDIA

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Printed in India @ New Delhi

ISSN: 2583-8725

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## **The Role of Insolvency Professionals and Committee of Creditors under the Insolvency and Bankruptcy Code: A Critical Legal Analysis**

Author

Sonir Chawla

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# **The Role of Insolvency Professionals and Committee of Creditors under the Insolvency and Bankruptcy Code: A Critical Legal Analysis**

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## **Conceptual and legal framework of Insolvency Professionals and CoC.**

This comprehensive piece of legislation is the Insolvency and Bankruptcy Code, 2016 (IBC). The IBC establishes an overall structure for the resolution of insolvency in India, which is largely creditor-driven and built upon the concept of institutions of resolution professionals. The most important institutions are: Insolvency Professionals (IPs); Committee of Creditors (CoC). Together they form the key component of Corporate Insolvency Resolution Process (CIRP) and both have specific roles in the effective resolution. While the IPs have the responsibility of being neutral managers, CoC acts as the commercial arm of resolution and represents the interests of all creditors. While IPs are bound by laws and regulations relating to insolvency and bankruptcy law the Code and Regulations made thereunder by the IBBI, CoC, on the other hand is the financial creditor whose business and commercial viability determines the fate of corporate debtor. This chapter explores in detail the legislative framework, powers, responsibilities of IPs and CoC in the resolution process and their conceptual underpinnings.<sup>12</sup>

## **Legislative Architecture of the IBC: Institutional Foundation**

The Insolvency and Bankruptcy Code, 2016 is a consolidating legislation covering resolution, liquidation, and bankruptcy of corporate persons, partnership firms, and individuals. The Code is broadly divided into six parts, where Part II of the Code deals with insolvency resolution and liquidation of corporate persons. Sections 16-32A under Part II of the Code contain procedural mechanisms of CIRP. The law establishes institutional framework for the implementation of the law and creates bodies such as the Insolvency and Bankruptcy Board of India under Section 188 which regulates insolvency professionals, insolvency professional agencies and information utilities. The National Company Law Tribunal and National Company Law Appellate Tribunal are designated as the adjudicating authority and the appellate authority under Section 60 of the Code respectively. Within this framework of institutional arrangements, the Insolvency Professional and Committee of Creditors are designated with crucial functions during the CIRP.

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<sup>1</sup> V Ahuja, "Role and Responsibilities of Insolvency Professionals under IBC" 5 NLSIU Business Law Review 67, 72-76 (2021).

<sup>2</sup> The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 208.

## **Insolvency Professionals: Conceptual and Legal Framework**

### **Concept of Insolvency Professionals**

Insolvency professionals are licensed by the IBBI and appointed to manage insolvency resolution process, liquidation process and bankruptcy process. Introduction of insolvency professionals is the most striking difference from the pre-existing insolvency regimes which were court-driven, to the time-bound, regulated and professional process under the Code. Conceptually, the IP acts as a facilitator of a creditor-driven process of insolvency resolution and performs its duties objectively in a way that he becomes a neutral third party not having conflicting interests in the case under resolution. It will be interesting to delve into the roles and functions of the IP from the conceptual standpoint and also legally.<sup>34</sup>

### **Appointment and Eligibility of Insolvency Professionals**

Appointment of interim resolution professional takes place immediately after admission of insolvency application to the NCLT by an interim resolution professional, who is appointed under Section 16. He then acts until the resolution professional is confirmed under Section 22 by the CoC or till his replacement. Eligibility requirement is stated in IBBI (Insolvency Professionals) Regulations, 2016, whereby anyone who successfully clears limited insolvency exam and has completed a required number of working days or training, can apply for registration as a professional by taking membership in an IPA. Qualification criteria include degree of law, chartered accountancy, cost accountancy and Company secretary ship with prescribed years of experience.<sup>5</sup>

### **Powers of Insolvency Professionals**

Power to manage corporate debtor, take control and custody over all assets, records, documents etc, operate bank accounts, carry out operations as a going concern rest with the insolvency professional, who is appointed to run the corporate debtor during CIRP. The powers vested in the IP are as mentioned under Section 17 of the Code. It also includes collection of information regarding assets, business and finances of the debtor under Section 18 of the Code, where the IP is the person responsible to manage affairs of the debtor as a going concern by preservation of its assets. The resolution professional is empowered under Section 25 to take all necessary steps to take over and protect the assets. Under Section 25 (h), resolution professional must propose resolution plan. The RP can also present resolution plan before the committee of creditors and present it.<sup>6</sup>

### **Duties and Responsibilities of Insolvency Professionals**

The main function of an IP is to protect the value of corporate debtor and carry on business as a going concern. This aspect of managing the affairs as a going concern by the IPs is important for maintaining value in business and employment for employees. Another primary function is the collation and verification of claims. IP examines claims submitted by the operational creditors and financial creditors. They have to ensure all efforts are made to save the value of corporate debtor. Another aspect is that the information memorandum must be provided to all the resolution applicants, which reflects the actual state of the business and finances. IPs are also responsible for complying with all legal timelines. As per Regulation 40A of CIRP

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<sup>3</sup> S Jain, "Independence of Insolvency Professionals under the IBC Framework" 3 Indian Journal of Insolvency Law 34, 38-41 (2020).

<sup>4</sup> IBBI (Insolvency Professionals) Regulations, 2016, reg. 3.

<sup>5</sup> The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), ss. 16, 22.

<sup>6</sup> The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), ss. 17, 18.

Regulations, every activity within CIRP has a prescribed timeline. Failure to adhere to timeline under these regulations is treated as a breach on the part of IRP.<sup>7</sup>

## **Code of Conduct and Regulatory Oversight**

IBBI has framed IBBI (Insolvency Professionals) Regulations, 2016 in exercise of the powers under Section 206 of the Code read with Sections 196 and 197 of the Code. Under the Code of Conduct for IPs as contained in First Schedule of the Regulations of 2016, an IP is mandated to be honest, transparent, objective, and to have high degree of integrity. An IP is prohibited from entering into business with conflicts and is to provide service with competence, efficiency, impartiality and confidentiality. There are specific provisions of regulatory oversight by IBBI, with regard to monitoring performance of IPs and also imposing penalties for breach of regulations.<sup>89</sup>

## **Committee of Creditors: Legal and Conceptual Framework**

### **Concept of Committee of Creditors**

A Committee of Creditors (CoC) is a statutory body comprised of the financial creditors of the corporate debtor and the same becomes operational from the moment all claims have been verified and authenticated by the interim resolution professional. In principle, the CoC has been envisioned as the ultimate arbiter of commercial decisions in CIRP and acts on a basis of creditor-in-control of the resolution process. Financial creditors possess detailed knowledge and information about the finances of the company and are the entities most equipped and incentivized to analyze the business viability of a resolution plan and the commercial aspect thereof.<sup>10</sup>

### **Constitution and Composition of CoC<sup>11</sup>**

A CoC consists of financial creditors only. As per Section 21, where there is only one financial creditor of the corporate debtor, the CoC shall consist of one financial creditor. Where there are more than one financial creditor, it will consist of all financial creditors, where each financial creditor shall have a vote proportional to its financial debt to the total amount of financial debt. All the related parties would not have a vote in the CoC. Operational creditors cannot vote but may attend the meetings if their debt exceeds ten per cent of the total debt.<sup>1213</sup>

### **The powers of the Committee of Creditors**

The CoC has many powers under the IBC. They are considered the most authoritative group in CIRP. The IBC, as stated in Section 28, stipulates that before the Resolution Professional can undertake any action, prior approval from the CoC must be obtained. These can be: interim finance; security interests in the asset; changing capital structure; transactions with related parties. The most decisive power of the CoC is its power to either approve or reject the resolution plan in Section 30(4) of the Code. A resolution plan will only be approved when at

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<sup>7</sup> A Dogra, "Monopoly Status of Resolution Professionals under IBC" 2 *Jus Corpus Law Journal* 113, 117-120 (2020).

<sup>8</sup> Abhiman Das, Anurag K Agarwal, et al., "Insolvency and Bankruptcy Reforms: The Way Forward" 45 *Vikalpa: The Journal for Decision Makers* 173 (2020), available at: <https://journals.sagepub.com/doi/full/10.1177/0256090920953988> (last visited on May 06, 2026).

<sup>9</sup> IBBI (Insolvency Professionals) Regulations, 2016, First Schedule, Code of Conduct.

<sup>10</sup> The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 21(2).

<sup>11</sup> Indian Institute of Corporate Affairs, *IBC Brief: Powering with Information* Q3 2023-24, 1-45 (IICA, New Delhi, 2024), available at: <https://iica.nic.in/images/Report-2024/IBC-Brief-Q3-2023-24.pdf> (last visited on May 06, 2026).

<sup>12</sup> K Bhandari, "Judicial Deference to CoC: A Critical Analysis" 13 *NUJS Law Review* 56, 61-64 (2020).

<sup>13</sup> *Supra* note 32 at para 25-30.

least 66% of the voting share of the CoC supports it. Following this, the approved plan will be sent to the NCLT for final approval under Section 31 and become binding to all stakeholders. Additionally, in accordance to Section 22 and Section 27 of the Code, the CoC holds the power to replace the Resolution Professional.<sup>1415</sup>

### **The duties of the Committee of Creditors**

Apart from making important decision the CoC has various duties that must be upheld. It is crucial that all members act with utmost good faith and in the collective interest of all creditors. Judicial intervention in such cases such as, Committee of Creditors of Essar Steel India Ltd. V. Satish Kumar Gupta, emphasized that the "Commercial wisdom" of the CoC cannot be arbitrary. The CoC is also expected to consider all plans and evaluate them based on its feasibility and viability, while maximizing the value of the asset. The objectives of the Code, which consist<sup>16</sup> of reviving a viable business and maximizing the value of the assets of the corporate debtor, should be borne in mind.

### **The doctrine of Commercial Wisdom**

One of the prominent doctrines that have been laid down in the course of Insolvency proceedings is the "Commercial Wisdom of the CoC". The Supreme Court has clearly indicated that unless it violates a procedural impropriety or a specific law, the decisions taken by the CoC are beyond the scope of judicial review. This essentially protects the autonomy of financial creditors and reduces intervention in commercial decision-making, but also places significant responsibility on the CoC to make prudent and balanced decisions.<sup>17</sup>

### **Interaction between the Insolvency Professional and Committee of Creditors**

The functioning of the CIRP heavily relies on the co-operation and interdependence of the IP and the CoC. The role of the IP is to act as an administrator that manages and supervises the process in order to ensure procedural integrity and compliance with the Code. The CoC, on the other hand, provides the commercial guidance and direction required during the resolution process. It is also the duty of the IP to present proposed resolution plans to the CoC for consideration and further direction. The IP cannot be a party that manages the corporate debtor as that role rests with the IP itself. These distinct roles result in a system of checks and balances, but it also leads to friction due to conflicting opinions, perception of data and the timelines given to the CoC.<sup>18</sup>

### **Regulatory framework and IBBI oversight**

The role of the IBBI in supervising both IPs and IPAs is significant. The IBBI issues circulars, regulations and guidelines that enable standardization and transparency in the insolvency process. For instance, under the CIRP Regulations 2016 (Regulations 13-39), there are various mandates given for the performance and duties of the IP. However, it is the Code that places the constraints on the CoC's decision-making and judicial review. IBBI guidelines recently

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<sup>14</sup> Aurelio Gurrea-Martinez, "Singapore's New Insolvency Restructuring and Dissolution Act" *Centre for Commercial Law in Asia Blog* (SMU, Singapore, Jul. 24, 2020), available at: <https://ccla.smu.edu.sg/sgri/blog/2020/07/24/singapores-new-insolvency-restructuring-and-dissolution-act> (last visited on May 06, 2026)

<sup>15</sup> The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), ss. 28, 30(4), 31.

<sup>16</sup> P Sharma, "Committee of Creditors under IBC: Power without Accountability?" 15 *Indian Journal of Law and Technology* 88, 93-97 (2021).

<sup>17</sup> *Supra* note 33 at para 42-48.

<sup>18</sup> IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 13-39.

highlight the need for timely CoC decisions and scheduled meetings, better standards of disclosure, which further help in the efficiency of the institutional mechanism.<sup>19</sup>

## **Conclusion**

The entire conceptual and legal framework under the Insolvency and Bankruptcy Code 2016 on the Insolvency Professionals and Committee of Creditors represents a finely crafted equilibrium between professional administration and creditor-initiated decisions. While IPs provide objectivity, transparency and adherence to the Code, the CoC exercises the ultimate control over the outcome through the mechanism of decision-making in the insolvency proceedings. These two institutions, in essence, provide the basis for a successful Corporate Insolvency Resolution Process. In the successful execution of their functions, the interplay, collaboration, and governance principles between the two entities prove instrumental not only from a statutory point of view but also to provide the grounds for further empirical analysis in subsequent chapters.<sup>20</sup>

## **The Insolvency Professional.**

The Insolvency Professional plays a crucial role in the whole framework of Insolvency and Bankruptcy Code, 2016. The establishment of Insolvency Professional is a landmark structural reform of the insolvency regime in India that fundamentally shifts the insolvency process from being an extremely bureaucratized and court-driven affair to a market-based, time-bound, professional service.

The core idea underlying the concept of Insolvency Professionals is to ensure that the insolvency resolution process is in the hands of professionals trained and licensed to act as intermediaries for a multitude of competing stakeholders. While the existing insolvency regime had court intervention in almost every aspect of the insolvency proceedings, the IBC has moved operational power out of court hands and placed them under the control of regulated licensed professionals.

IP is not just an administrator, but a fiduciary of the process and is obligated to conduct CIRP in an efficient and value maximizing manner, all while protecting the interests of the various stakeholders. This role thus includes being legal and administrative and also, in many aspects, managerial and financial.

This chapter delves into the statutory functions, duties, and powers of the Insolvency Professionals and the practical challenges in implementation. The chapter critically analyzes the importance of professional independence, ethical conduct and accountability to the overall success of insolvency in India.

## **Conceptual basis of Insolvency Professionals**

The concept of the Insolvency Professional derives its origin from comparative insolvency jurisprudence and takes a cue from debtor-creditor regimes in other jurisdictions like the UK and the US. The principal idea is that insolvency resolution must be driven by impartial professional intermediaries and not be at the discretion of the courts or by the opposing interests of stakeholders involved.<sup>21</sup>

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<sup>19</sup> The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 196.

<sup>20</sup> Supra note 41 at 89-95.

<sup>21</sup> Aurelio Gurrea-Martinez, "Developing Insolvency Law in Emerging Economies" 62 American Business Law Journal 1, 14-21 (2025).

The Insolvency Professional can thus be considered as the 'bridge institution' between law and economics. On one side they are bound by various statutes like IBC and IBBI Regulations, on the other they have to employ their managerial knowledge, financial acumen, and legal skills on a real-time basis. The establishment of Insolvency Professional also signals a policy decision of state control moving to "regulated privatization" of insolvency administration with public servants now handing over their jobs to a newly appointed, regulated and disciplined set of professionals.

Therefore, an IP is not a judicial authority, nor an agent of the creditors or the debtor but independent fiduciaries, for the insolvency process.

### **Statutory framework governing the IP.**

The IP is primarily governed by the Insolvency and Bankruptcy Code, 2016 and also the IBBI (Insolvency Professionals) Regulation, 2016.<sup>22</sup>

#### **Provisions in IBC.**

IP finds references throughout the various provisions of IBC like:

Section 16 - Appointment of interim resolution professional

Section 17 - Management of affairs of Corporate Debtor by IRP.

Section 18 - Duties of IRP.

Section 20 - Management of the operation of the corporate debtor as a going concern.

Section 21 - Constitution of committee of creditors.

Section 22 - Appointment of Resolution Professional.

Section 23 - Resolution Professional to conduct the CIRP.

Section 25 - Duties of Resolution Professional.

Section 30 - Submission of resolution plan.

Section 31 - Approval of resolution plan.

These sections outline the entire tenure of an IP from the very inception till the closure of the insolvency proceedings.<sup>23</sup>

#### **Provisions under IBBI.**

Under Section 196 of the IBC, the IBBI registers, prescribe requirements of eligibility, prescribe the code of conduct for the professional and carries out the process of disciplinary actions for IP in cases where there has been any infraction by an IP. IBBI(IP) Regulations further elaborates these concepts and add specifics on eligibility, code of conduct, remuneration and disciplinary proceeding under the relevant sections.

### **Appointment and entry of IP in the CIRP.**

IP gets incorporated into the CIRP post admission of an insolvency petition by the NCLT under Section 16 of IBC. Post-admission the adjudicating authority appoints an interim IP within 14 days of such admission. The interim resolution professional may be appointed by the adjudicating authority from the panel proposed by the financial creditor, or if there is no

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<sup>22</sup> The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), ss. 5(13), 5(27).

<sup>23</sup> United Kingdom Government, "Corporate Insolvency and Governance Act 2020: Final Evaluation Report" (Ministry of Justice and Insolvency Service, November 2022), available at: <https://www.gov.uk/government/publications/corporate-insolvency-and-governance-act-2020-evaluation-reports/corporate-insolvency-and-governance-act-2020-final-evaluation-report-november-2022> (last visited on March 06, 2026).

financial creditor, then from the data kept by the IBBI. On appointment, the IP immediately takes control over all the affairs and business operations of the corporate debtor thereby excluding the earlier management.<sup>24</sup>

Post the appointment within 7 days, the IP issues a public announcement to all the creditors to submit their claim towards the debt and after submission, verification and collation, forms the Committee of Creditors (CoC) under Section 21. The CoC is empowered to either confirm the Interim Resolution Professional as the resolution professional or to replace them under Section 22 of IBC.

### **Role of IP in the entire CIRP process.**

The role of IP can be considered broadly under the following:<sup>25</sup>

#### **Control and custody of assets.**

Under Section 17 of IBC the management of the corporate debtor vests with the IRP and it can then take all the necessary actions as required for controlling and taking custody of the assets of the debtor, including financial assets. The ousting of board of directors and management of the corporate debtor ensures no wastage and proper conduct of the insolvency. Furthermore under Section 20 of IBC, it can manage the entire operation of the Corporate Debtor as a going concern.

#### **Verification and collation of claims.**

Under Section 18, IP is required to collect all claims submitted to it and also determine the existence of debt, the amount and the classification. While doing this, the IP must be careful as to how the verification is performed as this would directly determine the voting power of the creditors.

#### **Constitution and facilitation of CoC.**

IP under Section 21 of IBC constitutes the Committee of Creditors to which the decision on various issues including confirmation of resolution plan and appointment of Resolution Professional vests and accordingly IP organizes the meetings, informs all the creditors etc.

#### **Information Memorandum.**

Under Regulation 36 of CIRP Regulation 2016, it is mandatory for the resolution professional to prepare and circulate a list of information called the Information Memorandum containing all required details of the corporate debtor to the participants. This information memorandum serves as an adequate basis for the applicants willing to submit a plan.

#### **Invitation and Evaluation of resolution plans.**

Under Section 25 (2)(h) of IBC, the IP has to invite expression of interest from intending participants for submitting resolution plan for resolution of corporate debtor and after receiving the plans, conducts scrutiny, presents them to the CoC and obtains approval for any plans.<sup>26</sup>

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<sup>24</sup> The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 16(1).

<sup>25</sup> Supra note 9 at 74-78.

<sup>26</sup> V S Mani, "Resolution Plans and the Role of the Insolvency Professional: Evaluating the CIRP Mechanism" *ILI Law Review* (Winter) 221, 226-230 (2020).

### 3.5.6 Proceedings for CIRP within legal timelines

It is one of the paramount objectives of the IBC to achieve speed. The IP's function is to ensure the completion of CIRP within a stipulated period of 180 days (which can be further extended for another 150 days i.e. To a maximum of 330 days). In an insolvency resolution, any further time lapse can lead to erosion of value of the asset. Therefore, efficiency of time is perhaps one of the most vital responsibilities of the IP.

### **Managerial function of the Insolvency Professional**

The role of the Insolvency Professional cannot be purely a legal one. There is also a significant managerial aspect to the role of the IP in that he must ensure that the corporate debtor continues as a going concern. The IP must liaise with the employees of the company, suppliers, creditors, as also with regulatory authorities like the Registrar of Companies and various departments. The IP must take operational decisions including that of procurement of supplies, continuation of manufacturing processes, managing financial resources of the company on a day-to-day basis, and essentially be in charge of the business. This is a distinctly different role from that of a typical lawyer and requires not only legal acumen but also business sense and the ability to take decisions in real-time.<sup>27</sup>

### **Ethics and code of conduct**

The role of the insolvency professional necessarily requires him to maintain high levels of integrity and professionalism. In a situation where high economic stakes are involved, the IP is expected to operate ethically and impartially. IBBI Code of Conduct clearly lays down rules with regard to independence, integrity and objectivity, confidentiality, and professional competence and due diligence. A breach of any aspect of the Code can result in penalties and suspension of the license of the IP. Ethical standards have been emphasized in situations of conflict of interests as is commonplace in insolvency proceedings. Ethical considerations are vital, especially when stakeholders may have diverging interests and the value at stake is significant.<sup>28</sup>

### **Professional independence of Insolvency Professionals**

The role of the IP cannot be tainted with undue influence either by creditors or the debtors or other third parties. He is required to act independently and professionally, taking all decisions in the best interests of the corporate debtor. The Committee of Creditors often plays a dominant role. The ability of the Committee of Creditors to replace the Resolution Professional may implicitly create pressure on the Resolution Professional, thereby undermining the much-emphasized independence required. While it is acknowledged that for certain commercial decisions creditor supremacy needs to be maintained (Swiss Ribbons Pvt. Ltd. V. Union of India), the challenge in ensuring the true independence of the RP in an inherently creditor-driven process is an enduring and difficult aspect of the job.<sup>29</sup>

### **Practical challenges encountered by Insolvency Professionals**

Although the Insolvency and Bankruptcy Code, 2016, posits Insolvency Professionals as independent, competent, and impartial facilitators of insolvency process, reality shows that their functioning is constrained by various structural issues, external pressures from

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<sup>27</sup> Supra note 29 at 318-322.

<sup>28</sup> IBBI (Insolvency Professionals) Regulations, 2016, First Schedule, Clause 1.

<sup>29</sup> Supra note 33 at para 67.

stakeholders, informational deficiencies, limitations on the institution and market expectations. One of the most persistent challenges faced by IPs is the issue of liability vs authority. While IPs are bestowed with the duty to manage the corporate debtor, conserve value and adhere to timelines; most of the crucial decisions remain at the disposal of the Committee of Creditors. This leads to a situation wherein they are held liable for actions but lack adequate decision-making autonomy.

### **Information Asymmetry and Data limitations**

A principal operational challenge facing IPs in India relates to the absence of complete and reliable financial data at the initiation of the CIRP. Usually, the corporate debtors lack organized and contemporary financial records. The IPs are then forced to reconstruct financial position based on incomplete information derived from piecemeal sources.

#### **This lack of adequate information is likely to:**

1. affect the proper valuation of the assets;
2. have implications on the confirmation of creditor claims and
3. influence going concern viability and preparation of IM.

Even institutional creditors like banks and FIs do not possess complete documentation at all times which again puts the IP in a vulnerable position as decisions have to be taken on the prescribed timelines.

### **Role and pressure of CoC**

Despite the IP being perceived to be independent and professional, in reality the Committee of Creditors (CoC) dominates and determines the course of insolvency process. The authority of the CoC to approve or reject a Resolution Plan and to replace the RP as provided under Section 27 imposes an indirect but considerable pressure on IPs, especially in relation to the selection and preference given to the applicants, to the pace and processes adopted and also influence valuations and selection processes by strategic voting. Due to substantial voting share the large FIs, primarily PSBs, can overrule interests of the smaller creditors which also might impact impartiality and functionality of the IP's role<sup>30</sup>.

### **Time constraints and procedural overburdening**

The strict timelines specified under the IB Code (180 days with possibility of extension upto 330 days) for completion of CIRP, though essential to provide timely solutions to the companies and the creditors and for ensuring time value of money is maintained, results in immense pressure and burden on IPs. IPs have to verify creditor claims, constitute CoC, manage ongoing business, issue IM, invite Resolution Plans and ensure all legal procedures are meticulously adhered to. All this needs to be completed within a fixed, often shrinking timeframe which is susceptible to extension due to external litigations or stakeholder issues.

### **Conflict of Interest situations**

An insolvency professional has to maintain independence at all times and is guided by the Code of Conduct for Insolvency Professionals issued by the IBBI. However conflicts of interests might arise on account of various factors, such as professional relations, indirect

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<sup>30</sup> United Kingdom Government, "Corporate Insolvency and Governance Act 2020: Final Evaluation Report" (Ministry of Justice and Insolvency Service, November 2022), available at: <https://www.gov.uk/government/publications/corporate-insolvency-and-governance-act-2020-evaluation-reports/corporate-insolvency-and-governance-act-2020-final-evaluation-report-november-2022> (last visited on May 06, 2026).

interests or relationships of the IP with various stakeholders. Disclosure requirements are present in the Code of Conduct but implementation often relies on self-regulation.

### **Operational challenges in ensuring going concern**

The primary objective during the CIRP is to keep the corporate debtor alive as a going concern. But the inherently uncertain atmosphere of insolvency proceedings impacts operations of the corporate debtor by affecting suppliers, customers and employees. Trade credit and financial accommodation might withdraw which severely compromises the going concern. IPs lack sector-specific expertise required to manage a company even in the short term.

### **Litigation and judicial intervention**

One of the major constraints for efficient resolution process is the high volume of litigation that it entails at almost all stages of CIRP. All decisions of the NCLT, and tribunals above, are susceptible to judicial challenge leading to delay and cost escalation.<sup>31</sup>

### **Ethical issues and professional integrity**

Ethical integrity of insolvency professionals is a fundamental prerequisite for successful functioning, but given the stakes and the competitive environment this is quite a difficult goal to achieve. IPs are required to uphold high ethical standards due to the nature of information, high value transactions and conflicting interests.

### **Objectivity**

IPs are expected to conduct their duties in an unbiased and impartial manner. However the constant interaction and dealings with same groups of people – the CoC, legal advisors etc., may indirectly create biases. The pressure is not just to avoid overt misconduct but to retain integrity of thinking.<sup>32</sup>

### **Confidentiality and Information control**

IPs handle highly sensitive and confidential commercial information of the company in liquidation or under restructuring. Improper disclosure can lead to financial losses or damage reputation of all concerned parties and create a breach of trust and liability to IP.

### **Problem of balancing independence with accountability**

Insolvency professionals are accountable for their decisions and professional actions both to IBBI, the Committee of Creditors and to the courts; but they also require considerable freedom in decision-making to be effective. This requires a delicate balance that seems difficult to maintain as neither extreme is desired.

### **Interpretation of law and role of Courts**

The role and nature of functioning of the Insolvency professionals in India has been defined and refined through various judicial pronouncements. The Hon'ble Supreme Court in its pronouncements like *Swiss Ribbons Pvt. Ltd. V Union of India* and *ArcelorMittal India Pvt.*

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<sup>31</sup> Sarah Paterson, "The Conceptual Foundation of Cross-Class Cramdown" *SSRN Working Paper* 1-45 (2024), available at: <https://ssrn.com/abstract=4959732> (last visited on May 01, 2026).

<sup>32</sup> Travers Smith LLP, "Corporate Insolvency and Governance Act 2020 — How are the Measures Working in Practice?" (2023), available at: <https://www.traverssmith.com/knowledge/knowledge-container/corporate-insolvency-and-governance-act-2020-how-are-the-measures-working-in-practice/> (last visited on April 06, 2026).

Ltd. V. Satish Kumar Gupta have repeatedly upheld the legislative intent behind introducing IP, emphasizing their professional role in administering insolvency and promoting timely and time-bound resolution of companies in India. The Apex Court in the matter of Committee of Creditors of Essar Steel India Ltd. V. Satish Kumar Gupta has rightly clarified the roles played by CoC and RP emphasizing the procedural nature and scope of the role of RP while clarifying that commercial decisions entirely rest with CoC.

### **Comparative Perspective<sup>33</sup>**

Similar to the functioning of IPs in India, professionals appointed in the United Kingdom, United States and Singapore for example also perform a significant function as administrator, receiver or liquidator. Their roles differ depending on whether the process is debtor-in-possession or creditor driven. In the US Chapter 11 proceeding, there is usually a debtor-in-possession and trustee is only appointed in specific cases. In India, however the insolvency professionals hold wider operational responsibility. The role of IPs in Singapore also appear to be a mixed model with a strong support from institutions similar to that in India, but also possibly better mechanisms in terms of management of finances and professional training and evaluation as per IRDA.<sup>34</sup>

### **Critical Appraisal of the role of Insolvency Professionals**

Insolvency Professionals represent a significant step forward in setting up the institutional mechanism for insolvency in India. The profession has to an extent helped in professionalizing the process, reduce the role of courts and speed up the resolution process.

There are various limitations which still exist due to structural issues: limited independence from overwhelming dominance of CoC; heavy reliance and dependence on instructions from creditors; operational pressure on IPs without enough institutional support; threat of litigations and differences in the level of professional expertise of IPs. Notwithstanding these issues, the role of an IP is central to the efficacy of IBC regime. Their skill and competence to balance between legal rigor, commercial acumen and ethical duty is the sole determinant of success or otherwise of the entire resolution process.

### **Conclusion**

Insolvency Professional occupies a central position in the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016. The IP acts as a neutral fiduciary who is tasked with a wide array of functions including management of the assets of the corporate debtor, verification of claims, facilitation of committee of creditors, approval of the resolution plan etc.

However, the IP has to function under a variety of constraints: structural deficiencies in the legal framework, intense pressure from the stakeholders, ethical dilemma of having to choose between the law and their own judgment, as well as the operational burden which often does not come with corresponding institutional support.

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<sup>33</sup> S K Agrawala, "Cross-Border Insolvency and Comparative Restructuring Frameworks: Lessons for India" *ILI Law Review* (Summer) 167, 171-175 (2018).

<sup>34</sup> Umakanth Varottil, "The Proper Role for the Committee of Creditors in Insolvency: Deciphering the Legislative Intent" 13 *NLSBLR* 1, 5-38 (National Law School of India University, 2022), available at: <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1105&context=nlsblr> (last visited on 02 Jan, 2026).

Despite the existing challenges, insolvency professionals remain critical to the functioning of India's insolvency system. Their competence to handle complexities and sensitivities of insolvency resolution contributes to the maximization of value, efficient resolution and thereby the overall economic viability. Evolving judicial pronouncements and legislative changes demonstrate continued endeavors to empower and enhance the independence of Insolvency Professionals. Further developments in this field through adequate training, legal and institutional support and good governance will shape a better role for the IPs in the country's insolvency ecosystem.

### **Role of the Committee of Creditors and the doctrine of commercial wisdom.**

Within the insolvency framework established by the Insolvency and Bankruptcy Code, 2016 (IBC), the Committee of Creditors (CoC) plays a critical and constitutionally central role. It marks a crucial departure from the previous debtor-in-possession regime to the present creditor-in-control system where financially stressed corporate debtors are guided by the collective decisions of the financial creditors. Far from being a mere administrative organ, the CoC is the very decision-making body of the Corporate Insolvency Resolution Process (CIRP), tasked with evaluating resolution plans, overseeing the work of the resolution professional and determining the fate of the corporate debtor-whether it should be rejuvenated or sent into liquidation. The entire jurisprudential basis for the decision-making power vested with the CoC is the concept of 'commercial wisdom', a principle consistently reinforced and celebrated by the Supreme Court of India, particularly in cases such as *Essar Steel India Limited v. Satish Kumar Gupta & Others*.<sup>35</sup>

Under Section 21 of the IBC, the composition of the CoC primarily consists of all the financial creditors of the corporate debtor. It's critical to note that operational creditors, despite being stakeholders, are excluded from exercising any voting rights in the CoC. This exclusion is not arbitrary; it arises from the presumption that financial creditors are inherently better placed to judge the feasibility of a restructuring plan as they possess the knowledge to understand credit risks, financial exposure and economic viability of the proposal. This aspect of structural exclusion has also been subjected to a lot of debate amongst academics as well as the judiciary and in the context of concerns surrounding fairness and stakeholder equity.

The vast decision-making powers of the CoC are vested by Section 30(4) of the IBC, by virtue of which the Committee can approve or reject resolution plans based on a minimum voting threshold of 66% (earlier 75% and amended later). This section, therefore, is seminal as it has fundamentally transformed insolvency resolution from a purely adjudicatory court-driven exercise to a predominantly commercial creditor-driven mechanism. In this structure, the Resolution Professional has no decision-making autonomy on any commercial matter. Instead, they act as mere facilitators and administrators, while the CoC's authority in commercial matters is substantive.

It is the 'commercial wisdom' doctrine which recognizes this substantive decision-making authority of the CoC. In *K. Sashidhar v. Indian Overseas Bank*, the Supreme Court held that an adjudicating authority such as the National Company Law Tribunal (NCLT) or the National Company Law Appellate Tribunal (NCLAT) cannot step into the shoes of the CoC and second-guess the latter's commercial decision to approve or reject a resolution plan, as this rests squarely in the domain of the financial creditors alone, with the NCLT and NCLAT confined to only supervising the procedure laid down in the Code. The Supreme Court amplified the importance of commercial wisdom further in *Essar Steel India Limited v. Satish Kumar Gupta*,

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<sup>35</sup> The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), ss. 21, 30(4).

declaring with considerable vehemence that "the commercial wisdom of the CoC is non-justiciable", again leaving scope only for very limited judicial review.<sup>36</sup>

The Essar Steel judgment, often hailed as a milestone in Indian insolvency jurisprudence, dealt with arguably one of the most complex insolvency cases in the country which gave rise to numerous competing resolution plans and conflicting creditor interests, thus presenting intricate legal challenges. The Supreme Court, through this landmark judgment, reaffirmed the primacy of the CoC over the NCLT and the NCLAT. They observed that it is the CoC which is best equipped to gauge the economic feasibility and financial viability of a resolution plan given that its members have a vested financial stake in the outcome and possess the required commercial expertise to evaluate the proposed solutions. Furthermore, the judgment importantly clarifies the essence of "equitable treatment of creditors" -it implies a fair and equitable distribution amongst creditors in proportion to the nature of their claims, and not equal distribution amongst creditors, irrespective of the size and nature of their debt.<sup>37</sup>

Several policy rationales can be discerned underlying the formulation of the doctrine of commercial wisdom. It is rooted in the principle of party autonomy inherent in commercial law where parties entering into an agreement are considered to possess the necessary competence to make economic decisions. Secondly, it ensures speed and efficiency by minimizing judicial intervention. Third, it places the burden of decision-making squarely upon the parties bearing financial risk which should also be encouraged as a practice in markets and in the case of insolvency matters this role of decision making is solely upon the lenders that will ultimately have to recoup their investment. Fourth, the approach helps to promote a more economically rational outcome in insolvency matters rather than one dictated by strict legal formalities and procedures.<sup>38</sup>

Despite its salutary intent of achieving speed and efficiency in insolvency matters, the doctrine of commercial wisdom also raises important concerns regarding the issue of accountability and transparency. It goes without saying that by largely immunizing the CoC from judicial scrutiny, one inevitably opens avenues for arbitrary decision-making. Secondly, with financial institutions holding large chunks of equity in corporations, concerns naturally arise over their overbearing dominance over the decision-making process within the CoC, the potential conflict of interests they may hold when compared with smaller creditors and the marginalization of these smaller, less informed stakeholders. It is not rare to see various financial institutions having a diverse risk appetite, varying recovery strategies and regulatory limitations which tend to lead to delay and confusion when it comes to decision making within the CoC as there is Fragmentation of vote.

The lack of a well-defined process and standards for the CoC in carrying out their decision making functions has, time and again, been a reason for operational issues in many of the insolvency cases under the Code. There can also be disparity in knowledge of the resolution professional and members of the CoC leading to difficulty in understanding various aspects of the proposed resolution plan which can only result in prolonged deliberations within the CoC. Other issues that impact the functioning of the CoC include: firstly, its heterogeneity; the

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<sup>36</sup> Pratik Datta, "Moving to a Statutory Framework for Cross-Border Insolvency in India: A Bridge Too Far?" *INSOL India Academic Committee Working Paper* 1-42 (2024), available at: [https://www.insolindia.com/uploads\\_insol/resources/files/academic-commimoving-to-a-statutory-framework-for-cross-border-insolvency-in-india-a-bridge-too-far-1135.pdf](https://www.insolindia.com/uploads_insol/resources/files/academic-commimoving-to-a-statutory-framework-for-cross-border-insolvency-in-india-a-bridge-too-far-1135.pdf) (last visited on 26 Feb, 2026).

<sup>37</sup> *Supra* note 33 at para 74-80.

<sup>38</sup> P C Markanda, *Insolvency and Bankruptcy Code: Commentary and Case Digest* 214-221 (LexisNexis, New Delhi, 3rd edn., 2022).

committee being composed of diverse institutions such as public sector banks, private banks, asset reconstruction companies, and so forth which inherently poses risks of their disparate risk profiles, lending practices and overall recovery strategies affecting consensus building. Secondly, an uneven information sharing structure that creates imbalances in terms of a resolution professional's information flow to various members of the CoC thereby enabling a few members to influence the process.

Secondly, there also needs to be addressed the element of good faith and the fact that every member of the CoC is bound to uphold the interests of the creditors collectively; However this is not consistently observed with individual interests often influencing decision making within the CoC, leading to the question of whether the CoC is truly a Collective decision making body or a collection of creditors with diverse and often competing commercial interests. The absence of a formal fiduciary duty towards the members of the CoC exacerbates this problem. In order to address concerns related to transparency, consistency in CoC functioning and potential issues arising from the dominance of large financial institutions, guidelines for CoC conduct have been brought out by the Insolvency and Bankruptcy Board of India (IBBI). Though advisory, these guidelines are significant for setting forth best practices.

The doctrine of commercial wisdom which largely limits judicial intervention, though instrumental in enabling speed and efficiency in the insolvency process should not and cannot be regarded as an unchecked principle in all commercial decision making. Though designed for its specific purpose and context, the effective operation of this doctrine hinges on its ability to overcome its limitations. It is expected that commercial wisdom is judiciously applied to ensure that a solution that maximizes the value of the corporate debtor's assets for all stakeholders, as opposed to the interests of just a few members, is approved.

The Committee of Creditors-The heart of Indian Insolvency Resolution Framework<sup>39</sup>

To conclude, it is pertinent to highlight that the CoC is indeed the bedrock of the entire framework of insolvency resolution in India. This wide ranging power which flows to it both by statute and by virtue of court pronouncements is a policy decision, to leave the resolution to commercial understanding, rather than to judicial discretion. The concept of 'commercial wisdom' that was developed through Essar Steel and subsequent judgments have undoubtedly revolutionized the contemporary insolvency jurisprudence in India. But the viability of this doctrine will, finally, be contingent on the intra-functioning of CoC, the quality of participation by the creditors, and the institutional set up within which the insolvency resolution regime operates. To have a successful insolvency regime, both law and competent-informed and fair-decision making by the CoC, is the need of the hour.

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<sup>39</sup> Supra note 28 at 485-491.

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