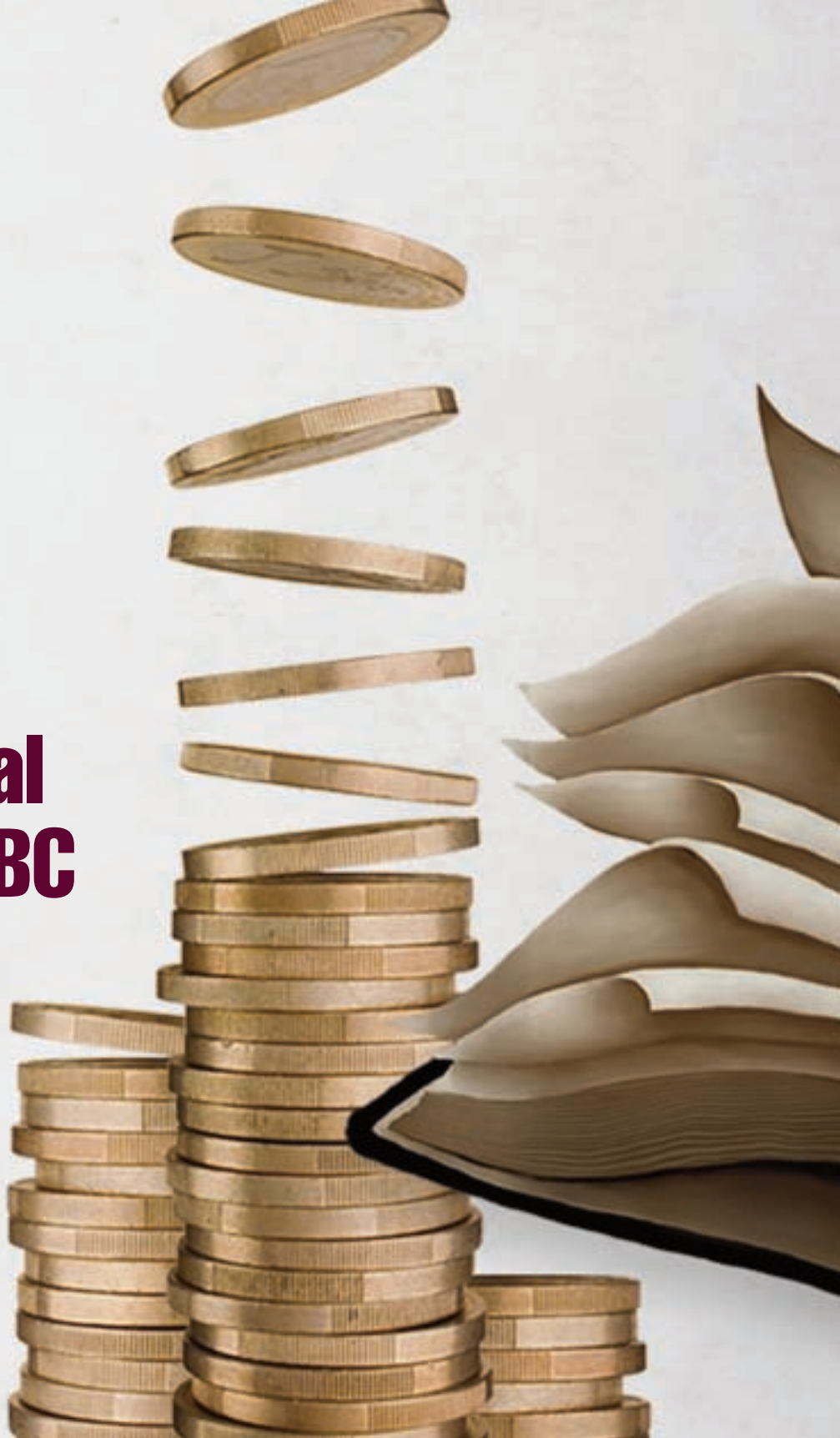


Challenging Role of an Insolvency Professional under the IBC



Insolvency
Professionals
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The transition from a fragmented legal system to a unified Insolvency and Bankruptcy Code 2016 (IBC) is marked by challenges to implement it effectively and expeditiously. Efforts are underway to streamline the common practices under one law. One of the critical pillars of this Code is the vesting of entire management and operations of the company undergoing insolvency process to an Insolvency Professional (IP), whose position is considered to be most significant in insolvency proceedings. These professionals are duly licensed by insolvency professional agencies (IPAs) and Insolvency and Bankruptcy Board of India (IBBI), who will perform the roles of interim resolution professional (IRP)/ resolution professional (RP)/liquidator in the insolvency, resolution and bankruptcy process as defined under the Code. Their responsibilities have expanded manifold to include expertise in finance, law, management and business administration.

The code clearly specifies functions and obligations of the Insolvency Professionals. Where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of Insolvency Professionals to take such actions as may be necessary in the manner provided in the Code. A recent press release issued by Insolvency and Bankruptcy Board of India (IBBI) has made it imperative that Insolvency Process has to be run by an Insolvency Professional (an individual) and not by an Insolvency Professional entity (IPE). However keeping in mind that the assignment as an IRP / RP would

require huge infrastructural support, which may go beyond the capabilities of an individual IP, it would be more appropriate to engage the services of an IPE which has been legally recognized under Regulation 12 of IBBI.

As the functions and responsibilities of the IPs include managing multiple locations of registered office / corporate & branch offices and operating units, taking over of the management of the company, control and custody of the assets of the corporate debtor, receiving claims (within 14 days of his appointment) which may run into hundreds or even thousands of claims, collate and verify the same within 7 days, IP necessarily has to be well-equipped with a multi-disciplinary team of professionals, which can easily be catered by an IPE.

The role of the RP is crucial as he also has to manage the business of the corporate debtor as a going concern, interact and lead the management, tackle legal issues, including proceedings in National Company Law Tribunal (NCLT), prepare periodic reports for NCLT & Committee of Creditors (CoC), identify prospective Resolution applicants, provide data rooms, get due diligence organized, evaluate Resolution Proposals, meet with the Creditors in CoC and try to evolve a consensus on proposals etc. In the said background, a multi-disciplinary team of high-quality professionals would be more desirable and result oriented to execute the tasks within the short time frame.

In M&A/takeover transactions, a very detailed Information Memorandum (IM) is required to be prepared often with the help of financial experts, investment bankers, technical and legal

consultants, along with other related professionals. The target companies, not only have to undergo deep and incisive due diligence by teams from the prospective acquirers, but also the transaction structures have to be devised and validated by lawyers, accountants and examined from the regulatory aspects. To achieve all this within a prescribed time limit, the MoUs and definitive documents will have to be prepared at all stages of the transaction well before the proposed M&A/takeover.

The new insolvency professional will have to take up the challenging role of addressing the various demands within the specified timelines. It occupies a pivotal role and works as an intermediary between the corporate debtors/financial creditors and the Adjudicating Authorities regulated by IBBI.

While the role of the IP is complex and challenging, it can broadly be divided into managing resolution process and liquidation process as envisaged in the Code. In the resolution process, the IP is the Resolution Professional. In implementing resolution processes, the IP will collate financial facts regarding the debtor, assess the claims, verify the claims of the creditors, constitute a committee of creditors based on their credit exposure of the various creditors carry on the business administration of the debtor and create a comprehensive resolution plan. Under liquidation, the IP assumes the role of the Liquidator, wherein the assets of the insolvent company are accumulated and sold off to facilitate payment to its creditors.

The Road Ahead

The objectives of the IBC are salutary and there was a dire need for such a

legislation to improve the Insolvency & Bankruptcy regime in the country. The Insolvency and Bankruptcy Board of India has made commendable efforts to transform the bankruptcy ecosystem by providing time-bound mechanism to expedite resolution of insolvency and

facilitate ease of exit. This will also help in improving India's ranking in the ease of doing business in India. The large companies are the wealth of the nation and the insolvency process for such companies need to be managed with great maturity. Considering the

powers and duties of the IPs imparted under the Code, it is clear that they steer the insolvency resolution process in every way. It brings a host of professional and business opportunities for Insolvency Professionals with tremendous growth potential.
