



RELEVANCE OF UNDERSTANDING THE NUANCES OF IBC CODE 2016 BY VALUERS IN NCLT ISSUES

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Abstract:

The preamble of IBC code 2016 commences with the main objective of insolvency resolution of corporate persons, individuals, partnership persons, in a time bound manner for Maximisation of Value of assets of such persons, to promote entrepreneurship and availability of credit, balancing the interest of all stakeholders.

The author advocates in the ensuing paragraphs that the Valuer has to acquaint himself with IBC code 2016 to understand the subtleties in the various stages of the process of Insolvency resolution.

Understanding the whole gamut of terminology in CIRP will facilitate the valuer with a holistic view instead of piecemeal approach

Why is understanding IBC Code relevant :

The code stresses on the Maximisation of value of assets for the benefit of all the concerned. This concept is aimed at minimising the losses incurred by the enterprise by obtaining a good price for the assets that are brought under CIRP. As per the IBC code valuer will be appointed by the Resolution Professional only at the stages of liquidation and is not exposed to CIRP. However the author reasons out strongly for the appointment at the initial stages of CIRP.

The valuer is an important link in the whole process of CIRP. The COC (Committee of Creditors) whose approval is final to approve the Resolution Plan may take guidance from the valuation as there are possibilities of undermining the value of enterprise by the corporate debtor. Asset valuation may come in handy to arrive at a rational price which is acceptable to all the stake holders. The figures may provide the true picture of the enterprise value before acceptance by COC or may function as the reserve price for the bids.

Understanding the Role and standards

The Valuer

It is relevant to look into the section 247 of companies act 2013 wherein the appointed registered valuer shall make a) an impartial and fair Valuation b) exercise due diligence c) in accordance with the rules as may be prescribed. Section 20.30 of Glossary of IVS 2022 defines a “valuer” is an individual, group of individuals or individual within an entity, regardless of whether employed (internal) or engaged (contracted/external), possessing the necessary qualifications, ability and experience to execute a valuation in an objective, unbiased, ethical and competent manner.

The Standards

There is an implicit mention in the IBC code Chapter 10 of Regulations REG004& REG012 (Resolution Process for Corporate Persons& Fast Track Insolvency) that internationally accepted valuation standards shall be followed in computation of liquidation value after due physical verification of the assets of the corporate debtor.

It may not be out of context to quote a few relevant definitions (applicable in the present context) from IVS2022 which has come into effect from 31st Jan 2022 and in IBC code.

Section 30.4.of Glossary of IVS defines: The market value of an asset will reflect its highest and best use(HABU) (paras 140.1-140.5). The highest and best use is the use of an asset that maximizes its potential and that is possible, legally permissible and financially feasible. The highest and best use may be for continuation of an asset’s existing use or for some alternative use (In Situ or Ex situ). This is determined by the use that a market participant would have in mind for the asset when formulating the price that it would be willing to bid.

Section 20.23 of Glossary of IVS defines. Synergistic Value: The result of a combination of two or more assets or interests where the combined value is more than the sum of the separate values. If the synergies are only available to one specific buyer, then synergistic value will differ from market value, as the synergistic value will reflect particular attributes of an asset that are only of value to a specific purchaser. The added value above the aggregate of the respective interests is often referred to as marriage value.

IVS-Defined liquidation value in section 80.1 of IVS104 as : the amount that would be realized when an asset or group of assets are sold on a piecemeal basis. Liquidation value should take into account the costs of getting the assets into saleable condition as well as those of the disposal activity.

Liquidation value can be determined under two different premises of value: (a) an orderly transaction with a typical marketing period (see section 160), or (b) a forced transaction with a shortened marketing period (see section 170).

In Chapters 10 of REG004 & REG 012 - Resolution plans, Liquidation value is defined as the estimated realizable value of assets of corporate debtor if the corporate debtor were to be liquidated on insolvency/fast track commencement date. A period of 2years /90 days is provided to make an assessment.

The Approach

IVS, while taking the standard approaches of Income, Market & Cost approaches as the accepted methods for valuation, elaborated the definitions& procedural aspects in the following standards for different assets.

IVS104 Bases of Value

IVS 105 Valuation Approaches and Methods

IVS 200 Businesses and Business Interests

IVS 210 Intangible Assets

IVS 220 Non-Financial Liabilities

IVS 230 Inventory

IVS 300 Plant and Equipment

IVS 400 Real Property Interests

IVS 410 Development Property

IVS 500 Financial Instruments

Holistic approach by the valuer

While the Resolution professional has the total responsibility from the date of his appointment to call for the necessary documents, step into the shoes of the board, call for COC and so on, the valuer in his own capacity may try to understand the whole scenario of the CIRP in the interests of the stakeholders. However, he is limited by the constraints of his appointment confirmation which is done by the resolution professional.

Following are the other helpful aspects from the Code for Valuers

Information Utilities

The IBBI (Information Utilities) Regulation 2017, IBBI/2016-17/GN/REG009. Information Utilities (IU) provides core services namely

- 1) Accepting electronic submission of Financial information in such form as may be prescribed
- 2) safe and accurate storing of financial information
- 3) authentication & verification
- 4) providing access to the authorized.

Valuers can optimally utilize Information utilities (NSEL) to upload all the documents that of assets, Inventory etc; and store for a period of 8 years as per the statute for a nominal fee.

Fees for Valuation :

It is often debated about the amount of fees to be charged by valuers. IBBI Regulations, 2016 Notification IBBI/2016-17/GN/REG005 (Liquidation process), Chapter 2, provides a brief guide line of remuneration to be paid to Liquidator based on certain percentage of amount realised/ distributed during the process of liquidation. This can function as a general guide line to Valuers as well. Certain percentage of this amount may be taken as a reference.

Conclusion/Recommendations

1) The author attempts to drive home the point that the valuer to be associated with CIRP since its commencement instead of at reaching the stages of culmination to liquidation. His understanding of IBC code and CIRP is of paramount importance as the real contribution of the maximization of value comes after proper valuation, on which Resolution plan can be based, to arrive at a plausible solution for the value of the enterprise.

2) The time frames left for accurate valuation at the point of liquidation are too narrow to arrive at fair value of the enterprise for fast track process. Association of RV at the initial stages will provide an opportunity to him for correct valuation as enough time is needed to collate and arrive at a reasonable estimate.

The appointment of RV may be made by The Board or Audit committee as the case may be, independent of Resolution professional and not at his discretion.

3) RVO's may take up these issues and impress upon IBBI for a) FEE structure for valuers b) Appointment of RV at the initial stages of CIRP and independently, to receive the due respect the Valuer richly deserves.

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Thank You,
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