

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 4 | Issue 1

2021

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Regulation of Insolvency Professionals in India: International Regulation Standards Litmus Test and Cross-Border Perspectives

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ABSTRACT

India transformed its business environment on May 11, 2016, by enacting the Insolvency & Bankruptcy Code, 2016 (“IBC”). The IBC is a robust and empowering legislation that has delivered tangible results within a remarkably short period post its enactment. Irrefutable proof of the same is India moving a whopping 56 places from 108 to 52 under the category of “Resolving Insolvency” in World Bank’s Ease of Doing Business Report, 2020.

One of the critical pillars of institutional infrastructure on which the robust legislative machinery created under the IBC rests is “Insolvency Professionals” (“IPs”). IPs exercise quasi-judicial powers in any insolvency/bankruptcy proceeding, subject to the review of the creditors and the adjudicating judicial authorities. IPs drive all the processes governed by and initiated under the IBC. Thus, given the critical position that IPs hold in the scheme of things promulgated under the IBC, their regulation and governance have become extremely critical in India.

Given that the IP regulation system in India is five years old as of the date (i.e. December 12, 2021), now is a good time to subject it to the global standards of IP regulation, given that India hopes to and has the potential to become a global economic superpower. Thus, this paper intends to undertake an intellectual reconnaissance into whether or not the incumbent framework governing IPs under the IBC is in sync with the global standards of IP regulation and whether or not India needs to draw any perspectives on IP regulation from other countries (i.e. The United Kingdom, Australia, Canada, and Singapore) (collectively “Identified Jurisdictions”) that have experience in IP regulation.

I. INTRODUCTION

May 11, 2016, went down as a historical day for economic reforms in India, as the Government of India enacted remarkable and trendsetting

legislation on insolvency and bankruptcy- The Insolvency and Bankruptcy Code, 2016

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(“**IBC**”)². The primary objective behind the enactment of the IBC is to consolidate and amend the laws relating to the reorganisation and insolvency resolution of corporate entities, partnership firms and individuals in a time-bound manner³.

As per a press release⁴ made by the Department of Economic Affairs, Government of India, the legislative framework under the IBC rests on the following four pillars of institutional infrastructure: (1) Insolvency Professionals; (2) Adjudicating Authorities; (3) Information Utilities; and (4) The Insolvency and Bankruptcy Board of India (collectively referred to as “**Pillars**”).

Since the central idea canvassed in this paper revolves around one of the Four Pillars, since a large portion of this paper otherwise focuses on the IBC, it is necessary to provide a brief background of the Pillars.

The first pillar is Insolvency Professionals (“**IPs**”). IPs are licensed professionals enrolled with Insolvency Professional Agencies (“**IPAs**”) and are also registered with the Insolvency and Bankruptcy Board of India. IPs advise the insolvency and bankruptcy processes about various entities that the IBC governs and owe their existence to Part IV, Chapter IV of the IBC. Since IPs are registered with IPAs, it is necessary

to touch upon IPAs conceptually quickly: IPAs⁵ are professional bodies that are registered with the Insolvency and Bankruptcy Board of India and are tasked with the responsibility of enrolling and training IPs.

The second pillar is the adjudicating judicial authorities, at the behest of whom most crucial procedures under the IBC are initiated and controlled. The National Company Law Tribunal (“**NCLT**”) and the National Company Law Appellate Tribunal (“**NCLAT**”) (collectively “**Adjudicating Authorities**”) have been designated as the adjudicating judicial authorities under Part II, Chapter VI of the IBC. All the processes under the IBC commence only after the NCLT admits an application for the commencement of the Corporate Insolvency Resolution Process (“**CIRP**”) (which is a process for restructuring a company’s debts). As their names suggest, NCLT is the court of the first instance under the IBC, whereas the NCLAT is the appellate court under the IBC.

The third pillar is Information Utilities (“**IUs**”). IUs have been established under Part IV, Chapter V of the IBC. Conceptually, an IU is a company in charge of collecting, collating and disseminating financial information⁶ (i.e. information about assets and liabilities of corporate borrowers). Notorious borrowers often

² A full text of the IBC is available at <http://ibbi.gov.in/webadmin/pdf/legalframework/2017/Jul/IBC%202016.pdf>

³ See Preamble to the IBC

⁴ Available at <https://www.dea.gov.in/sites/default/files/InsolvencyBankruptcyCode2016.pdf>

⁵ The closest international equivalents to IPAs are Recognized Professional Bodies (RPBs) in the United Kingdom (UK). RPBs in the UK authorise professionals to practice as Insolvency Practitioners.

A complete list of RPBs in the UK is available here-
<http://www.insolvency-practitioners.org.uk/links/rpbs>

⁶ Financial information as defined under §3(13) of the IBC includes the following categories of information: (1) records of debt; (2) records of liabilities; (3) records of assets in which a security interest has been created; (4) records of instances of default; (5) records of balance sheet and cash flow statements.

dispute the authenticity of the loan documents during recovery/restructuring proceedings before the court, frequently using it as a delay tactic to compromise the creditors' interests. More often than not, Borrowers interpolate security documents to mislead the court. The intention behind the introduction of IUs in India is to halt this. Effective December 19, 2017, as per a mandate⁷ of the Reserve Bank of India ("RBI"), all financial creditors (i.e. banks and financial institutions) have to file a copy of their security documents with National E-Governance Services Ltd (which is India's first and only IU as of date⁸). Once a set of security documents is filed with and authenticated by an IU, they become undisputable and unalterable. Courts will then refer to the set of security documents authenticated by the IU during recovery/restructuring proceedings.

The fourth pillar is India's Insolvency and Bankruptcy Board ("**Board**"). The Board is India's sole insolvency and bankruptcy regulator and has been established under Section 188 of the IBC. The Board regulates IPs, IPAs, and IUs and is bound by the decisions of the Adjudicating Authorities.

Out of the Pillars, the most crucial one is that of IPs (and they are also the central idea of this paper), since all the processes as envisaged under the IBC revolve around IPs and the success of each process is highly dependent on the skill, knowledge and competence of IPs. Furthermore, the effective functioning of the other pillars also

depends largely on the skill and competence of the IPs. IPs appear before Adjudicating Authorities and make submissions; IPs also have the power to access information stored with an IU and are regulated the Board. Given their peculiar position and their impact on the proceedings under the IBC, IP regulation has become a critical issue in India.

Since the Indian IP regulation system is close to being five years old as of the date⁹ and is still evolving, now is a good time to dispassionately subject it to the prevailing international standards of IP regulation and to also compare it to the IP regulation systems employed by other jurisdictions that have experience in IP regulation.

Effectively, this paper has two objectives: first, subjecting the Indian IP regulation system to the prevailing international standards of IP regulation, and second, comparing the Indian IP regulation system to the IP regulation systems deployed by other jurisdictions that have experience in IP regulation.

Nonetheless, between the first and the second objective, the first objective is more important because that subjects the Indian IP regulation system to a uniform set of international standards. In contrast, the second objective is an ancillary objective, as it only provides a cross-border perspective from other jurisdictions that have experience in IP regulation.

For the first objective, reliance will be placed on an October 2011 issue note on IPs published by

⁷ A copy of the RBI Notification is available at-
http://ibbi.gov.in/webadmin/pdf/whatsnew/2017/Dec/IU%20RBI-1_2017-12-19%2014:16:17.pdf

⁸ December 12, 2021

⁹ *Supra*

INSOL International¹⁰. Whereas, for the second objective, reliance will be placed on the insolvency laws of the **United Kingdom** (“UK”) (i.e. The Insolvency Act, 1986¹¹), **Australia** (i.e. The Bankruptcy Act, 1966¹²), **Canada** (i.e. The Companies’ Creditors Arrangement Act, 1933 (“CCA”)¹³; The Bankruptcy & Insolvency Act, 1985 (“BIA”)¹⁴) and **Singapore** (i.e. The Insolvency, Restructuring & Dissolution Act, 2018 (“IRDA”)¹⁵). Please note that the UK, Australia, Canada, and Singapore will be collectively referred to as “**Identified Jurisdictions**” from this point.

The ultimate prognosis that this paper intends to manifest is twofold: first, to determine whether the Indian IP regulation system is in sync with the international standards of IP regulation, and second, whether India can gain any useful insights and perspectives on IP regulation from the Identified Jurisdictions to the necessary extent.

A. Identification of Research Questions

This research paper intends to broach the following two central research questions: (i) Whether the Indian IP regulation system is in sync with the prevailing international standards

of IP regulation?; and (ii) Whether India needs to draw any perspectives on IP regulation from the Identified Jurisdictions?

The manner in which the answers to the abovementioned research questions intend to be arrived upon has been detailed in Section 5 of this paper.

B. Literature Review

Alka Kapoor & Lakshmi Arun¹⁶ have compared the Indian IP regulation system with the IP regulation system in the U.S., U.K., Canada, and Singapore. They have also picked up the principles enshrined in the Insolvency Office Holders Principles issued by the European Bank for Reconstruction and Development (“EBRD”) as the backbone for comparatively analysing the Indian IP regulation system with the IP regulation system of the countries listed in their work.

While generally speaking, they have churned out an overall decent literary piece, however, following are some of the gaps in it: (1) they have used a soft instrument issued by the EBRD, which is a multilateral developmental investment bank, and not a globally-recognized standard-setting body like INSOL or the International

¹⁰ Available at- <https://www.insol.org/Africa%20Round%20Table/Effective%20Insolvency%20Systems%20discussion%20paper.pdf> Please note that this issue note is a draft discussion paper, and that a final version of this note (if any), is not available in the public domain. However, given INSOL’s international standing and reputation, I am going to still place reliance on the contents of this issue note for the purposes of this paper.

¹¹ An electronic version of the Insolvency Act, 1986 is available at- http://www.legislation.gov.uk/ukpga/1986/45/pdfs/ukpga_19860045_en.pdf

¹² An electronic version of the Bankruptcy Act, 1966 is available at- <https://www.legislation.gov.au/Details/C2017C00197>

¹³ An electronic version of the Companies’ Creditors Arrangement Act, 1933 is available at- <https://laws-lois.justice.gc.ca/PDF/C-36.pdf>

¹⁴ An electronic version of the Bankruptcy & Insolvency Act, 1985 is available at- <https://laws-lois.justice.gc.ca/PDF/B-3.pdf>

¹⁵ An electronic version of the Insolvency, Restructuring & Dissolution Act, 2018 is available at- <https://sso.agc.gov.sg/Acts-Supp/40-2018/Published/20181107?DocDate=20181107>

¹⁶ Alka Kapoor & Lakshmi Arun, *Insolvency Professionals— An International Perspective*, Chartered Secretary (2017)

Association of Insolvency Regulators ; (2) they have merely restated the particulars of the IP regulation system from the countries that they have identified in their piece, without providing a comparative comment that truly compares the Indian IP regulation system with the IP regulation system in those countries; (3) their piece states the law in Singapore as of 2017, whereas on July 30, 2020, a new insolvency law¹⁷ was enforced in Singapore.

Sui-Jim Ho & Surya Kiran Banerjee¹⁸ have compared the critical working provisions of the IBC such as control of the debtor during the bankruptcy proceedings, the scope of the automatic stay/moratorium, the enforceability of the timelines, recognition of foreign proceedings, etc. with U.S.'s Chapter 11 and U.K.'s Insolvency Act, 1986. Their work, however, does not compare the IBC with the international standards of IP regulation, nor does it critically compare the Indian IP regulation system with the U.S. and the U.K.

On a side note, even if they had tried, they would have been only able to compare the Indian IP regulation system with that of the U.K., and not with the U.S. That's because the U.S. does not have private IPs like the way India and the U.K. do. The U.S. has a public IP system where a "trustee," a U.S. Government employee, is appointed to administer a bankruptcy proceeding in certain exceptional circumstances.

In light of the above, there is a need for a literary work product that compares the Indian IP regulation system with the global standards and practices of IP regulation.

C. Research Methodology

The below mentioned research methodology was used while completing the intellectual reconnaissance contemplated in this paper-

- **Step 1 (Collection of Primary Data)-**

Authenticated and digitally-certified versions of all the relevant international instruments and the insolvency and bankruptcy laws of the Identified Jurisdictions were first procured and then compiled. This compilation served as the original basis for carrying out the comparative analysis in this research paper.

- **Step 2 (Collection of Secondary Data)-**

Authoritative books/texts and other scholarly works such as articles and research papers in reputed journals were referred to and relied on.

- **Step 3 (Collection of Field Data)-**

Informational interviews with experts and practitioners were conducted, and their views and insights have been duly incorporated.

D. Roadmap

The essence of this paper is IP regulation; however, the term "IP regulation," per se, is wide and authoritative; yet, there is a danger of it becoming generic if further specific issues about IP regulation aren't properly identified and deliberated upon.

¹⁷ Insolvency, Restructuring & Dissolution Act, 2018; available at- <https://sso.agc.gov.sg/Acts-Supp/40-2018/Published/20181107?DocDate=20181107>

¹⁸ Sui-Jim Ho & Surya Kiran Banerjee, *Indian*

Bankruptcy Code— How Does it Compare?, Emerging Markets Restructuring Journal, Issue No. 8— Winter 2018-2019 (2018)

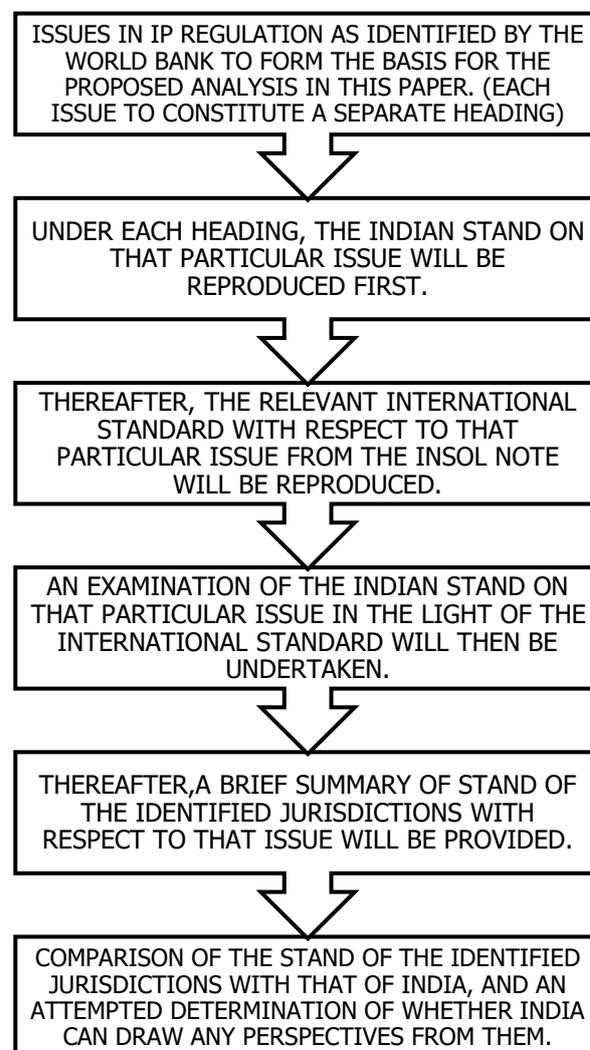
The World Bank has already identified the following three key areas in IP regulation¹⁹: (1) Qualifications and Appointment of IPs in Insolvency Proceedings; (2) Remuneration of IPs; and (3) Regulatory Oversight of IPs (collectively “**World Bank Issues**”).

The World Bank Issues will form a basis for subjecting the Indian IP regulation system to the proposed international standards litmus test (i.e. for the purposes of the first objective), and also for ideating a comparative analysis of the Indian system of IP regulation with that of the Identified Jurisdictions (i.e. for the purposes of the second objective).

The World Bank Issues will serve as a skeleton for this paper’s primary line of reasoning. Every World Bank issue has been earmarked as a separate heading in this paper. Under each World Bank issue heading in this paper, the steps taken by India in respect of that particular World Bank issue will be discussed first. After that, the international standard and its intricacies concerning that particular World Bank issue will be discussed, which is available in a practice note published by INSOL International (hereinafter referred to as “**INSOL Note**”). After that, an examination of the Indian stand on that particular World Bank issue will be undertaken in light of the international standard on that particular World Bank issue, to determine whether or not the Indian stand on that particular World Bank issue is in sync with the international standard on that particular World Bank issue. Lastly, the

position of each of the Identified Jurisdictions concerning that particular World Bank issue will be discussed, and an attempted determination will be made as to whether or not India needs to draw any perspectives/insights regarding IP regulation from any of the Identified Jurisdictions about that particular World Bank issue. Please note that the same roadmap will be followed regarding the World Bank Issues.

By way of an illustration, the proposed roadmap for the issues that will be broached in this paper is as follows:



¹⁹ See Page no. 3 of the Rapporteur’s Synopsis of January 10, 2011 meeting of the World Bank Insolvency and Creditor/Debtor Regimes Task Force.

An electronic version of the synopsis is available at-
<https://www.iiiglobal.org/sites/default/files/theregulationofinsolvencyrepresentatives.pdf>

ILLUSTRATION 1- ROADMAP OF ISSUES

E. IPs Conceptually

It would be prudent to first momentarily reflect on the concept of IPs before initiating the proposed intellectual reconnaissance that has been envisaged under this paper.

Further, it is important to note that the global terminology equivalent for IPs in India is Insolvency Representatives (“**IR/s**”). A clear, concise and reliable definition of IRs can be found in a publication of the United Nations Commission on International Trade Law (“**UNCITRAL**”) entitled- “*UNCITRAL Model Law on Cross Border Insolvency: The Judicial Perspective*²⁰” (for short “**Judicial Perspective Guide**”). The Judicial Perspective Guide defines IR as follows:

“...a person or body, including one appointed on an interim basis, authorised in insolvency proceedings to administer the reorganisation or liquidation of the insolvency estate.”

In other words, an IP/IR is an authorised professional or a body that administers and facilitates the reorganisation or the liquidation of the insolvency estate. The definition is broad enough to include Ips/IRs appointed on an interim/provisional basis.

F. Important Points to Note

Firstly, there are different processes for the insolvency resolution for companies and individuals under the IBC. The provisions governing individuals under the IBC have not

been enforced as of date²¹ (except to the extent that they apply to individuals that have personally guaranteed the repayment of the loans, i.e. personal guarantors; which, won’t be discussed in this research paper). Hence, any actions by Indian IPs discussed in this paper, are only in relation to corporate debtors.

Secondly, the provisions pertaining to the regulation of Indian IPs are scattered across the IBC and in the rules and regulations framed thereunder. Since the primary purpose of this paper is a comparative analysis of the provisions from a global standpoint, it would be prudent not to indulge in the intricacies regarding whether or not a provision that is discussed in this paper, appears in the IBC or in the rules and regulations framed thereunder. Hence, for the sake of uniformity and convenience, any mention of any provision under the Indian insolvency law this point onwards, will be made as if it were under the IBC.

Thirdly, as stated in Section 6 of this paper, the global terminology equivalent for IPs in India is IRs. Further, insolvency administrators across the world and in the Identified Jurisdictions in particular, are referred to by different designations. However, since the primary focus of this paper is IPs in India, any reference of insolvency administrators from the Identified Jurisdictions or otherwise, will also be made as “IP/s” for the sake of uniformity and convenience.

²⁰ See Page No.2, Clause 5(d) of the Judicial Perspective Guide. An electronic version of the Judicial Perspective Guide is available at-

https://www.uncitral.org/pdf/english/texts/insolven/V1188129-Judicial_Perspective_ebook-E.pdf

²¹ December 12, 2021

II. DISCUSSION OF ISSUES

Section 1- Qualifications and Appointment of IPs in Insolvency Proceedings (World Bank Issue No.1)

This issue entails two sub-issues: first, the qualifications that are required to become an IP, and second, the procedure for appointment as an IP in insolvency proceedings. Thus, the qualifications for becoming an IP, and the procedure for appointment of IPs in insolvency proceedings will be discussed separately under this heading.

A. Position in India

- **Qualifications for becoming an IP-**

Under the IBC²², an applicant seeking to register as an IP, needs to have the following qualifications: (1) registration with an IPA; (2) appearing for and clearing the Limited Insolvency Examination (“LIE”)²³; (3) have a work experience of fifteen years (15) if the applicant is a management professional and clear the LIE or have a work experience of ten years post-enrollment, if the applicant is a Chartered Accountant/Company Secretary/Cost Accountant/Advocate and clear the LIE.

- **Procedure for appointment as an IP in insolvency proceedings-** Under the IBC, the movant of an application seeking initiation of the CIRP (i.e. either the creditor or the debtor itself) has to propose the name of an IP that will assume charge of the affairs of the debtor in question once the application for the initiation of the CIRP

is admitted by the NCLT. As per §17 of the IBC, once an application for the initiation of the CIRP is admitted, the board of directors and the management of the debtor are automatically suspended and the IP assumes control of the debtor’s affairs. Further, the IP is appointed initially on an interim basis only for the period of the first thirty (30) days of the CIRP. Thereafter, the IP’s appointment has to be confirmed by 66% of the creditors by vote. At the end of the 30 days, the creditors have an option to retain that IP as a permanent IP, or to move for the appointment of another IP.

However, before appointing any IP in the insolvency proceedings, the NCLT seeks confirmation on whether any disciplinary proceedings are pending against that proposed IP. In the event there are disciplinary proceedings pending against the proposed IP, the NCLT has the power to direct the Board to recommend an IP against whom no disciplinary proceedings are pending.

B. INSOL Standards

- **INSOL standard regarding qualifications for becoming an IP-** The INSOL standard on the qualifications for becoming an IP states that an IP is expected to remain competent by maintaining appropriate levels of knowledge and experience in insolvency matters and also by engaging in continuous professional development.

The standard further states that the competence of an IP can be assessed on the basis

²² §§206, 207 and 208 of the IBC read with The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

²³ Complete syllabus of the LIE is available here- <http://ibbi.gov.in/syllabus2nov.html>

of the nature of the degree that that IP holds. The standard also enlists passing insolvency examination as an additional consideration for determining the competence of an IP. It is pertinent to note that the standard also recognizes lawyers and accountants as one of the eligible candidates as prospective IPs.

• **INSOL standard regarding appointment of an IP in insolvency proceedings-**

The INSOL standard on the appointment of IPs in insolvency proceedings states that the final word on the appointment of IPs can be either with the court or with the parties, or there can be a ‘mixed model’ involving the participation of both the court and the parties. The standard also regards choice of an IP by the petitioning debtor as a risky model because the debtor is an interested party, and also further asserts that there can be several conflict of interest situations that can arise between the petitioning debtor and its creditors. However, the standard also recognizes systems where an IP is initially appointed on an interim basis, and is then displaced by a creditor nominated IP. While recognizing such systems, the standard also states that such a system can stave off the dangers of having a debtor nominated IP to a large extent.

C. Position in India vis-à-vis INSOL Standard

• **Qualifications for becoming an IP-**

The INSOL standard requires IPs to maintain competence by maintaining appropriate levels of knowledge and experience in insolvency matters, and it also encourages IPs to engage in continuous professional development. As highlighted previously, IPs in India have to be enrolled with an IPA in order to be eligible to practice as IPs. As has also been highlighted previously, IPAs are tasked with responsibility of training IPs in India.

Hence, to determine whether India is in sync with this aspect of the INSOL standard, the steps that IPAs in India are taking with respect to training their IPs²⁴ need to be reviewed.

By way of an illustration, let’s examine what steps The Institute of Company Secretaries of India Insolvency Professional Agency (“**ICSI IPA**”) has taken with respect to training its IPs. A bare perusal of the ICSI IPA website²⁵ shows that it has organized several training programs, events and conferences for the benefit of its IP members in the past. It is interesting to note that the ICSI IPA jointly organized a training program on the IBC for the benefit of its IP members with the Board, World Bank and INSOL International²⁶ in early-2018. Its website also has a section called “Knowledge Reponere,²⁷” which provides weekly bulletins that contain a summary and analysis of all the recent pronouncements made under the IBC.

²⁴ Note that taking the initiative to actually remain abreast with the happenings in the field is a matter of personal prerogative of each IP. Over here, for the sake of the international standards litmus test, we are only concerned with whether IPAs are taking the right steps to train their IRs as per their statutory duty.

²⁵ <http://icsiipa.com/>

²⁶ See this link for more details of the program-<http://icsiipa.com/Portals/0/World%20Bank%20Training%20Programme%20%28Social%20Media%29.pdf>

²⁷ See this link to access an issue of the Knowledge Reponere-

Other Indian IPAs²⁸ have also organized similar training events in the past and also have a section dedicated to current insolvency affairs on their respective websites²⁹.

In the light of the above mentioned, it can be reasonably concluded that IPAs in India are taking steps to train their IPs, and that the IBC is in sync with this aspect of the INSOL standard on competence.

The INSOL standard further states that competence can be proved on bases such as the nature of the degree that the IP holds and passing insolvency examinations. As highlighted previously, only law, finance, accounting and management professionals having substantial work experience (10 years for law, finance and accounting, whereas, 15 years for management), are eligible to enroll as IPs in India. As was also highlighted previously, they need to appear for and clear the LIE which is an insolvency examination. Given that insolvency administration involves a simultaneous interplay of law, finance, management and accounting, the IBC declaring professionals from these fields to be eligible candidates for becoming IPs is itself an example of good legislative foresight. Furthermore, and more importantly, it can also be concluded that the IBC is also in sync with this aspect of the INSOL standard.

- **Appointment of an IP in insolvency proceedings-** As per the INSOL standard, the decision for the appointment of an IP can rest with either

the court or the parties. The standard also recognizes a hybrid system which includes participation from both the court and the parties in the appointment of the IP. India has employed the hybrid system where the petitioning party (i.e. either the debtor or the creditor) can propose the name of an IP, and that the IP's appointment will be confirmed by the court subject to absence of disciplinary proceedings against that IP. Hence the IBC is sync with the INSOL standard in this aspect.

Further, on one hand, the standard is apprehensive about a debtor-appointed IP (for reasons such as conflict of interest with creditors), whereas on the other hand it also states that in a system where an IP is initially appointed on an interim basis and is subsequently replaced by a creditor nominated IP can stave off the risks that come with appointing a debtor-appointed IP. As per the IBC, any IP, be it creditor-nominated or debtor-nominated, is appointed as an interim IP for the first 30 days of the CIRP. Thereafter, the creditors by a 66% majority, can either confirm the appointment of that Indian IP as a permanent IP in those insolvency proceedings, or they can move for the appointment of another IP. By following this model, the IBC is most certainly staving off most of the risks associated with appointing a debtor-nominated IP, and is therefore also in sync with this aspect of the INSOL standard.

²⁸ Indian Institute of Insolvency Professionals of ICAI- <https://www.iiipicai.in/>; Insolvency Professional Agency of Institute of Cost Accountants

of India- <http://ipaicmai.in/IPA/index.aspx>

²⁹ Supra

D. Position in India vis-à-vis Position in Identified Jurisdictions

- **UK**- UK follows a similar system to that of India with respect to prescribing qualifications for its IPs. Similar to IPAs in India, UK has Recognized Professional Bodies (“**RPBs**”) that are duly authorized by the UK Government to issue IP licenses to candidates that satisfy the prescribed qualification requirements. Like India, the UK also administers a qualifying insolvency exam. However, as a matter of contrast, insolvency examinations in India are administered by the Board, whereas insolvency examinations in the UK are administered by the RPBs.

Unlike India, which follows a hybrid IP appointment system (involving the participation of the court and the parties in the IP appointment), appointment of IPs in the UK, largely depends on the insolvency procedure that is being followed with respect to the proceeding in question. However, broadly speaking, there are three ways of getting appointed as an IP in the UK³⁰:

i. **Appointment by Creditors**- If the debtor has already appointed an IP, the creditors have a right to retain that IP or replace that IP by means of a majority vote.

ii. **Appointment by Secretary of State**- There may be certain instances where the official receiver, instead of holding a meeting of the creditors, requests the Secretary of State to appoint an IP.

iii. **Appointment by Courts**- In the event the Court passes a winding up order, the official receiver automatically becomes the IP in that matter.

- **Australia**- Registration and governance of IPs in Australia comes under the purview of the Australian Financial Security Authority (“**AFSA**”). In order to register as an IP in Australia, one needs to demonstrate certain required skills and engage in at least 4000 hours of relevant employment at a senior level in the preceding five years. Further, applicants need to also furnish a “National Police Certificate” covering a period of 10 years prior to an application for registration as an IP. Further, there are certain stringent education-related requirements that are also required to be complied with by prospective Australian IPs- they need to be awarded a tertiary education qualification that includes 3 years of full-time study (or equivalent) in commercial law and accounting, and they need to earn at least two credits in administration, restructuring, liquidation, and receivership of companies under the Australian Qualifications Framework Level 8.

Under the Australian bankruptcy law, the creditors of a debtor may appoint an IP to administer a debtor’s estate when it/they goes/go bankrupt. Additionally, a debtor can also appoint an IP when it/they files/file for bankruptcy protection.

³⁰ See- <https://www.begbies-traynorgroup.com/articles/insolvency/how-is-an->

insolvency-practitioner-appointed

- **Canada-** In order to register as an IP in Canada, one must first become a Chartered Insolvency & Restructuring Professional (“CIRP”), for which one needs to enroll in the CIRP Qualification Program (“CQP”) offered by the Canadian Association of Insolvency and Restructuring Professionals (“CAIRP”). In order to enroll in the CQP, one must hold a relevant professional designation relating to the accounting/auditing field in Canada or hold an undergraduate degree from a recognized post-secondary institution.

IPs in Canada are appointed as “bankruptcy trustees” in proceedings under the BIA, which applies largely to individuals, and as “monitors” in proceedings under the CCAA, which applies largely to companies.

- **Singapore-** In Singapore, one can become an IP only if they are either a Solicitor or a Public Accountant or a Chartered Accountant. The additional criteria for becoming an IP in Singapore are:

- i. They must have acted as IP under the IRDA or under any corresponding previous law;
 - ii. OR
 - iii. They must have assisted another person in acting as an IP in relation to a corporation or an individual, under the Act or under any corresponding previous law, for a minimum of 3 continuous years, of which 2 years must be at a supervisory level;
- OR

- iv. They must have acted as a solicitor for a creditor or a debtor in relation to a bankruptcy application, or for a creditor or a bankrupt in relation to the administration of any bankruptcy, under the IRDA or under any corresponding previous law within the last 3 years before the date of the application for a grant of an IP’s license.

There are also other general criteria such as they shouldn’t have been convicted of an offence involving dishonesty, fraud, and moral turpitude, they shouldn’t be an undischarged bankrupt, they shouldn’t have committed bankruptcy fraud/corporate fraud, etc.

An IP in Singapore can be appointed by the court to act as a liquidator/provisional liquidator or as a judicial manager/interim judicial manager of a corporation or trustee of a bankrupt’s estate or nominee of a voluntary arrangement.

Given that the Indian stand with respect to qualifications and appointment of IPs is in sync with the INSOL standard, there is no need for India to adopt any practice(s) from the Identified Jurisdictions with respect to qualifications and appointment of IPs in insolvency proceedings.

Section 2- Remuneration of IPs (World Bank Issue No. 2)

Like any other profession, remuneration issues also concern IPs. Even the INSOL Note recognizes IP remuneration (including the expenses incurred by the IP) as one of the central issues in any insolvency proceeding. Given the impact that IPs have on insolvency proceedings in India, it is essential to encourage open discussion and dialogue regarding their

remuneration. As is with any profession (the profession of IPs being no exception), a good remuneration serves as a strong economic incentive for attracting quality talent to that profession. Hence, this warrants additional discussion on this issue.

A. **Position in India**

- **Statutory Stand-** The IBC differentiates in between the fee payable to an interim IP and the fee payable to a permanent IP. As per the IBC, the movant of an application seeking initiation of the CIRP has to pay the interim IP his/her professional fee and bear the expenses pertaining to the insolvency proceeding incurred by the interim IP. The committee of creditors shall then reimburse the movant to an extent that the committee acquiesces to. Further, the NCLT can determine the interim IP's fee, in the event it hasn't been already done so by the movant.

With respect to the permanent IP however, the committee of creditors has to bear his/her fee and expenses. As per the statutory language of the IBC, the costs (i.e. fee and expenses collectively) incurred on the interim IP and the permanent IP are categorized as "insolvency resolution process costs."³¹

³¹ As per §5(13) of the IBC, read with Regulation 31 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution of Corporate Persons) Regulations, 2016, insolvency resolution process costs include the following: (1) interim finance and the costs incurred in raising such finance; (2) the fees payable to any person acting as a permanent IP; (3) any costs incurred by the permanent IP in running the business of the corporate debtor as a going concern; (4) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; (5) amounts due to suppliers of essential goods and services; (6) amounts due to an owner or lessor of a property where such property is occupied

The IBC further, through a code of conduct, requires Indian IPs to be transparent with respect to their fee and mandates that their fee should be a reasonable reflection of the work "necessarily and properly undertaken" by them. The code of conduct also prohibits an Indian IP from accepting any fees or charges other than those that are disclosed and approved by the persons fixing his remuneration.

The legislative framework under the IBC provides for the closure of the CIRP by means of a resolution plan, which has to have certain mandatory components in it, in order for it to be confirmed by the NCLT.

In order to be confirmed, a resolution plan should mandatorily provide for the manner in which the insolvency resolution process costs are going to be paid. As highlighted previously, the term "insolvency resolution process costs" as defined under the IBC, includes the fee and expenses of the interim and permanent IPs. The IBC also accords first priority for the payment of insolvency resolution process costs in the event the debtor company liquidates.

- **Regulatory Stand-** The Board, means of a circular³², reiterating the IBC's mandate with

by or in the possession of the corporate debtor whose rights are prejudicially affected on account of the moratorium imposed; (7) expenses incurred on or by the interim IP to the extent ratified by the committee of creditors; (8) expenses incurred on or by the permanent fixed by the committee of creditors; (9) other costs directly relating to the corporate insolvency resolution process and approved by the committee of creditors.

³² Available at- http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/Fees%20payable%20to%20an%20Insolvency%20professional%20and%20to%20other%20professionals%20appointed%20by%20an%20Insolvency%20professional_2018-01-

respect to Indian IPs' fees, further directed the Indian IPs to raise memos/bills/invoices in their own names, and stated that their fee should be directly paid into their respective bank accounts.

- **Other Secondary Sources**- Although not binding, yet persuasive, is a Statement of Best Practices³³ on Indian IP remuneration ("**SBP**") issued by INSOL India. The SBP states that an Indian IP can charge a fixed or a variable fee for the work that s/he "necessarily and properly undertakes," and further clarifies as to what work can be construed as "necessary and proper." Note that the SBP's interpretation of the phrase "necessary and proper" can be considered as a possible interpretation of the phrase "work necessarily and properly undertaken" as mentioned in the IBC with respect to the determination of IP remuneration, given INSOL's standing and reputation. As per the SBP, work that has been "necessarily and properly undertaken," includes work that is:

- i. Directly related to the CIRP;
- ii. Is in furtherance of exercise of the IP's powers and function under the IBC;
- iii. Is in accordance with the IP's duties under the IBC.

The SBP also enlists different fee models for Indian IPs such as time based charging, prospective fee, fixed fee, percentage based charging etc. Lastly, the SBP also encourages Indian IPs to consider the following factors while determining the quantum of fee to be charged:

- i. The "value and nature of the assets" that the Indian IP needs to deal with during the course of the CIRP;
- ii. The amount of time put in by the Indian IP and his/her staff while attending to the affairs of the debtor undergoing the CIRP;
- iii. The complexity of the issues that arise during the course of the CIRP;
- iv. Exceptional responsibilities undertaken by the Indian IP if any;
- v. Effectiveness with which the Indian IP carried out his/her duties.

As a whole, the SBP is a well-drafted document, and is certainly a reasonably reliable secondary source given INSOL's reputation in India and abroad.

B. INSOL Standard

The INSOL standard on IP remuneration states that an IP should be entitled to be fairly remunerated for his/her work, and should be reimbursed for all reasonable expenses and costs properly incurred in the performances of his/her functions and duties. The standard also envisions a possibility where the insolvency estate isn't sufficient to accommodate the costs of the insolvency procedure (which includes the remuneration of the IP concerned). To address situations such as this, the standard recommends that insolvency procedure costs should be granted priority over all other claims.

The standard also recommends that the insolvency legislation should specify the role of

16%2017:57:32.pdf

³³ Available at- <http://www.insolindia.com/uploa>

ds_insol/draft_best_practices/files/-1008.pdf

the regulatory body/authority/court in determining the IP's remuneration and using that as an impetus, further suggests that the insolvency legislation should outline a clear system for IP remuneration.

The standard prescribes two methods for determining an IP's fee. First is a scale or commission based fee, which typically includes a percentage of the assets realized/funds distributed and, second is a time-based fee, i.e. fee based primarily on the quantum of time spent by the IP on a particular matter.

The standard also enlists various criteria to be considered while calculating a scale/commission based fee and a time-based fee. While there is no need to restate and compare the criteria for calculation of either the scale/commission based fee or time based fee, as that is beyond the scope of this paper; yet, it is interesting to note that the criteria that the SBP enlists with respect to the determination of the quantum of the Indian IP's fee, are the same as the criteria that the INSOL Note enlists with respect to determination of time based fee (except for the criteria of the amount of time spent by the IP or his/her staff being a factor for fee calculation appearing only in the SBP), given that both the documents have been prepared by the same organization.

Lastly, the standard briefly discusses as to who can determine the IP's fee. The standard states that the IP's fee can be determined either by the regulatory body or the court or the creditors.

C. Position in India vis-à-vis INSOL Standard

The INSOL standard, as previously highlighted, entitles the IPs to be fairly remunerated and reasonably reimbursed for their expenses incurred in the course of performing their duty as IPs. Whereas, the IBC mandates the Indian IPs to be transparent with respect to their fee and further mandates that their fee should be a reasonable reflection of the work "necessarily and properly undertaken" by them.

Even the Board's circular³⁴ reiterates the stand of the IBC, and advises the IPs to raise memos/bills/invoices in their own names and further directs that their fee should be directly paid into their respective bank accounts.

Further, the committee of creditors as constituted in any proceeding under the IBC also ultimately bears both the fee and the expenses of the interim IP, as well as the permanent IP.

Hence, it can be safely concluded that the IBC is in sync with this aspect of the INSOL standard.

The INSOL standard also envisions a possibility where the insolvency estate is unable to accommodate the costs of insolvency procedure (which also includes the remuneration of the IP concerned), and recommends according priority to insolvency procedure costs over all claims as a remedy. The IBC not only accords first priority to insolvency resolution process costs (which also includes the remuneration of the Indian IPs) in the event of a liquidation, but also makes the disclosure of the modality of the satisfaction of the insolvency resolution process costs as one of

³⁴ See supra note 32

the grounds for approval of a resolution plan by the NCLT. So on that front, the IBC ensures that IP remuneration is prioritized in both resolution and liquidation. Hence, the IBC is in sync with the INSOL standard in that aspect.

The INSOL standard also requires the insolvency legislation to clarify the role of the regulators/authorities/courts in determination of IP remuneration and provide for a system of IP remuneration. Under the IBC, if the movant of a CIRP application does not determine the remuneration of the interim IP, then the NCLT can step in and determine that IP's remuneration. As far as the provision of a system for IP remuneration is concerned, the IBC makes it clear that all costs (including fee and expenses) associated with an IP (either interim or permanent), have to be ultimately borne by the committee of creditors. Hence, the IBC is in sync with this aspect of the INSOL standard.

The INSOL standard also recognizes two methods for IP fee determination: (1) scale/commission based fee which typically includes a percentage of the assets realized/funds distributed and, (2) time based fee, i.e. fee based primarily on the quantum of time spent by the IP on a particular matter. As highlighted previously, the IBC does not specify any method for Indian IP fee determination, whereas the SBP does; but the SBP is only a secondary source.

Now there are two ways of looking at this: either it can be viewed as an instance of legislative oversight and it can be very well concluded that the IBC is not sync with this aspect of the INSOL

standard, or it can be deduced that the drafters of the IBC deliberately chose to avoid prescribing any method for determination of the Indian IP's fee. In any case, before reaching any conclusion regarding this, the report³⁵ of the Bankruptcy Law Reforms Committee ("**Committee**") must be perused to determine whether the Committee deliberated on this issue.

Page no. 87 of the Committee's report states that the Committee deliberately elected not to regulate the manner of determination of the Indian IPs' fees. The Committee rather envisioned a competitive market for Indian IPs which would be shaped by market forces. The relevant extract in relation to this from the Committee report has been reproduced as under:

"The Committee feels it is prudent to allow the market to develop and competition to drive charges of the RP (i.e. IP) rather than setting these in the Code, or in regulations (emphasis supplied). In any competitive market, we expect that there will be a range of services available for a range of problems."

Although technically, the IBC is not in sync with the INSOL standard in this aspect, it would be unfair to conclude that the IBC is not in sync with this aspect of the INSOL standard, because, this is not a case of legislative oversight, but as just determined, is a unanimous and a deliberate decision by the Committee. Now whether this decision is right or wrong is beyond the scope of this paper. Hence, the IBC will not be subjected to this aspect of the INSOL standard.

³⁵ Available at- http://ibbi.gov.in/BLRCReportV_011_04112015.pdf

Except for the abovementioned aspect of the INSOL standard, the IBC's position on IP remuneration is fully in sync with the INSOL standard on remuneration otherwise.

D. Position in India vis-à-vis Position in Identified Jurisdictions

- **UK**- In contrast to India, the question of what is and who is to pay the fee of an IP in the UK depends on the kind of insolvency proceeding in question. In case of a voluntary insolvency (i.e. debtor-initiated) proceeding, the IP has the autonomy to negotiate and assent to a fee. In further contrast to India, if the creditors are in disagreement with the agreed fee, they can elect to move an objection before the court and seek appointment of a creditor-proposed IP. In case of a creditor-initiated insolvency procedure in the UK, the creditors usually negotiate the proposed IP's fee before being appointed. The courts have the discretion to step in and review in case there is any dispute/discrepancy with respect to the IP's fee³⁶.

- **Australia**- There is no statutory direction or formula that directs as to how the remuneration of IPs in Australia is to be calculated. The statutory and judicial expectation is that the remuneration must be 'reasonable.' However, the Code of Professional Practice of the Institute of Public Administration Australia states that the fees of an IP may be calculated using one of the four methods:

- i. Time spent by the IP and their staff according to hourly rates;

- ii. A quoted fixed fee based on an estimate of the costs;
- iii. A percentage, usually of the realized assets;
- iv. A success or contingency fee.

- **Canada**- The remuneration of Canadian IPs depends on whether or not the proceeding is pursuant to the BIA or the CCAA. If a proceeding is initiated pursuant to the CCAA, then the remuneration of the IP is judicially-determined basis the following criteria: (i) the nature, extent and value of the assets; (ii) the complications and difficulties encountered; (iii) the degree of assistance provided by the debtor; (iv) the time spent; (v) the diligence and thoroughness displayed, etc.

If a proceeding is initiated pursuant to the BIA, then the remuneration of the IP is judicially-determined basis the following criteria: (i) whether the IP is being fairly compensated for their services; (ii) whether the IP's professional fee to be prospectively sanctioned would be in detriment of the estate and its creditors; (iii) whether the fee prospectively sanctioned by the court would provide sufficient encouragement to the IP to carry out an efficient and a conscientious administration of the estate for the benefit of the creditors.

- **Singapore**- If an IP in Singapore is acting as a bankruptcy trustee under the IRDA, then their remuneration may be determined in the following manner: (i) by an agreement between the IP and the creditors' committee; (ii) by a

³⁶

See- researchbriefings.files.parliament.uk/documents/CBP-7402/CBP-7402.pdf

-7402/CBP-7402.pdf

special resolution of the creditors whose claims have been admitted, where there is no agreement in between the IP and the creditors' committee; (iii) by the court if there is no agreement in between the IP and the creditors' committee or if there is no special resolution passed by the creditors whose claims have been admitted.

Additionally, the court may fix the remuneration of the IPs acting as receivers/managers on the application of the company that is undergoing the restructuring/insolvency proceeding or on the application of the liquidator of a company or on the application of the IP acting as a receiver/manager.

Given that the Indian stand with respect to remuneration of IPs is in sync with the INSOL standard (except to the extent that has been previously exempted), there is no need for India adopt any practice(s) from the Identified Jurisdictions with respect to IP remuneration.

Section 3- Regulatory Oversight of IPs (World Bank Issue No. 3)

Given the critical and central role that IPs play in any insolvency proceeding, it is absolutely essential to put in place a regulatory framework governing them and their activities. In a way, issues nos. 1 and 2 finally merge into this issue, as this issue deals with the larger scheme of things that this paper intends to address.

A. Position in India

- **Statutory Stand-** As per the IBC, the Board and the IPAs share the function of overseeing Indian IPs, with the Board having an upper hand. Since the function of overseeing IPs is split in between the Board and the IPAs, the

roles of the Board and IPAs with respect to Indian IP oversight need to be reviewed separately:

i. **Board-** In relation to Indian IP oversight, the Board has the power to:

- Initiate disciplinary proceedings against an Indian IP accused of engaging in professional misconduct (note that at the conception of disciplinary proceedings, the Board has to give a fair and reasonable opportunity to the accused IP to show cause);
- In cases where the delinquency of the accused IP is proved beyond reasonable doubt, the Board has the power to:

→ Issue a warning

OR

→ Withdraw/suspend the registration of the concerned delinquent Indian IP

OR

→ Impose a penalty that is three times the amount of loss caused or likely to have been caused or three times the amount of unlawful gain made on account of the contravention, whichever is higher (note that the penalty imposed is directly remitted to the affected party by the Board);

- Specify the performance standards for Indian IPs and also monitor their performance;

- Call for information/documents/records from any Indian IP in relation to any matter;
- Issue guidelines to Indian IPs;
- Specify a grievance redressal procedure in relation to Indian IPs;
- Issue regulations on matters pertaining to Indian IPs.

Lastly, the code of conduct prescribed for Indian IPs under the IBC, requires the Indian IPs to exercise reasonable care and diligence while performing their duties.

- i. **IPAs-** IPAs have quasi-adjudicative/quasi-administrative powers in relation to the oversight of Indian IPs. The Board promulgated regulations³⁷ governing IPAs in 2016, which provide for certain model bylaws that IPAs are required to adopt verbatim. The model bylaws empower IPAs to:
 - Provide for minimum standards of professional competence that need to be demonstrated by their Indian IP members;
 - Provide for standards for professional and ethical conduct that need to be adhered to by their Indian IP members;

- Levy penalties on their Indian IP members;
- Provide for a fair and transparent mechanism for redressal of grievances against its Indian IP members;
- Monitor and review the professional assignments of its Indian IP members.

• **Regulatory Stand-** As highlighted previously, the IBC has empowered the Board to issue guidelines to Indian IPs. In accordance with this statutorily provided power, the Board has released guidelines that require Indian IPs to:

- a. Use their registration number and their registered address in all their communications³⁸;
- b. Ensure compliance with the provisions of the applicable laws³⁹;
- c. Not to outsource their responsibilities⁴⁰;
- d. Be reasonable with respect to their professional fees⁴¹;
- e. Mandatorily disclose the relationship (if any) that the Indian IP has with any of the parties to the insolvency proceedings⁴².

B. INSOL Standard

The INSOL standard on IP oversight states that the insolvency legislation should specifically address the issue of the IP's liability, and should

³⁷ Available at- <http://www.ibbi.gov.in/Law/MOD-EL%20BYE-LAWS.pdf>

³⁸ Available at- http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/CIRP%201_2018-01-03%2018:41:16.pdf

³⁹ Available at- http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/CIRP%202_2018-01-03%2018:41:44.pdf

⁴⁰ Available at- http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/CIRP%203_2018-01-03%2018:42:53.pdf

⁴¹ Supra Note 29

⁴² Available at- [http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/Disclosures-Circular-12.01.2018%20\(1\)-1_2018-01-16%2018:17:52.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/Disclosures-Circular-12.01.2018%20(1)-1_2018-01-16%2018:17:52.pdf)

strike a balance between stringency and leniency, without excessively tilting in either of the directions.

The standard further recommends that the insolvency statute should provide for a direct compensation to the affected parties in the event of fraud/defalcation/other malpractice by the IP.

With respect to expected level of professionalism from the IPs, the INSOL standard states that the IP should demonstrate a standard of care that is expected from an average IP.

Lastly, the INSOL standard addresses the competence of the authority concerned to discipline delinquent IPs. The INSOL standard states that only a “court competent” should discipline delinquent IPs.

C. Position in India vis-à-vis INSOL Standard

As far as IP oversight is concerned, the INSOL standard requires the insolvency legislation to specifically address the question of IP liability, and requires the insolvency legislation to aim to strike a balance between stringency and leniency, without excessively tilting into either of the directions. The Board has been empowered by the IBC to discipline IPs, and that it has to give a fair and a reasonable opportunity to the accused Indian IP to show cause at the conception of the disciplinary proceedings. In situations where the delinquency of the accused Indian IPs is proved beyond reasonable doubt, the Board can either issue warnings or withdraw/suspend their licenses or impose a severe penalty⁴³. Given that

the IBC specifically deals with IP liability, and that by providing for a reasonable opportunity to show cause to the accused Indian IPs, and that by providing for retributive actions that range from issuance of simple warnings to imposition of severe penalties, it can be deduced that the IBC specifically addresses IP liability and that it indeed strikes a balance between stringency and leniency. Hence, it can be concluded that the IBC is in sync with this aspect of the INSOL standard.

The INSOL standard further recommends that the insolvency statute should provide for a direct compensation to the affected parties in the event of fraud/defalcation/other malpractice by the IP. Under the IBC, in cases where the delinquency of the accused Indian IPs is proved beyond reasonable doubt, the Board has the power to impose a penalty that can be three times the amount of loss caused or likely to have been caused or three times the amount of unlawful gain made on account of the contravention, whichever is higher. Further, the penalty imposed is directly remitted to the affected party by the Board. Hence, it can be concluded that the IBC is in sync with this aspect of the INSOL standard.

The INSOL standard also requires the IPs to demonstrate a standard of care that is expected from an average IP while performing his/her duties. While the IBC does not specifically require Indian IPs to “demonstrate a standard of care that is expected from an average Indian IP,” the code of conduct under the IBC requires the Indian IPs to exercise reasonable care and

⁴³ The penalty imposed can be three times the amount of loss caused or likely to have been caused or three

times the amount of unlawful gain made on account of the contravention, whichever is higher.

diligence while performing their duties. Whether put forth as an expected standard of care from an average IP, or as an exercise of reasonable care and diligence by the IP, the same principle is being stated in different words. Hence, it can be concluded that the IBC is in sync with this aspect of the INSOL standard.

The INSOL standard lastly states that only a “court competent” should discipline IPs. Whereas, under the provisions of the IBC, it is not the courts, but the Board and the IPAs that have the power to discipline delinquent Indian IPs. Given the fact that the IBC specifically provides for an insolvency and bankruptcy regulator such as the Board, and further delegates the authority to discipline IPs to IPAs, it can be deduced that it probably wouldn’t have made much of a legislative sense if the courts, the Board and the IPAs had the power to discipline delinquent Indian IPs, as that would have increased the burden on all the three statutory instrumentalities. Thus, as long as competence is established (either statutorily or otherwise), the form of the disciplining authority should not matter. Hence, although not technically, yet in essence, the IBC is in sync with this aspect of the INSOL standard.

D. Position in India vis-à-vis Position in Identified Jurisdictions

- **UK**- Like India, the responsibility to regulate and discipline IPs in the UK is split between the Insolvency Service and RPBs. The

Insolvency Service is a government agency “that helps to deliver economic confidence by supporting those in financial distress, tackling financial wrongdoing and maximizing returns to creditors⁴⁴.” The Insolvency Service prescribes the professional standards for IPs and also monitors the activities of the RPBs. Please note that in contrast to India, RPBs process complaints against the IPs in the UK. It also interesting to note that that the complaints against IPs are initially received on a “Complaints Gateway⁴⁵,” and then subsequently forwarded to an appropriate RPB for further investigation.

- **Australia**- The AFSA carries out the regulatory oversight of the Australian IPs by: (i) mandating their registration with the AFSA; (ii) periodically inspecting their files and systems; and (iii) investigating complaints and imposing sanctions wherever appropriate. The AFSA further monitors and enforces the rules governing IPs by: (i) undertaking a proactive monitoring of the agreements entered into in between the IPs and parties to the insolvency/bankruptcy proceedings; (ii) monitoring the advertisements of the IPs regarding their services for misleading/deceptive advertising; (iii) investigating and prosecuting the alleged offences of the IPs.

- **Canada**- In Canada, the prerogative for the regulatory oversight of IPs rests with the CAIRP, which has prescribed a strictly enforceable code of conduct for IPs, which *inter alia* states that IPs are required to conduct

44

Source-
<https://www.gov.uk/government/organisations/insolvency-service>

45

See-

<https://www.gov.uk/government/publications/insolvency-practitioners-guidance-for-those-who-want-to-complain/insolvency-practitioners-guidance-on-how-to-complain-about-an-insolvency-practitioner>

themselves in a manner that maintains the good reputation of the IP profession, perform their professional services with integrity and due care, be free of any influence/relationship that impairs their ability to perform their duties as an IP independently and impartially, etc. The CAIRP also follows a thorough complaints and investigation process in order to investigate complaints against the Canadian IPs. Complainants are required to populate a detailed Professional Conduct Complaint Form⁴⁶ which is ultimately adjudicated upon by CAIRP's Professional Conduct Committee.

- **Singapore-** The Licensing and Regulation of Insolvency Practitioners Division (“LRIPD”), which was established under the IDRA, oversees the regulation of IPs in Singapore. Some of LRIPD's statutory functions in relation to the regulation of Singaporean IPs include: (i) granting and renewing the licenses of Singaporean IPs; (ii) maintaining a register of the Singaporean IPs; (iii) promoting and maintaining the standards of the IP profession in Singapore; (iv) investigating the complaints made against the IPs; (v) taking necessary corrective/enforcement action against delinquent IPs.

Given that the Indian stand with respect to IP oversight is in sync with the INSOL standard, there is no need for India adopt any practice(s) from the Identified Jurisdictions with respect to oversight of IPs.

III. CONCLUSION

Having dispassionately subjected the Indian IP regulation system to the prevailing international

standards (i.e. first objective), and having parallelly addressed the positions in the Identified Jurisdictions (i.e. second objective), it is time to manifest the proposed prognosis of this paper:

- Is the Indian IP regulation system in sync with the international standards?

Yes.

- Does India need to adopt any practices from the Identified Jurisdictions?

No.

Thus, the IBC in its present shape and form is in sync with the international standards governing the qualifications and appointment of IPs in insolvency proceedings, the remuneration of IPs, and the regulatory oversight of IPs.

While it is certainly impressive to note that the Indian IP regulation system, despite of being relatively new, is already fully in sync with the prevailing international standards, it must also be noted that the real test lies in continuity and consistency. Hence, India should strive hard to maintain this status for the years to come. Further, India should aim at periodically reviewing its IP regulation system and keep its eyes and ears open to IP regulation practices in the Identified Jurisdictions, as well as the other jurisdictions.

⁴⁶ Available at- https://cairp.ca/_Library/Documents/