

Insolvency & Bankruptcy Code (IBC) 2016 - From “DIP” to “CIP” approach - Role of Insolvency Professional



IBC 2016 departs from the “DIP” ie Debtor in Possession to “CIP” ie Creditors in Possession approach. Firstly, let us briefly discuss the difference between the two before we deliberate further on it.

DIP (Debtor in Possession) approach is being followed in the US Chapter 11 bankruptcy laws. It follows that debtor’s management remains in control of course with some safeguards regarding the disposal of assets outside the ordinary course of business. For some, it may sound that a fox is in charge of hen house but the counter argument is that debtors management provides most knowledgeable, economical, effective and efficient management to run the debtors affairs rather than a new person (Insolvency professional) with a learning curve made incharge for the business. Critiques also argue that such an approach not only increases the cost of Insolvency process but also may lead to unintended results of diminishing the value of debtor’s business. Creditors, in DIP, will support the debtors management by hiring the advisors/consultants. However, such consultants or advisors remain responsible to the board of the company.

CIP (Creditors in Possession) approach, as per IBC 2016, differs from DIP approach where day to day management is passed on to the Insolvency Professional. This is similar to UK Insolvency act where the day to day management is conducted by Administrator who

acts as agent of the company. This concept comes from an argument that the present situation is caused due to a weakness in management and a confidence is lost in them and hence it is best that they are relieved from running the company any more. As per section 17 & 18 of IBC 2016, the management of the affairs of the debtors vest with Interim Resolution Professional who continues further after his appointment as Resolution Professional by Committee of Creditors (CoC) as per section 22 of IBC 2016.

There are huge merits in CIP approach. The success lies as to how Resolution Professional play the process. The Resolution Professionals have a very important task of being well educated & experienced in running businesses. As the previous management or promoters will take a back seat the onus lies on them now to operate the company on going concern basis without diminishing the value.

This also requires that Lenders evaluate critically the experience of Insolvency Professionals (Registered IPs are around 1479 till date) for running the businesses, while proposing their names for the Corporate Insolvency Resolution Process (CIRP) so that they are comforted that the business of Corporate Debtors is run economically & efficiently thereby reducing the Insolvency costs. IPs should not only possess but also are required to show case leadership and entrepreneurship qualities while running the company. Additionally, Resolution Professional will be required to be well networked in industry circles world-wide. These will arm them in setting up independent management, assessing the financial viability and preparing for a resolution plan or evaluating the resolution plans. This requires a paradigm shift in the approach to select IPs to act as Resolution Professionals where the capabilities of RP should be a driver rather than to go for a “lowest” fee concept because the stakes are high.

In addition to IPs role to run the CIRP, IPs could also support each bank or financial institution in the CoC meetings. Section 24 (5) of IBC 2016 envisage such role.

“Any creditor who is a member of the committee of creditors may appoint an insolvency professional other than resolution professional to represent such creditors meeting of committee of creditors...”

While Financial Institutions/banks are subject matter experts on their area of operations ie banking but may fall short in these specialised insolvency cases. IPs can join their respective teams to fill this gap. IPs support may not only protect their individual interest but also will facilitate the faster decision making on crucial matters like evaluation of resolution plans in addition to the matters as listed under section 28 of IBC 2016. Such a practice is also being followed internationally.

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