



FEE AND OTHER EXPENSES INCURRED FOR CORPORATE INSOLVENCY RESOLUTION PROCESS¹

1. When a corporate debtor undergoes corporate insolvency resolution process (CIRP), an Insolvency Professional (IP) is vested with the management of its affairs and he manages its operations as a going concern. He complies with the applicable laws on behalf of the corporate debtor. He conducts the entire CIRP. Such responsibilities of an IP require the highest level of professional excellence, dexterity and integrity. He needs to be compensated for his professional services commensurate to his ability, duties and responsibilities. He also needs to pay fee or incur other expenses for various goods and services required for conducting the CIRP and or managing the corporate debtor as a going concern.
2. The relevant provisions of the Insolvency and Bankruptcy Code, 2016 (Code) and regulations made thereunder having a bearing on fee and other expenses of CIRP are at Annexure A, which could be accessed at [http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/Circular%20on%20Fee%20and%20other%20Expenses%20incurred%20for%20CIRP%20\[June%202018\]_2018-06-12%2017:21:28.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/Circular%20on%20Fee%20and%20other%20Expenses%20incurred%20for%20CIRP%20[June%202018]_2018-06-12%2017:21:28.pdf)
3. An IP is obliged under section 208(2) (a) of the Code to take reasonable care and diligence while performing his duties, including incurring expenses. He must, therefore, ensure that not only fee payable to him is reasonable, but also other expenses incurred by him are reasonable.
What is reasonable is context specific and it is not amenable to a precise definition. An illustrative list of factors considered in determination of what is reasonable is given in Annexure B, available at which could be accessed at [http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/Circular%20on%20Fee%20and%20other%20Expenses%20incurred%20for%20CIRP%20\[June%202018\]_2018-06-12%2017:21:28.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/Circular%20on%20Fee%20and%20other%20Expenses%20incurred%20for%20CIRP%20[June%202018]_2018-06-12%2017:21:28.pdf)
4. Para 16 of the Code of Conduct for IPs in the Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 provides that an IP must maintain written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his decisions and actions.
5. The IBBI had put out a discussion paper titled “Regulation of fee payable to insolvency professionals and other process costs under Corporate Insolvency Resolution Process” on its website on 1st April, 2018 seeking comments thereon. The comments received from stakeholders have been considered in consultation with the Insolvency Professional Agencies.

¹ Available at: which could be accessed at [http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/Circular%20on%20Fee%20and%20other%20Expenses%20incurred%20for%20CIRP%20\[June%202018\]_2018-06-12%2017:21:28.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/Circular%20on%20Fee%20and%20other%20Expenses%20incurred%20for%20CIRP%20[June%202018]_2018-06-12%2017:21:28.pdf)

6. Keeping the above in view, the IP is directed to ensure that:-
- (a) The fee payable to him, fee payable to an Insolvency Professional Entity, and fee payable to Registered Valuers and other Professionals, and other expenses incurred by him during the CIRP are reasonable;
 - (b) The fee or other expenses incurred by him are directly related to and necessary for the CIRP;
 - (c) The fee or other expenses are determined by him on an arms' length basis, in consonance with the requirements of integrity and independence;
 - (d) Written contemporaneous records for incurring or agreeing to incur any fee or other expense are maintained;
 - (e) Supporting records of fee and other expenses incurred are maintained at least for three years from the completion of the CIRP;
 - (f) Approval of the Committee of Creditors (CoC) for the fee or other expense is obtained, wherever approval is required; and
 - (g) All CIRP related fee and other expenses are paid through banking channel.
7. The Code read with regulations made thereunder specify what is included in the insolvency resolution process cost (IRPC). The IP is directed to ensure that:-
- (a) No fee or expense other than what is permitted under the Code read with regulations made thereunder is included in the IRPC;
 - (b) No fee or expense other than the IRPC incurred by the IP is borne by the corporate debtor; and
 - (c) Only the IRPC, to the extent not paid during the CIRP from the internal sources of the Corporate Debtor, shall be met in the manner provided in section 30 or section 53, as the case may be.
8. It is clarified that the IRPC shall not include:
- (a) Any fee or other expense not directly related to CIRP;
 - (b) Any fee or other expense beyond the amount approved by CoC, where such approval is required;
 - (c) Any fee or other expense incurred before the commencement of CIRP or to be incurred after the completion of the CIRP;
 - (d) Any expense incurred by a creditor, claimant, resolution applicant, promoter or member of the Board of Directors of the corporate debtor in relation to the CIRP;
 - (e) Any penalty imposed on the corporate debtor for non-compliance with applicable laws during the CIRP;
[Reference : Section 17 (2) (e) of the Code read with circular No. IP/002/2018 dated January 3, 2018.]
 - (f) Any expense incurred by a member of CoC or a professional engaged by the CoC;
 - (g) Any expense incurred on travel and stay of a member of CoC; and
 - (h) Any expense incurred by the CoC directly;
- [Explanation: Legal opinion is required on a matter. If that matter is relevant for the CIRP, the IP shall obtain it. If the CoC requires a legal opinion in addition to or in lieu of

the opinion obtained or being obtained by the IP, the expense of such opinion shall not be included in IRPC.]

- (i) Any expense beyond the amount approved by the CoC, wherever such approval is required; and
 - (j) Any expense not related to CIRP.
9. Further, the IP is directed to disclose fee and other expenses in the relevant Form in Annexure C (available at which could be accessed at [http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/Circular%20on%20Fee%20and%20other%20Expenses%20incurred%20for%20CIRP%20\[June%202018\]_2018-06-12%2017:21:28.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/Circular%20on%20Fee%20and%20other%20Expenses%20incurred%20for%20CIRP%20[June%202018]_2018-06-12%2017:21:28.pdf)) to the Insolvency Professional Agency of which he is a member:
- (a) For all concluded CIRPs by 15th July, 2018, and
 - (b) For ongoing and subsequent CIRPs within the time as specified in the relevant Form.
10. An Insolvency Professional Agency shall -
- (a) Disseminate the disclosures made by its IPs on an appropriate electronic platform within three working days of receipt of the same;
 - (b) Monitor disclosures made by its IPs and submit a monthly summary of non-compliance by its IPs with this circular to the IBBI by 7th of the succeeding month;
 - (c) Take appropriate measures to ensure compliance by its IPs.
11. This circular is issued in exercise of the powers conferred under clause (h) of sub-section (1) of section 196 read with regulation 34A of the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016, in consultation with all the three registered Insolvency Professional Agencies.

Team ICSI

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