



COMPLIANCES UNDER CIRP AND MANAGEMENT OF CD AS A GOING CONCERN

LEGAL PROVISIONS

Insolvency and Bankruptcy Code

CIRP Regulations

IP Regulations

IPA Byelaws

IBBI Circulars

Serial	Type of compliances	Filing with	Relevant provisions	Relavant Form
1.0	CIRP Regulations			
1.1	Process Timelines	Self	R 40A	
1.2	Regulatory fees	IBBI	R 31A	
1.3	Filing of forms with IBBI	IBBI	R 40B	CIRP-1 to CIRP-8
1.4	Compliance certificate	NCLT	R 39(4)	H
2.0	IP Regulations			
2.1	1% fees to IBBI on fees by IP	IBBI	R 7 (2)(ca)	E
2.2	Deposit of Regulatory fees	IBBI	R 7 (2)(cb)	EA
2.3	1% to IBBI on turnover by IPE / IP	IBBI	R 7(2)(ca) +13(2)(ca)	G
3.0	Code of conduct / IP Regulations			
3.1	Relationship disclosure	IPA	R 8	
3.2	Fees disclosure	IPA	R 25	
3.3	Cost disclosure	IPA	R 27	
4.0	IPA Byelaws			
4.1	Public announcement	IPA	R 18	
4.2	Monthly reports	IPA	R 18	
4.3	Half yearly reports	IPA	R 18	

PROCESS TIMELINES (IRP PERIOD)

REGULATION 40A

¹²⁹ [Section / Regulation]	Description of Activity	Norm	Latest Timeline
Section 16(1)	Commencement of CIRP and appointment of IRP	T
Regulation 6(1)	Public announcement inviting claims	Within 3 Days of Appointment of IRP	T+3
Section 15(1)(c) / Regulations 6(2)(c) and 12(1)	Submission of claims	For 14 Days from Appointment of IRP	T+14
Regulation 12(2)	Submission of claims	Up to 90 th day of commencement	T+90
Regulation 13(1)	Verification of claims received under regulation 12(1)	Within 7 days from the receipt of the claim	T+21
	Verification of claims received under regulation 12(2)		T+97
Section 21(6A)(b) / Regulation 16A	Application for appointment of AR	Within 2 days from verification of claims received under regulation 12(1)	T+23
Regulation 17(1)	Report certifying constitution of CoC	Within 7 days of filing of the report certifying constitution of the CoC, but with five days' notice.	T+23
Section 22(1) / Regulation 19(2)	1 st meeting of the CoC		T+30
Section 22(2)	Resolution to appoint RP by the CoC	In the first meeting of the CoC	T+30
Section 16(5)	Appointment of RP	On approval by the AA
Regulation 17(3)	IRP performs the functions of RP till the RP is appointed.	If RP is not appointed by 40 th day of commencement	T+40

PROCESS TIMELINES (RP PERIOD -1)

REGULATION 40A

Regulation 27	Appointment of valuer	Within 7 days of appointment of RP, but not later than 47th day of commencement.	T+47
Section 12(A) / Regulation 30A	Submission of application for withdrawal of application admitted	Before issue of EoI	W
	CoC to dispose of the application	Within 7 days of its receipt or 7 days of constitution of CoC, whichever is later.	W+7
	Filing application of withdrawal, if approved by CoC with 90% majority voting, by RP to AA	Within 3 days of approval by CoC	W+10
Regulation 35A	RP to form an opinion on preferential and other transactions	Within 75 days of the commencement	T+75
	RP to make a determination on preferential and other transactions	Within 115 days of commencement	T+115
	RP to file applications to AA for appropriate relief	Within 130 days of commencement	T+130
Regulation 36 (1)	Submission of IM to CoC	Within 95 days of commencement	T+95

PROCESS TIMELINES (RP PERIOD – 2)

REGULATION 40A

Regulation 36A	Publish Form G	Within 60 days of commencement	T+60
	Invitation of EoI		
	Submission of EoI	At least 15 days from issue of EoI (Assume 15 days)	T+75
	Provisional List of RAs by RP	Within 10 days from the last day of receipt of EoI	T+85
	Submission of objections to provisional list	For 5 days from the date of provisional list	T+90
	Final List of RAs by RP	Within 10 days of the receipt of objections	T+100
Regulation 36B	Issue of RFRP, including Evaluation Matrix and IM	Within 5 days of the issue of the provisional list	T+105
	Receipt of Resolution Plans	At least 30 days from issue of RFRP (Assume 30 days)	T+135
Regulation 39(4)	Submission of CoC approved Resolution Plan to AA	As soon as approved by the CoC	T+165
Section 31(1)	Approval of resolution plan by AA		T+180]

IBBI FORMS – 1 TO 5 (LINKED WITH PROGRESS-1)

REGULATION 40B

Form No.	Period covered and scope	To be filed by	Timeline
IP 1	Pre-Assignment: This includes consent to accept assignment as IRP / RP, the details of IP and the Applicant, the details of the person which will undergo the process, terms of consent, terms of engagement, etc.	IP	Within three days of signing of Form-2 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 or Form-AA of the Regulations, as the case may be.
CIRP 1	From Commencement of CIRP till Issue of Public Announcement: This includes details of IRP, CD, and the Applicant; admission of application by AA; public announcement; details of suggested Authorised Representatives; non-compliances with the provisions of the Code and other laws applicable to the CD; etc.	IRP	Within seven days of making the Public Announcement under section 13.
CIRP 2	From Public Announcement till confirmation / replacement of IRP: This includes details of Authorised Representative selected by IRPs for a class of creditors; taking over management of the CD; receipt and verification of claims; constitution of CoC, first meeting of CoC; confirmation / replacement of IRP; applications seeking co-operation of management (if any); expenses incurred on or by IRP; relationship of IRP with the CD, Financial Creditors and Professionals; support services taken from IPE; non-compliances with the provisions of the Code and other laws applicable to the CD; etc.	IRP	Within seven days of confirmation/ replacement of IRP under section 22.

IBBI FORMS – 1 TO 5 (LINKED WITH PROGRESS-2)

REGULATION 40B

Form No.	Period covered and scope	To be filed by	Timeline
CIRP 3	From Appointment of RP till issue of IM to Members of CoC: This includes details of RP; details of registered valuers; handing over of records of CD by IRP to RP; taking over management of the CD; applications seeking co-operation of management (if any); details in IM; non-compliances with the provisions of the Code and other laws applicable to the CD; etc.	RP	Within seven days of issue of IM to members of CoC under regulation 36.
CIRP 4	From Issue of IM till issue of RFRP: This includes expression of interest; RFRP and modification thereof; evaluation matrix and modification thereof; non-compliances with the provisions of the Code and other laws applicable to the CD; etc.	RP	Within seven days of the issue of RFRP under regulation 36B.
CIRP 5	From Issue of RFRP till completion of CIRP: This includes updated list of claimants; updated CoC; details of the resolution applicants; details of resolution plans received; details of approval or rejection of resolution plans by CoC; application filed with AA for approval of resolution plan; details of resolution plan approved by the AA; initiation of liquidation, if applicable; expenses incurred on or by RP; appointment of professionals and the terms of appointment; relationship of the RP with the CD, Financial Creditors, and Professionals; support services taken from IPE; non-compliances with the provisions of the Code and other laws applicable to the CD; etc.	RP	Within seven days of the approval or rejection of the resolution plan under section 31 or issue of liquidation order under section 33, as the case may be, by the AA.

IBBI FORMS – 6 (LINKED WITH EVENT)

REGULATION 40B

Form No.	Period covered and scope	To be filed by	Timeline
CIRP 6	<p>Event Specific: This includes:</p> <ul style="list-style-type: none"> a. Filing of application in respect of preferential transaction, undervalued transaction, fraudulent transaction, and extortionate transaction; b. Raising interim finance; c. Commencement of insolvency resolution process of guarantors of the CD; d. Extension of period of CIRP and exclusion of time; e. Premature closure of CIRP (appeal, settlement, withdrawal, etc.); f. Request for liquidation before completion of CIRP; and g. Non implementation of resolution plan, as approved by the AA. 	IRP or RP, as the case may be.	Within seven days of the occurrence of the relevant event.

IBBI FORMS – 7 & 8 (LINKED WITH TIMELINE)

REGULATION 40B

Sl.	Activity requiring filing of Form CIRP 7, if not completed by the specified date	Timeline for filing Form CIRP 7 for the first time	Timeline for subsequent filing of Form CIRP 7
(1)	(2)	(3)	(4)
1	Public announcement is not made by T+3 rd day	Date specified in	X+30 th day,
2	Appointment of RP is not made by T+30 th day		X+60 th day,
3	Information memorandum is not issued within 51 days from the date of public announcement	column (2) + 3 days	X+90 th day, and so on, till the activity is completed.
4	RFRP is not issued within 51 days from the date of issue of information memorandum		
5	CIRP is not completed by T+180 th day		

- Resolution professional shall file Form CIRP 8 intimating details of his opinion and determination under regulation 35A, on or **before 140th day** of the insolvency commencement date:

PENALTIES FOR NON COMPLIANCE

REGULATION 40B

¹³³[(4)The filing of a Form under this regulation after due date of submission, whether by correction, updation or otherwise, shall be accompanied by a fee of five hundred rupees per Form for each calendar month of delay after 1st October, 2020.

Example: A Form is required to be filed by 30th October, 2020. It shall be filed along with a fee as under:

If filed on	Fee (in Rupees)
29 th October, 2020	0
30 th October, 2020	0
31 st October, 2020	500
Any day in November, 2020	1000
Any day in December, 2020	1500''

REGULATORY FEES

- Regulatory fee calculated at the rate of 0.25% of the realisable value to creditors under the resolution plan approved under section 31, shall be payable to IBBI, where such realisable value is more than the liquidation value. [Regulation 31A of CIRP Regulations]
- Regulatory fee calculated at the rate of 1% of the cost being booked in insolvency resolution process costs in respect of hiring any professional or other services by the IRP / RP for assistance in CIRP shall be payable to IBBI. [Regulation 31A of CIRP Regulations]
- A fee calculated at the rate of 1% of the professional fee earned for the services rendered by him as an insolvency professional in the preceding financial year, on or before the 30th of April every year, along with a statement in Form E [Regulation 7(2)(ca) of IP Regulations]
- A fee calculated at the rate of 1% of the turnover by IPE from the services rendered by it in the preceding financial year, on or before the 30th of April every year, along with a statement in Form G [Regulation 13(2)(ca) of IP Regulations].

COMPLIANCE CERTIFICATE – FORM H

- The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule-I and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B.[Regulation 31(4) of CIRP Regulations]

RELATIONSHIP OF IP

REG 8B OF CODE OF CONDUCT / IP REGULATIONS

Relationship of the insolvency professional with	Disclosure to be made within three days of
(1)	(2)
Corporate debtor	his appointment.
Registered valuers / accountants/ legal professionals/ other professionals appointed by him	appointment of the professionals.
Financial creditors	the constitution of committee of creditors.
Interim finance providers	the agreement with the interim finance provider.
Prospective resolution applicants	the supply of information memorandum to the prospective resolution applicant.
If relationship with any of the above, comes to notice or arises subsequently	of such notice or arising.

RELATIONSHIP OF IP

REG 8C OF CODE OF CONDUCT / IP REGULATIONS

Relationship of the other professional with	Disclosure to be made within three days of
(1)	(2)
Insolvency professional	the appointment of the other professional.
Corporate debtor	the appointment of the other professional.
Financial creditors	constitution of committee of creditors.
Interim finance providers	the agreement with the interim finance provider or three days of the appointment of the other professional, whichever is later.
Prospective resolution applicants	the supply of information memorandum to the prospective resolution applicant or three days of the appointment of the other professional, whichever is later.
If relationship with any of the above, comes to notice or arises subsequently	of such notice or arising.

DEFINITION OF RELATIONSHIP

REG 8D OF CODE OF CONDUCT / IP REGULATIONS

Kind of relationship	Nature of relationship
(1)	(2)
A	Where the insolvency professional or the other professional, as the case may be, has derived 5% or more of his / its gross revenue in a year from professional services to the related party.
B	Where the insolvency professional or the other professional, as the case may be, is a shareholder, director, key managerial personnel or partner of the related party.
C	Where a relative (spouse, parents, parents of spouse, sibling of self and spouse, and children) of the insolvency professional or the other professional, as the case may be, has a relationship of kind A or B with the related party.
D	Where the insolvency professional or the other professional, as the case may be, is a partner or director of a company, firm or LLP, such as, an insolvency professional entity or registered valuer, the relationship of kind A, B or C of every partner or director of such company, firm or LLP with the related party.

REMUNERATION + COST DISCLOSURE

REG 25A & 27 OF CODE OF CONDUCT / IP REGULATIONS

- An insolvency professional shall disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website. [Regulation 25A]
- An insolvency professional shall disclose all costs towards the insolvency resolution process costs, liquidation costs, or costs of the bankruptcy process, as applicable, to all relevant stakeholders, and must endeavour to ensure that such costs are not unreasonable. [Regulation 27]

MANAGING THE CD AS A GOING CONCERN

The Art of the Possible !



MANAGING CIRP OF “GOING CONCERN” MEANS CHALLENGES GALORE

There are many Road Blocks and the sooner one realises, the better it is for the IRP / RP.



ROADBLOCK 1: LOYALTY OF THE TEAM

The team at the CD has been working with the Promoters and the Ex-Management for a long period of time.

They will not change their loyalty overnight in favour of the RP.

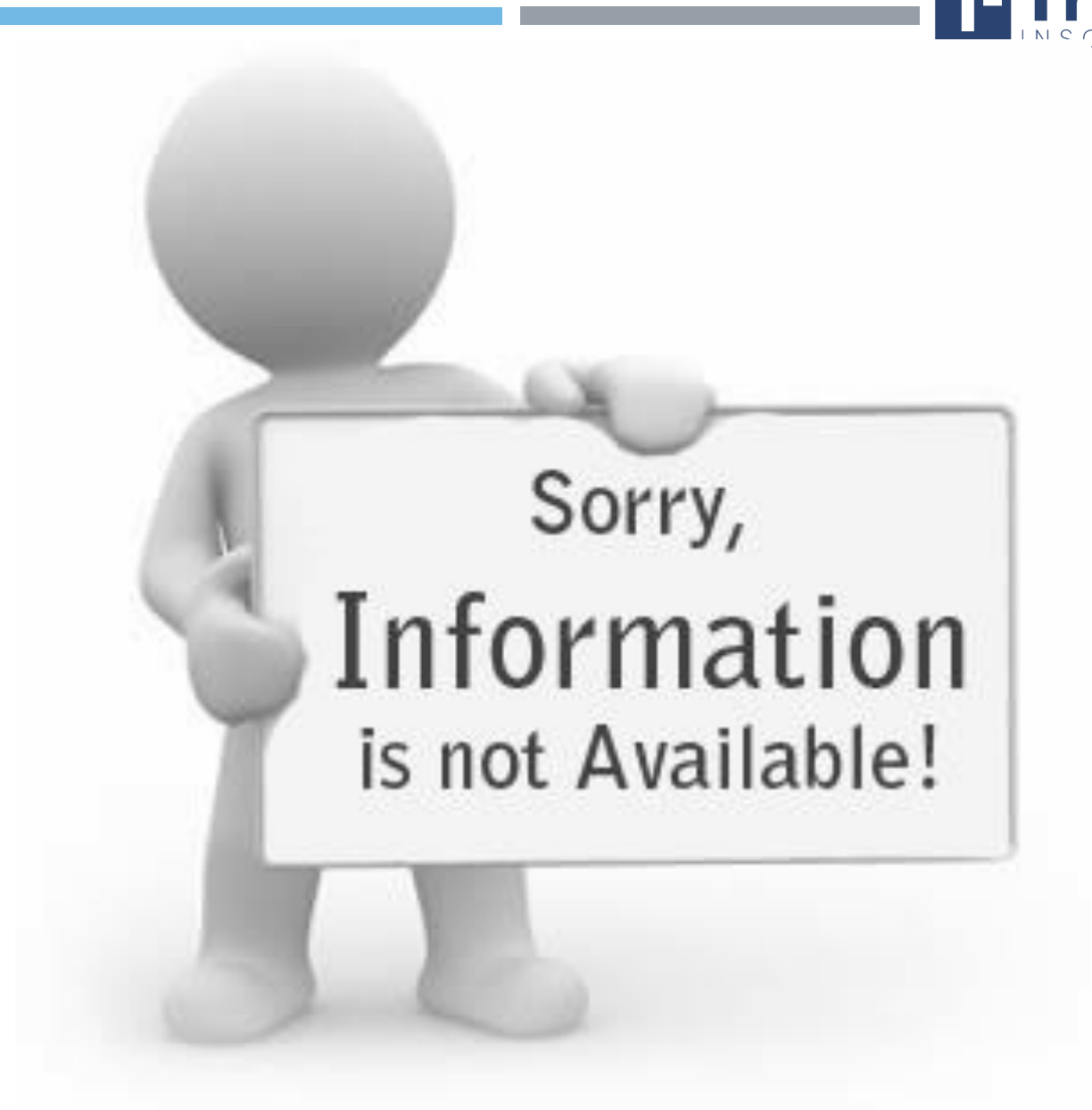
So what should the RP do ?



ROADBLOCK NO.2 RELUCTANCE TO SHARE INFORMATION / COOPERATE

By and large the employees would be reluctant to share information with the RP and will wait for a nod from the ex-management before sharing anything with the RP.

So what should the RP do ?



OVERCOMING THE HURDLES

Behavioural Interventions can be effectively put to use by the RP to overcome these roadblocks and take effective control of the CD.

What are these Behavioural Interventions ?

When to use them ?

How to use them ?

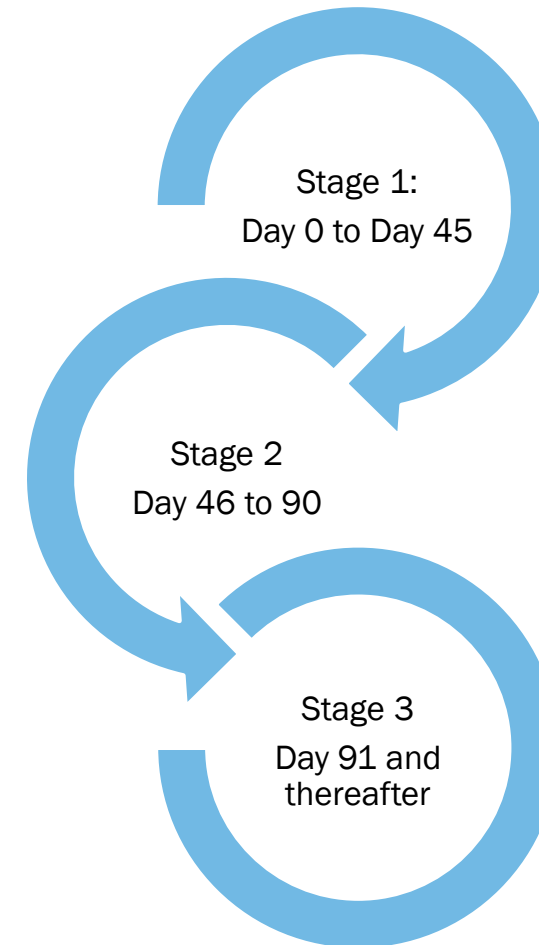


THREE STAGE APPROACH TO BEHAVIOURAL INTERVENTION

Stage 1: Easing into the role of the RP

Stage 2: Consolidating the grip

Stage 3: Fully in Control



BEHAVIOURAL INTERVENTIONS – STAGE 1 (0 – 45 DAYS)

EASING INTO THE ROLE

What to do

- Identify the people, their position and their proximity with ex-management.
 - Usually there are three levels; the innermost circle, the 2nd level of management and the 3rd level of management.
- Mostly Formal (Legal) Communication with the innermost circle and ex-management.
- Mostly Informal Communication with the 2nd level and 3rd level of the management.
- Look for disgruntled / talented yet frustrated 2nd level managers. Try and develop trust with them.
- BE PRESENT AND BE SEEN

How to do

- Zero Adversarial Approach.
 - You are not here to snatch the company away from the ex-management.
 - You are just a place holder who is entrusted to run the company by a court order during this intervening period.
- Show Empathy with the 2nd and 3rd level of management. Be approachable.
- Don't communicate anything that you cannot accomplish. The best is to communicate, "I will try ..."
- By and Large have an easy demeanour.
- Listen, listen and listen.

BEHAVIOURAL INTERVENTIONS – STAGE 2 (46 TO 90 DAYS)

CONSOLIDATING THE GRIP

What to do

- Form committees to evaluate all price related, buying related and selling related decisions.
- The RP to accept and go ahead with only that decision that has been recommended by the committees
- Be very particular about adhering to the new reporting processes to be followed. NO EXCEPTIONS.
- Simplify the Daily MIS and make people responsible for the same.
- Ask Questions

How to do

- Show respect to senior employees and let them know that without them it would be very difficult to run the show.
- Make yourself approachable by the 2nd and 3rd level employees.
- Through your trusted people, develop an informal communication network.
- Those who are still not cooperating, let it be known that there is Section 19(2) and 19(3).
- File Section 19(2) and 19(3) application, if needed.

BEHAVIOURAL INTERVENTIONS – STAGE 3 (91 DAYS AND BEYOND)

FULLY IN CONTROL

What to do

- SOME CARROT: Put people who have shown trust in positions from where you can exercise better control.
- SOME STICK: Some of the people who have shown non-cooperative behaviour, you may send them on paid leave.
- Take regular meetings of different verticals, keep asking questions but DO NOT Micromanage.

How to do

- Be Assertive in meetings.
- A little tough with the vertical heads but a little easy with the 2nd and 3rd line managers.
- The demeanour has to be a little tough now.
- Assume that you are in full control and that will help the control flow naturally.

HUMAN RESOURCE

Managing People

- Communicate, Communicate and Communicate.
- Be consistent in what you say and what you do.
- Show Empathy.



LEADERSHIP, MOTIVATION AND TEAM BUILDING

OPERATING GUIDELINES

What to do

- As RP, you begin at best as a legally imposed leader.
- Communicate More.
- Be present and be seen
- Judiciously use “Carrot” and “Stick”
- Acknowledge Performers.
- Within the constraints of being an Insolvent Company, have some “rewards” and “recognition”

How to do

- Be consistent in what you say and what you do.
- If you are wrong, accept it and rectify your stance.
- Never be overtly aggressive ... try to be an iron grip but in a fur glove.
- Be approachable and show your empathy.
- Reprimand in Private but Recognize in Public.

COMMUNICATION, NEGOTIATION SKILLS, MANAGING PERSONALITY CONFLICTS

BEING IN THE DRIVERS SEAT

What to do

- **COMMUNICATION:** Open a discussion and then listen, listen and listen. Do the final conclusion, let the last words be profound and yours.
- **NEGOTIATION SKILLS:** Be clear, consistent yet tough.
- **MANAGING PERSONALITY CONFLICTS:** Always take a principled stance. Align the objectives of the conflicting persons with the objectives of the company.

How to do

- Be firm, yet polite while communicating.
- While negotiating, conclude the discussions with a win-win approach. Both the parties must walk-off the negotiating table thinking that they got a good deal.
- Show empathy with both the conflicting personalities, show respect but clearly communicate the principled stance that you are taking.

COORDINATING WITH THE COC

FACT: RP is appointed by the COC and her/his fee is fixed by the COC.

Does that mean the RP becomes subservient to the COC ?

How to strike a delicate balance between RP's role and a possible COC's overbearing presence ?



COORDINATING WITH THE COC

BUILDING A WINNING COMBINATION

What to do

- Communicate – Not just Data but your analysis also.
- Demonstrate Quick Wins
 - Avoidable Transactions
 - Improving Operational Efficiency.
- Evoke trust with your knowledge and capability.
- “Lead” the COC meetings,

How to do

- Prepare well for the COC meetings, don’t give a hassled look and feel.
- Never hide (intentionally or unintentionally) any financial information or financial decision. Always get the financial decisions ratified by the COC.
- Always give the COC, valid reasons for your views and opinions.
- Say No firmly yet politely on any unnecessary point or opinion that may be detrimental to the interests of ALL stakeholders.

CASE STUDY

MR.N.VEDAM GYANAM GETS APPOINTED AS IRP/RP OF M/S MOONLIGHT CHEMICALS LTD.



M/s Moonlight Chemicals Ltd.(CD) is a stock exchange listed company that has defaulted on the payment of its debt obligations. There are five lenders who are part of a consortium, led by National Bank(NB) (having 37% of the Vote Share). However Capital Bank(CB) with 10% of the Vote Share files for CIRP under Section 7 of the IBC and proposes Mr.N.Vedam Gyanam (NVG) as the proposed IRP. The matter gets admitted by the Hon'ble NCLT and NVG gets appointed as the IRP.

Mr.Prem Nath Agarwal is the CMD of the CD and CA Raghunathan is the CFO and CS Shashi Shetty is the CS and Legal Officer (CSLO) of the CD and Mr.Madan Lal is the chief Production Officer (CPO) of the CD who looks after the Plant. The CMD confides with the CFO for all the Financial Matters and trusts the CFO. The CFO has a difficult relationship with the CPO and has fed the CMD with negativity about the CPO.

Immediately after the pronouncement of the CIRP Order, NVG's legal team sends well drafted legal notices to the CMD and key managerial personnel of the CD. NVG's custody team goes to the site of the Plant on the same day as the notice to CMD and tries to forcibly take control of the security of the premises. It leads to altercation and the workers working in the unit come to know about it.

CASE STUDY

MR.N.VEDAM GYANAM GETS APPOINTED AS IRP/RP OF M/S MOONLIGHT CHEMICALS LTD.

NVG schedules his visit to the Corporate Head Office of the CD after seven days from his appointment, and NVG's legal team informs the CMD and other key managerial personnel of his visit.

NVG visits the head Office along with his Advocate, the CSLO ushers them into the conference hall where the Tier 1 and Tier 2 management of the CD are sitting. NVG takes the biggest chair (in front of which a metal tent card with CMD being embossed, is kept). He asks his lawyer to take the seat next to him. The CSLO tells NVG that the CMD would be joining in next 15 mins as there was an emergency in his house. The CSLO then formally introduces NVG by telling that Hon'ble NCLT has appointed him for the resolution of the CD.

NVG then asks his lawyer to give a presentation wherein the provisions of IBC that empower NVG are displayed then there is presentation about the penal provisions for those who do not cooperate with him.

Just as NVG's lawyer is giving the presentation, the CMD enters the conference hall. All the members of the team rise from their chairs. The CMD greets NVG and looks for a seat, the CFO who is sitting on the other side of NVG, gets up and offers the CMD his seat.

The meeting ends with NVG telling the key managerial personnel that he can be contacted over his Email.



CASE STUDY

MR.N.VEDAM GYANAM GETS APPOINTED AS IRP/RP OF M/S MOONLIGHT CHEMICALS LTD.



It is week two after NVG's appointment and his office receives a communication from the stock exchange that the non-payment of dues may lead to permanent de-listing of shares. NVG sends a scathing Email to the CSLO with CC to the team of CSLO and the CMD about gross dereliction of duty that may result in permanent delisting of the CD's shares.

Everytime there is problem that is brought to the notice of NVG, he either does not respond or at time talks about the law and it's provisions.

NVG visits the CD's office towards the end of third week again and asks the CMD, the CFO and the second tier management in the finance team to come and meet him in the conference room. There he asks that why despite his Email, certain details about financial statements has not been provided to him. The CFO tells RVG that two critical members of the staff have gone on leave, hence the data remains incomplete. There is a silent non-cooperation that is palpable amongst the team members

It is week four now and NVG has scheduled the first COC meeting and he is not sure that in absence of the critical financial data, how he can handle the queries of the financial creditors.

He is clearly in stress !

THANK YOU

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31 CIRP/Liquidation Cases |

100 Years of Collective Experience |

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