



STATEMENT OF BEST PRACTICES PAYMENT OF CORPORATE INSOLVENCY RESOLUTION PROCESS COSTS

A. INTRODUCTION

Statements of Best Practices are guidance documents for the use of registered insolvency professionals being appointed as an interim resolution professional (“**IRP**”), a resolution professional (“**RP**”) or a liquidator under the Insolvency and Bankruptcy Code, 2016 (“**Code**”)

This Statement of Best Practices sets out-

- (a) the legal provisions regarding insolvency resolution process costs incurred under the Code, and
- (b) practice for observance of the legal provisions in letter and spirit.

This Statement of Best Practices does not set out on what factors fees and out-of-pocket expenses should be incurred.

B. PROVISIONS OF LAW

- (i) Section 5(13) of the Code and Regulation 31 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 define ‘insolvency resolution process costs’. These include-
 - (a) interim finance and the costs incurred in raising such finance,
 - (b) the fees payable to any person acting as a RP,
 - (c) any costs incurred by the RP in running the business of the corporate debtor as a going concern,
 - (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process,
 - (e) amounts due to suppliers of essential goods and services,
 - (f) amounts due to an owner or lessor of a property where such property is occupied by or in the possession of the corporate debtor whose rights are prejudicially affected on account of the moratorium imposed,
 - (g) expenses incurred on or by the IRP to the extent ratified by the committee of creditors,
 - (h) expenses incurred on or by the RP fixed by the committee of creditors, and
 - (i) other costs directly relating to the corporate insolvency resolution process and approved by the committee of creditors.
- (ii) Clause 27 of the Code of Conduct for insolvency professionals under the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 requires that insolvency professionals should-



- (a) disclose all costs towards the insolvency resolution process costs to all relevant stakeholders, and
- (b) must endeavour to ensure that such costs are not unreasonable.

C. CATEGORIES OF COSTS

Costs are of two categories-

- (i) **Category 1:** These are those costs which can be incurred without approval of the committee of creditors, although an insolvency professional should be prepared to disclose information about them as set out in Section E of this Statement. These costs include:
 - (a) Costs incurred in running the business of the corporate debtor as a going concern. Typically, these would be operational costs that would be incurred by the corporate debtor in the ordinary course of business. These may include wages of workmen, expenses on office supplies, sales and marketing costs, expenses on raw materials, etc.
 - (b) Any costs incurred at the expense of the Government to facilitate the insolvency resolution process. These may include costs of obtaining assistance from the local district administration, etc.
 - (c) Interim finance and the costs incurred in raising such finance by the IRP in accordance with section 20(2)(c).
 - (d) Amounts due to suppliers of essential goods and services. This includes costs payable to suppliers who are mandated to provide services during the corporate insolvency resolution process, such as suppliers of electricity, telecommunication, information technology and water.
 - (e) Amounts due to an owner or lessor of a property where such property is occupied by or in the possession of the corporate debtor whose rights are prejudicially affected on account of the moratorium imposed. This includes rent payments to be made to such owner or lessors.
- (ii) **Category 2:** These are those costs which require the approval of the committee of creditors to be incurred. At the time of requiring approval for these costs, the insolvency professional should make appropriate disclosures as set out in Section E of this Statement. These costs include:
 - (a) The fees payable to any person acting as a RP.
 - (b) Expenses incurred on or by the IRP to the extent ratified by the committee of creditors. This includes the fee of the IRP, the out-of-pocket expenses incurred by the IRP, and any other expenses incurred by



the IRP directly related to the insolvency resolution process, such as on appointment of professionals, etc.

- (c) Expenses incurred on or by the RP fixed by the committee of creditors. This includes the out-of-pocket expenses incurred by the RP, and any other expenses incurred by the RP directly related to the insolvency resolution process, such as on appointment of professionals, etc.
- (d) Interim finance and the costs incurred in raising such finance above the amount decided by creditors.
- (e) Other costs directly relating to the corporate insolvency resolution process and approved by the committee of creditors. This includes costs that do not fall under any other head of costs, such as costs of renegotiated contracts of key managerial personnel.

D. FACTORS TO BE CONSIDERED FOR INCURRING COSTS

- (i) Insolvency professionals must ensure that the costs incurred are reasonable. To determine the reasonability of these costs, they should consider if the costs are-
 - (a) directly related to the insolvency resolution process,
 - (b) necessary for meeting the objectives of the insolvency resolution process, and the Code,
 - (c) proportional to the work required to be done and the assets of the corporate debtor, and
 - (d) determined on an arms' length basis, in consonance with the requirements of integrity and independence.
- (ii) To achieve this objective, the insolvency professional may choose to procure goods and services through a public announcement, or through direct outreach to the relevant providers. In determining how the procurements should be made, the insolvency professional should give due regard to the timeliness, expense and probable outcome of any method of procurement.
- (iii) An insolvency professional must endeavour to ensure that the insolvency resolution process costs are not unduly high.
- (iv) An insolvency professional should not hesitate to incur costs for the efficient and effective conduct of the insolvency resolution process.
- (v) Where costs are incurred on services provided by associates of the insolvency professional, he/she should take particular care to ensure that the services are being provided at the best value. In cases, where incurring of costs can be seen to be a threat to the integrity of the insolvency professional, he/she should take approval of the creditors for such costs even if they are Category 1 costs.



- (vi) An insolvency professional should endeavour only pay costs incurred pre-admission with the **approval** of the committee of creditors. However, if incurring these costs are integral to keep the corporate debtor a going concern, these costs may be paid without approval of the committee of creditors.
- (vii) The payment of costs should be on actuals.

E. PROVISION OF INFORMATION

Before approval

- (i) When seeking approval for incurring Category 2 costs, the insolvency professional should provide sufficient supporting information to the committee of creditors to form a judgement as to whether the proposed costs are necessary, proper and reasonable having regard to all the circumstances of the case.
- (ii) Before seeking approval for costs, an insolvency professional must submit an estimate of:
 - (a) the items for which costs will be incurred,
 - (b) the total costs he/she believes will be incurred,
 - (c) the nature of costs he/she believes will be incurred, and
 - (d) the basis on which the costs will be incurred

to the committee of creditors.

Illustration: X is appointed as a RP for a company, for which interim finance is to be raised. X should disclose-

- (a) the total interim finance that X believes should be raised,
- (b) the reasons for raising interim finance and what it is intended to be used for,
- (c) the type of interim finance that will be raised- secured/ unsecured,
- (d) the impact on the rights of the existing creditors, if any,
- (e) the terms of the interim finance, including rate of interest, etc.

to the committee of creditors.

After approval/ After incurring (where approval not required)

- (i) An insolvency professional must maintain written contemporaneous records to demonstrate full details of the costs incurred and its correlation to the corporate insolvency resolution process.
- (ii) After incurring costs, an insolvency professional should update the committee of creditors on the work done, and the costs incurred for it in a clear and concise manner. The update should include-



- (a) the amount of costs incurred and details of the work done for which costs were incurred,
- (b) the detailed basis on which costs were incurred,
- (c) an explanation for incurring the costs, if they are Category 1, and
- (d) copies of supporting documents, including vouchers, bills etc.

Illustration: Costs incurred for payments to workmen of the same grade in Factory A & Factory B of the corporate debtor, may be represented as follows-

Amount	Basis	Explanation	Supporting documents (where available)
Rs. 3,00,000	Wage: 100 Days: 30 Workmen Grade x: 1000 $100*30*1000=3,00,000$	Costs incurred on workmen (of Grade x) for Factory A	Xx
Rs. 4,50,000	Wage: 100 Days: 30 Workmen Grade x: 1500 $100*30*1000=3,00,000$	Costs incurred on workmen (of Grade x) for Factory A	Xx

- (iii) An update may be given by an insolvency professional appointed as an IRP, to justify that expenses incurred by him/her should be ratified by the committee of creditors in its meeting as insolvency resolution process costs.
- (iv) In cases where an insolvency professional believes that the Category 2 costs will exceed the costs estimated, he/she should report the same to the applicant or committee of creditors not less than ten days before the costs are exceeded. This report should contain details of the amount expected to be exceeded and an explanation for the same.