



सत्यमेव जयते

भारतीय दिवाला और शोधन अक्षमता बोर्ड

Insolvency and Bankruptcy Board of India

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# Insolvency and Bankruptcy News

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## Shepherding Valuation Profession

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# CONTENTS

<b>From Chairperson's Desk</b> .....	<b>02</b>
<b>IBBI Updates</b> .....	<b>03</b>
<b>Legal and Regulatory Framework</b> .....	<b>05</b>
• Central Government	
• Insolvency and Bankruptcy Board of India	
• Other Authorities	
<b>Orders</b> .....	<b>07</b>
• Supreme Court	
• High Courts	
• National Company Law Appellate Tribunal	
• National Company Law Tribunal	
• Insolvency and Bankruptcy Board of India	
<b>Corporate Processes</b> .....	<b>14</b>
• Insolvency Resolution	
• Liquidation	
• Voluntary Liquidation	
<b>Service Providers</b> .....	<b>18</b>
• Insolvency Professionals	
• Information Utility	
• Registered Valuers	
• Complaints and Grievances	
<b>Examinations</b> .....	<b>20</b>
• Limited Insolvency Examination	
• Valuation Examinations	
<b>Building Ecosystem</b> .....	<b>20</b>
<b>Advocacy and Awareness</b> .....	<b>22</b>



“Doing business has become easier in India due to Insolvency and Bankruptcy Code. The banking system has also got strengthened.”

—Mr. Narendra Modi, Hon'ble Prime Minister  
at the First Uttarakhand Investors' Summit  
in Dehradun on 7<sup>th</sup> October, 2018.

## Shepherding Valuation Profession

*As compared to price discovered by the market, value estimated by a valuer is a more authentic reflection of worth of an asset. In a perfectly competitive market, price converges with value.*

Market usually discovers price, which reflects the worth of an asset (or liability). It discovers different prices for the same asset in different contexts. Thus, price is not absolute; it is context specific. Often, it is neither feasible nor desirable to pass an asset through the market to discover its worth. In such cases, worth of an asset is estimated in a simulated context. The person who estimates the worth is valuer, the process of estimation is valuation and the worth so estimated is value. If value of an asset is what the price ought to be in the given context, the valuation is perfect.

A professional typically competes with co-professionals and at times, with professionals of other disciplines. With extensive use of artificial intelligence around, she competes with machines as well. Additionally, a valuer competes with market, the most powerful force on earth, to ascertain the worth of an asset. While market may discover a dirty price occasionally failing to reflect the accurate worth of an asset, a responsible valuer with capability and integrity always estimates an authentic value. If price converges with value in the simulated context, the price discovery is perfect.

A market economy needs valuations of assets to facilitate a variety of transactions. Different statutes and authorities in India require valuation of assets for different purposes and prescribe the manner of such valuation. For example, the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 envisages estimation of fair value and liquidation value of the assets of the corporate debtor. These values serve as reference for evaluation of choices, including liquidation, and selection of the choice that decides the fate of the corporate debtor and consequently of the stakeholders. In sync with the role of valuation in processes under the Code, the regulations assign valuation to a cadre of valuers registered under the Companies Act, 2013.

A valuer thus has an important responsibility. She must estimate value which is more authentic than price. She must possess the required capability and integrity for the job. This calls for an institutional framework comprising three key elements, namely, standards for valuation, development of profession, and regulation of profession of valuers. These three elements feed on one another in a virtuous circle. Building a cadre of competent and accountable valuers, therefore, requires work on all three fronts simultaneously.

Most jurisdictions require registration of individuals with the required qualification, usually a basic degree in the relevant discipline, and certain years of experience. Some also require pre-registration training and a screening examination, and post-registration continuing professional education. Valuers have voluntarily organised themselves into associations which promote their calling and prescribe valuation standards. Such associations and market offer a variety of courses and programmes to develop the capacity of would-be-valuationers as well as practising valuers. They also regulate conduct of their valuer-members. There are thus 'n' associations in any jurisdiction and each such association has a unique model of developing and regulating the profession of valuers.

The valuation profession has a long history in India. I had the opportunity to address the 48<sup>th</sup> Indian Valuers Congress at Nagpur on 28<sup>th</sup> December, 2017, hosted by the Institution of Valuers established in 1968. There have been several attempts in the past to holistically institutionalise an arrangement that develops and regulates the profession of valuers who can estimate the value of an asset with full responsibility. It took a concrete shape with the enactment of the Companies Act, 2013. Section 247 of the Act originally provided that where valuation is required under the provisions of the Act, it shall be valued by a person having such qualifications and experience and registered as a valuer.

A reform succeeds if it is least disruptive and builds on the existing institutional framework. It was observed that there were several organisations engaged in development and regulation of valuation profession in the country and they had considerable expertise and experience which must be used. Further, it would be difficult to regulate valuers by direct registration with a central authority. Government, therefore, amended section 247 of the Companies Act, 2013 to provide that only a valuer member of a recognised valuer organization (RVO) would be registered with the authority. It designated the IBBI as the authority for this purpose and notified the Companies (Registered Valuers and Valuation) Rules, 2017 (Rules) to provide a comprehensive framework for development and regulation of the profession of valuers.

The IBBI, as the authority, recognises RVOs and registers valuers, and monitors their conduct and performance in accordance with the Rules. It publishes syllabus, format and frequency of the valuation examination for all three Asset Classes, namely, (a) Land and Building, (b) Plant and Machinery, and (c) Securities or Financial Assets, in consultation with the stakeholders. It conducts computer-based online valuation examinations every day from several locations across the country for all three Asset Classes. With effect from 1<sup>st</sup> February, 2019, every valuation required under the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016 needs to be conducted by valuers registered with the authority.

The approach followed for regulation and development of the valuation profession is quite distinct as compared to other professions in the country. Only fit and proper persons are eligible for registration as valuers, given the responsibilities they discharge. For determining if a person is fit and proper, the IBBI considers various aspects, including (i) integrity, reputation and character, (ii) absence of convictions and restraint orders, and (iii) competence and financial solvency. Further, valuers are subject to a two-tier, regulated self-regulation where they are enrolled with an RVO as a member, and thereafter registered with the IBBI as a valuer. This combines the benefits of statutory regulation and self-regulation and promotes competition among the RVOs.

In the space of development of valuation profession, the RVOs compete with one another and also with the market. However, they are, alongwith IBBI, monopolist in the sphere of regulation of the profession, though they compete among themselves. They must compete with one another to ensure that their members fetch a premium in the market over members of other RVOs.

Development and regulation are traditional responsibilities of the State. While discharging these responsibilities, the RVOs must conduct themselves as the State. They must exercise quasi-legislative, executive and quasi-judicial functions with independence and without intra-institutional bargaining and, thereby, avoid potential public law concerns. If they conduct well, their role and relevance would only increase over the time.

RVOs and valuers are being watched very closely by the stakeholders. Their action and conduct would determine the future of the profession. They have a collective responsibility to build and preserve the reputation of the fledgling profession. They must not allow a few undesirable elements to tarnish its reputation, as it is difficult to mend it once lost. They are uniquely positioned today to nurture the profession, with respect for values, to make the valuation profession the most valued profession.

Dr. M. S. Sahoo

# IBBI Updates

## Governing Board

Ms. Suman Saxena resigned as Whole-Time Member of the IBBI with effect from 8<sup>th</sup> October, 2018 on account of personal reasons. She was in-charge of the Research and Regulation Wing comprising Corporate Insolvency and Liquidation, Individual Insolvency and Bankruptcy, Research & Publications, Data Management & Dissemination and Advocacy.

Mr. G. S. Yadav, Joint Secretary and Legal Adviser, Department of Legal Affairs, Ministry of Law and Justice ceased to be *ex-officio* member of the Governing Board on his superannuation from service.

Both Ms. Saxena and Mr. Yadav played important roles in formulation of the initial set of regulations relating to corporate insolvency and have contributed to the journey of IBBI.

## Annual Day

To commemorate its establishment on 1<sup>st</sup> October, 2016, IBBI has instituted an annual day lecture series. Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhya, Chairperson, NCLAT delivered the Inaugural Annual Day Lecture on 'Emerging Trends in Law and Governance' in New Delhi on 1<sup>st</sup> October, 2018. He dwelt extensively on dynamic law and governance framework in fast growing economies. He stated that in the Indian context, the Competition Act, 2002 endeavours to provide freedom to continue business, the Insolvency and Bankruptcy Code, 2016 endeavours to provide freedom to discontinue business, and the Companies Act, 2013 regulates the conduct of companies engaged in business. These enactments define the contours of economic freedom and consequently the level of economic wellbeing.

On this occasion, a publication titled 'Insolvency and Bankruptcy Code, 2016 and Distressed Assets Opportunities' prepared by the Insolvency Professional Agencies (IPAs), namely, the Indian Institute of Insolvency Professionals of ICAI, the ICSI Institute of Insolvency Professionals, and the Insolvency Professional Agency of the Institute of Cost Accountants of India, in partnership with the Society of Insolvency Practitioners of India, was released.



Annual Day Lecture on 1<sup>st</sup> October, 2018



Induction Programme for Grade 'A' Officers, 8<sup>th</sup> October, 2018

## Induction Programme

The Induction Programme of the first batch of 18 Grade 'A' officers commenced on 8<sup>th</sup> October, 2018 at the Indian Institute of Corporate Affairs, Manesar, Haryana. Premised on TPI (theoretical knowledge, practical skills and interaction need) theory of induction, the programme aimed at preparing the officers for a regulatory role in the realm of insolvency and bankruptcy while exposing them to the nuances of the various processes under the Code and also work-life balance. While inaugurating the programme, Dr. M. S. Sahoo, Chairperson emphasised that it is the job of a regulator to make it easy for firms to do business and making easy really means providing, promoting and protecting economic freedom.

## Employee Workshops

The following capacity building workshops were held in the quarter:

- 'Economic Analysis of Regulations' by Dr. Ajay Shah, Professor, National Institute of Public Finance and Policy, on 24<sup>th</sup> November, 2018
- 'Valuation' by Mr. Kirit P. Budhbhatti and Mr. Nelson Macwan, Centre for Valuation Studies, Research and Training Association, on 21<sup>st</sup> December, 2018
- 'Inspection' by Mr. S. Ramann, Managing Director, NeSL, on 22<sup>nd</sup> December, 2018
- 'Implementation of e-office' by NIC.



Workshop on Economic Analysis of Regulations on 24<sup>th</sup> November, 2018



Valuation Workshop on 21<sup>st</sup> December, 2018.

## International Association of Insolvency Regulators

The International Association of Insolvency Regulators (IAIR) brings together the experiences and expertise of insolvency regulators from jurisdictions around the world. IBBI became its 31<sup>st</sup> member on 11<sup>th</sup> January, 2018. Mr. K. R. Saji Kumar, Executive Director represented IBBI in the Annual Conference and General Meeting on the theme "Sharing International Insolvency Trends and Developments", in Mauritius from 15<sup>th</sup> to 18<sup>th</sup> October, 2018. At the Conference, he presented the country report on the developments and changes in insolvency law and practice in India since enactment of the Code.



Annual General Meeting of IAIR in Mauritius on 15<sup>th</sup>-18<sup>th</sup> October, 2018



Talk by Mr. Mahesh Uttamchandani on 12<sup>th</sup> November, 2018

### Distinguished Speakers

The following distinguished speakers delivered talks and interacted with the officers of IBBI:

- Mr. Mahesh Uttamchandani, Practice Manager for Financial Inclusion and Infrastructure, World Bank Group on 'World Bank Group's Principles for Effective Insolvency and Creditor/Debtor Regimes and the work of its MSME Task Force' on 12<sup>th</sup> November, 2018
- Dr. G. Narayana Raju, Secretary, Legislative Department, Ministry of Law and Justice on 'Insolvency Law and Constitution of India' on 14<sup>th</sup> November, 2018
- Dr. Shubhashish Gangopadhyay, Research Director, India Development Foundation on 'Economic Analysis of Regulations made by IBBI' on 19<sup>th</sup> November, 2018
- Mr. Somasekhar Sundaresan, Legal Counsel on 'Genes of a Regulator' on 22<sup>nd</sup> November, 2018



Inspection Workshop on 22<sup>nd</sup> December, 2018

### Vigilance Week

IBBI observed vigilance week from 29<sup>th</sup> October, 2018 to 3<sup>rd</sup> November, 2018. Dr. M. S. Sahoo, Chairperson administered oath to the officers on the occasion. IBBI received an integrity pledge certificate from the Central Vigilance Commission.



Administering Vigilance Oath on 29<sup>th</sup> October, 2018



Talk by Dr. G. Narayana Raju on 14<sup>th</sup> November, 2018



Talk by Dr. Shubhashish Gangopadhyay on 19<sup>th</sup> November, 2018

# Legal and Regulatory Framework

## Central Government

### Cross Border Insolvency

The Insolvency Law Committee submitted its 2<sup>nd</sup> Report on 16<sup>th</sup> October, 2018 recommending adoption of the UNCITRAL Model Law of Cross Border Insolvency, 1997, which provides for a comprehensive framework to deal with cross border insolvency issues. It also recommended a few carve outs to ensure that there is no inconsistency between the domestic insolvency framework and the proposed cross border insolvency framework. The UNCITRAL Model Law has been adopted by as many as 44 countries and, therefore, forms part of international best practices in dealing with cross border insolvency.

### The Companies (Registered Valuers and Valuation) Rules, 2017

The Central Government amended the Companies (Registered Valuers and Valuation) Rules, 2017 on 13<sup>th</sup> November, 2018. The amendment clarifies that these rules shall apply for valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provisions of the Companies Act, 2013. It streamlines the requirements of qualification and experience for registration as valuers.

## Insolvency and Bankruptcy Board of India

### IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 5<sup>th</sup> October, 2018 to provide for the following:

- a. The Regulations earlier required the resolution professional (RP) to circulate minutes of the meeting by electronic means to all members of the Committee of Creditors (CoC) within 48 hours of the conclusion of the meeting and to seek a vote of the members who did not vote at the meeting. The amendment now requires the RP to circulate the minutes of the meeting by electronic means to authorised representatives (ARs) also;
- b. The AR shall circulate minutes of the meetings received from RP to Financial Creditors (FCs) in a class. He shall announce the voting window at least 24 hours before the window opens for voting instructions and keep it open for at least 12 hours. He shall exercise votes either by electronic means or through electronic voting system as per the voting instructions received by him from FCs in the class, pursuant to circulation of minutes. This would enable an FC in a class, who could not vote on a matter in the meeting, to vote after minutes of the meeting are circulated;
- c. The Regulations earlier provided payment of liquidation value to Operational Creditors (OCs) and dissenting FCs in priority. While deleting reference to FCs, the amendment provides that the amount due to OCs under a resolution plan shall be paid in priority over FCs; and
- d. The RP shall preserve the physical and electronic copy of the records relating to Corporate Insolvency Resolution Process (CIRP) as per the record retention schedule.



Talk by Mr. Somasekhar Sundaresan on 22<sup>nd</sup> November, 2018



Meeting of the Working Group on Graduate Insolvency Programme at Gurugram on 21<sup>st</sup> October, 2018



Meeting of the Working Group on Individual Insolvency on 27<sup>th</sup> November, 2018

### **IBBI (Insolvency Professionals) Regulations, 2016**

IBBI amended the IBBI (Insolvency Professionals) Regulations, 2016 on 11<sup>th</sup> October, 2018 to provide for the following:

- a. An insolvency professional (IP) shall pay IBBI a fee calculated at the rate of 0.25% of the professional fee earned for the services rendered by him as such in the preceding financial year, on or before the 30<sup>th</sup> of April every year;
- b. An eligible person seeking recognition as IPE shall pay an application fee of Rs. 50,000 along with the application for recognition;
- c. An IPE shall pay IBBI a fee calculated at the rate of 0.25% of the turnover from the services rendered by it in the preceding financial year, on or before the 30<sup>th</sup> of April every year;
- d. An IPE shall inform the IBBI, within seven days, when an individual ceases to be or joins as its director or partner, as the case may be, along with a fee of Rs. 2000; and
- e. Delay in payment of fee by an IP or an IPE shall attract a simple interest at the rate of 12% per annum on the amount of fee unpaid.

### **IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016**

IBBI amended the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 on 11<sup>th</sup> October, 2018 to provide for the following:

- a. The Governing Board of an IPA shall consist of a managing director, independent directors and shareholder directors. The managing director shall not be considered either as an independent director or shareholder director. An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier;
- b. An IPA shall, subject to the guidelines issued by IBBI from time to time, determine the qualification and experience, manner of appointment, terms and conditions of appointment and other procedural formalities associated with selection and appointment of the managing director. The appointment, renewal of appointment and termination of service of the managing director shall be subject to prior approval of IBBI; and
- c. The managing director shall be an *ex-officio* member of Membership Committee, Monitoring Committee, Grievance Redressal Committee and Disciplinary Committee.

### **IBBI (Insolvency Professional Agencies) Regulations, 2016**

IBBI amended the IBBI (Insolvency Professional Agencies) Regulations, 2016 on 11<sup>th</sup> October, 2018 to provide that no person shall at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than 5 % of the paid-up equity share capital in an IPA. However, certain entities, namely, a stock exchange, depository, banking company, insurance company, public financial institution and multilateral financial institution may, acquire or hold, directly or indirectly, either individually or together with persons acting in concert, up to 15% of the paid-up equity share capital of an IPA. Further, the Central Government, a State Government and statutory regulator may acquire or hold, directly or indirectly, up to 100% of paid-up equity share capital of an IPA. The IPA, its promoters, directors and shareholders need to be fit and proper persons.

### **IBBI (Information Utilities) Regulations, 2017**

IBBI amended the IBBI (Information Utilities) Regulations, 2017 on 11<sup>th</sup> October, 2018 to provide for matters, similar to those provided in the amendment to the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, in respect of an IU.

IPAs and IUs registered with IBBI, as on the date of the commencement of the amendment regulations, are required to comply with the amended regulations, within one year.

### **IBBI (Liquidation Process) Regulations, 2016**

IBBI amended the IBBI (Liquidation Process) Regulations, 2016 on 22<sup>nd</sup> October, 2018 to enable a liquidator to sell the business of the Corporate Debtor (CD) as a going concern subject to security interest on the assets of CD. These provide that where valuation has been conducted during CIRP, the liquidator shall consider such valuations. Otherwise, the liquidator shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses of the CD.

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

IBBI made the IBBI (Mechanism for Issuing Regulations) Regulations, 2018 on 22<sup>nd</sup> October, 2018 to govern the process of making regulations and consulting the public. These regulations provide that before making regulations, IBBI shall make public consultation and also cause economic analysis of the proposed regulations. Under the regulations, IBBI shall upload on the website:

- a. draft of proposed regulations;
- b. specific provision of the Code under which regulations are proposed;
- c. statement of the problem that the proposed regulation seeks to address;
- d. economic analysis of the proposed regulations;
- e. statement carrying norms advocated by international standard setting agencies and the international best practices, if any, relevant to the proposed regulation;
- f. manner of implementation of the proposed regulations; and
- g. manner, process and timelines for receiving comments from the public.

IBBI shall allow at least 21 days for the public to submit their comments. The regulations shall be notified promptly after approval of the Governing Board and the date of their enforcement shall ordinarily be after thirty days from the date of notification unless a different date is specified. However, in the case of urgent situations, regulations may be made with the approval of the Governing Board without following the consultative process.

### **Valuations under the Code**

IBBI issued a circular on 17<sup>th</sup> October, 2018 clarifying that every valuation required under the Code or any of the regulations made thereunder shall be conducted by a Registered Valuer (RV), that is, a valuer registered with IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017. It directed that with effect from 1<sup>st</sup> February, 2019, no IP shall appoint a person other than a RV to conduct any valuation under the Code or any of the regulations made thereunder.

### **Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) (Second) Guidelines, 2018**

Section 16(3)(a) of the Code requires the Adjudicating Authority (AA) to make a reference to IBBI for recommendation of an IP who may act as an interim resolution professional (IRP) in case an OC has made an application for CIRP but did not propose an IRP. Within ten days of the receipt of such reference, IBBI is required to recommend the name of an IP, against whom no disciplinary proceeding is pending, to the AA. Similarly, section 34(4) of the Code requires the AA to replace the RP, if (a) the resolution plan submitted by the RP under section 30 was rejected for failure to meet the requirements; (b) IBBI recommends the replacement of a RP to the AA for

reasons to be recorded in writing; or (c) the RP fails to submit written consent. For the purposes of (a) and (c), the AA may direct the IBBI to propose the name of another IP to be appointed as a liquidator. IBBI is required to propose the name of another IP along with his written consent within ten days of the direction issued by the AA.

It takes some time for a reference or a direction from the AA to reach IBBI. IBBI may take up to ten days to identify an IP for the purpose. It also takes some time for the recommendation of IBBI to reach the AA, after which the AA could appoint the recommended IP. The process of appointment of an IRP or Liquidator may entail 2-3 weeks, which could be saved if the AA has a ready panel of IPs recommended by IBBI and it can pick up any name from the panel while issuing an order admitting an application.

IBBI issued the 'Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) (Second) Guidelines, 2018 on 30<sup>th</sup> November, 2018 to govern the process of empanelment. In accordance with the said Guidelines, IBBI invited expression of interest on 7<sup>th</sup> December, 2018 from IPs for inclusion of their names in the panel. After following due process, it prepared and shared the panel of IPs for January-June, 2019 with the AA.

### Other Authorities

#### SEBI (Appointment of Administrator) Regulations, 2018

SEBI issued the SEBI (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018 on 3<sup>rd</sup> October, 2018. These regulations are applicable to all or any of the following:

- a. appointment of Administrator pursuant to failure to comply with disgorgement or refund orders passed by SEBI;
- b. sale of properties attached by the Recovery Officer of SEBI under the SEBI Act, 1992;
- c. collection of claim documents and verification of claims of investors for the purpose of effecting refunds;
- d. refund of monies to the investors pursuant to disgorgement or refund orders passed by SEBI;
- e. recovery of disgorgement amounts directed by SEBI; and
- f. any act incidental or connected to the above.

These regulations apply mutatis mutandis in respect of the proceedings under the Securities Contracts (Regulation) Act, 1956 or the Depositories Act, 1996.

Under these regulations, SEBI shall, after attachment of the properties of the defaulter by the Recovery Officer, appoint an Administrator who is registered IP and empaneled by SEBI from time to time.

The Administrator shall undertake the process of sale of properties after conducting an independent valuation of such properties by a registered valuer referred to in the Companies (Registered Valuers and Valuation) Rules, 2017.

## Orders

A brief on select decisions of judicial and quasi-judicial bodies during the quarter October-December, 2018 is as under:

### Supreme Court

#### **Arcelormittal India Private Limited Vs. Satish Kumar Gupta & Ors. [Civil Appeal Nos. 9402-9405 of 2018]**

The Supreme Court settled several issues relating to CIRP as under:

- (a) Section 29A is de facto as opposed to de jure position of persons mentioned therein. This is a 'typical see through provision' so that one can see persons who are actually in 'control', whether jointly or in concert with other persons. A purposeful and contextual interpretation of section 29A is imperative to find out the real individuals or entities who are acting jointly or in concert with for submission of a resolution plan.
- (b) The ineligibility under section 29A attaches when the resolution plan is submitted by a resolution applicant (RA).
- (c) Section 33 provides that if no resolution plan is received before the end of the period or the resolution plan is rejected, the CD is required to be liquidated. Therefore, the period under section 12 is mandatory. It is of utmost importance for all authorities concerned to follow the model timeline given in regulation 40A of the CIRP Regulations as closely as possible.
- (d) *Actus curiae neminem gravabit* - the act of the court shall prejudice no one - is a maxim firmly rooted in our jurisprudence. But the time taken by a Tribunal should not set at naught the time limits within which the CIRP must take place. Where a resolution plan is upheld by the Appellate Authority, either by way of allowing or dismissing an appeal before it, the period of time taken in litigation ought to be excluded. This is not to say that the NCLT and NCLAT will be tardy in decision making.
- (e) The non-obstante clause in section 60(5) is to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a CD covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings.
- (f) It is settled law that a statute is designed to be workable, and the interpretation thereof should be designed to make it so workable. Given the timeline and given the fact that RA has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the AA at threshold. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. Aggrieved RA can approach the NCLT for relief only after a resolution plan has been considered by the CoC via voting and not prior to that.
- (g) The only reasonable construction of the Code is the balance to be maintained between timely completion of the CIRP, and the CD otherwise being put into liquidation.
- (h) The CD consists of several employees and workmen whose daily bread is dependent on the outcome of the CIRP. If there is RA who can continue to run the CD as a going concern, every effort must be made to try and see that this is made possible.

In order to do complete justice under Article 142 of the Constitution of India, and also for the reason that the law on section 29A has been laid down for the first time by this judgment, both RAs were given an opportunity to pay off the NPAs of their related CDs within a period of two weeks from the date of receipt of the judgment, in accordance with the proviso to section 29A(c).

#### **B. K. Educational Services Private Limited Vs. Parag Gupta and Associates [Civil Appeal No. 23988 of 2017]**

Section 238A providing for applicability of the Limitation Act, 1963 came into existence on 6<sup>th</sup> June, 2018. The issue was whether the Limitation Act would apply to applications made under section 7 or 9 of the Code till 6<sup>th</sup> June, 2018. The Supreme Court noted that the Insolvency Law Committee Report of March, 2018 makes it clear that the object of the Code from the very beginning was not to allow dead or stale claims to be resuscitated. It held that the right to sue accrues when a default occurs. If the



default has occurred over three years prior to the date of filing of the application, it would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, section 5 of the Limitation Act may be applied to condone the delay in filing such application. Section 238A, being clarificatory of the law and being procedural in nature is retrospective.

**Transmission Corporation of Andhra Pradesh Limited Vs. Equipment Conductors and Cables Limited [Civil Appeal No. 9597 of 2018]**

In this matter, the AA dismissed the petition observing that there was an existing dispute between the OC and the CD with respect to the claims in question. The NCLAT, while dealing with the appeal against the order of the AA, observed: "... Therefore, by way of last chance we grant one opportunity to respondents to settle the claim with the appellant, failing which this Appellate Tribunal may pass appropriate order on merit." While allowing appeal against the aforesaid order of the NCLAT, the Supreme Court reiterated that the Code is not intended to be substitute to a recovery forum. The existence of an undisputed debt is sine qua non of initiating CIRP and whenever there is existence of real dispute, the provisions of the Code cannot be invoked.

**Jaipur Metals & Electricals Employees Organisation Vs. Jaipur Metals & Electricals Ltd. & Ors. [Civil Appeal No. 12023 of 2018]**

The AA admitted an application under section 7 of the Code, considering that till date no liquidation order had been passed in the winding up proceedings pending before the High Court. While setting aside the said order, the High Court, refused to transfer winding up proceedings pending before it to the AA.

While setting aside the order of High Court, the Supreme Court observed: "It is thus clear that under the scheme of Section 434 (as amended) and Rule 5 of the 2016 Transfer Rules, all proceedings under Section 20 of the SIC Act pending before the High Court are to continue as such until a party files an application before the High Court for transfer of such proceedings post 17.08.2018. Once this is done, the High Court must transfer such proceedings to the NCLT which will then deal with such proceedings as an application for initiation of the corporate insolvency resolution process under the Code."

It further observed: "...This being so, if there is any inconsistency between Section 434 as substituted and the provisions of the Code, the latter must prevail. We are of the view that the NCLT was absolutely correct in applying Section 238 of the Code to an independent proceeding instituted by a secured financial creditor, ..."

**Brilliant Alloys Private Limited Vs. Mr. S. Rajagopal & Ors. [SLA (C) No. 31557 of 2018]**

In this matter, withdrawal of application was not allowed, though agreed to by the CD as well as the creditors, because of the stipulation in regulation 30A of the CIRP Regulations does not permit withdrawal after issue of invitation for Expression of Interest (EoI). The Supreme Court held that this regulation must be read along with section 12A. Accordingly, the stipulation in regulation 30A can only be construed as directory depending on the facts of each case.

**V R Hemantraj Vs. Stanbic Bank of Ghana and Anr. [Civil Appeal No. 9980 of 2018]**

The NCLAT had ruled that in the applications filed for commencement of CIRP, the AA is not required to get into the merits of a foreign decree, because the AA under the Code does not have the powers of a Civil Court. The Supreme Court did not find any reason to interfere with the order of the NCLAT and accordingly dismissed the appeal preferred against it.

## High Courts

**Insolvency and Bankruptcy Board of India Vs State Bank of India & Ors [LPA No. 566 of 2018]**

IBBI filed an LPA before High Court against the order dated 5<sup>th</sup> September, 2018 of the AA declaring regulation 36A of the CIRP Regulations as *ultra vires*. While issuing the notice to the respondents, the High Court observed: "In the meanwhile, there shall be stay of the order dated 5<sup>th</sup> September, 2018 passed by the National Company Law Tribunal, Principal Bench, New Delhi to the extent it declares Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as *ultra vires*, shall remain stayed."

**Mrs. Jai Rajkumar and Anr. Vs. Stanbic Bank of Ghana and Anr. [D. No. 41408 of 2018]**

The AA had admitted application filed by Stanbic Bank, an FC to initiate CIRP of the CD, Rajkumar Impex Private Limited on the basis of a decree obtained in a UK Court. Two directors of the CD challenged the legality of the foreign decree. The High Court held that a Civil Court would be the appropriate forum for determining the legality of a foreign decree, reiterating the position taken by the NCLAT. As to who may institute proceedings for determination of the foreign decree in view of provisions of section 14(1)(a) of the Code, the High Court felt that it is for the RP to act on behalf of the CD and move the Court of competent jurisdiction, in pursuant to her duty under section 25(2)(b) of the Code. However, the RP argued that she did not have locus to bring about such an action. The High Court observed: "...this Commercial Division deems it appropriate to leave it open to the corporate debtor to assail the stand of the RP that she does not have the *locus standi*, authority or power to challenge or initiate proceedings before a Court. This can be done by the corporate debtor by taking resort to Section 60(5) of the IBC..."

## National Company Law Appellate Tribunal

**Radius Infratel Pvt. Ltd. Vs. Union Bank of India [CA(AT)(Insolvency) No. 535 of 2018]**

Appeal was filed by the CD against the order of the AA. Relying on the decision of the Supreme Court in the matter of Innoventive Industries Ltd. Vs. ICICI Bank and Ors., the NCLAT held that an appeal preferred by CD is not maintainable.

**Francis John Kattukaran Vs. The Federal Bank Ltd. & Anr. [CA(AT)(Insolvency) No. 242 of 2018]**

The CoC by a unanimous vote approved withdrawal and the RP moved an application under section 12A of the Code. The NCLAT held that the RP cannot file an application for withdrawal of an application made under section 7, 9 or 10 of the Code. It observed: "Regulation 30A cannot override the substantive provisions of Section 12A according to which the 'applicant' can only move application for withdrawal of the application before the Adjudicating Authority and not by the 'resolution professional'."

**Binani Industries Limited Vs. Bank of Baroda [CA (AT) (Insolvency) No. 82 of 2018]**

As regards the objectives of the Code, the NCLAT observed:

- (i) "The objective of the 'I&B Code' is Resolution. The Purpose of Resolution is for maximisation of value of assets of the 'Corporate Debtor' and thereby for all creditors. It is not maximisation of value for a 'stakeholder' or 'a set of stakeholders' such as Creditors and to promote entrepreneurship, availability of credit and balance the interests. The first order objective is "resolution". The second order objective is "maximisation of value of assets" of the 'Corporate Debtor' and the third order objective is "promoting entrepreneurship, availability of credit and balancing the interests". This order of objective is sacrosanct."
- (ii) "The 'I&B Code' aims at promoting availability of credit. Credit comes from

the 'Financial Creditors' and the 'Operational Creditors'. Either creditor is not enough for business. Both kinds of credits need to be on a level playing field. 'Operational Creditors' need to provide goods and services. If they are not treated well or discriminated, they will not provide goods and services on credit. The objective of promoting availability of credit will be defeated.”

- (iii) “'I&B Code' is for reorganisation and insolvency resolution of corporate persons, ....for maximisation of value of assets of such persons to.... balance interests of all stakeholders. It is possible to balance interests of all stakeholders if the resolution maximises the value of assets of the 'Corporate Debtor'. One cannot balance interest of all stakeholders, if resolution maximises the value for a or a set of stakeholders such as 'Financial Creditors'. One or a set of stakeholders cannot benefit unduly stakeholder at the cost of another.”
- (iv) “However, the 'I&B Code' or the Regulations framed by the Insolvency and Bankruptcy Board of India do not prescribe differential treatment between the similarly situated 'Operational Creditors' or the 'Financial Creditors' on one or other grounds.”
- (v) “Even if they settle the matter, the 'Corporate Insolvency Resolution Process' cannot be terminated by the Adjudicating Authority or this Appellate Tribunal in absence of any illegality.”

It summarised the role of the CoC as under:

- a. The liabilities of all creditors who are not part of Committee of Creditors must also be met in the resolution.
- b. The Financial Creditors can modify the terms of existing liabilities, while other creditors cannot take risk of postponing payment for better future prospectus. That is, Financial Creditors can take haircut and can take their dues in future, while Operational Creditors need to be paid immediately.
- c. A creditor cannot maximise his own interests in view of moratorium.
- d. If one type of credit is given preferential treatment, the other type of credit will disappear from market. This will be against the objective of promoting availability of credit.
- e. The 'I&B Code' aims to balance the interests of all stakeholders and does not maximise value for Financial Creditors.
- f. Therefore, the dues of creditors of Operational Creditors must get at least similar treatment as compared to the due of Financial Creditors.

#### **Rajeev K Agarwal Vs. Panipat Texo Fabs Pvt. Ltd. and Ors. [CA (AT) Insolvency No. 715 of 2018]**

While dismissing the appeal, the NCLAT observed that raising of dispute with regard to quality of goods being inferior/substandard or defective for the first time in reply to demand notice or in response to notice served by the AA would not constitute a prior and pre-existing dispute contemplated under law as a defence to the initiation of CIRP.

#### **Sh. Naveen Luthra Vs. Bell Finvest (India) Ltd. & Anr. [CA (AT) (Insolvency) No. 336 of 2017]**

The NCLAT considered the issue whether the AA can entertain or reject an application under section 7 of the Code on the ground of “usurious and extortionate penal interest”. It held: “... the “Corporate Insolvency Resolution Process' is not a litigation and are not decided by Court of Law. Now, the 'Adjudicating Authority' deals with the matter of insolvency, which in its first stage is required to take steps for 'resolution' of the 'Corporate Debtor'. Therefore, the Adjudicating Authority being not a Court of law and as the Adjudicating Authority do not decide a money claim or suit, it cannot exercise any of the power vested under Sections 3 or 4 of the 'Usurious Loans Act, 1918'.” It observed: “Further, as initiation of 'Corporate Insolvency Resolution Process' under Sections 7 or 9 do not amount to recovery proceedings, the question of deciding the claim, which may include the interest by the Adjudicating Authority does not arise for the purpose of triggering the 'Corporate Insolvency Resolution Process'.”

#### **Gaurav Pandey Vs. Eternity Investment Services Pvt. Ltd. [CA(AT) (Insolvency) No. 714 of 2018]**

An application under section 7 of the Code was admitted vide order dated 13<sup>th</sup> November, 2018. However, it turned out that the parties had reached a settlement on 1<sup>st</sup> November, 2018. The NCLAT, therefore, held that there was no default of payment as on 13<sup>th</sup> November, 2018, and no occasion for the AA to admit the application.

#### **Mrs. Mamatha Vs. AMB Infrabuild Pvt. Ltd. & Ors [CA (AT) (Insolvency) No. 155 of 2018]**

The allottee of Real Estate filed an application under section 7 of the Code for initiation of CIRP jointly against two CDs. The AA rejected the application on the ground that the application under section 7 of the Code cannot be filed jointly against the two CDs. While remitting the matter to AA for admission, the NCLAT held: “If the two 'Corporate Debtors' collaborate and form an independent corporate unit entity for developing the land and allotting the premises to its allottee, the application under Section 7 will be maintainable against both of them jointly and not individually against one or other..... In such case, both the 'Developer' and the 'Land Owner', if they are corporate should be jointly treated to be one for the purpose of initiation of 'Corporate Insolvency Resolution Process' against them.”

#### **Edelweiss Asset Reconstruction Company Ltd. Vs. Synergies Dooray Automotive Ltd. & Ors. [CA (AT) (Insolvency) No. 169 to 173 of 2017]**

The order dated 2<sup>nd</sup> August, 2017 of the AA approving resolution plan was challenged on two major grounds:

- a. It was argued that on the eve of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 coming into force on 1<sup>st</sup> December, 2016, Synergies Casting Ltd., a related party of the CD, assigned its debt (accounting for 78% of voting power) to a NBFC, Millennium Finance Limited on 24<sup>th</sup> November, 2016, with the ulterior motive of reducing the voting share of the appellant and such assignment was illegal. The NCLAT held: “The Appellant doesn't have any locus standi to question those documents in the insolvency proceedings initiated under 'I&B Code' on a far fetched argument that they are going to be effected if the rights of 'Synergies Castings Limited' and 'Millennium Finance Limited' are recognized basing on the Assignment Agreements in question and the Appellant cannot assume jurisdiction to question the documents in question basing on baseless allegations, apprehension etc. ... In the result, we hereby declare that both 'Synergies Castings Limited' and 'Millennium Finance Limited' were eligible to execute the assignment agreements in question and all rights flow those agreements to 'Millennium Finance Limited'.”
- b. It was argued that resolution plan provided for merger and amalgamation, which is not permissible being violative of section 30 (2)(e) of the Code. It was noted that a resolution plan may provide for merger or consolidation of the CD with one or more persons in terms of regulation 37(1)(c) of the CIRP Regulations. The NCLAT held: “The 'I&B Code' is a code by itself and Section 238 provides overriding effect of it over the provisions of the other Acts, if any of the provisions of an Act is in conflict with the provisions of the 'I&B Code'.”

#### **Lalit Mishra & Ors. Vs. Sharon Bio Medicine Ltd. & Ors. [CA (AT) (Insolvency) No. 164 of 2018]**

The approval of resolution plan was challenged on two counts, namely, (a) No amount has been provided under the resolution plan for promoters-shareholders; and (b) Promoters, who are also 'personal guarantors', have been discriminated. While dismissing the appeal, the NCLAT observed: “Admittedly, the shareholders and promoters are not the creditors and thereby the 'Resolution Plan' cannot balance the maximization of the value of the assets of the 'Corporate Debtor' at par with the 'Financial Creditors' or 'Operational Creditors' or 'Secured Creditors' or 'Unsecured Creditors'. They are also ineligible

to submit the 'Resolution Plan' to again control or takeover the management of the 'Corporate Debtor'. ... In the aforesaid background, if no amount is given to the promoters/ shareholders and the other equity shareholders who are not the promoters have been separately treated by providing certain amount in their favour, the Appellant cannot claim to have been discriminated."

**Consolidated Engineering Company & Anr. Vs. Golden Jubilee Hotels Pvt. Ltd. [CA (AT) (Insolvency) No. 501 of 2018]**

In this matter, the NCLAT held: "... Adjudicating Authority has rightly held that 10% of total debt for the purpose of representation in 'Committee of Creditors' is to be calculated on the basis of the claim as collated and noticed by the 'resolution professional'. It cannot be based on amount claimed by all the 'Operational Creditors', till it is verified and compared. If the claim of 'Operational Creditors', on verification is found to be less than 10%, the 'Operational Creditors' have no right to claim representation in the meeting of the 'Committee of Creditors'."

**SKS Power Generation Chattisgarh Limited. Vs. V Nagarajan [CA (AT) (Insolvency) No. 206 of 2018]**

In this matter, the RP filed an application under sections 43, 45, 180 and 186 of the Code. The AA by the impugned order granting interim prayer, directed R10 to repay Rs.158 crore to the CD and restraining R2 from realising the bank guarantee issued on behalf of the CD. The NCLAT allowed the appeal and remitted the matter to AA with an observation: "... the impugned order dated 24<sup>th</sup> April, 2018 was passed by the Adjudicating Authority without deciding question as to whether the 7 Company Appeal (AT) (Insolvency) No. 206 of 2018 application under Sections 43 and 45 of the 'I&B Code' is maintainable or not and as impugned order is not a speaking/reasoned order..."

**Export Import Bank of India & Anr. Vs. Astonfield Solar (Gujarat) Pvt. Ltd. & Anr. [CA (AT) (Insolvency) No. 754 of 2018]**

In terms of a 'Deed of Pledge of Securities' dated 28<sup>th</sup> March, 2013 entered into between the CD and the FCs, the shareholders have no voting right on occurrence of a default. Yet, they approved the decision of the Board of Directors for initiation of CIRP under section 10 of the Code. Hence admission of the CD into CIRP on such voting is not legal. While disagreeing with this, the NCLAT held: "... we hold that the shareholder has a right to decide whether approving or disapproving the decision be proceeded with the corporate insolvency resolution process under Section 10 of the I&B Code. Such right does not stand curtailed by Deed of Pledge dated 28<sup>th</sup> March, 2013."

**Mr. Suresh Padmanabhan & Anr. Vs. Tata Steel Ltd. & Ors. [CA (AT) (Insolvency) No. 29 of 2018]**

The AA rejected the application by impugned order dated 22<sup>nd</sup> December, 2017 on the ground that the matter had not been referred within 180 days from the date of abatement of reference in terms of section 4(b) of the SICA Repeal Act, 2003. The NCLAT observed that if a reference was made within 180 days, no fee was required to be paid. However, a corporate applicant can file an independent application under section 10 of the Code, even after 180 days of abatement of the reference, on payment of the requisite fee.

**Sudhi Sachdev Vs. APPL Industries Ltd. [CA (AT) (Insolvency) No. 623 of 2018]**

An appeal was filed against the order of the AA on the ground that there was an existence of dispute in view of a pending proceeding under section 138/441 of the Negotiable Instruments Act, 1881. While dismissing the appeal, the NCLAT held: "The pendency of the case under Section 138/441 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, it cannot be held to be a dispute pending before a court of law. Thereby we hold that the pendency of the case under Section 138/441 of Negotiable Instruments Act, 1881 actually amounts to admission of debt and not an existence of dispute."

**SICOM Limited Vs. Alok Employees Benefit and Welfare Trust & Ors. [CA (AT) (Insolvency) No. 344 of 2018]**

Resolution plan received the assent of 70.28% of voting shares of the CoC, as against 75% required for approval. Accordingly, the RP filed an application seeking liquidation of the CD. While the matter was pending, the Code was amended on 6<sup>th</sup> June, 2018 to require assent of 66% of voting share for approval. In view of the amendment, the AA passed the impugned order dated 11<sup>th</sup> June, 2018 asking the RP to place the matter before the CoC in terms of amended provision. It was appealed on the ground that the amended provision cannot be made applicable to resolution plans submitted before 6<sup>th</sup> June, 2018. While affirming the impugned order, the NCLAT held: "From bare perusal of amended sub-section (4) of Section 30 particularly proviso therein, it will be apparent that though amended subsection (4) of Section 30 came into force from 6<sup>th</sup> June, 2018, it is applicable to all 'Resolution Plans' which were not approved by the 'Committee of Creditors' or by the Adjudicating Authority."

**Neha Himatsingka & Anr. Vs. Himatsingka Resorts Private Limited & Anr. [CA (AT) (Insolvency) No. 201 of 2018]**

The AA, by impugned order, rejected applications filed under section 7 of the Code by exercising its inherent powers to address some extraordinary situations. While remitting the matter to AA, the NCLAT observed:

- a. "Once it is satisfied that a default has occurred, it is open to admit the case. The 'Corporate Debtor' can show and satisfy the Adjudicating Authority "that a default has not occurred in the sense that the 'debt', which may also include a disputed claim, is not due or payable in law or in fact". The Adjudicating Authority has no jurisdiction to decide any other issue..."
- b. "In the present case, we find that the Adjudicating Authority has exceeded its jurisdiction and exercised its inherent powers under Rule 11 of the National Company Law Tribunal Rules, 2016, which is actually not applicable in the cases under Sections 7 or 9 or 10 of the 'I&B Code'."

**Ajay Chaturvedi Vs. J. M. Financial Asset Reconstruction Co. Ltd. & Anr. [CA (AT) (Insolvency) No. 320 of 2018]**

Appeal was filed against impugned order of AA on the premise that there was no provision for filing an application under section 7 of the Code against corporate guarantor. The NCLAT held: "Clause (i) of sub-section (8) of Section 5 shows that any liability in respect of any 'guarantee' or 'indemnity' for any of the items referred to in sub-clauses (a) to (h) comes within the meaning of 'Financial Debt'. The 'Corporate Debtor' having given 'guarantee' on behalf of the principal borrower for the items referred to in sub-clause (a), guarantor company will also come within the meaning of 'Corporate Debtor' qua the 'Financial Creditor' in whose favour the guarantee has been given." and dismissed the appeal.

**National Company Law Tribunal**

**Ang Industries Limited [CP No. (IB) -292 (ND)/2017]**

The RP filed an application for approval of a resolution plan. While the proceeding was pending, he filed an affidavit that consortium of RA withdrew their resolution plan and as on date there was no approved resolution plan and, therefore, in absence of any resolution plan, the CD may be liquidated. The AA observed that in terms of section 33 (2) of the Code, the recommendation for liquidation can only be made by the RP on approval of at least 66% of the CoC. It directed the RP to call for a meeting of the CoC within seven days and file an appropriate application as per the decision of the CoC.

**M/s. A. J. Agrochem Vs. M/s. Duncan Industries Limited [CP(IB) No. 308/KB/2018]**

In this case, the Tea Board of India has taken over the affairs and management of the CD by virtue of section 16G (1)(c) of the Tea Act, 1953 which states that no proceeding for winding up of such company or for the appointment of receiver in respect thereof shall lie in any court except with

the consent of Central Government. The issue relates to maintainability an application under section 9 of the code maintainable without consent of Central Government. The AA held: “..Tea Act, 1953 is a special legislation governs the tea industries and tea companies. It provides the control of cultivation of tea and arrangement of tea board, etc. Whereas the provisions of I & B Code deals with general provisions relating to insolvency and bankruptcy of the Companies as well as individuals in India. Both the statues do not occupy one and same field. There are no inconsistent provisions in the Tea Act, 1953 which may give overriding effect of provisions of I& B Code. Hence, I hold that provisions of section 238 of I & B Code has no application in the case.”.

**Central Inland Water Transport Corporation Ltd. [C.A. (IB) No. 791/KB/2018]**

The CD initiated voluntary liquidation (VL) under section 59 of the Code by appointing a Liquidator. The Liquidator, however, found that the CD had several pending litigations and that claims against the CD exceeded the value of its assets. Hence the very pre-requisite for VL that the CD is solvent was absent. The Liquidator accordingly filed an application under regulation 40 (2) of the VL Regulations seeking suspension of VL of the CD. The AA noted that VL can be done, as required under regulation 38 of the VL Regulations, if the debt of the CD has been discharged to the satisfaction of the creditors and no litigation is pending. Since the CD did not satisfy the twin requirements in this case, the AA, suspended the VL of the CD.

**Rave Scans Pvt. Ltd. [(IB)-01 (PB)-2017]**

A resolution plan approved by the CoC was challenged. It was submitted that in the earlier plan, the objector was getting 36.99% of the settlement amount and all other FCs were getting proportionate amount. However, in the revised plan, the amount of the objector has reduced to 2.34%, whereas all others have gained. The AA held: “...Section 30 (2) nowhere provides that each financial creditor must get proportionately equivalent share with other Financial Creditors. The only condition for approving the resolution plan by the CoC is by voting share of 75 % as per the requirements of Section 30(4) (which has now been reduced to 66% w.e.f. 06.06.2018). In the present case the resolution plan has been approved by more than 75% voting share therefore, we do not find that the argument of learned counsel would require any detailed consideration. The type of discrimination alleged on behalf of the objector would not be sustainable as the resolution plan applicant has acted within the four corners of the provisions of the Code and Regulations.”

**Mr. Ramkumar SV (RP representing the CD) Vs. M/s. Ingen Capital Group LLC & 3 Others (In the matter of M/s. Orchid Pharma Limited) [MA/578/2018 in CP/540/IB/CB/2017]**

The AA noted that the period of 30 days has lapsed, but promise made by the RA has not seen the light of the day. In terms of resolution plan, the RA was to bring in an upfront payment of Rs. 1060 crore within 30 days from the date of approval of resolution plan. The AA held: “.. if at all this company is to be saved from falling into liquidation, it is very much essential on the part of the Resolution Applicant to deposit the amount as prayed by the Resolution Professional, therefore, this Bench hereby directs the Resolution Applicant to deposit, within five days from hereof, an amount of Rs.334 Crores, which is one third of payment that has to be paid to the financial creditors .... which will lie in Escrow as Security for performance of the obligations of the Respondents in implementing the approved Resolution Plan, .. or else, the RP is at liberty to take up further course of action in accordance with law.”.

**Sri Munisuvrata Agri International Limited [C.A. (IB) Nos. 635, 652, 722 & 778/KB/2018 and Inv. A. (IB) No. 800/KB/2018 in CA (IB) No. 615/KB of 2018]**

An application was made by the corporate applicant, not because of its inability to pay debt, but because of impossibility to continue its business. While considering the application, the AA observed: “Mere information that the outstanding amount is due is not at all satisfactory to hold that the corporate applicant has committed default...”. It noted that the business of the CD was

running in profit and the financial statements indicate that the CD was capable of paying the dues. It appeared that a default was attempted to enable it to file an application. It held: “...before demanding the outstanding dues from the Corporate Applicant, the petition was already filed to initiate Corporate Insolvency Resolution Process (CIRP) and hence, I am of the view that there has been no default on the part of the Corporate Applicant as on the date of filing the application in respect of the financial debt.” It concluded that corporate applicant filed the application with mala fide intention and ulterior motive to frustrate all the proceedings for recovery of money upon declaring moratorium and hence dismissed it.

**Tulip Chemicals Pvt. Ltd. Vs. Sonal Plasrub Industries Pvt. Ltd. [C.P.(IB)-198(MB)/2018]**

The AA dismissed the application under section 9 of the Code on the ground of 'dispute in existence'. It, however, observed: “Before we part with this order, it is worth to express an opinion that the Insolvency Code came into operation with the intention that if a Corporate entity is under financial stress and unable to come out of the heavy debts an attempt be made for its revival through financial restructuring. Prima facie this Code has not been legislated only for recovery of outstanding debt. A petition under this Code is not to be treated as a Civil Recovery Suit. Therefore, the procedure laid down under this Code is completely at variance from a Recovery Suit. Particularly in this case the attempt of the Petitioner is simply to recover the impugned small amount of debt, that too disputed one, without realising that the cost of insolvency proceedings is to be borne by the Petitioner at the initial stage, which may be higher than the debt amount itself. In such situation, a Petition u/s 9 of the Code is sometimes not economically viable for the Petitioner. Be that as it is, decision for initiation of a Petition is in the hands of an Operational Creditor.”

**Supriyo Rana Vs. Hahnemann Housing and Development Private Limited [CP (IB) No. 275/KB/2018]**

The AA noted that the RP did not make earnest effort to conduct the CIRP and the explanation that the CD did not co-operate was a lame excuse. Though he was directed to initiate action as provided under section 74(3), no action was initiated. It also appeared that the RP was in violation of the circular dated 12<sup>th</sup> June, 2018 of the IBBI and the CoC seemed to have approved a remuneration totaling ₹17 crore overlooking the said circular. The AA observed: “I am of the considered opinion that the RP is not eligible to claim the remuneration which was fixed on the basis of the volume of work...”.

**Kitply Industries Ltd Vs. Assistant Commissioner of Income Tax (TDS) & IDBI Bank Limited [I.A. No. 54/2018 in C.P. (IB)/02/GB/2018]**

The application was filed seeking: (a) appropriate directions to the Assistant Commissioner of Income Tax (TDS) directing him to give necessary instructions to the bank to defreeze the accounts of the CD; (b) directing the Assistant Commissioner Income Tax not to appropriate any amount lying in the accounts of the CD. The AA held: “..the proceeding(s) before the ITD which had resulted in freezing of the bank accounts in the name of CD is a proceeding of quasi-judicial nature and being so, such a proceeding is a “proceeding before any other authority” as contemplated in the provision of law and as such, continuation of the same during the period when the moratorium is in operation is illegal in view of the prohibitions, rendered in Section 14 (1) (a) of the Code and therefore, same becomes untenable in law.”

**Mr. Ajay Agarwal & Anr. Vs. M/s. Ashok Magnetics Limited & Anr. [MA/478/2018 in CP/551/IB/2017]**

The AA observed: “... clear that the members of the CoC have rejected the Resolution Plan mechanically without application of mind, as if, they have not been interested to consider the same on merits, as there is no shred of evidence that the suitability and viability of the Resolution Plan has been considered on merits. In these circumstances, it will be an exercise in futility to remand the matter to the RP and the CoCs for reconsideration of the Resolution Plan, as they have no intention to consider any Resolution plan, inspite of the directions of this

Authority, as mentioned hereinabove". It directed: "...the Head Offices of the members of the CoCs are directed to work out a "Standard Operating Procedure" for being followed by the members of the CoCs for determining the suitability and viability of the "Resolution Plans", so that the affairs of the CoCs could be regulated under the I&BC regime, for which the Banking Division of the Ministry of Finance must be consulted. The Resolution Professional is directed to send a copy of this Order to all the Head Offices of the members of the CoCs for information and compliance."

**Anuj Jain in the matter of IDBI Bank Ltd. Vs. Jaypee Infratech Ltd. [CA No. 225/2018 in CP No. (IB) 77/ALD/2017]**

Regulation 13(2) of the CIRP Regulations require the IRP to display the list of creditors on the website of the CD. The IRP, however, submitted that information of the investment in flats is private in nature and displaying the name and other personal details of allottees (creditors) without their permission may amount to breach of privacy. The AA noted that regulation 13(2) does not affect the right to life and personal liberty of any allottee. It observed: "...the right to acquire hold and dispose property is no longer a fundamental right, it is only a statutory right. Therefore, allottees have got a right to acquire their flats & plots from the corporate debtor and when such is the case, publication of their names in the list of creditors is not going to affect their privacy or fundamental right, especially when they became part of the Committee of Creditors....". It held: "... the Regulations 13 (2) (b) is a fair, just and reasonable regulation that would help to have effective resolution process."

**M/s T.M Naidu & Co Vs. M/s Enviros India Private Limited [CP/967/IB/2018]**

The applicant, who is a law firm, filed an application under section 9 of the Code. However, the CD contended that the firm didn't provide any legal services and nor the CD has entered into any kind of understanding for availing legal services from the firm. The AA found that firm did not provide services to the CD. It observed: "By seeing this kind of attitude from the Creditor, we are of the view that it is sheer abuse of process of law; it is understandable if a lay man filed a case like this. But here the Creditor being a legal firm, it is beyond our comprehension how a legal firm could file a case like this without any support of documents." Accordingly, it dismissed the application as misconceived and imposed nominal costs of Rs.10,000 against the firm for filing such a frivolous application.

**State Bank of India Vs. ARGL [(IB)-531-(PB)-2017]**

The RP filed an application to withdraw his earlier application seeking approval of resolution plan, which was submitted by the Liberty House Group PTE Limited and approved by the CoC, on the ground that the RA was not willing to proceed with the resolution plan. The AA observed: "The CIR Process is a time bound process and those who participate in the resolution process must be serious customers and not the one with casual approach. Having succeeded in the Resolution Plan, the somersault taken by the Liberty House put the whole CIR process and the machinery to quandary. Such an unsavoury stance of the Liberty House would only attract adverse comments from any fair minded person particularly when there is no justifiable reason for Liberty House to drag its feet. .... Viewed in that light the bona fide of the Liberty House becomes doubtful. We cannot appreciate the Liberty House when it argued that despite the relaxation of the condition concerning furnishing of performance bank guarantee he may be permitted to walk out of the Resolution Plan and no reason on that score be recorded." The AA also noted that in a few other CIRPs (Amtek Auto Limited, Adhunik Metaliks Limited), where resolution plans have been approved, the successful RA,

Liberty House has been dragging its feet. The AA, vide order dated 5<sup>th</sup> December, 2018, allowed the withdrawal application and imposed a cost of one lakh rupees on the Liberty House.

**Union Bank of India & Ors. Vs. M/s Sri Vinayak Paper & Boards Ltd. [IA No. 496 of 2018 in CP (IB) 173/10/HDB/2017]**

The AA approved the resolution plan submitted by RA, Ananya Rai Paper & Allied Products Private Limited. However, the RA sought time for making payment of the very first instalment, which was rejected by CoC. FC filed an application under section 33 (3) of the Code on behalf of the CoC for an order of liquidation of the CD, Sri Vinayaka Paper and Boards Limited on the ground that RA had violated the terms and failed to pay the first instalment. The AA observed: "It is not in dispute that Resolution applicant has not paid the first instalment as per the Resolution plan which was approved even as on today. Thus, it goes without saying that Resolution applicant has violated the terms of Resolution Plan." and ordered liquidation of the CD.

**M/s. Belthangady Taluk rubber Grower's Marketing & Processing Co-operative Society Limited Vs. M/s. Falcon Tyres Ltd. [CP (IB) No.01/BB/2017]**

The AA admitted application for initiation of CIRP. The CIRP commenced and RP appointed professionals and incurred fee and expenses. However, the NCLAT, set aside the aforesaid order of the AA and directed the AA to fix fees of the RP. The RP then filed an application seeking direction to the CD to pay a sum of Rs. 1.38 crore towards his fee and expenses incurred by him as IRP and RP. The AA observed that there are no hard and fast rules for payment of fee for IRP/RP, but it depends on facts and circumstances and the work involved in a given case. In the facts and circumstances, the AA fixed Rs.2 lakh as fee per month for IRP/RP, in addition to actual expenses.

**Merchem Limited (Ms. Nitrex Chemicals India Limited Vs. Ravindra Beleyur and Ors.) [MA/523/2018 in CP/689/(IB)/CB/2017]**

An unsuccessful RA filed an application seeking rejection of the resolution plan approved by the CoC on the grounds that its plan was superior, the CoC did not record its satisfaction of the feasibility and viability of the approved plan, etc. The AA noted that a reasonable opportunity of being heard was not given to the applicant in violation of principles of natural justice. It observed: " Thus, it is clear that though the resolution applicant has no voting right in the CoC; and it is the CoC to approve or reject the resolution plan, an opportunity ought to have been provided to the resolution applicant to attend the meeting of the CoC in which the Resolution Plan is to be considered, to make his representation and to express his view point on the Resolution Plan submitted to the CoC. Therefore, the application of the Resolution Applicant is allowed and the CoC is directed to consider the plan afresh submitted by the Applicant by providing it reasonable opportunity of being heard...".

**Affinity Finance Services Pvt Ltd Vs. Kiev Finance Limited [IA No. 905/KB/2018 in CP (IB) No. 110/KB/2018]**

The Liquidator filed an application under section 12(2) read with section 60(2) of the Code with a request to recall and revoke the order of liquidation of the CD passed by the AA on the ground that after order of liquidation was passed, one prospective RA has shown interest to submit a resolution plan. The AA held: "The order of liquidation of the Corporate Debtor passed by the authority cannot be reviewed or revoked as prayed by the RP". It, however, pointed out that the RP can sell the CD as a going concern as per regulation 32 of the Liquidation Regulations.

**Col. Sanjeev Dalal (Retd.) Vs. International Recreation and Amusement Ltd. [CP No. IB-297(PB)/2018]**

During the course of argument, the AA found that regulation 16A (7) of the CIRP Regulations has laid down the rate of interest for a claimant at the rate of 8% in the absence of any contract between the parties to the contrary. It observed: “It is doubtful whether the section 240 of IBC grant competence to IBB to frame such a regulation. However, there is no challenge to the Regulation on the ground that it comes in conflict with the provisions of section 240 of IBC or the Rules framed by the Central Government. Therefore, the instant application needs to be amended by incorporating the challenge.”

**Mr. S. S. Chockalingam Vs. Mr. CA Mahalingam Suresh Kumar [MA/661/2018 in TCP/431/2017]**

In e-auction of the assets of the CD in liquidation, the applicant was H1 and he was required to deposit 25% of the bid amount within 24 hours and the rest 75% within 15 days.. H1 deposited 25% after 3 days and sought time for payment of the rest of the amount. The liquidator granted extension of time twice. Thereafter, the liquidator cancelled the sale, proceeded to negotiate with H2 and sold the asset to H2 following bidding process. The applicant filed an application under rule 11 of the NCLT Rules, 2016 to direct the Liquidator to extend last date of payments, as he has already paid 57% of the bid amount and the Liquidator has no authority to forfeit the bid amount. The AA observed: “... there does not appear any provisions in the I&B Code, 2016 to give extension of time as far as the bidding process is concerned. Moreover, the Liquidator has already negotiated with the 2nd highest bidder who has already made payment which is equivalent to the amount, which was offered by the applicant being the highest bidder. In other words, the 2nd bidder, being in a position to make the payment of the same amount, has become the successful bidder and made the payment well in time. Therefore, in the circumstances, the application has become infructuous and the same stands dismissed”..

**ICICI Bank Limited Vs. Unimark Remedies Ltd. [MA No. 1529 of 2018 in CP No. 197/2018]**

RA submitted the resolution plan on 11<sup>th</sup> December, 2018. The CoC, in its meeting on 12<sup>th</sup> December, 2018, refused to open the cover containing the resolution plan of the applicant on the ground that it was submitted after the cut-off date. The RA has contended that the date fixed in EoI is not mandatory and CoC should accept the plan submitted before the expiry of CIRP period. The issue is whether the resolution plan of the RA can be considered at this belated hour. Keeping in view the objects of the code, the AA observed: “when there is a clash/ conflict between the Regulations and the Code, the object of the Code is paramount and not the Regulations which are formed only for the just implementation of the Code. Purely on the basis of technicalities, the rejection of Resolution Plan even without looking into its merits, is certainly an act which shall go against the very spirit of the Code and may even result in a huge loss to the Company. Any Regulation which does not anticipate such a situation and if the same comes in the way of proper justification and implementation of the principles of the Code, the same need not be considered nor can be treated as an impediment in the implementation of the Code.” It further held: “we are of the considered view that the spirit of the Code is first and then comes the other things. The rejection of the Resolution Plan by the CoC even without opening the envelope containing the Resolution Plan on the ground that the same is submitted after the expiry of the stipulated time fixed by the CoC, is certainly against the law/code and we hereby direct the Respondent to forthwith consider the Resolution plan of the Applicant on its merits and judicious decision may be taken in the best interest of the parties concerned...”

**Satyanarayan Malu in the matter of SBM Paper Mills Ltd. [M.A. 1396/2018, 827/2018, 1142/2018, & 828/2018 in C.P. (IB)-1362(MB)/2017]**

The CIRP commenced with the order of the AA based on an application filed under section 10 of the Code. The CoC comprised the sole FC, Allahabad Bank. With the approval of the CoC, the RP filed an application seeking approval of the AA for the resolution plan. While the proceeding was on, the RA filed an application seeking to withdraw its resolution plan.

Mr. Satyanarayan Malu, a member of the suspended Board of Directors of the CD, proposed a one-time settlement (OTS) to the FC and improved the OTS. After OTS was agreed to by the FC, Mr. Malu filed an application on 14<sup>th</sup> November, 2018 under section 12A to withdraw the application filed under section 10.

If the application of the RA is accepted, given that there was no other resolution plan, the CD would be liquidated. The OTS offer is better than the resolution plan approved by the CoC and if accepted, the stakeholders shall get 100% of their dues. In this background, the AA attempted to answer whether an applicant who has filed an application under section 10 of the IBC is entitled to withdraw its own petition under section 12A; whether RA who has submitted a resolution plan, which was approved by the CoC, can be allowed to withdraw the said plan; whether a director of the suspended Board of the CD, which is under CIRP, can offer OTS to the FC; etc.

Before attempting to address the above questions, the AA observed: “With modesty I put my view that a golden rule of interpretation of such statute is to subscribe a 'creative interpretation'. However, hastened to add that a “Laxman Rekha” is to be drawn while interpreting the provisions of a Law so that the main Legislative intent be not disturbed. A purposeful interpretation, also termed as “purposive interpretation” is sometimes more helpful to redress the grievance, so therefore preferred from literal interpretation. With all humility it is to be added that a Court must have recourse to the purpose, object, text and context of a particular provision before arriving at a judicial result. My attempt herein below is also in this direction.”

Under the peculiar circumstances (otherwise the CD will be liquidated), the AA allowed OTS and withdrawal of application subject to the applicant paying ₹5 lakh as the cost of liquidation, to discourage the Code to be used as a tool for deferment of liabilities, and allowed withdrawal of resolution plan, subject to the RA foregoing ₹25 lakh of earnest money to discourage such conduct on the part of the RAs.

**Venugopal N. Dhoot Vs. State Bank of India & Ors. [CA No. 1022 (PB)/2018]**

It was averred that the CIRP has been initiated against 14 companies of the Video Group. It was prayed that (a) all the petitions be listed before one bench, and (b) consolidate all petitions to treat CIRP as one in respect of all the Videocon group of companies. As regards (a), the Principal Bench observed that it will facilitate hearing and avoid conflicting orders if petitions are posted before one bench. It accordingly directed that all petitions be placed before the bench where the lead petition and majority of other petitions are posted. As regards (b), it left open for the bench concerned to decide.

**TATA Chemicals Limited Vs. Raj Process Equipments and Systems Private Limited [CP/21/I&BP/NCLT/MAH/2018]**

TATA Chemicals Limited filed an application under section 9 of the Code for initiation of CIRP of the CD, Raj Process Equipments and Systems Private Limited by submitting false information. The AA observed: “... the petition

has been filed on wrong facts to start CIRP by giving false information. There is no such case of the Petitioner that it has advanced Rs.9,19,40,000 as principal amount to the Corporate Debtor. By advance of Rs.4,40,000/-, the Petitioner has filed this petition, showing the principal amount of Rs.9,19,40,000/- and has further filed the Affidavit certifying the contents of the Petition. This clearly shows that Petitioner has filed this Petition for initiation of CIRP fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, which comes under the purview of Section 65 of the IBC.” It dismissed the application with costs of Rs. 10 lakhs to be paid into the account of the Prime Minister’s National Relief Fund.

## Insolvency and Bankruptcy Board of India

### In the matter of Mr. Sandeep Kumar Gupta, IP (Order dated 15<sup>th</sup> October, 2018)

The Disciplinary Committee (DC) observed: “A corporate debtor undergoing CIRP represents interests of several stakeholders. Many of them pin their hopes on the outcome of the CIRP. The Code assigns specific responsibilities in a CIRP to various constituents. An IP has the responsibility to run the corporate debtor as a going concern and conduct the entire CIRP. He has responsibility to run the process and assist the CoC in making business decisions such as resolution and liquidation. It is the CoC only which can decide if and how insolvency of a corporate debtor is to be resolved or it must be liquidated. It is not the job of an IP to take a decision, directly or indirectly, or by omission or commission, for or on behalf of the CoC or substitute itself for CoC. In the instant case, Mr. Gupta deprived the CoC of its right to decide the fate of the corporate debtor and thereby pushed the corporate debtor into liquidation. Probably, Mr. Gupta does not know the full implications of what he did.” It found that Mr. Gupta has contravened provisions of sections 31(2) and 208(2)(a) of the Code read with regulation 7(2)(a) and 7(2)(g) of the IP regulations and clauses 9, 10, 12, 14, 15 of the Code of Conduct. It imposed on Mr. Gupta a monetary penalty equal to 100% of the total fee payable to him as IRP and as RP in the CIRP of Stewarts & Lloyds of India Ltd. and directed him to undergo the pre-registration educational course from his IPA to improve his understanding of the Code and the regulations made thereunder, before accepting any assignment under the Code.

### In the matter of Mr. Martin S. K. Golla, IP (Order dated 12<sup>th</sup> November, 2018)

The DC found that an ineligible RA, the sole FC and the RP colluded to ensure that the people responsible for insolvency of the CD paid a fraction (33%) of the claim amount to the FC and wrested the control and management of the CD. They misused the CIRP to pass on a OTS as resolution plan and to wipe off claims of creditors, which was not possible otherwise. They did this against the explicit mandate of the Parliament and judicial pronouncements and in contravention of every provision of the Code and regulations relating to CIRP. Mr. Golla, as RP, did nothing for the entire period of CIRP, except waiting for approval of OTS by the bank. As the permissible time for conclusion of CIRP was approaching, Mr. Golla as RP, organised the first meeting of the CoC on 5<sup>th</sup> February, 2018 only to seek approval for extension of CIRP period and obtained extension by making false statements to the AA. Even after extension of CIRP period, Mr. Golla did nothing. He connived with the parties to allow an OTS in the garb of resolution plan and to allow an ineligible RA to submit the OTS and did absolutely nothing either to run the business of the CD or to run the CIRP. By his conduct and action, Mr. Golla contravened several provisions of the Code and regulations. The DC cancelled the registration of Mr. Martin S. K. Golla as IP and debarred him from seeking fresh registration as an IP or providing any service under the Code for ten years.

# Corporate Processes

The data used in this section relating to corporate processes are provisional. These are getting revised based on further information received from IPs or the information in respect of process changes.

## Insolvency Resolution

It is two years since the provisions relating to CIRP came into force on 1<sup>st</sup> December, 2016. As presented in Table 1, nearly 1500 CDs have been admitted into CIRP by the end of December, 2018. Of these, 142 have been closed on appeal or review or settled; 63 have been withdrawn; 302 have ended in liquidation and 79 have ended in approval of resolution plans.

Table 1: Corporate Insolvency Resolution Process

(Number)

Quarter	CIRPs at the beginning of the Quarter	Admitted	Closure by				CIRPs at the end of the Quarter
			Appeal/ Review/ Settled	Withdrawal under Section 12A	Approval of Resolution Plan*	Commencement of Liquidation	
Jan - Mar, 2017	0	37	1	-	-	-	36
Apr - Jun, 2017	36	129	8	-	-	-	157
July - Sept, 2017	157	232	18	-	2	8	361
Oct - Dec, 2017	361	147	38	-	7	24	439
Jan - Mar, 2018	439	195	20	-	11	59	544
Apr - Jun, 2018	544	245	20	1	14	50	704
Jul - Sept, 2018	704	235	30	26	32	83	768
Oct - Dec, 2018	768	264	7	36	13	78	898
<b>Total</b>	<b>NA</b>	<b>1484</b>	<b>142</b>	<b>63</b>	<b>79</b>	<b>302</b>	<b>898</b>

\*These exclude 3 resolutions which have since yielded into liquidation

Source: Compilation from website of the NCLT

Sector-wise distribution of CIRPs is presented in Table 2.

Table 2: Sector wise distribution of CIRPs as on 31<sup>st</sup> December, 2018

Sector	No. of CIRPs		
	Closed	Ongoing	Total
<b>Manufacturing</b>	259	353	612
Food, Beverages & Tobacco Products	24	50	74
Chemicals & Chemical Products	26	35	61
Electrical Machinery & Apparatus	20	36	56
Fabricated Metal Products	16	26	42
Machinery & Equipment	34	36	70
Textiles, Leather & Apparel Products	39	60	99
Wood, Rubber, Plastic & Paper Products	30	37	67
Basic Metals	55	61	116
Others	15	12	27
<b>Real Estate, Renting &amp; Business Activities</b>	87	148	235
<b>Construction</b>	47	106	153
<b>Wholesale &amp; Retail Trade</b>	69	82	151
<b>Hotels &amp; Restaurants</b>	17	24	41
<b>Electricity &amp; Others</b>	12	26	38
<b>Transport, Storage &amp; Communications</b>	18	21	39
<b>Others</b>	77	138	215
<b>Total</b>	<b>586</b>	<b>898</b>	<b>1484</b>

The distribution of stakeholders who triggered resolution process is presented in Table 3. 50% of the CIRPs were triggered by OCs, followed by 38% by FCs and remaining by CDs.

Table 3: Initiation of Corporate Insolvency Resolution Process

Quarter	No. of CIRPs Initiated by			Total
	Operational Creditor	Financial Creditor	Corporate Debtor	
Jan - Mar, 2017	7	8	22	37
Apr - Jun, 2017	58	37	34	129
Jul - Sept, 2017	101	92	39	232
Oct - Dec, 2017	69	64	14	147
Jan - Mar, 2018	89	84	22	195
Apr - Jun, 2018	128	99	18	245
Jul - Sept, 2018	136	83	16	235
Oct - Dec, 2018	154	95	15	264
<b>Total</b>	<b>742</b>	<b>562</b>	<b>180</b>	<b>1484</b>

The status of CIRPs as on 31<sup>st</sup> December, 2018 is presented in Table 4.

Table 4: Status of CIRPs as on 31<sup>st</sup> December, 2018

Status of CIRPs	No. of CIRPs
Admitted	1484
Closed on Appeal / Review/ Settled	142
Closed by Withdrawal under section 12A	63
Closed by Resolution	79
Closed by Liquidation	302
Ongoing CIRP	898
> 270 days	275
> 180 days ≤ 270 days	166
> 90 days ≤ 180 days	202
≤ 90 days	255

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

## Resolution Plans

It is seen that about 51.53% of the CIRPs, which were closed, ended in liquidation, as compared to 13.48% ending with a resolution plan. In addition, 10.75% ended in withdrawal under section 12A. However, it is important to note that 75.16% of the CIRPs ending in liquidation (227 out of 302) were earlier with BIFR and or defunct (Table 5). The economic value in most of these CDs had already eroded before they were admitted into CIRP.

Table 5: CIRPs Ending with Orders for Liquidation

State of Corporate Debtor at the Commencement of CIRP	No. of CIRPs initiated by			
	FC	OC	CD	Total
Either in BIFR or Non-functional or both	77	90	60	227
Resolution Value ≤ Liquidation Value	86	102	60	248
Resolution Value > Liquidation Value	21	11	16	48

\* Note: There were 26 CIRPs, where CDs were in BIFR or non-functional but had resolution value higher than liquidation value.

Till September, 2018, 52 CIRPs had yielded resolution plans. 17 more CIRPs were later reported as yielding in resolution plans during that period, as presented in Part A of Table 6. Of the CIRPs which yielded resolution plans till September, 2018, 3 corporate debtors later yielded in liquidation during the quarter October- December, 2018. During this quarter, 13 CIRPs yielded resolution plans with different degrees of realisation in comparison to the liquidation value as presented in Part B of Table 6. Realisation by FCs in comparison to liquidation value in respect of the CDs is 249%, while the realisation by them in comparison to their claims is 90%.

Table 6: CIRPs Yielding Resolution

(Amount in Rs. crore)

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 Claims Admitted	Realisable by FCs as % of Liquidation Value
<b>Part A: Prior Period (Till 30<sup>th</sup> September, 2018)</b>										
1	Basai Steels and Power Pvt. Ltd.	Yes	19-07-2017	13-04-2018	OC	853.69	52.09	125.81	14.74	241.52
2	Raj Oil Mills Ltd.	Yes	10-07-2017	19-04-2018	CD	243.19	22.83	55.87	22.97	244.72
3	BJN Hotels Ltd	No	25-09-2017	04-06-2018	FC	134.18	24.15	29.92	22.30	123.89
4	YashraajEthanoll Processing Pvt. Ltd.	No	20-07-2017	13-07-2018	FC	82.57	12.40	14.67	17.77	118.31
5	Admiron Life Sciences Pvt. Ltd.	No	28-07-2017	24-07-2018	CD	72.46	42.50	50.70	69.97	119.29
6	Paragon Steels Pvt. Ltd.	No	15-09-2017	24-07-2018	FC	181.75	37.71	41.50	22.83	110.05
7	S M M Steel Re-Rolling Mills Pvt. Ltd.	No	15-09-2017	24-07-2018	FC	41.46	1.80	1.60	3.86	88.89
8	Mohan Aromatics Pvt. Ltd.	No	18-10-2017	25-07-2018	FC	10.65	3.75	4.72	44.32	125.87
9	Frontline Printers Pvt. Ltd.	No	02-11-2017	30-07-2018	FC	62.90	19.55	19.55	31.08	100.00
10	S.M. Dyechem Ltd.	NA	13-10-2017	30-07-2018	CD	-	-	-	-	-
11	Southern Cooling Tower Pvt. Ltd.	No	07-02-2018	06-08-2018	OC	15.82	23.83	15.82	100.00	66.39
12	Shakti Nutraceuticals Pvt. Ltd.	Yes	28-08-2017	09-08-2018	FC	1.11	0.00	1.18	106.31	-
13	Quantum Ltd.	Yes	29-05-2017	10-08-2018	FC	32.18	19.2	32.18	100.00	167.60
14	NSR Steels Pvt. Ltd.	NA	24-11-2017	30-08-2018	FC	-	-	-	-	-
15	Vangal Amman Health Services Ltd.	NA	22-11-2017	30-08-2018	FC	-	-	-	-	-
16	Recorders and Medicare Systems Pvt. Ltd.	No	16-03-2017	14-09-2018	CD	103.16	14.83	45.29	43.90	305.39
17	Bhadravati Balaji Oil Palms Ltd.	Yes	22-11-2017	28-09-2018	OC	30.05	18.47	22.88	76.14	123.88
<b>Total</b>						<b>1865</b>	<b>293</b>	<b>462</b>	<b>25</b>	<b>158</b>
<b>Part B: October – December, 2018</b>										
1	Quality Rice Exports Pvt. Ltd.	Yes	28-02-2018	04-10-2018	OC	23.88	7.40	10.86	45.48	146.76
2	Cosmic Ferro Alloys Ltd.	No	16-01-2018	11-10-2018	FC	194.66	69.18	91.94	47.23	132.90
3	Universal Power Transformers Pvt. Ltd.	Yes	26-02-2018	11-10-2018	OC	37.82	12.47	13.50	35.70	108.26
4	Sun Paper Mill Ltd.	No	15-11-2017	16-10-2018	OC	20.99	163.19	20.99	100.00	12.86
5	ConnectM Technology Solutions Pvt. Ltd.	No	29-01-2018	17-10-2018	OC	0.90	0.01	0.90	100.00	9000.00
6	Fenace Auto Ltd.	No	10-01-2018	17-10-2018	OC	483.41	104.80	127.44	26.36	121.60
7	Rave Scans Pvt. Ltd.	Yes	25-01-2017	17-10-2018	CD	122.22	36.00	52.64	43.07	146.22
8	Parte Casters Pvt. Ltd.	No	14-08-2017	22-10-2018	CD	6.30	1.30	1.79	28.41	137.69
9	Manor Floatel Ltd.	No	10-01-2018	30-10-2018	FC	34.46	3.86	6.00	17.41	155.44
10	Rishi Ganga Power Corporation Ltd.	Yes	25-01-2018	13-11-2018	FC	159.64	15.38	45.12	28.26	293.37
11	Binani Cements Ltd.	Yes	25-07-2017	14-11-2018	FC	6469.36	2300.70	6469.40	100.00	281.19
12	AGP Steels Pvt. Ltd.	No	21-09-2017	28-11-2018	CD	3.07	2.25	2.65	86.32	117.78
13	Vardhman Industries Ltd.	No	16-11-2017	19-12-2018	CD	133.84	62.07	62.50	46.70	100.69
<b>Total</b>						<b>7691</b>	<b>2779</b>	<b>6906</b>	<b>90</b>	<b>249</b>

Defunct: Not Going Concern/Erstwhile BIFR  
NA: Not Available



## Liquidation

Till 30<sup>th</sup> September, 2018, a total of 212 CIRPs had yielded liquidation as presented in last newsletter. 12 more CIRPs were later reported as yielding in liquidation during that period, as indicated in Part A of Table 7. During the quarter October–December, 2018, 78 CIRPs ended in liquidation, taking the total CIRPs yielding liquidation to 302. The details of the CIRPs ending in orders of liquidation during the quarter is reported in part B of Table 7.

**Table 7: CIRPs ending with Orders for Liquidation**

Sl. No.	Name of CD	Defunct (Yes / No)	CIRP Initiated by	Date of Commencement of CIRP	Date of Liquidation Order
<b>Part A: Prior Period (Till 30<sup>th</sup> September, 2018)</b>					
1	Boss Profiles Ltd.	Yes	OC	11-08-2017	24-01-2018
2	Sarthak Creation Pvt. Ltd.	Yes	CD	30-08-2017	27-02-2018
3	Precision Fasteners Ltd.	Yes	FC	07-11-2017	12-03-2018
4	R.V.Steel and Power Pvt. Ltd.	Yes	OC	27-09-2017	21-06-2018
5	Vandana Udhog Ltd.	NA	CD	21-06-2017	25-06-2018
6	Linksonspat and Energy Pvt. Ltd.	Yes	FC	06-10-2017	20-07-2018
7	Jai Bhavani Steels Enterprises Ltd.	Yes	FC	02-04-2018	23-07-2018
8	Sham Udyog Ltd.	Yes	OC	21-11-2017	20-08-2018
9	Número Uno International Ltd.	Yes	CD	11-09-2017	04-09-2018
10	Shree Radhe Industries Ltd.	Yes	FC	04-12-2017	11-09-2018
11	Neelkanth Township and Construction Pvt. Ltd.	Yes	FC	21-04-2017	12-09-2018
12	Impex Steel Ltd.	Yes	OC	16-03-2018	18-09-2018
<b>Part B: October – December, 2018</b>					
1	J R Diamond Pvt. Ltd.	Yes	OC	13-02-2018	01-10-2018
2	Samudra Biopharma Pvt. Ltd.	Yes	FC	04-06-2018	03-10-2018
3	Gee Ispat Pvt. Ltd.	Yes	OC	24-08-2017	05-10-2018
4	Geo Express Pvt. Ltd.	Yes	FC	31-01-2018	05-10-2018
5	Nife Fire Systems Pvt. Ltd.	Yes	OC	26-03-2018	05-10-2018
6	Jinprabhu Infrastructure Developments Ltd.	No	OC	06-04-2018	08-10-2018
7	Luxury Train Pvt. Ltd.	Yes	OC	11-12-2017	08-10-2018
8	Fashionara Enterprises Pvt. Ltd.	No	FC	07-05-2018	09-10-2018
9	Veebro Technoplast Pvt. Ltd.	Yes	FC	22-09-2017	09-10-2018
10	Hitech Engineering Corporation (I) Pvt. Ltd.	No	OC	17-01-2018	10-10-2018
11	Nawa Engineers Consultants Pvt. Ltd.	No	OC	22-01-2018	10-10-2018
12	Vegan Colloids Ltd.	Yes	FC	24-11-2017	10-10-2018
13	BOP Projects Pvt. Ltd.	Yes	FC	13-04-2018	11-10-2018
14	Visa Power Ltd.	Yes	FC	22-12-2017	11-10-2018
15	Business Jets India Pvt. Ltd.	No	OC	24-04-2018	12-10-2018
16	SPM Auto Pvt. Ltd.	Yes	OC	17-10-2017	12-10-2018
17	Surana Industries Ltd.	Yes	OC	02-01-2018	12-10-2018
18	Meridian Extrusions Pvt. Ltd.	Yes	OC	05-03-2018	15-10-2018
19	Julka Rice & Oil Mills Ltd.	Yes	CD	05-04-2018	16-10-2018
20	Quetzal Furniture Systems Pvt. Ltd.	Yes	OC	18-12-2017	16-10-2018
21	James Hotels Ltd.	No	FC	27-04-2017	17-10-2018
22	Precision Engineers & Fabricators Pvt. Ltd.	Yes	OC	04-04-2017	22-10-2018
23	Ramdas Ispat and Metal Pvt. Ltd. &Ors	Yes	OC	06-04-2018	22-10-2018
24	Andaman Sea Foods Pvt. Ltd.	Yes	FC	24-04-2018	25-10-2018
25	Anil Ltd.	Yes	FC	23-08-2017	25-10-2018
26	Biotropics Pharma Pvt. Ltd.	Yes	OC	09-04-2018	26-10-2018
27	Dev Blessing Traders Pvt. Ltd.	No	FC	01-12-2017	26-10-2018
28	Forging Pvt. Ltd.	Yes	FC	28-03-2018	26-10-2018
29	Kamineni Steel and Power India Pvt.Ltd.	Yes	CD	10-02-2017	26-10-2018
30	Hahnemann Housings & Development Pvt. Ltd.	No	FC	26-04-2018	29-10-2018
31	Kokama International Pvt. Ltd.	Yes	FC	12-03-2018	30-10-2018
32	Rasoya Proteins Ltd.	Yes	FC	27-06-2017	30-10-2018
33	Oceanic Tropical Fruits Pvt. Ltd.	NA	FC	12-09-2017	31-10-2018
34	Sharda Gems and jewels Pvt. Ltd.	Yes	FC	06-03-2018	31-10-2018
35	Vandana Energy & Steels Pvt. Ltd.	Yes	FC	20-10-2017	31-10-2018
36	Jain Granite & Projects (I) Ltd.	No	OC	23-11-2017	01-11-2018

37	Ramanand Steel Ltd.	Yes	FC	20-03-2018	02-11-2018
38	Ashok Magnetics Ltd.	NA	OC	04-09-2017	09-11-2018
39	Bhootnath Consultancy Pvt. Ltd.	Yes	OC	07-05-2018	09-11-2018
40	Satyaxmi Tradelink Pvt. Ltd.	Yes	OC	07-05-2018	09-11-2018
41	Kohinoor Diamonds Pvt. Ltd.	Yes	OC	13-02-2018	13-11-2018
42	Farmers Pulse Pvt. Ltd.	Yes	FC	05-04-2018	14-11-2018
43	Flower Dealcom Pvt. Ltd.	Yes	OC	16-05-2018	14-11-2018
44	Ispat Energy Ltd.	Yes	OC	25-04-2018	14-11-2018
45	A J Casting Pvt. Ltd.	Yes	OC	01-06-2017	15-11-2018
46	Ashoka Multiyarn Mills Ltd.	Yes	FC	15-11-2017	16-11-2018
47	Hari Machines Ltd.	Yes	OC	15-05-2018	16-11-2018
48	RamsarupVyapaar Ltd.	Yes	FC	17-05-2018	16-11-2018
49	SBJ Exports & MFG Pvt. Ltd.	Yes	FC	16-08-2017	16-11-2018
50	Varun Resources Ltd	No	FC	14-06-2017	16-11-2018
51	Siddhi Vinayak Logistic Limited	No	FC	12-09-2017	19-11-2018
52	Sri Vinayaka Paper & Boards Ltd.	Yes	CD	22-09-2017	26-11-2018
53	Shreenidhi Woodtech Pvt. Ltd.	Yes	OC	22-12-2017	30-11-2018
54	Sree Ramakrishna Alloys Ltd.	No	FC	29-08-2017	30-11-2018
55	Delta Automobiles Pvt. Ltd.	Yes	CD	13-06-2018	03-12-2018
56	Harshavardhan Cotton & Synthetics Pvt. Ltd.	Yes	OC	12-03-2018	03-12-2018
57	Nova Electro Magnetics Pvt. Ltd.	Yes	OC	23-08-2018	03-12-2018
58	Pavai Alloys & Steels Pvt. Ltd.	Yes	OC	29-06-2018	03-12-2018
59	Arohi Infrastructures Pvt. Ltd.	NA	FC	20-03-2018	05-12-2018
60	Falcon Consultancy Pvt. Ltd.	Yes	FC	23-02-2018	05-12-2018
61	Matrix Metal Traders Pvt. Ltd.	Yes	OC	05-04-2018	05-12-2018
62	Srivari Metal Works Pvt. Ltd.	Yes	FC	09-01-2018	05-12-2018
63	Coastal Projects Ltd.	No	FC	05-01-2018	06-12-2018
64	Vasudev Ispat Pvt. Ltd.	No	FC	15-02-2018	07-12-2018
65	Aman Medical Products Pvt. Ltd.	Yes	OC	14-06-2018	10-12-2018
66	Forward Shoes (I) Pvt. Ltd.	No	OC	19-06-2017	11-12-2018
67	Gangadhara Steel Ltd.	No	FC	29-08-2017	11-12-2018
68	Muskaan Power Infrastructure Ltd.	NA	FC	28-07-2017	11-12-2018
69	Nagarjuna Oil Corporation Ltd.	Yes	OC	25-07-2017	11-12-2018
70	Neutrino Power Systems Pvt. Ltd.	No	CD	22-01-2018	14-12-2018
71	Gallium Industries Ltd.	No	FC	21-07-2017	17-12-2018
72	Global Houseware Ltd.	No	OC	03-05-2017	19-12-2018
73	Linus Processors Pvt. Ltd.	Yes	FC	13-03-2018	19-12-2018
74	Air Carnival Private Limited	NA	OC	02-11-2017	20-12-2018
75	Scope Vincom Industries Pvt. Ltd.	NA	OC	11-06-2018	20-12-2018
76	Concast Infratech Ltd.	Yes	FC	12-06-2018	21-12-2018
77	Everon Castings Pvt. Ltd.	No	OC	29-12-2017	21-12-2018
78	Biator Industries Ltd.	Yes	FC	01-01-2018	31-12-2018

Defunct: Not Going Concern/Erstwhile BIFR  
NA: Not Available

## Twelve Large Accounts

Resolution of 12 large accounts were initiated by banks as directed by RBI. Together they had an outstanding claim of Rs. 3.45 lakh crore as against liquidation value of Rs. 73,220.23 crore. Of these, resolution plan in respect of four CDs, namely, Electrosteel Steels Ltd., Bhushan Steel Ltd., Monnet Ispat and Energy Ltd., and Amtek Auto Ltd. have been approved. With regard to Lanco Infratech Ltd., liquidation order has been passed. Other accounts are at different stages of the process. The outcome of four large accounts that ended with resolution plans is presented in Table 8.

Table 8: Four Large Accounts

(Amount in Rs. crore)

Name of Corporate Debtor	Claims of Financial Creditors Dealt under Resolution			Realisation by all Claimants as a Percentage of Liquidation Value	Successful Resolution Applicant
	Amount Admitted	Amount Realised	Realisation as Percentage of Claims		
Electrosteel Steels Ltd.	13175	5320	40.38	183.45	Vedanta Ltd.
Bhushan Steel Ltd.	560226	35571	63.50	252.88	Bamnival Steel Ltd.
Monnet Ispat & Energy Ltd. Pvt. Ltd.	11015	2892	26.26	123.55	Consortium of JSW and AION Investments
Amtek Auto Ltd	12605	4334	34.38	106.20	Liberty House PTE

## Ease of Doing Business Report, 2019

The World Bank released its Ease of Doing Business Report (EoDBR) for the year 2019 in October, 2018. The Report assesses 190 economies in terms of 10 parameters that span the lifecycle of a business as to how conducive the environment is in an economy for doing business. India improved its overall ranking from 100 to 77 among 190 countries. India improved its rank in 6 out of 10 parameters in 2019 report as compared to 2018 report.

One of the ten parameters is “resolving insolvency” which measures the quality of legal framework for insolvency resolution in an economy. It measures the quality of regulation as the recovery rate for secured creditors and the extent to which domestic law has incorporated certain internationally-accepted principles on liquidation and reorganisation proceedings. The report notes that efficient outcomes occur when viable businesses are given a chance to survive, while loss-prone, inefficient firms exit the market, putting resources to better use elsewhere in the economy. The report emphasizes that in the absence of strong legal bankruptcy legislation, however, the balance between firm survival and efficient exit is distorted.

India's efforts in making insolvency resolution easier by adopting a new Insolvency and Bankruptcy Code that introduced a reorganisation procedure for CDs and facilitated continuation of the debtor's business during insolvency proceedings have been well recognised by the EoDBR. As a result of these reforms, India substantially improved its ranking in this parameter in 2018 from 136 to 103. In the 2019 Report, the rank declined to 108 even though the absolute score improved from 40.75 to 40.84.

The insolvency parameter is also linked to ease of getting credit. An efficient and effective insolvency regime would provide the right ecosystem for resolving failing firms and releasing resources for alternative use in the economy thereby help enhancing the availability of credit for viable projects. Under the “getting credit” parameter, India has substantially improved its ranking from 44 in 2017 Report to 29 in 2018 Report and to 22 in 2019 Report.

## Voluntary Liquidations

A corporate person may initiate a voluntary liquidation proceeding if majority of the directors or designated partners of the corporate person make a declaration to the effect that (i) the corporate person has no debt or it will be able to pay its debts in full from the proceeds of the assets to be sold under the proposed liquidation, (ii) the corporate person is not being liquidated to defraud any person. At the end of December, 2018, 300 corporate persons initiated voluntary liquidation, the details of which are given in Table 9. Of these, 18 dissolution orders have been passed.

Table 9: Voluntary Liquidations as on 31<sup>st</sup> December 2018 (Amount in Rs. crore)

Quarter	No. of Corporate Persons	Paid-up Capital	Assets	Outstanding Credit	No. of Final Reports Submitted	No. of Dissolution Orders Passed
Apr-Jun, 2017	13	179	40	9	-	-
Jul-Sept, 2017	38	195	340	8	-	-
Oct-Dec, 2017	56	67	180	14	4	1
Jan-Mar, 2018	66	354	220	8	6	1
Apr-Jun, 2018	41	992	333	39	21	3
Jul-Sep, 2018	55	201	105	18	2	1
Oct-Dec, 2018	31	62	18	1	29	12
<b>Total</b>	<b>300</b>	<b>2050</b>	<b>1236</b>	<b>97</b>	<b>62</b>	<b>18</b>

While 300 cases of voluntary liquidation were admitted till 31<sup>st</sup> December 2018, the reasons for initiation of 285 voluntary liquidations, as available with IBBI, are presented in Table 10.

Table 10: Reasons for Voluntary Liquidation

Sl. No.	Reason for Voluntary Liquidation	No. of Corporate Persons
1	Not carrying business operations	151
2	Commercially unviable	51
3	Running into losses	8
4	No revenue	12
5	Promoters unable to manage affairs	4
6	Purpose for which company was formed accomplished	5
7	Contract termination	5
8	Miscellaneous	49
	<b>Total</b>	<b>285</b>

Table 11: Phasing of Voluntary Liquidations

Status of Liquidation	Number of Liquidations
Initiated	300
Final Report Submitted	54
<b>Closed by Dissolution</b>	<b>18</b>
<b>Ongoing</b>	<b>246</b>
> 360 days	68
> 270 days ≤ 360 days	59
> 180 days ≤ 270 days	36
> 90 days ≤ 180 days	56
≤ 90 days	27

# Service Providers

## Insolvency Professionals

IPAs are frontline regulators and responsible for developing and regulating the profession of IPs. There are three IPAs registered in accordance with the provisions of the IPA Regulations. 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 is authorised to provide services as such under the Code. The details of IPs registered as on 31<sup>st</sup> December 2018, IPA-wise, is presented in Table 12.

Table 12: Registered Insolvency Professionals as on 31<sup>st</sup> December, 2018 (Number)

City / Region	Indian Institute of Insolvency professional of ICAI	ICSI Institute of Insolvency Professionals	Insolvency Professional Agency of Institute of Cost Accountants of India	Total
New Delhi	284	183	45	512
Rest of Northern Region	200	114	30	344
Mumbai	263	84	23	370
Rest of Western Region	183	84	23	290
Chennai	90	49	9	148
Rest of Southern Region	228	126	33	387
Kolkata	134	30	14	178
Rest of Eastern Region	43	13	5	61
<b>Total</b>	<b>1425</b>	<b>683</b>	<b>182</b>	<b>2290</b>

Till date, registration of three IPs has been cancelled after due disciplinary process. The registration and cancellation of IPs, quarter wise, till 31<sup>st</sup> December 2018 are presented in Table 13.

Table 13: Registration and Cancellation of Registration of IPs

Quarter	No. of IPs		
	Registered during the Quarter	Cancelled during the Quarter	At the End of the Quarter
Jan - Mar, 2017	96	0	96
Apr - Jun, 2017	450	0	546
Jul - Sep, 2017	561	0	1107
Oct - Dec, 2017	217	0	1324
Jan - Mar, 2018	488	0	1812
Apr - Jun, 2018	71	1	1882
Jul - Sep, 2018	154	1	2035
Oct - Dec, 2018	253	1	2287
<b>Total</b>	<b>2290</b>	<b>3</b>	<b>2287</b>

An individual with ten years of experience as a member of the ICAI, ICSI, ICAI (Cost) or 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 14 presents distribution of IPs as per their eligibility (an IP may be a member of more than one Institute) as on 31<sup>st</sup> December, 2018.

Table 14: Distribution of IPs as per their Eligibility

Eligibility	No. of IPs		
	Male	Female	Total
Member of ICAI	1189	103	1292
Member of ICSI	386	66	452
Member of ICAI (Cost)	127	10	137
Member of Bar Council	124	13	137
Managerial Experience	261	11	272
<b>Total</b>	<b>2085</b>	<b>205</b>	<b>2290</b>

IBBI meets MDs / CEOs of IPAs on 7<sup>th</sup> of every month to discuss the issues arising from the IP profession and to energise them to discharge their responsibilities. The IPAs are conducting pre-registration educational courses for prospective IPs and roundtables and webinars for building capacity of IPs. They are monitoring disclosures by IPs in respect of relationship and fee and expenses of CIRPs and disseminating the same on their respective websites. In accordance with the 'Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) (Second) Guidelines, 2018', IBBI prepared the panel of IPs for January- June 2019 and shared the same with the AA. Table 15 presents bench wise number of IPs empaneled for January - June, 2019.

Table 15.: Bench-wise Number of IPs in the Panel

Sl. No.	NCLT Bench	No. of IPs
1	New Delhi	172
2	Mumbai	139
3	Kolkata	105
4	Hyderabad	87
5	Chandigarh	84
6	Chennai	80
7	Ahmedabad	71
8	Bengaluru	38
9	Allahabad	26
10	Jaipur	25
11	Kochi	19
12	Guwahati	4
<b>Total</b>		<b>850</b>

## Replacement of IRP with RP

Section 22(2) of the Code provides that the committee of creditors (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 IBBI has been shared with the AA, disclosing whether any disciplinary proceeding is pending against them. While the database is currently being used by various benches of AA, in a few cases, IBBI receives references from the AA and promptly responds to the AA. Till 31<sup>st</sup> December, 2018, a total of 284 IRPs have been replaced with RPs, as shown in Table 16.

Table 16: Replacement of IRP with RP as on 31<sup>st</sup> December, 2018

CIRP initiated by	No. of CIRPs	
	Where RPs have been appointed	Where RP is different from the IRP
Corporate Applicant	164	73
Operational Creditor	517	133
Financial Creditor	487	78
<b>Total</b>	<b>1168</b>	<b>284</b>

## Insolvency Professional Entities

During the quarter under reference, three IPEs were recognised and 20 were de-recognised. As on 31<sup>st</sup> December, 2018, there are 56 IPEs. The details of recognised IPEs are given in Table 17.

Table 17: Recognition of IPEs as on 31<sup>st</sup> December, 2018

Quarter	No. of IPEs		
	Recognized during the Quarter	Derecognised during the Quarter	At the End of the Quarter
Jan-Mar, 2017	3	0	3
Apr-Jun, 2017	14	0	17
Jul-Sep, 2017	22	1	38
Oct-Dec, 2017	18	0	56
Jan-Mar, 2018	19	0	75
Apr-Jun, 2018	1	3	73
Jul-Sep, 2018	4	4	73
Oct-Dec, 2018	3	20	56
<b>Total</b>	<b>84</b>	<b>28</b>	<b>56</b>

## Information Utility

There is one information utility (IU), namely, the National e-Governance Service Limited (NeSL). IBBI meets the MD & CEO of IU along with the CEOs of IPAs every month to discuss the issues related to receipt and authentication of financial information. Table 18 provides details of the registered users and information with NeSL, as informed by them. It has issued 11 default certificates till 31<sup>st</sup> December, 2018.

Table 18: Details of Information with NeSL

(Number except as stated)

At the end of Quarter	Creditors having Agreement with NeSL		Creditors who have Submitted information		Debtors whose information is Submitted by Creditors		Loan records on-boarded		User Registrations by Debtors		Loan records Authenticated by Debtors		Amount of Underlying Debt (Rs. crore)	
	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs
June, 2018	66	NA	21	105	69184	52	191247	105	1024	10	1364	05	NA	NA
Sep, 2018	85	NA	40	144	2016709	530	1222737	207	5111	10	6079	32	2016708	530
Dec, 2018	108	NA	68	140	980724	202	1438390	280	10247	44	10065	35	2732805	1094

## Registered Valuers

Registered Valuers Organisations (RVOs), being the frontline regulators, are responsible for developing and regulating the profession of RVs. In all, there are 11 RVOs recognised in accordance with the provisions of the Companies (Registered Valuers and Valuation) Rules, 2017. There are nine RVOs in each asset class. A fit and proper person, who is enrolled with an RVO as a valuer member and has the required qualification and experience, and has passed the Valuation Examination, is registered as a valuer. At present, valuers are registered under 3 asset classes, namely, (i) Land & Building, (ii) Plant & Machinery and (iii) Securities or Financial Assets. They are authorised to undertake valuations under the Companies Act, 2013 and the Code. The details of RVs, RVO wise, as on 31<sup>st</sup> December, 2018 is given in Table 19.

Table 19: Registered Valuers as on 31<sup>st</sup> December, 2018

(Number)

Registered Valuers Organisation	Asset Class			Total
	Land & Building	Plant & Machinery	Securities or Financial Assets	
Institution of Estate Managers and Appraisers	20	0	1	21
IOV Registered Valuers Foundation	196	27	11	234
ICSI Registered Valuers Organisation	0	0	17	17
ICAI Registered Valuers Organisation	NA	NA	86	86
The Indian Institution of Valuers	9	3	0	12
ICMAI Registered Valuers Organisation	5	4	24	33
PVAI Valuation Professional Organisation	36	5	0	41
CVRSTA Registered Valuers Association	53	19	NA	72
Association of Certified Valuers and Analysts	NA	NA	0	0
CEV Integral Appraisers Foundation	0	0	NA	0
Divya Jyoti Foundation	0	0	0	0
<b>Total</b>	<b>319</b>	<b>58</b>	<b>139</b>	<b>516</b>

## Complaints and Grievances

Stakeholders may file a grievance or a complaint against a service provider under the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017. Besides this, IBBI receives grievances and complaints from the Centralised Public Grievance Redress and Monitoring System (CPGRAMS), Prime Minister's Office, Ministry of Corporate Affairs and other authorities. The receipt and disposal of grievances and complaints till 31<sup>st</sup> December, 2018 are provided in Table 20.

Table 20: Receipt and Disposal of Grievances and Complaints till 31<sup>st</sup> December, 2018

Complaints and Grievances received	Received	Disposed	Under Examination
Complaints under the Regulations	90	23	67
Through CPGRAM/PMO/MCA/Other Authorities	295	243	52
Through Other Modes	340	56	284
<b>Total</b>	<b>725</b>	<b>322</b>	<b>403</b>

## Examinations

### Limited Insolvency Examination

After successfully completing the first three phases of the Limited Insolvency Examination, IBBI commenced the fourth phase of the Examination on 1<sup>st</sup> November, 2018. The administration of the Examination has been assigned to NSEIT Limited with effect from 1<sup>st</sup> July, 2018. The Examination is available on daily basis from various locations across the country. The details of the examination are given in Table 21.

Table 21: Limited Insolvency Examination

Phase/Quarter	No. of Attempts (some candidates made more than one attempt)	No. of Successful Attempts
First Phase (January - June, 2017)	5329	1202
Second Phase (July - December, 2017)	6237	1112
Third Phase (January - October, 2018)	6344	1011
Fourth Phase (Since November, 2018)	625	116
<b>Total</b>	<b>18535</b>	<b>3441</b>

### Valuation Examinations

IBBI, being the authority, under the Companies (Registered Valuers and Valuation) Rules, 2017, commenced the valuation examinations for the asset classes of: (a) Land and Building, (b) Plant and Machinery and (c) Securities or Financial assets on 31<sup>st</sup> March, 2018. The test administration of valuation examinations has been assigned to BSE Institute Limited, which offers computer based online examinations from several locations across India. A candidate may register and schedule the examination on IBBI's website viz, www.ibbi.gov.in. The details of the examination are given in Table 22.

Table 22: Valuation Examinations

Phase / Quarter	Number of Attempts (some candidates made more than one attempt) in Asset Class			Number of Successful Attempts in Asset Class		
	Land & Building	Plant & Machinery	Securities or Financial Assets	Land & Building	Plant & Machinery	Securities or Financial Assets
First Phase (Mar - Dec, 2018)	6727	1011	2129	1229	189	280

In pursuance of rule 5(3) of the Companies (Registered Valuers and Valuation) Rules, 2017, IBBI, being the Authority, published the revised syllabus, format and frequency of the valuation examination for all the three asset classes on 31<sup>st</sup> December, 2018. The revised syllabus is effective for Examinations from 1<sup>st</sup> April, 2019.

## Building Ecosystem

### IP Workshops

IBBI has been organising two-day workshops for newly registered IPs with a view to build their capacity. It organised two workshops, 11<sup>th</sup> and 12<sup>th</sup> in the series, during the quarter. In the workshop held at Chandigarh on 30<sup>th</sup> November-1<sup>st</sup> December, 2018, 54 IPs participated. In Pune, 26 IPs took part in the workshop on 21<sup>st</sup>-22<sup>nd</sup> December, 2018.



Workshop for IPs in Chandigarh on 30<sup>th</sup> November-1<sup>st</sup> December, 2018



Workshop for IPs in Pune on 21<sup>st</sup> -22<sup>nd</sup> December, 2018

### IP Conclave

IBBI, in association with all three IPAs organised an IP Conclave on 1<sup>st</sup> December, 2018 in Hyderabad. Over 400 IPs and RVs participated in the Conclave.

At the conclave, Mr. T. V. Narendran, Global CEO & Managing Director, Tata Steel Limited and Chairman of Tata Steel BSL Limited stated that as compared to regular merger and amalgamation activities, acquisition of a stressed asset through CIRP is challenging. In case of former, buyer

negotiates terms, puts them into a contract and closes the deal. However, in the later case, considerable time lapses between due diligence and approval of the resolution plan by the AA. It is the RP who keeps the asset intact during this period. CIRP yields better outcomes where the RP has the ability to do so and inspires confidence of stakeholders.

Dr. M. S. Sahoo, Chairperson, IBBI informed that the IBBI is shepherding two brand new professions, namely, IPs and RVs. He impressed upon the distinct approach followed by IBBI for regulation and development of these two professions wherein unlike other professions, only fit and proper persons are eligible for registration as IP/RV and they are subject to a two-tier, regulated self-regulation involving enrollment with IPA / RVO as a member followed by registration with the IBBI.

Hon'ble Justice Mr. M. M. Kumar, President, NCLT stated on the occasion that the Code places controls in the hands of the IP and CoC. Therefore, IP and CoC must act in a responsible manner while keeping in mind the interest of all the stakeholders. The IP must guide the CoC as to what is permissible and what is not. He must keep himself updated on all the developments under the Code, including judgements/orders issued by various benches of NCLT, NCLAT, and the Supreme Court, considering the dynamic nature of insolvency regime at this nascent stage.



IP Conclave in Hyderabad on 1<sup>st</sup> December, 2018

### Webinars

With a view to provide clarity on the provisions of the regulations and circulars to IPs and other stakeholders, IBBI participated in a webinar. The webinar was organised by IIIP of ICAI on 18<sup>th</sup> October, 2018 on recent amendment to regulations, which was viewed by about 12000 participants.

### Roundtables

IBBI organised four roundtables - two in Kolkata on 2<sup>nd</sup> and 9<sup>th</sup> November, 2018, one in Delhi on 30<sup>th</sup> October, 2018 and the other in Mumbai on 3<sup>rd</sup> November, 2018 - for seeking comments of the stakeholders on CIRP and corporate liquidations.



Roundtable on CIRP at New Delhi on 30<sup>th</sup> October, 2018

### International Roadshows

IBBI, jointly with Consulate General of India and FICCI organised a conference on 'Insolvency and Bankruptcy Code – A New Paradigm for Stressed Assets' on 5<sup>th</sup> December, 2018 at the Consulate General of India, New York, USA.

While inaugurating the conference through video link, the Hon'ble Union Minister of Finance and Corporate Affairs, Mr. Arun Jaitley stated that despite the initial difficulties, the outcome of implementation of the Code has been better than he anticipated. It has significantly changed the lender-borrower relationship in India. Highlighting the investment opportunities emerging from the processes under the Code, he stated that given the future potential of the Indian economy, and the fair process followed under the Code, it is a great opportunity for investors who are seriously thinking about investing in India. There cannot be a better opportunity than the present one which is being offered through the Code, he said. "This is the right time and right place to be in India for these kinds of investments", Mr. Jaitley remarked.

The other eminent speakers at the conference included Dr. M. S. Sahoo, Chairperson, IBBI; Mr. Sanjeev Sanyal, Principal Economic Advisor, Ministry of Finance; Mr. Sandeep Chakravorty, Consul General of India in New York; Dr. Arunish Chawla, Minister Economic, Embassy of India; Mr. Shardul Shroff, Executive Chairman and National Practice Head, Insolvency & Bankruptcy, Shardul Amarchand Mangaldas & Co.; Dr. Mamta Suri, Executive Director, IBBI; Mr Manish Aggarwal, Partner, Head - Resolutions & Restructuring Special Situations Group, KPMG; and Ms. Jyoti Vij, Deputy Secretary General, FICCI.



Conference at New York on 5<sup>th</sup> December, 2018

The Conference was followed by a roundtable with prospective stakeholders, including large fund houses and law firms. This was followed by a roundtable on Indian insolvency regime in the Consulate General of India, Toronto, Canada on 7<sup>th</sup> December, 2018.

# Advocacy and Awareness

## Moot Competition

IBBI, jointly with NLU, INSOL India, SIPI and UNCITRAL RCAP organised the second moot in the series on insolvency and bankruptcy on the theme 'Process Memorandum and Resolution Plan'. Prestigious institutions of law from all over the country participated in the moot. The preliminary rounds involved parties presenting their resolution plans before the RP and the CoC. The Semi Final and the Final were based on a mock proceeding before the NCLT dealing with an approval of a resolution plan. The final round was held on 17<sup>th</sup> November, 2018 between teams from Gujarat National Law University Gandhinagar (GNLU) and UPES, Dehradun. It was adjudicated by a panel comprising Dr. M. S. Sahoo, Chairperson, IBBI; Dr. Mukulita Vijayawargiya, Whole-Time Member, IBBI, Ms. Pooja Mahajan, Mr. Sanjay Bhatt and Mr. Ketan Mukhija. The team from GNLU emerged victorious and UPES Dehradun finished as Runners-up in the competition.



Moot competition on 17<sup>th</sup> November, 2018

## IBBI-Vidhi Conference

IBBI and Vidhi jointly organised a conference titled 'Insolvency and Bankruptcy Code, 2016: A Roadmap for the Next Two Years' on 18<sup>th</sup> December, 2018 in New Delhi. The conference brought together key stakeholders to distil learning from the implementation of the Code over the last two years and draw a roadmap for further development of the insolvency eco-system over the next two years.

Mr. Arun Jaitley, Hon'ble Union Minister of Finance and Corporate Affairs, inaugurated the conference and suggested the issues relating to CIRP for deliberation: (a) role and rights of the operational creditors; (b) framework for cross border insolvency; (c) scope of related parties under section 29A; (d) special dispensation for the MSME sector; (e) strengthening the

institution of NCLT and NCLAT; and (f) provision of an alternative mechanism of settlement to deal with insolvency, parallel to the Code.

The conference featured four panel discussions and a valedictory address by Dr. Rajiv Kumar, Vice-Chairman, NITI Aayog. The Conference witnessed the launch of the book "Insolvency and Bankruptcy Code: The journey so far and the road ahead", a joint publication of Vidhi and Ernst & Young in the hands of Mr. Jaitley.



IBBI-Vidhi Conference on 18<sup>th</sup> December, 2018

## Awareness Programmes

The Chairperson, Whole Time Members and other senior officers of IBBI participated in several programmes (conferences, seminars, round tables, workshops, etc.) on insolvency and bankruptcy across the country as guest speakers. These include programmes organised by FICCI, Assocham, PHDCII, ICAI, ICAI (Cost), ICSI, IPAs, and RVOs.

IBBI, in association with the three IPAs, organised an insolvency and bankruptcy awareness programme on 14<sup>th</sup> December, 2018 at Guwahati. Hon'ble Mr. Justice P. K. Saikia, Member (Judicial), NCLT inaugurated the programme. Various stakeholders, including students, professionals, bankers, and business persons participated.

Another awareness programme was organised at Shillong on 15<sup>th</sup> December, 2018. Mr. P. K. Agrahari, Secretary (Finance), Government of Meghalaya spoke on the occasion. The participants included students, teachers, professionals, bankers, and business persons.



Awareness programme at Guwahati on 14<sup>th</sup> December, 2018



Awareness programme at Shillong on 15<sup>th</sup> December, 2018



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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.