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COC DHARMA

Maximisation

Resolution

Fairness

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CoC Dharma: Maximisation with Fairness

Failure of a firm to service debt, which is otherwise known as insolvency, is an outcome of the market. The Insolvency and Bankruptcy Code, 2016 (Code), therefore, envisages market-led solutions to address insolvency. It offers resolution, wherever possible, and liquidation, wherever required, of the firm.

CoC

The Code believes that a limited liability firm is a contract between equity and debt. As long as debt is serviced; equity, represented by a Board of Directors, has complete control of the firm. When the firm fails to service the debt, control of the firm shifts to creditors, represented by a committee of creditors (CoC), for resolving insolvency.

Resolution invariably entails restructuring of business as well as liabilities of the firm as a going concern. The operational creditors (OCs) typically do not have the ability and willingness to restructure liabilities. The CoC may opt for liquidation to realise whatever is available, if it comprises OCs. The financial creditors (FCs), on the other hand, generally have the ability to restructure liabilities and to take business decisions, as may be required for resolution. The CoC, therefore, comprises FCs in the interest of resolution.

The Bankruptcy Law Reforms Committee , which conceptualised the Code, used, inter alia, two design principles, namely, (a) the liabilities of all creditors, who are not part of the process, must also be met; and (b) the rights of all creditors shall be respected equally. The Code accordingly envisages resolution for maximising the value of the assets of the firm to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders. Therefore, the CoC must maximise the value of the assets of the firm and balance the interests of all stakeholders, irrespective of its composition.

Maximisation of Value

If a firm has failed to service debt, most probably it is not performing well. If it has potential to perform well, the Code envisages and facilitates resolution to put the firm on a viable track, that improves its performance and maximises the value of its assets. The turnaround of the firm thus is the heart of resolution, that preserves the going concern surplus.

The Code does not contemplate recovery as it destroys the value of the firm. When creditors recover their dues - one after the other or simultaneously - from the available assets of the firm, nothing may be left in due course, bleeding the firm to death. Further, recovery serves the interests of the creditors on first come first serve basis - the creditor, who initiates recovery first, realises the highest, and who initiates the last, realises the least. The Code, therefore, prohibits recovery during resolution.

The Code does not contemplate liquidation either. Liquidation destroys the going concern surplus, and renders its resources idle till reallocation, reducing the value of the assets of the firm. Further, it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. The Code, therefore, does not allow liquidation until the option of resolution is exhausted.

Resolution preserves the going concern surplus (excess of fair value over the liquidation value), while liquidation destroys it. Therefore, the CoC must prefer resolution wherever fair value exceeds liquidation value. It must not confuse fair value with resolution value, which a resolution applicant offers for resolution of the firm. It must engender competitive resolution plans through appropriate enhancement to push up the resolution value. Then it must extrapolate the resolution value to arrive at the fair value. If such fair value exceeds the net liquidation value (liquidation value minus the cost of liquidation), it must avoid liquidation.

The Code does not contemplate a haircut simpliciter that diminishes value for a creditor. It also does not contemplate sale of the firm where stakeholders merely trade places. One does not need the Code (IP, interim finance, calm period, essential services, CoC, resolution applicant, resolution plan, voting, etc.) for selling a firm or any rights in the firm. The Code envisages resolution plans which uniquely package limitless combinations of business, financial and operational restructuring entailing change of technology, product mix or management; acquisition or disposal of assets or businesses; infusion or withdrawal of resources in cash or kind; modification of capital structure or leverage; capability and credibility of resolution applicant; etc.; immediately or over a period of time, as may be required to resolve insolvency of the firm as a going concern. Consequently each resolution plan has a unique likelihood of resolving insolvency and its sustainability. The Code, therefore, envisages application of mind by market savvy FCs, through deliberation and voting for approval of the best resolution plan.

Fairness

The CoC or its members do not own the assets of firm. They hold the assets as trustees for the benefit of all stakeholders. The gain or pain emanating from the resolution, therefore, need to be shared by the stakeholders within a framework of fairness and equity. The CoC must not allocate a higher share of gain or a lesser share of pain to FCs. It must not allow FCs to be paid before the OCs are paid. That is why the Code mandates that the OCs be paid first and be paid at least the liquidation value.

A firm gets credit from FCs and OCs. Neither credit is enough for a firm nor does the State have any reason to promote either. If OCs, for example, are not provided a level playing field, they would not provide goods and services on credit. If their interests are not protected, they will perish. This defeats the objective of promoting the availability of credit. Similar argument applies to classes of OCs. The CoC, therefore, must not discriminate amongst the creditors.

The Code allows initiation of resolution process on default of a threshold amount. If it is initiated early, the firm can probably meet the dues of all the creditors, and yet remain viable. In such cases, the CoC must not approve a resolution plan that curtails the rights of shareholders. Wherever such curtailment is absolutely required, it must be reasonable and not more than required, subject to the shareholders getting at least the liquidation value.

Statutory Role

The CoC has a statutory role. It discharges a public function. It can even write off dues of stakeholders. It must, therefore, apply the highest standards of duty of care. It must not only follow the due process, but also be fair towards all stakeholders and transparent in discharge of its responsibilities.

The CoC influences the resolution plan through an evaluation matrix. If the evaluation matrix assigns zero weight to claims of OCs, the resolution applicant may not offer any value for them. If it assigns a higher weight to claims of a class of OCs, the resolution applicant may offer higher value for that class of OCs. Similarly, if it assigns zero weight to improved productivity, resolution applicant may not offer better technology. The CoC must design the evaluation matrix to engender resolution plans that consider the interests of all stakeholders of the firm with fairness and equity, while maximising the value of the assets of the firm.

The Code has demarcated responsibilities of CoC and IP, while assigning certain responsibilities to them jointly. For example, the CoC needs to approve a resolution plan after considering its feasibility and viability, while the IP needs to file an application before the Adjudicating Authority in respect of fraudulent transactions seeking appropriate relief. The CoC must not encroach upon the role of IP and must not allow the IP to encroach upon its role.

The CoC must have competent and empowered representatives of FCs. The representatives must attend the meetings, deliberate the matters and take decisions in accordance with the provisions of the Code. It should also benefit from the presence of members of the suspended board of directors of the CD and OCs in its meetings. This will prevent delay in concluding of the process and consequential depletion of value.

Conclusion

A firm embodies interests of many stakeholders. The CoC holds the key to the fate of the firm and its stakeholders. It is the custodian of public faith during resolution process. It must pursue resolution and avoid recovery, liquidation, or sale of the firm. While pursuing resolution, it must maximise the value of the firm for the benefit of all stakeholders. It must rise to the occasion to preserve its stature and authority granted under the Code.

Dr. M. S. Sahoo

IBBI Updates

Reconstitution of Audit Committee

The Governing Board of IBBI, in its meeting held on 26th June, 2018, reconstituted the Audit Committee as under:

- Mr. Gyaneshwar Kumar Singh, Member
- Mr. Unnikrishnan A., Member, and
- Whole Time Member in-charge of Finance and Accounts of the Board.

Employee Workshops

The International Finance Corporation (IFC) organised a workshop on 23rd June, 2018 for senior officers of IBBI. Ms. Antonia Preciosa Menezes, Senior Financial Sector Specialist, IFC conducted the workshop along with Mr. David Kerr, former CEO of the UK Insolvency Practitioners Association and Mr. Neil Taylor, former Chairman of the Joint Insolvency Examination Board in the United Kingdom.

The workshop focused on monitoring and regulation of regulated entities such as IPAs, IPEs and IUs. It discussed regulation and oversight of IPs, including investigation and disposal of complaints against them. It also discussed improving the capacity of IPs through examination and continuing professional education, based on experience of licensing examinations in the UK.

The IFC organised another workshop for the benefit of the officers of the MCA, IBBI and the IPAs on 'MSME Insolvency' on 25th June, 2018 focusing on challenges in MSME insolvency and the appropriate framework for resolving the same in Indian context. Experts from the Australian Financial Security Authority, the High Court of Korea, the UK Insolvency Practitioners Association and the Supreme Court of Thailand provided their perspectives through video.

IFC Workshop on 23rd June, 2018 at New Delhi

IFC Workshop on 25th June, 2018 at New Delhi

Distinguished Speakers

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

- Dr. Sameer Sharma, IAS, DG and CEO of Indian Institute of Corporate Affairs on 'Hourglass Philosophy'
- Mr. P. R. Ramesh, Chairman, Deloitte India on 'Data and Technology for Regulators'
- Mr. Rashesh Shah, President, FICCI on 'CIRP from the Perpsective of Resolution Applicants'
- Mr. Pavan Kumar Vijay, Chairman, Corporate Professional on 'Valuation, Valuation Standards and Valuation Profession'
- Mr. Anurag Das, Adviser, The Blackstone Group on 'India Stressed Assets Platform'
- Mr. Shardul Shroff, Executive Chairman of Shardul Amarchand Mangaldas & Co. on 'CIRP: Practice, Emerging Challenges and Jurisprudence'

Talk by Dr. Sameer Sharma, IAS, DG and CEO, IICA

Talk by Mr. P. R. Ramesh, Chairman, Deloitte India

Talk by Mr. Rashesh Shah, President, FICCI

Parliamentary Committee

Dr. M. S. Sahoo, Chairperson, along with Secretary and other officers of the Department of Financial Services, appeared before the Parliamentary Standing Committee on Finance on 17th April, 2018 for the briefing meeting on Banking Sector in India – Issues, Challenges and the Way Forward including Non-Performing Assets / Stressed Assets in Banks / Financial Institutions.

Working Group on Graduate Insolvency Programme

IBBI constituted a Working Group on 15th May, 2018 to recommend the structure, content and delivery mechanism for the Graduate Insolvency Programme. The composition of the Working Group is given in Table 1.

Table 1: Working Group on Graduate Insolvency Programme

Sl. No.	Name and Position	Position in the Group
1	Mr. T. V. Mohandas Pai, Chairman, Manipal Global Education	Member
2	Mr. P. R. Ramesh, Chairman, Deloitte India	Member
3	Mr. Sumant Batra, President, Society of Insolvency Practitioners of India	Member
4	Dr. K. V. Subramanian, Professor, Indian School of Business	Member
5	Dr. Sameer Sharma, Director General, Indian Institute of Corporate Affairs	Member
6	Dr. M. S. Sahoo, Chairperson, Insolvency and Bankruptcy Board of India	Convener
7	MDs/CEOs of the IPAs	Invitees

Working Group on Individual Insolvency

The IBBI reconstituted the Working Group on Individual Insolvency on 4th May, 2018 for recommending the strategy and approach for implementation of the provisions of the Code relating to (i) Guarantors to Corporate Debtors, and (ii) Individuals having Business, and drafting of related Rules and Regulations. The composition of the Working Group is given in Table 2.

Table 2: Working Group on Individual Insolvency

Sl. No.	Name and Position	Position in the Group
1	Mr. P. K. Malhotra, Former Law Secretary, Government of India	Chairperson
2	Mr. Sumant Batra, President, SIPI	Member
3	Mr. Jiji Mammen, MD & CEO, MUDRA	Member
4	Mr. Anil Bhardwaj, Secretary General, FISME	Member
5	Mr. Vijay Mahajan, Chairman, BASIX	Member
6	Dr. H. S. Shylendra, Professor, IRMA, Anand	Member
7	Ms. Bindu Ananth, Chairperson, IFMR	Member
8	Mr. Sankar Chakraborti, CEO, SMERA	Member
9	Representative of the Ministry of Corporate Affairs	Member
10	Mr. Sunil Pant, CEO, Indian Institute of Insolvency Professionals of ICAI	Invitee
11	Dr. S. K. Gupta, CEO, Insolvency Professional Agency of Institute of Cost Accountants of India	Invitee
12	Ms. Alka Kapoor, CEO, ICSI Institute of Insolvency Professionals	Invitee
13	Ms. Ranjeeta Dubey, GM, IBBI	Member Secretary

Meeting of the Working Group on Individual Insolvency on 13th June, 2018

MoU with IICA

IBBI signed an MoU with the IICA on 10th April, 2018. The MoU was signed by Mr. K. R. Saji Kumar, Executive Director, IBBI and Ms. Geeta Singh Rathore, Chief Administrative Officer, IICA in the august presence of Mr. Injeti Srinivas, IAS, Secretary, Ministry of Corporate Affairs; Dr. M. S. Sahoo, Chairperson, IBBI; Mr. Gyaneshwar Kumar Singh, the then Director General, IICA and other senior officers. The MoU envisages collaboration in research and publication, advancement of knowledge, capacity building, awareness and advocacy in the area of insolvency and bankruptcy.

Signing of MoU between IBBI and IICA in the presence of Mr. Injeti Srinivas, Secretary, MCA and Dr. M. S. Sahoo, Chairperson, IBBI on 10th April, 2018

Legal and Regulatory Framework

Central Government

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018

The President of India promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 on 6th June, 2018 with a view to balancing the interests of various stakeholders, especially interests of home buyers and Micro, Small and Medium Enterprises (MSMEs), promoting resolution over liquidation of corporate debtor by lowering the voting threshold of CoC and streamlining provisions relating to eligibility of resolution applicants. The Ordinance mostly implemented the recommendations of the Insolvency Law Committee.

The following are the key amendments brought in by the Ordinance:

(a) The Ordinance recognises the home buyers as financial creditors. This would give them representation in the CoC and make them an integral part of the decision-making process during CIRP. It will also enable them to invoke section 7 of the Code against defaulting developers;

(b) Recognising the importance of MSMEs in terms of employment generation and economic growth, the Ordinance enables a promoter to be a resolution applicant for his enterprise undergoing CIRP, if he is not a wilful defaulter. It also empowers the Central Government to allow further exemptions or modifications with respect to the MSMEs, if required, in public interest;

(c) The Ordinance allows withdrawal of applications, after admission, with the approval of 90% of voting share of the CoC;

(d) With a view to encourage resolution as against liquidation, the Ordinance has reduced voting threshold from 75% to 66% for all major decisions such as approval of resolution plan, extension of CIRP period, etc. Further, it has reduced the voting threshold for routine decisions to 51% to facilitate the corporate debtor to continue as a going concern during the CIRP;

(e) The Ordinance provides for a mechanism to allow participation of security holders, deposit holders and all other classes of financial creditors that exceed a certain number, in the meetings of the CoC, through authorised representative(s);

(f) The Ordinance has fine-tuned section 29A of the Code to exempt pure play financial entities from being disqualified because of NPAs. Similarly, it has provided a three-year cooling-off period from the date of such acquisition for a resolution applicant holding NPA by virtue of acquiring it in the past under the Code;

(g) Taking into account the wide range of disqualifications contained in Section 29A, the Ordinance provides that the resolution applicant shall submit an affidavit certifying its eligibility to take part in the process, placing the primary onus of eligibility on it;

(h) The Ordinance provides for one-year grace period for the successful resolution applicant to fulfil various statutory obligations required under different laws; and

(i) The Ordinance explicitly excludes the guarantors from the purview of moratorium under the Code.

Sections 227 to 229 of the Code

The Central Government, vide notification, appointed the 1st day of May, 2018 as the date on which the provisions of section 227 to section 229 (both inclusive) of the Code shall come into force.

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

Rule 19 of the Companies (Registered Valuers and Valuation) Rules, 2017 empowers the Central Government to constitute "Committee to advise on valuation matters" to make recommendations on formulation and laying down of valuation standards and policies for compliance by companies and registered valuers. It also provides for composition of the Committee. The Central Government amended the said rule on 13th June, 2018 to include the Presidents of the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India and the Institute of Cost Accountants of India as *ex-officio* members in the Committee.

Committee to advise on valuation matters

The Central Government constituted the Committee to advise on valuation matters on 23rd April, 2018 under rule 19 of the Companies (Registered Valuers and Valuation) Rules, 2017. The composition of the committee is given in Table 3.

Table 3: Committee to advise on valuation matters

Sl. No.	Name and Position	Position in the Committee
1	Dr. R. Narayanaswamy, Professor of Finance and Accounting, IIM, Bangalore	Chairperson
2	Dr. Navrang Saini, Whole Time Member, IBBI	Member/Convener
3	Mr. S. K. Biswal, Additional Secretary, Legislative Department	Member
4	Mr. K. V. R. Murty, Joint Secretary, MCA	Member
5	Mr. Rajesh Kumar Kedia, Director, CBDT	Member
6	Mr. Saurav Sinha, Chief General Manager-in-Charge, RBI	Member
7	Mr. Jayanta Jash, Chief General Manager, SEBI	Member
8	Sh. A. Ramana Rao, General Manager, IRDAI	Member
9	Mr. B. B. Goyal, Representative of IOV Registered Valuers Foundation	Member
10	Mr. Vijay Kumar Jhalani, Representative of ICSI Registered Valuers Organisation	Member
11	Mr. Varun Gupta, Representative of Confederation of Indian Industry	Member
12	Mr. R. K. Bansal, Representative of Federation of Indian Chambers of Commerce and Industry	Member

Meeting of the committee to advise on valuation matters on 31st May, 2018

IBBI (Annual Report) Rules, 2018

Section 229 of the Code requires IBBI to prepare an annual report giving a full account of its activities during the previous year. The Central Government notified the IBBI (Annual Report) Rules, 2018 on 1st May, 2018 providing the form for preparation of the report giving a true and full accounts of its activities, policies and programmes during the previous financial year and requiring its submission within ninety days of the end of the financial year.

IBBI (Form of Annual Statement of Accounts) Rules, 2018

Section 223 of the Code requires IBBI to maintain proper accounts and other relevant records and prepare an annual statement of accounts. The Central Government notified the IBBI (Annual Report) Rules, 2018 on 1st May, 2018 providing the form for preparation of annual statement of accounts and balance sheet showing the financial results and significant accounting policies and requiring submission of the same to the Comptroller and Auditor-General of India, for the purposes of audit, within three months of the end of the financial year.

Cross Border Insolvency

Sections 234 and 235 of the Code enable the Central Government to enter into reciprocal agreements with the Government of any country for enforcing the provisions of the Code.

The Central Government has proposed to add a chapter in the Code to introduce a globally accepted and well recognized cross border insolvency framework, considering the fact that corporates transact businesses in more than one jurisdiction and have assets across many jurisdictions. It put out the draft chapter in public domain on 20th June, 2018 seeking comments of the stakeholders. It proposes as under:

(a) Access: It allows foreign insolvency officials and foreign creditors direct access to domestic courts and confers on them the ability to participate in and commence domestic insolvency proceedings against a debtor.

(b) Recognition: It allows recognition of foreign proceedings and remedies by the domestic court based on such recognition. If domestic courts determine that the debtor has its centre of main interests in the foreign country, they will consider insolvency proceedings in such foreign country to be the main proceedings, if not, they will be considered non-main proceedings.

(c) Cooperation: It lays down the basic framework for cooperation between the domestic and foreign courts, and domestic and foreign insolvency professionals. It provides for direct cooperation between: (i) domestic courts and foreign insolvency representatives; (ii) domestic courts and foreign courts; (iii) foreign courts and domestic insolvency professionals; and (iv) foreign insolvency representatives and domestic insolvency professionals.

(d) Coordination: It provides a framework for commencement of domestic insolvency proceedings, when a foreign insolvency proceeding has already commenced or vice versa.

Financial Stability and Development Council

The Central Government, *vide* notification dated 23rd May, 2018, modified the composition of the Financial Stability and Development Council. Accordingly, the Council under the chairpersonship of the Union Finance Minister now comprises:

(a) Minister of State, in-charge of Department of Economic Affairs
(b) Governor, Reserve Bank of India
(c) Finance Secretary and/ or Secretary, Department of Economic Affairs
(d) Secretary, Department of Revenue
(e) Secretary, Department of Financial Services
(f) Secretary, Ministry of Corporate Affairs
(g) Secretary, Ministry of Electronics and Information Technology
(h) Chief Economic Adviser, Ministry of Finance
(i) Chairperson, Securities and Exchange Board of India
(j) Chairperson, Insurance Regulatory and Development Authority of India
(k) Chairperson, Pension Fund Regulatory and Development Authority and
(l) Chairperson, Insolvency and Bankruptcy Board of India

Insolvency and Bankruptcy Board of India

Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2018

Section 16 (3) (a) of the Code requires the Adjudicating Authority (AA) to make a reference to IBBI for recommendation of an IP who may act as an interim resolution professional (IRP) in case an operational creditor (OC) has made an application for corporate insolvency resolution process (CIRP) and has not proposed an IRP. IBBI, within ten days of the receipt of the reference from the AA, is required under section 16 (4) of the Code to recommend the name of an IP to AA against whom no disciplinary proceedings are pending. Similarly, Section 34 (4) of the Code requires the AA to replace the resolution professional (RP), if (a) the resolution plan submitted by the RP under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or (b) IBBI recommends the replacement of a RP to the AA for reasons to be recorded in writing. In such cases, the AA may direct IBBI under section 34 (5) of the Code to propose the name of another IP to be appointed as a liquidator. IBBI is required under section 34 (6) to propose the name of another IP within ten days of the direction issued by the AA.

Since every IP is equally qualified to be appointed as IRP/Liquidator of any CIRP/Liquidation Process, if otherwise not disqualified, and in the interest of avoiding administrative delays, IBBI prepared a panel of IPs, bench wise based on the registered office of the IP, for appointment as IRP or Liquidator and share the same with the AA. The AA may pick up any IP from the panel for appointment as IRP or Liquidator for a CIRP or Liquidation, as the case may be. Accordingly, IBBI issued the 'Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2018' on 31st May, 2018 to govern the process of empanelment.

In accordance with the said Guidelines, IBBI invited expression of interest on 6th June, 2018 from IPs for inclusion of their names in the panel. After following the due process, it has prepared the panel of IPs for July-December, 2018 and shared the same with the AA.

Compliance Certificate for IPAs

The Code read with the IBBI (Insolvency Professional Agencies) Regulations, 2016, the IBBI (Model Bye Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 and Guidelines, Circulars, and Directions issued thereunder cast several duties, responsibilities and obligations on the IPAs. Section 196 (1) (g) of the Code mandates IBBI to monitor performance of the IPAs. Keeping in view the institutional role of the IPAs, and to facilitate monitoring of both their performance and compliance of statutory requirements, as also in the interest of transparency and accountability, IBBI, in consultation with IPAs, devised and issued, *vide* circular dated 19th April, 2018, the format of Annual Compliance Certificate. This certificate is to be submitted by the IPAs to IBBI and to be displayed on its website within 45 days of the closure of every financial year.

Commencement of Disciplinary Proceeding

The Code envisages that an IP may be appointed as IRP, RP, liquidator, or a bankruptcy trustee if no disciplinary proceeding is pending against him. The Code, however, does not define 'disciplinary proceeding'. Hence, IBBI, *vide* Circular dated 23rd April 2018, clarified that (i) a disciplinary proceeding is considered as pending against an IP from the time he has been issued a show cause notice by IBBI till its disposal by the disciplinary committee; and (ii) an IP who has been issued a show cause notice shall not accept any fresh assignment as IRP, RP, liquidator, or a bankruptcy trustee under the Code.

Pre-registration Educational Course

In terms of the IBBI (Insolvency Professionals) Regulations, 2016, an individual is eligible for registration as an IP, subject to meeting other requirements, if he has completed a pre-registration educational course. Hence, IBBI, *vide* circular dated 23rd April, 2018, specified the details of pre-registration educational course prepared in consultation with the IPAs. The course shall be conducted by the IPAs in not less than 50 hours either in class room sessions or in MOOCs environment that provides participants an opportunity to do the tasks themselves in a near-real environment with practical examples. It shall be reviewed on 31st March, 2019.

Fees and Expenses

The IBBI, *vide* circular dated 12th June, 2018, directed the IP to ensure that the fee payable to him, fee payable to an IPE and fee payable to registered valuers and other professionals, as also other expenses incurred by him during CIRP are (a) reasonable; (b) directly related to and necessary for the CIRP; (c) determined by the IP on an arms' length basis; (d) duly approved by CoC, wherever required; and (e) paid through banking channel. The circular also specifies the fees and expenses which shall not be included in the Insolvency Resolution Process Cost. It directs the IPs to disclose fee and other expenses incurred for CIRP to the IPA of which he / she is a member and the IPA in turn shall disseminate such disclosures on its website within three working days of the receipt of the disclosure and monitor the disclosures and submit a monthly summary of non-compliance by its IPs to IBBI by the seventh day of the succeeding month.

Other Authorities

The SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2018

Chapter VII of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 govern aspects such as pricing, shareholder approval, disclosure, tenure, etc.; relating to preferential issue of securities. The SEBI amended the said Regulations on 31st May, 2018 to provide that provisions of Chapter VII, except the lock-in provisions, shall not apply where preferential issue of specified securities is made in terms of the resolution plan approved under section 31 of the Code.

The SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2018

Proviso to regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 provides that an acquirer is not entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition, above the maximum permissible non-public shareholding. The SEBI amended the said Regulations on 31st May, 2018 to exempt acquisition pursuant to a resolution plan approved under section 31 of the Code from the rigour of the proviso.

The SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2018

The SEBI (Delisting of Equity Shares) Regulations, 2009 govern listing and delisting of equity shares. SEBI amended the said Regulations on 31st May, 2018 to provide that the provisions of the Regulations shall not apply to delisting of equity shares of a listed entity made pursuant to a resolution plan approved under section 31 of the Code, if such plan, (a) lays down any specific procedure to complete the delisting of such share; or (b) provides an exit option to the existing public shareholders at a price specified in the resolution plan. The shareholders shall be provided exit at a price which shall not be less than the liquidation value as determined under regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Further, the public shareholders shall be provided an exit at a price which shall not be less than the price at which promoters or other shareholders, directly or indirectly, are provided exit.

The said Regulations require expiry of a specified period before delisted equity shares can be re-listed. The SEBI amended the Regulations to exempt this requirement for listing of equity shares of a company which has undergone CIRP under the Code.

The SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2018

SEBI amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 on 31st May, 2018 to provide that the provisions of regulation 17 (Board of Directors), regulation 18 (Audit Committee), regulation 19 (Nomination and Remuneration Committee) and regulation 20 (Stakeholders Relationship Committee) shall not be applicable during the insolvency resolution process period in respect of a listed entity which is undergoing CIRP under the Code, provided that the role and responsibilities of the Board of Directors or the Committees, as the case may be, specified in the respective regulations shall be fulfilled by the IRP or the RP.

The said Regulations require that all material related party transactions shall be approved by the shareholders and no related party shall be eligible to vote to approve such resolution. SEBI amended these provisions to provide that these provisions shall not apply in respect of a resolution plan approved under section 31 of the Code, subject to the event being disclosed to the recognised stock exchanges within one day of the resolution plan being approved.

The amendments further provide that the provisions of regulation 24 (5) (disposal of shares in a material subsidiary), 24 (6) (disposal of assets), 31A (5), (6) and (7) (b) (reclassification of promoter or promoter group), and 37 (scheme of arrangement) shall not apply to these activities as part of a resolution plan approved under section 31 of the Code.

The amendments require disclosure of the following events in relation to the CIRP of a listed corporate debtor under the Code:

(a) Filing of application by the corporate applicant for initiation of CIRP, also specifying the amount of default;

(b) Filing of application by financial creditors for initiation of CIRP against the corporate debtor, also specifying the amount of default;

(c) Admission of application by the AA, along with amount of default or rejection or withdrawal, as applicable;

(d) Public announcement made pursuant to order passed by the AA under section 13 of the Code;

(e) List of creditors as required to be displayed by the corporate debtor under regulation 13 (2) (c) of the CIRP Regulations, 2016;

(f) Appointment/ replacement of the RP;

(g) Prior or post-facto intimation of the meetings of the CoC;

(h) Brief particulars of the invitation of resolution plans under section 25 (2) (h) of the Code;

(i) Number of resolution plans received by RP;

(j) Filing of resolution plan with the AA;

(k) Approval of resolution plan by the AA or rejection, if applicable;

(l) Salient features, not involving commercial secrets, of the resolution plan approved by the AA; and

(m) Any other material information not involving commercial secrets.

Orders

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

Supreme Court

Swastik Coal Corporation Private Limited & Ors. Vs. Union of India & Ors [WP (Civil) No. 321/2018]

In view of the objections in Writ Petition (C) Nos. 99/2018 and 100/2018, the Hon'ble Supreme Court requested the President, National Company Law Tribunal to transfer both the matters to a Bench which consists of one Judicial and one Technical member.

In view of the request in Writ Petition (C) No. 115 of 2018, the Hon'ble Supreme Court allowed supply of a copy of the Resolution Plan(s) to the Corporate Debtors/Stakeholders, which was agreed by the Ld. Attorney General for India.

Anant Kajare Vs. Eknath Aher & Anr. [Civil Appeal No (s). 20971/2017]

The Hon'ble Supreme Court directed that a Sale-cum-Monitoring Committee be set up comprising of the Resolution Professional, one SEBI representative, one Investor Representative and one Representative of CCIL and RTSCL and their associates / sister concerns. This Committee would then appoint Registered Valuers to value the properties that have been unearthed during the insolvency process of CCIL, RTSCL, and the assets of their associates/ sister concerns. After valuation has been done, each of these properties would be sold under the aegis of the NCLT. The Hon'ble Supreme Court attached all properties of CCIL, RTCSL as well as assets and other properties of their associate and sister concerns. The Hon'ble Supreme Court appointed M/s. Deloitte as the special auditor to carry out forensic audit not only of CCIL and RTSCL, but also of their associates and sister concerns.

High Courts

SEL Manufacturing Company Ltd. & Anr Vs. Union of India & Ors [CWP No. 9131 of 2018]

An application was admitted under section 7 of the Code. The petitioner moved a writ petition challenging the admission, submitting several questions of facts. The Hon'ble High Court held that these questions of facts can be effectively adjudicated by the NCLAT in appeal proceedings for which efficacious and effective remedy has been provided under section 61 of the Code. It observed: *"Assuming that there is some merit in the petitioners' contention that all these issues were raised before the Adjudicating Authority and the same have not been decided on merits, yet it would not be a sufficient ground to entertain the writ petition. There is a sea of difference between 'erroneous exercise of jurisdiction' or 'lack of jurisdiction' in a Tribunal. The erroneous or failure to exercise jurisdiction by a Tribunal is a ground which can be effectively taken before the Appellate Authority."* It also observed that availability of an alternative remedy does not preclude a writ petition under Article 226, but facts and circumstances must justify it. Therefore, it declined to go into merits of respective contentions and relegated the petitioners to the alternative remedy of appeal as provided under the Code.

Mr. H. K. Sharma Vs. Union of India & Ors [WP Nos. 15812/2018 (GM – RES) & 21803-21929/2018 & 21930-21933/2018]

The Hon'ble High Court had stayed the operation and implementation of the Companies (Registered Valuers and Valuation) Rules, 2017 as far as the petitioners were concerned. However, the stay has since been vacated.

National Company Law Appellate Tribunal

State Bank of India Vs. D. S. Rajender Kumar [CA (AT) (Insolvency) No. 87 to 91/2018]

The AA *vide* an order dated 23rd January, 2018, did not allow the financial creditors to proceed against the personal guarantors till the moratorium period came to an end. While disposing of the appeal against the said order, the NCLAT reiterated its decision in the matter of State Bank of India Vs. V. Ramakrishnan & Ors. It, however, made clear that order of moratorium would be applicable only to the proceedings against the CD and the personal guarantor, if pending before any court of law/tribunal or authority. The order of moratorium will not be applicable for filing application for triggering CIRP under sections 7, 9 or 10 of the Code against the guarantor or the personal guarantor under section 60 (2). If CIRP has been initiated against the CD, the insolvency and bankruptcy process against the personal guarantor can be filed under section 60 (2) before the same NCLT and not before the Debt Recovery Tribunal.

Pr. Director General of Income Tax (Admn. & TPS) Vs. M/s. Spartek Ceramics India Ltd. & Anr. [CA (AT) (Insolvency) No. 160 of 2017]

Two appeals were filed in pursuance to two notifications issued by Government under section 242 of the Code against two schemes of demergers sanctioned by the BIFR. In this context, the NCLAT considered several issues and ruled as under:

(a) The Executive can fill in the deficiency but cannot amend the substantive provision of the Code. It is a settled law that the legislature can authorise an executive authority to modify either existing or future laws but not any of the essential features. The executive authority cannot act beyond the powers delegated by the legislature. The Central Government is empowered to make such provisions not inconsistent with the provisions of the Code, which is necessary for removing the difficulties in giving effect to the Code.

(b) In absence of any ground shown for removing any difficulty in giving effect to the provisions of the Code and as the Central Government cannot exercise powers conferred under section 242 of the Code for removing the difficulties arisen due to 'SICA Repeal Act, 2003' or omission of provisions of the 'Companies Act, 2013', the NCLAT cannot act pursuant to impugned notification dated 24th May, 2017 to entertain the appeal.

(c) By virtue of the amendment of the SICA under the Eighth Schedule of the Code, an appeal or reference or inquiry before BIFR stands abated. In such cases, a company can make a reference within 180 days of commencement of the Code without any fee. If it prefers any application under section 10 beyond 180 days, it is required to pay the requisite fee. However, the demerger scheme already sanctioned cannot be treated as a resolution plan.

Mr. Chetan Sharma Vs. Jai Lakshmi Solvents (P) Ltd & Anr. [CA (AT) (Insolvency) No. 66 of 2017]

In this appeal, the appellant among other things, challenged admission of an application under section 8 of the Code. The NCLAT observed that the 'dispute' under section 5(6) of the Code must be between the corporate debtor and the operational creditors. A unilateral transfer of liability does not constitute a 'dispute' within the meaning of section 5(6) of the Code and an inter-se dispute between two groups of shareholders of the corporate debtor does not constitute a 'dispute' in reference to operational creditors.

Sharvan Kumar Vishnoi Vs. Crown Alba Writing Instruments P. Ltd. [CA (AT) (Insolvency) No. 253 of 2018]

The AA appointed Mr. Anurag Goel as RP on the ground that the appellant, Mr. Sharvan Kumar Vishnoi was already appointed as RP in another matter. The NCLAT observed that except for special circumstance and good reasons, the AA should not replace an RP, if named and approved by the FC or CoC. Though it was not inclined to interfere with the impugned order of the AA, it made clear that the said order will not affect the career of the appellant.

Mack Soft Tech Pvt. Ltd. Vs. Quinn Logistics India Ltd. [CA (AT) (Insolvency) No. 143 of 2017]

In this matter, the appellant did not dispute that it had taken debt and did not repay. It, however, took the plea that the amount so paid was time barred. The NCLAT observed that there is a continuous cause of action as evident from the books of account of the appellant and hence the application under section 7 of the Code cannot be held to be barred by limitation.

Tomorrows Sales Agency Pvt. Ltd. Vs. Rajiv Khurana, RP of Power HImalyas Ltd. & Ors. [CA (AT) (Insolvency) No. 162 of 2018]

The NCLAT noted that it was not clear from resolution plan whether the resolution applicant had consent of 76% shareholders for transfer of their shares in favour of it. It observed: *"Prima facie, it appears that without following the procedure of transfer of shares in accordance with Companies Act, 2013 or taking consent of shareholders, if any, 'Resolution plan' is prepared for transfer / acquisition of share, one may allege that the same is violative under Section 30 (2) (e) of the Insolvency and Bankruptcy Code, 2016."*

Rajputana Properties Pvt. Ltd. Vs. Ultra Tech Cement Ltd. & Ors. [IA No. 594 of 2018 in CA (AT) (Insolvency) No. 188 of 2018]

It was held that-

(a) While scrutinizing the resolution plan under section 30 (2), the RP cannot hold or decide as to who is ineligible under section 29A. Neither section 30 (2) nor any other provision in the Code confers such power on the RP to scrutinize the eligibility of Resolution Applicants.

(b) As per section 30 (2), the RP is required to examine whether resolution plan confirms the provisions as mentioned therein but he cannot disclose it to any other person, including resolution applicant(s), who has submitted the resolution plan. The resolution plan submitted by one or other resolution applicant being confidential cannot be disclosed to any competitor Resolution Applicant nor any opinion can be taken or objection can be called for from other resolution applicants with regard to one or other resolution plan.

(c) The RP is not only required to give notice of the meeting to the members of CoC, but also to the members of suspended Board of Directors or partners of the corporate person, as the case may be. The OCs or their representatives are also to be informed to attend the meeting of CoC, if the amount of the aggregate dues is not less than ten percent of the debt.

(d) The CoC, while approving or rejecting one or other resolution plan, should follow transparent procedure. It should record the reason in brief while approving or rejecting one or other resolution plan. The members of suspended Board of Directors or its partners, OCs or their representatives and resolution applicant(s) are not mere spectators. They may express their views in the meetings of the CoC. Their views should be recorded and taken into consideration by the CoC before approving or rejecting one or other resolution plan.

The resolution applicant(s) are entitled to be present when the resolution plans are opened and placed before the CoC as per section 30 (5). At this stage, they may point out whether one or other resolution applicant is ineligible in terms of section 29A or not.

Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. & Ors. [CA (AT) (Insolvency) No. 185 of 2018]

In this matter, the CIRP remained stayed for about 166 days due to an interim order passed by the AA. The AA failed to exclude the period of 166 days from the CIRP period. The NCLAT observed that it is always open to the AA to exclude certain period for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances. It listed out the following good grounds and unforeseen circumstances, for excluding the intervening period for counting of the total period of 270 days:-

(a) If the CIRP is stayed by a court of law or the AA or the Tribunal or the Supreme Court;

(b) If no RP is functioning for one or other reason during the CIRP, such as removal;

(c) The period between the date of order of admission/moratorium is passed and the actual date on which the RP takes charge for completing the CIRP;

(d) On hearing a case, if the AA or the Appellate Tribunal or the Hon'ble Supreme Court reserved the order and finally passed order enabling the RP to complete the CIRP;

(e) If the CIRP is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and CIRP is restored; and

(f) Any other circumstances which justifies exclusion of certain period.

Accordingly, the NCLAT excluded 166 days from the CIRP period in this matter.

Uttam Galva Metallics Ltd. Vs. State Bank of India [CA (AT) (Insolvency) No. 315 of 2018]

Two separate applications for admission under section 7 was under consideration of the AA, which passed two separate orders to list on 26th June, 2018 for pronouncement of orders. The CD approached the NCLAT to defer pronouncement of admission orders by the AA as the CD had already negotiated with a third party for investing money and the matter would be settled if the orders were not pronounced for four weeks. The NCLAT declined to allow the prayer with an observation that even if the applications were admitted, it would be open for the CDs or their promoter along with the proposed investor to negotiate with the FC and settle the claims and move the appropriate forum for relief.

Velamur Varadan Anand Vs. Union Bank of India & Anr. [CA (AT) (Insolvency) No. 161 of 2018]

A question arose as to whether to count 180 days of CIRP from the date of admission, as per the provision of the Code or from the date of knowledge of the RP. In this matter, the application was admitted on 16th August, 2017 and on receipt of the intimation, the IRP took charge on 14th September, 2017. The NCLAT accordingly directed the AA to exclude 30 days for the purpose of counting the period of CIRP.

TATA Steel Ltd. Vs. Liberty House Group Pte. Ltd. & Ors. [CA (AT) (Insolvency) No. 198 of 2018]

The NCLAT allowed the CoC to consider the resolution plans submitted by all the resolution applicants during the pendency of the appeal. It, however, made clear that while considering the resolution plans, the CoC should give reason for rejecting one or other resolution plan and also record the suggestions, if any, given by the Board of Directors or the OC or their representative. While accepting the resolution plan, the CoC will consider whether the resolution applicant(s) have made any provision with regard to other creditors such as 'secured creditors', 'unsecured creditors', 'employees' and 'Government dues'.

National Company Law Tribunal

Punjab National Bank Vs. Bhushan Power and Steel Ltd. [CA No. 152(PB)/2018 in CP (IB)-202 (PB)/2017]

In this matter, the CoC had refused to entertain the resolution plan submitted by Liberty House as it was submitted after the due date. The AA examined this keeping in view the provisions of section 12 and 25 (2) (h) of the Code read with regulations 38 and 39 of the CIRP Regulations. It noted that a resolution applicant shall endeavour to submit a resolution plan 30 days before the expiry of the maximum period permitted under section 12 for completion of CIRP. Where a resolution plan has been submitted 30 days before the extended period of 270 days, the same has to be considered. The AA held that a resolution plan shall not be rejected on the ground of delay emanating from process document or any other document entirely circulated by the RP or the CoC. The rejection shall be on substantive ground as against flimsy one.

Numetal Ltd. Vs. Satish Kumar Gupta RP and Anr. [I.A. Nos. 98, 110-112 & 121/NCLT/AHM/2018 in CP (IB) No. 40/7/NCLT/AHM/2017]

In the matter, the resolution plans of Numetal Limited and Arcelormittal India Pvt. Ltd. (Resolution Applicants) were rejected by RP on the ground of disqualifications under section 29A of Code. While disposing of the applications of resolution applicants, the AA observed as under:

(a) Proviso to section 30 (4) of the Code provides that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, he shall be allowed by the CoC, such period, no exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c)of section 29A . The RP ought to follow provision of section 29A (C) read with section 30 (4) for the purpose of affording the opportunity to the resolution applicants before declaring them ineligible.

(b) The CoC is also creature of the statute and can be termed as an instrumentality of state and, are under the statutory obligation to follow the mandate of the Code, the basic principle of administrative law and law of the land.

(c) The nature of duties assigned to a RP is similar to a public servant, as he is being an appointee of the Code.

Bank of Baroda and Binani Cements Limited & Ors. Vs. Vijay Kumar V. Iyer, RP [CA (IB) Nos. 201, 210, 227, 233, 234, 245, 246 and 249/KB/2018 and IA (IB) Nos. 248, 343 and 344/KB/2018 in CP (IB) No. 359/KB/2018]

Several applications challenging the resolution process and seeking impleadment were filed before the AA. While disposing of these applications, the AA made several observations:

(a) "The question is whether an adverse decision can be taken by the CoC as against an applicant who has submitted a prospective bidding plan without giving an opportunity for hearing? In a case of this nature the applicant being a leading company in India who is capable of taking over a corporate debtor like the debtor in hand and can compete with other bidders denying an opportunity to hear the applicant is quite unjust and arbitrary.";

(b) "Ld. Sr. Counsel for the RP submits that RP's hand is locked from doing anything as per the process document and hence he cannot take a decision for reconsideration of an offer placed before him by an applicant who was not ranked as first. ...... If he can only identify the bidders on the advice of the CoC why he appointed advisors of his own? No valuable answers forthcoming. All answers based on process document which according to us not legally binding on RP. .... Whenever an offer comes which would be in the interest of all stakeholders then no doubt he is duty bound to accept the offer and to be placed before the CoC...";

(c) *"None of the above objections are substantive objections which can be raised in a case of this nature where the RP as well as CoC is duty bound to ensure maximization of value within the time frame prescribed by the code. Such an object in finding out bidder who can offer maximum bid amount so as to safeguard the interest of all stakeholders of the corporate debtor is lacking in the case in hand from the side of the RP as well as from the side of the CoC….. So can a revised offer subsequent to the submission of a resolution plan amounts to violation of section 25 (2)(h)? Our answer is not.";*

(d) *" … not considering the revised offer of the applicant that the offer was not made in accordance with the process document and to consider it would be a deviation of the process laid down in the process document by the CoC does not inspire our confidence….. The reason that the process document does not permit the resolution professional and the CoC in considering the revised offer of the applicant have no legal force at all. Even if the process document restricts CoC and the Resolution Professional which has been made by the CoC for their own convenience and for guidelines to the resolution applicant as well as to the Resolution Professional that is not a ground to deny a participant right in participating in the bidding process.";*

(e) *"Non consideration of revised offer is found without assigning substantive reasons and refusal to consider it is found on flimsy grounds on the strength of Process Documents and time line fixed in evaluation criteria. The entire decisions of RP as well as CoC in respect of identifying one resolution plan from among six plans and denying opportunity to have negotiation so as to raise the bid amount by the willing bidders other than H1 bidder is found vitiated that they have acted against the objective of the code and against the interest of various stakeholders of the corporate debtor and also acted unfairly, arbitrarily and against the interest of the competing bidders including the applicant Ultra Tech.";*

(f) *"Upon the above said factors we come to a legitimate conclusion that the process of selection and identification of one plan alone when there is other competing bidders is evidently available and who showed willingness to offer full satisfaction of the claim of all stakeholders claim denying opportunity to them from participating the bidding process even if CIRP period of 270 days ever expired is found filed with irregularity and in violation of the objective of the Code and Regulations."; and*

(g) *"Here, in this case the resolution professional is a chartered accountant by profession. However he failed to take business decisions so as to run the corporate debtor by his own. He managed to run the company by appointing about 22 representatives who are from his own partnership. Truly running an insolvent company pending exploration of a resolution process by him alone is not an easy task. A resolution professional like the RP in a case of this nature need some basic training in regards handling the resolution independently, efficiently so as to tackle with the multiple question may arises for consideration form different stakeholders in the courses of resolution. Whenever a question arise even if answerable by the RP independently or with advice from his advisors, he comes to Adjudicating Authority for having determination so that he is not exercising his own effort to see that all the questions posed to him during the process is answered justifiably. He shift that burden too to the Adjudicating Authority. So also in a case of this nature nobody taking care of operational creditors claim. At least minimum amount as required under the Code is not offered to those creditors in the plan of revival. But because of the supremacy of financial creditors who has control over the process, their claims neglected or rather ignored. It is time to recognise their voice also in the Committee of Creditors. While there was a need for reforms the Regulations to endure that it is not misused or misinterpreted, there cannot be any question on the fact that independence and competency of a resolution professional is essential for preserving the object of the code in a transparent manner giving no room to have interruption from any corner. Hopefully, we believe that IBBI take note of all the above observations and to do the needful review of the Code and Regulations."*

SBJ Exports & Mfg. Pvt. Ltd. Vs. BCC Fuba India Limited [CP-659/2016]

The AA noted that in the meeting of the CoC on 5th February, 2018, the two FCs expressed their views in favour of liquidation of the CD subject to the approval of Competent Authority, while the period of 180 days for the CIRP was to come to an end on 12th February, 2018. The approval of the Oriental Bank of Commerce representing 35.59% of vote sharing came on 7th February, 2018 whereas the approval of the Axis Bank representing 64.41% came only on 16th February, 2018. The AA observed: *"A strange phenomena has developed in so far as the functioning of CoC is concerned. In a number of cases it has now been seen that Members of the CoC are nominated by Financial Creditors like Banks without conferring upon them the authority to take decision on the spot which acts as a block in the time bound process contemplated by the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code'). Such like speed breakers and roadblocks obviously cause obstacles to achieve the targets of speedy disposal of the CIR process."* Accordingly, it directed the RP to bring this order to the notice of the CoC and directed service of this order to IBBI for taking suitable action in respect of the conduct of the Members of CoC in the present matter as well as in the day to day functioning of the Members of CoC generally speaking.

Sunrise Polyfilms Pvt Ltd. Vs. Punjab National Bank [IA 27 of 2018 in CP (IB) No. 89/7/NCLT/AHM/2017]

The RP filed an application praying for an order of liquidation. The AA noted that the RP did not invite application for resolution plan and straight away decided to go for liquidation. It observed: *"The very object/intention of the Code is to revive a company under the CIRP and not to liquidate it. In the instant case it is clear that the resolution professional has omitted to perform his statutory duties and responsibilities nor the COC seems to have shown much interest and made efforts to achieve the object of the Code for exploring the possibilities for revival of the company."* Accordingly, it directed the RP to act as per section 25 of the Code.

Mussadi Lal Kishan Lal Vs. Ram Dev Int. Ltd. [(IB)-178 (PB)/2017]

The State Bank of India is a member of the CoC. The name of Mr. K.V. Somani, who has been on the panel of erstwhile State Bank of Hyderabad which is now merged with State Bank of India, was proposed by the CoC to act as the RP by replacing the earlier RP, Mr. Rakesh Kumar Jain. The AA observed: *"In such like circumstances, the proposed Resolution Professional cannot be regarded as independent umpire to conduct CIRP as required by well settled practice and therefore, we cannot accept the request made by the learned Counsel for the CoC and reject the application."*

Bango Industries Vs. UT Limited [CP (IB) N0. 08/KB/2018]

The OC filed an application under section 9 of the Code. The CD contested it, *inter alia*, on the ground that the debt, if any, was barred by limitation. The AA noted that the date of default was in 2012 but the corporate debtor had acknowledged its liability in the letter sent to the OC in 2015. Therefore, the application filed by the OC is well within the limitation period which is three years from the date of acknowledgment of debt by the CD.

M. K. Shah Exports Ltd. Vs. Assam Company India Ltd. [IA No. 24 of 2018 in CP (IB)/20/GB/2017]

The applicant filed an application seeking a direction to RP / CoC to relax the eligibility criteria regarding requirement of minimum tangible net worth of Rs.400 crore on the ground that it was high, arbitrary, and unreasonable. The applicant contended that net worth of major tea industry players in India are between Rs.96 crore to Rs.292 crore, and, therefore, none of them would participate in the process. The AA observed: *"The above revelation, in my considered opinion, serve to show that the criteria so fixed …. cannot escape being found arbitrary, unreasonable and, therefore, unsustainable in law thereby offering this Authority a ground to invoke its extraordinary jurisdiction to rectify the illegalities so noticed in the eligibility criteria, … ".*

RBL Bank Limited. Vs. MBL Infrastructure Limited. [CA (IB) Nos. 238, 270 & 280/KB/2018 in CP (IB) No. 170/KB/2017]

In this matter, the AA answered two questions, namely (a) whether the AA has power to extend the time limit prescribed under section 12 of the Code, and (b) whether reconsideration of vote in respect of approval of resolution plan is permissible. The AA noted that the very objective of the Code is resolution of failing CD and its liquidation. It also noted that in this case, the CIRP could not be completed within the statutory period by acts beyond control of applicants and non-exclusion of time would cause grave injustice to them. Accordingly, it excluded the period of stay and time taken by it for disposal of a CA from CIRP period. It, however, observed: "*…if we are satisfied that grave injustice would be occurred if a prayer of extension for a no fault of applicant is occurred this Adjudicating Authority can extend the time limit provided under section 12 of the Code. However, we are not asked to extend the time limit as provided under section 12 of the Code but to exclude the period due to litigation and upon the above said finding we already held that exclusion of period due to litigation is liable to be allowed in a case of this nature. So we are not holding that we can extend the period of CIRP as prescribed under section 12 of the Code.*"

Dhaivat Anjaria RP in the matter of State Bank of India Vs. Electrosteel Steel Limited [CA (IB) Nos. 271, 277 & 281/2018 in CP No. 361/KB/2017]

In this matter, the RP filed an application for approval of resolution plan submitted by Vedanta Limited and approved by the CoC. It was submitted that the Konkola Copper Mines (KCM), which is a connected party of the Vedanta Limited, has been convicted by a foreign court to pay a fine, in default, imprisonment for three years and this punishment is much more severe than what (punishable for two years or more) is contemplated in section 29A(d). The AA observed: "*it appears to us that an offence punishable with imprisonment is different with that of an offence punishable with imprisonment or fine. The KCM in the case in hand, was found guilty of an offence punishable with imprisonment or fine for a term not exceeding 3 years or both. So there was no imprisonment, disqualification as stated under Clause (d) of Section 29A of the Code.*"

Punjab National Bank Vs. Rana Global Ltd. [(IB)-196(ND)2018]

The AA noted that the IRP did not take steps merely because of a typographical error in his name, while his address and registration number were correct, in the order of admission. It found inexplicable as to why the FC considered it fit after more than a month to seek correction in the order. It observed: "*Such a lackadaisical attitude in such proceedings is inexplicable. It would be necessary and expedient to bring it to the notice of IBBI for an appropriate action.*".

Vistar Financiers Pvt. Ltd. Vs. Datre Corporation Limited [CA No. 209 of 2018 in CP (IB) No. 441/KB/2017]

One of the FCs of the CD filed an application under section 60 (5) of the Code seeking recall of the order of admission. The AA held that it has no power to recall or review its own orders under the Code. It observed: "*No doubt Section 60 (5) of the IBC states that this Tribunal can entertain and dispose of any question of priorities or any question of law or facts, arising out of or in relation to the Insolvency Resolution or liquidation proceeding of the Corporate Debtor or corporate person under this Code. If above provision of law is considered, we feel that the prayer to recall and cancel our own Order of Admission of CIRP would not come within the purview of the above section. Moreover, the Order of Admission of CIRP is appealable order u/s 32 of IBC.*" It also observed: "*Before parting with, it appears to me that we have to endorse my appreciation to the work rendered by the Resolution Professional, Rakesh Kumar Aggarwal for seeing that the Resolution Plan is approved by the CoC so as to give a rebirth to the dying company.*"

M/s. Universal Bamboo Vs. Hindustan Paper Corporate Ltd. [IB/273(ND)/2018]

An application was filed by an OC for initiation of CIRP. The CD objected that OC, being a sole proprietorship concern, does not have any legal status. The OC submitted that this is a curable defect and it has submitted an amended petition in the name of the proprietor. The AA held: "*While such an amendment may be permitted in other civil proceedings, amendment of petition under the Code cannot be entertained as it would tantamount to proceedings de novo and relegating it back to the initial stage with the name of the Operational Creditor totally replaced. We are accordingly of the opinion that the petition in the name of the firm is not maintainable, neither is it amenable to amendment.*"

M/s. Stanbic Bank Ghana Limited Vs. M/s. Rajkumar Impex Pvt. Limited [CP/670/IB/2017]

FC, M/s Stanbic Bank Ghana Limited had extended a loan to M/s Rajkumar Impex Ghana Limited (principal borrower), a wholly owned subsidiary of Rajkumar Impex Private Limited (Guarantor). On default, the FC initiated proceedings against principal borrower in Ghana and against guarantor before the English Court. While the proceedings before Ghana Court was in process, the English Court passed an order dated 8th August, 2017 against guarantor. On the basis of the said order, the FC filed an application under scetion 7 of the Code for initiation of CIRP of the guarantor. While admitting the application, the AA observed: "*we hereby admit the petition as the petitioner has made out a prima facie case and also proved that there is debt due payable by the Principal Borrower and there is decree made against the Respondent/Guarantor. This Tribunal has no jurisdiction to enforce the foreign decree; however, there is no bar in it taking cognizance of the foreign decree.*"

Punjab National Bank Vs. Vindhya Vasini Industries Limited [MA 44 of 2018 in CP (IB)-1170(MB)/2017]

The CoC passed a resolution for liquidation of the CD. While considering the application for liquidation, a question was raised whether the process of liquidation can also be initiated against a property belonging to a mortgagor to the Bank. The AA noted that the debt in question was intricately linked with the property mortgaged and can not be segregated in the process of liquidation proceedings. It allowed the liquidator to liquidate the said property under section 60 (2) of the Code.

Sri Renga Creative Apparels India Pvt. Ltd. Vs. Aruppukotai Sri Jayavilas Ltd. [MA/103/IB/2018 in TCP/527/(IB)/CB/2017]

During the CIRP was on, the matter was settled between the OC and CD while the FC did not have any objection. The AA released the CD from CIRP and recalled the order of admission. However, it made clear that the CD shall pay the expenses of public announcement and other miscellaneous expenses which have been incurred by the IRP during the CIR process.

Mr. Anuj Jain, RP for Jaypee Infratech Ltd. Vs. Manoj Gaur & Ors. [CA No. 26/2018 in CP No. (IB)77/ALD/2017]

The RP filed an application under sections 43, 45, 48, 60 (5) (a) and 66, read with section 25 (2) (j) of the Code seeking direction that transactions entered into by promoters and directors of the CD creating mortgage of 858 acres of immovable property owned and in possession of the CD, to secure the debt of related party, namely, Jaiprakash Associates Ltd. (JAL) by way of mortgage deeds dated 12th May, 2014, 4th March, 2016, 24th May, 2016, 29th December, 2016, and 7th March, 2017 are fraudulent and wrongful transactions within the meaning of section 66 of the Code. He also sought directions against promoters and directors of the CD to make such contributions to the assets of the CD as the AA may deem fit and direction

to lenders of JAL to release or discharge security interest created by the CD over its immovable property. The AA held that the mortgage of land of the CD in favour of lenders of JAL amounts to transfer of interest in the property of the CD for the benefit of the creditor, i.e. JAL, and putting it in a beneficial position vis-à-vis other creditors, is a preferential transaction. It, however, declared the transactions which were executed during the look back period, that is, from 10th August, 2015 to 9th August, 2017 (date of commencement of CIRP) as fraudulent, preferential and undervalued as defined under section 66, 43 and 45 respectively of the Code. It, accordingly, passed an order for release of the security interest created by the CD in favour of lenders of JAL under section 44 (1) (c) of the Code. It also passed an order under section 48 (1) (a) of the Code that the properties mortgaged by way of preferential and undervalued transactions shall be deemed to be vested in the CD. It excluded the mortgage deed dated 12th May, 2014 for 100 acres of land executed by the CD in favour of ICICI Bank against the facility agreement dated 12th December, 2013 as it was outside the relevant time as provided under section 43 of the Code.

Gujarat NRE Coke Ltd. (In Liquidation) [CA (CAA) No. 198/KB/2018]

The company went into liquidation under the Code. The promoter of the company filed an application under sections 230 to 232 of the Companies Act, 2013, for obtaining sanction regarding scheme of compromise and arrangement between the petitioner and the secured / unsecured creditors, foreign convertible currency bonds and shareholders of the CD. The AA allowed the application under the aforesaid sections and appointed liquidator as the Chairperson of the meetings for scheme of compromise and arrangement.

Wig Associates Pvt. Ltd. [MA No. 435 of 2018 in CP No. 1214/I&BC/NCLT/MB/MAH/2017]

The AA considered the issue whether the resolution plan submitted by a resolution applicant who is related to the CD can be approved after section 29A of the Code has come into force on 23rd November, 2017. It noted that the proceedings under the Code are continuous proceedings and, therefore, cannot be halted, altered or changed once commenced till is finalization. It observed that once a game is started in a playground, it is unfair to alter the rule of the game once started till it finishes. So, one must not be allowed to change rules of a game midway so as to get a desired result. It held: *"The admitted factual position is that the Petition was "Admitted" on 24th August, 2017 by an Order of NCLT Mumbai, as against that the Ordinance was pronounced on 23rd of November 2017. It is hereby held that the impugned Resolution plan is eligible for due adjudication."*

While deliberating on the nature of satisfaction required under section 31 of the Code, the AA held: *"The 'satisfaction' as mandated in the statute can either objective or subjective or both, but it is a condition precedent. Naturally "satisfaction" is to be recorded in writing with reasons after proper application of mind. The pros and cons of the scheme is required to be studied before recording subjective satisfaction. If the CoC has submitted the scheme of Resolution after visualising the advantage and dis-advantage then such proposal can be termed as just and equitable fit for according satisfaction. An 'objective satisfaction' revolves around the object of enactment of the Code as enshrined in the Preamble of the I & B Code i.e. to revive the financially stressed corporate body. And the 'subjective satisfaction' depends upon logical analysis of the Financial Data supplied so as to match with the business model of the Corporate Debtor. A methodical scrutiny of Financial Statement is expected before concurring with approval of the CoC. Per contra, absence of recording of subjective satisfaction may lead to situation that, being sanctioned without judicial analysis, thus may not be sustainable in the eyes of law. There are no two views, and must not be, that this I & B Code provides greater accountability both on the Insolvency Professional, as also on CoC, mainly comprise of lender Banks. Their approval of a Resolution Plan ought to be judged with due diligence. Therefore, in our humble interpretation the recording of an analytical 'satisfaction' is a condition precedent before granting of approval."*

M/s Takkshill Enterprises Vs. M/s IAP Company Pvt. Ltd. [CA Nos. 60, 69 and 70/C-III/ND/2018 in CP-IB-446/ND/2017]

In order to avoid administrative delays in communication of reference by the AA to the Board and recommendation of an IP for appointment as IRP, IBBI prepares a panel of IPs in accordance with the Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2017. The IBBI forwarded a panel of IPs for appointment as IRP/Liquidator for the period 1st January, 2018 to 30th June, 2018. The AA appointed one of the IPs from the panel to act as IRP for the CIRP of the CD. Instead of discharging the functions as IRP, he filed an application for discharge, effectively subverting the provisions of the Code. The AA directed a notice to IBBI and made it as a party to the application, more by way of assistance. The IBBI filed a detailed reply. While dismissing the application of the IP with costs of Rs.50,000, the AA observed: *"The practice of IRP's appointed by NCLTs based on panel provided by IBBI and subsequently trying to resile from their consent earlier given and that too upon appointment by the Adjudicating Authority (AA) is strongly required to be eschewed and is to be nipped in the bud at the earliest opportunity."* It directed IBBI to initiate such actions as contemplated under several of the regulations framed by it in relation to IPs for this purpose and treat the application as a compliant of an aggrieved person.

Marvel Business Pvt. Ltd. Vs. J. R. Organics Ltd. [CP/A No. (I&B) No. 12/ALD/2017]

The AA rejected the application filed under section 7 of the Code for initiation of CIRP as occurrence of default was not proved and application was incomplete. More importantly, the applicant suppressed facts. Since application was made with manipulation in documents, it attracted provisions of section 75 of the Code. Accordingly, the application was rejected with a cost of Rs.5 lakh.

State Bank of India Vs. Orissa Manganese & Minerals Limited [CA (IB) Nos. 371,398, 402, 470 and 509/KB/2018 in CP (IB) No. 371/KB/2018]

FC filed an application against the decision taken by CoC in respect of distribution of upfront payment which is allegedly against the provisions of the Code and regulations. While dismissing the application, the AA held: *"CoC is the fit person to take its own business decision. We find no reason to disturb or sit on the decision of the CoC taken on by majority vote share. The application requires no consideration and it is liable to be dismissed."* It noted that instances of challenging resolution plans by unsuccessful resolution applicants is on increase and it is one among the reasons for delay in approval of resolution plan. In this case, the application was filed without any valid grounds. Accordingly, the AA dismissed the application with a cost of Rs. 1 lakh.

Union Bank of India Vs. Paramshakti Steel Limited [MA No. 243/2018 in CP No. (IB) 727 (MB)/2017]

While making physical verification of debtors appearing in the records of the CD, the RP found that some of them are not even aware of the CD. The AA suggested the RP to initiate all steps available under the Code to proceed against the promoters/directors of the CD. It also suggested the police authority to assist the RP in unravelling the fraud. It observed: *"By looking at the sincere efforts of this RP in revelation of all these things before this Bench, the Registry is further directed to communicate this order as well to IBBI, so that IBBI also will be conversant with the progress that is taking place in this case."*

Insolvency and Bankruptcy Board of India

In the matter of Mr. Dhaivat Anjaria, Insolvency Professional [Order dated 13th April, 2018]

The disciplinary committee (DC) found that Mr. Anjaria, as IRP, did not consider the claim of one of the claimants. He did not even respond to him. He was subsequently appointed as RP in the CIRP. As RP, he neither considered the claim nor responded to the claimant. He disregarded his duty to receive and collate claims and also the timeline for the same. He did not respond to IBBI. He made the claimant as well as IBBI helpless. The DC accordingly imposed a penalty equal to one tenth of the total fee payable to him as IRP and RP in the CIRP of Electrosteel Steels Ltd.

In the matter of Ms. Bhavna Sanjay Ruia, Insolvency Professional [Order dated 3rd May, 2018]

Ms. Bhavna Sanjay Ruia contracted a professional IRP fee of Rs.5 crore till the first meeting of the CoC and a monthly fee of Rs.1.75 crore for the subsequent months as IRP/RP. This is exclusive of (a) Government taxes, as applicable, (b) professional fee for Valuers, Advocates, Solicitors, Forensic Auditors, Consultants and Advisers, (c) fee for representation before the NCLT, (d) expenses on public announcement and (e) all out of pocket expenses. The IBBI found professional fee of such magnitude for her services as IRP / RP exorbitant and not reasonable reflection of the work to be done by her. It is unreasonable by any standard - in relation to the compensation of the MD & CEO of the same CD, fee of an IP for a similar CIRP, fee earned by Ms. Ruia as IRP / RP in a similar CIRP, opportunity cost of time of Ms. Ruia, fee payable to a liquidator of a similar CD, outstanding debt of Rs.4.16 crore of the CD, etc. Ms. Ruia attempted to mislead the stakeholders, IBBI and the DC by a series of misrepresentation of facts and severely compromised her status as a fit and proper person. The DC, therefore, suspended the registration of Ms. Ruia for a period of one year.

In the matter of ABC [Order dated 22nd May, 2018]

The IBBI rejected an application for registration as an IP on the ground that the applicant did not have the required experience in management. The applicant claimed that he was having a practice of uploading E-forms and depositing fee on MCA 21 system and he does it all by himself. While rejecting the application, IBBI observed: *"Thus, one needs to discern the predominant nature of duties of a person to determine if he is having experience in management. A key element of management is supervision and getting the task done with the help of people. A person is said to be in a supervisory capacity when there is at least one person working with him and he supervises the work of the other person."*

Corporate Processes

GRR Awards

India won the prestigious Global Restructuring Review (GRR) Award for the 'Most Improved Jurisdiction' in a glittering ceremony held in Banking Hall, London on 26th June, 2018. This award recognises the jurisdiction which improved its restructuring and insolvency regime the most over the last year. Other jurisdictions shortlisted for this award included the European Union and Switzerland. The winner is selected on the basis of a rigorous global nomination process. Singapore won the award in the Most Improved Jurisdiction category in 2017.

Ms. Kyriaki Karadelis, Editor, GRR observed on the occasion, *"The award for most improved jurisdiction is extremely well-deserved. As you know, India narrowly missed out on the title to Singapore last year, but as the Insolvency and Bankruptcy Law of 2016 has begun to be tested in the new network of National Company Law Tribunals resulting in several key, precedent-setting judgements, we felt it was the right time to celebrate India's progress in this sector."*

Insolvency Resolution

The CIRP of Electrosteel Steels Ltd., the first of the 12 large CDs, concluded with the approval of the AA on 17th April, 2018. Vedanta Limited was the successful resolution applicant. As against the liquidation value of Rs.2900 crore, the claimants realized Rs.5320 crore accounting for 38.11% of their admitted claims.

The CIRP of Bhushan Steel Ltd., the second of the 12 large CDs concluded with the approval by the AA on 15th May, 2018. Tata Steel was the successful resolution applicant, through its wholly owned subsidiary, Bamnipal Steel Ltd. As against the liquidation value of Rs.14541 crore, the claimants realized Rs.36771 crore accounting for 63.94% of their admitted claims.

As at end of 30th June 2018, 716 corporates were undergoing insolvency resolution process, as indicated in Table 4.

Table 4: Corporate Insolvency Resolution Process

Quarter	No. of Corporates undergoing Resolution at the beginning of the Quarter	Admitted during the Quarter	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	0	0	36
Apr-Jun, 2017	36	129	8	0	0	157
July-Sep, 2017	157	231	16	2	8	362
Oct-Dec, 2017	362	145	34	8	24	441
Jan-Mar, 2018	441	194	14	13	57	551
Apr-Jun, 2018	551	241	18	11	47	716
Total	**NA**	**977**	**91**	**34**	**136**	**716**

NB: Data compiled from details available on NCLT Website.

Table 5: Status of CIRPs

Status of CIRPs	Number of CIRPs
Admitted	977
Closed on Appeal / Review	91
Closed by Resolution	34
Closed by Liquidation	136
Ongoing CIRP	716
> 270 days	186
> 180 days ≤ 270 days	116
> 90 days ≤ 180 days	183
≤ 90 days	231

Note: 1. The number of days pending is from the date of admission
2. The number of days pending includes time excluded by the Tribunals

The categories of stakeholders who triggered resolution processes is given in Table 6. The number of CIRPs triggered by OCs is relatively more, though number of processes initiated is on increase.

Table 6: Initiation of Corporate Insolvency Resolution Process

Quarter	No. of Resolutions Processes Initiated by			
	Financial Creditor	Operational Creditor	Corporate Debtor	Total
Jan-Mar, 2017	8	7	22	37
Apr-Jun, 2017	37	58	34	129
July-Sep, 2017	92	100	39	231
Oct-Dec, 2017	62	69	14	145
Jan-Mar, 2018	84	88	22	194
Apr-Jun, 2018	98	125	18	241
Total	**381**	**447**	**149**	**977**

Of the 977 corporates admitted into resolution process, 91 were closed on appeal or review. 34 yielded resolution, while 136 resulted in liquidation. The distribution of 136 CDs ending up with liquidation is given in Table 7.

Table 7: Distribution of Corporate Debtors Ending up with Liquidation

State of Corporate Debtor at the Commencement of CIRP	No. of CIRPs initiated by			
	FC	OC	CD	Total
Either in BIFR or Non-functional or both	25	39	46	110
Resolution Value ≤ Liquidation Value	25	38	43	106
Resolution Value > Liquidation Value	3	2	13	18

There were 136 CIRPs that yielded liquidation. There were eleven CIRPs, where CD was in BIFR or non-functional but had resolution value higher than liquidation value.
Note: LV not available in 12 CIRPs that were closed by order of liquidation.

Till 31st March, 2018, 22 CIRPs had yielded resolution, as presented in the last newsletter. One more process, which yielded resoluton during the quarter ending 31st March, 2018, was reported subsequently. During the quarter April-June, 2018, another 11 CIRPs ended in resolution with different degrees of recovery in comparison to the liquidation value (Table 8). Realisation by FCs in comparison to liquidation value in the resolution for corporate debtors in the Table was 237.14%, while the realisation by them in comparison to their claims was 56.25%.

Table 8: CIRPs Yielding Resolution, April - June, 2018 **(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	Kalptaru Alloys Pvt. Ltd.	Yes	05-09-2017	20-03-2018	FC	51.19	27.48	31.60	61.73	114.99
2	Electrosteel Steels Ltd.	No	21-07-2017	17-04-2018	FC	13175.14	2899.98	5320.00	40.38	183.45
3	MBL Infrastructure Ltd.	No	30-03-2017	18-04-2018	FC	1428.21	269.90	1597.13	111.83	591.75
4	Ved Cellulose Ltd.	No	30-06-2017	14-05-2018	FC	24.51	13.26	14.47	59.04	109.15
5	Bhushan Steel Ltd.	No	26-07-2017	15-05-2018	FC	56022.06	14541.00	35571.00	63.49	244.63
6	Wig Associates Pvt. Ltd.	No	24-08-2017	04-06-2018	CD	10.67	0.87	3.55	33.27	408.05
7	Nutri First Agro International Pvt. Ltd.	No	31-07-2017	08-06-2018	OC	13.82	10.21	13.82	100.00	135.36
8	MOR Farms Pvt. Ltd.	No	04-09-2017	15-06-2018	FC	32.52	3.91	9.25	28.44	236.57
9	Master Shipyard Pvt. Ltd.	No	21-12-2017	15-06-2018	OC	0.00	3.78	0.00	100.00	0.10
10	Orissa Manganese & Minerals Ltd.	No	03-08-2017	22-06-2018	FC	5388.54	301.02	310.00	5.75	102.98
11	Datre Corporation Ltd.	Yes	20-09-2017	22-06-2018	FC	84.86	9.07	9.22	10.86	101.65
12	Ellora Paper Mills Ltd.	No	19-07-2017	26-06-2018	FC	7.60	3.88	5.40	71.05	139.18
Total						**76239.12**	**18084.36**	**42885.44**	**56.25**	**237.14**

Liquidation

Till 31st March, 2018, 87 CIRPs yielded liquidation, as presented in the last newsletter. Two more processes, which yielded liquidation during the quarter ending 31st March, 2018, were reported subsequently. During the quarter April-June, 2018, another 47 CIRPs ended in liquidation taking total number of CIRPs resulting into liquidation to 136. The details of CIRPs ending with orders of liquidations are given in Table 9.

Table 9: CIRPs Ending with Orders for Liquidation

Sl. No.	Name of Corporate Debtor	Not Going Concern / Erstwhile BIFR	Initiated by	Date of Commencement of CIRP	Date of Liquidation Order
1	Padmavati Wires and Cables Pvt. Ltd.	No	OC	05-09-2017	22-02-2018
2	Vindhya Vasini Industries Ltd.	Yes	FC	29-08-2017	20-03-2018
3	Aseem Ispat Pvt. Ltd.	Yes	OC	20-09-2017	02-04-2018
4	Vedika Nut Craft Pvt. Ltd.	Yes	CD	30-06-2017	04-04-2018
5	Raphael Engineering Pvt. Ltd.	Yes	FC	18-08-2017	05-04-2018
6	Nag Yang Shoes Pvt. Ltd.	Yes	OC	07-09-2017	06-04-2018
7	Futuristic Offshore Services & Chemicals Ltd.	Yes	CD	12-06-2017	09-04-2018
8	Jalaram Cotton & Proteins Ltd.	Yes	CD	15-11-2017	09-04-2018
9	Nag Leathers Pvt. Ltd.	Yes	OC	10-07-2017	09-04-2018
10	Yog Industries Ltd.	Yes	OC	22-08-2017	12-04-2018
11	Mehadia Sales Trade Corporation Pvt. Ltd.	No	CD	06-07-2017	17-04-2018
12	Everonn Skill Development Ltd.	Yes	FC	23-11-2017	23-04-2018
13	Servalakshmi Paper Ltd.	No	OC	21-06-2017	24-04-2018
14	Cethar Ltd.	Yes	OC	16-06-2017	25-04-2018
15	Lohaa Ispat Ltd.	Yes	OC	28-04-2017	26-04-2018
16	Swiber Offshore (India) Pvt. Ltd.	No	OC	31-03-2017	26-04-2018
17	Shiv Cotgin Pvt. Ltd.	Yes	CD	21-08-2017	27-04-2018
18	Vijai Mahalaxmi Spinning Mills India Pvt. Ltd.	Yes	OC	07-11-2017	27-04-2018
19	Deivaanai Sinter Metals Pvt. Ltd.	No	FC	11-10-2017	03-05-2018
20	Phadnis Infrastructure Ltd.	No	OC	14-09-2017	07-05-2018
21	Phadnis Properties Ltd.	No	OC	14-09-2017	07-05-2018
22	Zeel Global Projects Pvt. Ltd.	No	OC	27-04-2017	07-05-2018
23	Zenith Computers Ltd.	No	FC	12-06-2017	08-05-2018
24	Shivkripa Ispat Pvt. Ltd.	Yes	FC	14-08-2017	09-05-2018
25	Metal Holdings India Pvt. Ltd.	Yes	CD	17-08-2017	11-05-2018
26	Metal Link Alloys Ltd.	Yes	CD	17-08-2017	11-05-2018
27	H.P. Ore Processors Pvt. Ltd.	Yes	CD	28-08-2017	17-05-2018
28	Shivek Labs Ltd.	No	CD	06-07-2017	17-05-2018
29	Skyblue Papers Pvt. Ltd.	Yes	CD	07-04-2017	17-05-2018
30	Varun Corporation Ltd.	Yes	FC	30-06-2017	18-05-2018
31	Super Multicolor Printer Pvt. Ltd.	No	CD	07-04-2017	23-05-2018
32	Yashoda Cotton and General Mills Pvt. Ltd.	Yes	OC	28-11-2017	25-05-2018
33	Surya Balaji Steels Pvt. Ltd.	Yes	OC	05-10-2017	29-05-2018
34	Resurgent Infratel Pvt. Ltd.	No	FC	21-11-2017	30-05-2018
35	Mariners Buildcon India Ltd.	Yes	FC	24-08-2017	01-06-2018
36	Visuwam Auto Spares Pvt. Ltd.	Yes	OC	07-08-2017	06-06-2018
37	Tech Megacorp International Pvt. Ltd.	Yes	OC	16-08-2017	06-06-2018
38	Anil Nutrients Ltd.	Yes	FC	23-08-2017	07-06-2018
39	Well Pack Paper & Container Ltd.	Yes	CD	09-08-2017	07-06-2018
40	Rajesh Gems & Jewels Pvt. Ltd.	Yes	OC	12-12-2017	11-06-2018
41	Balaji Polysacks Pvt. Ltd.	Yes	FC	14-12-2017	12-06-2018
42	Max Tech Oil & Gas Services Pvt. Ltd.	Yes	OC	01-05-2017	12-06-2018
43	Titanium Tantalum Products Ltd.	No	OC	27-11-2017	12-06-2018
44	Nascent Jewellery Pvt. Ltd.	Yes	OC	14-09-2017	20-06-2018
45	Sri Naganathana Mills Ltd.	Yes	OC	29-11-2017	21-06-2018
46	KAC Yarn Pvt. Ltd.	Yes	OC	21-11-2017	22-06-2018
47	Lakshmi Apparel and Woven Ltd.	Yes	OC	01-09-2017	22-06-2018
48	SKC Retail Pvt. Ltd.	Yes	FC	12-07-2017	22-06-2018
49	Facor Steel Ltd.	Yes	CD	08-03-2017	26-06-2018

This kind of 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, the stakeholders may suffer much erosion of value.

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 30th June, 2018, a total number of 214 corporate persons initiated voluntary liquidation, the details of which are given in Table 10.

Table 10: Voluntary Liquidations as on 30th June, 2018 (Amount in Rs. crore)

Quarter	No. of 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	-	-
Jul-Sep, 2017	38	195	340	8	-	-
Oct-Dec, 2017	56	67	180	14	4	1
Jan-Mar, 2018	66	354	220	8	6	1
Apr-Jun, 2018	41	992*	333*	39*	21	3
Total	**214**	**1787**	**1113**	**78**	**31**	**5**

* Admitted during the quarter is 41. However, details for 21 liquidations, for which data have been received, are included.

Table 11: Reasons for Voluntary Liquidation

Sl. No.	Reason for Voluntary Liquidation	No. of Corporate Persons
1	Not carrying business operations	109
2	Commercially unviable	29
3	Running into losses	7
4	No revenue	9
5	Promotors unable to manage affairs	2
6	Purpose for which company was formed accomplished	1
7	Contract termination	3
8	Miscellaneous	41
Total		**201**

Admitted till 30th June, 2018, is 214. However, details for 201 liquidations, for which data have been received, are presented here.

Table 12: Status of Voluntary Liquidations

Status of Liquidations	Number of Liquidations
Initiated	214
Closed by Dissolutions	05
Final Reports Submitted	31
> 360 days	12
> 270 days ≤ 360 days	27
> 180 days ≤ 270 days	44
> 90 days ≤ 180 days	60
≤ 90 days	40

Service Providers

Insolvency Professionals

Individuals, who have the required qualification and experience and have passed the Limited Insolvency Examination, are registered as IPs since 31st December, 2016. As on 30th June 2018, a total of 1883 individuals are registered as IPs. The details are given in Table 13.

Table 13: Registered Insolvency Professionals as on 30th June, 2018

City / Region	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	240	154	40	434
Rest of Northern Region	168	105	28	301
Mumbai	201	72	18	291
Rest of Western Region	149	72	17	238
Chennai	75	42	7	124
Rest of Southern Region	167	104	28	299
Kolkata	110	24	10	144
Rest of Eastern Region	37	10	5	52
All India	**1147**	**583**	**153**	**1883**

Replacement of IRP with RP

Section 22 (2) of the Code states that the CoC may, in its first meeting, by a majority vote of not less than 66% 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. Under section 22 (4) of the Code, the AA shall forward the name of the RP, proposed by the CoC, under Section 22 (3) (b) of the Code, to the IBBI for its confirmation and shall make such appointment after confirmation by it. However, in order to avoid such reference by AA to the Board and save time, a database of all the IPs registered with the IBBI has already been shared with the AA, disclosing whether any disciplinary proceeding is pending against the IP. While the database is currently being used by various benches of AA, in few cases, the Board has received references from AA, which have been timely complied with. Accordingly, till 30th June, 2018, a total of 104 IRPs have been replaced with RPs, wherein the reference was made by the AA to the IBBI, as shown in Table 14:

Table 14: Replacement of IRP with RP as on 30th June, 2018

CIRP initiated by	No. of CIRPs where IRP is replaced by another IP as the RP
Corporate Applicant	35
Operational Creditor	33
Financial Creditor	36
Total	**104**

Insolvency Professional Agencies

The Insolvency Professional Agencies (IPAs) are front-line regulators for IPs. Three IPAs have so far been registered with IBBI as shown in Table 15.

Table 15: Insolvency Professional Agencies

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

The IBBI meets MDs / CEOs of IPAs on monthly basis to discuss various issues arising in the IP profession and to energise them to build capacity of the IPs. The IPAs are conducting pre-registration educational course for prospective IPs. They are monitoring disclosures by IPs in respect of relationship and fee and expenses of CIRPs and disseminating the same on their respective websites. They also have to disclose their Annual Compliance Certificate on their web sites in compliance with IBBI Circular dated 19th April 2018.

Insolvency Professional Entities

As per the amendments to the IBBI (Insolvency Professionals) Regulations, 2016 on 28th March 2018, the Insolvency Professional Entities (IPEs) recognised as on 1st April, 2018 needed to comply with certain provisions by 30th June, 2018 and certain other provisions by 30th September, 2018. All IPEs have since complied with the provisions required to be complied by 30th June, 2018. During the quarter under reference, two more IPEs were recognised and three IPEs were de-recognised. As on 30th June, 2018, there are seventy-three IPEs. The details of recognised IPEs are given in Table 16.

Table 16. Recognised IPEs as on 30th June, 2018

Quarter	No. of IPEs		
	Recognized during the Quarter	Derecognised during the Quarter	At the End of the Quarter
Jan-Mar, 2017	3	0	3
Apr-Jun, 2017	14	0	17
Jul-Sep, 2017	22	1	38
Oct-Dec, 2017	18	0	56
Jan-Mar, 2018	19	0	75
Apr-Jun, 2018	1	3	73
Total	**77**	**4**	**73**

Information Utility

The IBBI registered an information utility (IU), namely, the National e-Governance Services Limited (NeSL) on 25th September, 2017. As of 30th June, 2018, NeSL has executed agreements with 26 banks and 40 NBFCs. Table 17 gives details of registered users and information with the IU.

Table 17: Details of information with the IU

Creditors	Number of Creditors having Agreement with NeSL	Number of Creditors who have submitted Information	Number of Debtors for whom Information is submitted by Creditors	Number of Loan Records on boarded	Number of User Regns. by Debtors	Number of Loan Records Authenticated by Debtors
Financial Creditors	66	21	69184	191247	1024	1364
Operational Creditors	NA	105	52	105	10	5

Registered Valuers Organisation

The RVOs are frontline regulators for the registered valuers. At the end of June, 2018, five entities have been recognised as registered valuers organisations (RVOs), details of which are given in Table 18. As on the same date, three valuers have been registered by IBBI.

Table 18: Registered Valuers Organisations

Sl. No.	Date of Recognition	Name of RVO	Asset Class
1	27th December, 2017	The Indian Institution of Valuers	Land and Building, Plant and Machinery, and Securities or Financial Assets
2	27th December, 2017	ICMAI Registered Valuers Organisation	Land and Building, Plant and Machinery, and Securities or Financial Assets
3	17th January, 2018	ICAI Registered Valuers Organisation	Securities or Financial Assets
4	20th June, 2018	PVAI Valuation Professional Organisation	Land and Building, Plant and Machinery, and Securities or Financial Assets
5	28th June, 2018	CVSRTA Registered Valuers Association	Land and Building, and Plant and Machinery

Examinations

Limited Insolvency Examination

The IBBI has been conducting the Limited Insolvency Examination since 31st December, 2016 through the National Institute of Securities Markets. The examination is available on daily basis from various locations across the country. The details of the examination are given in the Table 19. The test administration of the Limited Insolvency Examination has been assigned to NSEIT Limited from 1st July, 2018.

Table 19: Limited Insolvency Examination

Phase	Number of Attempts (some candidates made more than one attempt)	Number of Successful Attempts
First Phase (January - June, 2017)	5329	1202
Second Phase (July - December, 2017)	6237	1112
Third Phase (January - June, 2018)	4733	741
Total	**16299**	**3055**

Valuation Examinations

The IBBI, being the authority, under the Companies (Registered Valuers and Valuation) Rules, 2017, has commenced the valuation examinations for the asset classes of (a) Land and Building, (b) Plant and Machinery and (c) Securities or Financial assets on 31st March 2018. These examinations are computer based online examinations and are available from several locations across India. A candidate may register and schedule the examination on IBBI website www.ibbi.gov.in. The test administration of valuation examinations has been assigned to BSE Institute Limited. The details of the examination are given in Table 20.

Table 20: Details of Valuation Examinations

Phase / Quarter	Number of Attempts (some candidates made more than one attempt) in Asset Class			Number of Successful Attempts in Asset Class		
	Land & Building	Plant & Machinery	Securities or Financial Assets	Land & Building	Plant & Machinery	Securities or Financial Assets
First Phase (March - June, 2018)	65	23	92	10	5	10

Interaction with Stakeholders

IP Conclave

IBBI, in association with the three IPAs, namely, the Indian Institute of Insolvency Professionals of ICAI, the ICSI Institute of Insolvency Professionals and the Insolvency Professional Agency of Institute of Cost Accountants of India, conducted a Conclave of IPs on 26th May, 2018 in Mumbai. Over 250 IPs participated in the conclave. It was the second of such Conclave, the first one was organised on 10th February, 2018 at New Delhi.

In his address on 'Building the Institution of Insolvency Professionals', Dr. M. S. Sahoo, Chairperson, IBBI emphasized that profession is a key institution of market economy and the insolvency profession is a key institution of the insolvency and bankruptcy regime. While appreciating the performance and conduct of IPs in general, he urged the IPs to collectively build and preserve the reputation of the fledgling institution and not allow a few undesirable elements to tarnish its reputation.

Hon'ble Mr. Justice M. M. Kumar, President, National Company Law Tribunal, in his address on 'Duties of Resolution Professional under the Code & Best Practices', highlighted the paradigm shift in law that segregates commercial aspects of insolvency resolution from judicial aspects and empowers the stakeholders and the AA to decide matters within their respective domain expeditiously. He underlined that the assets of the CD undergoing resolution as the assets of the nation and that they must be used for creating value for the country. He urged the IPs to seize the opportunity under the Code to allow themselves to be used for the nation.

Mr. Rashesh Shah, President, FICCI and Chairman, Edelweiss Group, in his address on 'Insolvency Professional as Key Facilitator for Value Creation', dwelled upon the insolvency reforms in developed nations and hoped that this reform would result in democratisation of credit in India that would fuel further growth of the country. He identified five essential characteristics for an IP: transparency, knowledge, fairness, execution capability, and ability to balance the stakeholders. Mr. B. S. V. Kumar, Hon'ble Judicial Member, NCLT; Mr. M. K. Shravat, Hon'ble Judicial Member, NCLT; and Dr. Navrang Saini, Whole Time Member, IBBI also addressed the Conclave.

IP Conclave at Mumbai on 26th May, 2018

IP Workshops

The IBBI has been organsing a two-day workshop for newly registered IPs with a view to build their capacity. During the quarter, IBBI organised two workshops for them as under:

(a) The Eighth workshop was conducted on 20th - 21st April 2018 at Chennai. The distinguished faculty included Hon'ble Mr. Justice S. J. Mukhopadhaya, Chairperson, NCLAT and Dr. M. S. Sahoo, Chairperson, IBBI. 50 IPs attended the workshop.

(b) The Ninth workshop was conducted on 29th - 30th June, 2018 at Bengaluru. 55 IPs attended the workshop.

IMF Workshop

The IBBI, in partnership with the International Monetary Fund (IMF) and the Indian Institute of Corporate Affairs, organised a workshop on 25th - 26th May, 2018 at New Delhi for officers of IBBI and other regulators, IPs and other stakeholders. The workshop focussed on emerging practices in corporate insolvency resolution and learning from international best practices and cross-country experience. It addressed the practical and operational challenges emerging in the insolvency processes under the Code.

IMF Workshop on "Current Trends in Comparative Insolvency Law" on 25th - 26th May, 2018, at New Delhi

Eighth Workshop for IPs on 20th - 21st April, 2018, at Chennai

Advocacy and Awareness

The Chairperson, Whole Time Members and other senior officers of IBBI participated in several programmes (conferences, seminars, round tables, workshops, etc.) on insolvency and bankruptcy across the country as guest speakers. These include programmes organized by the Ministry of Skill Development and Entrepreneurship, CII, FICCI, Assocham, PHDCII, IIBF, IPAs, and RVOs.

CII Programme on Insolvency on 9th June, 2018 at Kolkata

Ninth Workshop on 29th – 30th June, 2018, at Bengaluru

MSDE Programme on 6th June, 2018 at Centurion University, Bhubaneswar

In addition to having consultation with Working Groups and Advisory Committees, IBBI holds round tables with stakeholders on specific issues for deeper insights and practical solutions. Before amending CIRP regulations following the promulgation of the Insolvency and Bankruptcy (Second Amendment) Ordinance, 2018, IBBI conducted four roundtables at Hyderabad (8th June, 2018), Kolkata (9th June, 2018), New Delhi (11th June, 2018) and Mumbai (14th June, 2018).

Roundtable on CIRP on 14th June, 2018 at Mumbai

Comments on Existing Regulations

The IBBI has evolved a transparent and consultative process to make regulations. It has been the endeavour of the IBBI to effectively engage stakeholders in the regulation making process. The process generally starts with a working group making 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 the IBBI finalising regulations and the IBBI notifies them. This process endeavours to factor in ground reality, secures ownership of regulations and makes regulations robust and precise, relevant to the time and for the purpose.

Despite the best of efforts and intentions, a regulator may not always have the understanding of the ground realities, as much and as early as the stakeholders and the regulated may have, particularly in a dynamic environment. The stakeholders could, therefore, play a more active role in making regulations. They may contemplate, at leisure, the important issues in the extant regulatory framework that hinder transactions and offer alternate solutions to address them, in addition to responding urgently to draft regulations proposed by the regulator. This is akin to crowdsourcing of ideas. This would enable every idea to reach the regulator. Consequently, the universe of ideas available with the regulator would be much larger and the possibility of a more conducive regulatory framework much higher.

Keeping in view the above, the IBBI has invited comments from public, including the stakeholders and the regulated, on the regulations already notified under the Code. The comments received between 30th April, 2018 and 31st December, 2018 shall be processed together and following the due process, regulations will be amended to the extent considered necessary. It will be the endeavour of the IBBI to notify modified regulations by 31st March, 2019 and bring them into force on 1st April, 2019. A similar exercise was undertaken in the previous year and consequently several regulations were amended with effect from 1st April, 2018. This is in addition to the extant approach of inviting public comments on draft regulations before notifying them.

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