

Complaint against an Insolvency Professional

The Corporate Insolvency Resolution Process is a cumbersome and complex process. With the admission of the application, the powers of the Board of Directors / Management of the Corporate Debtor are vested in the Insolvency Professional may it be in the capacity of Interim Resolution Professional, Resolution Professional or Liquidator. An Insolvency Professional have tedious job to accomplish which include several multifaceted tasks of administrating the operations of the Company. The Insolvency and Bankruptcy Code is so designed, that the resolution has to be done in a time bound manner and the steps towards successful resolution also require time stamps. This intricate process may lead to many unexpected situations like collusion in the interest of the parties, poor or delay in execution of the affairs of the Company, derivation of undue gain by the Insolvency Professional. All such situations have been taken care in the Code under Chapter VI, Section 217.

Under Section 217 & Section 218, the Insolvency and Bankruptcy Board of India (“the Board”) is empowered to order inspection and investigation of the Insolvency Professional to be carried out by Investigating authority. The Board may then issue a show cause notice (SCN) to the concerned professional on receipt of a complaint. The reports of the Investigating Authority are placed before the disciplinary committee for its consideration. Where the Disciplinary Committee is of the opinion that the Insolvency Professional has contravened the provisions of this code, it may impose penalty to a maximum extent of one crore rupees, suspend the registration certificate or cancel it. However, the Insolvency Professional has an option to reach out to the First Appellate Authority against the order of the disciplinary Committee.

In a recent matter, the Resolution Professional has challenged the order of the Disciplinary Committee on the ground that no complaint was received against him by the Board under section 217 of the Code. The Disciplinary Committee held that the Board can initiate investigation with or without receiving a complaint. That, as per Section 218 of the code, the Board is empowered to initiate the investigation and inquiry if it has reasonable cause to believe that the Insolvency Professional has violated the provisions of the Code or have not acted in interest of the Corporate Debtor.

The terms like Petitioner and Respondent are not included in the Code and thus the Appellate Authority has rightly sad that the Insolvency Professional is entrusted with the responsibility to carry out the operations of the Company in a fair and efficient manner as per Section 23 and Section 25 of the Code.

Few judgments on the conduct of the Insolvency professionals passed by the Board and the First Appellate Authority shall be discussed in the next article.