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Role of Insolvency Professionals and Ethical Practices in Insolvency and Bankruptcy Code

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ABSTRACT

The abstract of professional and ethical practices in the context of the Insolvency and Bankruptcy Code (IBC) revolves around maintaining integrity, transparency, and fairness in the insolvency resolution process. The Practitioners in the IBC ecosystem, such as insolvency professionals and resolution applicants, are expected to adhere to high professional standards, ensuring competency and due diligence in their roles. The ethical practices require identifying and managing conflicts of interest to maintain the independence and impartiality of professionals involved in the process. There must be an open and transparent communication and disclosure of relevant information to all stakeholders, including creditors and the National Company Law Tribunal (NCLT), are essential to ensure fairness. All the creditors and stakeholders should be treated equitably, and the resolution process should prioritize the maximization of value for all creditors, not favoring one group over another.

The ethical behavior includes preventing and reporting fraudulent activities during the insolvency proceedings. The adherence of legal and regulatory framework is imperative for all participants in the IBC process. The Professionals should be accountable for their actions and decisions throughout the insolvency resolution journey.

In summary, professional and ethical practices in the IBC emphasize integrity, transparency, and a commitment to upholding the interests of all stakeholders while complying with legal and regulatory requirements.

Keywords: *Professional, Ethical Practices, Insolvency and Bankruptcy Code, National Company Law Tribunal.*

I. INTRODUCTION

The process of being insolvent and filing for bankruptcy is essential to any country's economic situation. It offers a methodical approach to handling financially troubled organizations while defending the rights of creditors, borrowers, and the economy at large. Following professional

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and ethical guidelines is crucial in this situation.

A major legislative framework intended to streamline the insolvency resolution and bankruptcy procedure was established in India in 2016 under the name Insolvency and Bankruptcy Code (IBC). It presents a thorough and deadline-driven method for managing financial hardship and asset sales. The individuals and companies involved in insolvency procedures must, however, adhere to professional conduct and ethical standards in order for the IBC to be effective.

This assignment delves into the intricate web of professional and ethical practices within the realm of the IBC. It seeks to explore the core concepts of insolvency and bankruptcy, the roles of professionals in the process, and the ethical challenges they encounter. Additionally, it evaluates the regulatory framework governing insolvency professionals and suggests measures to enhance the ethical standards and professionalism in the field.

The professional and ethical practices within the IBC context are indispensable for maintaining trust, transparency, and fairness in the insolvency and bankruptcy process. This assignment aims to shed light on these vital aspects and underscore their critical significance in preserving the integrity of the IBC and safeguarding the interests of all stakeholders involved.

II. PROFESSIONAL ROLES AND RESPONSIBILITIES

An extensive structure for addressing insolvency and bankruptcy difficulties was implemented in India with the Insolvency and Bankruptcy Code (IBC). It introduced a range of duties and positions for professionals, such as:

1. Insolvency Professionals (IPs):- IPs play a central role in the resolution process. They are licensed professionals responsible for managing the affairs of the debtor company during insolvency proceedings.

Their responsibilities include conducting the insolvency resolution process, managing the assets of the debtor, and facilitating the sale of assets to repay creditors.

2. Insolvency Professional Agencies (IPAs):- IPAs are responsible for registering and regulating IPs.

They ensure that IPs adhere to the IBC's code of conduct and professional standards.

3. Committee of Creditors (CoC):- The CoC consists of financial creditors of the debtor company and plays a pivotal role in decision-making during insolvency proceedings.

Their responsibilities include approving or rejecting resolution plans, appointing the IP, and taking key financial decisions.

4. Adjudicating Authorities (NCLT and NCLAT):- The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) are quasi-judicial bodies responsible for adjudicating insolvency cases.

They determine the initiation and progress of insolvency proceedings and resolve disputes related to the IBC.

5. Resolution Professionals (RPs):- In some cases, a financial institution may appoint an RP to oversee the debtor's assets and facilitate the insolvency resolution process.

6. Liquidators:- If the insolvency process leads to liquidation, a liquidator is appointed to sell the debtor's assets and distribute the proceeds to creditors in a specific order.

7. Creditors:- Financial and operational creditors are responsible for participating in the insolvency process, providing claims, and voting on resolution plans.

8. Regulatory Authorities:- Regulatory authorities like the Insolvency and Bankruptcy Board of India (IBBI) oversee the overall functioning of the IBC and ensure compliance with its provisions.

9. Resolution Applicants:- Entities or individuals interested in submitting resolution plans for distressed companies are known as resolution applicants. They must follow the guidelines and timelines specified by the IBC.

Each of these roles and responsibilities plays a crucial part in the successful implementation of the IBC and the resolution of insolvency and bankruptcy cases in India.

Impartiality, transparency, and accountability are crucial in the roles associated with the Insolvency and Bankruptcy Code (IBC) for several reasons:

1. **Credibility and Trust** - These principles build trust in the insolvency process, ensuring that stakeholders have confidence in its fairness and effectiveness.
2. **Fair Treatment** - Impartiality ensures that all stakeholders are treated equitably, regardless of their size or influence, preventing any unfair advantage or discrimination.
3. **Confidence of Creditors** - Transparency in financial and operational matters reassures creditors that their interests are protected, encouraging their participation and cooperation in the insolvency process.
4. **Protection of Right** - Accountability ensures that professionals and authorities are answerable for their actions, safeguarding the rights of creditors, debtors, and other parties involved.

5. Efficiency - Transparent and accountable processes reduce delays and inefficiencies, expediting the resolution of insolvency cases.
6. Preventing Fraud and Mismanagement - Transparency and accountability help detect and prevent fraudulent activities or mismanagement in distressed companies, leading to a more orderly resolution process.
7. Legal Compliance - Adhering to these principles ensures that the insolvency process complies with the law and regulations, reducing the risk of legal challenges and disputes.
8. Investor Confidence - In the long run, a system that consistently upholds impartiality, transparency, and accountability can boost investor confidence, attracting investment in distressed assets.
9. Economic Stability - A well-regulated and transparent insolvency system contributes to economic stability by efficiently resolving financial distress and preventing systemic risks.
10. International Reputation - A robust adherence to these principles enhances the international reputation of a country's insolvency framework, making it more attractive for foreign investment and cross-border insolvency cases.

In summary, impartiality, transparency, and accountability are not just ethical imperatives but are essential for the smooth and effective functioning of the insolvency and bankruptcy system, ensuring that it serves the interests of all stakeholders and contributes to the overall economic health of a nation.²³

III. THE CONCEPTUAL FRAMEWORK

The conditions in which insolvency practitioners work may pose risks to adherence to the core values. In order to help insolvency practitioners fulfill their obligation to act in the public interest and adhere to the fundamental principles, this part lays forth requirements and application materials, including a conceptual framework. The broad range of facts and circumstances, including the many professional activities, interests, and relationships that pose challenges to adherence to the core principles, are accommodated by such standards and application materials. Furthermore, they discourage insolvency practitioners from drawing the conclusion that a circumstance is acceptable only because the Code does not expressly exclude it.

² Role and Duties of Resolution Professional under the IBC, 2016 (ipleaders.in)

³ Roles and Responsibilities of Insolvency Professionals under IBC,2016.pdf (ipaicmai.in)

An insolvency practitioner might use the conceptual framework to outline a method for identifying risks to adhering to the core principles, assessing those risks, and taking appropriate action to mitigate or eliminate those risks. In general, the insolvency practitioner will use the conceptual framework to recognize, assess, and resolve risks to the fundamental principles' compliance. When accepting an insolvency appointment, an insolvency practitioner is required to exercise extra caution in identifying any hazards that may exist at that time or later on that could reasonably be anticipated to materialize throughout the insolvency process appointment. An insolvency practitioner must consider the relationships that present the firm as a member of a network when identifying potential hazards. The insolvency practitioner must take into account the circumstances surrounding the issue while addressing an ethical dilemma that has emerged or may arise. An insolvency practitioner must abide by the rules of this Code when engaging in professional activities related to their relationship with the firm, whether they are doing so as an owner, contractor, or employee. The insolvency practitioner must use professional judgment, stay aware of new information and changes in facts and circumstances, and apply the reasonable and informed third party test when implementing the conceptual framework.⁴⁵

IV. REGULATORY FRAMEWORK AND COMPLIANCE

The Insolvency and Bankruptcy Code (IBC) in India is a comprehensive regulatory framework that governs the insolvency and bankruptcy processes. It was enacted in 2016 to address the challenges in the resolution of stressed assets and to promote a more efficient and transparent insolvency regime. Here are some key aspects of the regulatory framework and compliance regarding professional and ethical practices under the IBC:

1. Licensed Insolvency Professionals (IPs): The IBC mandates the registration and regulation of Insolvency Professionals who play a crucial role in the insolvency process. These professionals are required to adhere to a strict code of conduct and ethics.

2. Insolvency Professional Agencies (IPAs): IPAs are responsible for regulating and monitoring the conduct and performance of IPs. They ensure that IPs maintain the highest standards of professional and ethical behavior.

3. Committee of Creditors (CoC): The CoC, comprising the financial creditors of the corporate debtor, plays a central role in the insolvency process. They are expected to make decisions in the best interest of all stakeholders, balancing the rights of various creditors.

⁴ Paper Teplate (rrjournals.com)

⁵ The conceptual framework and ethical dilemmas | ACCA Global

4. Information Utilities (IUs): IUs are entities that maintain a database of financial information of borrowers. They are subject to regulatory oversight and must maintain data accuracy and integrity.

5. Adjudicating Authorities: The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) are the adjudicating authorities that oversee insolvency proceedings. They ensure that the insolvency process is conducted in a fair and transparent manner.

6. Avoidance Transactions: The IBC contains provisions to prevent unethical practices, such as preferential transactions and undervalued transactions, which can harm the interests of creditors. Such transactions can be set aside by the resolution professional.

7. Code of Conduct: Various stakeholders in the insolvency process, including IPs, CoC members, and RP, are expected to adhere to a strict code of conduct outlined in the IBC to ensure ethical practices.

Compliance with the IBC is essential to maintain the integrity and effectiveness of the insolvency and bankruptcy resolution process in India. Violations of the code of conduct and ethical practices can result in penalties and legal actions. It's important for professionals involved in insolvency and bankruptcy cases to stay informed about the latest regulatory developments and adhere to the highest ethical standards to maintain the credibility of the system.⁶⁷

V. PROFESSIONAL AND ETHICAL PRACTICES

Professional and ethical practices within the context of Insolvency and Bankruptcy Code (IBC) involve distinct yet interconnected aspects. Here's a comparison of the two within the IBC framework:

Differences between Professional Practices and Ethical Practices :

1. Focus :

The Professional practices in IBC pertain to the technical and procedural aspects of insolvency and bankruptcy proceedings. They are centered around the effective implementation of the legal framework.

The ethical practices in IBC relate to the moral principles, values, and behavior expected from all parties involved in insolvency and bankruptcy proceedings. They emphasize honesty,

⁶ IBC Laws - IBBI Handbook on Ethics for Insolvency Professionals: Ethical and Regulatory Framework

⁷ 0ab3ccba77975afcd9eb7ac679154de8.pdf (ibbi.gov.in)

transparency, and fairness.

2. Regulation

The Professional practices are often regulated and standardized through legal provisions and the guidance of insolvency professionals and agencies, such as the Insolvency and Bankruptcy Board of India (IBBI).

While ethical practices are not as strictly regulated by law, they are an integral part of maintaining public trust and ensuring the integrity of the process.

3. Purpose:

Professional practices aim to ensure the orderly and efficient resolution of insolvency cases, including the valuation of assets, management of creditors' claims, and distribution of assets to stakeholders.

Ethical practices serve to uphold the principles of fairness, integrity, and transparency throughout the insolvency process. They help prevent conflicts of interest, fraud, and abuse.

Examples:- In the context of professional practices in IBC, this may involve adhering to strict timelines for insolvency proceedings, maintaining records, conducting due diligence, and applying the legal provisions accurately. Ethical practices in IBC may include disclosing conflicts of interest, treating all creditors fairly and equally, ensuring transparency in financial reporting, and refraining from fraudulent activities during insolvency.

Comparison between Professional Practices and Ethical Practices:

1. **Interconnected:** Professional and ethical practices within IBC are interconnected. While professional practices ensure the correct implementation of the legal process, ethical practices guide the conduct and decision-making of the professionals and stakeholders involved.
2. **Compliance and Trust:** Professional practices focus on compliance with legal procedures, while ethical practices emphasize trust and integrity in the insolvency process.
3. **Regulation:** Professional practices are more explicitly regulated through the IBC framework and regulatory authorities, while ethical practices rely on ethical standards and societal expectations.

In summary, professional practices in IBC are about the technical aspects of insolvency procedures, while ethical practices are about the moral and behavioral aspects of all parties

involved. Both are crucial for a fair, efficient, and trustworthy insolvency and bankruptcy process.⁸

VI. CONCLUSION

The professional and ethical practice of the Insolvency and Bankruptcy Code (IBC) is essential for maintaining the integrity of the insolvency resolution process. It is very crucial in maintaining transparency in the insolvency process. All stakeholders, including creditors, debtors, and insolvency professionals, should have access to relevant information. The Insolvency professionals must avoid conflicts of interest and act impartially. They should prioritize the best interests of creditors and the resolution process over personal gain. There must be a strict adherence to the rules and regulations set forth by the IBC, which is essential to ensure fair and consistent practices across all insolvency cases. The timely resolution of insolvency cases is critical to avoid value erosion of distressed assets and the delays can result in financial losses for all stakeholders. All the parties who are involved, especially insolvency professionals, must be held accountable for their actions and decisions during the resolution process.

The ethical conduct upholding ethical standards in all interactions and transactions is fundamental. This includes fair treatment of creditors and debtors, honest reporting, and ethical decision-making. Insolvency professionals should engage in continuous learning and development to stay updated on evolving insolvency laws and best practices. The IBC is designed to protect the rights of all stakeholders, and ethical practice ensures that these rights are respected and upheld.

In conclusion, the professional and ethical practice of the Insolvency and Bankruptcy Code is crucial to maintain the credibility and effectiveness of the insolvency resolution process, fostering investor confidence and economic stability. Adherence to the principles of transparency, accountability, and fairness is essential for its success.

VII. RECOMMENDATIONS FOR IMPROVEMENT

Enhancing professional and ethical practices in the field of insolvency and bankruptcy is crucial for maintaining trust and integrity. Here are some recommendations:

1. **Continuous Education:** Encourage insolvency professionals to engage in ongoing education and training to stay updated on evolving laws, regulations, and best practices.

⁸ IBC Laws - IBBI Handbook on Ethics for Insolvency Professionals: Ethical and Regulatory Framework

2. Code of Ethics: Develop and adhere to a comprehensive code of ethics that outlines professional standards, including conflicts of interest, confidentiality, and transparency.
3. Certification and Licensing: Ensure that insolvency professionals are appropriately certified and licensed, and establish mechanisms for monitoring and enforcing these requirements.
4. Independence: Maintain independence in decision-making, free from undue influence or conflicts of interest, and disclose any potential conflicts to relevant stakeholders.
5. Transparency: Provide transparent communication to all stakeholders, including creditors, debtors, and the public, regarding the status of insolvency proceedings.
6. Accountability: Establish mechanisms for holding professionals accountable for their actions, including sanctions for unethical conduct.
7. Due Diligence: Conduct thorough due diligence before accepting appointments, and evaluate the feasibility of restructuring or liquidation options.
8. Reporting and Documentation: Maintain accurate records and reporting of all actions taken during insolvency proceedings, ensuring compliance with legal and regulatory requirements.
9. Fair Treatment: Ensure fair and equitable treatment of all stakeholders, including creditors, employees, and debtors, without discrimination or bias.
10. Mediation and Alternative Dispute Resolution: Promote the use of mediation and alternative dispute resolution methods to resolve conflicts and disputes efficiently and fairly.
11. Public Awareness: Educate the public about the insolvency and bankruptcy process, its benefits, and its impact on stakeholders.
12. Whistleblower Protection: Implement mechanisms to protect and encourage whistleblowers who report unethical practices or misconduct.
13. Stakeholder Engagement: Engage with all relevant stakeholders throughout the insolvency process to gather input and address concerns.
14. Technology and Data Security: Utilize secure technology and data management practices to safeguard sensitive information and maintain the confidentiality of parties involved.
15. Regulatory Oversight: Collaborate with regulatory bodies to establish and enforce industry standards, guidelines, and oversight.

These recommendations can help foster a culture of professionalism and ethics within the insolvency and bankruptcy field, ensuring that stakeholders' interests are protected and that the

process is conducted with integrity and transparency.⁹

⁹ IIPI-COC's ROLE IN CIRP UNDER IBC - BEST PRACTICES-Inner page.indd (iiipcai.in)

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