

Provisions and Pronouncements having a bearing on Fee and other Expenses of CIRP

I. The Insolvency and Bankruptcy Code, 2016

Section 5(13) reads as under:

“(13) *Insolvency Resolution Process Costs*” means –

- (a) *the amount of any interim finance and the costs incurred in raising such finance;*
- (b) *the fees payable to any person acting as a resolution professional;*
- (c) *any costs incurred by the resolution professional 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; and*
- (e) *any other costs as may be specified by the Board;”*

Section 208(2) reads as under:

“**208. (2)** *Every insolvency professional shall abide by the following code of conduct: –*

- (a) *to take reasonable care and diligence while performing his duties;*
- (b) *to comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member;*
- (c) *to allow the insolvency professional agency to inspect his records;*
- (d) *to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and*
- (e) *to perform his functions in such manner and subject to such conditions as may be specified.”.*

II. The IBBI (Insolvency Professionals) Regulations, 2016

Relevant Paras of the Code of Conduct under the Regulations read as under:

“**16.** *An insolvency professional must ensure that he maintains 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.*

25. *An Insolvency Professional must provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken and is not inconsistent with the applicable regulations.*

25A. *An insolvency professional shall disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.*

26. *An insolvency professional shall not accept any fees or charges other than those which are disclosed to and approved by the persons fixing his remuneration.*

27. An insolvency professional shall disclose all costs towards the insolvency resolution process costs, liquidation costs, or costs of the bankruptcy process, as applicable, to all relevant stakeholders, and must endeavour to ensure that such costs are not unreasonable.”.

III. The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Chapter IX of the Regulations reads as under:

“Chapter IX INSOLVENCY RESOLUTION PROCESS COSTS

Insolvency Resolution Process Costs

31. “Insolvency resolution process costs” under Section 5(13)(e) shall mean-

- (a) amounts due to suppliers of essential goods and services under Regulation 32;
- (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);
- (c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;
- (d) expenses incurred on or by the resolution professional fixed under Regulation 34; and
- (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.

Essential supplies.

32. The essential goods and services referred to in section 14(2) shall mean-

- (1) electricity;
 - (2) water;
 - (3) telecommunication services; and
 - (4) information technology services,
- to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

Illustration- Water supplied to a corporate debtor will be essential supplies for drinking and sanitation purposes, and not for generation of hydro-electricity.

Costs of the interim resolution professional.

33. (1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.

(2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).

(3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.

(4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the interim resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional.

Resolution professional costs.

34. The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.

Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.

Disclosure of Costs.

34 A. The interim resolution professional or the resolution professional, as the case may be, shall disclose item wise insolvency resolution process costs in such manner as may be required by the Board.”

IV. Circulars Issued by the IBBI

The circular No. IP/004/2018 dated 16th January, 2018 provides as under:

“3. In view of the above, it is clarified that an insolvency professional shall render services for a fee which is a reasonable reflection of his work, raise bills / invoices in his name towards such fees, and such fees shall be paid to his bank account. Any payment of fees for the services of an insolvency professional to any person other than the insolvency professional shall not form part of the insolvency resolution process cost.

4. Similarly, any other professional appointed by an insolvency professional shall raise bills / invoices in his / its (such as registered valuer) name towards such fees, and such fees shall be paid to his / its bank account.”

What is Reasonable ‘Cost’ and Reasonable ‘Fee’

I. As regards reasonable costs, the Society for Insolvency Practitioners of India, in its statement of best practices on “PAYMENT OF CORPORATE INSOLVENCY RESOLUTION PROCESS COSTS” observes:

“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.”*

[http://www.insolindia.com/uploads_insol/draft_best_practices/files/-1013.pdf]

II. As regards reasonable fee, the Society for Insolvency Practitioners of India, in its statement of best practices on “PAYMENT OF FEE AND REIMBURSEMENT OF OUT-OF-POCKET EXPENSES” suggests:

“Factors to be considered while charging fee

(i) An insolvency professional may charge a fixed or variable fee to reasonably remunerate him/her for the work that he/she necessarily and properly undertakes for an appointment under the Code. In determining what is necessary and proper, the insolvency professional should consider if the work is-

- (a) directly related to the insolvency resolution process,*
- (b) in furtherance of the exercise of the powers and functions under Code, professional standards, and the terms of agreement, and*
- (c) in consonance with his/her duties under the Code and the Regulations thereunder.*

(ii) An insolvency professional may use one or a combination of bases to charge fee for carrying out different tasks or discharging different duties. The bases of charging fee include:

- (a) time based charging,*
- (b) prospective fee (up to a cap),*
- (c) fixed fee,*
- (d) percentage based charging,*
- (e) success or contingency fee, only to the extent that it is consistent with the requirements of integrity and independence of insolvency professionals.*

Illustration: X is appointed as an IRP. She can charge a cumulative of fixed fee to suspend the board of directors and have the public announcement made, fee per hour spent on collecting and verifying claims, and a fee based on the percentage of assets handled for running the business as a going concern.

(iii) An insolvency professional should consider the following factors while determining the quantum of fee to charged:

- (a) value and nature of the assets dealt with,
- (b) time properly given by the insolvency professional and her staff in attending to the affairs of the debtor,
- (c) the complexity of the case,
- (d) exceptional responsibility falling on the insolvency professional,
- (e) the effectiveness with which the insolvency professional carries out her duties.

Illustration: X, an insolvency professional, may choose to charge higher fee if-

- (a) the properties of the corporate debtor are in multiple locations all over the country (nature of property),
- (b) key trade suppliers are also unpaid creditors and thus hostile (complexity of the case),
or
- (c) if the existing management is not capable which requires him to expend unusual effort to run the business as a going concern (exceptional responsibility).

(iv) An insolvency professional should not increase the fee charged without the prior approval of the authority fixing his/her fee.”

[\[http://www.insolindia.com/uploads_insol/draft_best_practices/files/-1008.pdf\]](http://www.insolindia.com/uploads_insol/draft_best_practices/files/-1008.pdf)

III. Rule 1.04(b) of the Texas Disciplinary Rules of Professional Conduct, which sets forth eight factors to determine what is reasonable fee in the context of lawyers, reads as under:

“Factors that may be considered in determining the reasonableness of a fee include, but not to the exclusion of other relevant factors, the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.”

[\[http://www.txcourts.gov/media/1343648/tdrpc-effective-may-1-2018.pdf\]](http://www.txcourts.gov/media/1343648/tdrpc-effective-may-1-2018.pdf)

Cost Sheet for Insolvency Resolution of Corporate Debtor

Form I: Details of Corporate Debtor Undergoing Insolvency Resolution Process

(To be submitted by the IRP within **Seven Days** of his demitting¹ office as IRP)

Sl. No.	Particulars	Description
1	Name of the Corporate Debtor	
2	CIN of the Corporate Debtor	
3	Date of Commencement of CIRP	
4	Assets (Rs. crore) as on the last balance sheet date (write date here)	
5	Turnover (Rs. crore) in the last financial year (write year here)	
6	No. of Workmen as on the date of commencement of CIRP	
7	No. of Employees as on the date of Commencement of CIRP	
8	Number of Claimants	
9	Total Amount of Claims (Rs. crore) Admitted on the day of demitting office as IRP	
10	Date of demitting Office by IRP	
11	Name of IRP	
12	Registration No. of IRP	
13	Name of RP	
14	Registration No. of RP	

¹Demitting means leaving office either on completion of term as IRP, resignation, removal, reappointment as RP, or otherwise.

Form II: Insolvency Resolution Process Cost of Corporate Debtor
for the period under IRP

(To be submitted by the IRP within **Seven Days** of his demitting¹ office as IRP)

Activity	Expense Head	Expense Sub-Head	Amount of Expense (Rs.)	Amount Ratified / Approved ² by CoC (Rs.)
Running Process	IRP	Fee Payable to IRP		
		Cost of Insurance for IRP		
		Other Expenses on / for IRP (travel, stay, security, etc related to CIRP.)		
	IPE	Fee Payable for Support Services to an IPE, if any		
	Registered Valuer	Fee Payable to Valuer 1		
		Fee Payable to Valuer 2		
		Fee Payable to Valuer 3, if any		
		Other Expenses on / for Valuers (travel, stay, other out-of-pocket expenses)		
	Other Professionals engaged for CIRP, not for Corporate Debtor	Fee Payable to Accounting and Finance Professionals		
		Fee Payable to Audit Professionals		
		Fee Payable to Legal Professionals		
		Other Expenses on / for Professionals (travel, stay, other out-of-pocket expenses related to CIRP)		
	CoC Meetings	Meeting Venue		
		Video Conferencing		
		Electronic Voting		
		Any other Expenses related to CoC		
	Other Expenses	Expenses on Public Announcement		
		Expenses on CIRP related Filings before Adjudicating Authority and Other Authorities		
		CIRP related Litigation		
	Running Business	Essential Services	Electricity	
Water				
Telecommunication Services				
Information Technology Services				
Other Essential Services, if any				
Other Services		Other Supplies		
		Employees and Workmen		
		Security Personnel Services		
		Other Expenses, if any		
Interim Finance		Amount of Interim Finance		
		Expenses for Raising Interim Finance		
		Interest Payable on Interim Finance		
Other Expenses, if any, directly related to CIRP				

¹ Demitting means leaving office either on completion of term as IRP, resignation, removal, reappointment as RP, or otherwise

² If an expense is not required to be approved by CoC, please write 'NA'.

Form III: Insolvency Resolution Process Cost of Corporate Debtor
for the period under RP

(To be submitted by the RP within **Seven Days** of his demitting¹ office as RP)

Date of Joining as RP:

Date of Demitting Office as RP:

Activity	Expense Head	Expense Sub-Head	Amount of Expense (Rs.)	Amount Ratified / Approved ² by CoC (Rs.)
Running Process	RP	Fee Payable to RP		
		Cost of Insurance for RP		
		Other Expenses on / for RP (travel, stay, security, etc related to CIRP.)		
	IPE	Fee Payable for Support Services to an IPE, if any		
	Registered Valuer	Fee Payable to Valuer 1		
		Fee Payable to Valuer 2		
		Fee Payable to Valuer 3, if any		
		Other Expenses on / for Valuers (travel, stay, other out-of-pocket expenses)		
	Other Professionals engaged for CIRP, not for Corporate Debtor	Fee Payable to Accounting and Finance Professionals		
		Fee Payable to Audit Professionals		
		Fee Payable to Legal Professionals		
		Fee Payable to any other Professionals		
		Other Expenses on / for Professionals (travel, stay, other out-of-pocket expenses related to CIRP)		
	CoC Meetings	Data Room Service		
		Meeting Venue		
		Video Conferencing		
		Electronic Voting		
		Expenses for or by Authorised Representative		
	Examination of Transactions	Any other Expenses related to CoC		
		Preferential Transactions		
		Under/Over-valued Transactions		
		Extortionate Transactions		
	Other Expenses	Fraudulent Transactions		
Expenses on CIRP related Filings before Adjudicating Authority and Other Authorities				
CIRP related Litigation				
Running Business	Essential Services	Electricity		
		Water		
		Telecommunication Services		
		Information Technology Services		
		Other Essential Services, if any		
	Other Services	Other Supplies		
		Employees and Workmen		
		Security Personnel Services		
		Other Expenses		
	Interim Finance	Amount of Interim Finance		
		Expenses for Raising Interim Finance		
		Interest Payable on Interim Finance		
	Other Costs / Expenses, if any, directly related to CIRP			
	Amount due to Prejudicially Affected Persons			

¹ Demitting means leaving office either on completion of term as RP, resignation, removal, or otherwise.

² If an expense is not required to be approved by CoC, please write 'NA'.