



भारतीय विवाला और शोधन अकमता 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

July - September, 2020 | Vol. 16



Resolvability

Living Will

XYZ Limited

CONTENTS

From Chairperson's Desk	2
IBBI Updates	4
Legal and Regulatory Framework	5
• Central Government	
• Insolvency and Bankruptcy Board of India	
• Other Authorities	
Orders	7
• Supreme Court	
• High Courts	
• National Company Law Appellate Tribunal	
• National Company Law Tribunal	
• Insolvency and Bankruptcy Board of India	
Corporate Processes	15
• Insolvency Resolution	
• Liquidation	
• Voluntary Liquidation	
Individual Processes	20
Service Providers	21
• Insolvency Professionals	
• Information Utility	
• Registered Valuers	
• Complaints and Grievances	
Examinations	23
• Limited Insolvency Examination	
• Valuation Examinations	
Building Ecosystem	24
Advocacy and Awareness	25

“India offers a transparent and predictable tax regime. Our system encourages honest taxpayers. Further, Insolvency and Bankruptcy Code has reduced risk for the entire financial system. The continued regulatory reforms in bond markets ensure improved ease of access for investors. All of the above steps will ensure a brighter and more prosperous tomorrow.”

Shri Narendra Modi, Hon'ble Prime Minister of India at the Leadership Summit of US India Strategic & Partnership Forum, September 3, 2020

“Questions were asked here about the performance of different resolution or recovery channels. As for Lok Adalats, 40,80,947 cases were referred to them and amount recovered was ₹2,816 crore and there was only 5.3 per cent recovery. In the case of DRTs, cases referred were 52,175, amount recovered was ₹10,574 crore, and the percentage of recovery was 3.5 per cent only. In SARFAESI, the number of cases referred were 2,48,312 and total amount recovered was ₹41,876 crore, and the percentage of recovery was 14.5 per cent only. In IBC, the number of cases referred were 1,135 and amount recovered was ₹70,819 crore, and therefore, the percentage of recovery was 42.5 per cent.”

Smt. Nirmala Sitharaman, Hon'ble Finance Minister replying to the debate on the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2020 in Lok Sabha, September 21, 2020

From Chairperson's Desk

Resolvability: A 'Living Will' for Companies

A company should keep itself resolvable all the time and have a 'living will' on the shelf to guide its resolution should the need arise. It should vie for a higher resolvability index to command respect of the society and a premium from stakeholders.

I have, through this column, been reiterating that the life of a company is as precious as that of a human being. As Colin Mayer describes, the companies house, feed, clothe and employ us. By laying down norms that seek to minimise risks to life of a company and to rescue it when it experiences serious threat to its life, the Insolvency and Bankruptcy Code, 2016 (Code) has taken corporate governance to new heights. Let me explore one dimension of corporate governance, which can make rescue process faster and the possibility of rescue higher.

A high-rise building has several inherent risks. The caretakers (architects to residents) of the building anticipate risks, provide for risk prevention, and plan for risk mitigation. They plan, for example, for rescue of life and property as well as the building itself in case it catches fire. The community provides for a fire brigade, a stranger to the building, to come to its rescue. To ensure that the fire brigade reaches the site and starts rescue operations quickly, the caretakers take several measures, such as, the fire alarm alerts the fire brigade instantaneously, the access to the building is clear, and the building has functional emergency lighting and public announcement systems and an updated building evacuation plan. They further ensure clear escape routes, undisrupted water supply, and co-operation of residents to facilitate smooth and efficient rescue operations. The success of rescue operations depends on how rescuable the building is. The caretakers have incentive to keep the building rescuable, in the interest of their life and property and for the premium rescuable buildings enjoy in market. The law typically mandates certain minimum standards in this regard.

Similarly, a company faces several risks to its life. The immediate caretakers of the company, namely, promoters and managers, need to anticipate risks, provide for risk prevention and plan for risk mitigation. It is routine for a company to have stress periodically in a market economy. The caretakers need to plan for rescue of the company as well as its business from stress at the earliest. The Code provides for corporate insolvency resolution process (CIRP) to rescue a company in stress. CIRP assembles a team of rescuers - creditors and resolution applicants to work out a plan to rescue the company, and the Adjudicating Authority, Information Utilities, and Insolvency Professionals to facilitate the rescue process with fairness and transparency. The team is a stranger to the company. It appears on the scene when the company experiences stress and it is invited to rescue the company. Its success, however, depends on how rescuable the company is. Since CIRP rescues a company through a resolution plan, one often uses the term 'resolvable' in place of 'rescuable'. The term 'resolvability' gained momentum amidst global financial crisis of 2008 in the context of the resolution of large financial firms, who are, in many countries, required to have institutional ability to resolve stress.

Creditors have experimented different remedies, in case of default,

against the person and or his property. As these remedies, including collateral and personal guarantees, proved inadequate, they shifted focus to ability of the company, represented by business potential and management capability, to repay the loan. Several laws in recent decades strengthened their rights to recover loans and provided specialised fora to enforce such rights. Though focused on recovery and not so much on resolution, the recovery under these laws has not been inspiring; limited at best to the liquidation value of the assets available with the company. With the availability of CIRP, creditors have shifted focus again, in case of default, from the possibility of recovery to the possibility of resolution, whereby the company survives while they realise their dues from third parties. As the data indicate, the creditors are realising on average nearly 200% of liquidation value through resolution plans under CIRP, as the company continues with business, most often, with higher efficiency on a larger scale. The probability of resolution, which usually exceeds the probability of recovery, coupled with higher realisations and revival of the company, makes CIRP an attractive option for creditors.

The key purpose of keeping a company resolvable is to increase competition among resolution applicants that increases the likelihood of resolution in case of need. The likelihood is more if the company has value, and such value is free from encumbrances, is visible to a discerning eye, and easily realisable by any resolution applicant. It is less if value resides in informal, off-the record arrangements; personal relationships of promoters; disputed titles, complicated structures, and contingent contracts; or avoidance transactions. Similarly, an early commencement of CIRP and its quick closure improves the possibility of resolution. If initiation is resisted and / or the process is protracted, for reasons other than merit, the value diminishes making resolution difficult.

The resolution regimes are expected to incorporate the 'Key Attributes of Effective Resolution Regimes for Financial Institutions' to reduce the possibility of failure and enable resolution of financial institutions in an orderly manner. Similarly, to reduce the possibility of stress and to improve the likelihood of resolution, a real sector company may consider having a sort of living will, updated at regular intervals, that provides a guided path for resolution and carries:

- (a) an updated corporate structure with nature of relations and dealings with related parties;
- (b) updated and reliable books with complete information about the assets and liabilities of the company, that avoids disputes relating to default and claims;
- (c) an updated and authentic information memorandum on the shelf, which the resolution professional can pull out and share with stakeholders to enable them to work out a resolution plan;

- (d) a statement of material contracts, assets and liabilities, with brief details of disputes, encumbrances and litigations;
- (e) a statement of ongoing proceedings, if any, of alleged contraventions of provisions of law by the company and its management;
- (f) a user-friendly guide to ensure smooth and frictionless shifts of management and control from the board of directors to the interim resolution professional and then to the resolution professional and finally to the successful resolution applicant, without any disruption to business;
- (g) a manual for co-operation with the resolution professional in taking over the company and to keep it as a going concern for maximisation of value;
- (h) a back-up strategy for critical dependencies to keep the company as a going concern;
- (i) a plan to ensure timely and appropriate communication with the stakeholders;
- (j) a declaration that it has / has not been subject to any avoidance transaction during the relevant period;
- (k) an estimate of potential loss to the creditors from the date CIRP should have commenced;
- (l) a confirmation that it has provided and authenticated financial information with an information utility;
- (m) a description of the circumstances when the company on its volition would like to initiate a resolution process and suitability of different resolution options for the company;
- (n) a statement whether the caretakers are eligible under section 29A; and
- (o) a few possible resolution plans to serve as a model for potential resolution applicants.

The company stands to benefit the most if it is resolvable. If it is not resolvable, it is more likely to have a natural death in case of stress, and creditors would recover precious little through its liquidation. If it is resolvable, CIRP would rescue it, while ensuring decent realisation for creditors. A resolvable company would enjoy competitive advantage as compared to other companies in terms of better access to capital at lower cost, which may even avoid the need for resolution. A conscious effort to remain resolvable and preparation of a living will would enhance competitiveness and resilience of the company to withstand stress. The caretakers of the company would stand to gain as the company would not undergo CIRP, obviating the possibility of the company changing hands. In the unlikely event of CIRP, they, if eligible under section 29A, would most likely be the successful resolution applicant, having planned resolution options beforehand. Thus, keeping a company resolvable is a win-win for the caretakers, the company and creditors.

Resolvability, reflecting the readiness of a company to implement rescue strategies in a swift manner, is imperative as the intensity of competition and innovation increases in the economy. With growing acceptance of resolution as a tool for rescuing a company as well as in recovering the dues of creditors, more innovation in this realm is a certainty. An index should soon develop to measure the extent of resolvability of a company. Every company should vie for a higher resolvability index and the market should prefer to deal with a company which has higher index of resolvability, as it addresses 'what if' situations. This may entail some cost for the companies. Such costs are, however, likely to be insignificant as compared to rescuing the life of the company and the premium a rescuable company would enjoy in the market. The law may, in course of time, mandate certain minimum threshold of resolvability to prevent closure of viable companies and facilitate increased availability of credit and thereby promote growth.

(Dr. M. S. Sahoo)



Inauguration of second batch of GIP, July 1, 2020

IBBI Updates

Hindi Pakhwada

IBBI celebrated *Hindi Pakhwada* from September 14, 2020 to September 30, 2020. It conducted various activities during this period to popularise Hindi as the official language of the Union of India and to promote its use further in official work. The employees participated in various activities such as quiz and poem recitation, in Hindi, with great enthusiasm and won prizes. An essay competition on the subject *Atma Nirbhar Bharat* was also organised and prizes were given to best entries.



Winners of prizes during Hindi Pakhwada, with Mr. Shukla, WTM, September 30, 2020

150 Years of Mahatma Gandhi

IBBI organised several activities to mark the conclusion of yearlong celebrations associated with 150th Birth Anniversary of Mahatma Gandhi. The employees recalled the teachings of Mahatma Gandhi, especially in relation to governance and inclusive growth, in an event on September 29, 2020. An Essay Competition on "*Antyodaya and Fresh Start*" was also organised to spread awareness on resolution of rural indebtedness, a cause which Mahatma Gandhi envisioned to free the poor from the debt burden and give him fair opportunity to participate in the development story of the Nation. Further, employees made a voluntary contribution of ₹ 70,000 towards charity to mark the occasion.



Ms. Pihu Mishra, Winner of Essay on "*Antyodaya and Fresh Start*" with WTMs, October 14, 2020

Annual Report and Annual Accounts, 2018-19

In accordance with the Insolvency and Bankruptcy Board of India (Annual Report) Rules, 2018, and the Insolvency and Bankruptcy Board of India (Form of Annual Statement of Accounts) Rules, 2018, the Annual Report and Annual Accounts of the IBBI, for the year 2018-19, were laid before the Rajya Sabha and Lok Sabha on September 15, 2020 and September 19, 2020, respectively.

Meeting of Standing Committee of Finance

The Parliamentary Standing Committee on Finance took oral evidence of the representatives of the Ministry of Corporate Affairs (MCA) on the subject "*Implementation of Insolvency and Bankruptcy Code*" on August 25, 2020. Secretary and other officers of the MCA and Chairperson, IBBI appeared before the Committee and gave evidence.

MOU with IIBF

IBBI signed a Memorandum of Understanding (MoU) with the Indian Institute of Banking and Finance (IIBF) on August 12, 2020, to join as a knowledge partner for delivery of a certificate course "*Resolution of Stressed Assets with special emphasis on Insolvency and Bankruptcy Code, 2016 for Bankers*" to be offered by IIBF. The certificate course aims to develop among banking professionals and employees an understanding of the role and expectations from the financial creditors (FCs) and the committee of creditors (CoC) in the corporate insolvency resolution process (CIRP) under the Code. This will enable them to discharge their statutory duties and responsibilities, including the commercial decisions with utmost care and diligence, in the best interests of the corporate debtor and its stakeholders.

MoU with ICFAI Law School

IBBI signed an MoU with the ICFAI Law School, Hyderabad on September 16, 2020 as a knowledge partner for delivery of six-month long Certificate Courses on the Insolvency and Bankruptcy Code, 2016, namely, "*Insolvency and Bankruptcy Law in India*", "*Insolvency and Bankruptcy Processes and Procedures*", and "*Insolvency Professionals and Resolution*", offered by the Law School. The aim of these courses is to enhance the skill sets and knowledge relating to insolvency resolution among entrepreneurs and qualified professionals who may be evincing interest in this evolving field.

Human Resources

Interaction with Employees

Part-time Members of the Governing Board of IBBI had a first of its kind interaction with senior officers of the IBBI, on June 19, 2020 (previous quarter), to understand the challenges of the organisation and market, and share their perspectives on addressing them.

Executive Director

Mr. Pawan Kumar, Executive Director was relieved of his duties in IBBI on September 30, 2020 consequent to his appointment as Deputy Managing Director, Indian Infrastructure Finance Company Limited.

Employee Trainings

IBBI organised the following workshops and trainings for its officers through e-mode:

Date	Nature of Programme/Subject	Faculty
14-07-20, 16-07-20, 21-07-20, 23-07-20 and 28-07-20.	<ul style="list-style-type: none"> • Insolvency law in the times of COVID-19 • Insolvency of MSMEs • Insolvency of Individuals • The IBC and best international practices • Measuring outcomes of insolvency laws 	Mr. Jose Garrido, and Ms. Anjum Roshia, Senior Counsels, International Monetary Fund.
04-09-20, 09-09-20, 10-09-20, 11-09-20 and 14-09-20.	Regulatory Impact Assessment	Dr. Kristin van Zweiten, Associate Professor of Law and Finance, University of Oxford, and Ms. Antonia Preciosa Menezes, Senior Financial Sector Specialist, World Bank Group.



The officers of IBBI attended the following workshops and training programmes, organised by the Indian Institute of Corporate Affairs (IICA):

Date	Nature of the programme/Subject	No. of Officers
04-08-20 to 05-08-20	Induction Programme	07
01-09-20 to 04-09-20 & 08-09-20 to 11-09-20	Data Management & Analytics	05
06-09-20, 08-09-20, 10-09-20, 13-09-20, 15-09-20	Leadership, Team Building & Communication Skills	02

COVID-19

IBBI has taken several measures to fight against spread of COVID-19 while ensuring that the office work does not suffer in any manner. It continued to follow related protocols on social distancing, wearing masks and hand hygiene and intensive sanitisation of the office premises. It operated roaster for employees to work from home on alternate days, and allowed flexi timing for all employees. It arranged COVID-19 tests for all its officers and staff on September 14-15, 2020. With e-office and internet connectivity, the office continued to perform at its optimum.

Legal and Regulatory Framework

Central Government

Insolvency and Bankruptcy Code (Second Amendment) Act, 2020

The President of India had promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 on June 5, 2020 to further amend the Code to suspend filing of applications for initiation of CIRP for any default arising on or after March 25, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified. The Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 was enacted on September 23, 2020 to replace the said Ordinance.

Extension of suspension

In exercise of the powers conferred by section 10A of the Code, the Central Government, vide notification dated September 24, 2020, extended the suspension of filing of applications for initiation of CIRP by a further period of three months from September 25, 2020 for the purposes of the sections 7, 9 and 10 of the Code.

Amendments to Adjudicating Authority Rules

The Central Government amended the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on September 24, 2020 to, inter-alia, require serving of copies of applications by the applicants under sections 7, 9 and 10 to the IBBI as well. This also requires an IP consenting to act as IRP to disclose the assignments he has in hand.

Amendments to Annual Report Rules

The Central Government, vide notification dated September 10, 2020, amended the IBBI (Annual Report) Rules, 2018 to provide for the following timelines for submission of the annual report of IBBI, in respect of a particular financial year, to the MCA for laying on the Table of the Parliament:

- (a) June 30: Approved and authenticated annual accounts to be made available by the IBBI to the concerned Audit Office and commencement of audit of annual accounts;
- (b) October 31: Issue of the final Separate Audit Report (SAR) in English with Audit Certificate to IBBI; and
- (c) December 31: Submission of the annual report and audited accounts to the MCA.

Standard Operating Procedures

In the wake of the COVID-19 pandemic and the requirement to maintain social distancing, the NCLAT has been hearing matters through e-mode. It has been issuing Standard Operating Procedures (SOPs) for such e-hearings. It revised the SOPs, vide notice dated August 4, 2020, for the

Advocate/ Authorised Representative/Party-in-Person for mentioning the matter for hearing through virtual mode.

Officiating Chairperson of NCLAT

The Central Government, vide notification dated September 17, 2020, extended the term of Justice (Retd.) Mr. Bansi Lal Bhat, Member (Judicial) as officiating Chairperson, NCLAT up to October 16, 2020 or until a regular Chairperson is appointed or until further orders, whichever is the earliest.

Acting President of NCLT

Vide notification dated September 24, 2020, the Central Government extended the term of Office of Mr. Bethala Shantha Vijaya Prakash Kumar, Member (Judicial), as acting president of NCLT for a further period of one month with effect from September 5, 2020 or until a regular President is appointed or until further orders, whichever is earliest.

Advisory to banks

The Department of Financial Services, Ministry of Finance, issued an advisory to all nationalised banks, on August 26, 2020, informing them that the provisions of the Code as regards insolvency and bankruptcy of personal guarantors (PGs) to corporate debtors (CDs) have come into force with effect from December 1, 2019 that empowers creditors to file insolvency applications against PGs to CDs before the NCLT. Apropos the same, it advised the banks to consider putting in place mechanisms for monitoring the cases which may require initiation of individual insolvency process before the NCLT against PGs to CDs and setting up IT systems to collate data regarding PGs to CDs in all such cases.

Filing of default record

The NCLT had, vide order dated May 12, 2020, had directed that applications under section 7 of the Code for initiation of CIRP shall be filed along with default record from an information utility (IU). It had also directed the authorised representatives / parties to file default record from an IU before the next date of hearing where an application under section 7 was pending for admission. It modified the said order, on August 13, 2020, directing filing of default record from the IU along with the new petitions under section 7 of the Code, wherever available, with the IU. It also directed the authorised representatives / parties in the cases pending for admission under section 7 to file default record from IU wherever available. *(These were challenged; the update is available in orders section.)*

IBBI

Amendments to Voluntary Liquidation Regulations

The Code enables a corporate person to initiate voluntary liquidation process if it has no debt or it will be able to pay its debts fully from the proceeds of the assets. The corporate person appoints an IP as liquidator to conduct the voluntary liquidation process by a resolution of members or partners, or contributories, as the case may be. However, there can be situations which may require appointment of another IP as the liquidator. IBBI amended the IBBI (Voluntary Liquidation Process) Regulations, 2016, vide notification dated August 5, 2020, to enable the corporate person to replace the liquidator by appointing another IP as liquidator by a resolution of members or partners, or contributories, as the case may be.

Amendment to Liquidation Regulations

The IBBI (Liquidation Process) Regulations, 2016 require the CoC to fix the fee payable to the liquidator. Where the fee has not been fixed by the CoC, the Regulations provide for a fee as a percentage of the amount realised and of the amount distributed by the liquidator. The IBBI

amended the Liquidation Process Regulations, vide notification dated August 5, 2020, to clarify that where a liquidator realises any amount, but does not distribute the same, he shall be entitled to a fee corresponding to the amount realised by him. Likewise, where a liquidator distributes any amount, which is not realised by him, he shall be entitled to a fee corresponding to the amount distributed by him.

Amendment to CIRP Regulations

IBBI amended the IBBI (Corporate Insolvency Resolution Process) Regulations, 2016, vide notification dated August 7, 2020, to provide for the following:

(a) The Code provides for appointment of an authorised representative (AR) by the Adjudicating Authority (AA) to represent FCs in a class. For this purpose, the Regulations require the IRP to offer a choice of three IPs in the public announcement, and the creditors in a class to choose one of them to act as their AR. The amendment provides that the three IPs offered by the IRP must be from the State or Union Territory, which has the highest number of creditors in the class as per records of the CD. This will facilitate ease of coordination and communication between the AR and the creditors in the class he represents.

(b) The Regulations envisage that the AR shall seek voting instructions from creditors in a class at two stages, namely, (i) before the meeting; and (ii) after circulation of minutes of meeting. The amendment provides that the AR shall seek voting instructions only after circulation of minutes of meeting and vote accordingly. He shall, however, circulate the agenda, and he may seek preliminary views of creditors in the class before the meeting, to enable him to effectively participate in the meeting.

(c) The Regulations provide that the CoC shall evaluate all compliant resolution plans as per evaluation matrix to identify the best of them and may approve it. The amendment provides that after evaluation of all compliant resolution plans as per evaluation matrix, the CoC shall vote on all compliant resolution plans simultaneously. The resolution plan, which receives the highest votes, but not less than 66% of voting share, shall be considered as approved.

Guidelines

Online Delivery of Educational Courses

Insolvency Professional Agencies (IPAs) conduct pre-registration educational courses and continuing professional education for their members. Registered Valuer Organisations (RVOs) conduct educational courses on valuation and continuing professional education for their members. In the wake of COVID-19, it had become difficult for IPAs and RVOs to deliver educational courses and continuing professional education through classroom mode due to travel restrictions and social distancing norms. IBBI initially allowed IPAs and RVOs to deliver courses online to minimise difficulties for the registered valuers (RVs), IPs, valuer members and prospective IPs. To ensure that online delivery of courses is as effective as class-room delivery of education, the IBBI issued the IBBI (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuer Organisations) Guidelines, 2020 on July 10, 2020, which will be in force till March 31, 2021. These Guidelines specify various aspects such as technical requirements, administration, and compliance responsibility.

Use of Caveats, Limitations and Disclaimers in Valuation Reports

The Companies (Registered Valuers and Valuation) Rules, 2016 mandate that the RVs shall state 'caveats, limitations and disclaimers' to the extent

they explain or elucidate the limitations faced by valuer, but shall not limit his responsibility for the valuation report. This Rule aims to ensure that a valuation report does not carry any disclaimer, which has the potential to dilute the responsibility of the RV or make the valuation unsuitable for the purpose for which it was conducted.

Considering the recommendations of an expert committee and in consultation with the RVOs, IBBI issued the IBBI (Use of Caveats, Limitations, and Disclaimers in Valuation Reports) Guidelines, 2020 on September 1, 2020 to provide guidance to the RVs in the use of 'Caveats, Limitations, and Disclaimers' in the interest of credibility of the valuation reports. These also provide an illustrative list of the Caveats, Limitations, and Disclaimers which shall not be used in a valuation report. The Guidelines came into force in respect of valuation reports of valuations to be completed by RVs on or after October 1, 2020.

Facilitation Notes

For IPs conducting liquidation process

The AA, the National Company Law Appellate Tribunal (NCLAT), and High Courts (HCs), through their orders and judgements, have guided liquidators in the conduct of liquidation process. The IBBI issued a Facilitation Note on August 5, 2020, listing a few significant directions and observations from these orders and judgements, which an IP may find useful. These have been presented under the six broad categories, namely, taking charge as liquidator, scope of liquidation estate, sale of assets, attachments, managing the affairs, and powers and duties.

For IPs on Avoidance Transactions

The Code read with Regulations mandates the RP and the liquidator to determine if the CD has been subject to avoidance transactions such as preferential transactions, fraudulent transactions, undervalued transactions, and extortionate transactions in the past, and if so, casts an obligation on him to file an application to the AA for appropriate directions. To help an IP to discharge his role in respect of avoidance transactions, IBBI issued a facilitation note on 'Avoidance Transactions – Red Flags' on August 7, 2020 to guide the IPs to identify situations which would merit avoidance transaction review and resultant application to the AA. This note collates and places the red flags under six broad categories, namely, (a) Entity, Group and Operations, (b) Maintenance of Books and Records, (c) Regulatory Compliance and Litigation, (d) Independent Auditor Reports, (e) Financial Statements and Board Reports, and (f) Classification and Reporting of Frauds (as covered under Reserve Bank of India (RBI) Master Directions).

Other Authorities

RBI

Fair Practices Code for Asset Reconstruction Companies

RBI advised Asset Reconstruction Companies (ARCs) registered with it to put in place Fair Practices Code (FPC) approved by their Board to ensure transparency and fairness in dealing with their stakeholders and in their operations, vide its communication dated July 16, 2020. It specified the minimum regulatory expectation from the FPC. For sale of secured assets, an ARC shall publicly solicit participation in auction and follow the spirit of section 29A of the Code in dealing with prospective buyers. It shall not resort to harassment of the debtor in recovery of loans. It shall ensure that recovery agents are properly trained to handle their responsibilities with care and sensitivity, particularly in aspects such as hours of calling, privacy of customer information, etc.

Resolution framework for COVID-19 stress

The economic fallout of the COVID-19 pandemic has led to significant financial stress for borrowers across the board which can potentially impact the long-term viability of many otherwise economically viable firms. Such widespread impact could impair the entire recovery process, posing significant financial stability risks. Considering this situation with the intent to facilitate revival of real sector activities and mitigate the impact on the ultimate borrowers, RBI provided a window under the Prudential Framework, vide circular dated August 6, 2020, to enable the lenders to implement a resolution plan in respect of corporate borrowers having stress on account of COVID-19, without change in ownership, while classifying such exposures as Standard, subject to specified conditions. Only those accounts which were classified as standard and not in default for more than 30 days with any lending institution as on March 1, 2020 (i.e., not beyond SMA-0) and which continue to remain standard till invocation of resolution process, are eligible. RBI shall constitute a Committee to recommend a list of financial parameters which, in their opinion would be required to be factored into the assumptions that go into each resolution plan, and the sector specific benchmark ranges for such parameters.

Financial parameters for COVID-19 stress

The Expert Committee, as envisaged under resolution framework for COVID-19 related stress, submitted its report on September 4, 2020. Based on its recommendations, RBI, vide its circular dated September 7, 2020, directed that all lending institutions shall mandatorily consider the key ratios, namely, Total Outside Liabilities / Adjusted Tangible Net Worth, Total Debt / EBITDA, Current Ratio, Debt Service Coverage Ratio, and Average Debt Service Coverage Ratio, while finalising the resolution plans in respect of eligible borrowers. It also required the lending institutions to consider the sector-specific thresholds (ceilings or floors), for each of the key ratios in respect of 26 sectors. The lending institutions are free to consider other financial parameters as well while finalising the resolution assumptions. They should make their own assessment in respect of other sectors.

Orders

Supreme Court

M/s Marathe Hospitality Vs. Mahesh Surekha & Ors. [SLP (C) No. 8139/2020]

The petitioner filed an appeal before the NCLAT. However, the NCLAT closed its functioning as one of its employees was suffering from COVID-19. The Supreme Court observed that the doors of justice cannot be closed and that NCLAT should find out a way for online hearing in such a situation. While dismissing the petition, it requested the NCLAT to start hearing the matter on interim stay, immediately on reopening.

Saurabh Jain & Anr. Vs. Union of India & Ors. [WP(s) (Civil) No(s). 679/2020]

The petitioners submitted that the Ministry of Finance (MoF) has, by a circular, directed personal guarantees issued by promoters/managerial personnel to be invoked. They further submitted that despite this circular, public sector undertakings continue not to invoke such guarantees resulting in huge loss not only to the public exchequer but also to the common man. The SC allowed the petitioners to withdraw the petition and approach the MoF with a representation within two weeks. It directed MoF to reply to the said representation within four weeks thereafter.

Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. [CA Diary No(s). 14741/2020]

Appeals were filed by various stakeholders before the NCLAT against the order of approval of the modified resolution plan by the AA. The NCLAT in its interim order directed to implement the resolution plan subject to the outcome of the appeals. On further appeal, the SC agreed to the request of the parties that the appeals pending before the NCLAT should be withdrawn and be heard along with the appeals before the SC. It directed the IRP to continue to manage the affairs of the CD and stayed the operation of the interim order passed by the NCLAT.

Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. [CA No. 6347/2019]

The AA, by an order dated August 9, 2018, admitted an application filed in March 2018, seeking initiation of CIRP in respect of default that arose on July 8, 2011. On appeal against the said order, the NCLAT observed that the Code having come into force on December 1, 2016, the application made in 2018 is within limitation. It further observed that mortgage security having been provided by the CD, the limitation period of 12 years is available for the claim as per Article 61(b) of the Limitation Act, 1953 and hence the application is within limitation. The Supreme Court (SC) set aside the orders of the AA and NCLAT on the ground that the application under section 7 of the Code is barred by limitation.

The SC noted the following basics of the Code: (a) the Code is a beneficial legislation intended to put the CD back on its feet and is not a mere money recovery legislation; (b) CIRP is not intended to be adversarial to the CD but is aimed at protecting the interests of the CD; (c) intention of the Code is not to give a new lease of life to debts which are time-barred; (d) the period of limitation for an application seeking initiation of CIRP under section 7 of the Code is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues; (e) the trigger for initiation of CIRP by an FC is default on the part of the CD, that is, the right to apply under the Code accrues on the date when default occurs; (f) the default referred to in the Code is that of actual non-payment by the CD when a debt has become due and payable; (g) if default had occurred over three years prior to the date of filing of the application, the application would be time-barred, save and except in those cases where, on facts, the delay in filing may be condoned; and (h) an application under section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act does not apply to the application.

The SC observed that the date of the Code's coming into force is wholly irrelevant to the triggering of any limitation period for the purposes of the Code. There is nothing in the Code to even remotely indicate if the period of limitation for the purpose of an application under section 7 is to commence from the date of commencement of the Code itself. Similarly, nothing provided in the Limitation Act could be taken as the basis to support the proposition.

State Bank of India Vs. M/s Metenere Limited [CA No. 2570/2020]

The NCLAT, by the impugned order, upheld the order of the AA requiring substitution of IRP. While disposing of the appeal, the SC observed that merely because a person was in the service of the FC and is getting pension does not disentitle him to act as the IRP. It, however, noted that the parties have agreed to substitute the IP. It observed that the substitution of the IP shall not reflect adversely upon the integrity of the IP concerned and the impugned order shall not be treated as a precedent.

M/s. Radha Exports (India) Pvt. Limited Vs. K.P. Jayaram & Anr. [CA No. 7474/2019]

The promoter of the appellant company had obtained a loan from the respondent. After part payment of the debt, the respondent requested the appellant company in 2004 to convert the balance amount into share application money for issuance of shares in the appellant company. The respondent requested the appellant company in 2007 to issue shares in the name of Mr. Krishnan against the said share application money and the amount would be treated as a personal loan from him to Mr. M. Krishnan. The respondents issued a demand notice on December 7, 2017, to which the appellant company, by a letter dated December 14, 2017, refuted the claims in the demand notice, inter alia claiming that all amounts due and payable to the respondent had duly been paid within 2007 and 2008. Thereafter, the respondent filed section 7 application as an FC in 2018. The AA did not admit the application holding that the respondents were not FCs, and in any case the claim of the respondents was hopelessly barred by limitation. On appeal, the NCLAT set aside the order of the AA. The appellant challenged the order of the NCLAT admitting the CD into CIRP. While setting aside the order of the NCLAT, the SC held that a personal loan to a promoter or a director of a company cannot trigger the CIRP. It also held: “the payment received for shares, duly issued to a third party at the request of the payee as evident from official records, cannot be a debt, not to speak of financial debt.”

Union of India Vs. Association of Unified Telecom Service Providers of India Etc. Etc. [M.A. (D) No. 9887/2020 in CA Nos. 6328-6399/2015]

The SC, while examining the bona fides of the Telecom Service Providers (TSPs) who have resorted to insolvency proceedings under the Code, framed, *inter alia*, the following questions for the AA to be decided in two months:

- (a) Whether spectrum can be subjected to proceedings under the Code?
- (b) Whether the proceedings under the Code are *bona fide*?
- (c) Whether TSPs can be said to be the owner based on the right to use the spectrum under licence granted to them? Whether ownership of spectrum belongs to the Government of India? Whether the spectrum is a natural resource, is the Government holding the same as *cestui que trust* (beneficiary of a trust)?
- (d) Whether a licence can be transferred under the insolvency proceedings, particularly when the trading is subjected to clearance of dues by seller or buyer, as the case may be, as provided in Guideline Nos. 10 and 11; whereas in insolvency proceedings dues are wiped off?
- (e) When Government has declined permission to trade and has not issued NOC for trading on the ground of non-fulfilment of the conditions as stipulated in the Licence Agreement, whether the spectrum can be subjected to resolution proceedings which will have the effect of wiping off the dues of the Government, which are more than ₹ 40,000 crore?
- (f) Whereas the dues of the Banks are much less, whether obtaining the Department of Telecommunication's permission and its approval to the resolution plan would be a substitute for Trading Guideline Nos. 10, 11, and 12?
- (g) Whether spectrum licence is subjected to proceedings under the Code, and whether it overrides the provisions contained in the Indian Telegraph Act, 1885, Indian Wireless Telegraphy Act, 1933, and Telecom Regulatory Authority Act, 1997?
- (h) In view of the fact that the licence contained an agreement between

the licensor, licensee, and the lenders, whether on the basis of that, spectrum can be treated as a security interest and what is the mode of its enforcement?

(i) Whether the Banks can enforce it in the proceedings under the Code or by the procedure as per the law of enforcement of security interest under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) or under any other law?

(j) Whether dues under the licence can be said to be operational dues?

The Karad Urban Cooperative Bank Ltd. Vs. Swwapnil Bhangardevay & Ors. [CA Nos. 2955/2020 and 2902/2020]

The FC and the RP challenged the order of the NCLAT setting aside the approval granted by the AA to a resolution plan and remanding the matter back to the AA with a direction to have the resolution plan re-submitted before the CoC. The NCLAT had rejected the resolution plan on four grounds, namely, (a) the resolution plan suffered from issues of viability and feasibility; (b) the liquidation value mentioned by the successful resolution applicant (SRA) in its resolution plan tallied exactly with the liquidation value obtained by the RP, indicating a breach of confidentiality, in violation of Regulation 35(2); (c) the resolution plan does not note the fact that the ethanol plant and machinery shown as part of the assets of the CD, actually belonged to another company; and (d) the Expression of Interest invited interest for outright sale of the CD as a going concern, in violation of regulation 36A of the CIRP Regulations. The promoters/directors, who were appellants before the NCLAT, argued in support of the order of the NCLAT. The SC found such argument 'like the wolf shedding tears for the lamb getting drenched in the rain'. It observed: "If all the factors that need to be taken into account for determining whether or not the corporate debtor can be kept running as a going concern have been placed before the Committee of Creditors and the CoC has taken a conscious decision to approve the resolution plan, then the adjudicating authority will have to switch over to the hands off mode." It observed that the question of breach of confidentiality and leakage of confidential information can easily be tested on the touchstone of the benefit that accrued to the party who got the information and, in this case, no benefit accrued to the SRA. It noted that the advertisement as approved by the CoC was in accordance with the unamended regulation 36A of the CIRP Regulations, which did not mandate the publication of invitation of plans either in Form G or otherwise. Accordingly, it set aside the impugned order.

Sagufa Ahmed and Ors. Vs. Upper Assam Plywood Products Pvt. Ltd. & Ors. [CA Nos. 3007-3008/2020]

The appellants received the certified copy of the order dated October 25, 2019 on December 19, 2019. They, however, chose to file the statutory appeal before NCLAT on July 20, 2020. The NCLAT dismissed the application for condonation of delay as well as the appeal, on August 4, 2020, on the ground that it has no power to condone the delay beyond a period of 45 days. The appellants submitted that the NCLAT (i) erred in computing the period of limitation from the date of the order of the NCLAT, contrary to section 421(3) of the Companies Act, 2013, and (ii) failed to take note of the lockdown as well as the order passed by the SC on March 23, 2020 extending the period of limitation for any filing from March 15, 2020 until further orders. The SC noted that the appellants chose to apply for a certified copy of the order after 27 days of pronouncement. After receiving the order, they did not file appeal till expiry of 45 days. They did not file the appeal on or before March 18, 2020 but filed it on July 20, 2020. The SC's order extending the period of

limitation came only on March 23, 2020. The SC observed: "What was extended by the above order of this Court was only "the period of limitation" and not the period upto which delay can be condoned in exercise of discretion conferred by the statute." While dismissing the appeal, it observed that the said order was passed by the Court to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by the general or special law.

Saurabh Jain & Anr. Vs. Union of India & Ors. [WP (Civil) No. 976/2020]

The petitioners, in pursuance of the order in WP(s) (Civil) No(s). 679/2020, submitted a representation to MoF, which responded that it has issued an advisory on August 26, 2020 to public sector banks for formalising policy and SOP regarding initiation of insolvency resolution process against PGs so that filing of insolvency applications in appropriate cases is made fully operationalised. On being satisfied of the response to the representation, the SC dismissed the petition.

High Courts

Duff & Phelps India Private Limited Vs. Insolvency and Bankruptcy Board of India & Anr. [W.P. (C) 3936/2020]

The petitioner sought direction to set aside the order of the Disciplinary Committee (DC) of IBBI and to expunge certain observations made therein against him. The HC of Delhi observed that the nature of observations made in the order could *prima facie* cause grave prejudice to the petitioner and such observations should ordinarily be made after issue of a show cause to the concerned party. It may not be appropriate, however, to stay the operation of the impugned order in view of grave allegations made about the manner of functioning of the RP. Accordingly, it directed petitioner to give a representation to IBBI within three days and advised IBBI to pass a reasoned order uninfluenced by the observations made in the impugned order.

By another order, the HC permitted the petitioner to continue the assignments where it has been engaged by other RPs. It directed that such assignments shall not be terminated based on the observations made in the impugned order.

CA. Venkata Siva Kumar Vs. Insolvency and Bankruptcy Board of India (IBBI) & Ors. [W.P. No. 9132/2020 and W.M.P. No. 11134/2020]

The petitioner challenged regulation 7(2)(ca) of the IBBI (Insolvency Professionals) Regulations 2016, which stipulates that an IP shall pay a fee calculated at 0.25% of the professional fee earned for services rendered as such in the preceding financial year to the IBBI, alleging violative of Article 14, 19 and 21 of the Constitution. While dismissing the petition, the HC of Madras observed: "... we conclude that the IBBI does provide significant services, including in relation to IPs and that there is broad correlation between fees and services. Given the fact that direct or arithmetical correlation as between the fee received and service rendered is not necessary especially in the context of regulatory fees, we are of the view that Regulation 7(2)(ca) of the IP Regulations does not suffer from any constitutional infirmity on account of the absence of *quid pro quo*." It held that the conferment of the power to charge a fee and the charging of such fee by using the annual remuneration as a measure does not amount to delegation of an essential legislative function to the IBBI.

As regards competence of the IBBI to levy fee, the HC observed: "From the above, we find that there can be no question whatsoever with regard to the

powers of the IBBI to frame regulations with regard to the fee payable by IPs and insolvency professional agencies. As regards the charging of fees as a percentage of remuneration, we note that the fee making power is not subject to any fetters except that it should be for carrying out the purposes of the IBC. Given this statutory framework, we conclude that the IBBI is duly empowered under Sections 196 and 207 of the IBC to levy a fee on IPs, including as a percentage of the annual remuneration as an IP in the preceding financial year.”

Lalit Kumar Jain Vs. Union of India, Ministry of Law and Justice & Ors. [W.P. (C) 4849/2020]

The petitioner, a PG to a CD, challenged insolvency proceedings initiated against him. While staying the said proceeding, the HC of Delhi allowed the proceedings to continue in relation to the CD and the IRP to examine the liability of the petitioner.

Atin Arora Vs. Oriental Bank of Commerce [C.O. No. 3894/2019 with CAN 12340/2019]

The NCLT, Kolkata Bench admitted a section 7 application for initiation of CIRP against a CD. The petitioner, who is a director of the CD, filed an application for recall of the order inter alia on the ground that the said Bench did not have jurisdiction to entertain the application and the Bench at Cuttack has jurisdiction as the CD is located in Odisha. The NCLT, Kolkata Bench declined to recall the order, by the impugned order, stating that it had jurisdiction when section 7 application was filed. The petitioner challenged the impugned order. The respondent challenged the jurisdiction of the HC in deciding the matter when an appellate authority already exists under the Code. The HC of Calcutta observed: “There are no limits, fetters or restrictions placed on this power of superintendence and for all purposes, the HC as the custodian of justice within the territorial limits of its jurisdiction was armed with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the subordinate Courts or Tribunals.” It held that there is no bar on the HC to entertain an application under Article 227 of the Constitution of India, when a challenge is made to an order, which is otherwise amenable to be challenged by way of an appeal before the appellate forum if there is a patent error or miscarriage of justice apparent from the record. While noting that the Cuttack Bench of NCLT has exclusive jurisdiction to decide the matter, the HC set aside the orders of the NCLT, Kolkata Bench and directed it to transfer the proceedings to the NCLT, Cuttack Bench.

Univalve Projects Pvt. Ltd. Vs. The Union of India & Ors. [W.P. No. 5595 (W)/2020 with C.A.N. 3347/2020]

The petitioners challenged the order of the NCLT requiring all FCs to submit record of default from the IU along with the application under section 7 of the Code, and requiring the parties to submit such records in respect of applications filed earlier but waiting for admission. As regards authority of the NCLT, the HC observed: “Therefore, what becomes clear to me is that while both the NCLT and NCLAT have been conferred with powers to regulate their own procedure, such use of its power is circumscribed and subject to inter alia, the principles of natural justice as well as the provisions of CA, 2013 or the IBC, 2016, inclusive of any rules/ regulations made under the IBC, 2016 by the regulatory body, IBBI. Therefore, the powers of the NCLT and NCLAT is limited both by principles of natural justice as well as statutory provisions and regulations framed under such legislations.”

As regards evidence of debt, the HC of Calcutta observed: “On a close due diligence of the various provisions above, including section 7 of the IBC, 2016 read with Rule 4 of the AA Rules, 2016 and Form-1 therein, and regulation 8 of the CIRP Regulations, 2016, observations of the Supreme Court in paragraph

32 (provided above), it becomes crystal clear that apart from the financial information of the IU, eight classes of documents can be considered to be sources that evidence a “financial debt”. As regards evidence that can be provided along with section 7 application, the HC observed: “The three categories of evidence that can be provided are as follows: (a) record of the default recorded with the information utility; (b) such other record; (c) evidence of default as may be specified... three different categories of documents are available to a financial creditor to prove proof of default by a corporate debtor.” As regards retrospective effect, the HC observed: “Therefore, any delegatee, let alone the NCLT, not even the IBBI can make regulations, by way of the impugned order or of such nature, to make a delegated legislation retrospective under the IBC, 2016.” Accordingly, the HC struck down the impugned order to be ultra vires the Code.

Arvind Kumar Rastogi Vs. The National Company Law Tribunal & Anr. [CM(M) 350/2020 & CM APPL I 1249/2020 (stay)]

The HC of Delhi noted that the HC of Calcutta vide judgment dated August 18, 2020 in the matter of *Univalve Projects Pvt. Ltd Vs. The Union of India & Ors.* has struck down the order dated May 12, 2020 of the AA directing mandatory filing of default from the IU, as being ultra vires the Code and Regulations. Prior to the passing of the said order by HC of Calcutta, the AA vide another Order dated August 13, 2020 modified its earlier order dated May 12, 2020 directing filing of record of default from IUs, wherever the same is available. The HC of Delhi observed that since the order dated May 12, 2020 was struck down by the HC of Calcutta, the order dated August 13, 2020 modifying the earlier order dated May 12, 2020 cannot stand. While directing the respondents to file a fresh affidavit indicating their stand about the judgment of the HC of Calcutta, it stayed the operation of the order dated August 13, 2020.

Anil Dhirajlal Ambani Vs. State Bank of India and Ors. [W.P.(C) 5712/2020]

The petitioner, a PG to a CD, challenged the order of AA appointing RP in the individual insolvency proceedings initiated under Part III of the Code. While staying the said proceeding, the HC of Delhi allowed the proceedings to continue in relation to the CD and the IRP to examine the liability of the petitioner. It restrained the petitioner from transferring, alienating, encumbering, or dealing with, or disposing of any of his assets, or his rights, or beneficial interest therein till the next date.

Vachaspati and Ors. Vs. Insolvency and Bankruptcy Board of India & Ors. [W.P.(C) 5711/2020]

The petitioner was aggrieved by the reply sent by IBBI in respect of his complaint. The HC of Delhi found that the complainant has been informed about the status of the complaint by way of a cryptic order and this is not in compliance with the Regulations. It agreed to examine whether the complainant has a right to participate in the proceedings that may be initiated by IBBI on a complaint.

Sandip Kumar Bajaj & Anr. Vs. State Bank of India & Anr. [I.A. No. G.A. 1/2020 in W.P.O. 236/2020]

The petitioners challenged the show cause notice issued by State Bank of India calling upon the petitioners to show cause as to why their names should not be included in the list of willful defaulters as per RBI Guidelines. They are the erstwhile promoters/directors/ guarantors of a CD, which is undergoing CIRP since March 17, 2020. They contended that by reason of moratorium in respect of the CD, the proceedings under the RBI Guidelines should be stayed. The HC of Calcutta held that section 14(3)(b), that the prohibits institution or continuation of suits and other proceedings against the CD, does not extend to a surety.

National Company Law Appellate Tribunal

Vijay Kumar V. Iyer Vs. Bharti Airtel and Ors. [CA(AT)(Ins) No. 530 & 700/2019]

The AA, by an order, permitted to set off certain amount to be paid by the Airtel Companies to the Airtel Companies. The RP challenged the said order. Two respondents submitted that the right of a party to apply set off is a well-known concept in accounting and that such right has been recognised for more than a century in the context of Insolvency/Liquidation under Companies Act, Presidency Insolvency Act, and Provincial Insolvency Act. Another respondent opposed it being in violation of moratorium imposed under the Code and prejudicial to the interest of secured creditors. The NCLAT observed that the accounting conventions cannot supersede any express provisions in the specific law on the subject. Accordingly, it set aside the impugned order and directed the respondents to pay the amount whatever has been set off by them to the Airtel Entities.

Monotrone Leasing Private Limited Vs. PM Cold Storage Private Limited [CA(AT)(Ins) No. 99/2020]

The AA, by an order, rejected an application filed under section 7, inter alia, on the ground that the AA cannot act as a Recovery Tribunal and the CD is a solvent company. The NCLAT observed that the moment the AA is satisfied that a default has occurred, the application must be admitted unless it is incomplete and a presumption cannot be drawn that a solvent company cannot commit any default, as inability to pay off debts and committing default are two different aspects which are required to be adjudged on equally different parameters. It further observed that section 65 provides for penal action for initiating CIRP with a fraudulent or malicious intent or for any purpose other than resolution. This cannot be construed to mean that if a petition is filed under section 7, 9 or 10 of the Code without any malicious or fraudulent intent, then also such a petition can be rejected by the AA on the ground that the intent of the applicant was not resolution. As the proceedings under the Code are summary in nature, it is difficult to determine the intent of the applicant filing an application unless shown explicitly by way of documentary evidence.

Bank of Baroda on behalf of Committee of Creditors of Veda Biofuel Ltd. Vs. Mr. Sisir Kumar Appikatla, RP for Veda Biofuel Ltd. & Ors. [CA(AT)(Ins) No. 579/2020]

The AA rejected the resolution plan. The appellant filed an appeal on the ground that the resolution applicant was not disqualified under section 29A of the Code to submit a plan and the CoC had approved the resolution plan with an overwhelming majority of 96.39% and the decision taken by the CoC on the basis of its commercial wisdom could not be interdicted by the AA.

The NCLAT noted that Mr. Madhusudhan, one of the resolution applicants, and Mr. P. Vijay Kumar, who is erstwhile promoter and MD of the CD, and who had mismanaged the affairs of the CD rendering it insolvent, entered into a restructuring agreement whereby the latter would continue to hold substantial stake in the CD. Both entered into a settlement agreement with the applicant for withdrawal of application under section 12A. The CoC, however, did not consider the matter for withdrawal of application, but approved restructuring plan as resolution plan. The AA took the view that the former MD was virtually seeking backdoor access under the restructuring plan masqueraded as a resolution plan and therefore did not meet the requirements of section 30(2). While upholding the order of the AA, the NCLAT observed: *“Adjudicating Authority has rightly declined to approve the Resolution Plan of Mr. Madhusudhan who was only used as a ploy to gain control of the Corporate*

Debtor by the very person who had pushed the Corporate Debtor into insolvency.”

Mr. Vishal Vijay Kalantri Vs. Mr. Shailen Shah (RP of Dighi Port Limited) & Ors. [CA(AT)(Ins) No. 466/2020]

The appellant challenged the order of the AA approving a resolution plan inter alia on grounds that the settlement offer was superior to the resolution plan and the resolution plan did not have approval of the Competition Commission of India (CCI) before its approval by CoC. While dismissing the appeal, the NCLAT held that the superiority of settlement offer in terms of maximisation of the value of the assets of the CD in comparison to the resolution plan cannot be accepted as it is a business decision resting upon the commercial wisdom of the CoC and is not amenable to judicial review. Placing reliance on *Arcelormittal India Pvt. Ltd. Vs. Abhijit Guhathakurta*, it held that the prior approval of CCI is directory and not mandatory.

GRIDCO Limited Vs. Surya Kanta Satapathy and Ors. [CA(AT)(Ins) No. 1271/2019]

The RP submitted that the plant of CD was damaged in a storm in June, 2018 resulting in stoppage of supply of power to the Appellant. Since the CD could not start the plant and pay its debts, CIRP commenced in February, 2019. The appellant terminated the power purchase agreement (PPA) in July, 2019, which was challenged. The AA directed restoration of PPA in October, 2019. Subsequently, the successful resolution applicant submitted resolution plan. The resolution applicant contended that it submitted the resolution plan primarily on the subsistence of the PPA and the plan was approved by the CoC and the AA. The NCLAT dismissed appeal against approval of resolution plan in January, 2020. The plan, therefore, attained finality. The challenge in this appeal was limited to direction of the AA to restore PPA. The appellant submitted that it was constrained to terminate PPA, as CD failed to restore the power supply despite being asked to do so and that it was willing to restore the PPA at revised rates. The NCLAT observed that clause 14 of the PPA reads: *“...Neither party shall be entitled for claiming compensation for damages and loss in the event of force majeure...”*. This clause covers vagaries of nature resulting in inability to continue to supply power. Further, clause 17.4 provides that the affected party, in the event of default in performance of obligation, is required to issue a default notice to the other. The appellant did not issue the termination notice. Therefore, termination of PPA in the given circumstances is not sustainable. It dismissed the appeal accordingly.

M. P. Agarwal Vs. Shri Lakshmi Cotsyn Ltd. & Anr. [CA(AT)(Ins) No. 620/2020]

The Appellant contended that its settlement proposal of ₹ 650 crore far exceeded the liquidation value of the assets of the CD and hence there was no justification for the CoC to reject the same. The NCLAT observed that it is the settled law that the CoC enjoys primacy in the matter of approval or rejection of resolution plan/settlement proposal and the AA as well as the appellate tribunal would be exceeding its jurisdiction in questioning the commercial wisdom of the CoC, and accordingly dismissed the appeal.

Committee of Creditors of Educomp Solutions Ltd. Vs. Ebix Singapore Pte. Ltd. & Anr. [CA(AT)(Ins) No. 203/2020]

The AA allowed withdrawal of resolution plan with cost and subject to other legal consequences, as the resolution applicant has chosen to withdraw the plan which has created doubt about its implementation. The respondents supported the impugned order on the grounds that the

resolution plan was rendered commercially unviable on account of lapse of substantial time and severe and inordinate delays in the CIRP qua the CD; severe mismanagement and gross financial irregularities and fraud in the affairs of CD during 2014-2018 was subsequently uncovered; resolution plan is an offer and it binds the offeror only when it is accepted as per its term; etc. The NCLAT observed that the AA cannot enter into the arena of the majority decision of the CoC other than the grounds mentioned in section 32. It further noted that after due deliberations, when the resolution applicant had accepted the conditions of the resolution plan especially keeping in mind the ingredients of section 25(2)(h) of the Code to the effect that no change or supplementary information to the resolution plan shall be accepted after the submission date of resolution plan then it is not open to the resolution applicant to take a 'topsy turvy' stance and is not to be allowed to withdraw the approved resolution plan. It set aside the impugned order.

Mr. Devarajan Raman, RP of Poonam Drum & Containers Pvt. Ltd. Vs. Bank of India Ltd. [CA(AT)(Ins) No. 646/2020]

While disposing of an appeal, the NCLAT had directed the AA to decide the fee of RP. The AA accordingly allowed all expenditure incurred by the RP and directed payment of a consolidated amount of ₹ 5 lakh + GST towards his fee. The appellant submitted that the fee is inadequate and there are several judgments from the NCLAT where the fee has been left to the commercial wisdom of the CoC. Since the RP worked only for three months, the NCLAT found the amount not unreasonable. While dismissing the appeal, it observed that the fixation of fee is not a business decision depending upon the commercial wisdom of the CoC.

Kotak Investment Advisors Limited Vs. Mr. Krishna Chamadia and Ors. [CA(AT)(Ins) No. 344-345/2020]

The last date for submission of resolution plans was January 8, 2019. The CoC opened two resolution plans on January 10, 2019 and discussed the plans on January 13, 2020. However, the RP accepted two more resolution plans - one on January 13, 2019 and the other on January 28, 2019 - after expiry of the deadline for submission of plans. The appellant contested the conduct of the RP accepting two resolution plans without extending the timeline. The AA issued two orders, one rejecting an application raising objections against the alleged illegalities committed in conduct of CIRP and the other approving a resolution plan. While setting aside both the orders on appeal, the NCLAT held as under:

(a) After the expiry of the deadline for submission of resolution plan, the RP, with the approval of CoC, is fully authorised to invite fresh invitation for expression of interest for submission of resolution plan. However, the RP accepted plans after the deadline without extending the deadline and this is arbitrary and illegal, which the CoC cannot ratify. Such ratification is not covered by commercial wisdom.

(b) A single member Bench heard the arguments on the application alleging various illegalities committed by the RP. However, a two-member Bench, which included a member who did not hear the argument, pronounced the impugned order. The NCLAT Rules, 2016 provides for the Bench which hears the case to also pronounce the Order.

Sunil S. Kakkad Vs. Atrium Infocom Private Limited and Ors. [CA(AT)(Ins) No. 194/2020]

The CoC, in its 3rd meeting, passed a resolution unanimously to liquidate the CD as it was not working for the last five years and there was no possibility of resolution plan. The AA accordingly ordered liquidation. The appellant challenged the said order on various grounds, namely, liquidation is the last resort and it cannot and should not be passed

without following due process of resolution of the CD; the CoC decided to liquidate the CD without even inviting expression of interest, and taking any steps for resolution. The NCLAT held that the decision of CoC to liquidate the CD without taking any steps for resolution of the CD is covered under the *Explanation* to sub-clause (2) of section 33 of the Code and the same being decision on commercial wisdom, is non-justiciable given the law laid by the SC in case of *K. Sashidhar Vs. Indian Overseas Bank*.

Bharat Heavy Electricals Ltd. Vs. Mr. Anil Goel, Liquidator of Visa Power Limited & Anr. [CA(AT)(Ins) No. 22/2020]

The NCLAT set aside an auction conducted during the liquidation on noticing several irregularities, such as improper valuation reports, failure of the liquidator to prescribe pre-bid qualifications, discrepancy in the reserve price, discrepancy with regard to the actual quantity of items sold, the irregular conduct of the liquidator, etc. It, inter alia, directed as under:

"7) Copy of Judgement of the Adjudicating Authority and this Judgement may be sent to IBBI which may consider if actions, if any, are required to be initiated under Chapter - VI of IBC. If Respondent No.1 - Liquidator, extends full cooperation in carrying out the Orders which we are passing, especially, to get back goods/material of Corporate Debtor and reauction, IBBI may consider the same as mitigating factor, in favour of Respondent No.1 in action (if any) under Chapter - VI of IBC.

8) If it appears to Adjudicating Authority that Respondent No.1 is not cooperating, it would be at liberty to replace him with another person as Liquidator."

Invent Assets Securitisation and Reconstruction Pvt. Ltd. Vs. Xylon Electrotech Pvt. Ltd. [CA(AT)(Ins) No. 677/2020]

The AA, by an order, declined to admit an application on the ground that the financial debt was barred by limitation. The NCLAT reiterated that the period of limitation for filing of an application under section 7 would not be extended on the basis of pursuit of a remedy under the SARFAESI Act, 2002 or in a recovery proceeding before the DRT.

Sh. Sushil Ansal Vs. Ashok Tripathi and Ors. [CA(AT)(Ins) No. 452/2020]

The respondents had booked dwelling units under a real estate project. Even after lapse of five years, the CD neither completed the construction of these units nor refunded the amount to them. The UP RERA issued a recovery certificate in favour of them. Being the decree holders with a recovery certificate, they filed a section 7 application which the AA admitted by an order. On an appeal against the said order, the NCLAT considered whether application filed by respondents under section 7 was maintainable. It noted that the respondents are no more allottees of a real estate project after issuance of recovery certificate. They approached the AA as decree-holders seeking execution of money due under the recovery certificate and not as allottees. The NCLAT held that a decree-holder, though included in the definition of creditor, does not fall within the definition of FC, and cannot seek initiation of CIRP as FC.

Edelweiss Asset Reconstruction Co. Ltd. Vs. Shri Shyam Sundar Rathi & Anr. [CA(AT)(Ins) No. 683/2020], August 14, 2020

While considering the application for liquidation of the CD, the AA directed the RP to produce details of assets of the CD along with the valuation report by two valuers. The NCLAT noted that that the CD was not a going concern and there being no resolution plan, the CoC unanimously decided to send the CD into liquidation. While setting aside the order, the NCLAT observed that the AA was left with no option in such a case but to order the liquidation of the CD and collection of

material about the assets of the CD and valuation reports was not germane to the disposal of the application under section 33 of Code.

Shree Sidhivinayak Cotspin Private Limited & Anr. Vs. RP of Marurti Cotex Limited & Anr. [CA(AT)(Ins) No. 694/2020]

The AA approved a resolution plan with an observation that the resolution applicant has sought certain reliefs and concessions and it may apply to the relevant authority for the same and such authority may consider as per applicable laws. The appellant challenged the order of the AA on the ground that it has modified the resolution plan. The NCLAT observed that the AA has neither varied the terms of the approved resolution plan, nor denied any concession and held that the appeal is not maintainable.

Smt. Andal Bonumalla Vs. Tomato Trading LLP & Ors. [CA(AT)(Ins) No. 752/2020]

The AA admitted a section 9 application of a person who had given an advance to the CD for supply of sugar and the CD failed to supply sugar. While setting aside the order of admission, the NCLAT reiterated that advance payment for supply of goods cannot be treated as an operational debt and hence application under section 9 is not maintainable.

Indison Agro Foods Ltd. Vs. Registrar & Anr. [CA(AT)(Ins) No. 726-727/2020]

The appellant informed that the matter had been posted before a Single Bench of the AA. The NCLAT disposed of the appeal with a request to the President, NCLT to constitute a Bench consisting of a judicial member and a technical member to decide the matter in conformity with and in compliance with the order passed by SC in the WP No. 722 of 2019.

M/s. Vistara ITCL (India) Ltd. & Ors. Vs. Mr. Dinkar Venkatasubramanian & Ors. [CA(AT)(Ins) No. 703/2020]

The appellant had lent money to WLD and BRASSO for which the CD had created pledge of shares. The RP, however, refused to consider the appellant as a secured FC. The appellant filed an application before the AA seeking a direction to RP to include appellant No.1 in the CoC as a secured FC of the CD. The AA dismissed the application. While dismissing the appeal against the order of the AA, the NCLAT observed that the appellant had not advanced any money to the CD, and pledge of shares by the CD does not tantamount to a guarantee or indemnity and therefore the appellant is not an FC.

Park Energy Pvt. Ltd. Vs. Syndicate Bank & Ors. [CA(AT)(Ins) No. 270/2020]

The NCLAT observed that mere fact of debt being due and payable is not enough to justify the initiation of CIRP at the instance of the FC unless it establishes default on the part of the CD. The onus of proof of default lies on the FC and it must demonstrate that default has occurred on account of failure on the part of CD to discharge its liability.

E.C. John Vs. Jitender Kumar Jain & Ors. [CA(AT)(Ins) No. 249/2020]

The AA, by the impugned order, directed (a) the appellant not to disturb the possession of the liquidator or to create obstruction on a property of the CD; (b) quashing a civil suit on the file of Civil Court, and (c) Police to arrest the appellant for threatening and obstructing Liquidator. The appellant submitted that he was having possession of a part of property of CD on the strength of a letter dated August 17, 2002. The NCLAT noted that the said letter only states that the possession was handed over to the appellant 'for management of the school'. It observed: "*The Appellant does not show that he is in possession as owner or tenant, or licensee as such. Only*

giving property to manage school at the place would not be sufficient for the Appellant, to claim possession, when the Corporate Debtor goes in liquidation." It upheld the direction of the AA as at (a) above. It set aside the direction at (b) above, being not legal. It substituted the direction at (c) above by a direction that the Police concerned should take suitable action as per law.

Phoenix ARC Private Limited Trustee of Phoenix Trust FY 16-18 Vs. Kotak Mahindra Prime Limited & Anr. [CA(AT)(Ins) No. 749/2019]

The AA directed the RP to adjust the payment of EMIs during the moratorium against the claim and admit the remaining amount. The NCLAT, by majority, dismissed the appeal with an observation that it was premature. One Technical Member, however, took a view that during the currency of moratorium, the sanctity of maintaining the integrity of the assets of the CD is a sine qua non for the CIRP. He observed: "*In view of the blanket prohibition mandated by Section 14 after the initiation of CIRP it stands to reason that any change in the conditions of assets from what existed on the date of initiation of CIRP is not permitted in the normal course. The section 14 also does not give any authority to the RP or AA to accord any preferential treatment to any creditor.*" If one creditor is given preferential treatment, it would lead to the collapse of the waterfall mechanism under the Code.

Kind Special Steels (India) Pvt. Ltd. Vs. Amtek Auto Ltd. [CA(AT)(Ins) No. 782/2020]

The SC had directed to invite fresh offers as the approved resolution plan was not implementable. The appellant sought a direction to the RP to admit his claim at this stage, which the AA declined. The NCLAT observed that the SC opened a limited window permitting invitation of fresh offers and not to recommence CIRP *de novo* and dismissed the appeal.

Deepakk Kumar Vs. M/s Phoenix ARC Pvt. Ltd & Anr. [CA(AT)(Ins) No. 848/2019]

The applicant sought review of a judgement of the NCLAT for correction of an error 'apparent on the face of record' leading to an error. The NCLAT observed that the power to review is not an inherent power under Rule 11 of the NCLT Rules, 2016 and hence a 'review jurisdiction' cannot be pressed into service as an 'appellate jurisdiction'. It further noted that the Code, unlike the Companies Act, does not contain any provision for review and accordingly dismissed the application.

JM Financial Asset Reconstruction Company Ltd. Vs. Samay Electronics Pvt. Ltd. [CA(AT)(Ins) No. 807/2020]

In terms of the impugned order, the technical member admitted the application while the judicial member declined to admit it. The NCLAT directed the same Bench of the AA to make a reference to the President of the NCLT for placing the matter before a third member for hearing and the application would be decided in accordance with the opinion of the majority of the members.

Shailesh Chawla and & Vs. Vinod Kumar Mahajan, RP & Ors. [CA(AT)(Ins) No. 571-572/2020]

The AA directed its registry to send a copy of the impugned order to IBBI for consideration for initiation of prosecution. The NCLAT concluded that the AA was well within its ambit to make a recommendation for considering commencement of proceedings and not a recommendation for initiation of criminal proceedings and it is for the IBBI to take a final call after applying its independent overall assessment in an objective and dispassionate manner. It dismissed the appeal accordingly.

Bishal Jaiswal Vs. Asset Reconstruction Company (India) Ltd. & Anr. [CA(AT)(Ins) No. 385/2020]

A three-member Bench of the NCLAT, while hearing an appeal, thought it proper to refer the five-member judgement of the NCLAT in the matter of *V. Padmakumar Vs. Stressed Assets Stabilization Fund and Anr. [CA(AT)(Ins)No. 57 of 2020]* for reconsideration, as it involved an issue of great importance. It observed: “Hon'ble Supreme Court and various Hon'ble High Courts have consistently held that an entry made in the Company's Balance Sheet amounts to an acknowledgement of debt under Section 18 of the Limitation Act, 1963, in view of the settled law, *V. Padmakumar's Case* requires reconsideration.”

Mohan Gems & Jewels Pvt. Ltd. Through its Liquidator, Debashish Nanda Vs. Vijay Verma [CA(AT)(Ins) No. 849/2020]

While staying the impugned order, the NCLAT noted from the impugned order that AA has made certain observations regarding the legality of some regulations framed by the IBBI. It directed that the IBBI be impleaded as a necessary party.

Indian Overseas Bank Vs. Arvind Kumar [CA(AT)(Ins) No. 558/2020]

The appellant challenged the order of AA directing it to release the margin money held by it against a bank guarantee, which was invoked during the moratorium. It submitted that the margin money was adjusted towards the payment on account of the invocation of the said guarantee. The respondent submitted that such adjustment is barred under section 14. The NCLAT observed that 'security interest' as defined in section 3(31) does not include the 'Performance Bank Guarantee' and as such, it is not covered by section 14. It clarified that margin money is not a security, as argued by the respondent. If the bank guarantee expires without being invoked, the margin money reverses to the borrower, and in case the bank guarantee is invoked by the beneficiary, the margin money goes towards payment of bank guarantee to the beneficiary, and nothing remains with the financial institutions, which can be reversed to the CD. The NCLAT set aside the impugned order.

Kundan Care Products Ltd. Vs. Mr. Amit Gupta and Ors. [CA(AT)(Ins) No. 653/2020]

The appellant, who is successful resolution applicant assailed the impugned order rejecting its application for withdrawal of its resolution plan, on the ground that there is no legal basis for holding that an application for withdrawal of a resolution plan post approval is not maintainable. The NCLAT observed that a resolution applicant whose resolution plan stands approved by CoC cannot be permitted to alter his position to the detriment of various stakeholders. It rejected the argument that specific performance of the resolution plan cannot be compelled on four major grounds, namely, (a) There is no provision in the Code entitling the successful resolution applicant to seek withdrawal after its plan stands approved by the CoC; (b) The successful resolution plan incorporates contractual terms binding the resolution applicant, but it is not a contract of personal service which may be legally unenforceable; (c) The resolution applicant is estopped from wriggling out of the liabilities incurred under the approved plan and the principle of estoppel by conduct would apply to it; and (d) The value of the assets of the CD depletes with passage of time consumed in CIRP and in the event of successful resolution applicant walks out with impunity, the CD's depleting value would leave all stakeholders in a state of devastation.

National Company Law Tribunal

Syndicate Bank Vs. Bothra Metals and Alloys Limited [CP(IB) No. 2579/MB.IV/2019]

The CD contested section 7 application, inter alia, on grounds of limitation. The AA noted that there was an acknowledgement of debt in the balance sheet of the CD all along. It is well-settled through various judgments of the SC that acknowledgement in the balance sheet of the company satisfies the requirements of section 18 of the Limitation Act, 1963, leading to a fresh period of limitation commencing from each such acknowledgement. The AA admitted the application.

M/s Shree Dev Chemicals Corporation Vs. Gammon India Limited [CP(IB) No. 3637/MB.IV/2018]

The CD challenged application for CIRP on the ground that the applicant, being an unregistered firm, cannot file 'suit' under section 69(2) of the Partnership Act, 1932. The AA held that the said provision applies only to a 'suit' and not to proceedings, while the applications filed under the Code are not 'suits' but only proceeding. Therefore, the bar under section 69(2) of the Indian Partnership Act does not apply to the applications under the Code.

M/s. Brand Realty Services Ltd. Vs. M/s. Sir John Bakeries India Pvt. Ltd., [(IB)1677(ND)/2019]

The applicant filed a section 9 application. The AA observed that the application was not against the invoices raised, but for breach of a settlement agreement. It held that default of instalment of settlement agreement does not come within the definition of operational debt and hence dismissed the application.

SBER Bank Vs. Varrsana Ispat Limited [IA(IB) No. KB/2020 in CP(IB) No. 543/KB/2017]

The Liquidator filed an application under sections 60(5) and 32A of the Code seeking permission to sell the assets of the CD which were attached by the Enforcement Directorate (ED), in view of section 32A. The ED objected to the application on three grounds: (a) An application under section 32A can be made only after the liquidation process is over or resolution plan is approved; (b) An application under section 32A can be filed only by the successful resolution applicant and not the liquidator; and (c) the rights of the parties had already been crystallised through proceedings before the PMLA Appellate Authority and hence subsequent change in law (insertion of section 32A) would not take away such rights which had attained finality. The AA held that section 32A is also applicable to the assets of the CD undergoing liquidation and a liquidator can file an application like the one in hand. It further held that a liquidator can proceed with the sale of the assets even if it is under attachment by the ED, to continue the time bound process of liquidation under the Code and upon completion of the sale proceedings, the buyer can take appropriate steps to release the attachment. The attachment and confiscation of properties of a CD undergoing CIRP or liquidation is void under section 32A of the Code.

Allahabad Bank Vs. Anil Kumar IRP for KSL & Industries Ltd. [IA 90/2020 in IA 691/2019 in C.P.(IB) 397/NCLT/AHM/2018]

The CIRP commenced on September 6, 2019. There has been a stalemate since the first meeting of the CoC on the appointment of IRP as RP. Keeping the time bound nature of CIRP, the AA, in exercise of its power under Rule 11 of the NCLT Rules, 2016, appointed another IP as IRP/RP and directed him to complete the CIRP as early as possible.

M/s. Om Logistics Ltd. Vs. M/s. NTL Electronics India Limited [(IA/1658/2020) in CP(IB) No.814/ND/2019]

An OC sought a direction to the RP to include interest in the admitted claim. The AA studied the distinction between operational debt and financial debt, the requirements of default under sections 7 and 9 of the Code and the related case laws. It concluded that the claim of interest is not maintainable in case of operational debt.

State Bank of India Vs. Anil Dhirajlal Ambani [IA No. 1009 of 2020 in CP (IB) 916 (MB) of 2020]

A creditor filed an application against PG of a CD under section 97(3) of the Code. The respondent contended that section 99 of the Code requires the RP to submit the report to the AA with reasons for acceptance or rejection of the application. Since the application for approval of the resolution plan in CIRP of the CD is pending, the RP cannot file any report and therefore appointing the RP would be premature. The AA observed that the law does not envisage that the insolvency resolution of the personal guarantor should follow only when the process of CIRP of the CD has come to an end. It appointed RP accordingly.

LML Limited (under liquidation) through Liquidator Vs. Office of Commissioner of Income Tax, Mumbai [CA No. 389 of 2019 in CP(IB) No. 55/ALD/2017]

The liquidator sold certain properties relinquished by the secured creditors. Before proceeding to distribute the proceeds, she filed an application with the AA seeking guidance whether she is required to deposit capital gains on sale of secured assets and include it in the liquidation cost to be defrayed first and distribute the balance amongst the claimants. The AA opined that upon realisation of the liquidation estate of the CD, it must be distributed in accordance with the waterfall mechanism under section 53. The dues towards Government, be it tax on income or on sale of properties, would qualify as operational debt and must be dealt with accordingly. It noted that a secured creditor is entitled to effect sale under the SARFAESI Act and appropriate the entire amount towards its dues, without any liability to first pay capital gain. If the capital gain is first to be provided for, and then be included as liquidation cost, it would create an anomalous situation in the secured creditor getting a lesser remittance than what it could have realised had it not released the security into the common corpus. It is for this purpose that the provision of section 178 of the Income-tax Act, 1961 has been amended giving priority to the waterfall mechanism over government dues. The AA held: *“We therefore hold that the tax liability arising out of the sale shall be distributed in accordance with the provision of Sec 53 of the Code. The applicability of Section 178 or 194 IA of the IT Act will not have an overriding effect on the water fall mechanism provided under Section 53 of the Code, which is a complete code in itself, and the capital gain shall not be taken into consideration as the liquidation cost.”*

Bank of India Vs. V. Mahesh, Liquidator of Nagarjuna Oil Corporation Limited & Anr. [IA/497/2020 in MA/289/2018 in TCP/10/IB/2017]

The applicant challenged the order of the liquidator rejecting its claim on the ground of violation of natural justice, that is, he was not afforded an opportunity of being heard before the order of rejection. The AA observed that it is almost impracticable for the liquidator to follow the principles of natural justice before admitting or rejecting an application because he cannot be selective in his approach and if the same is applied universally it will make the timeline under the Code haywire and defeat the provisions of the Code. It also noted that the liquidator has passed a

well-reasoned order in terms of section 40 of the Code and same cannot be referred as a non-speaking order. In view of the above observations, the appeal was dismissed.

Techno Electric & Engineering Co. Ltd. Vs. McLeod Russel India Ltd. [TP 38/2020]

The applicant filed a section 7 application on July 8, 2019 before Kolkata Bench. As the application remained unattended, it filed an appeal. The NCLAT disposed of the appeal, by an order on March 3, 2020, with a direction to the AA to accord priority and make all endeavour to pass the order within 15 days. The applicant filed a transfer application. Owing to shortage of members at Kolkata, the Principal Bench transferred the section 7 application to New Delhi Bench V with a direction to list it on October 20, 2020.

Invest Asset Securitisations & Reconstruction Pvt. Ltd. Vs. M/s. Mohan Gems & Jewels Pvt. Ltd. [I.A. 1490/2020 in CP(IB) No. 590(PB)/2018]

The liquidator filed an application seeking closure of liquidation process in accordance with regulation 45(3)(a) of the Liquidation Regulations on the premise that the CD was sold as a going concern. The AA, while dismissing the application as misconceived, inter alia, observed: (a) A company being, a juridical person with perpetual succession, cannot be sold. It can only be dissolved; (b) Selling of company in liquidation is unknown to law and beyond the discretion given to IBBI under section 240 (2) (y) of the Code; (c) Regulation 45(3) is repugnant to the mandate under section 54; and (d) Tribunals cannot test the vires of the parent legislation, as it is the creature of the said statute, but they are competent to test the vires of subordinate / delegated legislation.

Sundaresh Bhat Vs. Assistant Commissioner of State Tax & State Bank of India [IA No. 1043 of 2020 in CP(IB) No/ 490-MB-2018]

The AA passed an order for liquidation which was stayed by NCLAT with direction to RP to keep the CD as a going concern. On the direction of R1, R2 transferred ₹ 1.24 crore towards pre-CIRP dues of the CD to R1. The RP filed an application seeking return of the amount, being a transfer in violation of section 14 of the Code. Agreeing with the RP, the AA directed R1 to refund the sum to the account of the CD.

IBBI

Disciplinary Orders

The DC passed a few orders with a variety of directions for contraventions of the provisions of law. The contraventions included: (a) an IP appointed a person, who is not a RV, for valuation in CIRP; (b) a person conducted valuation in a CIRP without having registration on the date of valuation; (c) an IP undertook assignment while not having AFA; etc. The DC has disposed of 37 show cause notices against IPs by September, 2020.

Other Orders

During the quarter, IBBI rejected six applications for registration as RV as the applicants failed to establish the qualifications and experience required for registration as RV.

Corporate Processes

The data used in this section relating to corporate processes are provisional. These are getting revised continuously as further information is received from IPs or the information in respect of a process changes. For example, a process may ultimately yield

an order for liquidation even after approval of resolution plan or may ultimately yield resolution plan even after an order for liquidation.

Insolvency Resolution

The provisions relating to CIRP came into force on December 1, 2016. Since then a total of 4008 CIRPs have commenced by the end of September, 2020, as presented in Table 1. Of these, 473 have been closed on appeal or review or settled; 291 have been withdrawn; 1025 have ended in orders for liquidation and 277 have ended in approval of resolution plans. Sectoral distribution of CDs under CIRP is presented in Table 2.

Table 2: Sectoral Distribution of CIRPs as on September 30, 2020

Sector	Admitted	No. of CIRPs					Ongoing
		Appeal/Review/Settled	Withdrawal under Section 12 A	Approval of Resolution Plan	Commencement of Liquidation	Total	
Manufacturing	1639	163	118	140	449	870	769
Food, Beverages & Tobacco Products	208	17	10	15	58	100	108
Chemicals & Chemical Products	164	16	15	19	38	88	76
Electrical Machinery & Apparatus	118	14	4	5	45	68	50
Fabricated Metal Products	92	8	11	4	28	51	41
Machinery & Equipment	183	25	20	10	45	100	83
Textiles, Leather & Apparel Products	279	27	18	19	98	162	117
Wood, Rubber, Plastic & Paper Products	195	17	18	20	38	93	102
Basic Metals	286	26	11	35	73	145	141
Others	114	13	11	13	26	63	51
Real Estate, Renting & Business Activities	793	123	75	34	166	398	395
Real Estate Activities	188	36	16	5	18	75	113
Computer and related activities	115	15	12	1	29	57	58
Research and Development	5	1	1	1	0	3	2
Other Business Activities	485	71	46	27	119	263	222
Construction	428	70	36	26	76	208	220
Wholesale & Retail Trade	398	39	22	16	127	204	194
Hotels & Restaurants	93	15	9	10	20	54	39
Electricity & Others	124	11	3	10	22	46	78
Transport, Storage & Communications	119	15	7	9	40	71	48
Others	414	37	21	32	125	215	199
Total	4008	473	291	277	1025	2066	1942

Note: The distribution is based on the CIN of CDs and as per National Industrial Classification (NIC 2004).

The distribution of stakeholder-wise initiation of CIRPs is presented in Table 3. OCs triggered 50.32% of the CIRPs, followed by about 43.16% by FCs and remaining by the CDs. The share of CIRPs initiated by CD is declining over time.

Table 3: Initiation of Corporate Insolvency Resolution Process

Period	No. of CIRPs Initiated by			
	Operational Creditors	Financial Creditors	Corporate Debtors	Total
2016 - 17	7	8	22	37
2017 - 18	310	285	110	705
2018 - 19	567	514	71	1152
Apr - Jun, 2019	157	130	14	301
Jul - Sep, 2019	297	282	9	588
Oct - Dec, 2019	333	272	18	623
Jan - Mar, 2020	245	186	10	441
Apr - Jun, 2020	51	25	5	81
Jul - Sep, 2020	50	28	2	80
Total	2017	1730	261	4008

The outcome of CIRPs, initiated stakeholder-wise, as on September 30, 2020 is presented in Table 4. About 51% of OC initiated CIRPs were closed on appeal, review, or withdrawal. Such closures accounted for about 70% of all closures by appeal, review, or withdrawal.

Table 1: Corporate Insolvency Resolution Process

Period	CIRPs at the beginning of the Period	Admitted	Closure by				CIRPs at the end of the Period
			Appeal/Review/Settled	Withdrawal under Section 12A	Approval of Resolution Plan	Commencement of Liquidation	
2016 - 17	0	37	1	0	0	0	36
2017 - 18	36	705	90	0	20	90	541
2018 - 19	541	1152	141	95	80	306	1071
Apr - Jun, 2019	1071	301	45	31	26	96	1174
Jul - Sep, 2019	1174	588	46	43	33	155	1485
Oct - Dec, 2019	1485	623	71	43	40	150	1804
Jan - Mar, 2020	1804	441	62	46	36	135	1966
Apr - Jun, 2020	1966	81	7	21	20	25	1974
Jul - Sep, 2020	1974	80	10	12	22	68	1942
Total	NA	4008	473	291	277	1025	1942

These CIRPs are in respect of 3936 CDs

This excludes 1 CD which has moved directly from BIFR to resolution

Source: Compilation from website of the NCLT and filing by Insolvency Professionals

Table 4: Outcome of CIRPs, initiated Stakeholder-wise, as on September 30, 2020

Outcome	Description	No. of CIRPs initiated by			
		Financial Creditors	Operational Creditors	Corporate Debtors	Total
Status of CIRPs	Closure by Appeal/Review/Settled	124	343	6	473
	Closure by Withdrawal u/s 12A	88	198	5	291
	Closure by Approval of Resolution Plan	157	80	40	277
	Closure by Commencement of Liquidation	444	438	143	1025
	Ongoing	917	958	67	1942
	Total	1730	2017	261	4008
CIRPs yielding	Realisation by FCs as % of Liquidation Value	192.09	112.40	142.77	185.15
	Realisation by FCs as % of their Claims	46.84	21.80	25.30	43.56
Resolution Plans	Average time taken for Closure of CIRP	444	406	443	433
	Liquidation Value as % of Claims	6.35	9.19	9.89	7.20
CIRPs yielding Liquidations	Average time taken for Closure of CIRP	336	304	306	318

The status of CIRPs as on September 30, 2020 is presented in Table 5.

Table 5: Status of CIRPs as on September 30, 2020

Status of CIRPs	No. of CIRPs
Admitted	4008
Closed on Appeal / Review / Settled	473
Closed by Withdrawal under section 12A	291
Closed by Resolution	277
Closed by Liquidation	1025
Ongoing CIRP	1942
> 270 days	1442
> 180 days ≤ 270 days	349
> 90 days ≤ 180 days	74
≤ 90 days	77

Withdrawals under Section 12A

Till September, 2020, a total of 291 CIRPs have been withdrawn under section 12A of the Code. The distribution of claims and reasons for withdrawal in these CIRPs are presented in Table 6.

Table 6: Closure of CIRP by Withdrawal till September 30, 2020

Amount of Claims Admitted* (₹ crore)	No. of CIRPs
≤ 01	132
> 01 ≤ 10	72
> 10 ≤ 50	50
> 50 ≤ 100	12
> 100 ≤ 1000	12
> 1000	6
Reason for Withdrawal*	
Full settlement with the applicant	96
Full settlement with other creditors	20
Agreement to settle in future	17
Other settlements with creditors	69
Others	82

*Data awaited in 7 CIRPs

Resolution Plans

About 49.61% of the CIRPs, which were closed, yielded orders for liquidation, as compared to 13.41% ending up with a resolution plan. However, 73.48% of the CIRPs ending in liquidation (751 out of 1022 for which data are available) were earlier under BIFR and / or defunct (Table 7). The economic value in most of these CDs had already eroded before they were admitted into CIRP. These CDs had assets, on average, valued at less than 5% of the outstanding debt amount.

Table 7: CIRPs Ending with Orders for Liquidation till September 30, 2020

State of Corporate Debtor at the Commencement of CIRP	No. of CIRPs initiated by			
	FC	OC	CD	Total
Either in BIFR or Non-functional or both	304	337	110	751
Resolution Value > Liquidation Value	67	35	26	128
Resolution Value ≤ Liquidation Value*	374	404	116	894

Note: 1. There were 57 CIRPs, where CDs were in BIFR or non-functional but had resolution value higher than liquidation value.

2. Data in respect of 03 CIRPs is awaited.

* Includes cases where no resolution plans were received and cases where liquidation value is zero or not estimated.

Table 8: CIRPs Yielding Resolution

Sl. No.	Name of CD	Defunct (Yes/No)	Date of Commencement of CIRP	Date of Approval of Resolution Plan	CIRP initiated by	Total Admitted Claims of FCs	Liquidation Value	Realisable by FCs	Realisable by FCs as % of their Admitted Claims	Realisable by FCs as % of Liquidation Value
Part A: Prior Period (Till June 30, 2020)										
1	Micromax Energy Limited	No	17-12-18	24-06-20	OC	0.00	0.18	0.00	NA	NA
2	Meghalaya Infratech Limited	Yes	28-08-19	18-05-20	FC	248.02	61.61	64.3	25.93	104.37
3	Print House (India) Private Limited	No	09-10-18	23-06-20	CD	66.67	52.43	42.50	63.75	81.06
4	Nippon Investment and Finance Company Private Limited	Yes	18-02-19	05-12-19	FC	167.00	0.71	9.51	5.69	1339.44
5	Mynah Industries Limited	Yes	26-02-19	28-02-20	OC	174.29	9.07	9.30	5.34	102.54
6	B.P. Food Products Private Limited	Yes	08-08-18	26-05-20	OC	159.42	37.73	47.16	29.58	124.99
Part B: July - September, 2020										
1	Amtek Auto Limited	No	24-07-17	09-07-20	FC	12641.18	1543.49	2614.72	20.68	169.40
2	Jagdamba Loha Udhyog Private Limited	No	31-07-18	20-07-20	OC	13.86	3.80	5.56	40.12	146.32
3	GVR Infra Projects Limited	No	17-10-18	20-07-20	FC	2271.08	387.80	352.00	15.50	90.77
4	Maruti Cotex Limited	Yes	08-05-19	02-07-20	FC	547.92	88.07	75.61	13.80	85.85
5	Mondal & Manna Coldstore Private Limited	Yes	23-09-19	13-07-20	FC	2.00	0.29	0.10	5.00	34.48
6	Pellet-Energy Systems Private Limited	No	20-07-18	17-07-20	FC	43.89	15.13	20.07	45.73	132.65
7	Shekhar Resorts Limited	No	11-09-18	24-07-20	FC	92.77	125.92	92.77	100.00	73.67
8	Maharashtra Vidhyut Nigam Private Limited	No	14-02-19	21-07-20	FC	388.50	25.19	25.30	6.51	100.44
9	City Mall Vikash Private Limited	No	26-02-19	10-07-20	FC	180.08	76.37	88.11	48.93	115.37
10	Unnati Fortune Industries Private Limited	No	11-06-19	01-07-20	FC	9.84	9.97	9.84	100.00	98.70
11	Suraj Fabrics Industries Limited	Yes	01-07-19	12-08-20	CD	119.29	7.84	9.75	8.17	124.36
12	Surya Treasure Island Private Limited*		15-06-18	17-08-20	FC					
13	JNC Constructions Private Limited	No	30-05-19	04-08-20	FC	203.72	99.89	198.36	97.37	198.58
14	International Book House Private Limited	No	21-12-18	01-09-20	OC	24.63	8.04	8.70	35.32	108.21
15	Payne Realtors Private Limited	No	25-07-19	24-08-20	FC	47.76	23.23	28.12	58.88	121.05
16	Prime Retail India Limited	No	27-08-19	15-07-20	OC	38.37	18.67	10.47	27.29	56.08
17	Aradhya Steel Private Limited	No	29-08-19	24-08-20	OC	257.97	53.06	61.50	23.84	115.91
18	Siddharth Milk and Milk Products Private Limited	Yes	26-04-19	03-08-20	FC	366.71	7.07	8.10	2.21	114.57
19	Siddharth Milk Foods (India) Private Limited	No	26-04-19	03-08-20	FC	398.30	39.47	70.35	17.66	178.24
20	Technovaa Plastic Industries Private Limited	No	26-10-18	04-09-20	OC	104.69	40.68	41.59	39.73	102.24
21	Shree Kedamath Sugar And Agro Products Limited	No	21-08-19	21-09-20	FC	574.59	28.76	54.25	9.44	188.63
22	Fourth Dimension Solutions Limited	Yes	25-07-19	25-09-20	FC	9.40	2.73	3.54	37.66	129.67
Total (July - September, 2020)						18336.56	2605.47	3778.81	20.61	145.03
Total (Till September, 2020)						434375.49	102194.10	189211.99	43.56	185.15

*Data awaited in 1 CIRP

Defunct: Not Going Concern/ Erstwhile BIFR.

Note: Total Liquidation value and Realisable by FCs are less than those reported in the previous newsletter. It is primarily because the values in respect of Amtek Auto Limited have changed with invitation of fresh resolution plans.

Till June, 2020, 250 CIRPs had yielded resolution plans as presented in the last newsletter. Six more CIRPs were later reported as yielding resolution plans during that period, as presented in Part A of Table 8. During July - September, 2020, 22 CIRPs yielded resolution plans with different degrees of realisation as compared to the liquidation value as presented in Part B of Table 8. During the quarter, realisation by FCs under resolution plans in comparison to liquidation value is 145.03%. Till September, 2020, realisation by FCs under resolution plans in comparison to liquidation value is 185.15%, while the realisation by them in comparison to their claims is 43.56%. It is important to note that out of the 277 CDs rescued under the processes under the Code, 91 were in BIFR or defunct.

Liquidation

Till June, 2020, a total of 955 CIRPs had yielded orders for liquidation, as presented in the previous Newsletter. Two more CIRPs were later reported as yielding orders for liquidation during that period. During the quarter July - September, 2020, 68 CIRPs ended in liquidation, taking the total CIRPs ending in liquidation to 1025 (excluding 08 cases where liquidation orders have been set aside by NCLT / NCLAT / SC). The status of liquidation process as on September 30, 2020 is presented in Table 9.

Table 9: Status of Liquidation Processes as on September 30, 2020

Status of Liquidation	Number
Initiated	1025*
Final Report submitted#	132
Closed by Dissolution	77
Closed by Going Concern Sale	4
Compromise / Arrangement	1
Ongoing	893
> Two years	160
> One year ≤ Two years	370
> 270 days ≤ One year	149
> 180 days ≤ 270 days	122
> 90 days ≤ 180 days	28
≤ 90 days	64

*This excludes 8 cases where liquidation order has been set aside by NCLT / NCLAT / SC.

This includes two cases where application for early dissolution has been filed with the NCLT.

Till June 2020, 69 liquidation processes were closed by dissolution / going concern sale as presented in the last newsletter. Dissolution of six more CDs, which happened during the earlier period were reported later, as presented in Part A of Table 10. During July - September, 2020, seven more liquidation processes were closed, taking total number of dissolutions / sold as going concern to 82. The details of the same are presented in Table 10.

Table 10: Details of Closed Liquidations (Amount in ₹ crore)

Sl. No.	Name of CD	Date of Order of Liquidation	Amount of Admitted Claims	Liquidation Value	Sale Proceeds	Amount Distributed to Stakeholders	Date of Order of Dissolution
Part A: Prior Period (Till June 30, 2020)							
1	Alipurduar Enterprises Ltd.	08-08-18	0	NA	NA	NA	07-08-19
2	Lukup Media Private Limited	10-08-18	85.16	0.73	0.27	0.23	29-11-19
3	Quadra Software Solutions Private Limited*	20-12-19	0.12	NA	NA	NA	20-12-19
4	Royal Agro Greenfoods Industries Private Limited	15-04-19	32.87	NA	NA	NA	19-03-20
5	Meka Dredging Company Private Limited**	29-09-18	26.50	11.52	26.50	26.50	05-05-20
6	Mychoicee Knit and Apparels Private Limited*	26-05-20	NA	NA	NA	NA	26-05-20
Part B: July - September, 2020							
1	Aarohi Motors Private Limited	19-03-18	36.57	3.89	3.16	2.64	01-07-20
2	Harsh Polymers (India) Limited	26-09-19	0.04	NA	NA	NA	17-07-20
3	Alfapeople IT Services Private Limited*	03-08-20	NA	NA	NA	NA	03-08-20
4	Meridian Extrusions Private Limited	15-10-18	8.16	1.39	1.61	1.44	07-08-20
5	Smaat India Private Limited#	06-06-19	63.90	2.72	5.49	4.75	13-08-20
6	Chemlinker Tradex Private Limited*	17-08-20	0.25	NA	NA	NA	17-08-20
7	Virtual Logic Systems Private Limited	17-07-18	6.83	0.03	0.02	NA	24-08-20
Total (July - September, 2020)			115.75	8.03	10.28	8.83	NA
Total (Till September, 2020)			11666.00	150.74	186.67	177.30	NA

0' means an amount below two decimals.
 NA means Not realisable/saleable or No asset left for liquidation or Not applicable or Not available.
 * Direct Dissolution; Claims pertain to CIRP period
 # Sale as a Going concern
 ** Compromise/arrangement under section 230 of the Companies Act, 2013

Sale as a Going Concern

Till September 30, 2020, four CDs, namely, M/s. Emmanuel Engineering Private Limited, M/s. K.T.C. Foods Private Limited, M/s Southern Online Bio Technologies and M/s. Smaat India Private Limited, were closed by sale as a going concern under liquidation process. These four CDs had claims amounting to ₹ 736.53 crore, as against the liquidation value of ₹ 60.03 crore. The liquidators in these cases realised ₹ 81.58 crore and companies were rescued.

The AA passes an order for liquidation under four circumstances. The details of liquidation as in terms of these circumstances are presented in Table 11.

Table 11: Reasons for Liquidations

Circumstance	Number of Liquidations	
	Where Final Reports Submitted	Ongoing
CoC decided to liquidate the CD during CIRP	60	428
AA did not receive any resolution plan for approval	70	417
AA rejected the resolution plan for non-compliance with the requirements	2	44
CD contravened provisions of resolution plan	0	4
Total	132	893

Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 requires the liquidator to make a public announcement calling upon stakeholders to submit their claims as on the liquidation commencement date, within 30 days from the liquidation commencement date. The details of the claims admitted by the liquidators in 938 liquidations, for which data are available, are presented in Table 12.

Table 12: Claims in Liquidation Process

(Amount in ₹ crore)

Stakeholders under Section	Number of Claimants	Amount of claims Admitted	Liquidation Value	Amount Realised#	Amount Distributed
132 Liquidations where Final Report Submitted					
52	10	201.22	22.18	25.66	25.50
53 (1) (a)	NA	NA			18.18
53 (1) (b)	872	16520.36			180.48
53 (1) (c)	156	2.77			0.98
53 (1) (d)	133	362.73			12.98
53 (1) (e)	89	1481.07	244.59	254.70	8.58
53 (1) (f)	406	338.33			27.35
53 (1) (g)	0	0			0
53 (1) (h)	79	10.52			1.51
Total (A)	1745	18916.90	266.77	280.36#	275.56
Ongoing 806 Liquidations*					
53 (1) (a)					
53 (1) (b)	34855	421632.85			
53 (1) (c)	24795	1235.55			
53 (1) (d)	8909	101948.94			
53 (1) (e)	850	19507.36	30146.03**	Not Applicable	Not Applicable
53 (1) (f)	1956080	28943.53			
53 (1) (g)	0	0			
53 (1) (h)	690	2636.17			
Total (B)	2026179	575904.37			
Grand Total (A+B)	2027924	594821.77	30412.80		

* Data for other liquidations are not available.

Inclusive of unclaimed proceeds of ₹ 4.80 crore under liquidation.

**Out of 893 ongoing cases, liquidation value of only 770 CDs is available. Liquidation value of 577 CDs taken during liquidation process is ₹ 30146.03 crore and liquidation value of rest of the 193 CDs captured during CIRP is ₹ 9699.40 crore.

Twelve large accounts

Resolution of 12 large accounts were initiated by banks, as directed by RBI. They had an aggregate outstanding claim of ₹ 3.45 lakh crore as against liquidation value of ₹ 73,220 crore. Of these, resolution plan in respect of nine CDs were approved and orders for liquidations were issued in respect of two CDs. Thus, CIRP in respect of one CD and liquidation in respect of two CDs are ongoing and are at different stages of the process. The status of the 12 large accounts is presented in Table 13.

Table 13: Twelve Large Accounts

(Amount in ₹ crore)

Name of CD	Claims of FCs Dealt Under Resolution			Realisation by all Claimants as a percentage of Liquidation Value	Successful Resolution Applicant
	Amount Admitted	Amount Realised	Realisation as % of Claims		
Completed					
Electrosteel Steels Limited	13175	5320	40.38	183.45	Vedanta Ltd.
Bhushan Steel Limited	56022	35571	63.50	252.88	Barnnival Steel Ltd.
Monnet Ispat & Energy Limited	11015	2892	26.26	123.35	Consortium of JSW and AION Investments Pvt. Ltd.
Essar Steel India Limited	49473	41018	82.91	266.65	Arcelor Mittal India Pvt. Ltd.
Alok Industries Limited	29523	5052	17.11	115.39	Reliance Industries Limited, JM Financial Asset Reconstruction Company Ltd., JMFARC - March 2018 Trust
Jyoti Structures Limited	7365	3691	50.12	387.44	Group of HNIs led by Mr. Sharad Sanghi
Bhushan Power & Steel Limited	47158	19350	41.03	209.12	JSW Limited
Jaypee Infratech Limited	23176	23223	100.20	130.82	NBCC (India) Limited
Amtek Auto Limited	12641	2615	20.68	169.65	Deccan Value Investors L.P and DVI PE (Mauritius) Ltd.
Under Process					
Era Infra Engineering Limited	Under CIRP				
Lanco Infratech Limited	Under Liquidation				
ABG Shipyards Limited	Under Liquidation				

Note: The Resolution Plan approved in Jaypee Infratech Limited is challenged before the Hon'ble NCLAT, and subsequently transferred to Hon'ble Supreme Court vide order dated 06.08.2020.

Resolution of FSPs

On an application filed by the RBI to initiate CIRP against Dewan Housing Finance Corporation Ltd (DHFL), the AA admitted the application on December 3, 2019. Mr. R. Subramaniakumar was appointed as the Administrator. This is the first FSP admitted for resolution under the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of

Financial Service Providers and Application to Adjudicating Authority) Rules, 2019, which were notified on November 15, 2019. The Administrator has the same duties, functions, obligations, responsibilities, rights, and powers of an IP undertaking a process under the Code. The CIRP is ongoing.

Voluntary Liquidation

A corporate person may initiate voluntary liquidation proceeding if majority of the directors or designated partners of the corporate person make a declaration to the effect that (i) the corporate person has no debt or it will be able to pay its debts in full from the proceeds of the assets to be sold under the proposed liquidation, and (ii) the corporate person is not being liquidated to defraud any person. At the end of September 30, 2020, 747 corporate persons initiated voluntary liquidation (Table 14). Final reports in respect of 295 voluntary liquidations have been submitted by September 30, 2020.

Table 14: Commencement of Voluntary Liquidations till September 30, 2020 (Number)

Period	Liquidations at the beginning	Liquidations Commenced	Liquidation closed by		Liquidations at the end of period
			Withdrawal	Final Reports Submitted	
2017 - 18	0	184	0	11	173
2018 - 19	173	229	7	98	297
Apr - Jun, 2019	297	53	0	24	326
Jul - Sep, 2019	326	61	0	37	350
Oct - Dec, 2019	350	66	0	23	393
Jan - Mar, 2020	393	89	1	36	445
Apr - Jun, 2020	445	10	0	24	431
Jul - Sep, 2020	431	55	0	42	444
Total	NA	747	8	295	444

The status of 747 liquidations is presented in Table 15.

Table 15: Status of Voluntary Liquidations as on September 30, 2020

Status	No. of Liquidations
Initiated	747
Closed by withdrawal/suspended	08
Final Report Submitted	295
Closed by Dissolution	152
Ongoing	444
> Two years	101
> One year ≤ Two years	142
> 270 days ≤ One year	55
> 180 days ≤ 270 days	81
> 90 days ≤ 180 days	11
≤ 90 days	54

Table 18: Realisations under Voluntary Liquidation

(Amount in ₹ crore)

Sl. No.	Name of Corporate Person	Date of Commencement	Date of Dissolution	Realisation of Assets	Amount due to Creditors	Amount paid to Creditors	Liquidation Expenses	Surplus
Part A: Prior Period (Till June 30, 2020)								
1	Aisa Automation & Robotics Private Limited	11-03-19	20-03-20	0.05	-	-	0.05	-
Part B: July - September, 2020								
1	Varam Capital Private Limited	23-04-19	09-07-20	14.85	-	-	0.12	14.73
2	One-Red India Licensing Private Limited	05-12-17	30-07-20	0.64	0.12	0.12	0.23	0.29
3	Aditya Birla Epoxy (India) Limited	23-10-19	05-08-20	0.08	-	-	0.08	-
4	Roger Trading Enterprises Private Limited	09-04-19	06-08-20	0.27	-	-	0.02	0.25
5	Faller Pharma Packaging India Private Limited	26-07-19	26-08-20	0.66	-	-	0.10	0.56
6	Vijay Mistry Construction and Rajkamal Builders Pvt. Ltd.	11-10-17	26-08-20	10.29	0.20	0.20	0.05	10.04
7	Dvarkesh Financial Services Private Limited	13-03-19	01-09-20	2.35	0.03	0.03	0.02	2.30
8	Morethansum Ventures Private Limited	01-04-19	03-09-20	0.79	-	-	0.01	0.78
9	Fairchild Semiconductor (India) Private Limited	28-09-18	09-09-20	0.14	-	-	0.14	-
10	Tsi Townships(Bangalore) Private Limited	21-10-19	11-09-20	0.06	-	-	0.04	0.02
11	Visual Changes Salon and Spa Private Limited	26-09-19	18-09-20	-	-	-	-	-
12	Aishwariyam Micro Finance Limited	22-07-19	23-09-20	2.06	-	-	0.03	2.03
13	Spam Agri Private Limited	14-09-19	28-09-20	1.52	-	-	0.25	1.27
14	Werfen Medical India Private Limited	20-05-19	28-09-20	0.33	-	-	0.13	0.20
Total (July - September, 2020)				34.04	0.35	0.35	1.22	32.47
Total (Till September, 2020)				2746.80	9.85	9.85	18.54	2718.41

Of the 747 corporate persons that initiated voluntary liquidations till September 30, 2020, the reasons for these initiations are available for 705 cases, which are presented in Table 16.

Table 16: Reasons for Voluntary Liquidations

Sl. No.	Reason	No. of Corporate Persons
1	Not carrying business operations	470
2	Commercially unviable	84
3	Running into losses	16
4	No revenue	25
5	Promoters unable to manage affairs	15
6	Purpose of the company accomplished	14
7	Contract termination	6
8	Miscellaneous	75
Total		705

Most of these corporate persons are small entities. 444 of them have paid-up equity capital of less than ₹ 1 crore. Only 86 of them have paid-up capital exceeding ₹ 5 crore. The corporate persons, for which details are available, have an aggregate paid-up capital of ₹ 4716 crore (Table 17).

Table 17: Details of 739 Liquidations (excludes 8 withdrawals) (Amount in ₹ crore)

Details of	No. of Liquidations	Paid-up capital	Assets	Outstanding debt	Amount paid to creditors	Surplus
Liquidations for which Final Reports submitted	295	1317*	3430	23	23	3148
Ongoing Liquidations	444	3399#	1444#	**		
Total	739	4716	4874	**		

* Paid up capital is not available in case of one company as it is a limited by guarantee company where there exist no shareholders and paid-up capital.

**For ongoing liquidations, outstanding debt amount is not available.

Paid up capital and assets of 402 and 388 cases, respectively, are available.

It was reported in the last newsletter that dissolution orders were passed in respect of 137 liquidations. Dissolution order in respect of one more liquidation, which was issued during the earlier period, was reported later, as indicated in Part A of Table 18. During the quarter July - September, 2020, dissolution orders in respect of 14 voluntary liquidations were issued taking the total dissolutions to 152. These 152 corporate persons owed ₹ 9.85 crore to creditors and through voluntary liquidation process, they were paid ₹ 9.85 crore.

Time for Conclusion of Processes

The average time taken for completion of various processes is presented in Table 19.

Table 19: Average time for approval of Resolution Plans/Orders for Liquidation

Sl. No.	Average time	No. of Processes covered	Time (In days)	
			Total time	Excluding excluded time
CIRPs				
1	From ICD to Approval of resolution plans by AA	277	433	384
2	From ICD to order for Liquidation by AA	1025	318	NA
Liquidations				
3	From LCD to submission of final report for Liquidations	132	332	NA
4	For submission of final report under Voluntary Liquidation	295	359	NA

Corporate Liquidation Accounts

The Regulations require a liquidator to deposit the amount of unclaimed dividends, if any, and undistributed proceeds, if any, in a liquidation process along with any income earned thereon into the corporate liquidation account before he submits an application for dissolution of the corporate person. It also provides a process for a stakeholder to seek withdrawal from the said account. Similar provisions exist for voluntary liquidation processes. The details of these accounts at the end of September, 2020, are presented in Table 20.

Table 20: Corporate Liquidation Accounts as on September 30, 2020 (Amount in ₹ lakh)

Name of Account	Opening Balance	Deposit during the period	Withdrawn during the period	Balance at the end of the period
Corporate Liquidation Account				
2019 - 20	0.00	498.24	0.21	498.03
Apr - Jun, 2020	498.03	19.42	0.00	517.45
Jul - Sep, 2020	517.45	9.60	0.00	527.05
Corporate Voluntary Liquidation Account				
2019 - 20	0.00	109.88	0.00	109.88
Apr - Jun, 2020	109.88	8.17	0.00	118.05
Jul - Sep, 2020	118.05	28.46	0.00	146.51

Summary of Outcomes

(a) The primary objective of the Code is rescuing lives of CDs in distress. The Code has rescued 277 CDs till September, 2020 through resolution plans, one third of which were in deep distress. However, it has referred 1025 CDs for liquidation. The CDs rescued had assets valued at ₹ 1.02 lakh crore, while the CDs referred for liquidation had assets valued at ₹ 0.42 lakh crore when they were admitted to CIRP. Thus, in value terms, around three fourth of distressed assets were rescued. Of the CDs sent for liquidation, three-fourth were either sick or defunct and of the firms rescued, one-third were either sick or defunct.

(b) The realisable value of the assets available with the 277 CDs rescued, when they entered the CIRP, was only ₹ 1.02 lakh crore, though they owed ₹ 4.89 lakh crore to creditors. The resolution plans recovered ₹ 1.97 lakh crore, which is about 193 per cent of the realisable value of these CDs. Any other option of recovery or liquidation would have recovered at best ₹ 100 minus the cost of recovery/liquidation, while the creditors recovered ₹ 193 under the Code. The excess recovery of ₹ 93 is a bonus from the Code. Though recovery is incidental under the Code, the FCs recovered 43% of their claims, which only reflects the extent of value erosion by the time the CDs entered CIRP, yet it the highest among all options available to creditors for recovery. These realisations are exclusive of realisations that would arise from resolution of PGs to CDs and from disposal of applications for avoidance transactions.

(c) Of the 1025 CDs ending up with orders for liquidation, data in respect of 1022 CDs are available. These had an aggregate claim of ₹ 5.88 lakh crore. Unfortunately, they had assets, on the ground, valued only at ₹ 0.42 lakh crore. Till September 30, 2020, 132 CDs have been completely liquidated. Many of these CDs did not have any job or asset when they entered the IBC process. These included Ghotaringa Minerals Limited and Orchid Healthcare Private Limited, which owed ₹ 8,163 crore, while they had absolutely no assets and employment. These 132 CDs together had outstanding claims of ₹ 18,917 crore, but the assets valued at ₹ 267 crore. ₹ 280 crore was realised through liquidation of these companies.

(d) A distressed asset has a life cycle. Its value gradually declines with time if distress is not addressed. The credible threat of the Code that a CD may change hands, has changed the behaviour of debtors. Thousands of debtors are resolving distress in early stages of distress. They are resolving when default is imminent, on receipt of a notice for repayment but before filing an application, after filing application but before its admission, and even after admission of the application, and making best effort to avoid consequences of resolution process. Most companies are rescued at these stages. Till September, 2020, 14884 applications for initiation of CIRPs of CDs having underlying default of ₹ 5,15,170 crore were resolved before their admission. Only a few companies, who fail to address the distress in any of earlier stages, pass through the entire resolution process. At this stage, the value of the company is substantially eroded, and hence some of them are rescued, and others liquidated. The recovery may be low at this stage, but recovery in early stages of distress is much higher, and it is primarily because of the Code.

(e) The Code endeavors to close the various processes at the earliest. It prescribes timelines for some of them. The 277 CIRPs, which have yielded resolution plans by the end of September, 2020, took on average 384 days (after excluding the time excluded by the AA) for conclusion of process. Similarly, the 1025 CIRPs, which ended up in orders for liquidation, took on average 318 days for conclusion. Further, 132 liquidation processes, which have closed by submission of final reports took on average 332 days for closure. Similarly, 295 voluntary liquidation processes, which have closed by submission of final reports, took on average 359 days for closure.

(f) Till September, 2020, a total of 277 CIRPs have yielded resolution plans. The cost details are available in respect of 260 CIRPs. The cost works out on average 0.79% of liquidation value and 0.42% of resolution value.

(g) The implementation of the Code got reflected in the Global innovation Index. The 2020 edition released on September 2, 2020 indicates improvement of India's rank in 'Ease of Resolving Insolvency' to 47 from 95 in the last year.

Individual Processes

The provisions relating to insolvency resolution and bankruptcy relating to PGs to CDs came into force on December 1, 2019. It was reported in the last newsletter that seven applications were filed under these provisions. As per the information received from IPs, 11 more applications have since been filed. Out of them two applications have been filed by the debtors and nine applications by the creditors under sections 94 and 95 of the Code, respectively. Among them eight have

been filed before NCLT, New Delhi two before NCLT, Hyderabad and one before DRT, Chennai.

Service Providers

Insolvency Professionals

An individual, who is enrolled with an IPA as a professional member and has the required qualification and experience and passed the Limited Insolvency Examination, is registered as an IP. An IP needs an AFA to take up an assignment under the Code with effect from January 1, 2020. IBBI made available an online facility from November 16, 2019 to enable an IP to make an application for AFA to the IPA, and an IPA to process such applications electronically. The details of IPs registered as on September 30, 2020 and AFAs held by them, IPA-wise, is presented in Table 21.

Table 21: Registered IPs and AFAs as on September 30, 2020 (Number)

City / Region	Registered IPs				IPs having Authorisation for Assignment			
	IIIP of ICAI	ICSI IIP	IPA of ICAI	Total	IIIP of ICAI	ICSI IIP	IPA of ICAI	Total
New Delhi	379	239	69	687	279	169	53	501
Rest of Northern Region	340	174	50	564	251	132	31	414
Mumbai	361	124	33	518	250	85	26	361
Rest of Western Region	232	97	32	361	166	74	23	263
Chennai	120	79	11	210	67	59	6	132
Rest of Southern Region	308	173	49	530	210	120	40	370
Kolkata	178	35	17	230	130	21	13	164
Rest of Eastern Region	53	22	7	82	32	16	6	54
Total Registered	1971	943	268	3182	1385	676	198	2259

Of the 3195 IPs registered till date, registrations of four IPs have been cancelled through disciplinary action, and registrations of two IPs cancelled on failing to fulfil the requirement of fit and proper person status. As per information available, seven IPs have passed away. The registrations and cancellations of registrations IPs, quarter wise, till September 30, 2020 are presented in Table 22.

Table 22: Registration and Cancellation of Registrations of IPs

Period	No. of IPs		
	Registered	Cancelled	Registered at the End of the Period
Oct - Dec, 2016#	977	0	977
2016 - 17 (Jan - Mar)	96	0	96
2017 - 18	1716	0	1812
2018 - 19	647	4	2455
Apr - Jun, 2019	203	0	2663
Jul - Sep, 2019	127	0	2790
Oct - Dec, 2019	122	0	2913
Jan - Mar, 2020	98	1	3008
Apr - Jun, 2020	119	1	3127
Jul - Sep, 2020	60	0	3182
Total	3188	6	3182

Registrations with validity of six months. These registrations expired by June 30, 2017.

An individual with 10 years of experience as a member of the ICAI, ICSI, ICAI or a Bar Council or an individual with 15 years of experience in management is eligible for registration as an IP on passing the Limited Insolvency Examination. Table 23 presents distribution of IPs as per their eligibility (an IP may be a member of more than one Institute) as on September 30, 2020. Of the 3182 IPs as on September 30, 2020, 291 IPs (constituting about nine per cent of the total registered IPs) are female.

Table 23: Distribution of IPs as per their Eligibility as on September 30, 2020

Eligibility	No. of IPs		
	Male	Female	Total
Member of ICAI	1588	143	1731
Member of ICSI	481	96	577
Member of ICAI	157	13	170
Member of Bar Council	181	21	202
Managerial Experience	484	18	502
Total	2891	291	3182

The Regulations provide that an IP shall be eligible to obtain an AFA if he has not attained the age of 70 years. Table 24 presents the age profile of the IPs registered as on September 30, 2020.

Table 24: Age Profile of IPs as on September 30, 2020 (Number)

Age Group (in Years)	Registered IPs				IPs having AFA			
	IIIP of ICAI	ICSI IIP	IPA of ICAI	Total	IIIP of ICAI	ICSI IIP	IPA of ICAI	Total
≤ 40	208	61	3	272	151	48	1	200
> 40 ≤ 50	707	341	48	1096	505	252	38	795
> 50 ≤ 60	629	250	65	944	452	182	46	680
> 60 ≤ 70	399	262	143	804	277	194	113	584
> 70 ≤ 80	24	26	7	57	NA	NA	NA	NA
> 80 ≤ 90	3	3	2	8	NA	NA	NA	NA
> 90	1	0	0	1	NA	NA	NA	NA
Total	1971	943	268	3182	1385	676	198	2259

NA: Not Applicable

Panel for Administrators

In accordance with the Guidelines for Appointment of Insolvency Professionals as Administrators under the SEBI (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018, the IBBI invited interest from IPs to act as Administrators, prepared the panel of IPs having AFAs for appointment as Administrators during October, 2020 - March, 2021, and shared the same with SEBI on September 24, 2020. Table 25 presents zone wise number of IPs empaneled for the period from October, 2020 - March, 2021.

Table 25: Zone-wise IPs in the Panel

Zone	No. of Ips
New Delhi	155
Mumbai	105
Chandigarh	76
Hyderabad	65
Kolkata	62
Chennai	58
Ahmedabad	51
Allahabad	36
Jaipur	25
Bengaluru	25
Cuttack	12
Kochi	12
Indore	9
Amravati	5
Guwahati	2
Total	698

Replacement of IRP with RP

Section 22(2) of the Code provides that the CoC may, in its first meeting, by a majority vote of not less than 66% of the voting share of the FCs, either resolve to appoint the IRP as the RP or to replace the IRP by another IP to function as the RP. Under section 22(4) of the Code, the AA shall forward the name of the RP, proposed by the CoC, under section 22(3)(b) of the Code, to IBBI for its confirmation and shall make such appointment after such confirmation. However, to save time in such reference, a database of all the IPs registered with the IBBI has been shared with the AA, disclosing whether any disciplinary proceeding is pending against any of them and the status of their AFAs. While the database is currently being used by various Benches of the AA, in a few cases, IBBI receives references from the AA and promptly responds to the AA. Till September 30, 2020, as per updates available, a total of 884 IRPs have been replaced with RPs, as shown in Table 26.

Table 26: Replacement of IRP with RP as on September 30, 2020

CIRP initiated by	No. of CIRPs	
	Where RPs have been appointed	Where RP is different from the IRP
Corporate Applicant	243	107
Operational Creditor	1464	498
Financial Creditor	1492	279
Total	3199	884

Insolvency Professional Entities

During the quarter under review, one IPE was recognised. As on September 30, 2020, there were 74 IPEs (Table 27).

Table 27: IPEs as on September 30, 2020

Period	No. of IPEs		
	Recognised	Derecognised	At the end of Period
2016 - 17 (Jan - Mar)	3	0	3
2017 - 18	73	1	75
2018 - 19	13	40	48
Apr - Jun, 2019	6	0	54
Jul - Sep, 2019	7	0	61
Oct - Dec, 2019	6	0	67
Jan - Mar, 2020	4	2	69
Apr - Jun, 2020	4	0	73
Jul - Sep, 2020	1	0	74
Total	117	43	74

Insolvency Professional Agencies

IPAs are front-line regulators and responsible for developing and regulating the insolvency profession. They discharge three kinds of functions, namely, quasi-legislative, executive, and quasi-judicial. The quasi-legislative functions cover laying down standards and code of conduct through byelaws, which are binding on all members. The executive functions include monitoring, inspection, and investigation of professional members on a regular basis, addressing grievances of aggrieved parties, gathering information about their performance, etc., with the overarching objective of preventing malicious behaviour and malfeasance by IPs. The quasi-judicial functions include dealing with complaints against IP members and taking suitable disciplinary actions.

There are three IPAs registered in accordance with the Code and Regulations. IBBI has monthly meetings with the MDs of the IPAs and the IU on the 7th of every month, to obtain feedback on areas of concern for the profession and discuss the ways and means to deal with them. During these meetings, issues like disposal of grievances, use of technology in processes, conduct of IPs, addressing concerns emanating from COVID-19, etc. are discussed.

Information Utility

There is one IU, namely, the National E-Governance Service Limited (NeSL). IBBI meets the MD & CEO of the IU along with the MDs of IPAs on 7th of every month to discuss the issues related to receipt and authentication of financial information. It has requested IPAs to encourage their members to make use of the information stored with the IU for verification of claims during CIRP. Table 28 provides details of the registered users and information with NeSL, as informed by them.

Table 28: Details of information with NeSL

At the end of Year/Month	Creditors having agreement with NeSL		Creditors who have submitted information		Debtors whose information submitted by		Loan records on-boarded by		Amount of underlying debt (₹ crore)		User registrations (debtors)	Loan records authenticated by debtors
	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	FC	OC		
2018 - 19	173	NA	114	169	1266445	230	1955230	316	4114988	16224	15148	13799
Jun, 2019	209	NA	160	231	2531930	570	3911146	52766	4910552	20455	23565	22363
Sep, 2019	226	NA	218	297	2737049	1764	4421280	86766	5625318	28016	32177	35621
Dec, 2019	246	NA	321	408	2926030	2121	4803931	125526	6919463	32038	48551	68766
Mar, 2020	267	NA	381	543	6551739	6191	9417317	167719	7873689	31910	73332	109726
Jun, 2020	269	NA	456	574	7464854	8336	10721829	204568	9855538	33151	106840	149533
Sep, 2020	276	NA	548	635	8228576	8979	12126772	206957	12299081	34374	120896	186091

Registered Valuers

The Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules) made under the Companies Act, 2013 provides a unified institutional framework for development and regulation of valuation profession. Its remit is limited to valuations required under the Code and the Companies Act, 2013. IBBI performs the functions of the Authority under the Valuation Rules. It recognises RVOs and registers RVs and exercises oversight over them, while RVOs serve as front-line regulators for the valuation profession. An individual having specified qualification and experience needs to enroll with an RVO, complete the educational course conducted by the RVO, pass the examination conducted by IBBI and subsequently, seek registration with IBBI as an RV. There are currently 14 RVOs. IBBI meets MDs / CEOs of RVOs on the 7th of every month to discuss the issues arising from the valuation profession, to resolve queries of the RVOs and to guide them in discharge of their responsibilities. The details of individual RVs, RVO-wise, as on September 30, 2020, is given in Table 29A. A total of 3358 individuals have registrations, two of them are registered for all three asset classes, 48 are registered for two asset classes and the balance 3308 are registered for one asset class.

Table 29A: Registered Valuers as on September 30, 2020

(Number)

Registered Valuer Organisation	Asset Class			Total
	Land & Building	Plant & Machinery	Securities or Financial Assets	
RVO Estate Managers and Appraisers Foundation	50	10	10	70
IOV Registered Valuers Foundation	1123	180	131	1434
ICSI Registered Valuers Organisation	0	0	128	128
IIV India registered Valuers Foundation	125	37	40	202
ICMAI Registered Valuers Organisation	16	13	210	239
ICAI Registered Valuers Organisation	N.A.	N.A.	665	665
PVAI Valuation Professional Organisation	258	46	40	344
CVSRTA Registered Valuers Association	174	54	N.A.	228
Association of Certified Valuers and Analysts	N.A.	N.A.	2	2
CEV Integral Appraisers Foundation	44	16	0	60
Divya Jyoti Foundation	8	4	22	34
Nandadeep Valuers Foundation	0	0	0	0
All India Institute of Valuers Foundation	0	0	2	2
International Business Valuers Association	0	0	2	2
Total	1798	360	1252	3410

Note: N.A. signifies the RVO is not recognised for that asset class

RVs are permitted to form an entity (Partnership / Company) for rendering valuation services. There are 27 such entities registered as RVs as on September 30, 2020, as presented in Table 29B. Fourteen of them are registered for three asset classes and one is registered for two asset classes.

(Number, except as stated)

Table 29B: Registered Valuers (Entities) as on September 30, 2020 (Number)

Registered Valuer Organisation	Asset Class			Number of Entities
	Land & Building	Plant & Machinery	Securities or Financial Assets	
RVO Estate Managers and Appraisers Foundation	2	2	2	2
IOV Registered Valuers Foundation	10	9	11	13
IIV India registered Valuers Foundation	1	1	1	1
ICMAI Registered Valuers Organisation	2	2	4	4
ICAI Registered Valuers Organisation	0	0	6	6
PVAI Valuation Professional Organisation	1	1	1	1
Total	16	15	25	27

The registration of RVs till September 30, 2020 is given in Table 30.

Table 30: Registration of RVs till September 30, 2020 (Number)

Year / Quarter	Land & Building	Plant & Machinery	Securities or Financial Assets	Total
2017 - 2018	0	0	0	0
2018 - 2019	781	121	284	1186
Jun, 2019	346	81	300	727
Sep, 2019	212	58	191	461
Dec, 2019	161	34	146	341
Mar, 2020	129	31	155	315
Jun, 2020	20	8	72	100
Sep, 2020	149	27	104	280
Total	1798	360	1252	3410

Note: There was an inadvertent error in the figures of 2018-19 and June, 2020 quarter in previous published quarterly newsletter for April – June, 2020. The same stands corrected in the present table.

Of the RVs registered as on September 30, 2020, 954 RVs (constituting 28% of the total RVs registered) are from metros, while 2456 RVs (constituting 72% of the total RVs registered) are from non-metro locations (Table 31).

Table 31: Region wise Registered Valuers as on September 30, 2020 (Number)

City / Region	Land & Building	Plant & Machinery	Securities or Financial Assets	Total
New Delhi	63	28	157	248
Rest of Northern Region	257	46	210	513
Mumbai	97	46	204	347
Rest of Western Region	495	95	187	777
Chennai	105	31	109	245
Rest of Southern Region	730	95	289	1114
Kolkata	22	13	79	114
Rest of Eastern Region	29	6	17	52
Total	1798	360	1252	3410

The average age of RVs as on September 30, 2020 stood at 48 years across asset classes. It was 50 years for Land & Building, 53 years for Plant & Machinery and 43 years for Securities or Financial Assets (Table 32). Of the 3410 RVs as on September 30, 2020, 303 RVs (constituting about nine per cent of the total registered valuers) are females.

Table 32: Age profile of RVs as on September 30, 2020 (Number)

Age Group (in years)	Land & Building	Plant & Machinery	Securities or Financial Assets	Total
≤ 30	83	3	87	173
> 30 ≤ 40	228	53	493	774
> 40 ≤ 50	476	82	373	931
> 50 ≤ 60	783	108	206	1097
> 60 ≤ 70	197	79	90	366
> 70 ≤ 80	30	33	3	66
> 80	1	2	0	3
Total	1798	360	1252	3410

Table 33: Receipt and Disposal of Grievances and Complaints till September 30, 2020 (Number)

Year / Quarter	Complaints and Grievances Received						Total		
	Under the Regulations		Through CPGRAMS/PMO/MCA/Other Authorities)		Through Other Modes		Received	Disposed	Under Examination
	Received	Disposed	Received	Disposed	Received	Disposed			
2017 - 2018	18	0	6	0	22	2	46	2	44
2018 - 2019	111	51	333	290	713	380	1157	721	480
Apr - Jun, 2019	36	21	60	74	149	207	245	302	423
Jul - Sep, 2019	42	41	46	35	628	196	716	272	867
Oct - Dec, 2019	40	46	68	54	71	106	179	206	840
Jan - Mar, 2020	35	69	65	64	420	480	520	613	747
Apr - Jun, 2020	20	52	62	88	324	623	406	763	390
Jul - Sep, 2020	82	32	97	95	183	422	362	549	203
Total	384	312	737	700	2510	2416	3631	3428	203

Note: The data have been revised.

Complaints and Grievances

The IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 enable a stakeholder to file a grievance or a complaint against a service provider. Beside this, grievance and complaints are received from the Centralised Public Grievance Redress and Monitoring System (CPGRAMS), Prime Minister's Office, MCA, and other authorities. The receipt and disposal of grievances and complaints till September 30, 2020 is presented in Table 33.

Examinations

Limited Insolvency Examination

IBBI publishes the syllabus, format, etc. of the Examination under regulation 3(3) of the IBBI (Insolvency Professionals) Regulations, 2016. It reviews the Examination continuously to keep it relevant with respect to dynamics of the market. It has successfully completed four phases of the Limited Insolvency Examination. The fifth phase commenced on July 01, 2019. IBBI published the syllabus and details of the examination under regulation 3 (3) of the IBBI (Insolvency Professionals) Regulations, 2016 on September 30, 2020 for the sixth phase of examinations to be conducted from January 1, 2021. It is a computer based online examination available on daily basis from various locations across India. NSEIT Limited is the test administrator. The details of the Examination are given in the Table 34.

Table 34: Limited Insolvency Examination

Phase	No. of Attempts (some candidates made more than one attempt)	No. of Successful Attempts	
First Phase (Jan - Jun, 2017)	5329	1202	
Second Phase (Jul - Dec, 2017)	6237	1112	
Third Phase (Jan - Oct, 2018)	6344	1011	
Fourth Phase (Nov, 2018 - Jun, 2019)	3025	506	
Fifth Phase	Jul - Sep, 2019	710	95
	Oct - Dec, 2019	889	119
	Jan - Mar, 2020	1007	164
	Apr - Jun, 2020	34	6
	Jul - Sep, 2020	1182	294
Total	24757	4509	

Valuation Examinations

IBBI, being the authority, under the Companies (Registered Valuers and Valuation) Rules, 17, commenced the Valuation Examinations for asset classes of: (a) Land and Building, (b) Plant and Machinery and (c) Securities or Financial Assets on March 31, 2018. It reviews the Examinations continuously to keep it relevant with the changing times. The second phase concluded on May 31, 2020 and the third phase commenced on June 1, 2020. It is a computer based online examination available from several locations across India. National Institute of

Securities Markets is the test administrator. The details of the Examinations are given in Table 35.

Table 35: Valuation Examinations

Phase/Quarter	No. of Attempts (some candidates made more than one attempt) in Asset Class			No. of Successful Attempts in Asset Class		
	Land & Building	Plant & Machinery	Securities or Financial Assets	Land & Building	Plant & Machinery	Securities or Financial Assets
First Phase (Mar, 2018 - Mar, 2019)	9469	1665	4496	1748	324	707
Second Phase (Apr, 2019 - May, 2020)	3780	757	4795	380	95	656
Third Phase (June, 2020)	64	7	99	1	0	6
Third Phase (Jul - Sep, 2020)	1471	248	1781	138	14	217
Total	14784	2677	11171	2267	433	1586

Building Ecosystem

IBBI Research Initiative, 2019

In its endeavors to promote research - legal, economic and interdisciplinary - and discourse in areas relevant for the evolving insolvency and bankruptcy regime in general, and that in India, IBBI had announced the IBBI Research Initiative, 2019 on July 1, 2019. It updated the Initiative on August 1, 2020 to cover new and emerging areas for research.

Meetings of various Committees

Sub-committee of ILC

The Government had constituted a sub-committee of Insolvency Law Committee (ILC) under the Chairmanship of Dr. M. S. Sahoo, Chairperson, IBBI on June 24, 2020 to propose a detailed scheme for implementing pre-pack and prearranged insolvency resolution process. The sub-committee was tasked: *“To study and recommend the regulatory framework for prepack insolvency resolution process which shall include pre-requisite for initiation of PPRIP in terms of default and threshold, appointment of Insolvency Professional, role and responsibility of committee of creditors, moratorium, expected cost of process and timelines for completion of process.”* It had three meetings on July 16, 2020, July 23, 2020, and August 12, 2020, to finalise its recommendations on pre-pack framework for Indian insolvency regime.



Meetings of sub-committee of ILC, July 23, 2020

Committee on Cross Border Insolvency

The Committee on Cross Border Insolvency Rules constituted by MCA under the chairpersonship of Dr. K. P. Krishnan, met on July 13, 2020 and September 29, 2020, and deliberated on various aspects of cross border insolvency delegated legislation and procedural matters, along with the interplay of various laws in dealing with cross border insolvency cases. The Committee interacted with some eminent experts to understand the nuances of cross border insolvencies and processes, as under:

Date	Name of the Expert
11-09-20	Prof. Irit Mevorach, University of Nottingham
14-09-20	Mr. Justice Alastair Norris, Rtd. Judge High Court of England & Wales
22-09-20	Mr. Richard A. Chesley, Managing Partner, DLA Piper, Chicago
30-09-20	Mr Ashok Kumar, Blackoak LLP, Singapore

Advisory Committee on Service Providers

The Advisory Committee on Service Providers, chaired by Mr. T. V. Mohandas Pai, held its 6th meeting on August 17, 2020 through video conferencing. It deliberated various matters such as fee of an IP and for support services of an IPE, limit on number of assignments to be handled by an IP, augmenting the utility and services of IU, etc.



Meeting of the Advisory Committee on Service Providers, August 17, 2020

The Advisory Committee on Service Providers constituted a sub-committee, comprising of Mr. P. R. Ramesh (Chairman of the sub-committee), Mr. Akhil Gupta, Dr. Binoy K. Kattadiyil and Mr. Shrikrishn Kulkarni to suggest a framework for development of a cadre of debt advisers and insolvency advisers to provide services in respect of fresh start process. The sub-committee met on September 14, 2020 and deliberated on aspects such as the eligibility norms, examination pattern, training needs and regulation of debt advisers and insolvency advisers.

Interaction with Service Providers

Part Time Members of the Governing Board of IBBI had a first of its kind interaction with select service providers of the insolvency ecosystem on August 20, 2020 to hear their experience with the new insolvency law and the challenges or concerns they may have on the processes under the Code. The Members shared their perspective on issues raised by the service providers.

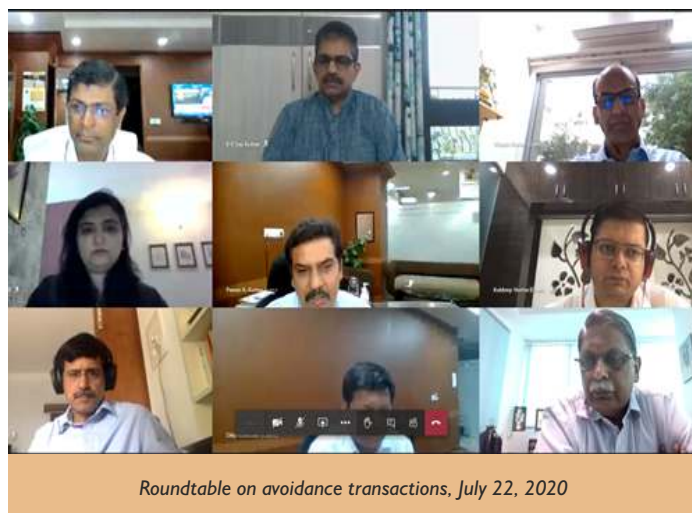
Workshops and Webinars

IP Workshops

IBBI has been organising Advanced Workshops for IPs with the aim of delivering specialised and deep level learning through intensive classroom sessions. In view of social distancing norms, it organised the 7th Advanced Workshops for the IPs during the quarter on the theme 'Sale as Going Concern during Liquidation under the Code' online on August 21, 2020. The details of the workshops conducted till September 30, 2020 are given in Table 36.

Table 36: IP Workshops organised by IBBI till September 30, 2020

Year / Quarter	No. of Workshops	
	Basic	Advanced
2016 - 17	1	-
2017 - 18	6	-
2018 - 19	7	-
2019 - 20	4	6
April - June, 2020	-	-
July - September, 2020	-	1
Total	18	7



Roundtables

To facilitate understanding of the role of IPs in avoidance transactions, IBBI organised three roundtables online with stakeholders. It also organised roundtables on issues relating to IPs and IUs. The details of roundtables organised in the quarter are presented in table 37.

Table 37: Roundtables during July - September, 2020

Sl. No.	Date	Partnership with	Subject	Participants
1	22-07-20	NA	Avoidance transactions	IPAs and IPs
2	27-07-20	Three IPAs	Avoidance transactions	IPAs, IPs, and other professionals
3	31-07-20	NA	Avoidance transactions	IPAs, IPs, and other professionals
4	08-08-20	NA	Strengthening the Institution of IP	IPs, Advocates, IPAs, IU, RVs, and Banks
5	01-09-20	ICSI IIP	Record Retention	IPs
6	02-09-20	IPA ICAI	Record Retention	IPs
7	03-09-20	IIIP ICAI	Record Retention	IPs
8	23-09-20	NA	Strengthening the Institution of IU	IPs, Advocates, IPAs, IU, RVs, and Banks

Advocacy and Awareness

National Online Quiz

The IBBI, in collaboration with MyGov.in, conducted 'National Online Quiz on Insolvency and Bankruptcy Code, 2016' from July 1 - 31, 2020, to promote awareness and understanding of the Code among various stakeholders across the country. The Quiz was open for all Indian citizens above 18 years of age, except for individuals working in IBBI, service providers registered with IBBI, and their immediate family members. The Quiz received an overwhelming response from a wide range of stakeholders, including students, professionals, and employees with 1,25,781 participants. There were participants from every State and every Union Territory. Uttar Pradesh accounted for the highest participation with 15.7% of total participants, followed by Maharashtra with 11.7% and Delhi with 6.9%. Top 10% of the participants, as per their performance, were awarded 'Certificates of Merit'. The following were the three best performers in the Quiz:

Rank	Name	Award
Best Performer	Mr. Aritra Saha	Gold Medal
Second Best Performer	Mr. Pawan Khandelwal	Silver Medal
Third Best Performer	Ms. Vakati Venkata Gnanusha	Bronze Medal

Role of Authorities in corporate insolvency proceedings

The AA, the NCLAT, the HCs and the SC have delivered numerous landmark judgments settling, clarifying, and affirming the role of the Government and its Agencies in corporate insolvency proceedings under the Code. IBBI issued a facilitation note on September 12, 2020 that explains some aspects of this role, based on the provisions of the Code and emerging jurisprudence, and provides a rationale for the same for better appreciation by all the stakeholders. It provides a list of illustrative facilitations that the Government and its agencies may extend for smooth conduct of the corporate insolvency resolution and liquidation processes under the Code while protecting their interests to the extent permissible under the law.

Essay Competition

IBBI, in its endeavour to create awareness about the insolvency and bankruptcy regime amongst the students of higher education, conducted an essay competition in collaboration with National Law University, Delhi on the topic “Emerging Jurisprudence on Corporate Insolvency after the I&B Code Amendment Act 2019”. 20 students participated in the competition and the following were adjudged as best essays on August 5, 2020:

Rank	Name	Subject of Essay
The Best Essay	Mr. Shubham Jain	The (Im)Permissibility of Discrimination under the Insolvency Code
Second Best Essay	Ms. Isha Gupta	Pre-CIRP Payment of dues by Resolution Professionals

Other Programmes

IBBI, in partnership with various stakeholders, organised advocacy and awareness programme as presented in Table 38.

Table 38: Advocacy and Awareness Programmes

Sl. No.	Date	In association with	Topic
1	19-07-20	NLU, Delhi	Insolvency and Bankruptcy Code, 2016
2	20-07-20	NLIU, Bhopal	Contemporary Developments in the Insolvency and Bankruptcy Code
3	23-07-20	ICAI	Career opportunities under Insolvency and Bankruptcy Code
4	10-08-20	DSNLU, Vishakhapatnam	Insolvency and Bankruptcy Code
5	18-08-20	Press Information Bureau	Insolvency and Bankruptcy Code for Journalists
6	17-09-20	FICCI	Opportunities for Investment in Stressed Assets in India
7	18-09-20	FICCI	Opportunities for Investment in Stressed Assets in India
8	19-09-20	GNLU, Gandhinagar	Corporate Insolvency Resolution Process: Understanding emerging issues and Challenges



ICAI Programme on Career opportunities under IBC, July 23, 2020



Awareness programme on IBC by DSNLU, Vishakhapatnam, August 10, 2020



Interaction with Journalists on IBC on August 18, 2020

Senior officers of IBBI participated as guests and faculty in several programmes (in e-mode) during the quarter, the details of which are presented in Table 39.

Table 39: Participation of Senior Officers in Programmes

Sl. No.	Date	Organiser	Subject	Participation
1	01-07-20	IICA	Inauguration of second batch of GIP	Chairperson
2	17-07-20	Economic Times	Tackling Bankruptcy: Restructuring from the Shambles	Chairperson
3	23-07-20	RBSA	Valuation	Chairperson
4	25-07-20	IICA	Assignments per IP	Chairperson
5	01-08-20	PVAI VPO	Valuation	Dr. Saini, WTM
6	04-08-20	ICLS Academy	IBC for ICLS Officers	Chairperson
7	12-08-20	FICCI	Pre-pack for Stressed Assets	Chairperson
8	14-08-20	Corporate Professionals	IBC: Current Developments and Road Ahead from Ease of Doing Business to Economic Growth	Chairperson
9	21-08-20	ASSOCHAM	Impact of COVID-19 and one-year suspension on stakeholders	Chairperson
10	10-09-20	ASSOCHAM	India Corporate Governance Stewardship	Chairperson
11	21-09-20	IIIP ICAI	IBC - A Boon for NPA Resolution: Myths Vs. Realities	Mr. Shukla, WTM
12	25-09-20	ICAI	IBBI and expectations from Professionals	Dr. Saini, WTM



FICCI Conference on “Opportunities for Investment in Stressed Assets in India”, September 17, 2020



ETCFO Leadership Summit, July 17, 2020



ASSOCHAM International Summit on Corporate Governance, September 10, 2020



IICA Programme on IBC for ICLS Officers, August 4, 2020



IIIPI Webinar on "IBC, a Boon for NPA Resolution: Myths Vs. Realities", September 21, 2020



ASSOCHAM National Summit on Insolvency and Bankruptcy, August 21, 2020



ICAI Webinar on "IBBI and Expectations from Professionals", September 25, 2020

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