



सत्यमेव जयते

भारतीय विवाला और शोधन अधिमता 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, 2017 / Vol. 5

Insolvency Resolution Process



Recovery

Resolution

Liquidation

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

T N E T N C O N T E N T

From the Desk of the Chairperson	02
IBBI Updates	03
<ul style="list-style-type: none"> ■ Delegation of Powers under Section 247 ■ Visit of Hon'ble President, NCLT ■ Visit of Secretary, MCA ■ Financial Stability and Development Council ■ Human Resources 	
The Insolvency and Bankruptcy Code, 2016	03
<ul style="list-style-type: none"> ■ Clarification regarding Resolution Plan ■ Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 ■ Insolvency Law Committee 	
Notifications	04
<ul style="list-style-type: none"> ■ The Companies (Registered Valuers and Valuation) Rules, 2017 ■ Commencement of Section 247 of the Companies Act, 2013 ■ The Companies (Removal of Difficulties) Second Order, 2017 	
Regulations	05
<ul style="list-style-type: none"> ■ Second Amendment to the Corporate Insolvency Resolution Regulations ■ Third Amendment to the Corporate Insolvency Resolution Regulations ■ Fourth Amendment to the Corporate Insolvency Resolution Regulations ■ Grievances and Complaint Handling Procedure Regulations, 2017 ■ Regulations relating to Individual Insolvency Resolution 	
Guidelines / Facilitations	06
<ul style="list-style-type: none"> ■ Guidelines on Technical Standards ■ Guidelines for Recommending IRPs and Liquidators ■ Guidelines on Essay Competition ■ Submission of Financial Information to IUs 	
Orders	07
<ul style="list-style-type: none"> ■ Supreme Court ■ High Courts ■ National Company Law Appellate Tribunal ■ National Company Law Tribunal ■ Insolvency and Bankruptcy Board of India 	
Corporate Processes	10
<ul style="list-style-type: none"> ■ Insolvency Resolution ■ Liquidation and Voluntary Liquidation ■ Ease of Doing Business 	
Service Providers	12
<ul style="list-style-type: none"> ■ Insolvency Professionals ■ Replacement of IRP ■ Insolvency Professional Entities ■ Registered Valuers Organisations 	
Examinations	13
<ul style="list-style-type: none"> ■ Limited Insolvency Examination ■ Workshop for Insolvency Professionals ■ Educational Course for Valuers ■ Valuation Examinations 	
Feature: Registered Valuers	13

Integrity Pledge Certificate issued by Central Vigilance Commission to IBBI



From the Desk of the Chairperson

Resolution: The Soul of IBC

Where a firm is in a state of insolvency, that is, it has defaulted in repayment obligations, the creditor has broadly two options, namely, recovery or resolution. Further, he has many options for recovering default; so also for resolving insolvency. He may use the Insolvency and Bankruptcy Code, 2016 (Code) for resolution, though he can resolve insolvency outside the Code. He must not use the Code for recovery, though he may recover from future earnings of the firm, post-resolution.

The soul of the Code is resolution of insolvency of a firm by (a) a collective effort (b) to keep it going (c) to maximise the value of its assets, and (d) to balance the interests of all stakeholders. As a collective body of financial creditors (FCs), the Committee of Creditors (CoC) acts in unison to resolve insolvency through a process that does not have petitioner/respondent or plaintiff/defendant. In contrast, recovery is an individual effort by a creditor to recover its dues through a process that has the debtor and the creditor on opposite sides. When creditors recover their dues - one after another or simultaneously - from the available assets of the firm, nothing may be left in due course. Thus, resolution endeavours to keep the firm alive, while recovery bleeds it to death. It would be an economic catastrophe if many creditors seek recovery from insolvent firms.

The CoC engenders competitive resolution plans and approves the best one that maximises the value of assets of the firm. In contrast, recovery maximises the value of the creditor alone to the detriment of the firm and other creditors. Resolution makes the stakeholders share the fate of the firm and thereby balances the interests of all stakeholders. However, recovery serves the interests of creditors on first come first served basis - the creditor, who initiates recovery first, realises the highest, and who initiates the last, realises the least - and yields inequitable distribution of available assets. Thus, recovery, which is not a collective effort, does not keep the firm alive, maximize the value of its assets and balance the interests of all stakeholders, and hence it is an antithesis of resolution.

The Code strives for resolution and discourages recovery in several ways. It enables any FC to trigger the resolution process even when the firm has defaulted to another FC. This prevents a firm from granting a preferential treatment to a noisy creditor while ignoring others. The Code prohibits any action to foreclose, recover or enforce any security interest during resolution process and thereby prevents a creditor(s) from recovering its dues. It does not envisage termination of the process even if dues of the creditor, who had initiated the process, are satisfied. The adjudicating rules permit withdrawal of application for initiation of resolution till its admission. Regulations allow payment of only liquidation value, not the default amount or proportionate share in enterprise value, to FCs who vote against the approved resolution plan.

Several pronouncements of the adjudicating authority reiterate prohibition on recovery. In the matter of M/s Nowfloats Technologies Pvt. Ltd., the National Company Law Tribunal (NCLT) reiterated that resolution process is initiated for the benefit of the general body of creditors. It is a representative action and is not for the recovery of money of an individual creditor. In the matter of Parker Hannifin India Pvt. Ltd., the NCLT observed that after the resolution process commences, the nature of proceeding changes to representative suit and the lis does not remain only between a creditor and the debtor. Therefore, they alone do not have the right to close the process because the creditor has been paid its dues. In the matter of Prowess International Pvt. Ltd., the Hon'ble National Company Law Appellate Tribunal (NCLAT) held: *"It is made clear that Insolvency*

Resolution Process is not a recovery proceeding to recover the dues of the creditors. I & B Code, 2016 is an Act relating to reorganisation and insolvency resolution of corporate persons, ...". In the matter of Lokhandwala Kataria Construction Pvt. Ltd., the Hon'ble NCLAT held: *"...matter cannot be closed till claim of all the creditors are satisfied by the corporate debtor."* When this matter came up on appeal before the Hon'ble Supreme Court, it allowed closure with the observation: *"However, since all the parties are before us today, we utilize our powers under Article 142 of the Constitution of India to put a quietus to the matter before us."*

Liquidation brings the life of a firm to an end. It destroys organisational capital and renders resources idle till their reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus left after satisfying the claims of a prior set of stakeholders fully. Thus, liquidation is also antithesis of resolution. The Code, therefore, does not allow liquidation of a firm directly. It allows liquidation only after the process fails to yield resolution. It rather facilitates and encourages resolution in several ways. It obliges an insolvency professional (IP) to manage the affairs of the firm as a going concern and to protect and preserve the value of its assets. It empowers the IP to raise interim finances for continued business operations of the firm and mandates continuation of essential services. It ensures a calm period when nobody disturbs the firm undergoing resolution.

The Code envisages initiation of the resolution process at the earliest, well before the insolvency balloons to an un-resolvable proportion. A stakeholder is entitled, though not obliged, to initiate process as soon as there is a default of the threshold amount. In early days of default, enterprise value of a firm is usually higher than its liquidation value and hence the CoC is motivated to resolve insolvency to preserve its value rather than to liquidate it. However, the enterprise value of the firm reduces exponentially with time, as prolonged uncertainty about its ownership and control and general apprehension surrounding insolvency leads to a flight of customers, vendors, workers, etc. The Code, therefore, mandates closure of the process ordinarily at the latest by 180th day. The essence of the Code is timeline and in the matter of JK Jute Mills Company Ltd., the Hon'ble NCLAT has held this timeline to be mandatory.

State is leaving no stone unturned to facilitate resolution. A resolution plan may create book profits arising from write-off of debt in the books of the firm. Such book profits attract minimum alternate tax and consequently could discourage the prospect of resolution. The Central Government has recently allowed set off of such book profits against the losses brought forward. A resolution plan may entail allotment of shares at a discount. The Companies (Amendment) Act, 2017 has allowed companies to issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan. The Central Government has clarified that approval of shareholders of the company for a particular action required for implementation of a resolution plan, which would have been required under the Companies Act, 2013 or any other law, is deemed to have been given on approval of resolution plan by the adjudicating authority.

With a view to maximise the value, the Code envisages boundless possibilities of resolution with or without the existing promoter, management, products, technology or business model. The resolution plan, however, must be feasible and viable so that it is sustainable. It needs to come from a person who has a credible record and is likely to deliver and, therefore, debars a person who does not have a credible record and is unlikely to deliver. It is the bounden duty of the CoC to make best endeavor towards resolution at least in all cases where enterprise value exceeds liquidation value.

Dr. M. S. Sahoo

IBBI Updates

Delegation of Powers under Section 247

Vide a notification dated 23rd November, 2017, the Central Government delegated its powers and functions under Section 247 of the Companies Act, 2013 to IBBI and specified it as the Authority for registration of Valuers and recognition of Registered Valuers Organisations under the Companies (Registered Valuers and Valuation) Rules, 2017.

Visit of Hon'ble President, NCLT

Hon'ble Justice Mr. M. M. Kumar, President of the National Company Law Tribunal (NCLT) made a special visit to Insolvency and Bankruptcy Board of India (IBBI) on 27th December, 2017 and had a rich interactive session with the IBBI family. He dwelt upon the paradigm shift in law to deal with insolvency of companies. He shared his experience in dealing with contentious issues in the initial days of the regime and expressed his satisfaction with the role played by the NCLT in evolving jurisprudence.



Hon'ble Justice Mr. M. M. Kumar, President, NCLT interacting with officers of the IBBI on 27th December, 2017.

Visit of Secretary, Ministry of Corporate Affairs

Mr. Injeti Srinivas, Secretary, Ministry of Corporate Affairs (MCA) made a special visit to IBBI on 2nd November, 2017. He reviewed the progress made in the implementation of the Insolvency and Bankruptcy Code, 2016 and emphasized the need for quick and effective resolution of issues impacting smooth implementation.



Shri Injeti Srinivas, Secretary, Ministry of Corporate Affairs.

Financial Stability and Development Council

Chairperson, IBBI was inducted as a Member of the Financial Stability and Development Council (FSDC) on 18th September, 2017. Dr. M. S. Sahoo, Chairperson, IBBI participated in the meeting of the Sub-Committee of the

FSDC held on 23rd November, 2017 in Mumbai. Dr. Urjit R. Patel, Governor, Reserve Bank of India, chaired the meeting. The Sub-Committee reviewed the major developments on the global and domestic fronts that impinge on the financial stability of the country. It discussed issues related to establishment of National Centre for Financial Education, Operationalization of Information Utilities registered by IBBI, sharing of data among regulators and implementation status of Legal Entity Identifier. It also reviewed the activities of its various Technical Groups and the functioning of State Level Coordination Committees in various States / UTs.

The 18th Meeting of the FSDC was held in New Delhi on 29th December, 2017 under the Chairmanship of the Union Minister of Finance, Mr. Arun Jaitley. Dr. M. S. Sahoo, Chairperson, IBBI participated in the meeting. The financial market regulators, namely, RBI, SEBI, IRDAI, PFRDA and IBBI presented their proposals for the Union Budget 2018-19 concerning development of their respective sectors. The Council deliberated over these proposals. Concerned Ministries/Departments were advised by the Council to examine respective proposals in detail for appropriate decision.

Human Resources

In its endeavour to learn from global best practices and strengthen its human resource capacity, the IBBI sent a delegation of two senior officers to Australia for interactions with functionaries of Australian Restructuring Insolvency and Turnaround Association (ARITA), Australian Securities and Investment Commission, Australian Financial Security Authority and few insolvency and bankruptcy professionals and other stakeholders in October, 2017. Two other senior officers participated in the BNM-WBG Credit Infrastructure programme in November, 2017 at Kuala Lumpur, Malaysia.



Dr. (Ms.) Mamta Suri, ED and Ms. Anita Kulshrestha, DGM interacting with functionaries of ARITA, in Sydney.

The Insolvency and Bankruptcy Code, 2016

Clarification regarding Resolution Plan

Stakeholders had sought a clarification whether the approval of shareholders is required for implementing a resolution plan which has been approved by the adjudicating authority (AA) under Section 31 of the Code. While observing that a resolution plan approved by the AA is binding on the



Mr. Ritesh Kavdia, CGM and Mr. I. Sreekara Rao, DGM participated in the BNM-WBG Credit Infrastructure programme in Nov, 2017 at Kuala Lumpur, Malaysia

corporate debtor (CD) and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan, the Central Government, vide a circular dated 25th October, 2017, clarified that approval of shareholders of the CD for a particular action required in the resolution plan for its implementation, which would have been required under the Companies Act, 2013 or any other law, is deemed to have been given on its approval by the AA.

Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017

The Central Government promulgated an Ordinance on 23rd November, 2017 to amend the Code. The gist of major amendments is as under:

- a. Section 2 of the Code, as amended, provides further categories of individuals, namely, (i) personal guarantors to CDs, (ii) partnership firms and proprietorship firms, and (iii) other individuals. This would facilitate phase-wise commencement of provisions relating to individuals.
- b. Section 25(2)(h) of the Code, as amended, empowers the CoC to lay down the criteria for resolution applicants, having regard to the complexity and scale of operations of the business of the CD, who can submit resolution plans.
- c. Section 29A, as inserted by the Ordinance, prohibits certain persons from submitting a resolution plan who, on account of their antecedents may adversely impact the credibility of the processes under the Code. A person is prohibited if he: (i) is an undischarged insolvent, (ii) has been a wilful defaulter, (iii) has an non-performing assets account, (iv) has been convicted of an offence punishable with imprisonment for two years or more, (v) has been disqualified to act as a director, (vi) has been prohibited by SEBI from trading in securities or accessing securities market, (vii) has indulged in preferential transactions, undervalued transactions, or fraudulent transactions, (viii) has executed an enforceable guarantee in favour of a creditor, in respect of a CD under resolution or liquidation under the Code, (ix) has a connected person who suffers from any of the above disabilities, or (x) has been subject to any of the above disabilities under any law in a jurisdiction outside India.
- d. Section 30(4), as amended, explicitly obliges the CoC, while approving a resolution plan, to consider its feasibility and viability.
- e. Section 35(1)(f), as amended, forbids sale of property in liquidation to a person who is ineligible to be a resolution applicant.
- f. Section 235A, as inserted by the Ordinance, provides for punishment for contravention of the provisions where no specific penalty or punishment

is provided in the Code. The punishment is fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 2 crore.

The Central Government introduced the Insolvency and Bankruptcy Code (Amendment) Bill, 2017 in Parliament in the winter session to replace the Ordinance. The Lok Sabha passed the Bill on 29th December, 2017.

Insolvency Law Committee

The Central Government, vide an Order dated 16th November, 2017, constituted the Insolvency Law Committee (ILC) under the Chairmanship of Secretary, MCA to take stock of the functioning and implementation of the Code, identify the issues that may impact the efficiency of corporate insolvency resolution and liquidation framework prescribed under the Code, and make suitable recommendations to address such issues, and enhance the efficiency of the processes prescribed for the effective implementation of the Code. The ILC comprises as under:

Table 1: Insolvency Law Committee

S.No.	Name and Position	Position in Committee
1	Secretary, MCA	Chairperson
2	Chairperson, IBBI	Member
3	Additional Secretary (Banking), Department of Financial Services	Member
4	Mr. Sudarshan Sen, ED, RBI	Member
5	Dr. T. K. Viswanathan, Former Secretary General, Lok Sabha and Chairman, BLRC	Member
6	Mr. Shardul Shroff, Executive Chairman, Shardul Amarchand Mangaldas & Co.	Member
7	Mr. Rashesh Shah, Chairman & CEO, Edelweiss Group	Member
8	Mr. Siddharth Birla, Past President, FICCI & Chairman, XPRO India Ltd.	Member
9	Mr. Bahram Vakil, Partner, AZB Partners	Member
10	Mr. B. Sriram, MD, Stressed Assets Resolution Group, SBI	Member
11	President, Institute of Chartered Accountants of India	Member
12	President, Institute of Cost Accountants of India	Member
13	President, Institute of Company Secretaries of India	Member
14	Joint Secretary (Policy/Insolvency), MCA	Member Secretary

Notifications

The Companies (Registered Valuers and Valuation) Rules, 2017

The Central Government, vide a notification dated 18th October, 2017, published the Companies (Registered Valuers and Valuation) Rules, 2017. The Rules, inter alia, provide for: (a) registration of valuers, who may be individuals, partnership firms or companies, with the IBBI for conduct of valuation of different classes of assets under the Companies Act, 2013, (b) recognition of Registered Valuers Organisations (RVOs) to enroll valuer members, enforce a code of conduct on them, and conduct training and educational courses for its members, and (c) the mechanism for notification and modification of valuation standards based on the recommendations of the “Committee to advise on valuation matters”.

The Rules provide for a transition period upto 31st March, 2018 for registration of valuers with IBBI. During this transition period, a person, who is rendering valuation services under the Companies Act, 2013, may continue to do so, without a certificate of registration up to 31st March, 2018. With effect from 1st April, 2018, only a person registered with the IBBI as a registered valuer can conduct valuations required under the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016. For registering



Dr. M. S. Sahoo, Chairperson, IBBI at inauguration of Conference on Insolvency and Bankruptcy, organised by BSE in association with IBBI, on 17th November, 2017 in Mumbai.



Dr. M. S. Sahoo, Chairperson, IBBI delivering the 34th Purushotamdas Thakurdas Memorial Lecture, organised by Indian Institute of Banking at Finance, on 18th December, 2017 in Mumbai.

with the IBBI, a person having necessary qualification and experience has to enroll himself as a valuer member with a RVO, complete a recognised educational course conducted by the RVO, and pass valuation examination conducted by the IBBI. A registered valuer may conduct valuations under any other law, if required or permitted under that law or the concerned authority.

Commencement of Section 247 of the Companies Act, 2013

The Central Government notified the commencement of section 247 (relating to valuers) of the Companies Act, 2013 with effect from 18th October, 2017.

The Companies (Removal of Difficulties) Second Order, 2017

Section 247 of the Companies Act, 2013 did not provide for a RVO, which can enroll valuers. Vide a notification dated 23rd October, 2017, the Central Government issued the Companies (Removal of Difficulties) Second Order, 2017 to amend section 247(1) to remove this difficulty. The amended section 247 provides that valuations required under the Companies Act, 2013 shall be undertaken by a person who, having the necessary qualifications and experience, and being a valuer member of a RVO, is registered as a valuer with the Authority.

Regulations

Second Amendment to the Corporate Insolvency Resolution Regulations

The IBBI made the second amendment to (i) the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and (ii) the IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 on 5th October, 2017. According to the amended regulations, a resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including FCs and operational creditors (OCs), of the CD.

Third Amendment to the Corporate Insolvency Resolution Regulations

The IBBI made the third amendment to (i) the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and (ii) the IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 on 7th November, 2017. These amendments empower the CoC to carry out due diligence of every resolution plan to satisfy itself that (a) the

plan is viable, and (b) the persons who have submitted the plan and who would implement the plan are credible, to avoid the plans which may lead to liquidation, post resolution, and select the most suitable plan under the circumstances.

According to the amendments, a resolution plan shall disclose details of the resolution applicant and other connected persons to enable the CoC to assess credibility of such applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval. The resolution plan shall disclose the details in respect of the resolution applicant; persons who are promoters or in management or control of the resolution applicant; persons who will be promoters or in management or control of the business of the CD during the implementation of the resolution plan; and their holding companies, subsidiary companies, associate companies and related parties, if any. It shall disclose details of convictions, pending criminal proceedings, disqualifications under the Companies Act, 2013, orders or directions issued by SEBI, categorization as a wilful defaulter, etc. Further, the resolution professional shall submit to the CoC all resolution plans which comply with the requirements of the Code and regulations made thereunder, along with details of preferential transactions under Section 43, undervalued transactions under Section 45, extortionate credit transactions under Section 50, and fraudulent transactions under Section 66 of the Code noticed by him.

Fourth Amendment to the Corporate Insolvency Resolution Regulations

The IBBI made the fourth amendment to (i) the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and (ii) the IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 on 31st December, 2017 to provide for the following:

- a. According to the regulations, a resolution plan needs to identify specific sources of funds to be used for paying the liquidation value due to dissenting creditors. For this purpose, the 'dissenting financial creditor', according to amended regulations, means a FC who voted against the resolution plan or abstained from voting for the resolution plan, approved by the CoC.
- b. As per the amendments, it is not necessary to disclose 'liquidation value' in the information memorandum. After the receipt of resolution plan(s) in accordance with the Code and the regulations, the resolution professional shall provide the liquidation value to every member of the CoC after obtaining an undertaking from the member to the effect that such member shall maintain confidentiality of the liquidation value and

shall not use such value to cause an undue gain or undue loss to itself or any other person. Also, the interim resolution professional or the resolution professional, as the case may be, shall maintain confidentiality of the liquidation value.

- c. According to the amendments, a resolution applicant shall submit the resolution plan(s) to the resolution professional within the time given in the invitation for the resolution plans in accordance with the provisions of the Code. This will enable the CoC to close a resolution process as early as possible subject to provisions in the Code and the regulations.

Grievances and Complaint Handling Procedure Regulations, 2017

The IBBI notified the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 on 7th December, 2017. The regulations enable a stakeholder, namely, debtor, creditor, claimant, service provider, resolution applicant or any other person having an interest in an insolvency resolution, liquidation, voluntary liquidation or bankruptcy process under the Code, to file a grievance or a complaint against a service provider, namely, insolvency professional agency, insolvency professional, insolvency professional entity or information utility. The regulations provide for an objective and transparent procedure for disposal of grievances and complaints by the IBBI, that does not spare a mischievous service provider, but does not harass an innocent service provider.

A stakeholder may file a grievance that shall state the details of the conduct of the service provider that has caused the suffering to the aggrieved; details of suffering, whether pecuniary or otherwise, the aggrieved has undergone; how the conduct of the service provider has caused the suffering of the aggrieved; details of his efforts to get the grievance redressed from the service provider; and how the grievance may be redressed. A stakeholder may file a complaint in the specified form along with a fee of rupees two thousand and five hundred. A complaint needs to state the details of the alleged contravention of any provision of the Code, or rules, regulations, or guidelines made thereunder or circulars or directions issued by the IBBI by a service provider or its associated persons; details of alleged conduct or activity of the service provider or its associated persons, along with date and place of such conduct or activity, which contravenes the provision of the law; and details of evidence in support of alleged contravention. If the complaint is not frivolous or malicious, the fee will be refunded.

Where the IBBI is of the opinion that there exists a *prima facie* case, it may order an inspection under sub-regulation (3) of regulation 3, order an investigation under sub-regulation (2) of regulation 7 or issue a show cause notice under sub-regulation (2) of regulation 11 of the IBBI (Inspection and

Investigation) Regulations, 2017, as may be warranted and the matter shall be proceeded accordingly.

Regulations relating to Individual Insolvency Resolution

The IBBI had constituted a Working Group to recommend the strategy and approach for implementation of the provisions of the Code dealing with the insolvency and bankruptcy in respect of individual guarantors to CDs and individuals having business, and submit a report along with draft rules and regulations. The Working Group has since submitted a report dealing with insolvency resolution process of individuals and firms. It intends to submit a separate report for bankruptcy process of individuals and firms. The IBBI placed (i) the draft Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Individuals and Firms) Rules, 2017, and (ii) the draft IBBI (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017 on its website seeking public comments. It participated in ten roundtables of stakeholders in different cities to seek and understand their perspective relating to the draft rules and regulations. The Advisory Committee on Individual Insolvency and Bankruptcy, in its meeting held on 8th November, 2017, considered the report of the Working Group and other related material. The Governing Board of the IBBI considered these and the recommendations of the Advisory Committee.



Meeting of the Advisory Committee on Individual Insolvency in progress on 8th November, 2017 in New Delhi. Justice Mr. B. N. Srikrishna in chair.

Guidelines / Facilitations

Guidelines on Technical Standards

Based on the recommendations of the Technical Committee, the IBBI issued Guidelines for Technical Standards for core services on 13th December, 2017 for the following matters under regulation 13 of the IBBI (Information Utilities) Regulations, 2017: (i) standard terms of service; (ii) registration of users; (iii) unique identifier for each record and each user; (iv) submission of information; (v) identification and verification of persons; (vi) authentication of information; (vii) verification of information; (viii) data integrity; (ix) consent framework for providing access to information to third parties; (x) security of the system; (xi) security of information; (xii) risk management framework; (xiii) preservation of information; and (xiv) purging of information. The Technical Standards will ensure and enforce the reliability, confidentiality and security of financial information to be stored by the information utilities.



Roundtable on Draft Rules and Regulations on Individual Insolvency on 1st November, 2017 in New Delhi, organised by SIPI and FISME.

Guidelines for Recommending IRPs and Liquidators

Section 16(3)(a) of the Code requires the AA to make a reference to the IBBI for recommendation of an IP who may act as an interim resolution professional (IRP) in case an OC has made an application for corporate insolvency resolution process (CIRP) and has not proposed an IRP. The 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, if (a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or (b) the IBBI recommends the replacement of a resolution professional to the AA for reasons to be recorded in writing. The AA may direct the IBBI to propose the name of another IP to be appointed as a liquidator. The IBBI is required under section 34(6) to propose the name of another IP within ten days of the direction issued by the AA.

When a reference or direction is received from AA for recommending / proposing the name of an IP, the IBBI has no information about the volume, nature and complexity of the CIRP or Liquidation Process and the resources available at the disposal of an IP. The IBBI considers that every IP is equally suitable to act as IRP/Liquidator of any CIRP/Liquidation, if otherwise not disqualified. Therefore, it issued 'Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2017' on 15th December, 2017. Under these Guidelines, the IBBI will prepare a Panel of IPs for appointment as IRP or Liquidator and share the said Panel with the AA. The AA may pick up a name from the Panel for appointment as IRP or Liquidator for a CIRP or Liquidation process, as the case may be. The Panel will have Bench-wise list of IPs based on the registered office of the IP. It will have a validity of six months and a new Panel will replace the earlier Panel every six months.

Guidelines on Essay Competition

The successful implementation of the Code, 2016 requires building capacity of the professionals, participants and institutions and creating awareness among the stakeholders. In its endeavour to create awareness about the insolvency and bankruptcy regime amongst the students of higher education, the IBBI issued 'IBBI Essay Competition Guidelines, 2017' to promote essay competitions through Institutes of Learning. These Guidelines are effective from 1st January, 2018. The students of graduation and post-graduation courses of any discipline at Universities, Deemed Universities and Professional Institutes (Institute of Chartered Accountants of India, Institute of Cost Accountants of India and Institute of Company Secretaries of India) in India can participate in this competition. An Institute of Learning may hold an essay competition on any of the topics listed in Schedule to the Guidelines. It will assess the essays and identify two best essays in order of merit. The IBBI, through the Institute of Learning, will issue a certificate of participation to all participants in the essay competition, a cash prize of Rs. 10,000 to the student who has written the best essay, and a cash prize of Rs. 5,000 to the student who has written the second-best essay.

Submission of Financial Information to IUs

Information Utilities constitute a key pillar of the insolvency and bankruptcy regime. Section 215 of the Code requires a FC to submit financial information and information relating to assets in relation to which any security interest has been created, to an IU. Having regard to the provisions of the Code and the fact that an IU has already been registered, Reserve Bank of India, vide a circular dated 19th December, 2017, advised all scheduled commercial banks (including RRBs), small finance banks, local area banks, all co-operative banks, all NBFCs and all India Financial Institutions to put in place appropriate systems and procedures to ensure compliance with the relevant provisions of Code and the IBBI (Information Utilities) Regulations, 2017.

Orders

This part presents a brief of select decisions of judicial and quasi-judicial bodies during the quarter October-December, 2017.

Supreme Court

Alchemist Asset Reconstruction Company Ltd. Vs. M/s. Hotel Gaudavan Pvt. Ltd. & Ors (Civil Appeal No. 16929 of 2017)

The Hon'ble Supreme Court observed that the mandate of the Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect under section 14(1)(a) of the Code expressly interdicts institution or continuation of pending suits or proceedings against CD. It accordingly held that arbitration that has been instituted after the imposition of moratorium under section 14 of the Code is *non est* in law.

Uttara Foods and Feeds Private Limited Vs. Mona Pharmachem (Civil Appeal No. 18520 of 2017)

The Hon'ble Supreme Court, while allowing settlement between the parties after the admission of an insolvency application, observed: "We are of the view that instead of all such orders coming to the Supreme Court as only the Supreme Court may utilise its powers under Article 142 of the Constitution of India, the relevant Rules be amended by the competent authority so as to include such inherent powers. This will obviate unnecessary appeals being filed before this Court in matters where such agreement has been reached."

Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd.(Civil Appeal No. 15135 of 2017)

The Hon'ble Supreme Court clarified that a copy of the certificate required under section 9(3)(c) of the Code from the financial institution maintaining accounts of the OC confirming that there is no payment of an unpaid operational debt by the CD is certainly not a condition precedent to triggering the insolvency process under the Code. On a joint reading of section 9(3)(d) of the Code and the Adjudicating Rules, it observed that if such accounts are not available, a certificate based on such accounts cannot be given. Therefore, a so called condition precedent impossible of compliance cannot be put as a threshold bar to the processing of an application under section 9 of the Code. It further held that an OC may on the occurrence of a default deliver a demand notice under section 8 of the Code through an authorised agent or lawyer.

High Courts

Power Grid Corporation of India Ltd. Vs. Jyoti Structures Ltd. (O.M.P.(COMM.) 397/2016)

The Hon'ble High Court clarified that section 14 of the Code does not apply to the proceedings which are in the benefit of the CD as conclusion of such proceedings does not endanger, diminish, dissipate or impact the assets of the CD in any manner whatsoever. Such proceedings are in sync with the purpose of moratorium which includes keeping the CD's assets together during the insolvency resolution process and facilitating orderly completion of the process envisaged during the insolvency resolution process and ensuring the company may continue as a going concern.

NCLAT

Canara Bank Vs. Deccan Chronicle Holdings Limited (Company Appeal (AT) (Insolvency) No. 147 of 2017) (Passed in the previous quarter on 14th September, 2017)

Hon'ble NCLAT determined whether the moratorium under section 14 of the Code covers proceeding before Hon'ble High Courts or Hon'ble Supreme Court of India. It observed: "The Hon'ble Supreme Court has power under Article 32 of the Constitution of India and Hon'ble High Court

under Article 226 of Constitution of India which power cannot be curtailed by any provision of an Act or a Court. In view of the aforesaid provision of law, we make it clear that 'moratorium' will not affect any suit or case pending before the Hon'ble Supreme Court under Article 32 of the Constitution of India or where an order is passed under Article 136 of Constitution of India. 'Moratorium' will also not affect the power of the High Court under Article 226 of Constitution of India. However, so far as suit, if filed before any High Court under original jurisdiction which is a money suit or suit for recovery, against the 'corporate debtor' such suit cannot proceed after declaration of 'moratorium', under Section 14 of the I&B Code."

Innoventive Industries Ltd. Vs. Maharashtra State Electricity Distribution Company Ltd. (Company Appeal (AT) (Insolvency) No. 156 of 2017)

The Hon'ble NCLAT made it clear that the CD or resolution professional is not liable to pay the dues of period prior to passing of order of moratorium, which can be considered at the time of payment of dues to the creditors under resolution plan. It allowed the resolution professional to pay the charges towards consumption of electricity since the date of moratorium and if such amount is deposited, directed the respondent to restore electrical connection within 48 hours of such payment.

Black Pearls Hotels Pvt. Ltd. Vs. Planet M Retail Ltd. (Company Appeal (AT) (Insolvency) No. 91 of 2017)

The Hon'ble NCLAT, while adjudicating on the applicability of the Limitation Act, 1963 over the initiation of CIRP under the Code, held: "Insolvency and Bankruptcy Code, 2016 has come into force with effect from 1st December, 2016. Therefore, the right to apply under I&B Code accrues only on or after 1st December, 2016 and not before the said date (1st December, 2016). As the right to apply under section 9 of I&B Code accrued to appellant since 1st December, 2016, the application filed much prior to three years, the said application cannot be held to be barred by limitation."

Indian Overseas Bank Vs. Mr. Dinkar T. Venkatsubramaniam (Company Appeal (AT) (Insolvency) No. 267 of 2017)

The Hon'ble NCLAT, while considering the issue whether after initiation of resolution against the CD, a FC can appropriate dues of the CD from the account maintained by the latter in the bank (FC), observed: ".....that after admission of an application under Section 7 of the 'I & B Code', once moratorium has been declared it is not open to any person including 'Financial Creditors' and the appellant bank to recover any amount from the account of the 'Corporate Debtor', nor it can appropriate any amount towards its own dues."

M/s. Speculum Plast Pvt. Ltd. Vs. PTC Techno Pvt. Ltd. (Company Appeal (AT) (Insolvency) No. 47 of 2017)

The Hon'ble NCLAT, while adjudicating on the applicability of the Limitation Act, 1963 over the proceedings under the IBC, 2016 has held that the Limitation Act, 1963 is not applicable for initiation of CIRP. It further held: "the Doctrine of Limitation and Prescription is necessary to be looked into for determining the question whether the application under Section 7 or Section 9 can be entertained after long delay, amounting to laches and thereby the person forfeited his claim." It also held: "In so far it relates to filing of claim before the 'Insolvency Resolution Professional', in case of stale claim, long delay....., it is open to resolution applicant to decide whether such claim is to be accepted or not, and on submission of resolution plan, the Committee of Creditors may decide such question."

M/s. Custodial Services (India) Private Limited Vs. M/s. Metafilms (India) Ltd. (Company Appeal (AT) (Insolvency) No. 183 of 2017)

As per sub-section (3) of Section 61 of the Code, an appeal is required to be filed within thirty days and the Hon'ble NCLAT has been empowered to

condone delay not exceeding fifteen days. In the instant matter, the appeal was filed beyond the period of 45 days. The Hon'ble NCLAT held that it has no jurisdiction to condone the delay beyond 45 days.

National Company Law Tribunal

Shri Shrikrishna Rail Engineers Private Limited Vs. Madhucon Projects Limited (CP(IB) SR No. 4322/9/HDB/2017)

In this matter, the AA noted that total outstanding debt amount from the CD is only Rs.4.16 crore (including interest and retention money) and the remuneration for MD & CEO and two Whole Time Directors of the CD works out to Rs. 1.10 crore per annum, while the fee proposed by IRP works out to Rs. 14.00 crore approximately, apart from other incidental expenses. While observing that the fee quoted by the professionals should be reasonable, commensurate with the work to be handled, the AA held the remuneration quoted by the IRP in this matter as quite exorbitant. Accordingly, it referred the matter to IBBI for taking appropriate action/remedial measure against the proposed IRP, including disciplinary action, if any, as deemed fit.

M/s. Bell Finvest (India) Limited Vs. Intercon Container Survey & Commodities Pvt. Ltd. (C.P.No. 1153/I&BP/2017)

A FC filed a petition for initiation of CIRP on account of default by the CD in payment of principal and interest on loan. The loan attracted an interest rate of 24% payable in advance, and in case of default, an additional interest at the rate of 1% per day. The AA held that since the Code has come into existence to deal with distress situation of companies, it is not expected to allow a creditor to fleece whatever is left in the company in the name of interest. Further, if claims of this nature are allowed, the other creditors who are genuinely entitled to have their say in CoC will get affected. The AA invoked the discretion given under the Usurious Loans Act, 1918 to deprecate the claim made by the FC and dismissed the application stating that the interest claimed over the principal is usurious.

Fortune Pharma Private Limited. MA 560 IN CP No. 1148/ I&BC/ NCLT/ MB/ MAH/2017)

The applicant, SBI contended that after filing application for initiation of CIRP but before its admission, two related parties of the CD assigned their debts to unrelated FCs and thereby reduced applicant's voting rights in the CoC, with a *mala fide* intention and ulterior motive. The AA held that disqualification that existed at the time of initiation of CIRP cannot be washed away just because of an assignment. It observed that 'assignment' refers to transfer of one's right to recover debt to another person and that the rights of 'Assignee' are no better than those of the 'Assignor'. Therefore, the assignee does not get the right to change its status from 'related' to 'unrelated' vis-à-vis the impugned debt.

ICICI Bank Ltd. Vs. Innoventive Industries Ltd. (MA 557/2017 in CP 01/I&BP/2016)

A resolution applicant had submitted a resolution plan. 66.57% of the CoC voted in favour of the resolution plan. The resolution applicant contended that the requirement of 75% vote in favor of a resolution plan is directory and not mandatory. It further contended that rejection of the proposed plan would result in loss-loss situation for all stakeholders of Innoventive Industries Ltd., including the workmen and employees of the company. It also contended that as the Code is meant for maximization of value of assets and to balance the interest of all stakeholders, the value of the resolution plan being more than double the net liquidation value of Rs.135.40 crore, it is the only viable alternative for liquidation. The AA, however, held that the mandate of statute and the statements and objects of the enactment as well as the report of the Committee who drafted the legislation have not minced words in saying that the pre-requisite for approval of the resolution by CoC is 75% majority of the vote shares of the

CoC. It observed that the jurisdiction of AA lies to exercise its power under section 31 of the Code only when a plan is approved by CoC. When no decision has been taken by CoC, no jurisdiction will lie to AA as jurisdiction given under section 30 is only limited to approve or reject the resolution plan approved by CoC with super majority. The provisions of legislation cannot be changed by AA in its own wisdom. Accordingly, it held that a resolution by CoC with less than 75% voting share in CoC is *non est* in law and ordered the liquidation of the CD.

UT Worldwide (India) Pvt Ltd. Vs. Integrated Caps Private Limited (IB-298/ND/2017)

In this matter, the AA dealt with the nature of proceedings under the Code. It observed that it is exercising only a summary jurisdiction and cannot be made to conduct the proceedings by way of a detailed trial to ascertain the amount of debt claimed is as claimed or not as is done by a Civil Court taking a detailed examination of documents supported by oral examination of witnesses when the plaintiff approaches it by way of a suit.

Punjab National Bank Vs. Divyajyoti Sponge Iron Pvt. Ltd. (C.P(IB) No.363/KB/17)

A prayer was made by the Resolution Professional seeking necessary assistance and security to him to visit factory premises of the corporate debtor to carry out statutory duties and obligations peacefully. The AA ordered: "Keeping in view of the direct threatening by the corporate debtor it is hereby ordered that copy of this order may be saved on the Director General of Police, West Bengal, Superintendent of Police, Bankura and in-charge of Mejia P.S. for making proper and effective assistance to the Resolution Professional in valuation of the company. In discharge of his duty any interference in the work of the Resolution Professional, action shall be initiated against the corporate debtor and it will be presumed that that corporate debtor is not obeying the order the Court. It is expected that corporate debtor should fully cooperate with the Resolution Professional."

Machhar Polymer Pvt. Ltd. Vs. Sabre Helmets Pvt. Ltd. (C.P. No. 1333/I&BP/2017)

The AA while adjudicating on the applicability of the Limitation Act, 1963 over the proceedings under the Code held: "in whatever line so far limitation is applied to winding up cases, in the same line, prescription of limitation is applicable to the Code as well. As long as limitation is not prescribed under any specific enactment, it goes without saying Limitation Act, 1963 is automatically applicable to the Code as well"

M/s Alchemist Asset Reconstruction Co. Ltd Vs. M/s Hotel Gaudavan Pvt. Ltd. (CP/CA. No.-(IB)-23(PB)/2017)

In this matter, an IP sought protection for all acts done by him in good faith and to save him from the frivolous allegations made in a FIR. The AA observed: "If, there is any complaint against the Insolvency Professional then the IBBI is competent to constitute a disciplinary committee and have the same investigated from an Investigating Authority as per the provision of section 220 of the Code. If, after investigation 'IBBI' finds that a criminal case has been made out against the Insolvency Resolution Professional then the 'IBBI' has to file a complaint in respect of the offences committed by him. It is with the aforesaid object that protection to action taken by the IRP in good faith has been accorded by section 233 of the Code. There is also complete bar of trial of offences in the absence of filing of a complaint by the 'IBBI' as is evident from a perusal of section 236(1) (2) of the code. Therefore, a complaint by Harendra Singh Rathore, a former director with the SHO, Police Station would not be maintainable and competent as the complaint is not lodged by the IBBI. ...the jurisdiction would vest with Investigation Officer only when a complaint is filed by IBBI".

ICICI Bank Limited Vs. Vista Steel Private Limited (CP (IB) No. 552/KB/2017)

The AA considered the issue whether CIRP can be initiated against a guarantor, if another insolvency process is already initiated against the principal borrower. It observed, "By implication of Sec. 14(1)(c) of the I & B Code security interest has been created by corporate debtor Vista Steel Pvt. Ltd. in favour of the financial creditor. Therefore order passed under sec. 14(1)(c) prohibits any action to foreclosure, recovery of any such security interest created by the corporate debtor". It further observed: "it is true that guarantor's liability is given co-extensive with that of principal borrower. But it does not mean that the insolvency petition can be filed against the principal borrower and the corporate guarantor simultaneously..... another insolvency proceeding against the corporate guarantor is barred on account of moratorium order passed under Sec. 14(1)(a) of I & B Code against the principal borrower....."

Kamineni Steel & Power India Pvt. Ltd. (CP(IB) No. 11/10/HDB/2017)

The AA held: "Section 30(4) states that the CoC may approve the resolution plan by a vote of not less than 75% of voting shares of the financial creditors. Further, under Section 31 it is provided that "if the adjudicating authority is satisfied ...". Therefore, we are of the considered view that even though the CoC may approve a resolution plan with not less than 75% of the voting share, a discretion is given to the Adjudicating Authority to approve the Resolution Plan. " In exercising such discretion, the AA approved the resolution plan even though it had received the support of less than 75% of the FCs in value, keeping in mind the wider objective of the Code and in light of RBI's guidelines on "Joint Lenders' Forum and Corrective Action Plan (CAP) ", which requires 60% of creditors by value and 50% of creditors by number for approval of CAP.

JEKPL Private Limited (CA No. 233/2017 in CP No. 24/ALD/2017)

While approving the resolution plan, the AA held: "...this court being an Adjudicating Authority is not expected to substitute its view with Commercial Wisdom of the RP and COC nor should it deal with technical complexity and merits of Resolution Plan unless it is found contrary to express provision of law and goes against the public interest. Our such observation finds support from the UNICITRAL Legislative Guide, which recommends for similar approach to be taken by a court."

Axis Bank Limited, and DBS Bank Limited Vs. Edu Smart Services Private Limited ((IB)-102(PB)/2017)

A FC invoked a guarantee after the CIRP commencement date. The resolution professional rejected the claim of the FC. The AA upheld the stand taken by the resolution professional while observing that invocation of corporate guarantee against the CD would result in enforcing security interest and would be in violation of the moratorium.

M/s. Nicco Corporation Ltd. in Liquidation (C.A. (IB) No. 487/KB/2017)

The Liquidator applied to AA seeking various permission with respect to liquidation of the CD. The AA held that the Liquidator has to exercise his power under the Code and does not require the prior permission of AA for every action to be performed. It, however, directed the Liquidator to constitute a Monitoring Committee consisting of FCs to monitor his work.

Jitender Kumar Jain Vs. BSE Limited and Ors (MA No. 373/2017 in C.P. NO. 1055/I&BP/2017)

An application was filed by resolution professional assailing the order of BSE and NSE de-listing shares of the CD. He contended that de-listing will affect the revival of CD and prayed that the notices issued by stock exchanges de-listing the CD be declared void given that the moratorium is in force. The AA stated that companies are governed by various enactments and they have to

run in compliance with laws of the country and it can't be said that companies under CIRP are free enough to flout all other laws.

It held that action of BSE and NSE is neither connected to prohibitions given under section 14 of the Code nor inconsistent with the *non-obstante* clause given under section 238 of the Code and dismissed the application.

RBL Bank Limited Vs. MBL Infrastructures Limited (C.A.(I.B.) No.543/2017 arising out of C.P(IB)/170/KB/2017)

While interpreting section 29A(h) of the Code, inserted by the Ordinance, the NCLT observed: "Clause (h) of Section 29A is not to disqualify the promoters as a class for submitting a Resolution Plan... The objective is to disqualify those guarantors whose antecedents may adversely affect the reliability of the process under the IB Code." It further observed: "It is a settled position of law that the liability of a guarantor may accrue only on invoking the guarantee. In the case in hand, the guarantee has not been invoked, and the personal guarantor has not committed any default. No demand has been made under guarantee. Therefore, no default in the payment of dues by the guarantor has occurred. During the moratorium period, the guarantee cannot be invoked. Thus, present Resolution Applicant is not barred by clause (c) and clause (h) of section 29A of the I.B. Code."

IBBI Orders

In the matter of Alleato Advisory Services Private Limited

The IBBI, while considering an application for registration as an IP, observed that a company, Alleato Advisory Services Private Limited had misrepresented on its website that it has been promoted by qualified IPs with accreditation from the IBBI. After following the due process, the IBBI, vide an order dated 15th November, 2017, held that in absence of registration of any of the directors of the said company as an IP and the IBBI not being an accrediting agency, the posting by the said company on its website amounted to misrepresentation. Therefore, it reported the matter of misrepresentation as a complaint to the MCA against the company and its directors.

In the matter of ABC

The IBBI rejected, vide an order dated 12th October, 2017, the application of ABC for registration as an IP on the ground that he is not a fit and proper person for registration. It noted that a charge sheet has been filed by the CBI before the Court of Special Judge, CBI, Nagpur, alleging that in pursuance of a criminal conspiracy, the accused, including the applicant, attempted to cheat the State Government of Chhattisgarh to the tune of more than Rs.80,000 crore by using forged documents for the grant of mining lease.

In the matter of XYZ

The IBBI rejected, vide an order dated 14th November, 2017, the application of XYZ for registration as an IP on the ground that he is not a fit and proper person for registration. It noted that a criminal proceeding u/s 120B and 420 of IPC is pending before Chief Judicial Magistrate, Chandigarh against the applicant since 2013. The sections 120B and 420 of the IPC deal with offences like criminal conspiracy, and cheating and dishonestly inducing delivery of property, which attract imprisonment upto seven years. It observed: "I find that the applicant has over 22 years of experience in responsible positions such as CFO, General Manager, Director, Whole Time Director, etc. Without getting into merits of the criminal proceeding, I find it difficult to appreciate the contention of the applicant that he, as a Whole Time Director, signed on papers without verifying the content. This does not speak well of the reputation, character and competence of the applicant. As an IP, he would be exercising the powers of the Board of Directors of corporate debtors and certainly, the society and the economy

cannot afford to have an IP, who signs the papers without verifying the content. A corporate debtor cannot be entrusted to such persons during resolution period under the Code."

In the matter of JKL

IBBI rejected, vide an order dated 14th November, 2017, the application of JKL for registration as an IP, on the applicant accepting the grounds for rejection. It, however, observed: "I would expect the IIIPI, which is the front-line regulator, to exercise the required due diligence in future while enrolling an individual as a member and recommending to the Board (IBBI) his registration as an IP."

Corporate Processes

After notification of relevant provisions of the Code on 1st December, 2016, 2,434 fresh cases were filed before the AA and 2,304 cases of winding up of companies were transferred from various High Courts. Out of these, a total number of 2,750 cases have been disposed of, and 1,988 cases were pending as on 30th November, 2017. (Source: Press Release dated 19th December, 2017 of MCA).

Insolvency Resolution

As at the end of December, 2017, 461 corporates were undergoing the resolution process, as shown in Table 2. Of the 540 corporates admitted for resolution, 39 were closed on appeal or review.

Table 2: Corporate Insolvency Resolution Process

Quarter	No. of CIRPs at the beginning of the Quarter	Admitted	Closure by			No. of Corporates undergoing Resolution at the end of the Quarter
			Appeal/ Review	Approval of Resolution Plan	Commencement of Liquidation	
Jan-Mar, 2017	0	38	1	0	0	37
Apr-Jun, 2017	37	128	8	0	0	157
July-Sept, 2017	157	234	6	2	7	376
Oct-Dec, 2017	376	140	24	8	23	461
Total	-	540	39	10	30	461

The distribution of stakeholders who triggered resolution processes are given in Table 3. The number of CIRPs triggered by OCs is relatively more, though number of CIRPs initiated by FCs has now started an uptrend, prompted particularly by the Banking Regulation (Amendment) Act, 2017.

Table 3: Initiation of Corporate Insolvency Resolution Process

Quarter	No. of Resolutions Processes Initiated by			Total
	Financial Creditor	Operational Creditor	Corporate Debtor	
Jan-Mar, 2017	9	7	22	38
Apr-Jun, 2017	32	59	37	128
July-Sept, 2017	97	102	35	234
Oct-Dec, 2017	60	66	14	140
Total	198	234	108	540

At the end of December, 2017, CIRPs have resulted in ten resolutions, details of which are given in Table 4. A relatively large number of corporates undergoing CIRP ending up in liquidation is on expected lines, as many of them have long pending defaults and hence are left with little organizational value. Wherever resolution happens, the realization for creditors as percentage of the outstanding claims may not be very promising for the same reason. It may, however, look attractive if one compares realization with the liquidation value.

Table 4: CIRPs Yielding Resolutions

S.No.	Name of Corporate Debtor	Whether under BIFR	Date of CIRP Commencement	Date of Approval of Resolution	CIRP initiated by	Liquidation Value (Rs. crore)	Realisations by FCs (Rs. crore)	Claims of FCs (Rs. crore)	Realisation by FCs (%)	Realisation by FCs to Liquidation Value (%)
1	Synergies Dooray Automotive Ltd.	Yes	23-Jan-17	02-Aug-17	CD	8.17	54.69	972.15	5.63	669.40
2	Chhaparia Industries Pvt. Ltd.	Yes	24-Feb-17	29-Sep-17	CD	17.15	20.60	49.75	41.41	120.12
3	Prowess International Pvt. Ltd.	No	20-Apr-17	17-Oct-17	OC	NC	3.42	3.42	100.00	
4	Sree Metalik Ltd.	No	30-Jan-17	07-Nov-17	FC	283.00	607.31	1287.23	7.18	214.60
5	West Bengal Essential Commodities Supply Corporation Ltd.	No	29-May-17	20-Nov-17	FC	NC	185.84	359.15	51.74	
6	Kamineni Steel & Power India Pvt. Ltd.	Yes	10-Feb-17	27-Nov-17	CD	760.00	600.00	1508.88	39.76	78.95
7	Shirdi Industries Ltd.	Yes	18-May-17	12-Dec-17	CD	103.05	176.36	673.88	26.16	171.04
8	Hotel Gaudavan Pvt. Ltd.	No	31-Mar-17	13-Dec-17	FC	36.12	44.21	70.84	62.41	122.40
9	Nandan Hotels Ltd.	No	17-Aug-17	14-Dec-17	OC	NC	1.38	NA		
10	JEKPL Private Ltd.	No	17-Mar-17	15-Dec-17	CD	222.06	162.00	599.00	27.05	72.95

NC: Not computed.

Liquidation and Voluntary Liquidation

At the end of December, 2017, CIRPs have resulted in 30 liquidations, the details of which are given in Table 5. In addition, 108 voluntary liquidations were also in process on the same date.

Table 5: Liquidation of Corporate Debtors following CIRP

S.No.	Name of Corporate Debtor	Whether under BIFR	CIRP initiated by	Date of CIRP Commencement	Date of Liquidation Order
1	Bhupen Electronic Ltd.	No	FC	19-Jan-2017	31-Jul-2017
2	Wind Ways Packaging Pvt. Ltd.	No	OC	07-Apr-2017	04-Aug-2017
3	REI Agro Ltd.	Yes	OC	27-Feb-2017	24-Aug-2017
4	VNR Infrastructures Ltd.	Yes	CD	10-Feb-2017	24-Aug-2017
5	Hind Motors Ltd.	No	CD	14-Feb-2017	28-Aug-2017
6	Hind Motors India Ltd.	No	CD	09-Mar-2017	12-Sep-2017
7	Hind Motors Mohali Pvt. Ltd.	No	CD	20-Feb-2017	12-Sep-2017
8	Blossom Oils & Fats Ltd.	Yes	OC	22-Mar-2017	10-Oct-2017
10	Helpline Hospitality Pvt. Ltd.	Yes	CD	24-Apr-2017	11-Oct-2017
11	Nicco Corporation Ltd.	Yes	CD	18-Jan-2017	17-Oct-2017
12	Stewarts & Lloyds of India Ltd.	Yes	CD	01-May-2017	26-Oct-2017
13	Hada Textile Industries Ltd.	Yes	FC	13-Nov-2017	13-Nov-2017
14	Keshav Sponge & Energy Pvt. Ltd.	Yes	CD	16-Feb-2017	14-Nov-2017
15	Abhayam Trading Ltd.	No	CD	31-May-2017	17-Nov-2017
16	DCS International Pvt. Ltd.	No	FC	10-Jul-2017	17-Nov-2017
17	Swift Shipping and Freight Logistics Pvt. Ltd.	No	OC	19-Apr-2017	20-Nov-2017
18	Oasis Textile Ltd.	No	CD	31-May-2017	22-Nov-2017
19	Innoventive Industries Ltd.	No	CD	17-Jan-2017	08-Dec-2017
20	Pooja Tex-Prints Pvt. Ltd.	No	CD	29-Mar-2017	29-Nov-2017
21	RG. Shaw & Sons Pvt. Ltd.	No	FC	12-Apr-2017	15-Dec-2017
22	Micro Forge (India) Ltd.	Yes	CD	29-May-2017	12-Dec-2017
23	U.B. Engineering Ltd.	No	FC	18-Jan-2017	05-Dec-2017
24	New Tech Forge and Foundry Ltd.	Yes	FC	29-May-2017	12-Dec-2017
25	Ajudhia Distributors Pvt. Ltd.	No	CD	01-May-2017	15-Dec-2017
26	New-Tech Fittings Pvt. Ltd.	Yes	OC	23-May-2017	18-Dec-2017
27	Advantage Projects & Consultants Pvt. Ltd.	No	OC	30-May-2017	18-Dec-2017
28	JODPL Pvt. Ltd.	No	CD	17-Mar-2017	18-Dec-2017
29	Eolane Electronics Bangalore Pvt. Ltd.	No	CD	31-Aug-2017	20-Dec-2017
30	Wegilant Net Solutions Pvt. Ltd.	No	CD	28-Jul-2017	21-Dec-2017

Ease of Doing Business

According to the World Bank Group's Doing Business Report released on 31st October, 2017, India's rank moved up from 130 to 100 among the 190 countries considered in the Report. This improvement was due to reforms in many areas, including enhancing the protection of minority shareholders, reducing the paperwork of paying taxes, and simplification of processes to start a new business. The implementation of the Code played a major role in the jump in India's ranking. The Doing Business rankings are computed using the Distance to Frontier (DTF) scores of each country on ten sets of indicators, one of which is "Resolving Insolvency". India's DTF score for the "Resolving Insolvency" improved from 32.75 to 40.75 pushing India's ranking in this set of indicators from 136 in 2017 to 103 in 2018.

Service Providers

Insolvency Professionals

As on 31st December, 2016, 977 individuals were granted registration as IPs for a limited period (six months). Since 31st December, 2016, individuals, who have the required qualification and experience and have passed the Limited Insolvency Examination, are being registered as IPs. In this category, 1324 individuals were registered as on 31st December, 2017. The details are given in Table 6.

Table 6: Registered Insolvency Professionals as on 31st December, 2017

City/Region	Enrolled with			Total
	The Indian Institute of Insolvency Professionals of ICAI	ICSI Insolvency Professionals Agency	Insolvency Professional Agency of Institute of Cost Accountants of India	
Delhi	151	123	35	309
Rest of the Northern Region	110	79	22	211
Mumbai	151	63	19	233
Rest of Western Region	108	57	9	174
Chennai	45	32	3	80
Rest of Southern Region	93	66	19	178
Kolkata	80	16	6	102
Rest of the Eastern Region	26	7	4	37
All India	764	443	117	1,324

Replacement of IRP

Section 22(2) of the Code states that the CoC may in the first meeting, by a majority vote of not less than seventy-five percent of the voting share of the FCs, either resolve to appoint the interim resolution professional (IRP) as a resolution professional (RP) or to replace the IRP by another RP. Accordingly, till 31st December, 2017, 67 IRPs have been replaced with other IPs as RPs as shown in Table 7.

Table 7: Replacement of IRP with RP as on 31st December, 2017

CIRP initiated by:	No. of CIRPs where IRP has been replaced by another IP as RP
Corporate Applicant	32
Operational Creditor	16
Financial Creditor	19
Total	67

Insolvency Professional Entities

The Regulations provide for recognition of Insolvency Professional Entities (IPEs). An IP may use the organizational resources of an IPE of which he is a partner or director. During the quarter October-December 2017, 18 IPEs were recognized. As on 31st December, 2017, there were 56 IPEs.

Registered Valuers Organisations

As on 31st December, 2017, two entities were recognized as RVOs, details of which are given in Table 8.

Table No. 8: Registered Valuers Organisations

RVO Recognition Number	Name of RVO	Asset Class	Address of RVO	Name of Chairperson/President
IBBI/RVO/2017/001	Institution of Estate Managers and Appraisers	Land and Building	HA 245, Salt Lake, Kolkata- 700097	Mr. Indranath Chakravorti
IBBI/RVO/2017/002	IOV Registered Valuers Foundation	Land and Building Plant and Machinery Securities or Financial Assets	IOV Headquarters, 2nd Floor, Plot No. 3, Parwana Road, Pitampura, New Delhi- 110034	Justice Mr. S Rajeshwaran (Retired)

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 from 100+ locations in the country daily. In the first phase of the examination which was available from 31st December, 2016 to 30th June, 2017, 1,202 candidates passed the examination. The second phase of the examination with revised syllabus and question bank was launched on 1st July, 2017. In the half year July-December, 2017, a total of 1,112 candidates passed the examination. The details of the examination are given in Table 9. The third phase with further revised syllabus and question bank is slated to commence on 1st January, 2018.

Table No. 9: Limited Insolvency Examination

Phase/Quarter	Number of attempts (some candidates made more than one attempt)	Number of successful attempts
First Phase (January-June, 2017)	5,329	1,202
Second Phase July-Sept, 2017	2,468	476
Oct-Dec, 2017	3,769	636
Total	11,566	2,314

Keeping in view the job requirements of an IP, a discussion paper was floated to modify the Limited Insolvency Examination pattern to have two stages, namely, objective multiple-choice questions and group discussion on a case study to test a person's ability to handle stress and pressure, conflict management, balancing the interests of stakeholders, negotiation, leadership, communication, etc.

Workshop for Insolvency Professionals

With a view to build capacity of newly registered IPs, IBBI has so far organised six workshops. The latest one was held on 8-9th December, 2017 in New Delhi with a total participation of 50 IPs.



Workshop for Insolvency Professionals on 8th December, 2017 in New Delhi, inaugurated by Mr. Balvinder Singh, Hon'ble Member, NCLAT.

Educational Course for Valuers

The recognised RVOs shall conduct educational courses for their members seeking registration as Valuers under the Companies (Registered Valuers and Valuation) Rules, 2017. The details of educational courses for three Asset Classes were published on the IBBI website. These courses shall be delivered by RVOs in not less than 50 hours.

Valuation Examinations

In pursuance of the rule 5(3) of the Companies (Registered Valuers and Valuation) Rules, 2017, the IBBI has published the syllabus, format and frequency of the valuation examination for all three Asset Classes, namely, (a) Land and Building, and (b) Plant and Machinery, and (c) Securities or Financial Assets. A person desirous to be a registered valuer needs to pass this examination.



Dr. M.S. Sahoo, Chairperson IBBI, delivering the inauguration speech at the curtain raiser programme conducted by NeSL on 13th November 2017. Seated on the dais from left to right are Shri N. Rangachary, Chairman, NeSL; Mr. Deepak Parekh, Chairman, HDFC; Mr. Ajay Tyagi, Chairman, SEBI; and Mr. S Ramann, MD & CEO, NeSL.

Feature: Registered Valuers

A key objective of the Code is maximisation of the value of assets of a CD and consequently value for the stakeholders. An important element towards achieving this objective is transparent and credible determination of the best possible value of the assets to facilitate comparison and informed decision making. The Code assigns this task to a class of professionals called the Registered Valuers (RVs). Registered Valuer means a person registered with the IBBI as such in accordance with the Companies Act, 2013 and rules made thereunder.

The Companies Act, 2013 brought the concept of RVs through Section 247. The Central Government notified the commencement of Section 247 with effect from 18th October, 2017. It also notified the Companies (Registered Valuers and Valuation) Rules, 2017 on 18th October, 2017.



Dr. M. S. Sahoo, Chairperson, IBBI inaugurating 48th Indian Valuers Congress 2017 on 27th December, 2017 in Nagpur.



Dr. M.S. Sahoo, Chairperson, IBBI, participating in the panel on 'Insolvency and Bankruptcy' at NSE-NYU Conference on 14th November, 2017 in Mumbai.

Vide a notification dated 23rd October, 2017, the Central Government provided that valuations required under the Companies Act, 2013 shall be undertaken by a person who, having the necessary qualifications and experience, and being a valuer member of a recognised valuer organisation, is registered as a valuer. These notifications require that with effect from 1st April, 2018, for conducting valuations required under the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016, a person is to be registered with the IBBI as a registered valuer.

The RV and its valuation report are critical inputs at various stages of insolvency resolution and liquidation processes under the Code.

Asset Valuation in CIRP

The possible uses of valuation in CIRP are as under:

- a. The CIRP requires appointment of two RVs (one in the case of Fast Track) who conduct physical verification of the inventory and fixed assets of the CD and use internationally accepted valuation standards to arrive at independent estimates of the liquidation value of the CD.
- b. Liquidation value provides the estimated realizable value of the assets of the CD if it were to be liquidated on the insolvency commencement date. This (i) creates a reference point to distinguish value of CD's business as a going concern vis-a-vis its liquidation, and (ii) puts a floor for pay-out to the OCs and dissenting FCs.
- c. The difference between enterprise value (value of the business as a going concern) and liquidation value becomes a key incentive or disincentive for the CoC to vote for a resolution plan that either preserves the debtor's organizational capital or liquidate the debtor and recover their dues from proceeds of liquidation estate.
- d. The liquidation value is kept confidential. It is shared with confidentiality undertakings only after resolution plans are received.
- e. The Code provides that any resolution plan shall provide for at least the liquidation value due to the OCs and make such payment in priority to any FC. The Code also provides that the resolution plan shall pay liquidation value due to dissenting FCs and that such payment is made before any recoveries are made by the FCs who

voted in favour of the resolution plan. Hence, this value has to be credible for potential resolution applicants and FCs to weigh potential resolution options.

- f. Often, there is no money left in a CD to pay for resolution expenses. However, to preserve the value of the CD, the Code empowers the IRP to raise interim finance by creating security interest under certain conditions and with caveats. Here, the valuation report becomes critical as it provides visibility on new security creating options for encumbered as well as unencumbered assets.
- g. The Code allows the RP, with the consent of CoC, to sell unencumbered asset(s) of the CD, other than in the ordinary course of business, if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case. The valuation report becomes a reference point for the CoC and the RP to identify such saleable assets and potentially raise money.

Asset Valuation in Liquidation Process

The possible uses of valuation in liquidation process are as under:

- a. In case of liquidation of CD, the Liquidator needs to appoint two RVs and arrive at the realizable value of liquidation estate. This value becomes the reference point for the liquidation process and goes into 'Asset Memorandum', which is filed with the AA. The Memorandum contains: value of the asset; intended manner and mode of sale and reasons for the same; expected amount of realization; and any other information that may be relevant for the realization of the asset.
- b. Deviations of realized liquidation value from liquidation value creates a control mechanism during liquidation. The asset value documented in Asset Memorandum is called out in the "Asset Sale Report" every time an asset is sold, and all such Asset Sale Reports are enclosed with the periodic progress report that the Liquidator has to submit. The Asset Sale Report includes details such as: the realized value, cost of realization, if any; the manner and mode of sale; if the value realized is less than the value in the asset memorandum, the reasons for the

same; the person to whom the sale is made; and any other details of the sale. This exercise uses the valuation report as the reference point.

- c. Valuation of assets is important in case of physical distribution of unsaleable assets. The Liquidator may, with the permission of the AA, distribute amongst the stakeholders, an asset that cannot be readily or advantageously sold due to its peculiar nature or other special circumstances. Here also, the application seeking such permission shall: identify the asset; provide a value of the asset; detail the efforts made to sell the asset, if any; and provide reasons for such distribution.

- d. The liquidation value provides a reference point for disclaiming onerous properties. Where any part of the property of a CD is burdened with onerous covenants or not saleable or is not readily saleable or bound either to the performance of any onerous act or to the payment of any sum of money; the Liquidator may make a request to the AA to disclaim the property.

It may suffice to say that the asset valuation by RV becomes a key determinant for the resolution outcome as well as liquidation value realization. It also provides for checks and balances for all future asset sale through the lifecycle till winding-down of the CD.



Dr. M. S. Sahoo, Chairperson, IBBI with winners of the Corporate Insolvency Resolution Moot Competition organised by NLU, Delhi in association with IBBI, INSOL and SIPI on 29th October, 2017 in Delhi. (Winners: Rajiv Gandhi National University of Law, Patiala represented by Ms. Purvi Nanda, Mr. Mohit Khandelwal, Ms. Sunidhi Pubreja and Runners Up: National Law Institute University, Bhopal represented by Mr. Shashank Chadha, Mr. Ankit Gupta, Mr. Udyan Shrivastava, and Ms. Deeksha Malik).

Prepared by the Research Division of the Insolvency and Bankruptcy Board of India (7th Floor, Mayur Bhawan, Shankar Market, Connaught Place, New Delhi 110 001). Suggestions, if any, may be mailed to research@ibbi.gov.in