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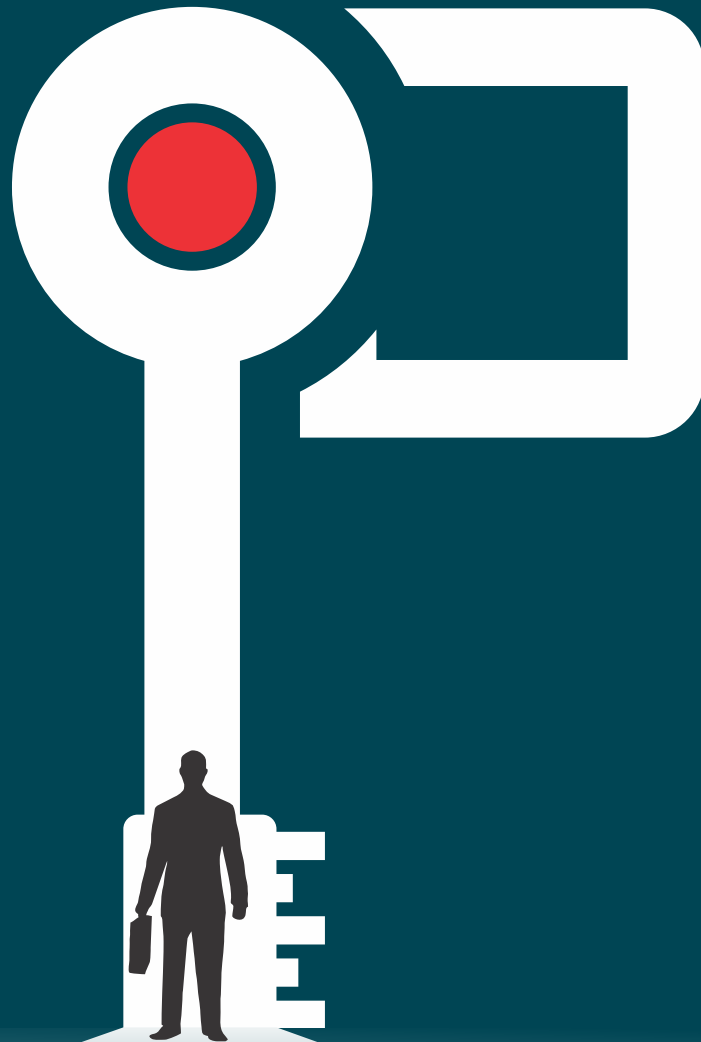
Insolvency and Bankruptcy Board of India

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# Insolvency and Bankruptcy News

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**INSOLVENCY PROFESSION: AN INSTITUTION IN THE MAKING**

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## Insolvency Profession: An Institution in the Making

Why does an economy develop or develop faster, while another similarly endowed languishes or lags? Many believe that it is because the former has better resources - human, finance, technology, etc. But why does one economy get better resources, and while the other does not? Conventional wisdom tells us that institutional milieu encourages and attract 'superior' resources and are, therefore, deeper determinants of development.

Institutions are the foundations of a well-functioning market economy. They define the contours of freedom, protect rights, enforce obligations, and penalise deviant behaviour and thereby bring in predictability of actions and certainty of outcomes. They entitle an entity to the fruits of its effort and thereby motivate it to behave and perform at its best.

The economies of scale and scope enable increasing returns and accelerated growth. This prompts organisation of firms for undertaking economic activity. However, a firm is an amalgam of interests of many stakeholders. Its operations often impact their interests differently. It occasionally trades off limited liability of a stakeholder for unlimited liability of another.

With the shift to a market economy, the number as well as size of firms has been increasing over time. The larger the firm, the larger is the number of stakeholders, the larger is the distance of stakeholders from the firm, and the larger is the effort required to balance and watch their interests. This calls for new institutional arrangements.

A professional records and reports performance of a firm, another safeguards minority interest, yet another ensures compliance with applicable laws, and so on; some of these are second order State functions that address market failure. The State is increasingly using them on its behalf to exercise oversight on the firms. Thus, a profession is a key institution of a market economy.

Indian economy is witnessing a proliferation of professions. The need for professional services has been increasing over the years, so also their influence in the making of the economy. Given the growing complexity and importance of services, professionalisation to a large extent determines the competitive edge of nations and sustainability of prosperity.

A market thrives on competition and innovation. However, the higher the incidence of competition and innovation, the higher is the likelihood of failure of a firm, and consequently default and insolvency. Insolvency is often an outcome of the market micro-structure adversely impacting an entity. Therefore, the Code rightly envisages a market process for resolution of insolvency and provides for supporting institutions.

A key supporting institution under the Code is insolvency profession. An insolvency professional (IP) exercises the powers of the Board of Directors of the firm under resolution, manages its operations as a going concern, and complies with applicable laws on behalf of the firm. He conducts the entire insolvency resolution process: he is the fulcrum of the process and the link between the Adjudicating Authority and stakeholders - debtor, creditors-financial as well as operational, and resolution applicants.

The process culminates in a resolution plan that maximises the value of assets of the firm. This presupposes availability of many competing resolution plans and

identifying the best of them. The key is generation of many promising resolution plans. This requires provision of and access to complete and accurate information about the firm for prospective resolution applicants and continued operation of the firm.

The Code casts this duty on the IP. He organises all information relating to the assets, finances and operations of the firm, receives and collates the claims, prepares information memorandum, and provides access to relevant information, so that there is complete symmetry of information among the entitled stakeholders, while maintaining confidentiality. He thus addresses the market failure arising from information asymmetry.

The resolution balances the interests of the stakeholders. This requires the services of a third person who does not side with any stakeholder and has no conflict of interests. The law casts this duty on the IP and makes several provisions to ensure his integrity, objectivity, independence and impartiality. It also requires him to be a fit and proper person.

Given the responsibilities, an IP requires the highest level of professional excellence. Accordingly, the law makes an individual with 10-15 years of professional experience eligible for registration as an IP on passing the Limited Insolvency Examination and completing a pre-registration educational course. He is also required to undergo continuing professional education to remain relevant. The IBBI and the IPAs are organising capacity development programmes for them.

The law facilitates and empowers the IP to discharge his responsibilities effectively. It obliges every officer of the firm to report and the promoter of the firm to extend all assistance and cooperation to him. There is an assurance of supply of essential goods and services to, and a moratorium on proceedings against, the firm. The Code empowers the IP to appoint professionals to assist him. He can seek orders from the Adjudicating Authority if he comes across any preferential, undervalued, extortionate, or fraudulent transaction. He can take support services from insolvency professional entities.

In order to ensure that an IP performs his role, the law empowers the IBBI and the IPAs to monitor his performance. It provides for appropriate sanctions for any kind of wrongdoing. Though a client proposes the name of an IP for appointment, he is actually appointed by the Adjudicating Authority. He may be removed from a process by the Adjudicating Authority if it is not satisfied with his performance.

The appointment and removal by the Adjudicating Authority secures and sanctifies the position of IP. He has protection for actions taken in good faith. His conduct can be investigated only by the IBBI/IPAs which has to follow a due process for the purpose. There is bar on trial of offences against an IP except on a complaint filed by the IBBI.

The insolvency profession is in its infancy. It is in a stage in which reputation is formed. Once the society forms a perception about a profession, it is very difficult to change it. It is, therefore, incumbent upon the IPs to build and safeguard the reputation of the profession which should enjoy the trust of the society and inspire confidence of all the stakeholders. They must justify the exalted status of an institution bestowed on them under the Code.

# IBBI Updates

## Governing Board

Government appointed Mr. Gyaneshwar Kumar Singh, Joint Secretary in the Ministry of Corporate Affairs as an ex-officio member of the Board of the IBBI vide notification dated 22<sup>nd</sup> February, 2018.



Mr. Gyaneshwar Kumar Singh

Mr. Singh is an officer of the Indian Post & Telecommunication Accounts & Finance Service of 1992 batch. He has done post-graduation in Sociology from Jawaharlal Nehru University, and MBA and LLB degrees from Delhi University. Since August 2016, he is working as Joint Secretary in the Ministry of Corporate Affairs. He is also the Chief Executive Officer of Investor Education and Protection Fund Authority, and was Director General and CEO of Indian Institute of Corporate Affairs. He has varied experience in Government of India and International Organisations. He has worked as Controller of Communications Accounts for Delhi Region, Ministry of Communication and Information Technology. In his stint as Director in the Ministry of Social Justice and Empowerment, he helped formulate the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. He has also served as Director in the Ministry of Communication and IT. He worked as International Capacity Development Advisor with UNDP, Afghanistan during 2007-2012.

## Human Resources

Mr. Ritesh Kavdia, an officer of the Indian Telecommunication Service of 1996 batch, joined as Executive Director on 1<sup>st</sup> February, 2018. Prior to this, he was serving as Chief General Manager in the IBBI. He has Bachelor of Engineering from the Regional Engineering College, Jaipur and Executive Master of Public Administration from Syracuse University, USA.

Mr. K. R. Saji Kumar, an officer of the Indian Legal Service, joined as Executive Director on 9<sup>th</sup> February, 2018. Prior to this, he was serving as Joint Secretary & Legislative Counsel in the Legislative Department of the Ministry of Law & Justice. He practised as an Advocate for about a decade before joining the Government. He has worked as Director in the Forward Markets Commission and also as Legal Expert in the AG's Chambers, Government of Guyana.

A few other officers joined the IBBI during the quarter as Chief General Manager, Deputy General Manager and Assistant General Manager on deputation.



Presentation on Case Laws by Research Associates of IBBI

## Employee Workshops

A three-day Induction Workshop was conducted from 1<sup>st</sup> to 3<sup>rd</sup> February, 2018 for the benefit of the new officers who joined IBBI so as to get them familiarised with their work.



Dr. (Ms.) Punam Sahgal at Induction Workshop at IBBI on 1<sup>st</sup> February, 2018

The Foreign and Commonwealth Office, Government of UK along with the UK Insolvency Service organised a five-day workshop in London from 19<sup>th</sup> to 23<sup>rd</sup> February, 2018. A delegation comprising Hon'ble Justice Mr. M. M. Kumar, President and Hon'ble Justice Mr. R. P. Nagrath, Judicial Member, NCLT; Mr. Gyaneshwar Kumar Singh, Joint Secretary, Ministry of Corporate Affairs; and Dr. M. S. Sahoo, Chairperson, Dr. Navrang Saini, Whole Time Member, and Mr. Vijay Kumar, Assistant General Manager, IBBI participated in the workshop. The delegation interacted with the judges and other functionaries of the Chancery Court, the UK Insolvency Service, Institute of Chartered Accountants England & Wales, Joint Insolvency Examination Board, Association of Recovery Professionals, Royal Institution of Chartered Surveyors and PwC Insolvency Practice.



Hon'ble Justice Mr. M. M. Kumar and Dr. M. S. Sahoo with Hon'ble Justice Mr. Alastair Norris at the Chancery Court in London on 21<sup>st</sup> February, 2018

The Foreign and Commonwealth Office, Government of UK organized a one-day workshop for IBBI officers and insolvency practitioners on 7<sup>th</sup> February, 2018 in New Delhi. The workshop aimed at building capacity among Indian practitioners and firms involved in insolvency regulations and further developing insights into the insolvency law by sharing UK's best practices and expertise in the implementation of insolvency laws from both official and private sector perspectives.



Talk by Mr. U. K. Sinha on 29<sup>th</sup> March, 2018

## Distinguished Speakers

The following distinguished speakers, among others, delivered talks and interacted with the officers of the IBBI during the quarter:

- Dr. (Ms.) Punam Sahgal, Management Consultant and Trainer on "Team Building and Leadership"
- Dr. Gyana Ranjan Parija, Researcher, Analytics & Optimization Research, IBM on "AI, Blockchain and Cogniculture"
- Dr. Omkar Goswami, Chairperson, CERG Advisory Private Limited on "Challenges in Implementing the Insolvency and Bankruptcy Code, 2016"
- Dr. Ranjan Kumar Bal, Former Professor, Utkal University on "Time Management"
- Professor (Dr.) Arun Tripathy, Management Development Institute, Gurgaon on "Strategy for a Regulatory Organisation"
- Mr. Sumant Batra, President, SIPI on "Reality Check on the Code Implementation", and

- Mr. U. K. Sinha, Former Chairman, SEBI on "Regulator, Regulations and Regulatory Challenges".



Talk by Mr. Sumant Batra on 29<sup>th</sup> March, 2018



Talk by Dr. Omkar Goswami on 1<sup>st</sup> March, 2018

## Strategy Meet

In 2017, the IBBI started a practice of formulating an annual strategic action plan to guide its efforts and resources towards its objectives. Senior officers of IBBI joined for the second strategy meet on 29<sup>th</sup> and 30<sup>th</sup> March, 2018 at NIFM, Faridabad to formulate the Strategic Action Plan for 2018-19 that outlines its objectives, strategies, specific actions and sub-actions.



Governing Board Members and Officers at the 2<sup>nd</sup> Annual Strategy Meet at NIFM, Faridabad on 29<sup>th</sup> -30<sup>th</sup> March, 2018

## Parliamentary Committee

Dr. M. S. Sahoo, Chairperson accompanied by all three Whole Time Members, Ms. Suman Saxena, Dr. Navrang Saini and Dr. (Ms.) Mukulita Vijayawargia appeared before the Joint Committee on “the Financial Resolution and Deposit Insurance Bill, 2017” on 22<sup>nd</sup> January, 2018 and presented their views on the said Bill.

## IAIR Membership

The International Association of Insolvency Regulators (IAIR) brings together the collective experiences and expertise of government insolvency regulators from jurisdictions around the world. It aims to promote liaison and co-operation and provides a forum for discussion amongst insolvency regulators and thereby contributes to a wider understanding of insolvency issues, procedures and practices and the development of approaches that reflect the different legal, socio-economic, historical, cultural and institutional frameworks of the countries from which members come. With the IBBI joining IAIR on 11<sup>th</sup> January, 2018, its membership has risen to 31.

## MoU with RBI

IBBI signed a Memorandum of Understanding (MoU) on 12<sup>th</sup> March, 2018 with the Reserve Bank of India (RBI). The MoU was signed by Mr. Sudarshan Sen, Executive Director, RBI and Dr. (Ms.) Mamta Suri, Executive Director, IBBI in the august presence of Mr. Injeti Srinivas, Secretary to Government of India, Ministry of Corporate Affairs; Dr. M. S. Sahoo, Chairperson, IBBI; and other distinguished Members of the Insolvency Law Committee (ILC) on the sidelines of the 4<sup>th</sup> meeting of the ILC at New Delhi. The IBBI and RBI agreed under the MoU to assist and co-operate with each other for the effective implementation of the Code, subject to limitations imposed by the applicable laws.



Signing of MoU between IBBI and RBI, in the presence of Mr. Injeti Srinivas, Secretary, MCA and Dr. M. S. Sahoo, Chairperson, IBBI at New Delhi on 12<sup>th</sup> March, 2018

# Legal And Regulatory Framework

## Central Government

### The Insolvency and Bankruptcy Code (Amendment) Act, 2018

The President had promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 on 23<sup>rd</sup> November, 2017. It aimed at (a) facilitating the commencement of provisions relating to individual insolvency in phases, (b) empowering the committee of creditors (CoC) to lay down the criteria for resolution applicants, having regard to the complexity and scale of operations of business of the corporate debtor (CD), who can submit resolution plans, and (c) prohibiting certain persons

from submitting a resolution plan who, on account of their antecedents may adversely impact the credibility of the processes under the Code. Government introduced the Insolvency and Bankruptcy Code (Amendment) Bill, 2017 in Parliament to replace the Ordinance. The Bill became an Act on 18<sup>th</sup> January, 2018 after it was passed by both the Houses of Parliament and on receiving the assent of the President.

### The Companies (Amendment) Act, 2017

The Central Government notified the Companies (Amendment) Act, 2017 on 3<sup>rd</sup> January, 2018. The provisions in the Amendment Act having an important bearing on the processes under the Code are:

- Section 53 of the Companies Act, 2013 prohibited issuance of shares at a discount. The Amendment Act now allows a company to issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan such as resolution plan under the Code or debt restructuring scheme.
- Section 197 of the Companies Act, 2013 required approval of the company in a general meeting for payment of managerial remuneration in excess of 11 percent of the net profit. The Amendment Act now requires that where a company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, for such payment of managerial remuneration, shall be obtained by the company before obtaining the approval in the general meeting.
- Section 247 of the Companies Act, 2013 prohibited a registered valuer from undertaking valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets. The Amendment Act now prohibits a registered valuer from undertaking valuation of any asset in which he has direct or indirect interest or becomes so interested at any time during three years prior to his appointment as valuer or three years after valuation of assets was conducted by him.

### The Finance Act, 2018

The following two amendments in the Income-tax Act, 1961 effected by the Finance Act, 2018, have an important bearing on the processes under the Code:

- Section 79, inter alia, provided that where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless on the last day of the previous year the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred. The Finance Act, 2018 has amended the said section to provide that nothing contained therein shall apply to a company where a change in the shareholding takes place in a previous year pursuant to approved resolution plan under the Code.
- Section 115JB provided for levy of tax on certain companies on the basis of book profit which is determined after making certain adjustments to the net profit disclosed in the profit and loss account prepared in accordance with the provisions of the Companies Act, 2013. The Finance Act, 2018 has amended the said section to provide that in case of a company, against whom an application for CIRP has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Code, the aggregate amount of the unabsorbed depreciation and loss brought forward shall be allowed to be reduced from the book profit and the loss shall not include depreciation.

In his Budget Speech on 1<sup>st</sup> February, 2018, the Hon'ble Finance Minister stated: "Reserve Bank of India has issued guidelines to nudge Corporates to access bond market. SEBI will also consider mandating, beginning with large Corporates, to meet about one-fourth of their financing needs from the bond market."

### **The Companies (Registered Valuers and Valuation) (Amendment) Rules, 2018**

Pursuant to rule 11 of the Companies (Registered Valuers and Valuation) Rules, 2017, any person, who was rendering valuation services under the Companies Act, 2013 on the date of commencement of these rules, was allowed to continue to render valuation services without a certificate of registration under the rules up to 31<sup>st</sup> March, 2018. The Ministry of Corporate Affairs vide notification dated 9<sup>th</sup> February, 2018 postponed the aforementioned deadline from 31<sup>st</sup> March, 2018 to 30<sup>th</sup> September, 2018.

### **Report of the Insolvency Law Committee**

The Central Government had constituted the Insolvency Law Committee (ILC) on 16<sup>th</sup> November, 2017 to take stock of the functioning and implementation of the Code, identify the issues that may impact the efficiency of corporate insolvency resolution and liquidation framework prescribed under the Code, make suitable recommendations to address such issues, and enhance the efficiency of the process prescribed for implementation of the Code. The ILC submitted its report to the Hon'ble Union Minister of Finance and Corporate Affairs on 26<sup>th</sup> March, 2018. The key recommendations are as under:

- (i) in recognition of the importance of Micro, Small and Medium Enterprises (MSMEs) to the Indian economy and the unique challenges faced by them, it has been recommended to allow the Central Government to exempt MSMEs from application of certain provisions of the Code. Illustratively, since usually only the promoters of an MSME are likely to be interested in acquiring it, applicability of section 29A has been restricted only to disqualify willful defaulters from bidding for MSMEs;
- (ii) in order to address the problem of unintended exclusions under section 29A that disqualifies certain persons from submitting resolution plans under the Code, it has been recommended to streamline it so that only those who contributed to defaults of the company or are otherwise undesirable are rendered ineligible. Moreover, being mindful of the Non-Performing Assets (NPA) crisis in the country, the need to encourage the market for NPAs was felt and accordingly several carve-outs from section 29A have been recommended for pure play financial entities. In order to prevent retrospective application of any proposed change, it has been recommended to add a proviso that the amendments shall be applicable to resolution applicants that have not submitted resolution plans as on date of coming into force of the said amendment;
- (iii) it has been recommended that home buyers should be treated as financial creditors (FCs) owing to the unique nature of financing in real estate projects and the treatment of home buyers by the Hon'ble Supreme Court in some of the ongoing cases. Notably, classification of home buyers as FC would enable them to participate equitably in the insolvency resolution process under the Code;
- (iv) to clear the confusion regarding treatment of assets of guarantors of the CD vis-à-vis the moratorium on the assets of the CD, it has been recommended to clarify by way of an explanation that all assets of such guarantors to the CD shall be outside the scope of moratorium imposed under the Code;
- (v) in order to fulfil the stated objective of the Code, i.e., to promote resolution, it has been recommended to re-calibrate voting threshold for various decisions of the CoC;
- (vi) in order to enable the CD to continue as a going concern while

undergoing CIRP, it has been recommended to empower the NCLT on the application of interim resolution professional (IRP)/RP to allow expansion of the scope of essential goods and services beyond what is specified in CIRP Regulations;

- (vii) in order to cater to exceptional circumstances warranting withdrawal of an application for CIRP post-admission, it has been recommended to allow such exit provided the CoC approves such action by ninety per cent of voting share;
- (viii) in order to prevent misuse of section 10 of the Code, which permits initiation of CIRP by Corporate Applicant, it has been recommended to provide for the requirement of special resolution passed by the shareholders of the CD or resolution passed by at least three-fourth of the total number of partners of the CD as the case may be;
- (ix) in order to facilitate successful implementation of the resolution plan by the successful resolution applicant, it has been proposed to allow one year time to obtain necessary statutory clearances from Central, State and other authorities or such time as may be specified in the relevant law, whichever is later.

## **Insolvency and Bankruptcy Board of India**

### **The IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018**

The IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 6<sup>th</sup> February, 2018 to provide for the following:

- a. The resolution professional (RP) shall appoint two registered valuers to determine the fair value and the liquidation value of the CD. After the receipt of resolution plans, the RP shall provide the fair value and the liquidation value to each member of the CoC in electronic form, on receiving a confidentiality undertaking. The RP and registered valuers shall maintain confidentiality of the fair value and the liquidation value.
- b. The RP shall submit the information memorandum in electronic form to each member of the CoC within two weeks of his appointment as RP and to each prospective resolution applicant latest by the date of invitation of resolution plan, on receiving confidentiality undertaking.
- c. The RP shall issue an invitation, including the evaluation matrix, to the prospective resolution applicants. He may modify the invitation as well as the evaluation matrix. However, the prospective resolution applicant shall get at least 30 days from the date of issue of invitation or modification thereof, whichever is later, to submit resolution plans. Similarly, he will get at least 15 days from the date of issue of evaluation matrix or modification thereof, whichever is later, to submit resolution plans. An abridged invitation shall be available on the website, if any, of the CD, and on the web site, if any, designated by the IBBI for the purpose.
- d. While the resolution applicant shall continue to specify the sources of funds that will be used to pay insolvency resolution process costs, liquidation value due to operational creditors (OCs) and liquidation value due to dissenting FCs, the CoC shall specify the amounts payable from resources under the resolution plan for these purposes.
- e. A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the CD for maximization of value of its assets. These may include reduction in the amount payable to the creditors, extension of a maturity date or a change in interest rate or other terms of a debt due from the CD, change in portfolio of goods or services produced or rendered by the CD, and change in technology used by the CD.

- f. The RP shall submit the resolution plan approved by the CoC to the Adjudicating Authority, at least 15 days before the expiry of the maximum period permitted for the completion of the CIRP.

#### **The IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018**

The IBBI amended the IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 7<sup>th</sup> February, 2018 to provide for similar changes as made in the IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2016.

#### **Consultative Process for Making Regulations**

The IBBI has evolved a transparent and consultative process for making regulations. It has been the endeavour of the IBBI to effectively engage stakeholders in the regulation-making process to factor in ground reality, secure ownership of regulations and make regulations robust and precise, relevant to the time and for the purpose. Towards this objective, the IBBI invited comments from the public, including the stakeholders and the regulated, on the regulations already notified under the Code by 31<sup>st</sup> December, 2017. The comments received on the extant Regulations were considered by the respective Advisory Committees and thereafter by the Governing Board of the IBBI. Thereafter, the IBBI has amended the following Regulations effective from 1<sup>st</sup> April, 2018:

#### **The IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2018**

The important amendments effected by the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2018 are:

- a. The regulations provide timelines for various activities in a resolution process. The amendments now require the RP to identify the prospective resolution applicants on or before the 105<sup>th</sup> day from the insolvency commencement date.
- b. The regulations provide that the expenses to be incurred on or by the IRP / RP shall be fixed / ratified by the CoC and such fixed / ratified expense will form part of insolvency resolution process costs. The amendments now provide that such expenses mean the fee to be paid to the IRP, the fee to be paid to insolvency professional entity, if any, and the fee to be paid to professionals, if any, and other expenses to be incurred by the IRP / RP.
- c. The IRP / RP shall disclose item-wise insolvency resolution process costs in such manner, as may be required by the IBBI.
- d. The FC submitting a claim to the IRP shall declare whether it is or is not a related party in relation to the CD.
- e. The forms for submission of claims required affidavit from the claimant. The amendments have dispensed with such requirement.

#### **The IBBI (Liquidation Process) (Amendment) Regulations, 2018**

The important amendments effected by the IBBI (Liquidation Process) (Amendment) Regulations, 2018 are:

- a. Previously, the regulations allowed a liquidator to sell an asset on a standalone basis. They also allowed the liquidator to sell the assets in a slump sale, a set of assets collectively, or the assets in parcels. The amendments now allow the liquidator to sell the CD as a going concern.
- b. The amendments provide that the liquidation cost includes interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower.

#### **The IBBI (Insolvency Professionals) (Amendment) Regulations, 2018**

The important amendments effected by the IBBI (Insolvency Professionals) (Amendment) Regulations, 2018 are:

- a. Subject to meeting other requirements, an individual shall be eligible for registration as an IP if he has passed the Limited Insolvency Examination within the last 12 months and has completed a pre-registration educational course from an insolvency professional agency, as may be required by the IBBI.
- b. The syllabus, format, qualifying marks and frequency of the 'Limited Insolvency Examination' shall be published on the website of the IBBI at least three months before the examination.
- c. An individual with the required experience of 10 / 15 years is eligible for registration as an insolvency professional. In addition, an individual with little or no experience shall also be eligible for registration as an IP on successful completion of the Graduate Insolvency Programme, as may be approved by the IBBI.
- d. As a condition of registration, an IP shall undergo continuing professional education as may be required by the IBBI.
- e. An IP shall not outsource any of his duties and responsibilities under the Code.
- f. A company, a registered partnership firm or a limited liability partnership shall be eligible for recognition as an insolvency professional entity (IPE), if-
  - i. its sole objective is to provide support services to IPs, who are its partners or directors, as the case may be;
  - ii. it has a net worth of not less than one crore rupees;
  - iii. majority of its shares is held by IPs, who are its directors, in case it is a company;
  - iv. majority of capital contribution is made by IPs, who are its partners, in case it is a limited liability partnership firm or a registered partnership firm;
  - v. majority of its partners or directors, as the case may be, are IPs;
  - vi. majority of its whole-time directors are IPs, in case it is a company; and
  - vii. none of its partners or directors is a partner or a director of another IPE.
- g. An IP shall disclose the fee payable to him, the fee payable to the IPE, 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.

#### **Draft IBBI (Mechanism for Issuing Regulations) Regulations, 2018**

The Code is a modern economic legislation. Section 240 of the Code empowers IBBI to make regulations. A transparent and consultative process to make regulations has been evolved by IBBI. It has been the endeavour of IBBI to effectively engage stakeholders in the regulation-making process. The process generally starts with a working group, suggesting draft regulations. The IBBI puts these draft regulations out in public domain seeking comments thereon. It holds a few round tables to discuss draft regulations with the stakeholders. It takes the advice of its Advisory Committee. The process culminates with the Governing Board of IBBI approving regulations and the final notification by IBBI. This process endeavours to factor in ground reality, secures ownership of regulations, imparts democratic legitimacy and makes regulations robust and precise, relevant to the time and for the purpose.

Given the importance of subordinate legislations for the processes under the Code, it is essential that the IBBI has a structured, robust mechanism, which includes effective engagement with the stakeholders, for making regulations. Section 196 (1)(s) of the Code requires the IBBI to specify mechanisms for issuing regulations, including the conduct of public consultation processes, before notification of regulations. In sync with this philosophy and the statutory requirement, the IBBI proposes to make



regulations to govern the process of making regulations and consulting the public. Accordingly, the IBBI put out the draft IBBI (Mechanism for Issuing Regulations), Regulations, 2018 on 7<sup>th</sup> March, 2018 inviting comments from public, including the stakeholders and the regulated, on the same.

### **Circulars**

The IBBI issued the following circulars during the quarter January-March, 2018.

#### **Use of Registration Number and Address**

The IBBI, vide Circular dated 3<sup>rd</sup> January, 2018, directed that an IP shall prominently state in all his communications, whether by way of public announcement or otherwise to a stakeholder or to an authority, (i) his name, address and email, as registered with the IBBI, (ii) his Registration Number as an IP granted by the IBBI, and (iii) the capacity in which he is communicating (Example: as IRP of XYZ Limited, as RP of ABC Limited, etc.). Additionally, an IP may use a process (Example: CIRP, Liquidation, etc.) specific address and email in his communications, if he considers it necessary, subject to the conditions that: (i) the process specific address and email are in addition to the address registered with the IBBI, and (ii) the IP continues to service the process specific address and email for at least six months from the conclusion of his role in the process.

#### **Prohibition on Outsourcing**

The Code read with regulations made thereunder cast specific duties and responsibilities on an IP. Accordingly, the IBBI, vide Circular dated 3<sup>rd</sup> March, 2018, directed that he shall not outsource any of his duties and responsibilities under the Code. It has been specifically directed that no certificate from another person regarding the eligibility of a resolution applicant shall be obtained by him.

#### **Compliance with Applicable Laws**

A corporate person undergoing insolvency resolution process, fast track insolvency resolution process, liquidation process or voluntary liquidation process under the Code needs to comply with the provisions of the applicable laws. Accordingly, the IBBI, vide Circular dated 3<sup>rd</sup> January, 2018, directed that, while acting as an IRP, RP, or Liquidator for a corporate person under the Code, an IP shall exercise reasonable care and diligence and take all necessary steps to ensure that the corporate person undergoing any process under the Code complies with the applicable laws. It has been clarified that if a corporate person during any of the aforesaid processes under the Code suffers any loss, including penalty, if any, on account of non-compliance of any provision of the applicable laws, such loss shall not form part of insolvency resolution process cost or liquidation process cost under the Code. It further clarified that the IP will be responsible for the non-compliance of the provisions of the applicable laws if it is on account of his conduct.

#### **Disclosures by Insolvency Professionals**

The IBBI, vide Circular dated 16<sup>th</sup> January, 2018, directed that an IP, in the interest of transparency, shall disclose his relationship, if any, with (i) the CD, (ii) other professional(s) engaged by them, (iii) financial creditor(s), (iv) interim finance provider(s), and (v) prospective resolution applicant(s). He shall ensure disclosure of the relationship, if any, of the other professional(s) engaged by them with (i) themselves, (ii) the CD, (iii) financial creditor(s), (iv) interim finance provider(s), and (v) prospective resolution applicant(s). The disclosures shall be made to the IPA of which he is a member and the IPA in turn shall disseminate such disclosures on its website within three working days of receipt of the disclosure. Any wrong disclosure and delayed disclosure shall attract action against the IPs and the other professionals as per the provisions of the law. An IP shall provide a confirmation to the IPA to the effect that the appointment of every other professional has been made at arm's length relationship.

### **Fees Payable to Insolvency Professional**

In terms of section 5(13) of the Code, 'the fees payable to any person acting as a resolution professional' is included in the 'insolvency resolution process cost', which needs to be paid on priority. The Code of Conduct for IPs under the IBBI (Insolvency Professionals) Regulations, 2016 require that an IP must provide services for remuneration which is charged in a transparent manner, and is a reasonable reflection of the work necessarily and properly undertaken. He shall not accept any fees or charges other than those which are disclosed to and approved by the persons fixing his remuneration. Accordingly, the IBBI, vide a Circular dated 16<sup>th</sup> January, 2018, clarified that an IP 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 IP to any person other than the IP shall not form part of the insolvency resolution process cost. Similarly, any other professional appointed by an IP 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.

#### **Designated Website for Publishing Forms**

The IBBI has previously specified Forms for publishing Public Announcements and Brief Particulars of Invitations of Resolution Plans under the Code and the regulations made thereunder. It specified the details of the manner of publishing such Forms and also designated its website, namely, [www.ibbi.gov.in](http://www.ibbi.gov.in) for the said purposes vide Circular dated 23<sup>rd</sup> February, 2018.

#### **Confidentiality of Information relating to Processes**

The Code and regulations made thereunder contain specific provisions for keeping the information confidential or for providing information to stakeholders under confidentiality agreement. Accordingly, vide a Circular dated 23<sup>rd</sup> February, 2018, the IBBI clarified that the disclosure of information, except as provided for in the Code, or rules, regulations or circulars issued thereunder, is restricted. Unauthorised access to or leakage of such information has the potential to impact the processes under the Code. An IP, whether acting as IRP, RP or Liquidator, except to the extent provided in the Code and the rules, regulations or circulars issued thereunder, shall (i) keep every information related to confidential; and (ii) not disclose or provide access to any information to any unauthorised person.

### **Other Authorities**

#### **Minimum Alternate Tax**

The erstwhile section 115JB of the Income-Tax Act, 1961 provided that for the purposes of levy of the Minimum Alternate Tax (MAT) in case of a company, the amount of loss brought forward or unabsorbed depreciation, whichever is less as per the books of account, shall be reduced from the book profit. Government decided on 6<sup>th</sup> January, 2018 that with effect from the Assessment Year 2018-19, in case of a company against whom an application for CIRP has been admitted by the Adjudicating Authority under the Code, the amount of total loss brought forward (including unabsorbed depreciation) shall be allowed to be reduced from the book profit for the purpose of levy of MAT.

#### **Submission of Financial Information**

The RBI, vide Circular dated 19<sup>th</sup> December, 2017, had advised all FCs regulated by it to put in place appropriate systems and procedures to ensure compliance with the relevant provisions of the Code and the IBBI (Information Utilities) Regulations, 2017. Vide another Circular dated 4<sup>th</sup> January, 2018, it made the instructions contained in the earlier Circular applicable to all registered Asset Reconstruction Companies as well.

## Resolution of Stressed Assets

On 12<sup>th</sup> February, 2018, the RBI substituted the existing guidelines with a harmonized and simplified generic framework for resolution of stressed assets. It withdrew all extant instructions on the resolution of stressed assets such as Framework for Revitalising Distressed Assets, Corporate Debt Restructuring Scheme, Flexible Structuring of Existing Long Term Project Loans, Strategic Debt Restructuring Scheme (SDR), Change in Ownership outside SDR and Scheme for Sustainable Structuring of Stressed Assets with immediate effect and accordingly discontinued the Joint Lenders' Forum as an institutional mechanism for resolution of stressed assets.

The new framework requires that as soon as there is a default in a borrower's account with any lender, all lenders – singly or jointly - shall initiate steps to cure the default as per their board approved policies for resolution of stressed assets. For accounts where the aggregate exposure of the lenders is Rs.2000 crore or more on or after 1<sup>st</sup> March, 2018 (reference date), the resolution plan shall be implemented within a period of 180 days from the reference date or the date of default, as the case may be. If such plan is not implemented as per timelines, the lenders shall file insolvency application, jointly or singly, under the Code within 15 days from the expiry of the said timeline. For accounts with aggregate exposure of lenders below Rs.2000 crore, but above Rs. 1000 crore, the RBI shall announce over a two-year period the reference dates for implementing the resolution plan.

## Orders

A brief of select decisions of judicial and quasi-judicial bodies during the quarter January-March, 2018 is as under:

### Supreme Court

#### **Shivam Water Treaters Pvt. Ltd. Vs. Union of India & Ors. [SLP (C) No. 1740/2018]**

The Hon'ble Supreme Court observed: "*Having heard the learned counsel for the parties, we are only inclined to request the High Court to address the relief limited to any action taken by the respondents or any order passed by the NCLT. Barring this, the High Court should not address any other relief sought in the prayer clause. The High Court is requested not to enter into the debate pertaining to the validity of the Insolvency and Bankruptcy Code, 2016 or the constitutional validity of the National Company Law Tribunal.*"

### High Courts

#### **Joint India Private Limited Vs. PSL Limited [Company Petition No. 434 of 2015]**

The Hon'ble High Court held: "*NCLT is not a court subordinate to the High Court and hence as prohibited by the provisions of Section 41 (b) of the Specific Relief Act, 1963 no injunction can be granted by the High Court against a corporate debtor from institution of proceedings in NCLT.*" It further held: "*.. since the IBC is admittedly a successor statute to SICA, and Section 64 (2) of IBC being pari-materia to Section 22 of SICA, the argument that the Company Court has the power to injunct proceedings before under NCLT in cases of pending winding up petitions is entirely misplaced and contrary to legislative intent.*" It ordered: "*... In the circumstances, there is no bar on NCLT Ahmedabad from proceedings with IBC application.*"

#### **Akshay Jhunjunwala & Anr. Vs. Union of India & Ors. [WP No. 672/2017]**

The issue for consideration was whether the treatment of FC on a pedestal higher than an OC and bestowing a higher or better right to the FC is just and proper or whether the same offends any provision of the Constitution of India.

The Hon'ble High Court observed that the Bankruptcy Law Reforms Committee gives a rationale to the FCs being treated in a particular way vis-à-vis an OC in insolvency proceedings with regard to a company. The rationale of giving a particular treatment to a FC in the process of the insolvency of a company under the Code cannot be said to offend any provisions of the Constitution of India. It relied on two pronouncements of the Hon'ble Supreme Court: (i) In *Bhaves D. Parish & Ors.*, the Supreme Court expressed the view that the Court should be slow in staying the applicability of a piece of legislation particularly in the economic spheres even if arguable points are raised unless such provisions are manifestly unjust or glaringly unconstitutional. (ii) In *P. Laxmi Devi*, the Supreme Court held that the Courts while dealing with legislations particularly in economic matters should presume in favour of the constitutionality of a statute.

#### **Dr. Vidya Sagar Garg Vs. Insolvency and Bankruptcy Board of India [W.P. (C) 9520/2017, CM Appl. 38726-38727/2017]**

The petitioner challenged an order of the IBBI rejecting his application seeking registration as an IP on the ground that he is not a fit and proper person as he has been charge-sheeted. He contended that he had no role in the alleged infraction of law and he had filed an application for discharge. The Hon'ble High Court held that the writ petition was pre-mature and allowed the petitioner liberty to approach the High Court, once the discharge application is disposed of by the trial court.

### National Company Law Appellate Tribunal

#### **Quantum Limited Vs. Indus Finance Corporation Ltd. [CA (AT) (Ins) No. 35 of 2018]**

An appeal had been filed against an order of AA rejecting the extension of time on the ground that there is no provision to file such application after the expiry of 180 days of CIRP. The NCLAT held that in terms of section 12(2) of the Code, an RP can file an application to AA for extension of the period of CIRP only if instructed to do so by the CoC by a vote of 75% of the voting shares. The provision does not stipulate that such application is to be filed before the AA within 180 days. If within 180 days, a resolution is passed by the CoC by a majority vote of 75% of the voting shares instructing the RP to file an application for extension of period, the AA should allow time up to 90 days beyond 180<sup>th</sup> day. The NCLAT accordingly extended the period of resolution process for another 90 days and excluded the period between 181<sup>st</sup> day and passing of the order by the NCLAT for all purposes. It observed that it is the duty of the AA to find out whether a suitable resolution plan is there to be approved instead of going for liquidation, which is the last recourse on failure of resolution process.

#### **Tarini Steel Company Pvt. Ltd. Vs. Trinity Auto Components Ltd. & Anr. [CA (AT) (Ins) No. 75 of 2018]**

An appeal was filed against the impugned order of the AA approving a resolution plan with certain modifications. The appellant contended that the AA has no jurisdiction to make any modification to the resolution plan after it was approved by the CoC. Without expressing any opinion, the NCLAT gave liberty to the appellant to withdraw the resolution plan if it was not satisfied with the amendment made therein and, in that case, the AA would allow the same and proceed with liquidation.

#### **Devendra Padamchand Jain (RP) Vs. State Bank of India & Others [CA (AT) (Ins) No. 177 of 2017]**

Being unhappy with the services of the RP, the AA removed him vide the impugned order and appointed another IP as liquidator.

The RP stated in the appeal that the AA has no jurisdiction to replace him and a RP can be replaced only for the reasons mentioned in section 34 of the Code. The NCLAT held that the AA has jurisdiction to remove the RP, if it is not satisfied with his functioning, which amounts to non-compliance of section 30 (2) of the Code.

**M/s. Subasri Realty Private Limited Vs. Mr. N. Subramanian & Anr. [CA (AT) (Ins) No. 290 of 2017].**

The NCLAT clarified that after the appointment of the RP and declaration of a moratorium, the Board of Directors stands suspended, but that does not amount to a suspension of Managing Director, or any of the directors or officers or employees of the CD. To ensure that the CD remains a going concern, all the directors/employees are required to function and to assist the RP who manages the affairs of the CD during the moratorium. If one or other officer or employee had the power to sign a cheque on behalf of the CD prior to the order of moratorium, such power does not stand suspended on suspension of Board of Directors nor can it be taken away by the RP. If the person empowered to sign cheque refuses to function on the direction of the RP or misuse the power, it is always open to the RP to take away such power after notice to the person concerned.

**Innoventive Industries Limited Vs. Kumar Motors Private Limited [CA (AT) (Ins) No. 181 of 2017].**

The issue was whether an application under section 7 of the Code can be rejected on the ground of pendency of a winding up proceeding against the CD. In this case, as the High Court has already admitted the winding up proceedings and ordered for winding up of the CD, the NCLAT held that the question of initiation of CIRP against the same CD does not arise.

**State Bank of India Vs. Mr. V. Ramakrishnan and M/s. Veasons Energy Systems Pvt. Ltd. [CA (AT) (Ins) No. 213 of 2017]**

The CD invoked section 10 of the Code which was admitted, and an order of moratorium was passed. Even after declaration of the moratorium, the SBI continued to take measures under SARFAESI Act, 2002 and proceeded against the property of the personal guarantor. The AA restrained the SBI from proceeding against the personal guarantor till the period of moratorium was over. The issue involved was whether moratorium is applicable on the property of the CD as well as of the personal guarantor. The NCLAT observed that the resolution plan, if approved by the CoC and also by the AA, is not only binding on the CD but also on its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan, including the personal guarantor. Therefore, it held that the moratorium will not only be applicable to the property of the CD but also on the personal guarantor.

**Sandeep Kumar Gupta (RP) Vs. Stewarts & Lloyds of India Ltd. & Anr. [CA (AT) (Ins) No. 263 of 2017]**

The Appellant RP has challenged the appointment of another IP as Liquidator on the ground that as per section 34 (1) of the Code, the RP can only act as liquidator for the purpose of liquidation and he can be replaced by the AA only on the ground mentioned in section 34 (4). The NCLAT found that the AA was not satisfied with the performance of the RP and, therefore, it held that the AA was well within its jurisdiction to engage another person as RP or Liquidator. It further held that if any person is appointed out of the list of RPs made available by the IBBI to the AAs, it should be treated to be an appointment of RP/Liquidator on the recommendation of the IBBI.

**State Bank of India Vs. SKC Retails Ltd. [CA (AT) (Ins) No. 08 & 43 of 2018]**

The AA, vide impugned orders, directed that the CoC bear the rest of expenses incurred by the IRP in proportion to the amount claimed. The NCLAT held that as per regulation 33(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the applicant is liable to incur the expenses of RP and, thereafter, the applicant will get the amount reimbursed by CoC to the extent the amount is ratified by the CoC.

**Dakshin Gujarat VIJ Company Ltd. Vs. M/s. ABG Shipyard Ltd. & Anr. [CA (AT) (Ins) No.334 of 2017]**

The issue was whether the order of 'Moratorium' will cover the current

charges payable by the CD for supply of water, electricity etc. or not. The NCLAT observed that there is no prohibition or bar on payment of current charges of essential services. Such payment is not covered by the order of "Moratorium". If any cost is incurred towards the supply of the essential services during the "Moratorium", it may be accounted towards 'Insolvency Resolution Costs', but law does not stipulate that the suppliers of essential goods including the electricity or water to be supplied free of cost, till completion of the 'Moratorium'.

**Mr. M. Nandagopal Vs. Virtuous Urja Limited [CA (AT) (Ins) Nos. 285 & 286 of 2017]**

The NCLAT set aside the order (s) passed by the AA appointing RP, declaring moratorium, freezing of account, etc. and declared action, if any, taken by the RP under the said orders as illegal. It, however, directed: "The Adjudicating Authority will fix the fee of 'Resolution Professional', and the 'Corporate Debtor' will pay the fees for the period he has functioned."

## National Company Law Tribunal

**In the matter of Vedikat Nut Crafts Pvt. Ltd. [(IB)-40(PB)/2017]**

After perusing records, the AA could not see any reason for not inviting resolution plan despite the fact that even a period of one month as balance period of 180 days was still available. It observed: "The aforesaid reason given by the Committee of Creditor to jump to the conclusion of seeking liquidation of the company without seeking extension of time of 90 days, without inviting expression of interest by the prospective resolution plan applicant falls foul of legal provisions and fair play. It presents a tell tale story of the irregularity committed. To say the least such a decision is arbitrary and cannot be sustained." Accordingly, it directed the RP to float expression of interest as per the provision of section 25(2)(h) of IBC. It noted that in this matter, the RP is an advocate practising for many years and yet he engaged a counsel. It observed: "However, we needed the assistance of the Resolution Professional, when he appeared today we found that there was hardly any necessity to engage another counsel. It was avoidable."

**In the matter of Gupta Energy Pvt. Ltd. [MA 24, 80 & 110/2018 in C.P. No. 43/I&BP/2017]**

The AA made several important observations in this matter:

- It made clear that the AA has neither jurisdiction to question the actions of the CoC nor any discretion to examine the resolution plan to dig into, as to whether resolution plan is better or the liquidation better. As per the statute, the CoC is the competent authority and it cannot transgress into the jurisdiction of CoC.
- CoC is not a statutory authority; it is only a decision taking body, like general body of a company, in respect to a CD.
- "may" used in section 30 (4) of the Code is indeed a discretion given to CoC either to reject or accept the resolution plan with 75% voting despite the plan in all respects is correct. Such phraseology cannot be misconstrued as requisite of 75% as directory.
- The super majority provided for the decisions taken by CoC is substantive law to achieve the purpose and object of the Code. The purpose of 75% voting approval is to decide 100% creditors' stake as well as other stakeholders' stake. When many stakeholders' rights are involved, a Court cannot alter the requisite authority mentioned by the statute to take a decision on the rights of the stakeholders. If at all any such alteration is made to the approval of the CoC, two anomalies will come: one is violation of the law, and the other is the alteration of the rights of the stakeholders bereft of statutory approval. If anybody ventures to alter this majority means, it is playing with the rights of the parties.
- A resolution plan accepted by voting in CoC with less than 75% cannot even be looked into by the AA under section 31 of the Code.

**Punjab National Bank Vs. Divya Jyoti Sponge Iron Pvt. Ltd. [CP (IB) No. 363/KB/2017]**

The AA took judicial notice of exaggerated insolvency resolution cost, inclusive of fixation of fee of RP in a lump sum manner by the CoC without applying its mind in regards fate of CD, the volume, nature and complexity of CIRP. It observed that it is time to have legitimate guidelines or regulation so as to safeguard and to ensure the prospects of revival of a dying CD. It hoped that the IBBI would frame necessary regulations/guidelines for fixation of fees and resolution cost by a RP.

**In the matter of Roofit Industries [MA 701 in C.P. 1055/I&BP/2017]**

The CD had nine immoveable properties. Since the CIRP period of 180 days ended on 26th December, 2017 and no resolution plan for CD was received except for B-42, Gummidipoondi Factory, the applicant filed application for liquidation under section 33 of the Code. Considering the fact that resolution plan was submitted only in respect of one property, the AA held the view that the resolution plan could not be considered as a resolution plan under the Code and accordingly, it ordered liquidation of CD. To the RP's plea that he is not willing to act as a liquidator of CD, the AA underscored that the Code provides that where the AA passes an order for liquidation of a CD, the RP appointed for the CIRP shall act as a liquidator.

**In the matter of Burn Standard Company Ltd. [C.P. (IB) No. 244/KB/2017]**

The AA observed that the resolution plan, approved in this matter by the CoC with 100% voting share, was a unique one. It did not provide for the revival of the CD but for its closure by discharging its debts to all stakeholders, inclusive of staff and workmen. It was styled as a repayment plan of its debt, on the basis of a budgetary allocation of Rs.417 crore by the Ministry of Railways for 2018-19 to Burn Standard Co. It approved the plan on being satisfied that the same meets with the requirements of section 30 (2) of the Code.

**State Bank of India Vs. Electrosteel Steels Limited [CA (IB) No. 202 & 203/KB/2018, CP (IB) No. 361/KB/2017]**

The appellant alleged that two of the resolution applicants (Tata Steel and Vedanta Limited) were not eligible to submit the resolution plans in view of clause (d) read with clauses (j) and (i) of section 29A of the Code. It contended that the RP did not consider objections in respect of ineligibility of resolution applicants. The AA observed that it cannot make a decision to hold that the Resolution Applicants are eligible or ineligible. It observed that the RP as well as CoC are equally responsible for safeguarding the interests and assets of a CD under CIRP and would take as much caution to ensure that an applicant under the purview of section 29A of the Code is not qualified for submission of a resolution plan. It accordingly advised that the objections would be considered by the CoC for an independent decision in regard to application of section 29A.

**State Bank of India Vs. Ghotaringa Minerals Ltd. [CP (IB) No. 758/KB/2017]**

The CD submitted that application for initiation of CIRP as against the CD without exhausting the remedy available to the applicant as against the principal borrower was not maintainable. It was held that law is settled regarding the liability of a guarantor and guarantor's liability being co-extensive with that of the principal borrower, there is no legal bar in initiating action against the CD who is a guarantor.

**LML Ltd. (Corporate Debtor) [CP NO. (IB) ALD/2017 with CA No. 73/2018]**

The RP submitted the report for initiation of liquidation process. The AA observed that the RP has failed to submit the progress report within 270 days and that he filed the application for liquidation on 19<sup>th</sup> March, 2018, after issuance of notice by the AA for submission of progress report/ resolution plan. The RP was not careful in following the timeline prescribed

under the Code, and therefore, it was not proper to appoint the RP as liquidator in the case. It directed the RP to handover all the documents to the liquidator to be appointed.

**Indian Bank Vs. Kadevi Industries Limited [CP (IB) 10/7/HDB/2017]**

In the second meeting of CoC, Mr. Prabhakar, promoter of CD identified Netiel (Singapore) Pte Ltd. along with its consortium partner as resolution applicant. There were several rounds of modifications to the resolution proposal. However, this could not be finally approved, extension of 90 days was sought. The extended period of 90 days expired, but resolution plan was not approved. Consequently, the order of liquidation was passed on 9<sup>th</sup> January, 2018. While passing the order of liquidation, the AA observed "... This implies that all the parties involved in the entire CIRP process are hand in glove and made untruthful / wilful false submissions to the Adjudicating Authority. Therefore, the Adjudicating Authority has taken issue seriously and imposes a cost of Rs. 1,00,000/- (Rs. One Lakh only) each on the Financial Creditors/CoC and on the corporate debtor." It warned the RP to be careful in all his future assignments and sent strong signals to all the resolution applicants to be genuine/ truthful in the entire CIRP.

**Innovsource Private Limited Vs. Getit Grocery Private Ltd. [IB-295(PB)/2017]**

An application was filed under section 9 of the Code. It did not propose the name of any IP to act as IRP. While admitting the application, the AA observed: "*The Insolvency and Bankruptcy Board of India vide its letter dated 01.01.2018 has recommended a panel of Insolvency Professionals for appointment of Insolvency Resolution Professional in compliance with Section 16 (3) (a) of the Code in order to cut delay. The list of recommended Insolvency Professionals provides instant solution to the Adjudicating Authority to pick up the name and make appointment. It helps in meeting the time line given in the Code and the unnecessary time wasted firstly in asking the Insolvency and Bankruptcy Board of India to recommend the name and then to appoint such Interim Resolution Professional by the Adjudicating Authority*".

**Alchemist Asset Reconstruction Co. Ltd. Vs. Moser Baer India Limited [(IB)-378(PB)/2017]**

The applicant wanted to submit claim after last date for filing the claim. The AA observed that public announcement of a CIRP is required to be made by IRP by incorporating the information indicated in section 15(1), including the last date of submission of claims. There is no provision in the Code for extending the period beyond the last date for submission of claims. However, regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has provided that a creditor can submit the proof of claim even after the stipulated date mentioned in the public announcement till the approval of a resolution plan by the CoC. It held: "*The aforesaid regulation comes in direct conflict with the provisions of Parliamentary Statute with the provision of section 15(1)(c) of the Insolvency & Bankruptcy Code. We do not think that by subordinate legislation the timeline provided by Insolvency & Bankruptcy Code could be eroded in such a manner as to cause delay in the Corporate Insolvency Resolution Process.*"

**RP (In the matter of Orchid Pharma) [CA/26/IB/2018 in CP/540/(IB)/2017]**

The CIRP of Orchid Pharma Limited commenced on 17<sup>th</sup> August, 2017. The shareholders passed a resolution for the appointment of M/s. CNGSN & Associates LLP as the statutory auditor for a period of five years commencing on 1<sup>st</sup> April, 2017. However, the erstwhile auditor was not willing to give NOC unless the RP cleared 50% of its outstanding dues. The RP took up the matter with the AA, which directed: "*The earlier auditor, M/s SNB Associates, is directed to issue NoC as well as transfer the necessary papers to the newly appointed auditor of the corporate debtor, M/s. CNGSN & Associates. It has been noted by this tribunal that the dues of the earlier audit has been admitted to the extent of Rs. 1,23,69,272 and it has been included as the operational credit with respect to the corporate debtor*".

**In the matter of M/s. Gujarat NRE Coke Limited [C.P. (I.B.) No. 182/KB/2017]**

After failure of resolution even during the extended period, the AA appointed the RP as liquidator. An affidavit filed by workmen and employees emphasized that the regulations provide for slump sale of assets and, therefore, permits sale of the business of the CD, including all its assets and properties, as a going concern and Hon'ble Supreme Court and High Courts have often directed sale of assets of the company as a going concern to preserve employment, particularly when CD is a going concern. Accordingly, the AA directed: "The Liquidator shall try to dispose off the Corporate Debtor company as a going concern after publication of notice in newspaper with the reserve price which shall be equal to the total debt amount including interest and maximum period applicable for trying the sale of the Corporate Debtor as a going concern will be only three month from the date of the order if the process of sale as a going concern is failed during this period, then process of the sale of the assets of the company will be according to the provisions of sale of asset of the Corporate Debtor prescribed under section 33, Chapter VI of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016. In case it is not concluded within this period, the order of this Court directing the sale of the company as a going concern shall stand set aside and corporate debtor to be liquidated in the manner as laid down in Chapter III of the Liquidation process provided in Insolvency & Bankruptcy Code."

**M/s. Brasher Boot Company Limited Vs. M/s. Forward Shoes (India) Private Limited [CA/41/IB/2017 in TCP/205/(IB)/2017]**

The AA had already granted extension of time for a period 30 days which has expired. Further extension of time has been sought. Section 12(3) of the Code empowers the AA to extend the duration of CIRP beyond 180 days for such further period not exceeding 90 days. The proviso to said section, however, provides that extension of the period of CIRP shall not be granted more than once. The issue, therefore, is whether extension can be granted for second time where the extension has been granted earlier for 30 days. The AA held that the language of section 12(3) speaks the intention of legislature. The provision cannot take away the effect of the main provision or to remove any doubt in relation to its implementation. If another extension is not granted beyond the extension of 30 days, it will render section 12(3) of the Code otiose. Accordingly, the AA granted extension for a further period of sixty days.

**Insolvency and Bankruptcy Board of India**

**In the matter of Mr. Mukesh Mohan, IP [Order dated 8<sup>th</sup> March, 2018]**

On examination of the Interim Inspection Report detailing the conduct and transgression of the IP in the matter of Carnation Auto India Private Limited, JEKPL Pvt. Ltd. and Athena Demwe Power Limited, the Disciplinary Committee found that the IP had attempted to mislead the CoC, NCLT and the IBBI, outsourced his responsibilities to a third person, acted beyond his authority without the approval of the CoC, acted for on behalf of one of the creditors, etc. Accordingly, the Disciplinary Committee, by an interim order, debarred the IP from undertaking any new assignment either as an IRP/RP/Liquidator or otherwise under the Code. It directed the said debarment would cease to have effect on the expiry of 90 days from the date of the Order.

**In the matter of DEF [Order dated 26<sup>th</sup> February, 2018]**

The IBBI rejected the application of DEF for registration as an IP on the ground that he is not a fit and proper person for registration as a criminal proceeding under section 509 (word, gesture or act intended to insult the

modesty of a woman) of the Indian Penal Code, 1860, was pending against him before the Metropolitan Court, Mumbai. It observed: "The integrity, conduct, reputation, character and competence of the applicant are of material consideration. It is material to note how/ what others feel about the applicant who has been charge sheeted for offence under section 509 of the ....."

**In the matter of XYZ [Order dated 26<sup>th</sup> February, 2018]**

The IBBI rejected the application of XYZ for registration as an IP on the ground that he is not a fit and proper person for registration as a charge sheet has been filed before the Court of the Special Judge, CBI, Greater Mumbai. It observed: "What is material is that what others feel about the applicant who has been charge sheeted for offences such as criminal conspiracy, cheating and dishonestly inducing delivery of property, using as genuine a forged document, involved in criminal misconduct which attract imprisonment up to seven years. Does such a person inspire confidence of the stakeholders who can entrust him with property of lakhs of crores for management under corporate insolvency resolution process? Pendency of serious criminal proceedings against the applicant adversely impacts his reputation and makes him not a person fit and proper to become an IP."

# Corporate Processes

**Insolvency Resolution**

As at the end of March 2018, 525 corporates were undergoing insolvency resolution process, as indicated in Table I.

**Table I: Corporate Insolvency Resolution Process**

Quarter	No. of Corporates undergoing Resolution at the beginning of the Quarter	Admitted	Closure by			No. of Corporates undergoing Resolution at the end of the Quarter
			Appeal/ Review	Approval of Resolution Plan	Commencement of Liquidation	
Jan-Mar, 2017	0	37	1			36
Apr-Jun, 2017	36	128	8			156
July-Sept, 2017	156	228	13	2	8	361
Oct-Dec, 2017	361	141	33	8	24	437
Jan-Mar, 2018	437	167	12	12	55	525
<b>Total</b>	<b>NA</b>	<b>701</b>	<b>67</b>	<b>22</b>	<b>87</b>	<b>525</b>

NB: Data compiled from details available on NCLT Website.



Meeting of the Advisory Committee on Corporate Insolvency and Liquidation at IBBI on 10<sup>th</sup> February, 2018

The categories of stakeholders who triggered resolution processes is given in Table 2. The number of CIRPs triggered by OCs is relatively more, though number of processes initiated by FCs is on increase, prompted primarily by the Banking Regulation (Amendment) Act, 2017.

**Table 2: Initiation of Corporate Insolvency Resolution Process**

Quarter	No. of Resolutions Processes Initiated by			Total
	Financial Creditor	Operational Creditor	Corporate Debtor	
Jan-Mar, 2017	8	7	22	37
Apr-Jun, 2017	36	58	34	128
Jul-Sept, 2017	91	97	40	228
Oct-Dec, 2017	61	67	13	141
Jan-Mar, 2018	66	81	20	167
<b>Total</b>	<b>262</b>	<b>310</b>	<b>129</b>	<b>701</b>

Of the 701 corporates admitted into resolution process, 67 were closed on appeal or review. 22 resulted in resolution, while 87 yielded liquidations. The distribution of 87 corporate debtors ending up with liquidation is given in Table 3.

**Table 4: CIRPs Yielding Resolutions**

(Amount in Rs. crore)

Sl. No.	Name of CD	Not Going Concern/ Erstwhile BIFR (Yes/No)	Date of Commencement of CIRP	Date of Approval of Resolution Plan	CIRP Initiated by	Total Admitted claims of FCs	Liquidation Value	Realisation by FCs	Realisation by FCs as % of their Claims Admitted	Realisation by FCs as % of Liquidation Value
1	Trinity Auto Components Ltd.	YES	25 -05 -2017	22 -01 -2017	CD	17.38	20.82	17.38	99.98	83.49
2	Kalyanpur Cements Ltd.	YES	01 -05 -2017	31 -01 -2018	OC	131.05	119.74	98.60	75.24	82.34
3	Precision Engineers & Fabricators Pvt. Ltd.	NO	04 -04 -2017	01 -02 -2018	OC	79.27	27.24	35.06	44.23	128.71
4	Palogix Infrastructure Pvt. Ltd.	NO	16 -05 -2017	12 -02 -2018	FC	154.39	48.86	56.84	36.81	116.34
5	Shree Radha Raman Packaging Pvt. Ltd.	NO	28 -04 -2017	15 -02 -2018	OC	0.89	2.88	0.96	107.00	33.24
6	Kohinoor CTNL Infrastructure Company Pvt. Ltd.	NO	16 -06 -2017	21 -02 -2018	FC	2528.40	329.90	2246.00	88.83	680.81
7	Sharon Bio-Medicine Ltd.	NO	11 -04 -2017	28 -02 -2018	FC	891.38	181.40	294.03	32.99	162.09
8	Burn Standard Company Ltd.	YES	31 -05 -2017	06 -03 -2018	CD	58.77	593.00	65.47	111.40	11.04
9	Divya Jyoti Sponge Iron Pvt. Ltd.	NO	23 -08 -2017	13 -03 -2018	FC	77.20	16.80	34.25	44.37	203.87
10	Propel Valves Pvt. Ltd.	NO	11 -08 -2017	19 -03 -2018	OC	1.71	0.38	1.71	100.00	450.60
11	Forward Shoes (India) Ltd.	NO	19 -06 -2017	27 -03 -2018	OC	120.62	79.69	120.62	100.00	151.36
12	Haldia Coke and Chemicals Pvt. Ltd.	YES	11 -07 -2017	27 -03 -2018	CD	343.69	6.61	99.35	28.91	1503.03
	<b>Total</b>					<b>4405</b>	<b>1427</b>	<b>3070</b>	<b>69.70</b>	<b>215.11</b>

**Table 3: Distribution of Corporate Debtors Ending up with Liquidation**

State of the Corporate Debtor at the Commencement of CIRP	No. of CIRPs initiated by			
	FC	OC	CD	Total
Either in BIFR or Non-functional or both	18	21	35	74
Resolution Value ≤ Liquidation Value	18	23	35	76
Resolution Value > Liquidation Value	2	1	8	11

Note: There were 87 CIRPs that yielded liquidation. There were eight CIRPs, where CD was in BIFR or non-functional, had resolution value higher than liquidation value.

Till 31<sup>st</sup> December, 2017, 10 processes had yielded resolution, as presented in the last newsletter. During the quarter January-March, 2018, another 12 processes ended in resolution with different degrees of recovery, as given in Table 4, taking total number of CIRPs ending in resolution to 22. The resolution process has resulted in reasonably well recovery in comparison to the liquidation value. Realisation by FCs in comparison to liquidation value in the above cases was 215% while the realization by them in comparison to their claims was 70%.

## Liquidation

Till 31<sup>st</sup> December, 2017, 29 processes had yielded liquidation, as presented in the last newsletter. Three more processes, which yielded liquidations during the quarter ending 31<sup>st</sup> December, 2017, were reported subsequently. During the quarter January-March, 2018, another 55 processes ended in liquidation taking the total number of CIRPs resulting into liquidations to 87. The details of liquidations are given in Table 5.

**Table 5: CIRPs Ending with Orders for Liquidation**

Sl No.	Name of CD	Not Going Concern / Erstwhile BIFR (Yes / No)	CIRP initiated by	Date of Commencement of CIRP	Date of Liquidation Order
1	VNR Infra Metals Pvt. Ltd.	Yes	CD	03-03-2017	22-09-2017
2	Shree Rajeshwar Weaving Mills Pvt. Ltd.	Yes	CD	02-03-2017	05-12-2017
3	24 X 7 Learning Pvt. Ltd.	No	CD	28-04-2017	06-12-2017
4	Gupta Coal India Pvt. Ltd.	Yes	CD	09-03-2017	01-01-2018
5	Auro Mira Energy Company Pvt. Ltd.	Yes	CD	19-06-2017	04-01-2018
6	Esskay Motors Pvt. Ltd.	Yes	FC	29-06-2017	08-01-2018
7	Thirupur Surya Hitec Apparel Pvt. Ltd.	No	CD	14-06-2017	11-01-2018
8	Gujarat NRE Coke Ltd.	No	CD	07-04-2017	11-01-2018
9	Gujarat Oleo Pvt. Ltd.	Yes	CD	13-04-2017	17-01-2018
10	Tiruppur Surya Textiles Pvt. Ltd.	Yes	CD	14-06-2017	11-01-2018
11	Orion Kuries and Loans Pvt. Ltd.	Yes	FC	10-07-2017	15-01-2018
12	Radheshyam Fibres Pvt. Ltd.	Yes	FC	07-08-2017	15-01-2018
13	Roofit Industries Ltd.	Yes	CD	28-06-2017	22-01-2018
14	Mahaan Proteins Ltd.	Yes	OC	27-06-2017	23-01-2018
15	Jackonblock Facility Services Pvt. Ltd.	Yes	OC	17-04-2017	24-01-2018
16	Raman Ispat Pvt. Ltd.	Yes	CD	11-04-2017	31-01-2018
17	Gupta Corporation Pvt. Ltd.	No	CD	03-04-2017	01-02-2018
18	Best Deal TV Pvt. Ltd.	Yes	OC	05-05-2017	02-02-2018
19	Dev Cotex Pvt. Ltd.	Yes	CD	21-08-2017	05-02-2018
20	Ruby Cables Ltd.	Yes	CD	02-08-2017	05-02-2018
21	Somnath Textile Pvt. Ltd.	Yes	CD	28-07-2017	05-02-2018
22	Diamond Polymers Pvt. Ltd.	Yes	OC	09-08-2017	06-02-2018
23	Dunn Foods Pvt. Ltd.	Yes	CD	02-05-2017	06-02-2018
24	MM Cargo Container Line Pvt. Ltd.	No	OC	27-07-2017	06-02-2018
25	Asian Natural Resources (India) Ltd.	Yes	FC	23-05-2017	09-02-2018
26	Sri Maharaja Oil Imports and Exports India Pvt. Ltd.	Yes	FC	04-08-2017	09-02-2018
27	Jenson & Nicholson (India) Ltd.	Yes	FC	07-08-2017	12-02-2018
28	Rolex Cycles Pvt. Ltd.	Yes	OC	13-07-2017	13-02-2018
29	Clutch Auto Ltd.	Yes	CD	10-04-2017	15-02-2018
30	Ultra Drytech Engineering Ltd.	Yes	CD	06-03-2017	19-02-2018
31	Infinity Fab Engineering Co. Pvt. Ltd.	Yes	OC	27-06-2017	20-02-2018
32	Karpagam Spinners Pvt. Ltd.	Yes	OC	19-07-2017	22-02-2018
33	RHD Enterprises Pvt. Ltd.	Yes	OC	21-08-2017	22-02-2018
34	SRS Modern Sales Ltd.	Yes	CD	17-04-2017	26-02-2018
35	DLS Industries Ltd.	Yes	FC	03-05-2017	27-02-2018
36	Mega Soft Infrastructure Pvt. Ltd.	Yes	FC	23-08-2017	28-02-2018
37	Upadan Commodities Pvt. Ltd.	No	OC	01-09-2017	01-03-2018
38	Sri Padambalaji Steels Pvt. Ltd.	Yes	OC	11-09-2017	05-03-2018
39	Kadevi Industries Ltd.	No	FC	15-03-2017	23-03-2018
40	Suvarna Karnataka Cements Pvt. Ltd.	Yes	CD	28-04-2017	07-03-2018
41	Maa Tara Industrial Complex Pvt. Ltd.	Yes	OC	08-09-2017	16-03-2018
42	Aarohi Motors Pvt. Ltd.	No	CD	21-09-2017	19-03-2018
43	Veesons Energy Systems Pvt. Ltd.	No	CD	19-06-2017	19-03-2018
44	Diamond Power Transformers Ltd.	Yes	CD	06-06-2017	19-03-2018
45	Jhelum Industries Pvt. Ltd.	Yes	OC	17-08-2017	20-03-2018
46	Varadha Steels Pvt. Ltd.	Yes	OC	22-08-2017	20-03-2018
47	Barjora Steel & Re-Rolling Mills Pvt. Ltd.	Yes	OC	18-05-2017	21-03-2018
48	Super Agri Seeds Pvt. Ltd.	Yes	CD	06-09-2017	21-03-2018
49	Tirupati Ceramics Ltd.	Yes	FC	29-09-2017	22-03-2018
50	Laxminayak Rice Mill Pvt. Ltd.	Yes	FC	19-09-2017	22-03-2018
51	Rotomac Global Pvt. Ltd.	Yes	FC	20-09-2017	23-03-2018
52	Rotomac Exports Pvt. Ltd.	Yes	FC	20-09-2017	23-03-2018
53	Ennore Coke Ltd.	Yes	CD	20-06-2017	23-03-2018
54	LML Ltd.	Yes	CD	30-05-2017	23-03-2018
55	Gupta Energy Pvt. Ltd.	No	CD	21-03-2017	26-03-2018
56	Daehsan Trading (India) Pvt. Ltd.	Yes	OC	16-06-2017	27-03-2018
57	Deep Water Services (India) Ltd.	Yes	OC	20-09-2017	27-03-2018
58	Bumblebee Electronics Pvt. Ltd.	Yes	OC	25-09-2017	28-03-2018

This outcome is consistent with the expectation under the Code in the initial days of its implementation. The resolution process gives good outcomes when the process is initiated at the earliest and completed at the earliest. If it is initiated very late, the corporate is only worth its liquidation value, which even decays further with time. Many of the corporates ending up with liquidation had long pending defaults and hence were left with little organizational capital. Therefore, in most of the cases, the resolution value offered was either below the liquidation value, the resolution plan came from ineligible parties, or there was no resolution plan at all. A few years down the line, CDs would come up for resolution at the earliest instance of default of threshold amount, that is, when they have reasonably good health and stakeholders have an incentive to preserve the organizational capital and therefore even FCs will initiate resolution to avoid haircuts.

## Voluntary Liquidation

A corporate person may initiate a voluntary liquidation proceeding if majority of the directors or designated partners of the corporate person make a declaration to the effect that (i) the corporate person has no debt or it will be able to pay its debts in full from the proceeds of the assets to be sold under the proposed liquidation, and (ii) the corporate person is not being liquidated to defraud any person. At the end of 31<sup>st</sup> March, 2018, 173 corporate persons initiated voluntary liquidation, the details of which are given in Table 6.

**Table 6: Details of Voluntary Liquidations as on 31<sup>st</sup> March, 2018** (Amount in Rs. crore)

Quarter	No. Corporate Persons	Paid up Capital	Assets	Outstanding Credit	No. of Final Reports Submitted	No. of Dissolution Orders Passed
Apr-Jun, 2017	13	179	40	9	5	3
Jul-Sept, 2017	38	195	340	8	10	
Oct-Dec, 2017	56	67	180	14	7	
Jan-Mar, 2018	66	354	220	8		
<b>Total</b>	<b>173</b>	<b>795</b>	<b>780</b>	<b>39</b>	<b>22</b>	<b>3</b>

**Table 7: Reasons for Voluntary Liquidation**

Sl. No.	Reason for Voluntary Liquidation	No. of Corporate Persons
1	Not carrying business operations	98
2	Commercially unviable	25
3	Running into losses	7
4	No revenue	5
5	Promoters unable to manage affairs	2
6	Purpose for which company was formed accomplished	1
7	Contract termination	2
8	Miscellaneous	33
	<b>Total</b>	<b>173</b>

# Service Providers

## Insolvency Professionals

Since 31<sup>st</sup> December, 2016, individuals, who have the required qualification and experience and have passed the Limited Insolvency Examination, are registered as IPs. As on 31<sup>st</sup> March, 2018, a total of 1812 individuals are registered as IPs. The details are given in Table 8.

**Table 8: Registered Insolvency Professionals as on 31<sup>st</sup> March, 2018**

City / Region	The Indian Institute of Insolvency professional of ICAI	ICSI Institute of Insolvency Professionals	Insolvency Professional Agency of Institute of Cost Accountants of India	Total
New Delhi	217	145	37	399
Rest of Northern Region	160	102	27	289
Mumbai	198	72	18	288
Rest of Western Region	147	69	17	233
Chennai	75	42	7	124
Rest of Southern Region	163	100	27	290
Kolkata	108	22	10	140
Rest of Eastern Region	36	9	4	49
<b>All India</b>	<b>1104</b>	<b>561</b>	<b>147</b>	<b>1812</b>



Meeting of the Advisory Committee on Service Providers at IBBI on the 26<sup>th</sup> February, 2018

## Replacement of IRP

Section 22(2) of the Code states that the CoC may in the first meeting, by a majority vote of not less than 75% of the voting share of the FCs, either resolve to appoint the IRP as the RP or to replace the IRP by another IP to function as the RP. Accordingly, till 31<sup>st</sup> March, 2018, 92 IRPs have been replaced with RPs as shown in Table 9.

**Table 9: Replacement of IRP with RP as 31<sup>st</sup> March, 2018**

CIRP initiated by	No. of CIRPs where IRP is replaced by another IP as the RP
Corporate Applicant	35
Operational Creditor	27
Financial Creditor	30
<b>Total</b>	<b>92</b>

## Insolvency Professional Agencies

At the end of March, 2018, three IPAs are registered with the IBBI as indicated in Table 10. They are acting as front-line regulators for IPs. The IBBI is having monthly meetings with the MDs/CEOs of the IPAs to discuss various issues.

**Table 10: Insolvency Professional Agencies**

Sl. No.	Date of Registration	Name of IPA
1	28 <sup>th</sup> November, 2016	The Indian Institute of Insolvency Professionals of ICAI
2	28 <sup>th</sup> November, 2016	ICSI Institute of Insolvency Professionals
3	30 <sup>th</sup> November, 2016	Insolvency Professional Agency of Institute of Cost Accountants of India



## Insolvency Professional Entities

In the last quarter of 2017-18, nineteen entities were recognized as IPEs. As on 31<sup>st</sup> March 2018, seventy five entities are recognized as IPEs. The details are given in Table 11.

**Table 11: Quarter-wise Number of IPEs in 2017-18**

Quarter	Number of IPEs
Jan-Mar, 2017	3
Apr-Jun, 2017	13
Jul-Sept, 2017	22
Oct-Dec, 2017	18
Jan-Mar, 2018	19
<b>Total</b>	<b>75</b>

## Information Utility

There is only one Information Utility, namely, National eGovernance Services Limited which was registered with the IBBI on 25<sup>th</sup> September, 2017.

## Registered Valuer Organisations

At the end of March, 2018, three entities were recognized as RVOs, details of which are given in Table 12. They act as front line regulator for registered valuers. The IBBI is having monthly meetings with MDs/CEOs of the RVOs to discuss various issues.

**Table 12: Registered Valuers Organizations**

Sl. No.	Date of Recognition	Name of RVO	Asset Class
1	27 <sup>th</sup> December, 2017	Institution of Estate Managers and Appraisers	Land and Building
2	27 <sup>th</sup> December, 2017	IOV Registered Valuers Foundation	Land and Building Plant and Machinery, and Securities or Financial Assets
3	17 <sup>th</sup> January, 2018	ICSI Registered Valuers Organisation	Land and Building Plant and Machinery, and Securities or Financial Assets

# Examinations

## Limited Insolvency Examination

The IBBI has been conducting the Limited Insolvency Examination since 31<sup>st</sup> December, 2016 through the National Institute of Securities Markets. The examination is available from 100+ locations in the country daily. In the first phase of the examination which was available from 31<sup>st</sup> December, 2016 to 30<sup>th</sup> June, 2017, a total of 1,202 candidates passed the examination. The second phase of the examination was launched on 1<sup>st</sup> July, 2017. In the half-year July-December, 2017, a total of 1,112 candidates passed the examination. The third phase with further revised syllabus and question bank commenced from 1<sup>st</sup> January, 2018. In this phase, a total of 360 candidates have passed the examination till 31<sup>st</sup> March, 2018. The details are provided in Table 13.

**Table 13: Limited Insolvency Examination**

Phase/Quarter	Number of attempts (some candidates made more than one attempt)	Number of Successful Attempts
First Phase (January-June, 2017)	5,329	1,202
Second Phase (July-Dec. 2017)	6,237	1,112
Third Phase (January-June, 2018)	2,605	360
<b>Total</b>	<b>14,171</b>	<b>2,674</b>

## Valuation Examinations

The IBBI, being the Authority, in pursuance of the first proviso to Rule 5(1) of the Rules, commenced the valuation examinations for the Asset Classes of (a) Securities or Financial Assets, (b) Land and Building, and (c) Plant and Machinery on 31<sup>st</sup> March, 2018. These examinations are computer-based online examinations and are available from several locations across India. Candidates can register and schedule the examination on IBBI website [www.ibbi.gov.in](http://www.ibbi.gov.in).

# Advocacy and Awareness

## IP Conclave

The IBBI, in association with the three Insolvency Professional Agencies, namely, Indian Institute of Insolvency Professionals of ICAI, ICSI Institute of Insolvency Professionals Agency, and Insolvency Professional Agency of Institute of Cost Accountants of India, organised a Conclave of IPs on 10<sup>th</sup> February, 2018 in New Delhi. About 250 insolvency professionals participated in the conclave.

Dr. M. S. Sahoo, Chairperson, IBBI in his address on "Building the Institution of Insolvency Professionals" emphasized that insolvency profession is an institution of market economy and the insolvency professional is a key institution of the insolvency and bankruptcy regime in the country. He further stated that as an institution, the profession of IPs rests on two pillars, namely, talent and character. He advised the IPs not to look for ready-made solutions as the job in a process is unique, while the knowledge is evolving. He called upon the IPs to run the processes efficiently and impartially and not outsource the responsibilities.

Hon'ble Justice Mr. M. M. Kumar, President, National Company Law Tribunal, in his address on "Duties of Resolution Professional under IBC, 2016 & Best Practices" highlighted the paradigm shift in law that segregates commercial aspects of insolvency resolution from judicial aspects and empowers the stakeholders of the CD and the AA to decide matters within their respective domain expeditiously. He suggested that the optional certificate in the Form 2 of the Adjudicating Rules, 2016 entails a conflict of interest for IPs and may be modified. He also suggested that submission of claims after the last date of submission may not be in order unless it has been specifically provided in the public announcement. He called upon the IPAs to build their own professional capacity and have own faculty to build the capability of the IPs. He also suggested that IPs may consider taking insurance cover given the nature of their job.



IP Conclave at New Delhi on 10<sup>th</sup> February, 2018

Mr. Uday Kotak, Executive Vice Chairman and MD, Kotak Mahindra Bank, in his address on 'Insolvency Professional as Key Facilitator for Value Creation', underlined that the assets of the CD undergoing resolution are assets of the nation and must continue to be used for value creation. He impressed upon the insolvency professional to follow robust and sound process for engendering competitive resolution plans. He pointed out that the job of an insolvency professional requires strong process orientation, running the debtor as a going concern and communicating with the CoC and resolution applicants.



IP Workshop organized by IBBI at Mumbai on 16<sup>th</sup>-17<sup>th</sup> February, 2018

## IP Workshops

With a view to build capacity of newly registered IPs, the IBBI organised a two-day workshop on 16<sup>th</sup>-17<sup>th</sup> February, 2018, the 7<sup>th</sup> in the series, at Mumbai in which 55 IPs participated.

With the assistance of the World Bank Group and the IBBI, the Indian Institute of Insolvency Professionals of ICAI organized a three-day workshop for 50 IPs in Mumbai on 18<sup>th</sup>-20<sup>th</sup> January, 2018. With similar assistance, the ICSI Institute of Insolvency Professionals organized a three-day workshop for 40 IPs in Mumbai on 22<sup>nd</sup>-24<sup>th</sup> January, 2018. The workshops were led by two leading IPs from the United Kingdom, Mr. Gordon Stewart and Mr. Richard Heis, who are Past-President and Treasurer of INSOL International, respectively and supported by Ms. Antonia Preciosa Menezes, Senior Financial Sector Specialist, FCI GP of the WBG as well as a few Indian IPs handling large CIRPs. The workshop utilized a combination of international best practices, panel discussions with the expert IPs and case studies to train the participants.



IPs and Trainers at workshop at Mumbai on 20<sup>th</sup> January, 2018



IPs and Trainers at workshop at Mumbai on 24<sup>th</sup> January, 2018

## Other Awareness Programmes

Chairperson, Whole Time Members and other senior officers of the IBBI participated in several programmes (conferences, seminars, round tables, workshops, etc.) on insolvency and bankruptcy across the country as guest speakers. These included programmes organized by Indian Banks' Association, National eGovernance Services Limited, ASSOCHAM, Odisha Economic Association, SEBI, Institute of Cost and Accountants of India and Insolvency Professional Agencies.



Dr. M. S. Sahoo, Chairperson delivering the Dr. K. M. Pattnaik Endowment Lecture at Golden Jubilee Annual Conference of the Odisha Economic Association at Bhubaneswar on 11<sup>th</sup> February, 2018



Dr. M. S. Sahoo with Mr. Sudarshan Sen, ED, RBI, Mr. Rajnish Kumar, Chairman, SBI and Ms. Usha Ananathasubramanian, Chairperson, IBA at an IBA Conference at Mumbai 10<sup>th</sup> January, 2018



Dr M. S. Sahoo addressing SEBI officers at Mumbai on 23<sup>rd</sup> March, 2018

## Essay Competition

The IBB, in its endeavour to create awareness about the insolvency and bankruptcy regime amongst the students of higher education, is promoting essay competitions through Institutes of Learning. The list of students successful in the essay competitions is given in Table 14.

**Table 14: Winners of Essay Competition**

Sl. No.	Institute of Learning	Name of Winner	Subject of Essay	Runner-up	Subject of Essay
1	National Law Institute University, Bhopal	Mr. Utsav Mitra	Emerging Jurisprudence on Corporate Insolvency: Director Duties in the Twilight Zone	Ms. Shefali Chawla	The Frenzy of Private Settlement under the Insolvency and Bankruptcy Code
2	Institute of Law, Nirma University, Ahmedabad	Mr. Kaivalya Shah	Reforms by RBI for Resolution of Stressed Assets: An Overnight Chronicle?	Ms. Namrata Dubey	The New Conundrum: Guarantor in Insolvency Regime
3	Indian Institute of Management, Rohtak	Mr. Naveen Kumar	Corporate Liquidation	Mr. Parag Navani	Corporate Liquidation

The Gujarat National Law University, Gandhinagar in collaboration with the IBB organized an all India Research Writing Competition on 'Legal Landscape of Insolvency and Bankruptcy in India - Journey since 2016'. The winners of the competition are listed in Table 15.

**Table 15: Winners of Research Writing Competition**

Position	Name of Winner	Institute	Subject
First	Mr. Subhadip Choudhuri	Gujarat National Law University	Should the Insolvency and Bankruptcy Code be Shadowed by Limitation
Second	Ms. Ayushi Singh	National Law University, Jodhpur	Investigation of Interpretative Growth of Corporate Insolvency Resolution Statutes: Settlements, Open-Ends and Lacunae
Third	Mr. Rohan Kohli	National Law India University, Bhopal	The Impact and Relevance of Provisions of the Companies Act, 2013 in the Wake of New Insolvency Law



Chairperson, Whole Time Members and Senior Officers as on 31<sup>st</sup> March, 2018

Disclaimer: This Newsletter is meant for the sole purpose of creating awareness and must not be used as a guide for taking or recommending any action or decision, commercial or otherwise. The reader must do his own research or seek professional advice if he intends to take any action or decision in any matter covered in this Newsletter.