

Insolvency Professionals Under India's New Insolvency Regime

By DHANANJAY KUMAR and GAUTAM SUNDARESH



The profession and the regime for insolvency professionals in India came into existence following the enactment of the new Insolvency and Bankruptcy Code 2016 (“IBC”) in late 2016.

The adoption of the IBC has resulted in a shift away from a debtor-in-possession rescue regime to one that is largely creditor-run, pursuant to which insolvency professionals take control of a financially distressed company as part of the resolution process and coordinate its management and operations in tandem with its financial creditors. Today, there are over 2000 insolvency professionals registered with the Insolvency and Bankruptcy Board of India (“IBBI”). In this article, we discuss the role of insolvency professionals in undertaking both the resolution and liquidation processes contemplated under the IBC, as well as the practical issues and hurdles affecting the insolvency professional regime during the nascent stages of its implementation (including from the point of view of distressed debt investors and potential acquirers).

The Regulatory Framework: The IBC

The IBC now constitutes the primary framework for the insolvency resolution of Indian companies (other than to the limited extent that the Companies Act framework still provides for winding-up of companies, as discussed in more detail below). Apart from providing for the resolution process itself, the IBC also provides for and regulates the liquidation (voluntary and involuntary) of companies and LLPs.

Under the IBC resolution process, a committee of creditors (“CoC”) comprising all the unaffiliated ‘financial’ creditors of the corporate debtor is constituted to vote on significant decisions relating to the day-to-day operations, and on the resolution process, of the company. The meetings of the CoC are presided over by the insolvency professional appointed for the debtor. In addition, the items to be deliberated upon in such meetings are also proposed by the insolvency professional.

DUAL REGIMES: THE INDIAN COMPANIES ACT

- It is pertinent to note that the winding-up regime under the (Indian) Companies Act continues to exist and is available in respect of certain equity-based triggers. Thus, there theoretically continues to exist a dual insolvency regime for corporate debtors in India.
- However, the Companies Act regime does not infringe upon the sanctity of the process or the jurisdiction of the insolvency courts constituted under the IBC in respect of insolvency proceedings that are triggered based on the default test (default in repayment obligations of INR 100,000 or above), except in situations where a winding-up order has already been passed prior to the commencement of the proceedings under the IBC.
- It is also relevant to note that the Companies Act now also contemplates the appointment of insolvency professionals as the liquidator of the company in a winding-up.

Roles Played by Insolvency Professionals Under the IBC Framework

Insolvency professionals in India wear many hats. Their roles under the IBC can be divided on the basis of statutorily designated functions during the resolution and liquidation processes. For the purposes of a resolution process, insolvency professionals act as: (i) interim resolution professionals; and (ii) resolution professionals. In addition, during a liquidation process, insolvency professionals also play the role of liquidators of the corporate debtor.

Interim Resolution Professionals

Interim resolution professionals are usually appointed simultaneously with the admission of an application to initiate the corporate insolvency resolution process (“CIRP”) in respect of a company under the IBC. The interim resolution professional undertakes the management of the company during the period between the commencement of the CIRP and the appointment of a full-time resolution professional by the CoC. The name of the interim resolution professional to be appointed is specified (mandatorily in the case of a financial creditor or company applicant, and optionally in the case of a trade creditor application—in which case, the IBBI recommends the interim resolution professional to be appointed) in the application for initiation of the CIRP. The interim resolution professional remains in office until the date of appointment of the resolution professional (which may be delayed, for example, by a challenge to the eligibility of the resolution professional sought to be appointed).

Resolution Professionals

The appointment of a resolution professional is approved by the CoC in its first meeting (by way of a majority vote of not less than 66% by value), approximately 30 days from the date of the commencement of the CIRP or soon thereafter.

The CoC has the option of reappointing the interim resolution professional as the resolution professional for the corporate debtor or to choose a different insolvency professional to be appointed as the resolution professional. If the CoC elects to appoint the interim resolution professional as the resolution professional, it is required to communicate its decision to the National Company Law Tribunal (“NCLT”) (which is the court vested with jurisdiction under and relating to the IBC) along with the written consent of the interim resolution professional (in the prescribed form) demonstrating his/her willingness to be appointed as the resolution professional for the corporate debtor, pursuant to which the NCLT passes an order for the re-appointment of the interim resolution professional as the resolution professional for the company.

If it is decided to replace the interim resolution professional with another insolvency professional, any CoC member may propose the name of an insolvency professional to be considered for appointment. The CoC would then have to vote in favor of the appointment of such person by the requisite majority, and is required to communicate its decision to the NCLT, which in turn, is required to forward the name of such proposed resolution professional to the IBBI for its confirmation. The NCLT is authorized to appoint such person as the resolution professional of the debtor upon receiving the confirmation from the IBBI. However, if this confirmation is not received within a ten day period (from the date the name is forwarded by the NCLT to the IBBI), the NCLT is statutorily obligated to direct the previously appointed interim resolution professional to continue to function as the resolution professional of the debtor until such time as the IBBI confirms the appointment of the new resolution professional.

Further, the IBC also accords the CoC the right to replace the resolution professional appointed by it with another resolution professional at any time during the CIRP of the corporate debtor. This appointment is also required to be approved by the NCLT and is subject to the confirmation of the proposed resolution professional by the IBBI. All applications submitted to the NCLT for the approval of the appointment of the relevant interim resolution professional/resolution professional are liable to be dismissed in case there are any disciplinary proceedings pending against the relevant insolvency professional.

Similarly, a resolution professional may, with his/her consent, be re-appointed by the NCLT as the liquidator of the corporate debtor if the company enters liquidation, unless there are



circumstances (such as pending disciplinary proceedings in relation to the relevant resolution professional) which require the NCLT to appoint a different insolvency professional as the liquidator.

A company proposing its voluntary liquidation is also required to appoint a liquidator (who has to be qualified as an insolvency professional under the IBC).

ELIGIBILITY OF RESOLUTION PROFESSIONALS

- Prospective insolvency professionals are required to pass an examination conducted by and to be registered with the IBBI and are also to be enrolled with an insolvency professional agency that is recognized by the IBBI.
- Eligibility to apply for registration as an insolvency professional is restricted to individuals that are resident in India (a non-citizen is eligible for membership if he/she is a partner or director of an '*insolvency professional entity*' ("*IPE*")), and grounds for ineligibility include being a minor, an undischarged insolvent or of unsound mind; or having a conviction for an offense involving moral turpitude which results in imprisonment for a period exceeding six months (subject to certain mitigating factors which have been prescribed).
- Further, insolvency professionals are prohibited from engaging in any alternative employment while holding a valid certificate of registration.

Duties and Powers

Interestingly, the IBC does not provide for specific duties to be owed by interim resolution professionals or resolution professionals to creditors of the company. However, as per a recent decision of the National Company Law Appellate Tribunal ("**NCLAT**"), it has been clarified that the objective of an insolvency resolution process under the IBC framework is the overall resolution of the corporate debtor and the maximization of value of assets of the company for the benefit of all of its stakeholders. In addition, in one case, a bench of the NCLT equated the resolution professional with a 'public servant' and clarified that the CoC is to perform the function of an 'instrumentality of the state', and that their duties/performance should be scrutinized by courts accordingly. Further, although the interim resolution professional/resolution professional is obligated to take over the management functions of the board of directors of the corporate debtor pursuant to the initiation of a CIRP against the company, the fiduciary obligations of directors have not been extended to insolvency professionals. While the powers of the board of directors of the corporate debtor stand suspended upon the commencement of the CIRP, the powers of the shareholders are also effectively suspended, as the approval of a resolution plan does not require the consent of the shareholders.

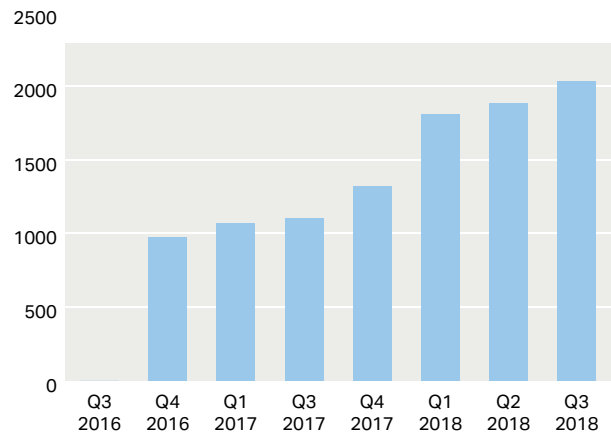
For ease of understanding, the duties of insolvency professionals under the IBC have been segregated into their duties in the capacity of: (i) interim resolution professionals; (ii) resolution professionals; and (iii) liquidators, as set out below:

Interim Resolution Professionals

The duties imposed on interim resolution professionals under the IBC are specific to the role they perform during the 'transitory' phase (as mentioned above), before the full-time resolution

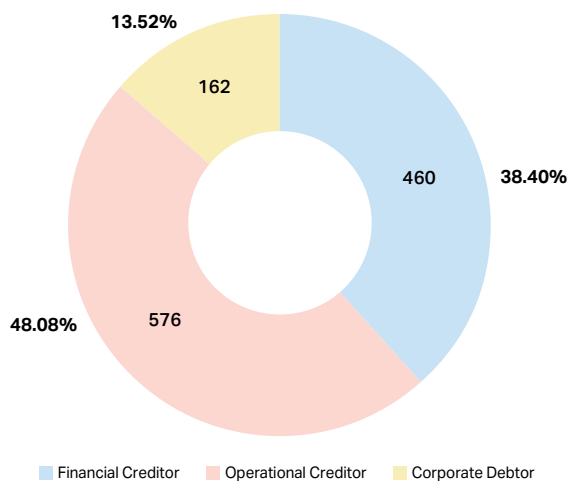
professional is appointed for the company. Most significantly, in line with the shift away from the debtor-in-possession regime, the management of the affairs/assets and the powers of the board of directors of the company immediately vest in the interim resolution professional upon his/her appointment by the NCLT. Consequently, the officers and managers of the corporate debtor, and financial institutions maintaining the accounts of the corporate debtor, are required to act on the instructions of the interim resolution professional and to provide him/her all the necessary details, information and access. The primary duty of an interim resolution professional is to take such actions as are necessary to keep the corporate debtor as a going concern. Interim resolution professionals are also empowered to act and execute any documents/deeds/receipts in the name of the company, and they also have the obligation to ensure that the company complies with requirements under applicable law during its operation.

Number of Registered Insolvency Professionals



Source: IBBI, Quarterly Newsletter October 2016 – September 2018

Who is Using the Code?
(as of September 2018)



Source: IBBI, Quarterly Newsletter July 2018 – September 2018

Interim resolution professionals are also required to constitute the CoC, to receive/collate claims submitted by various creditors and to collect information relating to the assets, finances and operations of the corporate debtor. Further, interim resolution professionals are required to take control of all assets over which the debtor has any ownership rights (including shares held by the corporate debtor in its subsidiary companies—but not including any of the assets of the subsidiary companies, as was clarified by the appellate court under the IBC). It is also important to note that the interim resolution professional is bound by the terms of the moratorium instituted against the corporate debtor, including the prohibition on transfer or disposal of any assets, legal right or beneficial interest by the corporate debtor during the CIRP period.

Interim resolution professionals are also empowered to carry out specific functions, in order to protect and preserve the value of the corporate debtor and its assets, and to manage its operations as a going concern. For performing these duties, interim resolution professionals are permitted to appoint professionals, including accountants and lawyers, to enter into/modify existing contracts or transactions on behalf of the company and to raise super-priority finance for undertaking the CIRP.

Resolution Professionals

As the role/functions of resolution professionals come into play during the substantive part of a CIRP, they have a wider and more significant range of duties to perform (than do interim resolution professionals). Resolution professionals are required to conduct the entire CIRP and manage the operations of the company during the CIRP following their appointment. The IBC includes a specific deeming provision that provides that resolution professionals are to exercise all the powers and perform all the duties as are vested or conferred upon interim resolution professionals under the statute.

Similar to interim resolution professionals, resolution professionals also have the duty to carry out certain functions to preserve and protect the value of the corporate debtor, and to continue its business operations. Further, resolution professionals are required to maintain an updated list of claims of the company’s various creditors, convene and attend all meetings of the CoC, file applications (before the NCLT) to reverse the effect of avoidable transactions and prepare an information memorandum to be issued to the prospective resolution applicants of the company. Resolution professionals are also required to appoint two ‘*registered valuers*’ for the purpose of determining the fair value and liquidation value of the company. One of the most significant duties of the resolution



professional is the invitation and vetting of resolution plans submitted by resolution applicants. As mentioned below, the Supreme Court has recently clarified that the examination of resolution plans by resolution professionals is only to be done for purposes of the issuance of an opinion containing the *prima facie* views of the resolution professional, and that resolution professionals are not expected to make any binding determination in this regard.

There are also certain powers specified under the IBC which can be exercised by the resolution professional only with the prior approval of the CoC (these powers are not available to interim resolution professionals, however). These include, *inter alia*, the creation of any security interest over the assets of the corporate debtor, raising of interim finance in excess of CoC specified thresholds, effecting a change in the capital structure or ownership interest in the corporate debtor, undertaking related party transactions, amending constitutional documents of the corporate debtor, transferring rights or debts under material contracts outside of the ordinary course of business, delegation of one's authority and the disposal of shares of any shareholder of the corporate debtor to third parties. Further, resolution professionals are also permitted to enter into new contracts and modify existing contracts of the corporate debtor (for which the prior approval of the CoC is not required). Thus, from the above, it can be seen that while the role and duties of the resolution professional primarily pertain to managing the corporate debtor in a manner to keep it functioning as a going concern, resolution professionals are also permitted to undertake certain actions that were previously exercisable by the board of directors, to ensure the continuing operations of the company. On a separate note, while resolution professionals are constrained in their functioning by the restrictions created by the moratorium imposed under the IBC (as is the case with interim resolution professionals), certain actions are permitted

to be undertaken in contravention of the moratorium, with the prior approval of the CoC (for example, the creation of security interests over the assets of the corporate debtor).

Inviting and Presenting Plans for the Insolvent Company

One of the most important duties performed by the resolution professional is in relation to effecting the resolution of the company. As per the IBC, the resolution professional is required to invite prospective resolution applicants, who meet the eligibility criteria prescribed by the CoC (usually pertaining to the financial and technical capability of the prospective resolution applicants), to submit resolution plans for the company. The resolution professional is also required to provide to the resolution applicants (who meet the eligibility criteria specified in the expression of interest issued by the resolution professional) all information in relation to the insolvent company that is relevant for the preparation of resolution plans by such persons. All such information is provided subject to the execution of a strict confidentiality undertaking and can be used by the resolution applicants only for the purpose of preparing resolution plans for the company. In practice, resolution professionals usually issue a '*process memorandum*' to the prospective resolution applicants, which sets out the entire process and timelines for submission of resolution plans. Typically, resolution applicants are provided a window to carry out legal and financial due diligence on the debtor. In order to protect against disclosure of sensitive information to non-credible bidders, it is usually required (under the terms of the process memorandum) that prospective applicants submit an earnest money deposit/bid bond prior to gaining access to the data room. It is relevant to mention that courts have been flexible when it comes to strict compliance with the process memorandum, so long as creditors are able to maximize their recoveries in a fair and just manner.

Once received, the resolution professional reviews the plans for compliance with the IBC and other applicable laws. One such aspect of compliance is eligibility of the resolution applicants under Section 29A of the IBC. Section 29A, introduced in November 2017, provides for wide-ranging disqualifications in relation to the types of persons/entities that are eligible to submit a resolution plan under the IBC. In brief, if the resolution applicant or any of its group companies has (anywhere in the world) been classified as a chronic/willful defaulter to banks or has been prohibited from the securities market or convicted of specified offenses, such resolution applicant may be disqualified from submitting a resolution plan. Practical difficulties of confirming ‘worldwide’ compliance with such requirements (many of which are not available in the public domain) aside, many resolution applicants have also been seen to challenge the determination by the resolution professional of their (or their competitors’) eligibility under Section 29A, or the lack thereof. Quite a few high profile cases have been delayed on account of such challenges (for instance, the *Essar Steel* and *Ruchi Soya* cases). The scope of the resolution professional’s duties in this regard have, however, recently been watered down by the decision of the Supreme Court in the landmark *Essar Steel* decision (passed on October 4, 2018). The judgment clarifies that the resolution professional is only required to provide his *prima facie* opinion regarding the compliance of resolution plans with applicable law (including with the Section 29A eligibility requirements). It has also been clarified that resolution professionals do not have the power to decide whether resolution plans contravene applicable law, but must only present their findings (preferably in the form of a due diligence report) to the CoC in this regard (the decision being required to be taken by the CoC instead). It will not be out of place to mention that in July 2018, the IBBI amended the relevant regulations to provide for a time-bound mechanism of testing the eligibility of resolution applicants, including by giving the other suitors for the company a chance to present to the resolution professional any material in relation to ineligibility of their competitors.

The *Essar Steel* judgment has also brought about clarity on certain other issues in relation to the submission and assessment of resolution plans under the IBC. This includes the fact that the Section 29A disqualification is to attach and is required to be assessed as on the date of submission of the resolution plan; and as a corollary, that the ineligibility of a resolution applicant (relating to the disqualification of having an account that has been classified as a non-performing asset) can be cured only by repaying all overdue amounts (along with interest and relevant charges) prior to the submission of a resolution plan.

After having conducted such an examination, the resolution professional is required to present eligible plans to the CoC for its approval, and subsequently to the NCLT after the receipt of CoC approval. Typically, the resolution professionals do not

prepare or negotiate the plans and this is left to the resolution applicants and the CoC, respectively.

Liquidators

The IBC provides that if during a CIRP, a plan is not approved within 180 days (extendable by another 90 days, subject to judicially created exceptions relating to the period of litigation), or if no plan is received, the company is required to be liquidated. This determination is made by the NCLT on receiving an application from the resolution professional of the company. As mentioned above, subject to the receipt of their consent, resolution professionals continue to function as liquidators for the company. In order to carry out and manage the distribution of assets under the liquidation process, the liquidator is empowered to take custody or control of all the assets, property, effects and actionable claims of the corporate debtor, and to take any measures required for the protection and preservation of its assets and properties. The liquidation estate constituted by the liquidator (comprised of all the assets owned by the corporate debtor) is managed and held by the liquidator in a fiduciary capacity for the benefit of all the creditors.

In order to equip the liquidator with the necessary powers to create the liquidation estate and distribute the assets constituting the estate, the IBC entitles him/her to, *inter alia*, invite, verify and settle the claims of all creditors and claimants, to conduct an evaluation of the assets and property of the corporate debtor and to take all actions or to sign or execute any documents (including, *inter alia*, applications, petitions, affidavits and deeds) that are necessary for the liquidation or the distribution of the corporate debtor’s assets. For the purposes of managing the affairs of the corporate debtor during the liquidation process and to carry on the business of the corporate debtor for its beneficial liquidation, the liquidator is empowered to institute or defend any suits, prosecutions or other legal proceedings (whether civil or criminal) and to investigate the financial affairs of the corporate debtor and the occurrence of avoidable transactions in the past. The liquidator is also required to prepare and submit progress reports to the NCLT on the status of the liquidation of the corporate debtor on a periodical basis.

The liquidator is empowered to sell the immovable and movable property constituting the liquidation estate, as well as the actionable claims of the corporate debtor, by public auction or private contract, and also has the power to sell such property in parts. Further, by way of an amendment earlier this year, liquidators have been empowered to sell the corporate debtor as a going concern. This provides a second chance for the company to be taken over as a going concern, even following the failure of the CIRP initiated against it, contingent on it being able to sustain its business operations up to this point. However, to prevent misuse of this provision, the ineligibility

criteria that are applicable to the CIRP process have also been made applicable to such liquidation sales.

Implied Duties

Insolvency professionals are governed under specific regulations issued by the IBBI along with a comprehensive code of conduct, which mandates the highest standard of care and integrity and prohibits any conflict of interest/partiality. While there is a specific prohibition on insolvency professionals taking up assignments in matters where the insolvency professional or any of his/her relatives, or any of the partners or directors of the IPE in which he/she is a partner/director, are in any way connected to the insolvent company or any of its related parties, the regulations and the code of conduct are not always clear. In interpreting the scope of these requirements, the courts can also be said to be implying certain duties in respect of insolvency professionals.

Accordingly, as the jurisprudence under the IBC evolves, the contours of the role of insolvency professionals continue to be defined. In a recent order, the NCLT expressed its displeasure with the fact that the resolution professional had undervalued the assets (in terms of their liquidation value) of the company and had outsourced work to a firm that he was associated with. The court stated that the IBBI may need to revise the applicable framework in order to prohibit such conduct by insolvency professionals (the specific remarks made and the costs imposed by the NCLT against the resolution professional were directed to be expunged by the NCLAT, however).

At the same time, courts are also being careful to ensure that insolvency professionals do not exceed their legal remit. In a recent case, costs of INR 50,000 (approximately USD 700) were imposed on a resolution professional by the NCLT for having acted in contravention of the provisions of the IBC and the code of conduct, by having attempted to reverse the decision of the CoC to reject the resolutions plans voted upon by it, by approaching dissenting lenders directly and seeking consent letters from them for the approval of the plan presented. In this case, too, the remarks made against the resolution professional were directed to be expunged by the NCLAT on appeal. In another such instance of determination of the scope of duties of resolution professionals by the NCLT, the resolution professional in question was reprimanded for not having taken the necessary actions to service the company's contractual obligations towards one of its biggest customers, which resulted in the termination of the contract.

The IBBI has also been proactive in regulating the conduct of insolvency professionals by issuing various circulars from time to time. For example, the IBBI, by a circular, has prohibited insolvency professionals from outsourcing work in respect of duties that are specifically required to be carried out by them under the IBC. Similarly, circulars have been issued mandating

insolvency professionals to disclose their relationship with all the stakeholders involved in the CIRP (including the corporate debtor, the financial creditors, interim finance providers, prospective resolution applicants and other professionals appointed by the insolvency professionals); mandating transparency by insolvency professionals in the charging of fees and raising of invoices for services rendered; and requiring IPEs to publish compliance certificates containing the details of compliance of all insolvency professionals registered with them (with the requirements of the IBC and the regulations thereunder) on an annual basis. Further, the IBBI has specifically prohibited IPEs from being directly engaged to carry out the duties of an insolvency professional, and has also specified that insolvency professionals will be personally liable for any penalty suffered by the corporate debtor on account of non-compliance with applicable law (while under the management of the insolvency professional). The law does not currently provide for a cap on the liability of an insolvency professional for any actions taken by him/her, and this becomes a problem when members of the CoC are unwilling to approve liability insurance packages for the insolvency professional.

DISCIPLINARY PROCEEDINGS AGAINST INSOLVENCY PROFESSIONALS

- The possibility of insolvency professionals abusing their powers or overstepping their mandate is mitigated by the power accorded to the IBBI to initiate disciplinary proceedings against insolvency professionals.
- The IBBI may initiate such proceedings, either on a complaint received from any person or *suo moto*.
- It is significant to note that an insolvency professional who has been issued a show cause notice by the IBBI (pursuant to which disciplinary proceedings are initiated), is not permitted to accept any fresh assignment (whether as interim resolution professional, resolution professional or liquidator) until the completion of the disciplinary proceedings against him/her. Another safeguard in this respect is the power given to the CoC to replace or remove the concerned interim resolution professional/resolution professional at will.
- This power is currently not exercisable by the operational creditors and other stakeholders that do not qualify for membership in the CoC, however.
- At the same time, it is relevant to note that the IBC accords protection to all insolvency professionals for any actions taken by them in good faith.

Some Practical Issues

Despite several protections built into the statutory framework to enable and facilitate the functions of insolvency professionals, such professionals have, in a few cases, faced hurdles in the day-to-day management of companies undergoing a CIRP. In some instances, the workers, the suppliers, the promoters and the erstwhile management have refused to cooperate with such third-party professionals. This is especially true of companies where wages and salaries of workers have remained due for a long period of time, even prior to the commencement of insolvency. In cases where an official complaint is filed by the resolution professional regarding the non-cooperation by an officer of the company during the CIRP, the IBC provides for a penalty of imprisonment of between three and five years, and/or a fine of between INR 100,000 and INR 10 million.

Another major issue is having to work with incomplete information and records, and having to conduct extensive and time-consuming compliance checks and corrections, with the employees and personnel of the corporate debtor not being easily forthcoming with information. It is relevant to note that the July amendment to the relevant IBC regulations provide for tight milestone-based timelines for the insolvency professionals to follow during the CIRP. This includes an upper limit of ten days (from the date of receipt of expressions of interest from prospective resolution applicants) for the issuance of a provisional list of eligible prospective resolution applicants; and a further ten-day period (post completion of the five-day window for receipt of objections regarding non-inclusion in the provisional list) for the issuance of the final list of prospective resolution applicants. Further, the resolution professional is now also obligated to issue the information memorandum, evaluation matrix and request for resolution plan document to every prospective resolution applicant (including prospective resolution applicants who challenged the decision of non-inclusion in the provisional list) within five days of issuance of the final list of prospective resolution applicants. Another stringent timeline that has been introduced is the requirement for the resolution professional to form his/her opinion regarding the occurrence of any antecedent/avoidance transactions prior to the commencement of the CIRP on or before the 75th day from the insolvency commencement date. A final determination in this regard is required to be made on or before the 115th day, and an application to the NCLT seeking the appropriate relief is to be filed on or before the hundred and 135th day from the insolvency commencement date.

Considerations for Stakeholders Involved

Potential Acquirers/Distressed Asset Investors

Owing to the restricted and highly regulated role of insolvency professionals, potential acquirers and distressed debt investors may have to keep certain things in mind while opting to participate in an insolvency resolution process under the IBC. Some of the significant concerns include the fact that resolution professionals are not in a position to offer representations and warranties on behalf of the corporate debtor. This becomes a cause for worry for bidders who are accustomed to greater protections under the traditional mergers and acquisitions route. Resolution professionals are also usually unwilling to facilitate the transfer of existing approvals and licenses in the name of the successful acquirer, and this exercise is required to be carried out by the successful bidder itself. At a more fundamental level, another cause for concern for potential acquirers/distressed debt investors is that the insolvency professional profession itself is still in its nascent stages, and that the level of experience in the market may currently be inadequate given the complexity of the structures and operations of some of the companies undergoing a CIRP under the IBC framework.

Existing Creditors

Similarly, certain concerns may arise for existing creditors of the corporate debtor. These include the fact that insolvency professionals owe no express duty (whether fiduciary or otherwise) to creditors. Further, as it is the obligation of the CoC to appoint the interim resolution professional/resolution professional, it also becomes incumbent on the CoC to ensure that any allegation of bias is allayed during the term of appointment of the insolvency professional. ■



▼ **Dhananjay Kumar** is a partner at Cyril Amarchand Mangaldas and is based in Mumbai. Dhananjay studied law at the National Law School of India University, Bangalore, India. He advises leading banks and financial institutions as well as debtors on aspects of debt restructuring, security enforcement, infrastructure projects, structured financing, recovery of loans and banking and insolvency matters. He is advising leading banks, officeholders and ARCs in various cases under the new Insolvency and Bankruptcy Code. He is a Member and Fellow of INSOL International and a Member of American Bankruptcy Institute.



▼ **Gautam Sundaresh** is an associate in the Restructuring and Insolvency team at Cyril Amarchand Mangaldas, and has worked on several significant matters under the Insolvency and Bankruptcy Code, 2016.