

# **CASE STUDIES ON BUSINESS AND PROFESSIONAL ETHICS**

## **Ten points on which the Board may grill an IRP/RP:-**

1. Abdicating his authority in Favour of COC. E.g. in appointment of professionals include valuers
2. Acting against basic objectives of the code e.g. pushing for liquidation.
3. Fees not commensurate with work, experience.. when considerations for fixation of fees are extraneous and fees is not a reasonable reflection of the skill and expertise.
4. Sliding with influential financial creditors in derogation of COC
5. Not acting at arm's length while dealing with related parties
6. Delay/failure in taking custody and control of the assets of the CD.
7. Inordinate delay in reporting irregular transactions
8. Sharing of fees
9. Inclusion of costs not admissible to be included in IRPC
10. Relying on the work of or engaging a professional working with financial creditors before CIRP.

Mr. S an IP, as an IRP of SNPL a Pvt. Ltd. Co., filed application for initiating CIRP against 14 corporate Debtors. In all these 14 cases, Mrs. B the spouse of Mr. S was appointed as an IRP on a fee of Rs. 269.25 Lakhs. While considering the application for initiation of CIRP of one of the companies, the AA observed on 15/03/2018 that a clarification was required from the Board as to whether the proposed IRP could be a relative of the IRP of the applicant. In another case not covered in the 14 cases mentioned above, AA had observed on 22/11/2017 that the professional who accepted to work an IRP was none other than the wife of the CA who filed the company petition u/s 9. Professional fee mentioned in this case was Rs. 5cr. The AA referred the matter to IBBI for taking appropriate action against the proposed IRP.

Based on the above facts, the Board issued a SCN to Mrs. S alleging the following:-

That Mrs. S compromised her independence, integrity and impartiality by consenting to act as IRP of 15 CIRPs simultaneously even though she has no experience and no capacity.

Mrs. S contracted to act as IRP at a fee of Rs. 5.15cr for one month and a fee of Rs. 3cr as RP per month besides out of pocket expenses for a default of Rs. 42.74 lakhs. The appointment as RP was locked in before COC was formed.

Mrs. S submitted the following:

1. She is not explicitly barred from acting as IRP/RP of the CDs as she has no relationships with any of them
2. At the time of giving consent, she had no assignment in hand. Therefore she consented to all 15 CIRPs. If she got 2-3 CIRPs, she would recuse herself from other CIRPs by filing withdrawal letter.
3. Her registration had already been suspended by the Board for a year in a similar accusation. It is trite law that a person cannot be held liable twice for the same mistake

In view of the submission of Mrs. S, please answer the following questions:

1. Whether trite law, as cited by Mrs. S would be applicable in this case or 15 separate CIRPs are a separate cause of action.
2. What should be the punishment for such a conduct of the IRP
  - a. Cancellation for a specified period
  - b. Monetary penalty
  - c. Both a and b
  - d. None of the above

4. Which of the following statements are false?
  - a. Appointment of RP is the discretion of the CD
  - b. Appointment of RP is done by the AA
  - c. Appointment of RP is the exclusive domain of the COC
  - d. Both (a) and (b)
5. Both Mr. A, husband and wife Mrs. B are qualified. Is there any prohibition that the spouse of the IRP i.e. Mrs. B can't be an IRP in cases filed by her spouse i.e. Mr. A on behalf of the applicant.
6. What could be the criterion to judge integrity, impartiality and independence
  - a. Nearness of relationship
  - b. Fees charged
  - c. Prior Experience
  - d. All of the Above

Mr. D was appointed as IRP/RP of SVLL IRP found that 300 trucks of the corporate debtor SVLL were being used by SPPL ,a sister concern and the entire revenue was credited to SPPL's bank A/c. The promoters of the CD i.e. SVLL had a stake in SPPL and had transferred the staff of the CD to SPPL. The directors of SPPL were former employees of the CD and SPPL appeared to be under the direct control of the erstwhile promoters of CD.

However despite knowing this fact, application u/s 66(1) was filed after a delay of more than a year. RP also failed to deploy a security agency to protect illegal use of assets of CD by another company which was sister concern of CD. RP knew this fact at the time of 1st meeting of COC held a 12.10.2017. Approval to deploy security was accorded in 3rd COC meeting held a 16.11.2017. Despite approval, RP failed to appoint security agency due to lack of funds and due to the fact that security was already provided by the yard owners where trucks owned by the CD were parked.

In the 2nd COC meeting, COC resolved to liquidate the CD based on interim valuation report. Although RP advised against liquidation, COC informed RP that they has conducted a Joint Lenders meeting where they decided to go in for liquidation.

The Board issued a SCN based on findings of an inspection report.

Main Accusations against the RP were as under:

1. Delay in filing of application under Section 66. There was a delay of 115 days from receiving the forensic report and 412 days from the date of commencement of CIRP. However the Board found that one of the items of the agenda of one of the meetings of COC provided as under:  
“To take approval of the COC for appointment of forensic auditor and fixing the fees for the assignment. Hence RP abdicated his responsibility to the COC.
2. Failure to take control of the assets of the CD and failure to deploy the security where CD's trucks were parked.
3. COC authorised the appointment of an external agency for preparation of Information Memorandum.
4. RP used process email only for communication and not the mail ID informed to IBBI.
5. Discrepancy in the amounts due to Valuers. At the end of the form there was a column for remarks where RP could have mentioned this fact. However, RP failed to do so.
6. One of the items in the agenda for meetings and summary report of e-voting contained a proposal for sale of encumbered or unencumbered assets of the CD not exceeding 10% of the total value.

Mr. D the RP submitted the following reply:

1. SPPL failed to provide statement / details of revenues earned by SPPL out of use of CD's assets. This resulted in delay in filing application u/s 66. Regarding delay in appointment of forensic auditor, RP submitted that he came to know that one of the FCs had got conducted the forensic audit and requested the Bank to share the forensic audit report which was denied by the bank. The RP also submitted that appointment of forensic auditor without approval of fee has little meaning.
2. Movable assets of CD consisted of thousands of trucks which were passed in yards belonging to third parties who had their own security. Since funds available with CD were limited, control of keys and locks were taken to protect the assets of the CD instead of deploying new security agency to replace the old one. Besides this , COC did not approve for interim finance.
3. RP submitted that it was not the information Memorandum which was outsourced but investor memorandum which was a pitch document outsourced to a professional investment banking firm to effectively showcase the investment opportunity in the CD. Besides this the name of the RP was appearing at the bottom of every page of the Investor Memorandum and thus he owed responsibility for the same.



4. RP created a separate email address to run CIR process so that there is efficiency in collection, storage, assimilation and distribution of the data. Notice of the meetings of COC do not contain the email registered with the Board. It contained only the process email address. However in the emails sent along with the copy of notice and agenda email address registered with IBBI was mentioned.
5. RP proposed for valuers fee of Rs. 1.20cr which was approved by the COC. Actual fee was Rs. 27.48 lakh. As per Form III (Cost Disclosure) submitted by RP to IPA the amount ratified by the COC is mentioned as Rs. 1.20 separately for each valuer.

RP's Submission: Approval for Valuers fee was taken on the basis of highest quotations received.

Number of trucks in ERP was 6170 whereas the Valuers could find only 2500 trucks. Hence actual costs were lower.

Format error in the prescribed form of IPA.

6. One of the items in the agenda for meetings and summary report of e-voting contained a proposal for sale of encumbered or unencumbered assets of the CD not exceeding 10% of the total value. However no encumbered assets were actually sold.

Based on the above, please answers the following questions:

1. Timelines prescribed in the code are only directory in nature and it is the discretion of the IP to file an application under Section 66 of the code when he deems fit.

True or False

2. Section 66 relates to
  - i. fraudulent transactions
  - ii. is a contributory provision
  - iii. Is directory in nature
  - iv. None of the above
3. Whether RP can be held liable for filing an application for liquidation of the CD without inviting resolution plans.
4. In view of the above, what is your recommendation as a Board Member of the Disciplinary Committee:
  - A. IP not to take up any new assignment .
  - B. Registration to be suspended for three months.
  - C. Monetary Penalty to be levied
  - D. None of the above since it is a new Law and RP should be issued a strict warning to be more vigilant in future.
5. (a)Whether an RP can appoint a forensic auditor who was forensic auditor of one of the FCs?  
(b)Whether RP can file application under section 66 based on the report of such forensic auditor?

Mr. K an IP formed an LLP in the name “IBBI Insolvency Practitioners LLP and created a website [www.ibbi-ip.com](http://www.ibbi-ip.com)

On receiving an anonymous complaint, IBBI issued a SCN. The Board checked the facts from the website of MCA and found the allegation to be correct.

When a clarification was sought from Mr. K that use of the abbreviated name of the Board in the LLP was misleading, Mr. K contended that it was without any intention and motive to gain any material benefits.

He further submitted that after receipt of letter from the Board, he had made an application to the MCA to change the name of the said LLP to Expert Insolvency Practitioners LLP.

After about a month, the Board found that the expression IBBI had still not been dropped. Mr. K replied that MCA had objected and he had filed a fresh form.

The Board found it too naive to believe that Mr.K did not have intent and notice to gain material benefit while using the name of the IBBI.

Mr. K seemed in no hurry to make rectification of the illegal act even after being advised by the Board. Even on the date of the passing of the order, the company master data on the website of MCA carried the name IBBI Insolvency Practitioners LLP.

In view of the above, what is your recommendation as a Board Member of the Disciplinary Committee?

- a. IP not to take up any new assignment till the name is removed.
- b. Registration to be suspended for three months.
- c. Both a and B above
- d. None of the above since it is a new Law and the IP can be let off after issuing a stern warning.

Mrs. K was issued a SCN by the Board for her role in CIRP of VSPL.

The main accusations in the SCN were as under:

1. RP got the valuation done for properties of the guarantor as well besides the corporate debtor on the suggestion of the FC who was the sole member of COC. Besides this, this cost was also included in the IRPC. The cost of the Valuation was borne by the FC. FC issued cheques in the name of RP and RP issued cheques to the valuers from his personal account.
2. Appointment of Valuers is the exclusive domain of the RP. However, RP compromised her independence in favour of COC by routing payments through her personal account.
3. COC also acted beyond the provisions of the code by directing the RP to get valuation done of properties of the personal guarantors which were not in the custody and control of the RP.
4. Ideally such expenditure should be recovered and deposited in the account of the CD. However in this case, entire expenditure was borne by the bank, who was the sole FC and sole COC member
5. RP appointed a CA to conduct the audit. However RP failed to get their fee approved by the COC.

In view of the above, what is your recommendation as a Board Member of the Disciplinary Committee?

- a. IP not to take up any new assignment till the name is removed.
- b. Registration to be suspended for three months.
- c. Both a and B above
- d. None of the above since it is a new Law and the IP can be let off after issuing a stern warning.

Mr. M who was appointed as an RP of BPL was issued a SCN based on findings of an inspection accusing him of the following infractions:

1. Failure to report transactions covered u/s 45 and abdicating his authority in favour of COC, thereby allowing COC to usurp his authority.

Application for avoidance of transactions was filed after 236 days from the date of commencement of CIRP. Application for CIRP admitted on 26th July 2017. Application for avoidance of transactions filed on 19th March, 2018

RP submission: The transaction review report had to be discussed with legal professionals/CD to determine the contraventions. Although transactions were clearly disclosed as related party transaction in the financial statements of the FY 2016-17, despite this, valuers were not expeditiously appointed. And even after their submission of report in Jan 2018, application was filed after two months i.e. 19th March 2018 Further he took the matter before COC for review which was not required.

2. Non-Disclosure to IPA regarding on-going CIRPs within stipulated time.

Hon'ble High court insisted upon the IP and other professionals to enter into consent terms for sharing fees in case of dispute between the IP and IPE. The appointment of every other professional has to be made at an arm's length and appropriate disclosure to this effect has to be made to the IPA. However in this case, disclosure was made only after receipt of draft inspection report.

3. RP included the fees payable to lender's legal counsel in the IRPC since there was no clarity on this issue at that time. COC decided to route the payment to legal counsel through RP and it was further decided that if Board does not allow this, it shall be recovered on pro-rata basis from upfront cash recovery amount to be paid to lenders.

RP in spite of circular dated 12.03.2018 clearly prohibiting inclusion of any expense incurred by a member of COC or a professional engaged by COC, agreed with the COC members though conditionally for payment of lender's legal counsel which shows his disregard to the circular issued by the Board. This amounts to a understanding between COC and RP to contravene a law and willingness to remedy the situation only if they are caught.

4. Only individual person can render services as IP. However the IP shared his fees with an IPE during the period 26th July to upto Dec. 2017. Thereafter sharing was in pursuance of a court order.
5. EOI of some companies were accepted without officially extending the date of submission of EOI. This amounts to arbitrary exercise of power in a non-transparent manner with a malafied intention to prefer some resolution applicants. However since acceptance of EOI was done in accordance with the directions issued in the COC, DC did not hold the RP liable on this account.



In view of the above, as a member of DC of the Board, what shall be your recommendation?

- Imposition of monetary penalty
- Ensuing recovery of legal counsel's fee to the account of the CD

Mr. M was appointed as an IRP/RP of CIRP of four corporate Debtors Viz. A, B, C and D. The Board issued a SCN to him alleging contraventions outlined as under:

**In the matter of A Ltd.**

Failure to comply with the directions of NCLAT to take into consideration the claim of a FC and pursuing the matter before NCLT suppressing the order passed by NCLAT as to inclusion of an FC. However the contempt proceedings were dropped by NCLAT on tendering an unconditional and unqualified apology and keeping in view fact that he already submitted his resignation in all the four CIRPs Viz. A, B, C and D.

**In the matter of B Ltd.**

COC had two FCS. The RP issued an EOI based on vetting by one of the FCs disregarding the draft EOI approved by COC. The EOI issued had a condition as to certificate from a CA regarding eligibility to be a resolution applicant besides some other errors like registration number, email id, address, and last date of submission of EOI etc.

The Board on coming to know this erroneous issue of EOI vide a letter date 26th Dec, 2017 and 3rd Jan 2018 required the RP to issue a fresh EOI after removing deficiencies.

RP instead placed a legal opinion before the COC confirming that the EOI was in accordance with the code. COC authorised the RP to secure directions from AA whether to issue a corrigendum or a fresh EOI. In the meantime RP resigned and the AA authorised the replaced RP to publish a corrigendum.

On being countered by the Board, RP submitted that the matter was sub-judice. However it was not sub-judice on the date of issue of SCN or on the date of hearing before the DC. Regarding RP's submission that COC rejected the proposal to issue fresh EOI, Board was of the view that the code never contemplates that the directions of the Board are subject to approval by COC. Moreover COC had not rejected the proposal to issue fresh EOI. COC had rather expressed infeasibility to issue fresh EOI due to fund constraints and therefore decided to seek directions from AA. RP however added certain prayers before AA which were not authorised by COC like whether the Board can initiate any action against the RP/COC for non-compliance with the directions of the Board.

Regarding inclusion of a condition as to a certificate from a CA regarding eligibility of the RA, the same was included and approved by only one Financial creditor and not the COC. RP contended that EOI was in accordance with the best market practice and had the approval of a FC having 83% voting power RP also contended that COC had accorded post facto approval to the EOI. However no such record was found in the minutes of meeting of COC.

RP also enclosed EOI issued by some other companies while submitting reply to the Board. However none of these invitations carried a requirement as to certification of eligibility requirement of RA by a CA. Some of the enclosed EOI required a CA certificate in respect of net worth.

However eligibility certificate and net worth certificate are different and not the same thing. RP thus outsourced the responsibility of ascertaining eligibility of RA to a CA.

He introduced the requirement of a CA certificate which is not envisaged in the law, adding to cost in terms of time and money. Even assuming that outsourcing this responsibility of eligibility verification was permissible, the task of identification of a professional was the responsibility of the RP. He asked the interested party Viz. the RA to obtain a certificate from a CA thus compromising the integrity of the process.

RP outsourced claim verification to India Juris, a related party.

RP used the services of a forensic auditor who was earlier appointed by one of the FCs in the same account. COC directed the RP to file an application before the AA in respect of irregular transactions pointed out in the forensic report. However, the RP failed to do so. Although the views of the CD and COC are considered before filing the application for irregular transactions, COC is not expected to sit and deliberate upon the same for months.

## **In the matter of C Ltd.**

RP did not appoint a forensic auditor and used the services of a forensic auditor, who was earlier appointed by one of the FCs in the same account. COC asked the RP to engage an advocate for filing an application before AA. However the RP failed to do so. RP submitted that the forensic auditor did not give attachments of the report to RP. It can happen only when the forensic auditor has allegiance to somebody else, not IP.

RP failed to include liquidation value in the IM and failed to submit complete IM in time. RP submitted that since the Valuers appointed by him were not approved by the COC, liquidation value could not be arrived at. The Board was of the view that COC did not even exist at the time when the IRP was required to appoint valuers

## **In the matter of D Ltd.**

RP handed over the custody of the assets of the CD to the members of suspended BOD ignoring his statutory duties. RP submitted that it was within the knowledge of COC. Board was of the view an act does not become legal or absolve the RP simply because it is within the knowledge of COC. RP did not hand over the assets with the knowledge of COC. He handed over the assets on his own and subsequently informed it in a meeting of the COC.

One of the Valuers engaged by the RP was providing consulting services to an FC. The Board was of the view that COC did not even exist at the time IRP was required to appoint valuers. How did he get the recommendation of a member of the COC, unless there is some private understanding between the RP and a person who is likely to become a member of the COC?

RP appointed the same valuers in all the four CIRPs. He failed to supply any record of due diligence in selection of the same valuers thereby raising concerns on his impartiality and objectivity. RP submitted that COC has ratified the appointment of valuers. COC has no role in the appointment of valuers. It is the exclusive domain of the RP.

RP resigned from all the four companies Viz. A, B, C and D citing different reasons:

- Health issues
- Bills of service providers not paid
- Because of pre-occupation.

Board was of the view that RP ran away from all the four CIRPs jeopardising the life of four CDs and the interests of their stakeholders.

RP included the cost of public announcement as part of IRPC against explicit prohibition. RP submitted that the COC ratified the expenditure. Board was of the view that ratification of an expenditure and its inclusion in IRPC are two different matters. By including the expenses on public announcement in the IRPC, the RP disturbed the priority in payment.

In view of the above accusations and observations of the Board what will be your recommendations as a member of the DC

- Cancellation of registration
- Bar on seeking fresh registration for 10 years
- Both a and b
- None of the above

# Fact Sheet in TJ

Particulars	Case Study 9
Case Acronym	Mr.TJ
Appointment of Liquidator	In Two companies who filed application for Voluntary Liquidation.
Brief Summary	Failure reg Public Announcement in Newspaper and Appointing existing auditor after LCD
	Publication on IBBI website on 17/01/2018 and 09/05/2018
LCD	15/01/2018 and 08/05/2018
Shareholders meeting	15.01.2018 and 08/05/2018
Date of filing reg Irregular transactions	
Other Important dates	Public Announcement on 27.06.2019 (Delay 18 months) and 10.01.2019 (Delay 8 months)
Date of appointment of Valuers	
Date of Issue of SCN	27/11/2019



Particulars	Board Accusation	IRP/RP Reply	Board Stand
Genesis of SCN	Failure reg Public Announcement in Newspaper and Appointing existing auditor after LCD	Liquidator approached suo moto the Board regarding this inadvertent error  No Creditors. Members decided to continue with existing auditors	Lenient View. Members can't decide this. Strictly prohibited. No such record found except proof of request by liquidator to Auditor. Board imposed penalty of Rs. 1 Lakh
Can you identify the case			
Whether RP acted within its powers	No		
Whether COC acted within its powers	No		
Whether there was a conflict of Interest	Yes		
Fees Issues	No		
Appointment of Professionals issue	Yes, Same auditors continued after LCD		
Resolution option explored?	No		
Inclusion in IRPC Issue			
Any other Issues			

# Fact Sheet in V

Particulars	Case Study 10
Case Acronym	Mr. V
Appointment of IRP	Mr.SK
CIRP Brief	Application u/s 9
Appointment of RP	Mr.V on recommendation of Board since IRP Mr.SK resigned
1st COC date	
2 <sup>nd</sup> COC date	
3 <sup>rd</sup> COC date	12/02/2018.Notice for meeting sent on 31/01/2018
Date of filing reg Irregular transactions	
Other Important dates	Mr. Arun Kr Jain the sole creditor consented to hold the meeting on 19/02/2018 wherein it was decided not to seek extension of time for CIRP beyond 27/02/2018 First Progress Report filed on 01/02/2018 /Second Progress Report filed on 22/02/2018 AA initiated liquidation vide order dated 01/03/2018 appointing Mr. V as liquidator. Mr. filed an application before AA on 05/03/2018 not to appoint him as liquidator for personal reasons. AA then appointed two other liquidators who also expressed difficulty due to workload. Mr. V was discharged by AA on 17/07/2018 after taking note of Progress Report dated 17/07/2018
Date of appointment of Valuers	No valuers appointed. No IM,NO EOI, No Resolution plan
Date of Issue of SCN	28/07/2018 on the basis of order of AA dated 01/03/2018

Particulars	Board Accusation	IRP/RP Reply	Board Stand
Genesis of SCN	3 <sup>rd</sup> meeting should have been conducted with seven days notice. If not convened, then next day	Sole Creditor was not available. Meeting would not have served any purpose since sole creditor was not available before 19 <sup>th</sup> February	Convening meeting before 19/02/2018 would have been an exercise in futility
Can you identify the case			
Whether RP acted within its powers	RP did not take over the management of CD. Did not seek help u/s 19 No valuers appointed. No IM, NO EOI, No Resolution plan. Recused himself for being appointed as Liquidator	RP in his second report dated 22/02/2018 informed AA about non –cooperation of the CD. Reg Non appointment of Valuers, EOI, IM etc. RP denied the allegations and stated his difficulty in conducting CIRP. Regarding his recusing himself, he stated that he continued to perform the duties of liquidator until discharged by the AA on 17/07/2018.	Informing in Progress Report and seeking direction u/s 19 are not same. He was IRP for 140 days. Two meetings of COC held. One director was present who informed RP about change of address of the CD. Mr. V was appointed as IRP after 140 days of commencement of CIRP. There is a limit to which one can fast track within 40 days. Board took a lenient view. Directed him to deposit penalty equal to 100% of his fees as IRP and RP.

Whether COC acted within its powers	Sole Creditor		
Whether there was a conflict of Interest	No		
Fees Issues			
Appointment of Professionals issue	Yes, No professionals appointed		
Resolution option explored?	No		
Inclusion in IRPC Issue			
Any other Issues			