

Walking the Regulatory Tightrope

K. R. Saji Kumar

'Regulators, under unprecedented pressure, face a range of demands, often contradictory in nature: be less intrusive – but more effective; be kinder and gentler – but don't let the get away with anything; focus your efforts – but be consistent; process things quicker – and be more careful next time; deal with important issues – but do not stray outside your statutory authority; be more responsive to the regulated community – but do not get captured by industry.'

Prof. Malcolm K. Sparrow¹ (Harvard University)

REGULATION AND REGULATORS

Regulation is quite pervasive in our contemporary society. It is a key socio-economic tool for both policy development (regulatory design) and policy implementation (regulatory delivery mechanism).² A 'good quality regulation' should meet five criteria viz., democratic legitimacy, accountability of the regulator, fair, accessible and open procedures, expertise and efficiency.³ Additionally, good regulation should emphasise on the achievement of the outcomes rather than mere technical compliance.⁴

Regulators function in a polycentric environment, at the interface among public authorities, the private sector and the stakeholders. They can best be labelled as the 'referees' of the markets.⁵ As public institutions they help guarantee access to and the quality of key public services and enhance market efficiency. They play a pivotal role in driving fiscal discipline and preserving confidence in the markets. As 'referees', they must strive to balance conflicting interests of diverse stakeholders by utilising principles of good governance, to ensure justice-oriented outcomes. Essentially, a regulator must act objectively, impartially and consistently, without prejudice, fear, apprehension or undue influence.

In the Indian regulatory landscape, systemic economic reforms in the year 1991 led to the setting up of several independent sectoral regulators to check market distortions and safeguard the interests of the beneficiaries. The regulators have partaken in supporting the stakeholders and have assumed themselves the task of 'drivers of development'.⁶ A bulk of these reforms focused on the financial sector stability and strengthening the legal and institutional framework for speeding up the process of recovery of debts. However, the

¹ Sparrow, Malcolm K. (2000). *The Regulatory Craft- Controlling Risks, Solving Problems, and Managing Compliance*. Brookings, p. 17.

² Organisation for Economic Co-operation and Development (OECD), (2016). *Being an Independent Regulator, The Governance of Regulators Series*.

³ Baldwin, Robert., Cave, Martin., and Lodge, Martin (2012). *Understanding Regulation: Theory, Strategy and Practice*. 2nd ed, OUP, p. 25.

⁴ Black, Julia. (2008). *Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes*. *Regulation and Governance* 137.

⁵ OECD (2016). *supra* note 2.

⁶ Gopal Jain. (August 28, 2019). *Why India needs empowered regulators to partner in economic growth*, *Business Today*.

insolvency landscape was highly fragmented with several overlapping laws being implemented in an unpredictable manner in different fora, without any coordination. Resultantly, India needed a policy shift towards a definite and structured framework of laws and a centralised point of access to information.

WINDS OF BEHAVIOURAL TRANSITION

Pertinently, the enactment of the Insolvency and Bankruptcy Code, 2016 (Code), hailed as a key economic reform, changed the legal and economic rescue landscape in India. It is a reform, probably, much deeper than GST,⁷ and has already demonstrated early signs of behavioural changes amongst the various market players. As a progressive economic legislation, the Code has shifted the balance of power from the debtor to the creditor. It has instilled a significantly better sense of fiscal discipline and ascribed greater certainty of outcome of the insolvency and bankruptcy processes. The Code has adopted the principle of mercantile law that 'the law should follow the merchant and not vice versa'.⁸ The Code and the regulations have been designed and implemented to suit the prevailing business practices, as per this mercantile law principle. The entire regulatory framework under the Code has been instituted to proactively lead the winds of change and dispel information asymmetry. Many major reforms were triggered by the Government in order to facilitate the swifter implementation of the Code. It was recognised that robust institutional frameworks should be put in place to attribute judicial and legislative certitude, as well as orderly conduct of processes under the law. With this thought-process, the Insolvency and Bankruptcy Board of India (IBBI) was conceived and crafted by the Code and was established on October 1, 2016. As the Indian insolvency regulator, it is tasked to formulate enabling ecosystem and regulatory framework, *inter alia*, for implementation of corporate processes which commenced on December 1, 2016.

Positioning

IBBI is touted as the key pillar of the insolvency and bankruptcy institutional infrastructure. Its remnants can be traced to the suggestions made by the Bankruptcy Law Reforms Committee (BLRC)⁹ and the Working Group-I.¹⁰ It was envisioned as the supervisor of the institution of insolvency professionals, as well as other regulatory entities, for the overall insolvency and bankruptcy processes in the country.¹¹ As regards the functions of IBBI, the BLRC recommended four strands of activities *viz.*, malleability in the operations- to be achieved through a formal regulation making process, performing legislative, executive and quasi-judicial functions vis-à-vis the two regulated entities of information utilities and also insolvency professionals and agencies, and maintenance and public release of granular data about the working of all the insolvency and bankruptcy transactions.¹² The objective of IBBI, as outlined by the BLRC, is to utilise all its legislative, executive and quasi-judicial functions to achieve a well-functioning bankruptcy process in India.¹³ No doubt, IBBI is a unique regulator as its regulatory functions

⁷ The Central Goods and Services Tax Act, 2017

⁸ William Murray, 1st Earl of Mansfield

⁹ The Report of the Bankruptcy Law Reforms Committee (BLRC)- Volume I: Rationale and Design. November 2015.

¹⁰ Report of the Working Group- I- Building the Insolvency and Bankruptcy Board of India (Design of the Board). Ministry of Corporate Affairs, Government of India.

¹¹ *Supra* note 9 at p. 38 (Para 4.1.5).

¹² *Supra* note 9 at p. 35

¹³ *Supra* note 9 para 4.1.3

are distinctive in nature. It is mandated, *inter alia*, to make regulations for registering, monitoring and guiding individual professionals and professional entities. IBBI performs its functions subject to the general directions of the Central Government. However, the Government does not intervene in the day-to-day affairs of IBBI. It sends three of its officers at the level of Joint Secretary representing the Ministries of Finance, Corporate Affairs and Law and Justice, as *ex-officio* members, besides having a nominated member of the Reserve Bank of India.

Specific Role

The functions of IBBI are stipulated in section 196 of the Code. Like a financial sector regulator, it has, broadly, three sets of functions, such as:

- *Legislative*: Making regulations for market intermediaries (service providers) and processes;
- *Executive*: Registering and regulating service providers for the insolvency process and taking measures for professional development and expertise for the market players through education, examination, training and continuous professional education; and
- *Quasi-judicial*: Adjudication of service providers for ensuring their orderly growth, development and functioning.

Besides the above, IBBI also prosecutes persons who contravene the provisions of the Code and thus assumes enforcement functions. It, therefore, acts as a regulator that writes down the norms by way of regulations for the insolvency and bankruptcy process but does not *per se* partake in the process. The processes under the Code are private affairs of corporates and individuals. IBBI does not get into any financial or strategic business decisions of either the persons in distress or the ones whose financial exposure is in distress. However, it facilitates smooth conduct and culmination of the processes for the stakeholders by making regulations, within the secondary legislative powers offered by the Code. By registering the professionals and monitoring their performances during the processes, IBBI exercises executive functions. It carries out investigation and inspection of the insolvency professionals and professional entities for alleged violations of the law, thereby discharging adjudicatory functions. While disciplining the professionals who contravene the regulations during the process, IBBI assumes quasi-judicial functions as well. Thus, the role of IBBI is by and large administrative, regulatory, enforcement-oriented and quasi-judicial in nature. This makes IBBI distinct from many other regulators.

Exercise of Regulatory Functions

As discussed, IBBI performs functions generally for regulating the conduct of professionals and professional entities, and facilitating the processes. Section 196(1) (aa) of the Code is similar to the functions of the Securities and Exchange Board of India (SEBI) under section 11(1) of the Securities and Exchange Board of India Act, 1992. However, SEBI's powers are wide enough to protect the interests of investors in securities market and also to promote and develop the market by resorting to any measure that SEBI may think fit. IBBI does not have such outspread functions but are limited to promoting the development and regulation of working and practice

of professionals and professional agencies, information utilities and other institutions, in furtherance of the purposes of the Code. IBBI cannot take any measure to achieve the above said purposes. This restrains it from an absolute development of the insolvency and bankruptcy regime, and taking all measures for the betterment and advancement of the insolvency and bankruptcy realm in the country, much beyond the limited development and promotion of professions and professional entities. Besides the usual regulatory functions, IBBI also publishes information, data, research studies and other information. This function of IBBI is oriented towards forging alliance with the academia. Since it has been entrusted with writing regulations for the conduct of processes, knowledge building is necessary to position it as a repository of information to strengthen the regulatory goals. In order to reach out to the masses, IBBI maintains website for maximum dissemination of information. Aggregation and maintenance of records relating to insolvency and bankruptcy cases and their publication for information is one of its other important functions. It is interesting that IBBI has disseminated more than seven thousand orders on its website in the less than two years' of their evolution, to ensure that the stakeholders are not deprived of the day-to-day judicial developments.

REGULATORY GOALS BY REGULATIONS

Pursuing regulatory goals involves an interplay between various policy choices. While implementing the policies, a pertinent question arises as to whether the concerned legislation should regulate the area directly or should it delegate some part of the regulatory endeavour to a specialised statutory body or a body corporate. By and large, with enhanced Governmental remit, delegated/subordinate legislation has become a favoured route of Governments *en route* socio-economic policy implementation. The Code, by section 240, vests with IBBI the responsibility to make regulations for effectively 'carrying out' the provisions of the Code (enabling Act/legislation). It is one strand of the regulatory authority conferred on IBBI for pursuing the general and specific public policy goals enunciated in the Code. It helps in fleshing out the operational terms and procedures of the insolvency and bankruptcy regime instituted by the Code. These regulations, however, must satisfy the test of consistency with the Code and the rules made thereunder and shall be laid, as soon as possible, before each House of Parliament to ensure Parliamentary control over delegated legislation. While sub-section (1) of section 240 provides for making regulations consistent with the Code and the rules, sub-section (2) postulates the specific circumstances of regulatory mandate. In exercise of this specific provision, so conferred, IBBI has made regulations, *inter alia*, regulating the Information Utilities¹⁴, liquidation process¹⁵, corporate insolvency resolution process¹⁶, insolvency professionals¹⁷, etc.

Democratic Regulation Making

Increasingly, with the turn towards deliberative democracy, IBBI has developed a transparent and consultative process to regulation making. It seeks to bridge the gulf between the regulator, the regulated and other stakeholders. As a responsible and receptive regulator, it

¹⁴ The IBBI (Information Utilities) Regulations, 2017.

¹⁵ The IBBI (Liquidation Process) Regulations, 2016.

¹⁶ The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

¹⁷ The IBBI (Insolvency Professionals) Regulations, 2016.

invites comments from the public on draft regulations notified under the Code. Besides regulatory impact assessment / analysis, public consultation and participation is one of the key regulatory gears employed by Government or its instrumentalities to enhance transparency, efficacy and effectiveness of regulation.¹⁸ The Code neither mandates consultation with the Central Government nor seeks Government approval before regulations are made by IBBI. Section 196(1)(s), provides for 'making regulations for issuing regulations' giving opportunity to the regulated by the regulator to present their views and suggestions before a particular regulation is actually made and implemented by IBBI. This public participation mechanism is a rarity in the Indian regulatory landscape. Expert views of Advisory Committees and Working Groups are also sought before a policy framework on regulations is made. Roundtables and similar stakeholder consultations are also undertaken before policy decision for making regulations are formulated. The ideas and views from all these are crystallised and draft regulations are published on the website of IBBI to elicit public opinion. IBBI considers the views of the stakeholders and then a final regulatory decision is taken by the Governing Board before regulations are published in the Official Gazette. IBBI also voluntarily offers an all year long online public consultation process on regulation making. Suggestions of the general public are obtained in an online format, including suggestion to make amendments to the Code and the Regulations, which are considered at the end of every financial year for review. Time is the essence of the Code and this is reflected in various provisions. Section 196(1)(t), thus provides for making regulations and guidelines on matters relating to insolvency and bankruptcy, including mechanism for time bound disposal of the assets of the Corporate debtor or debtor keeping in mind the true spirit of the Code.

Inspection and/or Investigation

The Code requires IBBI¹⁹ to carry out inspection and/or investigation of the professionals and professional entities. Generally, an inspection or investigation is undertaken by a regulatory authority on a complaint by any aggrieved person or where there is reasonable ground to believe that the regulated entity has contravened any provisions of law, primary or secondary. The Code provides inspection *or* investigation to be conducted by any person or persons within a time period as directed by it. However, it is interesting to note that the person carrying out 'inspection' *or* 'investigation' is regarded in the Code as 'investigating authority' and not 'inspection authority'. It, thus mandates inspection *or* investigation to be conducted by a person or persons by 'investigating authority' only. Both inspection and investigation are different in pith and substance in terms of the procedure and process adopted. Inspection is sifting through the documents and scrutiny of existing material or record; however, investigation entails formal deep delving into facts and figures, involving proper exploration and understanding of the violations committed by the regulated entity. The Code has not clearly made a distinction between inspection and/or investigation, and a strict contradistinction between these two procedures, therefore, appears to be necessary. Detailed procedure for conducting inspection *or* investigation by the investigating authority is contained in section 218 but it only envisages conclusion of 'investigation' but silent about 'inspection' in sub-section (5) thereof.

¹⁸ OECD. Background Document on Public Consultation., https://www.mcgill.ca/law-studies/files/law-studies/sao_handbook2017_2018.pdf

¹⁹ Sections 217-220 of the Code

Interestingly, sub-section (6) of section 218 mandates a detailed report of 'inspection or investigation' to be submitted to IBBI by the 'investigating authority'. In view of the above, inspection and investigation provisions of the Code warrant rationalisation.

Expedited Regulatory Intervention

It is expected that IBBI takes immediate market intervention in matters of contraventions without waiting for detailed report submitted by the investigating authority on completion of inspection or investigation. It is interesting that the Code²⁰ provides for issuing show cause notice after completion of 'inspection or investigation' and yet again carrying out 'inspection'. This appears to be a repetitive, time consuming and unconscionable exercise. IBBI appoints disciplinary committee²¹ to consider reports of the investigating authority and to further deal with matters covered under the report and dispose of the same. There appears to be no logic in issuing show-cause notice after completion of the inspection or investigation. IBBI cannot wait for an inspection or investigation report before proceeding against a regulated entity which contravenes the law that warrants immediate intervention. The disciplinary action by the committee should not be defeated for want of a report from the inspecting or investigating authority. IBBI must be able to immediately intervene in any market manipulation and thwart an attempt to derail the course of a process or cause damage to a process. IBBI must be able to temporarily suspend or cancel registration of a regulated entity pending inspection or investigation and without any report thereon. It is essential for an important regulator such as IBBI to intervene and contain a market malpractice and to call for information relating to any contravention of process and also to detect and prevent violations. It must also be able to give directions to the market participants, including intermediaries, for any contraventions of law and process. Preventive action is also important for effective market regulation. IBBI must ideally possess authority to issue cease and desist orders, if it finds that there is any violation or likely violation of provisions of law as course correction alone would not always be helpful in efficacious market regulation.

Disciplinary Action

Besides carrying out inspection and investigation of the professionals and professional entities, the Code also mandates monitoring their performance as to legal compliance and may call for information and records. Mechanism is also put in place for redressal of grievances against them and to pass orders relating to complaints against regulated entities. Law requires professionals,²² to comply with professional behaviour and conduct. No authority except the disciplinary committee appointed by IBBI is authorised to initiate, hear and dispose of disciplinary proceedings against professionals and professional entities. There have been trends of Adjudicating Authority (AA) taking over this disciplinary burden of IBBI, which are reflected in some of their decisions. In a matter,²³ the AA observed that the show cause notice issued by IBBI deserved to be recalled. Further, the AA directed all disciplinary proceedings initiated by the IBBI against the insolvency professional be quashed and the matter was treated

²⁰ Section 219 of the Code

²¹ Section 220 of the Code

²² Section 220; regulations 11 and 7(2)(h) r/w the Code of Conduct in the First Schedule to the IBBI (Insolvency Professionals) Regulations, 2016

²³ *Punjab National Bank v. Rana Global Ltd.* [(IB)-196(ND)2018]

as closed. The National Company Law Appellate Tribunal (NCLAT), however, set aside the order of the AA²⁴ which quashed the disciplinary proceedings initiated against the professional by IBBI and observed that once a disciplinary proceeding is initiated by IBBI on the basis of evidence on record, it is for IBBI to close the proceeding or pass appropriate orders in accordance with law. It further held that the AA is not vested with powers to discipline professionals under the Code.

Section 236 of the Code and Section 213 of the Companies Act, 2013

In a matter²⁵, the NCLAT, nullified the effect of section 236(2) of the Code that provides for filing complaints by IBBI before the Special Courts for taking cognizance of offences committed by market participants and punishable under sections 68 to 77 and section 235A of the Code. The NCLAT directed the committee of creditors to move an application under section 213 read with section 447 of the Companies Act, 2013 before the AA, for it to decide as to whether a reference to IBBI or the Central Government was required for taking any action under section 74(3), which provides for punishment for contravention of resolution plan. Section 213 of the said Act, relating to investigation into the affairs of a company, is for providing opportunity to the concerned parties before an investigation by an inspector is undertaken, into the affairs of the company. The logic behind giving opportunity to the parties concerned is that the tribunal must be satisfied that it is justifiable to investigate into the affairs of the company, as it is an extraordinary affair. The tribunal needs to ensure as to whether the business of the company is conducted to defraud the creditors, equity holders and others or the business itself is fraudulent or unlawful, which would be brought to light only after investigation. Similar opportunity to the accused, who has contravened provisions of the Code, is against the scheme of the Code and there is no concept of 'inspectors' and 'investigation' under it. A private complaint is filed before a Special Court by IBBI or the Central Government to facilitate 'taking cognizance of offence' and no investigation is necessary before setting criminal law into motion as per section 236(2) of the Code. Mixing up criminal prosecution under the Code and the Companies Act creates confusion. Probably, the role of the IBBI as a regulator to approach the criminal court has not been fully understood in this matter and this poses a big block in building discipline in the insolvency and bankruptcy regime.

Judicial Interplay and Regulations

Rendition of the Code in the light of judicial interplay has been echoed in so many pronouncements touching the Code and the regulations made thereunder. In the matter of *ArcellorMittal India Private Limited v. Satish Kumar Gupta & Ors.*²⁶ the Supreme Court observed that the model timeline under regulation 40A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) is of utmost importance and that all the authorities concerned with the process of resolution should follow this timeline as closely as possible. In *Francis John Kattukaran v. The Federal Bank Ltd. & Anr.*,²⁷ the NCLAT held that regulation 30A of the CIRP Regulations, which refers to the process of withdrawal of

²⁴ *Punjab National Bank v. Rana Global Ltd.* [(IB)-196(ND)2018 CA 781 of 2018]

²⁵ *Committee of Creditors of Amtek Auto Ltd. through Corporation Bank v. Mr. Dinkar T. Venkatasubramanian & Ors.* [Company Appeal (AT) (Insolvency) No. 219 of 2019]

²⁶ (2019) 2 SCC 1

²⁷ Company Appeal (AT) (Insolvency) No. 242 of 2018

application, do not have an overriding power over the substantive provisions of the Code and that the regulation cannot override section 12A of the Code, which provides for withdrawal by the applicant, and not the resolution professional. In *K. Sashidhar v. Indian Overseas Bank*,²⁸ the apex court declared that the regulations 25 and 39 of the CIRP Regulations should always be read in the light of the substantive provisions contained in section 30(4) of the Code and a harmonious approach should be adopted during the process of interpretation.

In the matter of *Sharad Sanghi and others v. Vandana Garg and Others*,²⁹ the AA held that a certain regulation is completely directory in nature and it does not have the power to override the power of the committee of creditors.

In *Swiss Ribbons Private Limited & another v. Union of India & others*³⁰, the apex court upheld the constitutional validity of the Code on the basis that post amendment, the CIRP Regulations, 2016, give priority to operational creditors under the resolution plan over the financial creditors. This clearly states the importance of a regulation in terms of determining the Constitutional validity of the Code.

In *State Bank of India v. Su Kam Power Systems Ltd*,³¹ the AA held that regulation 36A of CIRP Regulations is *ultra vires* section 240(1) of the Code because speed is the essence of CIRP and inviting 'Expression of Interest' would impede the process referred to in section 240(1). This poses a great challenge in building a strong insolvency ecosystem, although the decision of the AA stands stayed by the High Court.

Institutional Goals

Every law brings about some behavioural change, so has the Code. The effect of behavioural change triggered by a law depends on its impact on the stakeholders (the regulated), the market mechanisms and also the regulatory endeavours undertaken by the authority (the regulator). A regulator must justify its action(s). IBBI has already established its position in the market as a responsive statutory body that attends and addresses the institutional and plethora of other issues in functional way. It has striven to design and define its path by capturing the available market wisdom and expertise and also understanding the needs of the stakeholders. It has streamlined compliance and increased efficiency for the regulated entities along with promoting growth, supporting competition and innovation.

CONCLUSION

Credibility of a regulator, as an institution, rests on consistency of thought and action coupled with scientific vision. Regulators lay down their path within the applicable law and decide the distance they want to travel. It is the endeavour of every regulator to 'go by' the law and not to 'go to' the law, as the latter leads to diminution of the very institution of the regulator. Effective regulation by the regulator is accomplished not by mere legal compliance but identifying its regulatory path. Autonomy of the regulator is visible through the prism of democratic legitimacy and/or regulatory accountability to the consumers and to the society in general.

²⁸ 2019 (3) SCALE 6.

²⁹ Company Appeal (AT) (Insolvency) No. 461 of 2018 [(Arising out of Order in MA Nos. 491/2018, 341/2018, 515/2018, 410/2018, 91/2018, IA Nos. 35/2018 & 30/2018 in CP (IB) 1137 (MB) 2017), Company Appeal (AT) (Insolvency) No. 464 of 2018, Company Appeal (AT) (Insolvency) No. 548 of 2018.

³⁰ (2019) 4 SCC 17.

³¹ C.P. No. (IB) – 540 (PB)/ 2017.

Regulators need to understand their business well and that it is done easily, timely and effectively. The profits and gains of doing regulatory business is assessed, may be from lesser market interventions and not probably from over-regulation.

Regulatory travel is formidable, and every regulator is destined to balance a tightrope walking. IBBI's journey is not an exception. It has been treading a fair, accessible and broad approach to regulation. The regulatory discourse initiated by IBBI in the insolvency ecosystem is intertwined with fostering 'rule of law' and meta regulation. As stated by our first full-time Finance Minister in her maiden budget speech recently, *Karya purusha karena lakshyam sampadyate*, which means, with determined human efforts,³² the task will surely be completed. It is envisioned that IBBI will be able to accomplish its diverse tasks going by the spirit of this *Chanakya Niti*.

³² *Chanakya Niti* (Sanskrit).

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Insolvency Professionals and the Code of Conduct

Mukulita Vijayawargiya

“Where your talent and the needs of the world cross, there lies your purpose.”

Aristotle

In today's world, the success or failure of any activity depends upon the kind of professionals involved. The professionals are persons having domain knowledge and experience. In the era of super speciality, their role has become more significant. There are as many professions as the numbers of activities or services. No individual, institution or industry works without professionals. Professionals, by and large, are associated with trade and business of every sector. They are responsible for a higher rating of any institution or industry or establishment. In other words, professionals lay down the benchmark for their quality, efficiency and good governance. In business, failures are due to managing the business in an unprofessional manner or not engaging the right professionals or intentionally not following the advice of the professional. Obviously, this results into the state of insolvency.

Since ancient times, though professionals are revered, the credibility of any individual has been measured across all civilisations in terms of the state of solvency. It has been seen that an undischarged insolvent is disqualified to occupy public offices under various laws. Thus, society and the system of governance do not take the state of insolvency in a good taste. Further, the state of insolvency is not limited to individuals but extends to the universe of corporate persons having limited liability. The business plans of corporates, as per the usual market practice, are incomplete without debt component. Large number of corporate debtors are defaulters and account for huge non-performing assets thereby adversely affecting the economic growth of the country. The findings of the World Bank in its Report (2014), especially with regard to time taken in recovery of debts and rate of recovery, have been matters of grave concern for the ease of doing business. To address these issues and other related issues, the Insolvency and Bankruptcy Code, 2016 (the Code) has been enacted which contemplates special class of Insolvency Professionals (IPs) from various streams of professions.

LEGAL FRAMEWORK

The legal framework for insolvency and bankruptcy prior to the enactment of the Code was inadequate and ineffective. There have been undue delays in resolution of issues despite special laws being in place for the recovery actions by creditors, for example, in case of corporates, the Recovery of Debts Due to Banks and Financial Institution Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interests Act, 2002, the Sick Industrial Companies (Special Provisions) Act, 1985 and the winding up