



सत्यमेव जयते

भारतीय दिवाला और शोधन अथवा बोर्ड  
Insolvency and Bankruptcy Board of India  
www.ibbi.gov.in

# Insolvency and Bankruptcy News

The Quarterly Newsletter of the Insolvency and Bankruptcy Board of India

October - December 2016 | Vol. 1

रजिस्ट्री सं० डी० एल०—(ए)०४/००७/२००३—१६ REGISTERED NO. DL—(N)०४/००७/२००३—१६

## भारत का राजपत्र The Gazette of India

असाधारण  
EXTRAORDINARY  
भाग II — खण्ड 1  
PART II — Section 1  
प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY

सं० 37] नई दिल्ली, शनिवार, मई 28, 2016/ज्यैष्ठ 7, 1938 (शक)  
No. 37] NEW DELHI, SATURDAY, MAY 28, 2016/JYAISTHA 7, 1938 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE  
(Legislative Department)

New Delhi, the 28th May, 2016/Jyaistha 7, 1938 (Saka)

The following Act of Parliament received the assent of the President on the 28th May, 2016, and is hereby published for general information:—

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

No. 31 of 2016

[28th May, 2016.]

An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

PART I

PRELIMINARY

1. (1) This Code may be called the Insolvency and Bankruptcy Code, 2016.

(2) It extends to the whole of India:

Provided that Part III of this Code shall not extend to the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Short title,  
extent and  
commencement.

रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99

## भारत का राजपत्र The Gazette of India

असाधारण  
EXTRAORDINARY  
भाग II — खण्ड 3 — उप-खण्ड (ii)  
PART II — Section 3 — Sub-section (ii)

प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY  
सं० 2387] नई दिल्ली, शनिवार, अक्टूबर 1, 2016/आश्विन 9, 1938  
No. 2387] NEW DELHI, SATURDAY, OCTOBER 1, 2016/ASVINA 9, 1938

कारपोरेट कार्य मंत्रालय  
वित्त विभाग  
नई दिल्ली, 1 अक्टूबर, 2016

का.अ. 3110(क).— केन्द्रीय सरकार, दिवाला और शोधन अधमता संहिता, 2016 (2016 का 31) की धारा 188 की उपधारा (1) और उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तारीख 01 अक्टूबर, 2016 को भारतीय दिवाला और शोधन अधमता बोर्ड की स्थापना की तारीख के रूप में नियत करती है। भारतीय दिवाला और शोधन अधमता बोर्ड का मुख्यालय नई दिल्ली में होगा।

[फा.सं. 30/2/2016-इंजोल्वेंसी अनुभाग]  
अमरदीप सिंह भाटिया, संयुक्त सचिव

MINISTRY OF CORPORATE AFFAIRS  
NOTIFICATION

New Delhi, the 1<sup>st</sup> October, 2016

S.O. 3110(E).— In exercise of the powers conferred by sub-section (1) and (3) of section 188 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints 01<sup>st</sup> October, 2016 as the date of establishment of Insolvency and Bankruptcy Board of India. The head office of the Insolvency and Bankruptcy Board of India shall be at New Delhi.

[F. No. 30/2/2016-Insolvency Section]  
AMARDEEP SINGH BHATIA, Jr. Secy.

4683 (G)/2016

(1)

# Content

From the Desk of Chairperson  
Journey So Far  
The Insolvency and Bankruptcy Code, 2016  
The Insolvency and Bankruptcy Board of India  
Regulations  
Service Providers  
Limited Insolvency Examination  
Advisory Committees  
Events  
Quotes

---



◀ Hon'ble Minister of Finance and Corporate Affairs administering the oath of office to Dr. M. S. Sahoo as Chairperson on 1<sup>st</sup> October, 2016



◀ Hon'ble Minister of State for Finance and Corporate Affairs, Shri Arjun Ram Meghwal addressing the 1<sup>st</sup> meeting of the Governing Board of the IBBI on 7<sup>th</sup> October, 2016

## Freedom to Exit

### The Insolvency and Bankruptcy Code, 2016 builds the third pillar of economic freedom

It is well established that economic freedom and economic performance have very high positive correlation. Countries having high level of economic freedom generally out-perform the countries with not-so-high level of economic freedom. The index of economic freedom, which measures the degree to which the policies and institutions of an economy are supportive of economic freedom, has substantially improved for India since the 1990s. The outcome has been astounding; the growth rate in the 1990s onwards has almost doubled as compared to the *Hindu rate of growth* in the preceding period.

An economy has either of the two broad types of institutions, namely, inclusive institutions and extractive institutions. The inclusive institutions allow everybody to participate in the economy, while extractive institutions restrain them. Inclusive institutions allow every person to undertake any economic activity(ies) (business) of his choice in the manner and the scale he is comfortable with. These unleash and realise the full potential of a person to innovate, invest and contribute to the economy. On the other hand, extractive institutions concentrate power and opportunity in the hands of a few or use energy and creativity of a small set

of persons. Obviously, economies with inclusive institutions develop faster as the contribution of all exceeds the contribution of some.

One of the primary duties of the State is to provide the right institutional milieu to bring out the best from her people. It is, therefore, not surprising that the thrust of the reforms over the years has been provision of economic freedom, inclusive institutions to protect freedom and regulation of such economic freedom only to address market failure(s). Accordingly, India made a paradigm shift from State providing goods and services to State regulating the market for provision of goods and services. It granted freedom by repealing enactments such as the Capital Issues (Control) Act, 1947 and the Import and Export (Control) Act, 1947. It came up with a different genre of economic laws, which expanded the 'who, what and how to do' list. These expanded the contours of economic freedom and consequently the frontiers of development.

Markets need freedom broadly at three stages of a business - to start a business (free entry), to continue the business (free competition) and to discontinue the business (free exit). This enables



▲ Secretary, Ministry of Corporate Affairs, Shri Tapan Ray addressing an event on 28<sup>th</sup> November, 2016, where certificates of registration were handed over to Insolvency Professional Agencies

new firms to emerge continuously; and they do business when they remain efficient, and vacate the space when they are no more efficient. This ensures free flow of resources from inefficient uses to efficient uses - the first stage ensures allocation of resources to the most efficient use, the second stage ensures efficient use of resources allocated, and the third stage ensures release of resources from inefficient uses - and consequently the highest possible growth.

The reforms initially focused on freedom of entry by dismantling the license-permit-quota Raj. This phase witnessed laws such as the Securities and Exchange Board of India Act, 1992, when license gave way to registration. Anybody who meets the eligibility requirements is entitled to registration. If registration is to be denied, it has to be communicated by a reasoned order and that order is appealable. Further, entry requires many facilitators. For instance, one can enter into a business only if he has resources. Accordingly, the securities laws allowed him, subject to meeting the eligibility requirements, to access the securities markets without requiring any approval from any authority.

The reforms then shifted focus to freedom of doing business. It came up with laws such as the Competition Act, 2002 to protect freedom of firms. One has freedom to do business, but not to refrain the freedom of others to do so. One restrains freedom of others by taking control of either price and or quantity. For instance, if a business adopts predatory pricing and has the financial muscle to sustain it, it effectively thwarts the competitors' freedom to do business. So predatory pricing was proscribed. Further, freedom of business requires strengthening supporting institutions such as level playing field. Accordingly, a state owned firm was treated at par with a private firm under the competition law.

A firm may fail to deliver as planned for a variety of reasons. It could be because of faulty conceptualisation of business, inefficient execution of business, change of business environment, or even malafide design in some

cases. Regardless of the reason, the failure impacts macro economy in multitudes of ways and needs to be addressed expeditiously. Such failure usually manifests in default in repayment obligations. Default arises also from mismatches between cash inflows and outflows. Default is a state of insolvency and is often a legitimate outcome of business operations. It does not necessarily warrant the closure of a business, which destroys organisational capital. It is necessary to have a mechanism to resolve insolvency in an orderly manner. The absence of such a mechanism hitherto denied effective recourse to lenders to recover their debt and thereby discouraged them from lending. This reduced availability of finance for even genuinely viable projects. Further, low and delayed recovery pushed up the cost of lending, and consequently, fewer projects became viable.

Further, it may not be possible to resolve insolvency of firms in all cases. It is mostly because efficient firms drive out inefficient firms continuously from the market. It is necessary to have a mechanism whereby the inefficient or defunct firms vacate the space and release the idle resources for efficient uses in an orderly manner. In the absence of a mechanism hitherto, there are quite a few firms stuck in unsustainable business or with no business and idle assets. The Economic Survey 2015-16 compares this situation to the '*Chakravayuha*' of the *Mahabharata*, and has documented the cost of such impended exit, thereby illustrating the opportunity cost of not allowing '*creative destruction*' in an otherwise dynamic economy.

It has been a paradox that an economy which allowed free entry and free competition did not permit free exit and in the process suffered the inefficiencies of several zombie entities in the system for so long. The third pillar has now been erected in the form of the Insolvency and Bankruptcy Code, 2016. This Code offers a market directed, time bound mechanism for resolution of insolvency, wherever possible, or exit, wherever required, and thereby ensures freedom to exit.

Dr. M. S. Sahoo

# Journey So Far

The Insolvency and Bankruptcy Board of India (IBBI) was established on 1<sup>st</sup> October, 2016. It is useful to chronicle the critical steps leading to establishment of the IBBI and the steps taken thereafter during the quarter September-December, 2016:

Date	Steps in the Journey
<b>Developments up to 30<sup>th</sup> September, 2016</b>	
10.07.2014	Hon'ble Finance Minister in his budget speech for 2014-15 stated as under: "Entrepreneur friendly legal bankruptcy framework will also be developed for SMEs to enable easy exit." (Para 106)
22.08.2014	Committee (Bankruptcy Law Reforms Committee / BLRC hereafter) under the Chairmanship of Dr. T. K. Viswanathan constituted to study Corporate Bankruptcy Legal Framework in India.
11.02.2015	BLRC submitted an interim report. Ministry of Finance sought suggestions / comments on the recommendations in the interim report by 20.02.2015.
28.02.2015	Hon'ble Finance Minister in his budget speech for 2015-16 stated as under: "Bankruptcy law reform, that brings about legal certainty and speed, has been identified as a key priority for improving the ease of doing business. SICA (Sick Industrial Companies Act) and BIFR (Board for Industrial and Financial Reconstruction) have failed in achieving these objectives. We will bring a comprehensive Bankruptcy Code in fiscal 2015-16, that will meet global standards and provide necessary judicial capacity." (Para 36)
04.11.2015	BLRC submitted its report. Ministry of Finance sought suggestions / comments on the report by 19.11.2015.
21.12.2015	The Insolvency and Bankruptcy Code, 2015 introduced in Lok Sabha.
28.04.2016	The report of the Joint Committee under the Chairmanship of Shri Bhupender Yadav on the Insolvency and Bankruptcy Code, 2015 presented to Parliament.
05.05.2016	Lok Sabha passed the Insolvency and Bankruptcy Code, 2016.
11.05.2016	Rajya Sabha passed the Insolvency and Bankruptcy Code, 2016.
28.05.2016	The Insolvency and Bankruptcy Code, 2016 (Code hereafter) enacted.
01.06.2016	National Company Law Tribunals constituted.
22.07.2016	Oversight Committee and Four Working Groups for implementation of the Code constituted.
29.07.2016	Ministry of Corporate Affairs entrusted with the responsibility of administration of the Code.
05.08.2016	The provisions relating to establishment of the IBBI in the Code came into force.
19.08.2016	The provisions relating to finance of the IBBI and other matters in the Code came into force.
23.08.2016	Shri Arun Jaitley, Hon'ble Minister of Finance and Corporate Affairs directed the senior officers of the Ministry of Finance and Corporate Affairs to take suitable necessary action for implementation of Code in a time bound manner. (Press Release)
29.08.2016	The Insolvency and Bankruptcy Board of India (Salary, Allowances and other Terms and Conditions of Service of Chairperson and Members) Rules, 2016 came into force.

**Developments during September – December, 2016**

01.10.2016	<p>The IBBI established. Head office of the IBBI to be in Delhi.</p> <p>Dr. M. S. Sahoo appointed as Chairperson of the IBBI. He was administered oath of office by Shri Arun Jaitley, Hon'ble Minister of Finance and Corporate Affairs.</p> <p>The following four ex-officio Members of the IBBI appointed:</p> <p>a. Shri Ajay Tyagi, Additional Secretary (Investment), Department of Economic Affairs, Ministry of Finance,</p> <p>b. Shri Amardeep S. Bhatia, Joint Secretary, Ministry of Corporate Affairs,</p> <p>c. Shri G. S. Yadav, Joint Secretary &amp; Legal Adviser, Ministry of Law and Justice, Department of Legal Affairs, and</p> <p>d. Shri A. Unnikrishnan, Legal Adviser, Legal Department, Reserve Bank of India.</p>
07.10.2016	Shri Arjun Ram Meghwal, Hon'ble Minister of State for Finance and Corporate Affairs addressed the 1 <sup>st</sup> meeting of the Governing Board of the IBBI.
18.10.2016	The IBBI constituted two Advisory Committees: one on Service Providers and the other on Corporate Insolvency Resolution and Liquidation.
01.11.2016	The provisions relating to powers and functions of the IBBI in the Code came into force.
15.11.2016	The provisions relating to Insolvency Professional Agencies (IPAs) and Insolvency Professionals (IPs) in the Code came into force.
22.11.2016	The IBBI (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 and the IBBI (Insolvency Professional Agencies) Regulations, 2016, notified on 21.11.2016, came into force.
28.11.2016	Shri Arun Jaitley, Hon'ble Minister of Finance and Corporate Affairs handed over certificates of registration to two Insolvency Professional Agencies registered with the IBBI.
29.11.2016	The IBBI (Insolvency Professionals) Regulations, 2016, notified on 23.11.2016, came into force.
30.11.2016	Shri Tapan Ray, Secretary to Government of India, Ministry of Corporate Affairs, handed over certificates of registration to 18 Insolvency Professionals.
01.12.2016	The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, notified on 30.11.2016, came into force.
01.12.2016	The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, notified on 30.11.2016, came into force.
01.12.2016	The provisions relating to corporate insolvency resolution in the Code came into force.
15.12.2016	The provisions relating to liquidation in the Code came into force.
15.12.2016	The IBBI (Liquidation Process) Regulations, 2016 came into force.
31.12.2016	The Limited Insolvency Examination commenced.

# The Insolvency and Bankruptcy Code, 2016

On passing of the Insolvency and Bankruptcy Code, 2016 by the Rajya Sabha, Ministry of Finance issued a Press Release on 11<sup>th</sup> May, 2016 which stated that the Code is the biggest reform next only to GST. The Press Release very clearly states the import of the Code. The same is reproduced hereunder:

## “PRESS RELEASE

### Parliament passes the Insolvency and Bankruptcy Code

Today is a historical day for economic reforms in India when the Rajya Sabha passed the major economic reform Bill moved by the Government, i.e. “Insolvency and Bankruptcy Code, 2016”. This is considered as the biggest economic reform next only to GST. The Lok Sabha had earlier passed the Bill on 5<sup>th</sup> May, 2016.

In India, the legal and institutional machinery for dealing with debt default has not been in line with global standards. The recovery action by creditors, either through the Contract Act or through special laws such as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, has not had desired outcomes. Similarly, action through the Sick Industrial Companies (Special Provisions) Act, 1985 and the winding up provisions of the Companies Act, 1956 have neither been able to aid recovery for lenders nor aid restructuring of firms. Laws dealing with individual insolvency, the Presidential Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, are almost a century old. This has hampered the confidence of the lender. When lenders are unconfident, debt access for borrowers is diminished. This reflects in the state of the credit markets in India. Secured credit by banks is the largest component of the credit market in India. The corporate bond market is yet to develop.

The objective of the new law is to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders by consolidating and amending the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner and for maximization of value of assets of such persons and matters connected therewith or incidental thereto.

The law aims to consolidate the laws relating to insolvency of companies and limited liability entities (including limited liability partnerships and other entities with limited liability), unlimited liability partnerships and individuals, presently contained in a number of legislations, into a single legislation.

Such consolidation will provide for a greater clarity in law and facilitate the application of consistent and coherent provisions to different stakeholders affected by business failure or inability to pay debt.

The salient features of the law are as follows:

- i- Clear, coherent and speedy process for early identification of financial distress and resolution of companies and limited liability entities if the underlying business is found to be viable.
- ii- Two distinct processes for resolution of individuals, namely- “Fresh Start” and “Insolvency Resolution”.
- iii- Debt Recovery Tribunal and National Company Law Tribunal to act as Adjudicating Authority and deal with the cases related to insolvency, liquidation and bankruptcy process in respect of individuals and unlimited partnership firms and in respect of companies and limited liabilities entities respectively.
- iv- Establishment of an Insolvency and Bankruptcy Board of India to exercise regulatory oversight over insolvency professionals, insolvency professional agencies and information utilities.
- v- Insolvency professionals would handle the commercial aspects of insolvency resolution process. Insolvency professional agencies will develop professional standards, code of ethics and be first level regulator for insolvency professionals members leading to development of a competitive industry for such professionals.
- vi- Information utilities would collect, collate, authenticate and disseminate financial information to be used in insolvency, liquidation and bankruptcy proceedings.
- vii- Enabling provisions to deal with cross border insolvency.

The essential idea of the new law is that when a firm defaults on its debt, control shifts from the shareholders / promoters to a Committee of Creditors, who have 180 days in which to evaluate proposals from various players about resuscitating the company or taking it into liquidation. When decisions are taken in a time-bound manner, there is a greater chance that the firm can be saved as a going concern, and the productive resources of the economy (the labour and the capital) can be put to the best use. This is in complete departure with the experience under the SICA regime where there were delays leading to destruction of the value of the firm.

The vision of the new law is to encourage entrepreneurship and innovation. Some business ventures will always fail, but they will be handled rapidly and swiftly. Entrepreneurs and lenders will be able to move on, instead of being bogged down with decisions taken in the past.

A key innovation of the Insolvency and Bankruptcy Code is four pillars of institutional infrastructure.

The first pillar of institutional infrastructure is a class of regulated persons, the “Insolvency Professionals”. They would play a key role in the efficient working of the bankruptcy process. They would be regulated by “Insolvency Professional Agencies”.

The second pillar of institutional infrastructure is a new industry of ‘Information Utilities’. These would store facts about lenders and terms of lending in electronic databases. This would eliminate delays and disputes about facts when default does take place.

The third pillar of institutional infrastructure is in adjudication. The NCLT will be the forum where firm insolvency will

be heard and DRTs will be the forum where individual insolvencies will be heard. These institutions, along with their Appellate bodies, viz., NCLAT and DRATs will be adequately strengthened so as to achieve world class functioning of the bankruptcy process.

The fourth pillar of institutional infrastructure is a regulator viz., “The Insolvency and Bankruptcy Board of India”. This body will have regulatory over-sight over the Insolvency Professionals, Insolvency Professional Agencies and Information Utilities.

The Insolvency and Bankruptcy Code is thus a comprehensive and systemic reform, which will give a quantum leap to the functioning of the credit market. It would take India from among relatively weak insolvency regimes to becoming one of the world’s best insolvency regimes. It lays the foundations for the development of the corporate bond market, which would finance the infrastructure projects of the future. The passing of this Code and implementation of the same will give a big boost to ease of doing business in India.”

## Insolvency and Bankruptcy Board of India

Under section 188 of the Code, the IBBI was established on 1<sup>st</sup> October, 2016. The Governing Board of the IBBI consists of the following members appointed by the Central Government, namely:

- a. a Chairperson;
- b. three members from amongst the officers of the Central Government not below the rank of Joint Secretary or equivalent, one each to represent the Ministry of Finance, the Ministry of Corporate Affairs and the Ministry of Law, ex officio;
- c. one member to be nominated by the Reserve Bank of India, ex officio; and
- d. five other members to be nominated by the Central Government, of whom at least three are whole-time members.

The Governing Board comprises the following members as on 31<sup>st</sup> December, 2016:

- a. Dr. M. S. Sahoo, Chairperson;
- b. Shri Ajay Tyagi, Additional Secretary (Investment), Ministry of Finance;
- c. Shri Amardeep S. Bhatia, Joint Secretary, Ministry of

Corporate Affairs;

d. Shri G. S. Yadav, Joint Secretary & Legal Adviser, Ministry of Law and Justice; and

e. Shri A. Unnikrishnan, Legal Adviser, Legal Department, Reserve Bank of India.

The IBBI has the following broad responsibilities:

- a. Regulation and development of market processes and practices relating to Corporate Insolvency, Corporate Liquidation, Individual Insolvency, and Individual Bankruptcy;
- b. Registration and regulation of service providers for the insolvency process which includes the Insolvency Professionals, Insolvency Professional Agencies, and Information Utilities;
- c. Oversight of markets and service providers through Surveillance, Investigation and Grievance Redressal;
- d. Enforcement and Adjudication of service providers to ensure their orderly functioning; and
- e. Professional development and expertise through Education, Examination, Training and continuous professional education.



# Regulations

The IBBI issued five regulations to provide for regulation of service providers and enable implementation of provisions relating to corporate insolvency resolution and liquidation. The details are as under:

I. The IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016: These regulations make it mandatory for an Insolvency Professional Agency (IPA) to adopt bye-laws that are consistent with the Model Bye Laws issued by the IBBI. More than half of the directors of its Board of the IPA shall be independent directors and not more than one-fourth of the directors shall be IPs. The IPA shall have Membership Committee(s), Monitoring Committee, Grievance Redressal Committee(s), and Disciplinary Committee(s) for regulation and oversight of professional members.

II. The IBBI (Insolvency Professional Agencies) Regulations, 2016: These regulations *inter alia* provide for the eligibility norms to be a Professional Member of an IPA and also for eligibility norms to be registered with the IBBI as an IPA. A company registered under section 8 of the Companies Act, 2013 with a minimum net worth of Rs.10 crore and a paid up capital of Rs.5 crore is eligible to be an Insolvency Professional Agency. At least 51% of the share capital of the IPA must be held, directly or indirectly, by persons resident in India. The IPA, its promoters, its directors and persons holding more than 10% of its share capital must be fit and proper persons.

III. The IBBI (Insolvency Professionals) Regulations, 2016: These regulations, *inter alia* provide for registration, regulation and oversight of insolvency professionals (IPs). These provide for three modes of registration: (a) chartered accountants, company secretaries, cost accountants, and advocates who have been in practice for 15 years are eligible to seek for registration (with validity of six months) as IPs till 31<sup>st</sup> December, 2016; (b) chartered accountants, company secretaries, cost accountants and advocates with 10 years' of post-membership experience (practice or employment) and graduates with 15 years' of post-qualification managerial experience are eligible for registration as IPs on passing the Limited Insolvency Examination; and (c) any other person is eligible for registration as IP on passing the National Insolvency Examination. These allow an IP to use organisational resources of a recognised insolvency professional entity. A limited liability partnership, a registered partnership firm and a company can be recognised as an insolvency professional entity if a majority of the partners of partnership firm or a majority of the whole-time directors of the company are registered as insolvency professionals with the IBBI. The regulations provide for the code of conduct for IPs whereby IPs are required to *inter alia* adhere to timelines, maintain confidentiality, comply with the restrictions on employment and occupation and avoid conflict of interests.

IV. The IBBI (Insolvency Resolution Process for Corporate

Persons) Regulations, 2016: The regulations delineate the processes and activities from initiation of Corporate Insolvency Resolution Process (CIRP) till its conclusion with approval of the resolution plan. These regulations prohibit an insolvency professional from acting as a resolution professional for CIRP of a corporate debtor if he is not independent of the corporate debtor. These prohibit partners or directors of an insolvency professional entity of which the insolvency professional is a partner or director from representing other stakeholders in the same CIRP. These oblige the insolvency professional to make disclosures - initial and continuing - if he has any pecuniary or personal relationship with any of the stakeholders entitled to distribution of assets. These regulations specify the manner and contents of public announcement, receipt and verification of claims of creditors, formation of committee of creditors, and manner of holding meetings of committee of creditors and voting in such meetings. These also specify the contents of information memorandum and of resolution plan, including its implementation schedule, and the manner of determination of liquidation values. These further specify the components of resolution process costs and scope of essential supplies.

V. The IBBI (Liquidation Process) Regulations, 2016: These regulations *inter alia* provide for the details of activities from issue of liquidation order under section 33 of the Code to dissolution order under section 54. These regulations prohibit an insolvency professional from acting as a liquidator for a corporate debtor if he is not independent of the corporate debtor. These prohibit partners or directors of an insolvency professional entity of which the insolvency professional is a partner or director from representing other stakeholders in the same liquidation process. These oblige the liquidator, and also registered valuer(s) and professional(s) assisting him in liquidation to make disclosures - initial and continuing - about pecuniary or personal relationship with any of the stakeholders entitled to distribution of assets. These regulations specify the manner and contents of public announcement, receipt and verification of claims of stakeholders, reports and registers to be maintained, preserved and submitted by the liquidator, the manner of realisation of assets and security interest, and distribution of proceeds to stakeholders. These regulations provide that a liquidator should ordinarily sell the assets through auctions. He may sell the assets through private sale only when the asset is perishable; the asset is likely to deteriorate in value significantly if not sold immediately or the asset is sold at a price higher than the reserve price of a failed auction. He may sell an asset on standalone basis, or assets in a slump sale, assets in parcels or a set of assets collectively. These regulations provide that the fee payable to a liquidator shall form a part of liquidation cost. These further provide that a liquidator shall be paid such fees and in such manner as has been decided by the committee of creditors during the resolution process. In all other cases, the liquidator shall be entitled to a fee as a percentage of the amount realised net of other liquidation costs and of the amount distributed.

# Service Providers

The IPAs are front line regulators for the IPs under the Code. The IBBI commenced registration of IPAs from 28<sup>th</sup> November, 2016 in accordance with the regulations. It has registered at the end of the quarter the following three IPAs:

Sl.	Name of IPA	Promoted by	Date of Registration
1	Indian Institute of Insolvency Professionals of ICAI	The Institute of Chartered Accountants of India	28 <sup>th</sup> November, 2016
2	ICSI Insolvency Professionals Agency	The Institute of Company Secretaries of India	28 <sup>th</sup> November, 2016
3	Insolvency Professional Agency of Institute of Cost Accountants of India	The Institute of Cost Accountants of India	30 <sup>th</sup> November, 2016

The three IPAs started enrolling professional members since 29<sup>th</sup> November, 2016 for their registration as Insolvency Professionals for a limited period of six months as per Regulation 9 of the IBBI (Insolvency Professionals) Regulations, 2016. The IBBI has granted registration to 977 Insolvency Professionals in this category. The region-wise and IPA wise break-up of Insolvency Professionals registered with the IBBI is as under:

City / Region	Indian Institute of Insolvency Professionals of ICAI	ICSI Insolvency Professionals Agency	Insolvency Professional Agency of Institute of Cost Accountants of India	Total*
Delhi	224	77	18	319
Rest of the Northern Region	109	36	2	144
Mumbai	100	29	4	133
Rest of the Western Region	75	26	9	110
Chennai	41	5	1	47
Rest of the Southern Region	53	23	2	78
Kolkata	81	18	6	105
Rest of the Eastern Region	30	7	1	38
All India	713	221	43	977

\* These IPs have been enrolled by one of the three IPAs on or before 31<sup>st</sup> December, 2016

## Limited Insolvency Examination

The IBBI (Insolvency Professionals) Regulations, 2016 allow chartered accountants, company secretaries, cost accountants and Advocates with 10 years' of post-membership experience (practice or employment) or Graduates with 15 years' of post-qualification managerial experience to be registered as IPs on passing the Limited Insolvency Examination. For this purpose, the IBBI launched the Limited Insolvency Examination on 31<sup>st</sup> December, 2016. It constituted an Examination Committee of Officers to finalise the syllabus and the questions for the examination. The Examination Committee published the syllabus for the examinations (being conducted from 31<sup>st</sup> December 2016 to 30<sup>th</sup> June 2017) on 30<sup>th</sup> November, 2016, FAQ on examination on 14<sup>th</sup> December, 2016 and one sample question paper on 28<sup>th</sup> December, 2016 on the web site of the IBBI.

The IBBI has assigned administration of the Limited Insolvency Examination to National Institute of Securities Markets (NISM).

The format of examination is as under:

a. The examination is conducted online (computer-based in a proctored environment) with objective multiple choice questions;

- b. The duration of the examination is two hours;
- c. A candidate is required to answer 90 questions in two hours for a total of 100 marks;
- d. There is a negative marking of 25% of the marks assigned for the question;
- e. Passing mark for the examination is 60%;
- f. A candidate is issued a temporary mark sheet on the submission of examination paper;
- g. Passing candidate is awarded a certificate by the IBBI; and
- h. No workbook or study material is provided.

The frequency of examination is as under:

- a. The examination is available from 100 + locations in the country;
- b. The examination is available from 31<sup>st</sup> December, 2016 between 9:30 AM and 5:30 PM;
- c. The enrolment for examination is open from 15<sup>th</sup> December, 2016;
- d. A candidate pays an examination fee of Rs.1000 (Rupees one thousand only) online on every enrolment.

# Advisory Committees

The IBBI constituted two Advisory Committees as under:

a. Advisory Committee on Service Providers: The Committee comprises as under:

- Shri Mohandas Pai, Chairman, Manipal Global Education (Chairperson)
- Dr. Ajay N. Shah, Professor, National Institute of Public Finance and Policy
- Shri Amarjit Singh Chandhiok, Senior Advocate
- Dr. Bimal N. Patel, Director and Professor of Public International Law, Gujarat National Law University
- Shri J. Ranganayakulu, Executive Director (Law), Securities and Exchange Board of India

IBBI. It may advise on these matters on its own also.

b. Advisory Committee on Corporate Insolvency Resolution and Liquidation: The Committee comprises as under:

- Shri Uday Kotak, Executive Vice Chairman and Managing Director, Kotak Mahindra Bank (Chairperson)
- Shri Ashish Kumar Chauhan, Managing Director and Chief Executive Officer, BSE Limited
- Shri Gyaneshwar Kumar Singh, Joint Secretary to Government of India, Ministry of Corporate Affairs
- Shri M.V. Nair, Chairman, Credit Information Bureau (India) Limited



◀ Meeting of the Advisory Committee on Service Providers in progress



◀ Members of the Advisory Committee on Corporate Insolvency & Liquidation

- Shri K.V. R. Murty, Joint Secretary, Ministry of Corporate Affairs
- Shri Ravi Narain, Vice Chairman, National Stock Exchange of India Ltd.
- President, The Institute of Chartered Accountants of India (CA M. Devaraja Reddy) and
- President, The Institute of Company Secretaries of India (CS (Ms.) Mamta Binani).

- Dr. Omkar Goswami, Chairperson, CERG Advisory Private Limited
- Shri Somshekhar Sundaresan, Legal Counsel
- President, NCLT & NCLAT Bar Association (Shri Virender Ganda, Senior Advocate), and
- President, The Institute of Cost Accountants of India (CMA Manas Kumar Thakur).

The Advisory Committee shall advise and provide professional support to the IBBI on regulation and development of the service providers on a request from the

The Advisory Committee shall advise and provide professional support to the IBBI on matters relating to Corporate Insolvency Resolution and Liquidation on a request from the IBBI. It may advise on these matters on its own also.

## Events

The IBBI organised two events during the quarter

- The IBBI commenced registration of Insolvency Professional Agencies on 28<sup>th</sup> November, 2016. In a function in North Block, New Delhi on 28<sup>th</sup> November, 2016, Shri Arun Jaitley, Hon'ble Minister of Finance and Corporate Affairs handed over certificates of registration to two Insolvency Professional Agencies registered with the IBBI.
- The IBBI commenced registration of Insolvency Professionals on 30<sup>th</sup> November, 2016. In a function at CMA Bhawan, Lodhi Road, New Delhi on 30<sup>th</sup> November, 2016, Shri Tapan Ray, Secretary to Government of India, Ministry of Corporate Affairs, handed over certificates of registration to 18 Insolvency Professionals enrolled by Insolvency Professional Agencies and registered with the IBBI.

## Quotes

Shri Narendra Modi, Hon'ble Prime Minister of India in his address at National Initiative towards Strengthening Arbitration and Enforcement in India, 23<sup>rd</sup> October, 2016:

“Towards this end, we have initiated far-reaching legal reforms. Over a thousand archaic laws have been scrapped. We have enacted a comprehensive Insolvency and Bankruptcy Code, 2016, implemented the National Company Law Tribunals....

*Further, in harmony with the Bankruptcy Code, we have amended the SARFAESI and DRT Acts this year to suit the changing credit landscape and augment ease of doing business.”*

Shri Arun Jaitley, Hon'ble Minister of Finance and Corporate Affairs in his address at the inauguration of the NISM Campus, 24<sup>th</sup> December, 2016:

“We started the year with the implementation ..... The Insolvency and Bankruptcy Law not only got passed, but by the end of the year, got effectively implemented.”

Ministry of Finance, Press Release dated 11<sup>th</sup> May, 2016:

“This (The Insolvency and Bankruptcy Code, 2016) is considered as the biggest economic reform next only to GST.”