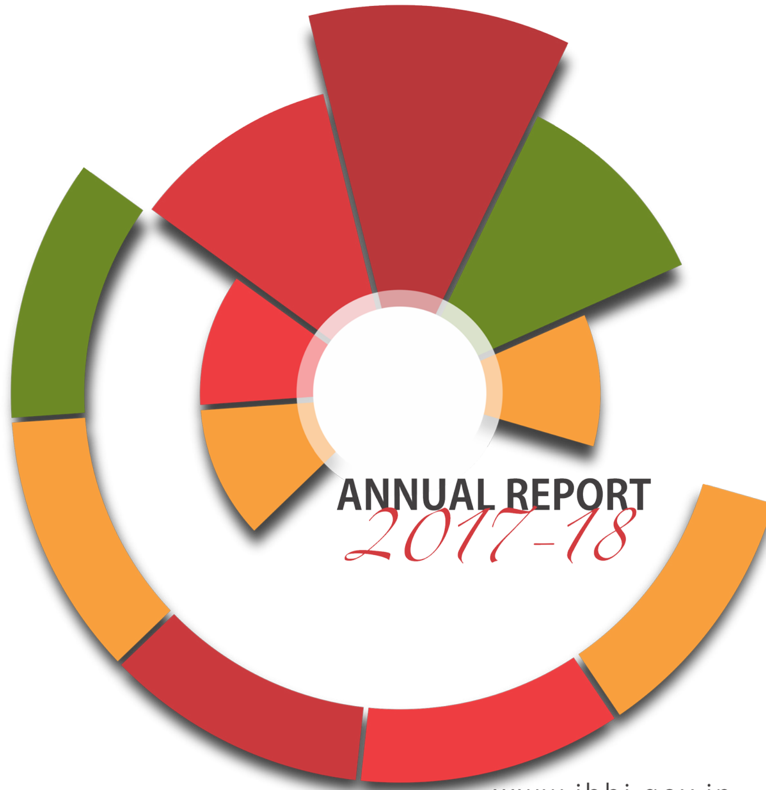
भारतीय दिवाला और शोधन अक्षमता बोर्ड
Insolvency and Bankruptcy Board of India

ANNUAL REPORT 2017-18

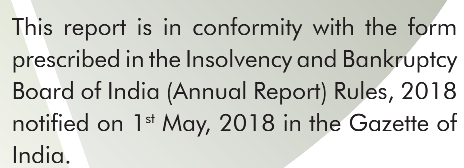
www.ibbi.gov.in

भारतीय दिवाला और शोधन अक्षमता बोर्ड

Insolvency and Bankruptcy Board of India



INSOLVENCY AND BANKRUPTCY BOARD OF INDIA



This report is in conformity with the form prescribed in the Insolvency and Bankruptcy Board of India (Annual Report) Rules, 2018 notified on 1st May, 2018 in the Gazette of India.

सत्यमेव जयते

Dr. M. S. Sahoo
Chairperson

भारतीय दिवाला और शोधन अक्षमता बोर्ड
Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan, Connaught Place
New Delhi-110001 Tel: +91 11 23462801
E-mail: chairperson@ibbi.gov.in Web.: www.ibbi.gov.in

बोर्ड-18011/2/2019-आई. बी. बी. आई.
दिनांक : 29 नवंबर, 2019

सचिव, भारत सरकार
कॉर्पोरेट कार्य मंत्रालय
'ए' विंग, शास्त्री भवन
नई दिल्ली -110001.

प्रिय महोदय,

दिवाला और शोधन अक्षमता संहिता, 2016 की धारा 229 के प्रावधानों के अनुसरण में, मैं भारत के राजपत्र में 1 मई, 2018 को अधिसूचित दिवाला और शोधन अक्षमता बोर्ड (वार्षिक रिपोर्ट) नियम, 2018 में निर्धारित प्रारूप में 1 अप्रैल, 2017 से 31 मार्च, 2018 तक की अवधि के लिए भारतीय दिवाला और शोधन अक्षमता बोर्ड की वार्षिक रिपोर्ट की एक प्रति अग्रेषित कर रहा हूँ।

भवदीय,

एम. एस साहु
(डॉ. एम. एस साहू)

संलग्न : उपरोक्तानुसार

The Secretary to Government of India
Ministry of Corporate Affairs
'A' Wing, Shastri Bhawan
New Delhi- 110 001.

Board -18011/2/2019-IBBI
29th November, 2019

Dear Sir,

In accordance with the provisions of section 229 of the Insolvency and Bankruptcy Code, 2016, I forward herewith a copy of the Annual Report of the Insolvency and Bankruptcy Board of India for the period 1st April, 2017 to 31st March, 2018, in the form prescribed in the Insolvency and Bankruptcy Board of India (Annual Report) Rules, 2018 notified on 1st May, 2018 in the Gazette of India.

Yours faithfully,

M. S. Sahoo
(Dr. M. S. Sahoo)

Encl.: As above.

THE GOVERNING BOARD

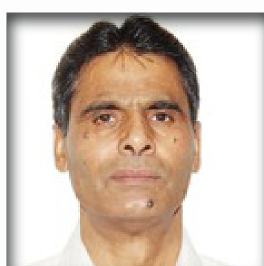
(As on 31st March, 2018)

CHAIRPERSON

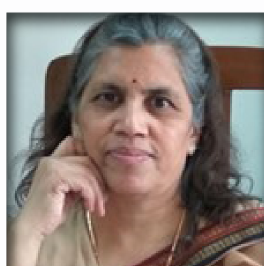
Dr. M. S. Sahoo

WHOLE-TIME MEMBERS

Ms. Suman Saxena



Dr. Navrang Saini



Dr. (Ms.) Mukulita Vijayawargiya

EX-OFFICIO MEMBERS

Dr. Shashank Saksena
Adviser - Department of Economic Affairs
Ministry of Finance

Mr. Gyaneshwar Kumar Singh
Joint Secretary
Ministry of Corporate Affairs

Mr. G. S. Yadav
Joint Secretary and Legal Advisor
Department of Legal Affairs, Ministry of Law & Justice

Mr. Unnikrishnan A.
Legal Adviser
Reserve Bank of India

CHAIRPERSON, WTMs AND SENIOR OFFICERS

(As on 31st March, 2018)

(Left to Right)

Sitting: Dr. Mukulita Vijayawargiya, WTM; Ms. Suman Saxena, WTM; Dr. M. S. Sahoo, Chairperson; Dr. Navrang Saini, WTM

Standing (first row): Mr. Ritesh Kavdia, ED; Mr. K. R. Saji Kumar, ED; Ms. Anita Kulshrestha, DGM; Dr. Mamta Suri, ED; Ms. Ranjeeta Dubey, GM; Mr. I. Sreekara Rao, DGM; Mr. Rameshwar Dhariwal, CGM

Standing (second row): Mr. Vijay Kumar, AGM; Mr. Dilip Khandale, DGM; Mr. Sunil Kumar, AGM; Mr. Debajyoti Ray Chaudhuri, CGM; Mr. Umesh Kumar Sharma, DGM

EXECUTIVE DIRECTORS

(As on 31st March, 2018)

Name	Divisions
Dr. Mamta Suri	Corporate Insolvency; Corporate Liquidation; Data Management and Dissemination; Finance and Accounts; Organisations (IU, IPA, IPE, RVO); Registered Valuers; Complaints, Grievance Redressal, Surveillance, Inspection and Investigation related to Registered Valuers.
Mr. Ritesh Kavdia	Human Resources; Establishment; Examinations; Information Technology and other processes; Insolvency Professionals; Complaints, Grievance Redressal, Surveillance, Inspection and Investigation related to Insolvency Professionals; Strategy and Cross Border Insolvency.
Mr. K. R. Saji Kumar	Individual Insolvency; Individual Bankruptcy; Continuing Professional Education; Knowledge Management and Partnership; National Insolvency Programme; Research and Publication; Legal Affairs; Adjudication, Prosecution and Court Proceedings; Board Secretariat; International Affairs; Communications; Parliament Cell and Right to Information Act.

CONTENTS

SECTION A: CHAIRPERSON'S STATEMENT............1

SECTION B: THE YEAR IN REVIEW.........................5

- The Macroeconomic Backdrop
- Major Policy Developments

SECTION C: POLICIES, PROGRAMMES AND ACTIVITIES..15

C.1 Service Provider

- Insolvency Professionals
- Insolvency Professional Entities
- Insolvency Professional Agencies
- Information Utilities
- Grievances and Complaints
- Inspection and Investigation
- Registered Valuers
- Registered Valuers Organisations

C.2: Processes

- Corporate Insolvency Resolution Process
- Fast Track Corporate Insolvency Resolution Process
- Corporate Liquidation
- Voluntary Liquidation
- Firsts Under the Code
- Individual Insolvency Resolution and Bankruptcy
- Mechanism for Issuing Regulations

C.3 Advocacy and Awareness

- Programmes
- Academic Engagements
- Newsletter

C.4 Research

SECTION D: FUNCTIONS OF THE BOARD 34

- Quasi-Legislative Functions
- Executive Functions
- Quasi-Judicial Functions

SECTION E: ANALYSIS OF OUTCOMES...............47

- Corporate Processes
- Emerging Jurisprudence

SECTION F: IMPACT OF THE CODE 63

- Ease of Doing Business
- Recovery by Banks
- Short to Medium Term Impacts
- Long Term Impact

SECTION G: PERFORMANCE OF THE BOARD 68

SECTION H: PERFORMANCE OF THE GOVERNING BOARD 71

SECTION I: FINANCIAL PERFORMANCE OF THE BOARD 79

SECTION J: COMPLIANCES WITH STATUTORY OBLIGATIONS 80

SECTION K: ORGANISATIONAL MATTERS 82

- Responsibility Centres
- Professional Membership
- Human Resources
- Delivery Design
- Right to Information

List of Box Items

1. Addressing Moral Hazard ... 8
2. Information Utilities ... 17
3. Shepherding Valuation Profession ... 20
4. IBC: A Code of Balances ... 22
5. Dooray Paved Doorway ... 52
6. Individual Insolvency: The Next Big Thing ... 72
7. Group Insolvency ... 74
8. Automating the Wheels of Commerce ... 76

List of Tables

1. Chronology of Policy and Regulatory Developments, 2017-18 ... 12
2. Amendments to CIRP and Fast Track Regulations ... 23
3. Firsts under the Code ... 26
4. Participation in Advocacy Events in 2017-18 ... 27
5. Details of Advocacy Events in 2017-18 ... 28
6. Winners of Research Writing Competition ... 33
7. Regulations Notified in 2017-18 ... 35
8. Subject wise Roundtables ... 36
9. Composition of Advisory Committee on Service Providers ... 36
10. Composition of Advisory Committee on Corporate Insolvency Resolution ... 37
11. Composition of Advisory Committee on Individual Insolvency and Bankruptcy ... 37
12. Registration of IPs ... 38
13. Distribution of IPs ... 38
14. Distribution of IPs as per their Eligibility ... 40
15. Recognised IPEs as on 31st March, 2018 ... 40
16. Workshops for IPs ... 41
17. Replacement of IRP with RP till 31st March, 2018 ... 41
18. IPAs Registered as on 31st March, 2018 ... 42
19. Details of information with the NeSL ... 43
20. Registered Valuers Organisations ... 43
21. Status of Limited Insolvency Examination ... 44
22. Receipt and Disposal of Grievances and Complaints ... 44

23. Circulars issued by the Board 45
24. Corporate Insolvency Resolution Process 47
25. CIRPs Admitted 48
26. Initiation of CIRPs 49
27. Sector-wise Distribution of CIRPs 49
28. Status of CIRPs 50
29. CIRPs Yielding Resolution, 2017-18 51
30. CIRPs Yielding in Liquidation 54
31. Distribution of CIRPs ending in Liquidation 54
32. Status of 12 Large Accounts 55
33. Voluntary Liquidations 56
34. Reasons for Voluntary Liquidation 56
35. Phasing of Voluntary Liquidations 56
36. Sector-wise Distribution of Voluntary Liquidations 57
37. Distribution of Liabilities of Voluntary Liquidations 57
38. Distribution of Assets of Voluntary Liquidations 57
39. DBR: India's Performance in Resolving Insolvency 63
40. NPAs of SCBs recovered through various channels 64
41. Attendance in Board Meetings 71
42. Income and Expenditure Statement, 2017-18 79
43. Statement of Compliance with Statutory Obligations 80
44. Governing Board of IBBI as on 31st March, 2018 82
45. Eligibility for various positions 84
46. Employees of IBBI 85
47. Distinguished Lectures in 2017-18 87
48. Training Programmes Attended by Officers of IBBI 88
49. Receipt and Disposal of Applications and Appeals in 2017-18 90

List of Figures

1. GDP, Credit and NPA Growth 5
2. Geographical Distribution of IPs as on 31st March, 2018 39
3. Month-wise Admission of CIRPs 48

Abbreviations

AA	Adjudicating Authority
AC	Advisory Committee
ALW	Administrative Law Wing
Advisory Committee Regulations	The IBBI (Advisory Committee) Regulations, 2017
AGM	Assistant General Manager
AM	Assistant Manager
ASSOCHAM	Associated Chambers of Commerce and Industry of India
BIFR	Board for Industrial and Financial Reconstruction
BLRC	Bankruptcy Law Reforms Committee
Board / IBBI	Insolvency and Bankruptcy Board of India
Board Regulations	The IBBI (Procedure for Governing Boards Meetings) Regulations, 2017
BRICS	Brazil, Russia, India, China, South Africa
BSE	Bombay Stock Exchange
C&AG	Comptroller and Auditor-General of India
CAFRAL	Centre for Advanced Financial Research and Learning
CCI	Competition Commission of India
CD	Corporate Debtor
CGM	Chief General Manager
CICs	Credit Information Companies
CII	Confederation of Indian Industry
CIMSME	Chamber of Indian Micro Small and Medium Enterprises
CIRP	Corporate Insolvency Resolution Process/Processes
CIRP Regulations	The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
CMIE	Centre for Monitoring Indian Economy
CoC	Committee of Creditors
Code / IBC	The Insolvency and Bankruptcy Code, 2016
CoP	Certificate of Practice
CPGRAMS	Centralised Public Grievance Redress and Monitoring System
CPIO	Central Public Information Officer
CVSRTA	Centre for Valuation Studies, Research and Training Association
DBR	World Bank's Doing Business Report
DC	Disciplinary Committee
Delegation Order	The IBBI (Delegation of Powers and Functions) Order, 2017
DGM	Deputy General Manager

Draft Valuers Rules	Draft Companies (Valuers and Valuation) Rules, 2017
DRT	Debt Recovery Tribunal
ED	Executive Director
Examination	Limited Insolvency Examination
FAA	First Appellate Authority
Fast Track Regulations	The IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017
FC(s)	Financial Creditor / Creditors
FIs	Financial Institutions
FICCI	Federation of Indian Chambers of Commerce and Industry
FIDC	Finance Industry Development Council
FISME	Federation of Indian Micro and Small and Medium Enterprises
FOIR	Forum of Indian Regulators
FSDC	Financial Stability and Development Council
GB	Governing Board
GDP	Gross Domestic Product
GIP	Graduate Insolvency Programme
GM	General Manager
GNLU	Gujarat National Law University, Gandhinagar
Government	Central Government
Grievance Regulations	The IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017
GST	Goods and Services Tax
IA	Inspecting Authority
IAC	Internal Advisory Committee
IAIR	International Association of Insolvency Regulators
IBA	Indian Banks' Association
ICAI	Institute of Chartered Accountants of India
ICD	Insolvency Commencement Date
ICMAI	Institute of Cost Accountants of India
ICSI	Institute of Company Secretaries of India
ICSI IIP	ICSI Institute of Insolvency Professionals
IGIDR	Indira Gandhi Institute of Development Research
IIA	Indian Industries Association
IIBF	Indian Institute of Banking and Finance
IICA	Indian Institute of Corporate Affairs
IIIP of ICAI	Indian Institute of Insolvency Professionals of ICAI
IIM	Indian Institute of Management

ILC	Insolvency Law Committee
IM	Information Memorandum
IOSCO	International Organisation of Securities Commissions
IoV	Institute of Valuers
IP(s)	Insolvency Professional / Professionals
IP Regulations	The IBBI (Insolvency Professional) Regulations, 2016
IPA(s)	Insolvency Professional Agency / Agencies
IPA of ICMAI	Insolvency Professional Agency of ICMAI
IPA Regulations	The IBBI (Insolvency Professional Agencies) Regulations, 2016
IPE(s)	Insolvency Professional Entity /Entities
IRDAI	Insurance Regulatory and Development Authority of India
IRP	Interim Resolution Professional
IRPC	Insolvency Resolution Process Cost
ISME	Indian School of Political Economy, Pune
ITR	Income Tax Return
IU(s)	Information Utility / Utilities
IU Regulations	The IBBI (Information Utilities) Regulations, 2017
JIM	Jaipuria Institute of Management, Jaipur
Liquidation Regulations	The IBBI (Liquidation Process) Regulations, 2016
LLP	Limited Liability Partnership
MoL&J	Ministry of Law and Justice
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MCCI	Merchant's Chamber of Commerce and Industry
MoF	Ministry of Finance
MoU	Memorandum of Understanding
MSME	Micro, Small and Medium Enterprises
NABARD	National Bank for Agriculture and Rural Development
NBFC	Non-Banking Financial Company
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NBA	NCLT&AT Bar Association
NeSL	National E-Governance Services Limited
NFCG	National Foundation for Corporate Governance
NIBM	National Institute of Bank Management
NIFM	National Institute of Financial Management
NIPFP	National Institute of Public Finance and Policy
NISM	National Institute of Securities Markets

NLU	National Law University
NPA(s)	Non-Performing Asset / Assets
NPS	National Pension System
OC(s)	Operational Creditor / Creditors
OEA	Odisha Economic Association
PHDCII	PHD Chamber of Commerce and Industry
PSB(s)	Public Sector Banks
PVAI	The Practising Valuers Association, India
RA	Resolution Applicant
RAKNPA	Rafi Ahmed Kidwai National Postal Academy
RBI	The Reserve Bank of India
RBSC	Reserve Bank Staff College
RDBA	The Recovery of Debts and Bankruptcy Act, 1993
RERA	The Real Estate (Regulation and Development) Act, 2016
RMW	Registration and Monitoring Wing
RP	Resolution Professional
RRW	Research and Regulations Wing
RTI Act	The Right to Information Act, 2005
RV	Registered Valuer
RVO	Registered Valuer Organisation
SARFAESI	The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SBI	State Bank of India
SC	Supreme Court
SCB(s)	Scheduled Commercial Bank / Banks
SCN(s)	Show Cause Notice / Notices
SDR	Strategic Debt Restructuring
SEBI	The Securities and Exchange Board of India
SGCCI	Southern Gujarat Chamber of Commerce & Industry
SICA	The Sick Industrial Companies (Special Provisions) Act, 1985
SIPI	Society of Insolvency Practitioners of India
SMECI	SME Chamber of India
TDS	Tax Deducted at Source
TERI	The Energy and Resources Institute
UNCITRAL	United Nations Commission on International Trade Law
Valuers Rules	The Companies (Valuers and Valuation Rules), 2017
WEO	World Economic Outlook
WG	Working Group
WTM(s)	Whole Time Member / Members

A CHAIRPERSON'S STATEMENT

> Beyond realisation for creditors, and rescue of failing corporate debtors, the Insolvency and Bankruptcy Code, 2016 has potential to clean up the financial markets and corporate sector.

Swift Implementation

India did not have experience of a law for insolvency resolution that was proactive, incentive-compliant, market-led, and time-bound. Many institutions required for implementation of a modern and robust insolvency regime did not exist. The Insolvency and Bankruptcy Code, 2016 (Code) and the reform envisaged under the Code was, in many ways, a leap into the unknown and a leap of faith. Yet, the enactment of the Code and its implementation have been very swift, probably with no parallel inside or outside the country.

The year 2017-18 witnessed an unprecedented cooperation and partnership among authorities and stakeholders, to implement the Code in letter and spirit to fully realise its objectives. The Government led the reform from the front and demonstrated the highest commitment to the insolvency reform. It pushed very large corporates with high non-performing assets (NPAs) into the resolution process in the early days. It made changes in banking law, revenue law, company law, etc. to facilitate the processes under the Code.

The Code made its first delivery on 2nd August, 2017, when the Adjudicating Authority (AA) approved the first resolution plan in the corporate insolvency resolution process (CIRP) of the corporate debtor (CD), Synergy Dooray Automotives Limited. In this CIRP, the promoters wrested control of the CD, while the financial creditors (FCs) took a haircut of about 94 per cent. This made a moral hazard apparent that creditors suffered for the conduct of the debtor. The Insolvency and Bankruptcy Code (Ordinance), 2017 inserted section 29A to address the moral hazard by prohibiting certain persons from submitting resolution plans, who on account of their antecedents, may adversely impact the credibility of the process under the Code. This ensured that only capable and credible persons take control of a CD in the interest of sustainable resolution. This changed the behaviour of debtors forever as well as the trajectory of insolvency reforms.

A dynamic law is one which is crafted in the context of life. Given that life is ever evolving, the Code underwent prompt course corrections, to address deficiencies arising from its implementation, in sync with the emerging market realities, to further its objectives. While the Insolvency and Bankruptcy Code (Ordinance), 2017 addressed the immediate concerns, Government set up the Insolvency Law Committee (ILC) to identify the issues that may impact the efficiency of corporate insolvency resolution and liquidation framework, make suitable recommendations to address such issues, and enhance the efficiency of the processes for the effective implementation of the Code. The Committee submitted its first report on 26th March, 2018 with several recommendations, most of which found place in the next Amendment Bill.

The AA, the Appellate Authority and judiciary have been in the forefront of the reform. They have delivered numerous landmark orders to explain several conceptual issues, settle contentious issues and resolve grey areas with alacrity. These orders have imparted clarity to the roles of various stakeholders in the resolution process and as to what is permissible and what is not, thereby streamlining the process for future. The insolvency regime now boasts of a very large body of case laws.

The year began with an empathic assertion by the AA in *M/s. DF Deutsche Forfait AG and Anr. Vs. M/s. Uttam Galva Steel Ltd.* that the Code is a mandate of the nation. In *Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd.*, the Appellate Authority made it clear that the Code provides a process for reorganisation and insolvency resolution of corporate persons. In *Innoventive Industries Ltd. Vs. ICICI Bank and Anr.*, the Supreme Court (SC) acknowledged that the Code is a paradigm shift in the law and held that the provisions of the Code prevail over every other law to the extent they are inconsistent with. In *JK Jute Mills Company Ltd. Vs. M/s Surendra Trading Company*, the Appellate Authority and the SC reiterated that time is the essence of the Code and clarified as to which timelines are mandatory and which are directory.

The stakeholders and elements of the ecosystem learnt the processes under the Code by doing things themselves.

Soon insolvency resolution got professionalised. Two professions, namely insolvency profession and valuation profession emerged along with the insolvency reform. An insolvency professional (IP) has defined strategic duties and responsibilities under the Code. He is the hub that connects all the spokes, co-ordinating and communicating with all the stakeholders and facilitating commercial decisions with equity and fairness. A registered valuer (RV) estimates the value of an asset, which is at least as authentic as the price the market may discover, to facilitate various transactions under the Companies Act, 2013 and the Code. The Insolvency and Bankruptcy Board of India (IBBI) has been shepherding these two brand new professions.

The swift implementation of the Code got reflected in ease of doing business. In the World Bank Group's Doing Business Report released on 31st October, 2017, India's ranking in the 'Resolving Insolvency' parameter improved from 136 to 103. The Global Restructuring Review (GRR), a London based journal, recognised India's progress, in resolving insolvency and conferred the prestigious award for the *'Most Improved Jurisdiction'* for 2018, to India, over jurisdictions such as the European Union and Switzerland.

'Swachh' Bharat

The attempts to recover loans through either the general laws or special laws such as the Recovery of Debts and Bankruptcy Act, 1993 (RDBA), the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) or non-statutory schemes of RBI had proved ineffective. Besides, many creditors did not have access to any formal mechanism for recovery of loans. This skewed the availability of credit backed by security, mostly from banking system. For various reasons, including inability to compete and innovate at marketplace on the part of debtors and in the absence of an effective insolvency regime, NPAs in the banking system have reached an unacceptably high level, requiring urgent measures for their speedy resolution to improve the financial health of banks for economic growth.

The enactment of the Code on 28th May, 2016 provided a ray of hope for creditors. In the initial days, however, the banks were reluctant to use the Code for two reasons. First, being generally secured creditors, the banks had security to fall back for recovery and they had other recourses for recovery as well as resolution outside the Code. Second, some believed that the new insolvency regime should be tried out first with smaller cases to prepare it to handle the large, complex stressed assets of banks in course of time. A case was made out to create a Public Sector Asset Rehabilitation Agency to address stressed assets of banks in the interim.

However, the authorities took note that the entire regulatory framework and ecosystem was in place for corporate insolvency resolution by the end of 2016 and debtors and creditors had started using the Code for resolution. Government promulgated the Banking Regulation (Amendment) Ordinance, 2017 on 4th May, 2017 to authorise the Reserve Bank of India (RBI) to issue directions to banks for initiating proceedings under the Code for timely resolution in case of a default. In the first instance, the RBI directed banks in June, 2017 to file applications for insolvency proceedings under the Code in respect of 12 accounts, having very large NPAs aggregating approximately 25 per cent of the aggregate NPAs of the banking system. This encouraged the FCs, who were watching from sidelines, to use the Code for resolution of their stressed assets, while reaffirming Government's faith in and commitment to the insolvency reform.

The Code, along with the Banking Ordinance, redefined the debtor-creditor relationship. Hon'ble Finance Minister, Mr. Arun Jaitley observed at a conference in Mumbai on 19th August, 2017: *"But one thing is very clear that the old regime by which the creditor would get tired chasing the debtor and ends up recovering nothing is now over. If a debtor has to survive, he will have to service his debts or else he will have to make way for somebody else. I think this is the only correct way by which businesses would now be run and this message I think has to go loud and clear to all."* This message is now loud and clear. The right of the promoters to cling on to the CD, irrespective of its conduct, is no more divine and the creditors step in when the CD has failed to service debt.

To clean up the system further, the Government promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 on 23rd November, 2017 to prevent undeserving persons such as wilful defaulters or criminals from submitting resolution plans. This prevented the possibility of the promoters regaining control of the CD through a resolution plan under the Code. The credible threat that the control and management of the CD would move away from existing promoters and managers deterred the promoters of the CD from committing default or prompted them to make best efforts to settle the default.

Probably emboldened by the progress in resolution of 12 accounts, the RBI substituted the existing guidelines on 12th February, 2018 with a harmonised and simplified generic framework for resolution of stressed assets. The framework specified the timeline and the circumstances when the Banks shall file insolvency application, jointly or singly, under the Code. The Code read with the RBI Guidelines took away the excuse of not reacting in time before the default assumes an unresolvable proportion.

By preventing ballooning of default and allowing expeditious resolution of insolvency, the Code is expected to address the *twin balance sheet* problem to a large extent.

The Banking Regulation (Amendment) Ordinance, 2017 and the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 are expected to clean up the financial markets and corporate sector. This is in a sense another dimension of *swachh Bharat*.

Outcome

The first resolution plan approved under the Code yielded only six per cent of the claims of FCs. It, however, yielded six times of the liquidation value for them. But for the Code, it would have continued with the Board for Industrial and Financial Reconstruction (BIFR) for 'n' years more and liquidation value would have depleted further. Consequently, the FCs would have got still less. While six per cent of the claim does not appear attractive, six times of liquidation value may appear very attractive.

The Code delivers good outcomes when CIRP is both initiated and completed at the earliest. If it is initiated very late, the CD is only worth its liquidation value, which deteriorates even further with time. As the Code came into force, many CDs with long pending defaults, particularly those which had been under the BIFR process as well or had no business for years, came up for insolvency resolution. It is natural for CIRPs of such CDs to yield liquidation or yield low realisation for creditors through resolution plans. This is consistent with the expectation in initial days of implementation of any insolvency law. A few years down the line, CDs would come up for resolution at the earliest default of the threshold amount, that is, when they are in reasonably good health and hence the outcome then would be more attractive.

The resolution plans have yielded about 168.35 per cent of liquidation value for FCs. They are realising on an average 49.68 per cent of their claims through resolutions plans under a process which takes on average about a year and entails significantly lower cost, a far cry from the previous regime which yielded a recovery of 25 per cent for creditors through a process which took about 5+ years and entailed a cost of 9 per cent. It is important to note that this realisation, not being an objective of the Code, is only a bi-product of revival of failing CDs.

Beyond realisation for creditors and revival of the CDs, the scheme of incentives and disincentives under the Code has ushered in significant behavioural changes on the part of every stakeholder of the corporate, minimising the incidence of failure, default and under-performance. A debtor is now seen attempting everything possible to avoid default given its consequences under the Code. A defaulter is paying up the default as soon as it can or settling the same to the satisfaction of the creditor, resulting in substantial recoveries for creditors outside the Code. Many of them are settling defaults before admission of the application by the AA. A few have settled default with the approval of the SC. Therefore, for better appreciation of the impact of the Code, it is important to consider the sum total of what happens under the processes under the Code, what happens on account of the Code and what happens in the shadow of the Code in the financial markets and corporate sector.

The process has got somewhat delayed in some cases. It is important to appreciate that everyone (IPs, creditors, debtors, AA, IBBI, etc.) is discharging its duties under the Code for the first time. Further, given the stakes involved, there have been appeals and counter-appeals and litigations in high value cases. The contentious issues are getting settled, some of them at the level of the highest court, streamlining the process for future.

Successful implementation of insolvency reform should improve leverage of corporates, the share of financial debt to total debt of corporates, the share of non-bank debt to financial debt and the share of unsecured debt to total debt and impact entrepreneurship, availability of credit, corporate debt market, cost of funds, etc. in the long term. As some more CIRPs conclude, there would be reasonable data to assess the impact of the Code in terms of these parameters.

Going Forward

Several developments are expected in the next year. The work has begun to put in place a comprehensive multilateral framework for cross-border insolvency, a regulatory framework for individual insolvency resolution, regulation and development of the valuation profession, launch of Graduate Insolvency Programme (GIP), etc.

The authorities are addressing the emerging difficulties promptly. The insolvency regime is fast transiting to maturity. Certainty as regards process, outcome, and time is emerging. There is a sea-change in insolvency and bankruptcy practice. The key actors in the corporate insolvency resolution and liquidation process, namely, members of the AA, creditors, CDs, IPs, and Resolution Applicants (RAs) are learning techniques to tailor the process to the needs of the CD. All stakeholders are on the same page to take the insolvency reform to the next level.

I thank the Ministry of Corporate Affairs (MCA) for driving the insolvency reform in the country and putting the pieces together, enabling conclusion of several CIRPs in 2017-18. I thank my member colleagues on the Governing Board (GB) of the IBBI for not only steering the affairs of the IBBI in its formative days, but also guiding implementation of the Code. In the coming year, the IBBI will aim to consolidate the progress made till 2017-18 and strengthen the capacity of the ecosystem further. Facilitating implementation of the provisions of the Code which are yet to be notified and enriching the corporate processes with value added features will also be on the agenda. I sincerely hope that the year 2018-19 would be further fulfilling.

(Dr. M. S. Sahoo)

B THE YEAR UNDER REVIEW

THE MACROECONOMIC BACKDROP

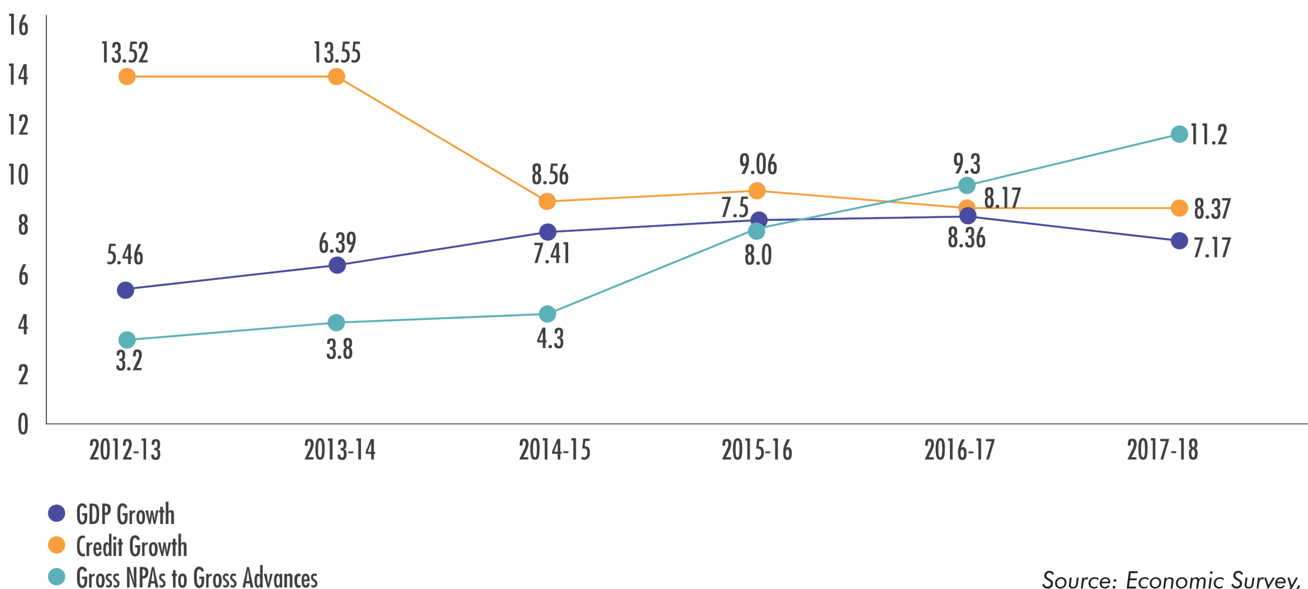
India has been the fastest-growing trillion-dollar economy in the world since 2014. The economy was the seventh-largest overall, with a nominal Gross Domestic Product (GDP) of $2.72 trillion, in 2018. In terms of purchasing power parity, it ranked the third in the World. The GDP grew by around 7.2 per cent in 2017-18. While the year-on-year growth has witnessed mild fluctuations indicating resilience of the economy, the average growth rate in the post reforms period since 1992 has been more than double of that in the pre-reforms period since independence.

While reforms generally have sustained salubrious impact on the economy, some reforms may have short-term costs and disruptions. It is considered to be an opportune time to undertake difficult reforms when the economy is doing well and can absorb short-term costs and disruptions, if any. Being encouraged by success of reforms in general and taking advantage of a buoyant economy, Government continued reforms with a view to make it easier for wealth creators to do business in the country and removing obstacles on business. It has been undertaking deep and difficult reforms to move India into the top 50 economies in terms of doing business and ensure its transition to a developed economy. In terms of Ease of Doing Business Report of the World Bank (DBR), India improved her rank to 100 in 2018 (Report released in October, 2017) and to 77 in 2019 (Report released in October, 2018).

While the economy has been expanding and so has been the bank credit, the problem of Non-Performing Assets (NPAs) engulfed the banking sector. The gross NPAs of Scheduled Commercial Banks (SCBs) increased from Rs.2,51,054 crore as on 31st March, 2014, to Rs.7,90,268 crore in March, 2017 and further to Rs.9,61,962 crore by March, 2018. The gross NPAs to gross advances ratio of SCBs rose from 3.8 per cent in 2013-14 to 11.2 per cent in 2017-18. These high NPAs depressed bank profitability and constrained new lending. On the corporate side, major companies were operating with interest coverage ratio of less than one, implying inability to service debt obligations. Thus, what emerged is popularly referred to as the 'Twin Balance Sheet' problem where both the banks and corporates were reeling under the stress of bad loans. Figure 1 depicts the rates of growth of GDP, credit and gross NPAs as percentage of gross advances since 2012-13.

Figure 1

GDP, Credit and NPA Growth



Source: Economic Survey, RBI Database

The year 2017-18 witnessed frontal attacks on festering Twin Balance Sheet Syndrome (TBS). The RBI, being empowered by the Banking Regulations (Amendment) Ordinance, 2017, sent major stressed companies in June, 2017 for resolution under the Code. In February, 2018, it came up with a generic framework of resolution of stressed assets and withdrew all extant schemes which had proved ineffective. While the resolutions under the Code will help corporates clean up their balance sheets, the large recapitalisation package of Rs.2,11,000 crore announced in October, 2017 will strengthen the balance sheets of the Public Sector Banks (PSBs). There are early indications of these reforms yielding desired outcomes in the form of uptick in the reduction of NPAs of banks and also movement of accounts from default status to non-default status in the fourth quarter of 2017-18. Further, the realisations for banks from the concluded resolutions under the Code have been substantially higher than those under other options for them. As the two reforms take hold in 2018-19, the corporates should augment spending and banks should augment lending, promoting capital formation and reversing growth rate.

The Code envisages rescue of failing, but viable companies and closure of failing and unviable companies. It has rescued a few companies in 2017-18 and would keep on doing so in the years to come. In turn, this will save business, and employment. This will also increase capacity utilisation in businesses and enhance efficiency of resource use in the companies being rescued.

For a market economy to function efficiently, the process of creative destruction should drive out failing, unviable firms continuously. It was not happening hitherto: quite a few firms got stuck up in unsustainable business or with idle assets and no business. The Code provides a mechanism whereby a failing, unviable company exits with the least disruption and cost and releases idle resources in an orderly manner for fresh allocation to efficient uses. The Code has allowed closure of a few companies in 2017-18, where rescue was not feasible and would keep on doing so in the years to come, releasing the entrepreneurs and resources stuck up in these companies for competing uses, creating job opportunities. This will improve allocation of resources being released from closure of companies.

Efficient and predictable insolvency and debt resolution frameworks are key drivers to improve financial inclusion and increase access to credit, which may lead to the reduction of the cost for obtaining credit. Increased access to finance enhances enterprise growth, which in turn leads to preserving employment, growth and the creation of new job opportunities.

The Code has been hailed as one of the most important economic legislation in recent times, having reformed the much-needed exit mechanism for corporates, to start with, and having addressed an important aspect of ease of doing business in the country. The law, being preventive in nature, is also being touted as having brought about a cultural shift in the dynamics between lenders and borrowers, and promoters and creditors. The Code has made an impact in the way repayment of debts are being viewed and treated by promoters and management of the defaulting firms. The first signs of distress now serve as early warnings for management to take corrective actions to avoid defaults. The Code is emerging as a behavioural law aiming to draw various stakeholders of the entity in distress to work together, in a non-adversarial manner, towards laid down objectives of the law viz. '*…reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders…*'.

Market for Distressed Assets

The Code has given distressed asset investment landscape in India a legal structure, well-defined processes, responsibilities and timelines. The distressed asset investment in India can be seen to have come of age offering astute investors to seize the opportunities to pick 'value' assets. Such investors had largely been shying away from this space given the lack of robust and efficient regulatory framework. With the implementation of the Code and the ensuing progress in the resolution process for NPAs, there is a genuine interest amongst investors in the distressed assets investment markets with their inherent 'buy low-sell high' potential. Businesses are looking for opportunities for buying good underlying assets with potential for a turnaround, at reasonable valuations.

According to the Centre for Monitoring Indian Economy (CMIE) database on non-financial firms, there were 2573 firms with stressed assets (a firm being identified as being under financial stress if its interest cover ratio has been below 1.5 for two consecutive years) in year 2016-17. The aggregate balance sheet size of the stressed firms, as observed in the CMIE database, was Rs.30 trillion. The stressed firms had Rs.15.6 trillion in

borrowings of which Rs.9 trillion was from banks. These 2,573 stressed firms accounted for 11.4 per cent of the overall bank debt ("non-food credit") in the economy. These stressed firms may, in the near future, see some activity in the form of mergers and acquisitions or be seen to be heading towards a bankruptcy process. These firms hence present a future market for distressed assets and there is likely to be more activity in the insolvency and bankruptcy space. Besides, there will be a continuous flow of distressed assets, given the size of the Indian economy, and its growth potential of 7+ per cent for over next two decades or so, coupled with increase in intensity of innovation and competition, expansion of credit market and credit growth following insolvency reforms.

The potential investors - foreign or domestic - in Indian market may find it attractive to invest in (a) corporate bonds in view of considerable strengthening of rights of creditors, and (b) distressed assets at competitive prices available under the Code or account of the Code. There are several entry points for investment in the life cycle of a distressed asset. These are when: (a) a CD is facing an impending default and is trying to avoid default which may push it into CIRP and its attendant consequences; (b) a debtor has received a notice from an Operational Creditor (OC) demanding payment before initiating its CIRP and is trying to pre-empt filing of an application for initiation of CIRP; (c) an application has been filed for initiation of CIRP, but it is yet to be admitted and the debtor is trying to pre-empt admission of the application; (d) the Resolution Professional (RP) is operating the CD as a going concern and is requiring interim finance for this purpose; (e) the RP has invited resolution plans and the investor alone or in partnership may submit a resolution plan; (f) an order of liquidation of the debtor has been passed, but there is a proposal for compromise or arrangement; (g) the Liquidator proposes to sell the debtor or the business(s) of the debtor as a going concern; and (h) a creditor is willing to sell the stressed asset at any stage before or after commencement of CIRP.

MAJOR POLICY DEVELOPMENTS

After the enactment of the Code in May, 2016, important Regulations were put in place in the first six months. The year under review saw consolidation of the regulatory regime under the Code as well as actions by various authorities such as MCA, Ministry of Finance (MoF), Securities and Exchange Board of India (SEBI), RBI, Competition Commission of India (CCI), etc., to facilitate the implementation of the Code. The constituents, namely, IPs, AA and FCs moved very fast on a steep learning curve. The AA and Courts settled several contentious issues. Several measures were taken to maintain the process integrity while promoting resolution over liquidation. Some of these developments are outlined here.

Legislative Changes

Several legislative changes were made during the year to facilitate implementation of the Code.

The Banking Regulation (Amendment) Act, 2017

Recognising the need for urgent measures to resolve the high levels of stressed assets in the banking system, the Banking Regulation (Amendment) Ordinance, 2017 was promulgated on 4th May, 2017. This empowered the RBI to issue directions to any banking company to initiate insolvency resolution processes under the Code on default by a debtor. The Banking Regulation (Amendment) Act, 2017, notified on 25th August, 2017, replaced this Ordinance. This was,in a sense a leap of faith that Government pushed very large NPAs for resolution under the nascent insolvency framework. This also nudged the FCs to use the Code for insolvency resolution.

Insolvency and Bankruptcy Code (Amendment) Act, 2018

The Government has been proactively addressing the challenges and concerns that were arising in the implementation of the Code. A key challenge that arose was that unscrupulous persons could misuse the provisions of the Code to vitiate an insolvency resolution process under the Code. Accordingly, a need arose to put safeguards in the Code to prevent this. The Code was thus amended, through an Ordinance on 23rd November, 2017, which was subsequently replaced by the Insolvency and Bankruptcy Code (Amendment) Act, 2017, notified on 18th January, 2018. The key amendments made were as under:

(a) Section 2 was amended to provide further categories of persons, namely, (i) personal guarantors to CDs, (ii) partnership firms and proprietorship firms, and (iii) other individuals, with the aim of facilitating phase-wise commencement of personal insolvency provisions.

(b) Section 25(2)(h) was amended to empower the committee of creditors (CoC) to lay down the criteria for RAs, having regard to the complexity and scale of operations of business of the CD, to keep out

frivolous applicants.

(c) Section 29A was inserted to prohibit certain persons from submitting a resolution plan who, on account of their antecedents may adversely impact the credibility of the process under the Code **(Box 1)**.

(d) Section 30(4) was amended to explicitly oblige the CoC to consider the feasibility and viability of the resolution plan while approving it.

(e) Section 35(1)(f) was amended to forbid sale of property to a person, who is ineligible to be a RA under section 29A.

(f) Section 235A was inserted to provide for punishment for contravention of the provisions where no specific penalty or punishment is provided. The punishment is fine which shall not be less than one lakh rupees but which may extend to two crore rupees. This will ensure that the provisions of the Code and the Rules and Regulations made thereunder are enforced effectively.

The Companies (Amendment) Act, 2017

The Companies (Amendment) Act, 2017 (Amendment Act) was enacted on 3rd January, 2018. The provision in the Amendment Act, having important bearing on the processes in the Code, are:

(a) Section 53 of the Companies Act, 2013 prohibited issuance of shares at a discount. The Amendment Act allowed a company to issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan such as resolution plan under the Code or under a debt restructuring scheme.

(b) Section 197 of the Companies Act, 2013 required approval of the members of the company for payment of managerial remuneration in excess of 11 per cent of the net profit. The Amendment Act required that where a company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company for such payment of managerial remuneration, before the approval of members is obtained.

(c) Section 247 of the Companies Act, 2013 prohibited a RV from undertaking valuation of any asset in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of the assets. The Amendment Act prohibited a RV from undertaking valuation of any asset *"in which he has direct or indirect interest or becomes so interested at any time during three years prior to his appointment as valuer or three years after valuation*

Box 1

Addressing Moral Hazard

The Code, as originally enacted, envisaged that 'any one' may submit a resolution plan to rescue a CD undergoing CIRP. This 'any one' included any one, including the persons, (a) who have contributed, with intention or by incompetence, to the distress of the CD, or (b) who have no capability and credibility to rescue the CD. If any such person takes over the CD which is already in distress, the value of the CD may deteriorate further leading to eventual liquidation of the CD, which the Code aims to avoid.

The Insolvency and Bankruptcy Code (Amendment) Act, 2018 inserted section 29A to avoid such a possibility by preventing undesirable persons from taking over the CDs undergoing CIRP. Section 29A prohibited a person to submit a resolution plan if he: (i) is an undischarged insolvent, (ii) has been a wilful defaulter, (iii) has an NPA account, (iv) has been convicted of an offence publishable with imprisonment for two years or more, (v) has been disqualified to act as a director, (vi) has been prohibited by SEBI from trading in securities or accessing the securities market, (vii) has indulged in preferential, undervalued or fraudulent transactions, (viii) has executed an enforceable guarantee in favour of a creditor, in respect of a debt of a CD under resolution or liquidation under the Code, (ix) has a connected person who suffers from any of these disabilities, or (x) has been subject to any of these disabilities under any law in a jurisdiction outside India. It is important to note that the prohibition applied to every person, whether promoter of the CD or not, though some believed that section 29A prohibited only the promoters.

As stated in the Statement of Objects and Reasons appended to the Insolvency and Bankruptcy Code (Amendment) Bill, 2017, section 29A aimed to prevent rewarding unscrupulous persons at the expense of creditors. While replying to the debate on the Bill, the Finance Minister stated: *"In the case of resolution also, all type of creditors may take some haircut and the man who created the insolvency pays a fraction of the amount and comes back into management. Should we allow that to continue? The overwhelming view, as expressed*

by the Members, is that it should not be allowed. This was a gap which was there in the original Bill and by bringing in 29(a) we have tried to fill in that gap. That is the objective. In order that this provision must apply to all existing cases of resolution which are pending, that is the case for urgency. If we had not done this, then all such defaulters would have rejoiced because they would have merrily walked back into these companies by paying only a fraction of these amounts. That is something which besides being commercially imprudent would also be morally unacceptable. That is the real rationale behind this particular Bill." Thus, it is clear that the section 29A must apply to all ongoing cases of CIRP, not only to CIRPs which commenced after it came into force. Further, the eligibility of the RA is considered when it submits a RA, not on the date of commencement of CIRP.

In a situation where a person takes a decision / action, but someone else bears the consequences of that decision, if things go wrong, the former person has no incentive to take the most prudent decision. Rather he has incentive to take such decisions or actions which do not affect the person taking decision, but adversely affect others. Promoters / equity suppliers of a company may not take the most prudent decision if the consequences of their decisions are borne by creditors. If CIRP yields a resolution plan where the creditors take haircut, while the promoters regain control and management of the CD through a resolution plan, they would not have any incentive to run the CD as prudently and efficiently as possible. After regaining the control of the CD, they may continue to behave as they did earlier or even behave worse, as the creditors will ultimately take the brunt. Even a non-promoter RA may not exercise due diligence if the CD can undergo CIRP periodically and creditors take haircut every time, with no consequences on the RA. This is a situation of moral hazard where creditors suffer for the conduct of the debtor. Section 29A addresses this moral hazard by prohibiting undesirable persons from gaining / regaining the control of the CD through a resolution plan.

The credible threat that the control and management of the CD would move away from existing promoters and managers deters the promoters of the firm from operating below the optimum level of efficiency and motivates them to make the best efforts to avoid default. This brought in significant behavioural changes among the CDs encouraging them to settle default with the creditor(s) at the earliest, preferably outside the Code. Debtors are settling *'in the shadow of the Code'* before an application is filed for initiation of CIRP, *'on account of the Code'* after application is filed before it is admitted to avoid the consequences of CIRP. This is in addition to resolution *'under the Code'* and settlement under Article 142 of the Constitution. Therefore, the Code pursues its objectives through what happens under the Code, what happens on account of the Code and what happens in the shadow of the Code.

The Finance Act, 2018

The following two amendments in the Income-tax Act, 1961, which were effected by the Finance Act, 2018, have an important bearing on the processes under the Code:

(a) Section 79, *inter alia*, provided that where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless on the last day of the previous year the shares of the company, carrying not less than 51 per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51 per cent of the voting power on the last day of the year or years in which the loss was incurred. The Finance Act, 2018 amended this requirement for a company, where a change in the shareholding takes place in a previous year pursuant to approved resolution plan under the Code.

(b) Section 115JB provided for levy of tax on certain companies on the basis of book profits. A resolution plan may create book profits arising from write-off / waiver of loan in the books of the CD. Such book profits attract minimum alternate tax (MAT) and consequently could discourage the prospect of resolution. The Finance Act, 2018 amended section 115 of the Income Tax Act, 1961 to provide that the amount of loss brought forward (including unabsorbed depreciation) should be reduced from the book profits arising from waiver / write off of loans under resolution plans approved under the Code.

The Budget Speech on 1st February, 2018 carried a statement: *"Reserve Bank of India has issued guidelines to nudge Corporates to access bond market. SEBI will also consider mandating, beginning with large Corporates, to meet about one-fourth of their financing needs from the bond market."* This is in sync with improved creditor's rights under the Code to promote credit market.

Removal of Difficulties Order

The Central Government issued the following removal of difficulties order and clarifications during 2017-18 to facilitate the processes under the code:

(a) The Insolvency and Bankruptcy Code (Removal

of Difficulties) Order, 2017, issued on 24th May, 2017, provided that any scheme sanctioned or under implementation under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) shall be deemed to be an approved resolution plan under the Code.

(b) The Companies (Removal of Difficulties) Second Order, 2017, issued on 23rd October, 2017, provided that valuations required under the Companies Act, 2013 shall be undertaken by a person who, having the necessary qualifications and experience, and being a valuer member of a recognised valuer organisation, is registered as a valuer with the Authority. This facilitated commencement of scetion 247 of the Companies Act, 2013.

(c) A circular issued on 25th October, 2017 clarified that the approval of the shareholders of the CD for an action that would require approval under the Companies Act, 2013 or any other law, is deemed to have been given in respect of a resolution plan on its approval by the AA.

The Companies (Registered Valuers and Valuation) Rules, 2017

A key objective of the Code is maximisation of the value of assets of a CD undergoing a CIRP under the Code, and consequently value for its stakeholders. A critical element towards achieving this objective is transparent and credible determination of value of the assets of the CD to facilitate comparison and informed decision making. The Code and the Regulations framed thereunder assign this responsibility to the RV and require that an IP acting as a RP should appoint two RVs to determine the value of a CD. However, there were no such valuers in place when the Code came into force. The Companies (Registered Valuers and Valuation) Rules, 2017 (Valuers Rules) was notified on 18th October, 2017 to provide a comprehensive framework for the development and regulation of the profession of valuers.

Pursuant to rule 11 of the Valuers Rules, any person, who was rendering valuation services under the Companies Act, 2013 on the date of commencement of these Rules, was allowed to continue to render valuation services without a certificate of registration under the rules up to 31st March, 2018. The MCA vide notification dated 9th February, 2018 postponed the aforementioned deadline from 31st March, 2018 to 30th September, 2018.

Insolvency Law Committee

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

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

The Committee submitted its first report on 26th March, 2018 with the following key recommendations:

(a) The home buyers should be treated as FCs owing to the unique nature of financing in real estate projects and the treatment of home buyers by the SC in some of the ongoing cases. This would enable them to participate effectively in the insolvency resolution process.

(b) The Central Government should be empowered to exempt Micro, Small and Medium Enterprises (MSMEs) from application of certain provisions of the Code, in recognition of their importance in the Indian economy and the unique challenges faced by them. Some of the ineligibilities under section 29A should not apply to RAs for MSMEs.

(c) To avoid unintended exclusions, section 29A should be streamlined to ensure that only those who contributed to defaults of the CD or are otherwise undesirable are rendered ineligible. Further, this section should not apply to pure play financial entities.

(d) The FCs regulated by financial sector regulators should not be considered as related parties of the CD, if they become related parties solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date (ICD).

(e) To clear the confusion regarding treatment of assets of guarantors of the CD vis-à-vis the moratorium on the assets of the CD, it should be clarified by way of an explanation that all assets of such guarantors to the CD shall be outside the scope of moratorium imposed under the Code.

(f) The voting threshold should be reduced from 75 per cent to 66 per cent for approval of resolution plan and other critical decisions to promote resolution. The threshold for approval of the other routine decisions should be reduced to 51 per cent.

(g) To enable the CD to continue as a going concern while undergoing CIRP, the National Company Law Tribunal (NCLT) should be empowered to expand the scope of essential goods and services beyond what is specified in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), on an the application of the Interim Resolution Professional (IRP)/RP.

(h) The law may allow withdrawal of an application for CIRP post-admission in exceptional circumstances with approval of the CoC by 90 per cent of voting share.

(i) A corporate applicant should initiate CIRP only with approval by a special resolution passed by the shareholders of the CD or a resolution passed by at least three-fourth of the total number of partners of the CD, as the case may be.

(j) The successful RA should be allowed one year to obtain necessary statutory clearances from Central, State and other authorities or such time as may be specified in the relevant law, whichever is later, to facilitate successful implementation of the resolution plan.

(k) The liquidation process cost should include interest on interim finance for one year after the liquidation commencement date or until repayment, whichever is earlier, to encourage flow of interim finance to keep the CD going.

(l) The IRP should continue until the RP is appointed and not until the 30th day from the date of his appointment.

(m) The IRP/RP should be responsible for the statutory compliances while managing the affairs of the CD during CIRP.

(n) The Limitation Act, 1963 should be applicable to processes under the Code.

Facilitations by Authorities

Some of the important facilitative actions undertaken by the authorities are listed here.

Facilitation by RBI

The facilitations by RBI include:

12 Large NPA Accounts: The Internal Advisory Committee (IAC) constituted by the RBI arrived at an objective, non-discretionary criterion for referring accounts for resolution under the Code. In particular, it recommended all accounts with fund and non-fund based outstanding amount greater than Rs.5000 crore, with 60 per cent or more classified as non-performing by banks as of 31st March, 2016 for proceedings under the Code. 12 accounts totalling about 25 per cent of the gross NPAs of the banking system qualified for immediate reference under the Code. Based on the recommendations of the IAC, the RBI issued directions to banks to file for insolvency proceedings of the identified CDs. As regards

the other NPAs, the IAC recommended that banks should finalise a resolution plan within six months. In cases where a viable resolution plan is not agreed upon within six months, banks should be required to file for insolvency proceedings under the Code.

Resolution of Stressed Assets: On 12th February, 2018, the RBI substituted the existing guidelines with a harmonized and simplified generic framework for resolution of stressed assets. It withdrew all extant instructions on the resolution of stressed assets such as Framework for Revitalising Distressed Assets, Corporate Debt Restructuring Scheme, Flexible Structuring of Existing Long Term Project Loans, Strategic Debt Restructuring Scheme (SDR), Change in Ownership outside SDR and Scheme for Sustainable Structuring of Stressed Assets with immediate effect and accordingly discontinued the Joint Lenders' Forum as an institutional mechanism for resolution of stressed assets.

The new framework requires that as soon as there is a default in a borrower's account with any lender, all lenders – singly or jointly - shall initiate steps to cure the default as per their board approved policies for resolution of stressed assets. For accounts where the aggregate exposure of the lenders is Rs.2000 crore or more on or after 1st March, 2018 (reference date), the resolution plan shall be implemented within a period of 180 days from the reference date or the date of default, as the case may be. If such plan is not implemented as per timelines, the lenders shall file insolvency application, jointly or singly, under the Code within 15 days from the expiry of the said timeline. For accounts with aggregate exposure of lenders below Rs.2000 crore, but above Rs.1000 crore, the RBI shall announce over a two-year period the reference dates for implementing the resolution plan.

Access to Credit Information Companies: Information Utilities (IUs) constitute a key pillar of the insolvency and bankruptcy regime. RBI amended the Credit Information Companies Regulation, 2006 on 11th August, 2017 to allow IUs, as specified users, to access the information with Credit Information Companies (CICs). It also allowed RPs to access CICs for credit related information of the CD, in whose proceedings he has been appointed.

Submission of Financial Information to IUs: Section 215 of the Code requires a FC to submit financial information including information relating to assets in which any security interest has been created, to an IU. Having regard to the provisions of the Code and the fact that an IU has already been registered, RBI, vide a circular dated 19th December, 2017 advised all SCBs, Regional Rural Banks, small finance banks, local area banks, all co-operative banks, all Non-Banking Financial Companies (NBFCs) and all Indian Financial Institutions to put in place appropriate systems and procedures to ensure compliance with the relevant provisions of Code and the IBBI (Information Utilities) Regulations, 2017 (IU Regulations). On 4th January, 2018, it issued similar instructions to Asset Reconstruction Companies.

Facilitation by SEBI

Exemption from Public Offer: The SEBI amended the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 on 14th August, 2017 to provide exemption from open offer obligations for acquisitions pursuant to resolution plans approved under the Code.

Exemption from Preferential Pricing Norms: The SEBI amended the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 on 14th August, 2017 to exempt the preferential issue of equity shares made in terms of the resolution plan approved under the Code from norms relating to preferential issue norms such as pricing, disclosure, etc.

Submission information to IUs: The SEBI advised that Debenture Trustees may enter into agreement with IUs, and provide financial information on 27th November, 2017.

Table 1 chronicles the important developments in the regulatory framework over the period April, 2017 to March, 2018.

Table 1

Chronology of Policy and Regulatory Developments, 2017-18

Date	Development
01.04.17	The Provisions relating to voluntary liquidation, IUs and agreements with foreign countries came into force.
01.04.17	The provisions of clause (a) to clause (d) of section 2 of the Code relating to voluntary liquidation or bankruptcy came into force (Notification dated 16th May, 2017).

03.05.17	The IBBI constituted a Technical Committee on IU in accordance with regulation 14 of the IBBI (Information Utilities) Regulations, 2017.
04.05.17	The Banking Regulation (Amendment) Ordinance, 2017 promulgated to empower the RBI to issue directions to any banking company/companies to initiate CIRP in respect of a default.
24.05.17	The IBC (Removal of Difficulties) Order, 2017 issued to provide that any scheme sanctioned or under implementation under the Sick Industrial Companies (Special Provisions) Act, 1985 shall be deemed to be an approved resolution plan the Code.
25.05.17	The IBBI issued the 'Insolvency Professionals to act as Interim Resolution Professionals (Recommendation) Guidelines, 2017' to identify and recommend an IP for appointment as IRP by the AA.
13.06.17	The IBBI constituted a Working Group for recommending the strategy and approach for implementation of the provisions relating to individual insolvency.
14.06.17	The IBBI (Inspection and Investigation) Regulations, 2017 notified to govern inspection and investigation of service providers.
14.06.17	The provisions relating to Fast Track Insolvency Resolution Process for Corporate Persons came into force.
14.06.17	The applicability of provisions relating to Fast Track Insolvency Resolution Process to CDs notified.
15.06.17	The IBBI (Fast Track Resolution Process for Corporate Persons) Regulations, 2017 notified.
14.08.17	The SEBI amended the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, to provide exemption from open offer obligations for acquisitions pursuant to resolution plans.
14.08.17	The SEBI amended the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 to exempt the preferential issue of equity shares made in terms of the resolution plan from norms relating to preferential issue norms.
16.08.17	The CIRP Regulations and Fast Track Regulations amended to provide for a Form for submission of claims by a creditor, who is not a FC or OC.
25.08.17	The RBI amended the Credit Information Companies Regulation, 2006 to allow Resolution Professionals and Information Utilities to access the information with CICs.
25.08.17	The Banking Regulation (Amendment) Act, 2017 enacted to replace the Banking Regulation (Amendment) Ordinance, 2017.
25.08.17	The IBBI reconstituted the Advisory Committee on Corporate Insolvency and Liquidation in pursuance of the IBBI (Advisory Committee) Regulations, 2017.
30.08.17	The IBBI reconstituted the Advisory Committee on Service Providers in pursuance of the IBBI (Advisory Committee) Regulations, 2017.
15.09.17	The IBBI constituted the Advisory Committee on Individual Insolvency and Bankruptcy in accordance with the IBBI (Advisory Committee) Regulations, 2017.
18.09.17	Financial Stability and Development Council reconstituted to include inter alia, the Secretary, MCA and the Chairperson, IBBI as its Members.
29.09.17	The IBBI (Information Utilities) (Amendment) Regulations, 2017 notified to allow a window for higher shareholding in a IU.
05.10.17	The CIRP Regulations and Fast Track Regulations amended to demonstrate treatment of interests of stakeholders in a resolution plan.
18.10.17	Section 247 (relating to valuers) of the Companies Act, 2013 came into force.
18.10.17	The Companies (Registered Valuers and Valuation) Rules, 2017 notified.
23.10.17	The Companies (Removal of Difficulties) Second Order, 2017 issued to amend section 247(1) to require membership of a RVO to be a RV.
23.10.17	The powers and functions vested in Central Government under section 247 (Relating to valuers) of the Companies Act, 2013 delegated to the IBBI.
25.10.17	Government clarified that the approval of shareholders / members of the CD for a particular action required in the resolution plan for its implementation is deemed to have been given.

07.11.17	The CIRP Regulations and Fast Track Regulations amended to ensure only credible persons to submit resolution plans.
16.11.17	The Insolvency Law Committee under the Chairmanship of Secretary, MCA constituted to make recommendations to address issues that impact efficiency and for effective implementation of the Code.
23.11.17	The Insolvency and Bankruptcy Code (Ordinance) 2017 promulgated to prevent unscrupulous and undesirable persons from misusing the provisions of the Code.
27.11.17	The SEBI advised the Debenture Trustees to share financial information with IUs.
07.12.17	The IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 notified to deal with grievances and complaints against service providers.
13.12.17	The IBBI issued Guidelines for Technical Standards for performance of core services by IUs.
15.12.17	The IBBI issued the 'Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2017' to govern preparation of Panel of IPs for appointment as IRP/Liquidator during January - June, 2018.
19.12.17	The RBI advised all FCs regulated by it to put in place appropriate systems and procedures to ensure compliance with the relevant provisions of the Code and the IBBI (Information Utilities) Regulations, 2017.
01.01.18	The CIRP Regulations and Fast Track Regulations amended to promote resolution.
03.01.18	The Companies (Amendment) Act, 2017 enacted to allow companies to issue shares at a discount to its creditors when its debt is converted into shares in pursuance of a resolution plan.
03.01.18	The IBBI directed IPs not to outsource any of their duties and responsibilities under the Code.
03.01.18	The IBBI directed IPs to exercise reasonable care and diligence and take all necessary steps to ensure that the corporate person undergoing any process complies with all the applicable laws.
03.01.18	The IBBI directed IPs to use his name, address, email, Registration Number etc. in all his communications.
04.01.18	The RBI advised the Asset Reconstruction Companies to put in place appropriate systems and procedures to ensure compliance with the relevant provisions of the Code and the IBBI (Information Utilities) Regulations, 2017.
06.01.18	Government relaxed MAT provisions for companies undergoing CIRP.
16.01.18	The IBBI directed the IPs and other professionals appointed by IPs to disclose their relationship with stakeholders.
16.01.18	The IBBI clarified that an IPs shall raise bills/invoices in their names towards fees, and such fees shall be paid to their bank accounts. Any payment of fees for the services of IPs to any person other than the insolvency professional shall not form part of the Insolvency Resolution Process Cost.
19.01.18	The Insolvency and Bankruptcy Code (Amendment) Act, 2017 was enacted to replace the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017.
06.02.18	The CIRP Regulations amended in the interest of transparency and process integrity.
07.02.18	The Fast Track Regulations amended in the interest of transparency and process integrity.
09.02.18	The Companies (Registered Valuers and Valuation) Amendment Rules, 2017 notified to allow any person who was rendering valuation services under the Companies Act, 2013 on the date of commencement of these Rules to continue to render valuation services without a certificate of registration till 30th September, 2018.
12.02.18	The RBI issued a revised new framework for the resolution of stressed assets.
23.02.18	The IBBI designated its website, www.ibbi.gov.in for publishing various Forms under the Regulations.
28.03.18	The CIRP Regulations amended in the interest of time and cost efficiency.
28.03.18	The IBBI (Liquidation Process) (Amendment) Regulations, 2018 notified to enable sale of CD as a going concern.
28.03.18	The IBBI (Insolvency Professionals) (Amendment) Regulations, 2018 notified to require certain disclosures and prohibit outsourcing and introduce GIP.
28.03.18	The IBBI (Information Utilities) (Amendment) Regulations, 2018 notified.

C POLICIES, PROGRAMMES AND ACTIVITIES

C.1 SERVICE PROVIDERS

The Code provides a market mechanism for resolution of insolvency, wherever possible, and ease of exit, wherever required, for a CD which has defaulted in repayment obligations. It envisages insolvency resolution of a defaulting CD in two phases. In the first phase, it requires a defaulting CD to undergo a time bound CIRP wherein the endeavour is to work out a resolution plan to rescue the CD as a going concern. In the second phase, it envisages liquidation of the CD if the CIRP fails to rescue the CD, to release the resources for alternate uses. The Code similarly provides for a defaulting individual to go through the insolvency resolution process with an endeavour to work out a repayment plan to rehabilitate the individual concerned. On failure of insolvency resolution process, the individual may go through the bankruptcy process when the assets of the individual are sold to repay the defaults to the extent possible. Unlike the erstwhile regime, the Code makes provisions for regulated professional services to conduct the insolvency, liquidation and bankruptcy processes.

The Code makes provisions for a slew of service providers, namely, IPs, Insolvency Professional Agencies (IPAs), Insolvency Professional Entities (IPEs) and IUs. Given their critical role in the functioning of the Code, regulations are designed to ensure that individuals/ persons who wish to render these services are not only technically competent but also possess the highest standards of ethics and professionalism. In other words, they must pass the test of being a 'fit and proper person'. The Companies Act, 2013 makes provisions for RVs and Registered Valuer Organisations (RVOs). The Valuers Rules make similar provisions regarding the competency and conduct of RVs.

INSOLVENCY PROFESSIONALS

An IP is a key institution of the insolvency regime. He is the beacon of hope for the person in financial distress and its stakeholders. He plays a key role in insolvency proceedings (resolution, liquidation and bankruptcy processes) of financially distressed persons (companies, Limited Liability Partnerships (LLPs), partnership and proprietorship firms and individuals) under the Code. A whole array of statutory and legal duties / powers is vested with him when conducting a process. He is required to take important business and financial decisions that may have critical ramifications for the company and all its stakeholders.

The NCLT appoints an IP as IRP, RP or Liquidator for conducting an insolvency proceeding. It replaces or approves replacement of an IP in an insolvency proceeding, wherever required. In a sense, an IP exercises oversight over insolvency proceedings on behalf of the NCLT. The law facilitates and empowers the IP to discharge his responsibilities effectively. It obliges every officer of the CD to report to him. It also obliges the promoter of the CD to extend all assistance and cooperation to him. It also empowers the IP to appoint professionals to assist him. He can seek orders from the AA if he comes across any preferential, undervalued, extortionate, or fraudulent transaction. He can take support services from an IPE of which he is a partner/ director. He has protection for actions taken in good faith. There is bar on trial of offences against an IP except on a complaint filed by the IBBI.

IP Regulations

The IBBI notified the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) on 23rd November, 2016 which inter alia provide for registration, regulation and oversight of IPs. To meet the immediate needs, regulation 9 of the IP Regulations allowed Advocates, Chartered Accountants, Company Secretaries and Cost Accountants with 15 years of practice to seek registration as IPs. However, this facility was available only for one month till 31st December, 2016 and such registration was valid for a limited period of six months only. The registrations of IPs under regulation 9 expired by 30th June, 2017. This provided breathing time to work out a regular stream of IPs.

In the regular stream under regulation 7 of the IP Regulations, Chartered Accountants, Company Secretaries, Cost Accountants and Advocates with 10 years of post-membership experience (practice or employment) and graduates with 15 years of post-qualification managerial experience are eligible for registration as IPs on passing the Limited Insolvency Examination (Examination). IBBI made the Examination available on 31st December, 2016. Individuals having the required qualification and experience and having passed the Examination were registered as IPs since 1st January, 2017 in the regular stream.

The IBBI amended the IP Regulations on 28th March, 2018 to provide for the following:

(a) Subject to meeting other requirements, an individual shall be eligible for registration as an IP if he has passed the Examination within the last 12 months and has completed a pre-registration educational course from an IPA, as may be required by IBBI.

(b) The syllabus, format, qualifying marks and frequency of the Examination shall be published on the website of the IBBI at least three months before the examination.

(c) An individual with the required experience of 10/15 years is eligible for registration as an IP. In addition, an individual with little or no experience shall also be eligible for registration as an IP on successful completion of the GIP, as may be approved by IBBI.

(d) As a condition of registration, an IP shall undergo continuing professional education as may be required by IBBI.

(e) An IP shall not outsource any of his duties and responsibilities under the Code.

(f) An IP shall disclose the fee payable to him, the fee payable to the IPE, and the fee payable to professionals engaged by him to the IPA of which he is a professional member and the agency shall publish such disclosures on its website.

INSOLVENCY PROFESSIONAL ENTITIES

An individual IP may not always have adequate resources of his own to handle a big and complicated CIRP. It was considered necessary to enable him, jointly with other IPs, to develop and access a pool of resources required for processes under the Code. The IP Regulations enable such a pool in the form of an IPE. An LLP, a registered partnership firm and a company is recognised as an IPE if a majority of the partners of the LLP or registered partnership firm or a majority of the whole-time directors of the company are registered as IPs under the Code. An IP may use the organisational resources of a recognised IPE subject to the condition that the entity as well as the IP shall be jointly and severally liable for all acts of omission or commission of its partners or directors as IPs. An IPE is neither enrolled as member of an IPA nor registered as IP and it cannot act as IP under the Code.

IBBI amended the IP Regulations on 28th March, 2018 to provide that a company, a registered partnership firm or a LLP shall be eligible for recognition as an IPE, if:-

(a) its sole objective is to provide support services to IPs, who are its partners or directors, as the case may be;

(b) it has a net worth of not less than one crore rupees;

(c) majority of its shares is held by IPs, who are its directors, in case it is a company;

(d) majority of capital contribution is made by IPs, who are its partners, in case it is a LLP firm or a registered partnership firm;

(e) majority of its partners or directors, as the case may be, are IPs;

(f) majority of its whole-time directors are IPs, in case it is a company; and

(g) none of its partners or directors is a partner or a director of another IPE.

There was doubt in some circles whether an IPE can act as IP. IBBI, vide a press release dated 15th June, 2017, clarified that the Code read with the regulations allow only a person having the required qualification and experience to be enrolled as a member of an IPA and thereafter registered as an IP with the IBBI. Only such a person can act as IP and render services as an IP under the Code. No person other than persons registered as IPs with the IBBI can act as IP. IPEs are neither enrolled as members of an IPA nor registered as IPs with the IBBI and they cannot act as IPs under the Code.

INSOLVENCY PROFESSIONAL AGENCIES

Keeping in view the role of IPs in the insolvency regime, the Code envisages a two-tier regulated self-regulation comprising of IPAs, as the front-line regulator, and IBBI, as the principal regulator of IPs. It accordingly provides a two-stage process for becoming an IP - first enrolment with an IPA as its professional member and then registration with the Board. It obliges the Board and the IPAs to monitor IPs on an ongoing basis and to take disciplinary actions against errant IPs, whenever required.

Regulatory framework for IPAs

The IBBI (Insolvency Professional Agencies) Regulations, 2016 (IPA Regulations) *inter-alia* provide for eligibility norms to be registered with the IBBI as an IPA. A company registered under section 8 of the Companies Act, 2013 with a minimum net worth of Rs.10 crore and a paid up capital of Rs.5 crore is eligible to be an IPA. At least 51 per cent of the share capital of the IPA must be

held, directly or indirectly, by persons resident in India. The IPA, its promoters, its directors and persons holding more than 10 per cent of its share capital must be 'fit and proper' persons.

The IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 provide for eligibility norms to be a professional member of an IPA and make it mandatory for an IPA to adopt bye-laws that are consistent with the Model Bye Laws issued by IBBI. More than half of the directors of the Board of the IPA are required to be independent directors and not more than one-fourth of the directors should be IPs. IPAs are required to have Membership Committee(s), a Monitoring Committee, Grievance Redressal Committee(s), and Disciplinary Committee(s) (DCs) for regulation and oversight of professional members.

IBBI meets the Managing Directors (MDs)/Chief Executive Officers (CEOs) of IPAs on the 7th of every month, in addition to subject specific meetings, to share developments and address difficulties encountered by them. They are undertaking various capacity development measures to build capacity of their members. They are monitoring conduct and performance of their members and initiate appropriate action against their members who do not comply with the provisions of the Code/ Regulations.

To facilitate monitoring of performance of IPAs, their compliance with statutory requirements, and in the interest of transparency and accountability, IBBI, in consultation with the IPAs, has devised a format of an Annual Compliance Certificate, which is submitted by the IPAs and displayed on their respective websites within 45 days of the closure of the financial year.

INFORMATION UTILITIES

The Code envisages IUs to store financial information that helps to establish defaults as well as verify claims expeditiously and thereby facilitates completion of processes under the Code in a time bound manner. The Bankruptcy Law Reforms Committee (BLRC) envisaged a private competitive market for interoperable IUs, rather than a centralised depository with the State, to avoid market failure. To ensure that IUs capture the information necessary for the resolution of insolvency and bankruptcy, the Code made data submission mandatory for FCs, and imposed an obligation on IUs to accept such data. To ensure accuracy and preclude disputes, the Code mandated that such records be co-verified with all concerned parties. The Code stipulates that the records of an IU may be accessed by an IP acting as an IRP, RP, Liquidator or Bankruptcy Trustee in furtherance of their functions under the Code. IUs are a novel creation and has no parallel in any other jurisdiction **(Box2)**.

Box 2

Information Utilities

The BLRC envisages a competitive industry of inter-operable IUs, rather than a centralised depository with the State. It elucidates the rationale: *"Before the IRP can commence, all parties need an accurate and undisputed set of facts about existing credit, collateral that has been pledged, etc. Under the present arrangements, considerable time can be lost before all parties obtain this information. Disputes about these facts can take up years to resolve in court. The objective of an IRP that is completed in no more than 180 days can be lost owing to these problems. Hence, the Committee envisions a competitive industry of information utilities who hold an array of information about all firms at all times. When the IRP commences, within less than a day, undisputed and complete information would become available to all persons involved in the IRP and thus address this source of delay."*

While recommending a regulatory framework for IUs in its report in January 2017, the Working Group (WG) on IUs set up by MCA, was guided by a few principles: *"One principle has been that courts and tribunals should accept the information in IUs as evidence. For this, once information is submitted to the IU, the IU should authenticate that information with all the concerned parties and only then store it. IUs need to follow restrictions in terms of the kind of information they can accept and the persons whom they can accept or authenticate information from. This ensures that the information in the IU is accurate, and that it cannot be disputed later. Another principle is that of standardisation — the regulator should specify applicable standards and all IUs should conform to those standards. In addition, the WG determined that debtors, creditors, and debts needed to be uniquely identified."*

The Code envisages an IU to provide core services in respect of financial information, such as (a) records of the debt of a person; (b) records of liabilities when the person is solvent; (c) records of assets of person over which security interest has been created; (d) records, if any, of instances of default by the person against any debt; (e) records of the balance sheet and cash-flow statements of the person; etc. It provides core services such as (a) accepting electronic submission of financial information, (b) safe and accurate recording of financial information; (c) authenticating and verifying the financial information submitted by a person; and (d) providing access to information stored with the information utility to persons.

The Code envisages IUs to store financial information that helps to establish defaults before the AA, verification of claims of creditors by the RP and constitution of the CoC expeditiously and thereby facilitates completion of processes under the Code in a time bound manner. To ensure that IUs capture the information necessary for the resolution of insolvency and bankruptcy, the Code made data submission mandatory for FCs, and imposed an obligation on IUs to accept such information. To ensure accuracy of information and preclude disputes about claims and defaults, the Code mandates that such information be co-verified with the concerned parties. This avoids lengthy adjudication and minimise the possibility of disputes and expedite initiation and closure of processes in a time bound manner.

IUs are a novel creation. There is no parallel to IU either in India or elsewhere. There are many organisations in India that store credit information. These include Credit Information Companies, the Central Repository of Information on Large Credits (CRILC), the Central Registry of Securitisation, Asset Reconstruction, and Security Interest (CERSAI), and the Ministry of Corporate Affairs' MCA21 database, etc. As compared to these databases, IUs store only credit information that has been verified by all the concerned parties. A set of technical standards apply to submission of information, authentication of information, data integrity, etc. This ensures that the information with IUs are undisputed and irrefutable and can be used as evidence.

IU is a novel idea. It took some time to understand, develop and put in place a regulatory framework to govern IUs. The WG set up by MCA on IUs submitted its report in January, 2017 with recommendations on regulation of IUs. The IBBI notified the IU Regulations on 31st March, 2017. It constituted a Technical Committee on 3rd May, 2017 to recommend Technical Standards. The Technical Committee recommended Technical Standards on 14 topics (out of 18) on 16th August, 2017. The stakeholders, however, needed time to understand utility of an IU and be familiar with using the information available with it. Market needed time to figure out commercials of business of an IU to make investment in IUs. Many investors may not have appetite to invest in an IU which has to comply with the shareholding and governance norms. One entity, namely, National E-Governance Services Limited (NeSL), promoted by banks and insurance companies, was registered as an IU on 25th September, 2017. The IBBI issued the Guidelines for Technical Standards on 13th December, 2017. NeSL started receiving information by the close of the year 2017-18.

Regulatory framework for IUs

The IU Regulations provide a framework for registration and regulation of IUs. A public company with a minimum net worth of Rs.50 crore is eligible for registration as an IU. More than half of its directors shall be independent directors. The IU, its promoters, its directors, its key managerial personnel, and persons holding more than 5 per cent of its paid-up equity share capital or its total voting power, shall be fit and proper persons. Ordinarily, a person should not hold more than 10 per cent of paid up equity share capital, while certain specified persons may hold up to 25 per cent of paid up equity share capital.

The IBBI amended the IU Regulations on 29th September, 2017 to provide that in case an IU is registered before 30th September, 2018,

(a) a person may, directly or indirectly, either by itself or together with persons acting in concert, hold up to fifty-one percent of the paid-up equity share capital or total voting power of an IU up to three years from the date of its registration; or

(b) an Indian company, (i) which is listed on a recognised stock exchange in India, or (ii) where no individual, directly or indirectly, either by himself or together with persons acting in concert, holds more than ten percent of the paid-up equity share capital, may hold up to hundred percent of the paid-up equity share capital or total voting power of an IU up to three years from the date of its registration.

GRIEVANCES AND COMPLAINTS

The IBBI notified the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 (Grievance Regulations) on 7th December, 2017. The Regulations enable a stakeholder, namely, debtor, creditor, claimant, service provider, RA or any other person having an interest in an insolvency resolution, liquidation, voluntary liquidation or bankruptcy process, to file a grievance or a complaint against a service provider, namely, IPA, IP, IPE or IU. The Regulations provide for an objective and transparent procedure for disposal of grievances and complaints by IBBI, that does not spare a mischievous service provider, but at the same time does not harass an innocent service provider.

A stakeholder may file a grievance that shall state the details of the conduct of the service provider that has caused the suffering to the aggrieved; details of suffering, whether pecuniary or otherwise, the aggrieved has undergone; how the conduct of the service provider has caused the suffering of the aggrieved; details of his efforts to get the grievance redressed from the service provider; and how the grievance may be redressed. It

may file a complaint in the specified form along with a fee of Rs. 2500. A complaint needs to state the details of the alleged contravention of any provision of the Code, or rules, regulations, or guidelines made thereunder or circulars or directions issued by the IBBI by a service provider or its associated persons; details of alleged conduct or activity of the service provider or its associated persons, along with date and place of such conduct or activity, which contravenes the provision of the law; and details of evidence in support of alleged contravention. If the complaint is not frivolous, the fee will be refunded. Where IBBI is of the opinion that there exists a *prima facie* case, it may order an inspection or investigation or issue a show cause notice, as may be warranted.

INSPECTION AND INVESTIGATION

Inspections and investigations are standard mechanism to verify facts as to compliance with applicable provisions of law. Based on such verification, appropriate enforcement actions, if required, are initiated. Since inspection and investigation entail infringement of freedom of service providers besides imposing a cost on them and the outcome of such inspection and investigation could be an enforcement action, there should be clear governance principles to minimise the pains of inspection and investigation to concerned stakeholders and also to avoid unwarranted enforcement actions, as required under section 196(1)(m). The Board accordingly notified the IBBI (Inspection and Investigation) Regulations, 2017 on 14th June, 2017.

These Regulations enable the Board to conduct inspection of a certain number of service providers every year, in addition to inspection emanating from a complaint. For conducting an inspection it needs to issue an order appointing an Inspecting Authority (IA) to conduct an inspection of records of a service provider for specified purposes. The order shall indicate the scope of inspection; composition of IA; timelines for conducting the inspection; reporting of progress in inspection; submission of inspection report, etc. The Board and the IA shall make every effort to keep the inspection confidential and to cause the least burden on, or disruption to, the business of the service provider under inspection. The Regulation provides the manner of conduct of inspection and consideration of inspection report, including disposal of show cause notice wherever issued.

REGISTERED VALUERS

Institutions are the foundations of a well-functioning market economy. Professions constitute a key element of the institutional framework. The nature and extent of professionalisation, to a large extent, determines the competitive edge of nations and sustainability of prosperity. A market economy needs a cadre of such professionals for valuations of a variety of assets or liabilities **(Box 3)**.

The Central Government notified the commencement of section 247 of the Companies Act, 2013 with effect from 18th October, 2017. On the same day, it notified the Valuer Rules to provide for a complete framework for development and regulation of the profession of valuers. The Valuers Rules, inter alia, provide for: (a) registration of valuers, who may be individuals or partnership firms or companies, with the IBBI for conduct of valuation of different classes of assets under the Companies Act, 2013; (b) recognition of RVOs to enrol valuer members, enforce a code of conduct on them, and conduct training and educational courses for its members; and (c) mechanism for notification and modification of valuation standards based on the recommendations of the 'Committee to advise on valuation matters'.

The Valuers Rules provide for a transition period up to 31st March, 2018 for registration of valuers with the Authority. During this transition period, a person, who is rendering valuation services under the Companies Act, 2013, may continue to do, so without a certificate of registration up to 31st March, 2018. Thus, with effect from 1st April, 2018, only a person registered with the Authority as a RV can conduct valuations required under the Companies Act, 2013 and the Code. A RV may conduct valuations under any other law, if required or permitted under that law or the concerned authority. Subject to meeting other requirements, an individual is eligible to be a RV, if he (i) is a fit and proper person, (ii) has the necessary qualification and experience, (iii) is a valuer member of an RVO, (iv) has completed a recognised educational course as member of an RVO, (v) has passed the valuation examination conducted by the Authority, and (vi) is recommended by the RVO for registration as a valuer.

Section 247 (2) of the Companies Act, 2013 mandates that a valuer shall (a) make an impartial, true and fair valuation of any assets; (b) exercise due diligence while performing the functions as valuer; (c) make the valuation in accordance with the Valuers Rules; and (d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets. The Valuers Rules require that a RV shall, while conducting

a valuation, comply with the valuation standards as notified by the Central Government, and till such time the standards are notified, the RV shall make valuations as per internationally accepted valuation standards and valuation standards adopted by the RVO.

The Central Government issued the Companies (Removal of Difficulties) Second Order, 2017 on 23rd October, 2017 to provide that valuations required under the Companies Act, 2013 shall be undertaken by a person who, having the necessary qualifications and experience, and being a valuer member of a RVO, is registered as a valuer with the Authority. By another notification on the same day, it delegated its powers and functions under section 247 of the Act to the IBBI and specified it as the Authority under the said Rules.

The IBBI performs the functions of the Authority under the Valuers Rules. It recognises RVOs and registers valuers and exercises oversight over them. It has published the 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 from 31st March, 2018. It has specified the details of educational course for the three Asset Classes, which a member of an RVO is required to complete before taking the valuation examination.

Box 3

Shepherding Valuation Profession

Market usually discovers price, which reflects the worth of an asset (or liability). It discovers different prices for the same asset in different contexts and the parties exchange the asset at the price. 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. At times, there may not even exist a competitive market for an asset. 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. It, however, requires specialised knowledge, considerable dexterity and the highest integrity on the part of a professional to take the asset through a simulated market in the given context to estimate its value, which is very close, if not equal, to the price.

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 CIRP under the Code envisages estimation of fair value and liquidation value of the assets of the CD. These values serve as reference for evaluation of choices, including liquidation, and selection of the choice that decides the fate of the CD and consequently of the stakeholders. If valuation is not right, a CD having economic value (viable firm) could be liquidated, or a CD not having economic value (unviable firm) could be rehabilitated. Further, if market participants undertake transactions at a value which is not reflective of market or different from price, the resources in the economy could be misallocated. Such outcomes are disastrous for an economy and impinge economic growth. 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 valuers 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. 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 RVO would be registered with the authority. It designated the IBBI as the authority for this purpose and notified the Valuers Rules to provide a comprehensive framework for development and regulation of the profession of valuers.

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, along with 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.

REGISTERED VALUERS ORGANISATIONS

RVOs act as frontline regulator for RVs. They provide an institutional arrangement for the oversight, development and regulation of RVs. They grant membership to valuers in accordance with Valuers Rules, conduct an educational course in valuation and provide training for the individual members before a Certificate of Practice (CoP) is issued. They also lay down standards of professional conduct and monitor their members. An RVO has an important role as a partner of IBBI, in the administration of the regulatory framework for development and regulation of the valuation professionals for respectability of the profession and accountable valuation services in the country.

C.2: PROCESSES

The provisions in the Code relating to CIRP, Liquidation Process and Voluntary Liquidation Process came into force in 2016-17 and accordingly, IBBI notified Regulations relating to these processes.

CORPORATE INSOLVENCY RESOLUTION PROCESS

The Code recognises that a going concern has a higher value than the sum of its parts. It looks upon business failure as a normal and legitimate part of the functioning of the market economy. When businesses fail, the best outcome for society is to have a rapid re-negotiation between the financiers, to finance the going concern using a new arrangement of liabilities and with a new management team. If this is not possible, the best outcome for the society is rapid liquidation. Where such arrangements are in place, the market process drives

creative destruction efficiently. The Code, read with Rules and Regulations made thereunder, facilitate revival of the CD, wherever possible, and closure of the CD, wherever required that promote competition and innovation in the economy.

As several CIRP commenced, some deficiencies came to surface requiring immediate attention. Consideration of interests of various stakeholders while maintaining integrity of the process dominated policy and regulatory initiatives. In the second quarter of 2017, it was realised that there are claimants other than FCs and OCs. Such claimants were enabled to submit their claims. The law does not mandate the manner of balancing the interests of stakeholders at CIRP stage. The resolution plan was mandated to disclose how it has dealt with the interests of stakeholders **(Box 4)**. Table 2 presents various amendments in the CIRP Regulations and rationale for the same.

FAST TRACK INSOLVENCY RESOLUTION

While it is likely that the creditors and debtors themselves chose to wind down negotiations in a shorter period than the permissible default maximum period, the BLRC was of the view that there is merit in making explicit provisions for cases where the CIRP should be necessarily concluded in shorter time frame than the more complex ones. Accordingly, sections 55 to 58 provide for a fast track process where CIRP shall be completed within a period of 90 days, as against 180 days in other cases. However, the AA may, if satisfied, extend the period of 90 days by a further period up to 45 days for completion of the process.

The MCA appointed 14th June, 2017 as the date for the provisions of section 55 to section 58 to come into force. It also notified that fast track process shall apply to the following categories of CDs:

(a) a small company, as defined under clause (85) of section 2 of the Companies Act, 2013; or

(b) a Start-up (other than the partnership firm), as defined in the notification dated 23rd May, 2017 of the Ministry of Commerce and Industry; or

(c) an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding Rs.1 crore.

These Regulations provide the process from initiation of insolvency resolution of eligible CDs till its conclusion with approval of the resolution plan by the AA. After the application is admitted and the IRP is appointed, if the IRP is of the opinion, based on the records of CD, that the fast track process is not applicable to the CD, he shall file an application before expiry of 21 days from the date of his appointment, to AA to pass an order to convert the fast track process into a normal CIRP.

The IBBI notified the IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 (Fast Track Regulations) on 15th June, 2017 to lay down the process from initiation of insolvency resolution of eligible CDs till its conclusion with approval of the resolution plan by the AA. The process flow of the CIRP in fast-track mode is broadly similar to that of a normal CIRP process. The IBBI amended these Regulations, as detailed in Table 2.

Box 4

IBC : A Code of Balances

A corporate is an amalgam of stakeholders. It is expected to maximise the value of its assets and consequently the interests of all its stakeholders. However, it may not always have the motivation to maximise the value of a corporate and/or promote the interests of all the stakeholders simultaneously or equitably. Therefore, the law prescribes governance norms to ensure that a corporate maximises the value of its assets, today and tomorrow, and balances the interests of all the stakeholders, and assigns the responsibility for compliance with those norms primarily to a professional, the company secretary, and a custodian, the board of directors.

A corporate (other than a financial services provider) has broadly two sources of funds, namely, 'equity' and 'debt'. Usually, the equity owners control and manage the corporate. The Code, however, envisages that if they fail to service the debt, the corporate in default undergoes CIRP. An IP carries on business operations of the corporate as a going concern until the CoC draws up a resolution plan that would keep the business of the corporate going on forever. The Code, as stated in the long title, requires a CIRP to (a) maximise value of assets of the corporate, and (b) while doing so, balance the interests of all the stakeholders, and assigns the responsibility primarily to the IP, and the CoC comprising non-related FCs.

The IBC maximises the value by striking a balance between resolution and liquidation. It encourages and facilitates resolution in most cases where creditors would receive at least as much as they would in liquidation. This would happen where the enterprise value

is sufficiently higher than the liquidation value. In such cases, resolution preserves and maximises the enterprise value as a going concern. In the remaining cases, the Code facilitates liquidation as that maximises the value for the stakeholders.

The Code enables initiation of a CIRP at the earliest, even at the very first default, when the enterprise value is usually higher than the liquidation value and hence the CoC has the motivation to resolve insolvency of the corporate rather than liquidate it. It mandates resolution in a time-bound manner to prevent decline in the enterprise value with time, reducing motivation of the CoC to opt for liquidation. It facilitates resolution - makes a cadre of professionals available to run the corporate as a going concern, prohibits suspension or termination of supply of essential services, enables raising interim finances required for running the corporate, etc.

In contrast, it prohibits any action to foreclose, recover or enforce any security interest during a CIRP and thereby prevents creditor(s) from maximising its interests. It expects creditors to recover their default amounts collectively from future earnings of the corporate rather than from the sale of its assets or from RA. In the matter of Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd., the NCLAT reiterated: *"It is made clear that Insolvency Resolution Process is not a recovery proceeding to recover the dues of the creditors."* Further, the Code enables a FC to trigger a CIRP even when the corporate has defaulted to another creditor and thereby prevents any preferential treatment to a creditor over others. In the matter of Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt Ltd, the NCLT observed: *"The nature of insolvency petition changes to representative suit and the lis does not remain only between a creditor and the corporate debtor."*

Resolution maximises the value of assets of the corporate and enables every stakeholder to continue with the corporate to share its fate. All stand to gain or lose from resolution, though one may gain or lose relatively more than another. In contrast, liquidation allows satisfaction of their claims one after another. If there is any surplus after satisfying the claims of one set of stakeholders fully, the claim of the next set is considered. On both counts, maximisation of value of assets and balancing the interests, resolution triumphs over recovery as well as liquidation in most cases.

Balancing interests under CIRP assumes significance as every corporate may not have enough resources at the commencement of a CIRP to satisfy the claims of all the stakeholders fully, while resolution provides an opportunity to the CoC to consider and balance their interests. In fact, the Code prescribes several balances in a resolution process - repayment of at least liquidation value to OCs, repayment of interim finance in priority, approval of resolution plan by 75 per cent voting power, etc. The CIRP Regulations also provide for several balances. Regulation 38 strengthens the rights of OCs by statutorily incorporating the principle of fair and equitable dealing of their rights, together with priority in payment over FCs. They require a resolution plan to include a statement as to how it has dealt with the interests of all the stakeholders, including FCs and OCs, of the CD.

The AA and the Appellate Authority have generally considered whether OCs have been treated well under resolution plans. The judicial pronouncements require consideration of the interests of all the stakeholders in a resolution. Again, in the matter of Prowess International Pvt Ltd Vs. Parker Hannifin India Pvt. Ltd., the NCLAT held: *"In the circumstances, instead of interfering with the impugned order, we remit the case to the Adjudicating Authority for its satisfaction whether the interest of all stakeholders have been satisfied…" And in the matter of Prabodh Kumar Gupta Vs. Jaypee Infratech Ltd. and Ors., the NCLT observed: "…the position of present petitioner is undisputedly of stakeholders. Therefore, the IRP appointed by this Court in respect of the corporate debtor company is equally expected to consider and take care of the interests of the petitioner…"*

When the fundamental aim of the Code is to facilitate recasting a corporate faltering in its debt obligations, it needs to take care of the interests of all the stakeholders with equity. The CoC, which is placed in a unique position of the custodian of a corporate under a CIRP, has the duty to strive for resolution, and through resolution maximise the value of assets of the corporate and balance the interests of all the stakeholders.

Table 2

Amendments to CIRP and Fast Track Regulations

Date of Notification	Amendment
16.08.17	**Home Buyers:** The Regulations initially provided for Forms for submission of claims by OCs (including workmen and employees), and FCs. A claimant, who is not a FC or an OC, also needed a specific Form for submitting its claim. The IBBI amended the CIRP Regulations and Fast Track Regulations to provide for a Form (Form F) for submission of claims by creditors who is not a FC or OC. This enabled home buyers to submit claims under CIRP. In due course, on the recommendation of the ILC, they were considered as FCs.

05.10.17	**Balancing Interests:** The IBBI amended the CIRP Regulations and Fast Track Regulations to require that a resolution plan must include a statement as to how it has dealt with the interests of all stakeholders, including FCs and OCs, of the CD. This explicitly required consideration of claims of all stakeholders.
07.11.17	The IBBI amended the CIRP Regulations and Fast Track Regulations to provide for the following: **Credible Resolution Applicants:** The amendment requires that the CoC must carry out due diligence of every resolution plan to satisfy itself that (a) the plan is viable, and (b) the persons who have submitted the plan and who would implement the plan are credible. To enable the CoC to assess credibility of RA and other connected persons to take a prudent decision while considering the resolution plan for its approval, a resolution plan shall disclose details of such applicant and other connected persons. It shall disclose the details in respect of the RA, persons who are promoters or in management or control of the RA; persons who will be promoters or in management or control of the business of the CD during the implementation of the resolution plan; and their holding companies, subsidiary companies, associate companies and related parties, if any. It shall disclose details of convictions, pending criminal proceedings, disqualifications under the Companies Act, 2013, orders or directions issued by SEBI, categorization as a wilful defaulter, etc. This became precursor to famous section 29A. **Fraudulent Transactions:** The RP shall submit to the CoC all resolution plans which comply with the requirements of the Code and regulations made thereunder, along with details of preferential transactions under section 43, undervalued transactions under section 45, extortionate credit transactions under section 50, and fraudulent transactions under section 66 of the Code noticed by him.
01.01.18	The IBBI amended the CIRP Regulations and Fast Track Regulations to provide for the following: **Promote resolution:** According to the Regulations, a resolution plan needed to identify specific sources of funds to be used for paying the liquidation value due to dissenting creditors. This was to discourage FCs to dissent and thereby promote resolution. However, some creditors, who actually wanted dissent, abstained from voting. To avoid such situations, the amendment defined the 'dissenting financial creditor' to mean a FC who voted against the resolution plan or abstained from voting for the resolution plan, as approved by the CoC. **Value maximisation:** The Regulations required disclosure of 'liquidation value' in the information memorandum (IM). This anchored the resolution value around the liquidation value. As per the amendments, after the receipt of resolution plan(s) in accordance with the Code and the regulations, the RP shall provide the liquidation value to every member of the CoC after obtaining an undertaking from the member to the effect that such member shall maintain confidentiality of the liquidation value and shall not use such value to cause an undue gain or undue loss to itself or any other person. Also, the IRP or the RP, as the case may be, shall maintain confidentiality of the liquidation value. **Early resolution:** The Regulations earlier provided that a RA may submit resolution plan till one month before the closure of resolution period. According to the amendments, a RA shall submit the resolution plan(s) to the RP within the time given in the invitation for the resolution plans in accordance with the provisions of the Code. This will enable the CoC to close a resolution process as early as possible subject to provisions in the Code and the Regulations.
06.02.18	**Time bound closure of CIRP with value maximisation and process integrity:** The IBBI amended the CIRP Regulations and Fast Track Regulations to provide for the following: (a) The RP shall appoint two RVs to determine the fair value and the liquidation value of the CD. After the receipt of resolution plans, the RP shall provide the fair value and the liquidation value to each member of the CoC in electronic form, on receiving a confidentiality undertaking. The RP and RVs shall maintain confidentiality of the fair value and the liquidation value. (b) The RP shall submit the IM in electronic form to each member of the CoC within two weeks of his appointment as RP and to each prospective RA latest by the date of invitation of resolution plan, on receiving confidentiality undertaking. (c) The RP shall issue an invitation, including the evaluation matrix, to the prospective RAs. He may modify the invitation as well as the evaluation matrix. However, the prospective RA shall get at least 30 days from the date of issue of invitation or modification thereof, whichever is later, to submit resolution plans. Similarly, he will get at least 15 days from the date of issue of evaluation matrix or modification thereof, whichever is later, to submit

	resolution plans. An abridged invitation shall be available on the website, if any, of the CD, and on the web site, if any, designated by the IBBI for the purpose. (d) While the RA shall continue to specify the sources of funds that will be used to pay IRPC, liquidation value due to OCs and liquidation value due to dissenting FCs, the CoC shall specify the amounts payable from resources under the resolution plan for these purposes. (e) A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the CD for maximization of value of its assets. These may include reduction in the amount payable to the creditors, extension of a maturity date or a change in interest rate or other terms of a debt due from the CD, change in portfolio of goods or services produced or rendered by the CD, and change in technology used by the CD (f) The RP shall submit the resolution plan approved by the CoC to the AA, at least 15 days before the expiry of the maximum period permitted for the completion of the CIRP.
28.03.18	**Time and cost efficiency:** The IBBI amended the CIRP Regulations to provide for the following: (a) The Regulations provide timelines for various activities in a resolution process. The amendments require the RP to identify the prospective RAs on or before the 105th day from the ICD. (b) The Regulations provide that the expenses to be incurred on or by the IRP / RP shall be fixed / ratified by the CoC and such fixed / ratified expense will form part of IRPC. The amendments provide that such expenses mean the fee to be paid to the IRP, the fee to be paid to IPE, if any, and the fee to be paid to professionals, if any, and other expenses to be incurred by the IRP / RP. (c) The IRP / RP shall disclose item-wise IRPC in such manner, as may be required by the IBBI. (d) The FC submitting a claim to the IRP shall declare whether it is or is not a related party in relation to the CD. (e) The forms for submission of claims required affidavit from the claimant. The amendments have dispensed with such requirement.

CORPORATE LIQUIDATION

An order for liquidation may be passed following a CIRP of the CD in four circumstances:

(a) the AA rejects resolution plan, which has been submitted by RP for approval, for non-compliance with the specified requirements;

(b) the AA does not receive a resolution plan approved by the CoC within time permissible for completion of the CIRP;

(c) the CoC has decided with required majority, at any time during CIRP period, to liquidate the CD and the RP has intimated the same to the AA; or

(d) where an application has been made by any person other than the CD to AA for a liquidation order on the ground that the approved resolution plan has been contravened by the concerned CD.

The IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations), *inter alia*, provide for the details of activities from issue of liquidation order under section 33 of the Code to dissolution order under section 54. The IBBI amended the Liquidation Regulations on 28th March, 2018 to provide for the following:

(a) **Value Maximisation**: The Regulations allow a Liquidator to sell an asset on a standalone basis. These also allow the Liquidator to sell the assets in a slump sale, a set of assets collectively, or the assets in parcels. Most often slump sale would be sale of the entire business of the CD as a going concern. There is a likelihood that a CD has several businesses, and specific businesses generate interest for different buyers as it would complement their existing businesses. Hence, there is a possibility of some businesses surviving after slump sale of other businesses. If the CD has only one undertaking and that is sold in slump sale, the CD continues to exist without any business. The amendments allow the Liquidator the option to sell various businesses separately to different buyers as a slump sale or even the entire CD as a going concern. This would enable better value realisation and provide a chance for rescuing the CD.

(b) **Interim Finance**: The Code considers the 'amount of interim finance and the costs incurred in raising such finance' as IRPC, which have to be paid in priority to any other creditor under a resolution plan. If, however, the CIRP yields a liquidation order, the interest on interim finance could be claimed up to the liquidation commencement date. Liquidation could be a long drawn process. If the providers of interim finance are denied interest during liquidation, they may not be forthcoming to extend interim finance, which is absolutely necessary to keep the CD as a going concern. The amendments provide that the liquidation cost includes interest on interim finance for a period of 12 months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower. This is expected to improve availability of interim finance.

VOLUNTARY LIQUIDATION

The Code provides that a corporate person, who intends to liquidate itself voluntarily and has not committed any default, may initiate voluntary liquidation proceedings. The Code read with the IBBI (Voluntary Liquidation Process) Regulations, 2017, which was notified on 31st March, 2017, govern the voluntary liquidation process.

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, and (ii) the corporate person is not being liquidated to defraud any person.

FIRSTS UNDER THE CODE

Table 3 presents the details of the firsts under the Code. The detailed outcomes of the CIRP process are presented in Section E.

Table 3

Firsts under the Code

Date	First	Matter
17.01.17	CIRP initiated by a Financial Creditor	ICICI Bank Ltd. Vs. M/s. Innoventive Industries Ltd.
18.01.17	CIRP initiated by a Corporate Debtor	M/s. Nicco Corporation Limited. and U.B. Engineering Limited.
17.02.17	CIRP initiated by an Operational Creditor	Shyam Indofab Pvt. Ltd. (Disposed of vide discharge order dated 02.05.2017)
07.04.17	Voluntary Liquidation	Nilgai Furniture Pvt. Limited
27.04.17	CIRP initiated by Employees	Arvind Gawada Vs. Zeel Global Projects Private Limited
31.05.17	CIRP of a Public Sector Company	Burn Standard Company Ltd.
02.08.17	Resolution Plan approved	Synergies Dooray Automotive Ltd.
31.07.17	Liquidation Ordered	M/s. VIP Finvest Consultancy Pvt. Ltd. Vs. M/s. Bhupen Electronic Limited
11.12.17	Voluntary Liquidation Closed by Dissolution	M/s. Raay Hospitality Private Limited
23.03.18	Liquidation Closed by Dissolution	M/s. Chivad Trading Pvt. Ltd. Vs. M/s. Abhayam Trading Ltd.

INDIVIDUAL INSOLVENCY RESOLUTION AND BANKRUPTCY

Individual insolvency is a complex and challenging issue all over the world. Implementation of the provisions of the Code dealing with insolvency and bankruptcy of partnership and proprietorship firms and other individuals impact a large population of the country. A deeper understanding is required of the society, culture, and nature and composition of credit extended by financial institutions and other lenders to partnership and proprietorship firms, and the issues faced by such firms.

The IBBI constituted a WG for recommending the strategy

and approach for implementation of the provisions of the Code to deal with insolvency and bankruptcy in respect of: (a) guarantors to CDs, and (b) individuals having business, and also drafting related rules and regulations. The WG submitted its report along with draft Insolvency and Bankruptcy (Application to Authority for Insolvency Resolution Process for Individual and Firms) Rules, 2017 and the draft IBBI (Insolvency Resolution Process for Individuals and Firms) Regulations. The IBBI Advisory Committee (AC) on Individual Insolvency and Bankruptcy considered the report of the WG, and public comments on the draft rules and regulations and made certain recommendations. The GB of IBBI, in its meeting in December, 2017, considered the report of the WG, recommendations of the AC and other relevant materials. In the meantime, the Amendment Ordinance, 2017 classified individuals into three categories, enabling commencement of provisions relating to individual insolvency in a phased manner. However, these provisions are yet to come into force.

MECHANISM FOR ISSUING REGULATIONS

The Code is a modern economic legislation. Section 240 of the Code empowers the IBBI to make regulations. A transparent and consultative process to make regulations has been evolved by the IBBI. It has been the endeavour of the IBBI to effectively engage stakeholders in the regulation-making process. The process generally starts with a WG, suggesting draft regulations. The IBBI puts these draft regulations out in public domain seeking comments thereon. It holds a few roundtables to discuss draft regulations with the stakeholders. It takes the advice of its AC. The process culminates with the GB of IBBI approving regulations and the final notification by IBBI. This process endeavours to factor in ground reality, secures ownership of regulations, imparts democratic legitimacy and makes regulations robust and precise, relevant to the time and for the purpose.

Given the importance of subordinate legislations for the processes under the Code, it is essential that IBBI has a structured, robust mechanism, which includes effective engagement with the stakeholders, for making regulations. Section 196 (1) (s) of the Code requires the IBBI to specify mechanisms for issuing regulations, including the conduct of public consultation processes, before notification of regulations. In sync with this philosophy and the statutory requirement, the IBBI proposes to make regulations to govern the process of making regulations and consulting the public. Accordingly, the IBBI put out the draft IBBI (Mechanism for Issuing Regulations) Regulations, 2018 on 7th March, 2018 inviting comments from public, including the stakeholders and the regulated, on the same.

C.3 ADVOCACY AND AWARENESS

Government and the authorities frame policy and lay down legal and regulatory framework for market transactions in the economy. It is important to engage with the stakeholders to ensure that the policy and regulations are in sync with ground realities and the stakeholders undertake transactions in accordance with the policy and regulations. In the initial days of any reform, such engagement is extremely important to carry the message of policy and regulations to stakeholders and make them aware of the possible uses and manner of use. In the context of insolvency reforms, the stakeholders need to be familiar with the Code, regulatory framework and ecosystem, all of which are new in the Indian context.

Chairperson, Whole-Time Members (WTMs) and senior officers of IBBI participated in different capacities (faculty, panellist, speaker, guest of honour, chief guest, etc.) in 134 events (seminar, conference, roundtable, study circles, workshop, etc.) on insolvency and bankruptcy, organised by a host of institutions across the country, as presented in Table 4.

Table 4

Participation in Advocacy Events in 2017-18

Name and Position	No. of Events
Dr. M. S. Sahoo, Chairperson	83
Ms. Suman Saxena, WTM	09
Dr. Navrang Saini, WTM	13
Dr. (Ms.) Mukulita Vijayawargiya, WTM	20
Other Officers	09
Total	**134**

The details of these events are presented in Table 5.

PROGRAMMES

In addition to various events in which IBBI participated, as detailed above, the IBBI, in association with FICCI, ASSOCHAM, PHD Chamber of Commerce and Industry and CII organised a number of events with the underlying theme of *'Decoding the Code'*, for IPs, industry participants and other stakeholders. These interactions were intended to both understand the difficulties that various stakeholders are facing in the implementation of the Code as well as to educate market participants

about the Code. In collaboration with Government/other organisations, the IBBI organised two mega events:

(a) MCA, National Foundation for Corporate Governance and the IBBI organised a National Conference on *'Insolvency and Bankruptcy: Changing Paradigm'* on 19th August, 2017 at Mumbai. Mr. Arun Jaitley, Hon'ble Minister of Finance, Corporate Affairs and Defence was the Chief Guest at the Conference.

(b) IBBI, in association with FICCI, organized an event, *'Decoding the Insolvency and Bankruptcy Code, 2016'*, for IPs, industry participants and other stakeholders on 29th July, 2017 in New Delhi.

Table 5

Details of Advocacy Events in 2017-18

Sl.No.	Date	Venue	Organiser	Event	Subject	Participation by
1	13.04.17	New Delhi	NLU, Delhi	Practicum	IBC	Chairperson
2	15.04.17	New Delhi	H2Life Foundation	Seminar	IBC: Achievements, Challenges and the Way Forward	Chairperson
3	20.04.17	New Delhi	CIMSME	Ceremony	MSME Banking Excellence Awards	Chairperson
4	20.04.17	New Delhi	IBBI	Talk	Laws and Governance: IBBI and IBC	Chairperson
5	21.04.17	Kolkata	ICMAI	Seminar	IBC: Practical Aspects for Bankers	Chairperson
6	26.04.17	New Delhi	IBBI	IP Workshop	Corporate Insolvency and Liquidation Processes	Chairperson
7	28.04.17	New Delhi	ASSOCHAM	Conference	New Corporate insolvency Regime	Chairperson
8	29.04.17	New Delhi	ASSOCHAM	Conference	Building Regulatory Capacity	Chairperson
9	02.05.17	New Delhi	IBBI	Roundtable	Draft Fast Track CIRP Regulations	Chairperson
10	06.05.17	New Delhi	NBA	Seminar	IBC and Emerging Jurisprudence	Chairperson
11	08.05.17	Bangalore	ICSI	Roundtable	Draft Fast Track CIRP Regulations	Ms. Saxena, WTM
12	08.05.17	Bangalore	ICSI	Roundtable	CIRP for SMEs	Ms. Saxena, WTM
13	12.05.17	Lucknow	SIPI, FISME, & IIA	Roundtable	Draft Fast Track CIRP Regulations	Ms. Saxena, WTM
14	13.05.17	New Delhi	CIMSME	Study Circle	Role of IPs	Chairperson
15	19.05.17	Mumbai	CIMSME	Study Circle	Role of IPs	Chairperson
16	02.06.17	Hyderabad	ASSOCHAM	Conference	IBC and Regulated Professionals	Dr. Saini, WTM
17	02.06.17	Hyderabad	ICSI	Roundtable	Draft Valuers Rules	Dr. Saini, WTM
18	12.06.17	Ahmedabad	IoV	Roundtable	Draft Valuers Rules	Dr. Saini, WTM
19	14.06.17	Chennai	ICAI	Roundtable	Draft Valuers Rules	Dr. Vijayawargiya, WTM
20	15.06.17	Bangalore	ICAI	Roundtable	Draft Valuers Rules	Dr. Vijayawargiya, WTM
21	15.06.17	Mumbai	CIMSME	Roundtable	Draft Valuers Rules	Ms. Saxena, WTM
22	16.06.17	Mumbai	ICAI	Roundtable	Draft Valuers Rules	Ms. Saxena, WTM
23	16.06.17	Kolkata	MCCI	Seminar	IBC for MSME	Chairperson
24	16.06.17	Kolkata	MCCI & ICSI	Roundtable	Draft Valuers Rules	Chairperson

25	17.06.17	Guwahati	ICAI	Seminar	IBC	Chairperson
26	19.06.17	New Delhi	IoV	Roundtable	Draft Valuers Rules	Dr. Saini, WTM
27	20.06.17	New Delhi	CII	Roundtable	Draft Valuers Rules	Ms. Saxena, WTM
28	23.06.17	Chennai	ICAI	Conference	Insolvency Reforms	Chairperson
29	23.06.17	Chennai	ICAI	CA Workshop	IBC	Chairperson
30	23.06.17	Chennai	RBI Staff College	Lecture	IBC	Chairperson
31	23.06.17	Chennai	FICCI	Roundtable	Draft Valuers Rules	Chairperson
32	23.06.17	New Delhi	CII	Roundtable	Draft Valuers Rules	Ms. Saxena, WTM
33	24.06.17	Chennai	FICCI	Conference	IBC	Chairperson
34	24.06.17	Chennai	IoV	Roundtable	Draft Valuers Rules	Chairperson
35	27.06.17	Mumbai	INSOL & SIPI	Roundtable	Draft Valuers Rules	Dr. Saini, WTM
36	28.06.17	Mumbai	PVAI	Roundtable	Draft Valuers Rules	Dr. Saini, WTM
37	29.06.17	Chennai	RBSC	Panel Discussion	Financial Ills and Living Wills -Recovery and Resolution	Dr. Vijayawargiya, WTM
38	30.06.17	New Delhi	FICCI	Roundtable	Draft Valuers Rules	Chairperson
39	04.07.17	Kolkata	IPA of ICMAI	Roundtable	Draft Valuers Rules	Dr. Saini, WTM
40	05.07.17	New Delhi	NITI Aayog	Session	IBC and MSME	Chairperson
41	15.07.17	New Delhi	ASSOCHAM	Summit	Mergers and Acquisitions: Issues and Challenges	Chairperson
42	16.07.17	Mumbai	NISM	Talk	Financial Literacy for Insolvency and Bankruptcy	Chairperson
43	18.07.17	Mumbai	CAFRAL	Workshop	Recovery and Resolution of Stressed Assets	Chairperson
44	28.07.17	Bangalore	ASSOCHAM	Workshop	IBC for Ease of Doing Business	Chairperson
45	29.07.17	New Delhi	IBBI	Seminar	Decoding the IBC	Chairperson
46	02.08.17	Mumbai	BFSI Skill Council	Roundtable	Developing Insolvency Associates	Chairperson
47	19.08.17	Mumbai	NFCG & MCA	Seminar	IBC: Changing Paradigm	Chairperson
48	19.08.17	Mumbai	ASSOCHAM	Conference	Restructuring, Resolution and Sustainability	Dr. Vijayawargiya, WTM
49	23.08.17	New Delhi	PHDCCI	Conference	Merger and Acquisition: Regulatory Framework	Chairperson
50	26.08.17	Kolkata	ICSI	Conference	IBC for Practising Company Secretaries	Chairperson
51	28.08.17	Cuttack	NLU, Odisha	Talk	Changing Dimensions of Insolvency Regime in India	Chairperson
52	28.08.17	Bhubaneswar	ICSI	Talk	IBC	Chairperson
53	29.08.17	Bhubaneswar	ICAI	Seminar	IBC	Chairperson

54	29.08.17	Cuttack	Ravenshaw University	Lecture	Academics and Insolvency Reforms	Chairperson
55	30.08.17	New Delhi	NITI Aayog	Roundtable	MSME Insolvency	Chairperson
56	30.08.17	Kolkata	ASSOCHAM	Conference	New Corporate Insolvency Regime and RERA	Dr. Vijayawargiya, WTM
57	31.08.17	New Delhi	Corporate Professionals	Book Release	Book on IBC	Chairperson
58	07.09.17	Mumbai	BQ Global	Training	IBC: A New Paradigm	Chairperson
59	08.09.17	Mumbai	SMECI	Summit	SME Manufacturing and IBC	Chairperson
60	08.09.17	Ahmedabad	ASSOCHAM	Conference	New Corporate Insolvency Regime & RERA	Dr. Vijayawargiya, WTM
61	09.09.17	Mussouri	SBI Capital Markets	Strategy Meet	IBC	Chairperson
62	13.09.17	Mumbai	IBBI	Roundtable	CIRP Regulations	Chairperson
63	14.09.17	Noida	ICSI	Training	Corporate Leadership Development	Chairperson
64	14.09.17	Hyderabad	ASSOCHAM	IP Workshop	Conduct and Competence of IPs	Dr. Saini, WTM
65	15.09.17	Hyderabad	ASSOCHAM	Conference	IBC	Dr. Saini, WTM
66	20.09.17	New Delhi	SIPI	Roundtable	CIRP Regulations	Chairperson
67	20.09.17	New Delhi	PHD CCI	Seminar	IBC: Paradigm Shift to New Era	Chairperson
68	22.09.17	Mumbai	SIPI & INSOL	Summit	Insolvency Reform: Progress so far and the Road Ahead	Chairperson
69	22.09.17	Mumbai	Pahle Foundation	Seminar	Managing NPAs through IBC	Chairperson
70	23.09.17	New Delhi	Study Circle of IPs	Study Circle	IBC	Chairperson
71	27.09.17	New Delhi	IBBI	Roundtable	CIRP Regulations	Chairperson
72	28.09.17	Mumbai	IOSCO	Seminar	Insolvency and Bankruptcy Framework in India	Chairperson
73	03.10.17	Pune	NIBM	Workshop	IBC	Chairperson
74	03.10.17	Pune	ISPE	Talk	IBC in Pursuit of Economic Freedom	Chairperson
75	05.10.17	New Delhi	ICSI IIP	Training	Building Capacity in the Ecosystem for IBC	Chairperson
76	23.10.17	Indore	IPA of ICMAI	Roundtable	Individual Insolvency Resolution	Dr. Vijayawargiya, WTM
77	23.10.17	Indore	ICMAI	Roundtable	IBC Regulations	Dr. Vijayawargiya, WTM
78	24.10.17	Ludhiana	FISME	Roundtable	Individual Insolvency Resolution	Ms. Saxena, WTM
79	24.10.17	Vishakhapatnam	IIIP of ICAI	Roundtable	Individual Insolvency Resolution	Dr. Saini, WTM
80	25.10.17	Lucknow	FISME	Roundtable	Individual Insolvency Resolution	Dr. Suri, ED
81	25.10.17	New Delhi	ASSOCHAM	Conference	Insolvency and Bankruptcy code	Dr. Vijayawargiya, WTM

82	26.10.17	Coimbatore	IIIP of ICAI	Roundtable	Individual Insolvency Resolution	Dr. Saini, WTM
83	27.10.17	New Delhi	NLU, Delhi	Conference	Insolvency Resolution and Cross Border Insolvency	Dr. Vijayawargiya, WTM
84	28.10.17	New Delhi	NLU, Delhi	Roundtable	Corporate Insolvency	Chairperson
85	29.10.17	New Delhi	NLU, Delhi	Moot	Insolvency Moot on Corporate Insolvency	Chairperson
86	30.10.17	New Delhi	IBBI	Roundtable	Liquidity for CIRP	Chairperson
87	30.10.17	Jodhpur	IPA of ICMAI	Roundtable	Individual Insolvency Resolution	Dr. Saini, WTM
88	31.10.17	Mumbai	ICSI IIP	Roundtable	Individual Insolvency Resolution	Ms. Saxena, WTM
89	01.11.17	New Delhi	SIPI & FISME	Roundtable	Individual Insolvency Resolution	Chairperson
90	03.11.17	Kolkata	ICSI IIP	Roundtable	Individual Insolvency Resolution	Ms. Dubey, DGM
91	06.11.17	Surat	SGCCI & FISME	Roundtable	Individual Insolvency Resolution	Dr. Suri, ED
92	07.11.17	Mumbai	ASSOCHAM	Conference	IBC and RERA	Chairperson
93	07.11.17	Mumbai	SIPI	Roundtable	IBC	Chairperson
94	13.11.17	Mumbai	IBA	Seminar	IBC	Chairperson
95	13.11.17	Mumbai	NeSL	Curtain Raiser	Commencement of IU Operations	Chairperson
96	17.11.17	Mumbai	BSE	Conference	IBC	Chairperson
97	22.11.17	Trivandrum	ICSI	Convention	IBC: A World of New Opportunities	Chairperson
98	24.11.17	Jaipur	ICAI	Conference	Opportunities for Professionals in IBC	Dr. Vijayawargiya, WTM
99	27.11.17	Ghaziabad	RAKNPA	Training	In pursuit of Economic Freedom	Chairperson
100	28.11.17	New Delhi	ASSOCHAM	Roundtable	Indian Valuation System	Chairperson
101	30.11.17	New Delhi	IBBI	Roundtable	Draft Valuers Rules	Chairperson
102	05.12.17	Mumbai	AVCJ	Conference	Annual Session	Dr. Suri, ED
103	08.12.17	New Delhi	IBBI	Workshop	Essence of IBC	Dr. Vijayawargiya, WTM
104	11.12.17	New Delhi	NIPFP	Talk	Indian Insolvency Reform: A Progress Report	Chairperson
105	14.12.17	Mumbai	NeSL	Session	IBC	Chairperson
106	14.12.17	Mumbai	NSE-NYU	Conference	IBC	Chairperson
107	15.12.17	New Delhi	ASSOCHAM	Conference	New India Confluence of Private and Public Enterprises	Dr. Vijayawargiya, WTM
108	16.12.17	Mumbai	BRICS	Seminar	IBC	Chairperson
109	16.12.17	Pune	NIBM	Workshop	IBC	Dr. Vijayawargiya, WTM
110	18.12.17	Mumbai	IGIDR	Conference	Emerging Markets Finance	Chairperson
111	18.12.17	Mumbai	IIBF	Memorial Lecture	Banking on Governance: Freedom From and Freedom To	Chairperson
112	28.12.17	Nagpur	IoV	Congress	Indian Valuers Congress	Chairperson

113	30.12.17	Hyderabad	ICAI	Roundtable	Issues for Consideration of Insolvency Law Committee	Dr. Suri, ED
114	02.01.18	Mumbai	ICAI	Conference	Amendments in IBC	Dr. Saini, WTM
115	10.01.18	Mumbai	IBA	Conference	Stressed Asset Resolution	Chairperson
116	10.01.18	Mumbai	FIDC &NeSL	Roundtable	NBFCs and IU	Chairperson
117	18.01.18	Mumbai	World Bank	Workshop	IBC Development and Jurisprudence	Dr. Vijayawargiya, WTM
118	24.01.18	Mumbai	ICSI IIP & World Bank	Workshop	Insolvency Law for IPs	Dr. Suri, ED
119	28.01.18	Nagpur	ICAI	Seminar	Sectoral Analysis post Economic Reforms	Dr. Vijayawargiya, WTM
120	30.01.18	Mumbai	ASOCHAM	Conference	Valuation Rules: A Game Changer	Chairperson
121	30.01.18	Mumbai	SBI &NeSL	Ceremony	Building Information Utility	Chairperson
122	10.02.18	New Delhi	IBBI	IP Conclave	Building the Institution of IPs	Chairperson
123	11.02.18	Bhubaneswar	OEA	Memorial Lecture	Starting Business to Exiting from Business	Chairperson
124	13.02.18	Hyderabad	ICAI	Roundtable	CIRP	Dr. Suri, ED
125	14.02.18	Hyderabad	ICAI	Roundtable	CIRP	Dr. Suri, ED
126	17.02.18	Anand	CVSRTA	Conference	Valuation of Assets	Chairperson
127	17.02.18	Mumbai	IBBI	Workshop	IBC	Dr. Vijayawargiya, WTM
128	09.03.18	Bhubaneshwar	SIDBI	Workshop	IBC	Dr. Vijayawargiya, WTM
129	16.03.18	New Delhi	ICMAI	Convention	Implementation of IBC: An Assessment	Chairperson
130	17.03.18	Jaipur	JIM, Jaipur	Conference	Role and Strategy for Academia for Corporate Insolvency	Chairperson
131	17.03.18	Gandhinagar	GNLU	Conference	Banking and Finance	Dr. Vijayawargiya, WTM
132	23.03.18	Mumbai	SEBI	Talk	Corporate Insolvency and Securities Market	Chairperson
133	24.03.18	Bangalore	NLSIU, Bangalore	Symposium	Implementing IBC: Building Wherewithal	Dr. Suri, ED
134	24.03.18	New Delhi	CII	Conference	Resolving Insolvency - Progress and Way Forward	Dr. Vijayawargiya, WTM

ACADEMIC ENGAGEMENTS

Research Writing Competition

The Gujarat National Law University, Gandhinagar in collaboration with the IBBI organised an all India Research Writing Competition on the *'Legal Landscape of Insolvency and Bankruptcy in India - Journey since 2016'*. The details of the winners of the research writing competition are given in Table 6.

Table 6

Winners of Research Writing Competition

Position	Name of Winner	Institute	Subject
First	Mr. Subhadip Choudhuri	Gujarat National Law University	Should the Insolvency and Bankruptcy Code be Shadowed by Limitation?
Second	Ms. Ayushi Singh	National Law University, Jodhpur	Investigation of Interpretative Growth of Corporate Insolvency Resolution Statutes: Settlements, Open-Ends and Lacunae.
Third	Mr. Rohan Kohli	National Law Institute University, Bhopal	The Impact and Relevance of Provisions of the Companies Act, 2013 in the Wake of New Insolvency Law.

Essay Competition

The IBBI, in its endeavour to create awareness about the insolvency and bankruptcy regime amongst the students of higher education, issued the IBBI (Essay Competition) Guidelines, 2017 on 13th October, 2017 to promote essay competitions through Institutes of Learning. Students of graduation and post-graduation courses of any discipline at universities, deemed universities and professional institutes (viz. ICAI, ICMAI and ICSI) in India can participate in this competition. The IBBI, through the Institute of Learning, issues certificates of participation to all participants in the essay competition, a cash prize of Rs. 10,000 to the student who has written the best essay, and a cash prize of Rs. 5,000 to the student who has written the second-best essay. Three Essay Competitions were held under the aegis of (i) Indian Institute of Management, Rohtak, (ii) Institute of Law, Nirma University, Ahmedabad and (iii) National Law Institute University (NLIU), Bhopal.

Insolvency Moot

The IBBI, jointly with National Law University, Delhi, INSOL India, SIPI and UNCITRAL Regional Centre for Asia and the Pacific organised the inaugural moot on the new insolvency regime in October, 2017. Prestigious institutions of business and law from all over the country were invited to participate in the moot. The finalists at the moot were:

Winners: Ms. Purvi Nanda, Mr. Mohit Khandelwal, and Ms. Sunidhi Pubreja of Rajiv Gandhi National University of Law, Patiala; and

Runners Up: Mr. Shashank Chadha, Mr. Ankit Gupta, Mr. Udyan Shrivastava, and Ms. Deeksha Malik of National Law Institute University, Bhopal.

Internship programme

The IBBI provides an opportunity of internship to students who wish to pursue a professional career in insolvency, liquidation, bankruptcy or any other related field. The IBBI Internship Guidelines, 2017, which was issued on 16th August, 2017, detail the requirements for students applying for such internship with the IBBI. A student pursuing a five year or three-year degree course in law or post-graduation course in Economics, Commerce, Finance, Management or Law in any recognised School / College / Institute / University is eligible for the same. The duration of the internship is one month. On satisfactory completion of internship, an intern is issued an internship completion certificate.

NEWSLETTER

While IBBI engages with the stakeholders to get their inputs into policy making, it is also important to report back to them about its working, informing about the tasks being carried out and the outcomes being achieved. In this endeavour, IBBI has been publishing its quarterly newsletter since its inception. A soft copy of the same is placed on the website of the IBBI for larger dissemination. The newsletters encapsulated the legal and regulatory developments; status of all the processes and service providers under the Code; capacity building initiatives and advocacy and awareness generation activities undertaken by the IBBI.

C.4 RESEARCH

In an evolving area such as insolvency and bankruptcy, there is a need to analyse literature and market information to inform future policy making. Accordingly, the IBBI has been promoting research and publication through IPAs and academics. It has a Research and Publications Division which (a) collates and analyses data relating to processes and outcomes, (b) publishes quarterly newsletters and brochures, (c) publishes the Annual Report, and (d) coordinates with external researchers for case studies, research workshops etc.

D FUNCTIONS OF THE BOARD

Section 196 of the Code enumerates the functions of the Board. It has broadly three sets of functions, namely,

(a) **Quasi-legislative functions**: The Board makes Regulations for service providers and processes;

(b) **Executive functions**: The Board registers and regulates service providers for the insolvency process and takes measures for professional development and expertise through education, examination, training and continuous professional education; and

(c) **Quasi-judicial functions**: The Board adjudicates upon contraventions against service providers to ensure their orderly functioning.

The actions taken by the Board during 2017-18 in furtherance of each of these functions are enumerated in this Section.

QUASI-LEGISLATIVE FUNCTIONS

The Code enables the IBBI to make Regulations and Guidelines on matters relating to insolvency and bankruptcy and issue guidelines to the IPAs, IPs, and IUs. Section 240 of the Code enables the IBBI to make Regulations, subject to the conditions that the Regulations: (a) carry out the provisions of the Code, (b) are consistent with the Code and the rules made thereunder; (c) are made by a notification published in the Official Gazette; and (d) are laid, as soon as possible, before each House of Parliament for 30 days.

The IBBI has evolved a transparent and consultative process to make regulations. The process generally starts with a WG making draft regulations. The practice of setting up of WGs to study issues in detail and make recommendations on important aspects of regulations was used by the Government in the early stages of implementing the provisions of the Code. The Government had set up four WGs with members drawn from professional institutions and practitioners having experience in the area of a related/associated area to recommend on: (a) organisational structure and design of the Board; (b) Rules and Regulations for IPAs and IPs; (c) Rules and Regulations for insolvency resolution process, liquidation process and NCLT procedures and (d) Rules and Regulations for IUs and associated matters. In keeping with this practice, the IBBI constitutes WGs in important areas of policy making. For example, IBBI has set up a WG on individual insolvency and bankruptcy for recommending the strategy and approach for implementation of the provisions of the Code to deal with insolvency and bankruptcy in respect of personal guarantors to CDs, and individuals having business, and drafting related rules and regulations.

It has been the endeavour of the IBBI to effectively engage with stakeholders in the regulation making process. The engagement has been broadly through three routes: (a) It discussed the draft regulations in several roundtables with the stakeholders to revalidate the understanding of the issues the said regulations sought to address, and the appropriateness of such regulations to address the issues; (b) It obtained comments of the public, through an electronic platform, on each draft regulation and sub-

regulation; and (c) It obtained the advice of the relevant AC on draft regulations. The process of regulation making culminates with the GB finalising and approving the regulations, after considering public comments, the feedback received at roundtables and advice of the AC.

The IBBI invited comments from stakeholders on the existing Regulations in July, 2017. It processed the comments received till 31st December, 2017 and following the due process, modified the Regulations, to the extent necessary, by 31st March, 2018 and brought them into force from 1st April, 2018.

The Board had notified ten Regulations in 2016-17. It notified four new regulations in 2017-18. It amended some of these Regulations from time to time, as detailed in Table 7. The details of each of these Regulations and amendments have been provided under the relevant sub-sections of Section C of the Report.

Table 7

Regulations Notified in 2017-18

No.	Notification Date	Regulations
1	14.06.17	IBBI (Inspection and Investigation) Regulations, 2017
2	15.06.17	IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017
3	16.08.17	IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2017
4	16.08.17	IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2017
5	24.08.17	IBBI (Employees' Service) Regulations, 2017
6	29.09.17	IBBI (Information Utilities) (Amendment) Regulations, 2017
7	05.10.17	IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2017
8	05.10.17	IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2017
9	07.11.17	IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2017
10	07.11.17	IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2017
11	07.12.17	IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017
12	01.01.18	IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2017
13	01.01.18	IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2017
14	06.02.18	IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018
15	07.02.18	IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018
16	26.03.18	IBBI (Employees' Service) (Amendment) Regulations, 2018
17	28.03.18	IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2018
18	28.03.18	IBBI (Insolvency Professionals) (Amendment) Regulations, 2018
19	28.03.18	IBBI (Liquidation Process) (Amendment) Regulations, 2018
20	28.03.18	IBBI (Information Utilities) (Amendment) Regulations, 2018

In order to reach out to various stakeholders and get their feedback on draft regulations/policies, IBBI itself or in collaboration with the industry, professional institutes, and IPAs, organised several roundtables across India. A list of such roundtables, organised in the period under review, is provided in Table 5 of Section C. Table 8 is a summary of the roundtables on various subjects:

Table 8

Subject wise Roundtables

Subject	2016-17	2017-18	Total
Service Providers under the Code	04	02	06
Corporate Insolvency Processes - Insolvency Resolution, Fast Track Resolution, Liquidation and Voluntary Liquidation	04	11	15
Individual Insolvency Processes	--	10	10
Valuation Rules	--	18	18
Others	--	03	03
Total	**08**	**44**	**52**

Advisory Committees

The ACs generally serve as a sounding board for emerging ideas and to lend professional wisdom and market knowledge to the regulator. IBBI has constituted three standing ACs in accordance with the IBBI (Advisory Committee) Regulations, 2017 (Advisory Committee Regulations). The details of these Committees are as under:

(a) ***Advisory Committee on Service Providers***: It was constituted on 18th October, 2016 and reconstituted on 30th August, 2017. One of the Members (Mr. A. S. Chandhiok) resigned on 11th December, 2017 due to personal reasons. Its composition as on 31st March, 2018 is given in Table 9.

Table 9

Composition of Advisory Committee on Service Providers

Sl. No.	Name and Position	Position in the Committee
1	Mr. Mohandas Pai, Chairman, Manipal Global Education	Chairperson
2	Mr. K.V. R. Murty, Joint Secretary, MCA	Member
3	Dr. Bimal N. Patel, Director, Gujarat National Law University	Member
4	Dr. Ajay N. Shah, Professor, NIPFP	Member
5	Mr. J. Ranganayakulu, Former Executive Director, SEBI	Member
6	Mr. Ravi Narain, Former Managing Director, NSE	Member
7	Mr. P. R. Ramesh, Chairman, Deloitte India	Member
8	Chief Executive Officer, ICSI IPA	Member

(b) ***Advisory Committee on Corporate Insolvency Resolution***: It was constituted on 18th October, 2016 and reconstituted on 25th August, 2017. Its composition as on 31st March, 2018 is given in Table10.

Table 10

Composition of Advisory Committee on Corporate Insolvency Resolution

Sl. No.	Name and Position	Position in the Committee
1	Mr. Uday Kotak, Executive Vice Chairman & MD, Kotak Mahindra Bank	Chairperson
2	Mr. Gyaneshwar Kumar Singh, Joint Secretary, MCA	Member
3	Mr. Ashish Kumar Chauhan, MD and CEO, BSE Limited	Member
4	Mr. M. V. Nair, Chairman, Credit Information Bureau (India) Limited	Member
5	Dr. Omkar Goswami, Chairperson, CERG Advisory Private Limited	Member
6	Mr. Somsekhar Sundaresan, Legal Counsel	Member
7	President, NCLT and NCLAT Bar Association	Member
8	Mr. Ajay Piramal, Chairman of Piramal Group and Shriram Group	Member
9	Prof (Dr.) Ranbir Singh, Vice Chancellor, NLU, Delhi	Member
10	Mr. R. K. Nair, Ex-Member, IRDA	Member
11	Chairman, Indian Bank Association	Member
12	Chief Executive Officer, IPA of ICAI	Member

(c) ***Advisory Committee on Individual Insolvency and Bankruptcy***: It was constituted on 15th September, 2017 with the composition given in Table 11.

Table 11

Composition of Advisory Committee on Individual Insolvency and Bankruptcy

Sl. No.	Name and Position	Position in the Committee
1	Justice B. N. Srikrishna, Former Justice, Supreme Court of India	Chairperson
2	Mr. C. B. Bhave, Chairperson, IIHS and Former Chairman, SEBI	Member
3	Professor Dipankar Gupta, Sociologist and Author	Member
4	Mr. Prithvi Haldea, Founder Chairman, Prime Database	Member
5	Dr. (Mrs.) Poornima Advani, Former Chairperson, NCW and Advocate	Member
6	Mr. R. V. Verma, Former CMD, National Housing Bank	Member
7	Mr. Sanjeev Sanyal, Principal Economic Advisor, Ministry of Finance	Member
8	Representative, MCA	Member
9	Mr. Sumant Batra, President, Society of Insolvency Practitioners of India	Member
10	CEO, IIIP of ICAI	Member

EXECUTIVE FUNCTIONS

Insolvency Professionals

Till 31st December, 2016, 977 individuals were granted registration as IPs with validity for a limited period of six months. Since 31st December, 2016, an individual, who is enrolled with an IPA as a professional member and has the required qualification and experience and passed the Examination, is registered as an IP. The details of IPs registered as on 31st March, 2018 is presented in Tables 12 and 13.

Table 12

Registration of IPs

Quarter	Registrations during quarter				Registrations at the end of quarter			
	IIIP of ICAI	ICSI IIP	IPA of ICMAI	Total	IIIP of ICAI	ICSI IIP	IPA of ICMAI	Total
Oct-Dec, 2016*	713	221	43	977	713	221	43	977
Jan-Mar, 2017	33	51	12	96	33	51	12	96
Apr-Jun, 2017	266	136	48	450	299	187	60	546
Jul-Sep, 2017	338	183	40	561	637	370	100	1107
Oct-Dec, 2017	125	72	20	217	762	442	120	1324
Jan-Mar, 2018	340	118	30	488	1102	560	150	1812

** These registrations expired by 30th June, 2017*

Table 13

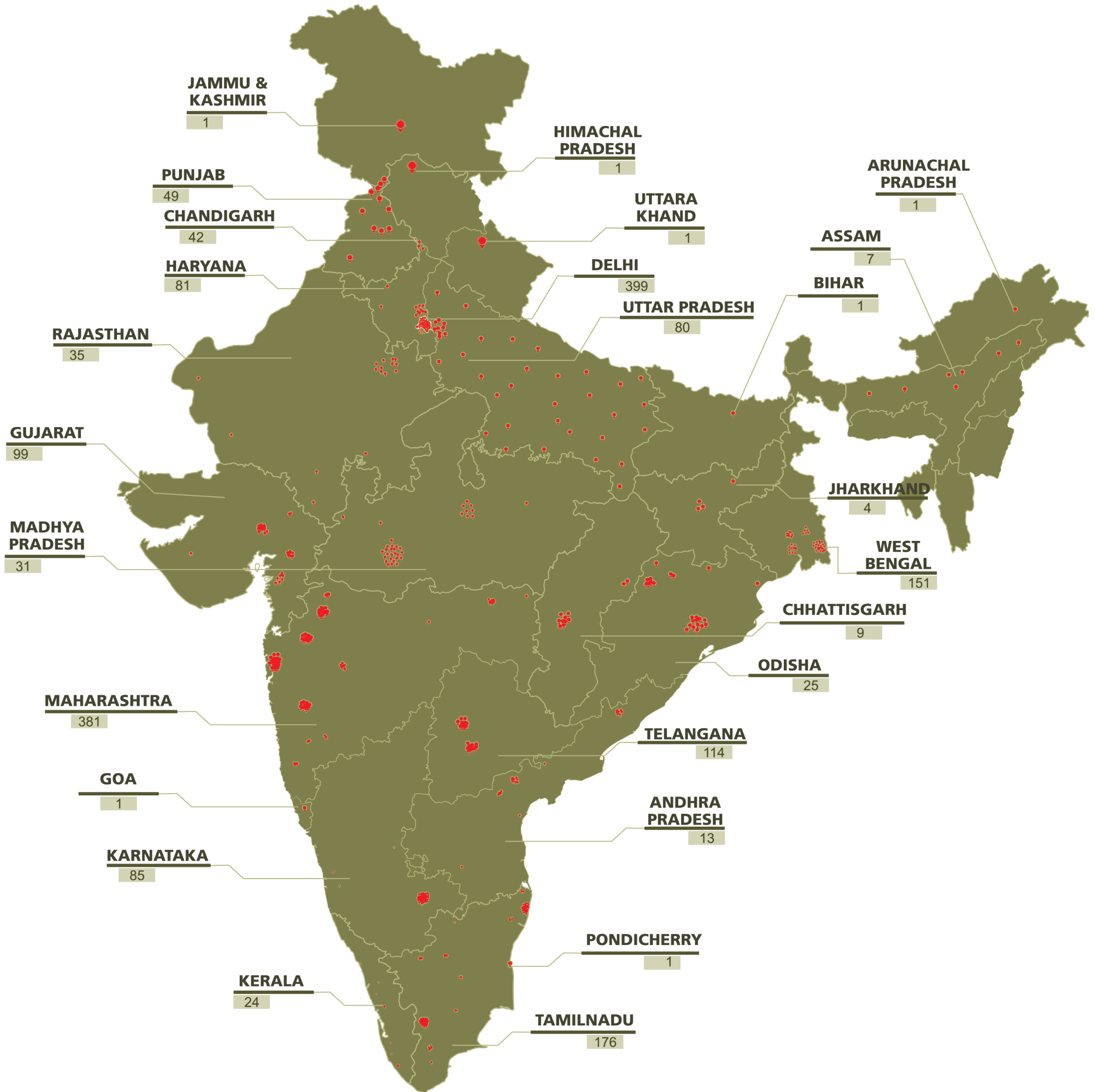
Distribution of IPs

(Number)

City / Region	IIIP of ICAI	ICSI IIP	IPA of ICMAI	Total
New Delhi	217	148	39	405
Rest of Northern Region	159	100	26	285
Mumbai	205	72	20	297
Rest of Western Region	139	67	17	223
Chennai	76	42	7	125
Rest of Southern Region	161	100	27	288
Kolkata	109	22	10	141
Rest of Eastern Region	35	9	4	48
Total	**1102**	**560**	**150**	**1812**

The geographical distribution of IPs as on 31st March, 2018 is presented in Figure 2.

Figure 2: Geographical Distribution of IPs as on 31st March, 2018[1]



[1]*Map of India as on 31st March, 2018.*

Table 14 presents distribution of IPs as per their eligibility (An IP may be a member of more than one Institute) as on 31st March, 2018.

Table 14

Distribution of IPs as per their Eligibility

Eligibility	No. of IPs		Total
	Male	Female	
Member of ICAI	926	77	1003
Member of ICSI	332	56	388
Member of ICMAI	104	10	114
Member of Bar Council	105	12	117
Managerial Experience	181	9	190
Total	**1648**	**164**	**1812**

Insolvency Professional Entities

As on 31st March, 2018, there were 75 IPEs. The details of recognised IPEs are given in Table 15.

Table 15

Recognised IPEs as on 31st March, 2018

Quarter	No. of IPEs		
	Recognised	Derecognised	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
Total	**76**	**1**	**75**

Capacity Building

It is the endeavour of IBBI to build capacity of the IPs in the area of insolvency and bankruptcy given that the law is a new one and needs to be understood and interpreted correctly to be able to deliver the envisaged outcomes. It organised six workshops for IPs during 2017-18 (Table 16).

Table 16

Workshops for IPs

Date	Venue	No. of Participants
26 - 27 Apr, 2017	Delhi	40
15 -16 Jun, 2017	Mumbai	29
26 -27 Jul 2017	Kolkata	24
15 -16 Sept, 2017	Hyderabad	41
8 - 9 Dec, 2017	Delhi	44
18 - 20 Jan, 2018*	Mumbai	50
22 - 24 Jan, 2018*	Mumbai	40
16 -17 Feb, 2018	Mumbai	55

**These were organised with the assistance of the World Bank Group, the IIIP of ICAI and ICSI IIP*

IBBI organised a three-day workshop for 50 IPs in Mumbai on 18th -20th January, 2018, in association with the World Bank and IIIP of IPCAI. It also organized another three-day workshop for 40 IPs in Mumbai on 22nd – 24th January, 2018, in association with the World Bank and ICSI IIP. The workshops were led by two leading IPs from the United Kingdom, Mr. Gordon Stewart and Mr. Richard Heis, who are Past-President and Treasurer of INSOL International, respectively and supported by representatives from World Bank Group and few Indian IPs handling large CIRPs. The workshop utilized a combination of international best practices, panel discussions with the expert IPs and case studies to train the participants.

Further, IBBI, in association with the three IPAs organised an IP Conclave on 10th February, 2018 in New Delhi. About 300 IPs participated in the conclave.

Replacement of IRP with RP

Section 22(2) of the Code provides that the CoC may, in its first meeting, by a majority vote of not less than 75 per cent 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 31st March, 2018, a total of 182 IRPs have been replaced with RPs, as shown in Table 17.

Table 17

Replacement of IRP with RP till 31st March, 2018

CIRP initiated by	No. of CIRPs	
	Where RPs have been appointed	Where RP is different from the IRP
Corporate Applicant	128	58
Operational Creditor	272	78
Financial Creditor	276	46
Total	**676**	**182**

Guidelines for Recommending IRPs

Section 16(3)(a) of the Code requires the AA to make a reference to the Board for recommendation of an IP who may act as an IRP in case an OC has made an application for CIRP and has not proposed an IRP. The Board, within ten days of the receipt of the reference from the AA, is required under section 16(4) of the Code to recommend to the AA the name of an IP against whom no disciplinary proceedings are pending. In the interest of objectivity and transparency, the Board issued 'Insolvency Professionals to act as Interim Resolution Professionals (Recommendation) Guidelines, 2017' on 25th May, 2017 to identify and recommend the name of an IP to act as IRP.

Guidelines for Recommending IRPs and Liquidators

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 mentioned in sub-section (2) of section 30; or (b) the Board recommends the replacement of a RP to the AA for reasons to be recorded in writing. The AA may direct the Board to propose the name of another IP to be appointed as a Liquidator. The Board is required under section 34(6) to propose the name of another IP within ten days of the direction issued by the AA. The Board used to receive a reference from the AA for recommending the name of an IP to act as IRP or Liquidator, as the case may be. Identification and recommendation of a name on receipt of a reference from the AA took some time. In the interest of the time bound processes under the Code, while maintaining objectivity and transparency of the process, the Board decided to make available a panel of IPs to the AA for appointment as IRP or Liquidator, as the case may be.

Accordingly, the IBBI issued the 'Insolvency Professional to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2017' on 15th December, 2017. The Guidelines provide that the Board will prepare a common Panel of IPs for appointment as IRPs and Liquidators and share the same with the AA. The Panel will have a bench-wise list of IPs based on the registered office of the IP. It will have a validity of six months and a new Panel will replace the earlier Panel every six months. The AA may pick up any name from the Panel for appointment of IRP or Liquidator, as the case may be, for a CIRP or liquidation process, as the case may be. The Guidelines lay down the process that the IBBI will follow for preparation of the Panel. In accordance with the aforesaid Guidelines, the IBBI prepared a Panel of 807 IPs for appointment as IRP or Liquidator valid for January-June, 2018 and shared the same with the AA. The Panel was accepted by the AA as well as the Appellate Authority.

Insolvency Professional Agencies

IPAs are frontline regulators and responsible for developing and regulating the profession of IPs. There were three IPAs registered as on 31st March, 2018, as presented in Table 18.

Table 18

IPAs Registered as on 31st March, 2018

Sl. No.	Date of Registration	Name of IPA	Promoted by
1	28.11.16	Indian Institute Insolvency Professionals of ICAI	Institute of Chartered Accountants of India
2	28.11.16	ICSI Institute of Insolvency Professionals	Institute of Company Secretaries of India
3	30.11.16	Insolvency Professional Agency of Institute of Cost Accountants of India	Institute of Cost Accountants of India

Information Utility

The Code envisages IUs to store financial information that helps to establish defaults as well as verify claims expeditiously and thereby facilitates completion of processes under the Code in a time bound manner. IBBI registered the NeSL as an IU on 25th September, 2017. NeSL has been promoted by SBI, Canara Bank, Bank of Baroda and others. The details of the registered users and information with the NeSL as on 31st March, 2018 is given in Table 19.

Table 19

Details of information with the NeSL

(Number except as stated)

Creditors	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
Financial Creditors	26	1	2,392	3,000	Nil	Nil
Operational Creditors	NA	38	38	38	2	Nil

Technical Committee

The Regulations enable IBBI to lay down technical standards, through guidelines, for the performance of core services and other services by IUs. The technical standards will ensure reliability, confidentiality and security of financial information to be stored by the IUs. The Board is required to lay down technical standards based on the recommendations of a Technical Committee. Accordingly, the Board constituted a Technical Committee on 3rd May, 2017 comprising:

(a) Dr. R. B. Barman, Chairman, National Statistical Commission, as Chairperson

(b) Dr. Nand Lal Sarda, Emeritus Fellow, Indian Institute of Technology, Bombay

(c) Dr. Pulak Ghosh, Professor, Indian Institute of Management, Bangalore, and

(d) Sh. V. G. Kannan, Chief Executive, Indian Banks Association.

Technical Standards

The Board laid down the Technical Standards for the performance of core services and other services by IUs on 13th December, 2017, based on the recommendations of the Technical Committee. These standard relate to terms of service; registration of users; unique identifier for each record and each user; submission of information; identification and verification of persons; authentication of information; verification of information; data integrity; consent framework for providing access to information to third parties; security of the system; security of information; risk management framework; preservation of information; and purging of information.

Registered Valuer Organisation

RVOs are frontline regulators for the RVs. They are responsible for development and regulation of the profession of RVs. At the end of 31st March, 2018, three entities were recognised as RVOs (Table 20).

Table 20

Registered Valuers Organisations

Sl. No.	Date of Recognition	Name of RVO	Asset Class
1	27.12.17	Institution of Estate Managers and Appraisers	Land and Building
2	27.12.17	Institute of Valuers (IoV) Registered Valuers Foundation	Land and Building, Plant and Machinery, and Securities or Financial Assets
3	17.01.18	ICSI Registered Valuers Organisation	Land and Building, Plant and Machinery, and Securities or Financial Assets

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 of the relevant asset class, is registered as a valuer.

Limited Insolvency Examination

Subject to meeting other requirements, an individual is eligible for registration as an IP if he has passed the Examination. The IBBI commenced the Examination on 31st December, 2016. The second phase of Examination with a revised syllabus and question bank commenced on 1st July, 2017 and the third phase with a further revised syllabus and question bank commenced on 1st January, 2018. The Examination is conducted online (computer-based in a proctored environment) with objective multiple-choice questions. It is available from more than 100 locations in the country on all days. The duration of the Examination is two hours. Till 31st March, 2018, there have been 2674 successful attempts. Out of them, 279 were from East Zone, 981 from North Zone, 788 from West Zone and 625 from South Zone. Zone-wise distribution is present in Table 21.

Table 21

Status of Limited Insolvency Examination

Phase	Quarter	Number of successful attempts				
		East	North	West	South	All India
First	Jan-Mar, 2017	32	109	91	34	267
	Apr- Jun, 2017	128	325	300	182	935
Second	Jul-Sept, 2017	41	177	156	102	476
	Oct-Dec, 2017	45	224	160	207	636
Third	Jan -Mar, 2018	33	146	81	100	360
	Total	**279**	**981**	**788**	**625**	**2674**

Valuation Examinations

IBBI, being the 'Authority' tasked with development and regulation of the profession of valuers under section 247 of the Companies Act, published the 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. It commenced the valuation examinations for three asset classes on 31st March, 2018. These examinations are computer-based online examinations and are available from several locations across the country.

Complaints and Grievances Regulations

The Grievance Regulations enable a stakeholder to file a grievance or a complaint against a service provider. Besides this, grievances and complaints are received from the Centralised Public Grievance Redress and Monitoring System (CPGRAMS), Prime Minister's Office, MCA and other authorities. The details of receipt and disposal of grievances and complaints till 31st March, 2018 is presented in Table 22.

Table 22

Receipt and Disposal of Grievances and Complaints

(Number)

Complaints and Grievances	Received	Disposed	Pending
Under the Regulations	18	0	18
Through other modes (CPGRAM/PMO/MCA/Other Authorities)	6	0	6
Other Sources	22	2	20
Total	**46**	**2**	**44**

Circulars

The Board issues a few circulars from time to time to IPs, IPAs, IUs, to facilitate its monitoring function. Table 23 enumerates that Circulars issued by the Board during the year 2017-18.

Table 23

Circulars Issued by the Board

Date of Issue	Content
03.01.18	**IP to ensure compliance with provisions of the applicable laws.** A corporate person undergoing insolvency resolution process, fast track insolvency resolution process, liquidation process or voluntary liquidation process under the Code needs to comply with provisions of the applicable laws (Acts, Rules and Regulations, Circulars, Guidelines, Orders, Directions, etc.) during such process. For example, a corporate person undergoing insolvency resolution process, if listed on a stock exchange, needs to comply with provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, unless the provision is specifically exempted by the competent authority or becomes inapplicable by operation of law for the corporate person. Accordingly, the IBBI directed IPs that while acting as an IRP, a RP, or a Liquidator for a corporate person under the Code, they shall exercise reasonable care and diligence and take all necessary steps to ensure that the corporate person undergoing any process under the Code complies with the applicable laws. It was clarified that if a corporate person during any of the aforesaid processes under the Code suffers any loss, including penalty, if any, because of non-compliance of any provision of the applicable laws, such loss shall not form part of IRPC or liquidation process cost under the Code. It was also clarified that the IP will be responsible for the non-compliance of the provisions of the applicable laws if it is because of his conduct.
03.01.18	**IP not to outsource his responsibilities.** An IP is required to perform certain tasks under the Code while acting as an IRP, a RP, a Liquidator or a Bankruptcy Trustee for various processes. The IBBI directed that an IP shall not outsource any of his duties and responsibilities under the Code.
03.01.18	**Use of Registration Number etc.** An IP is required to prominently state in all his communications, whether by way of public announcement or otherwise to a stakeholder or to an authority, his name, address, email, Registration Number etc.
16.01.18	**Fees payable to IP and to other professionals appointed by the IP.** The IBBI clarified that an IP shall render services for a fee which is a reasonable reflection of his work, raise bills / invoices in his name towards such fees, and such fees shall be paid to his bank account. Any payment of fees for the services of an IP to any person, other than the IP, shall not form part of the IRPC. Similarly, any other professional (such as registered valuer) appointed by an IP shall raise bills / invoices in his / its name towards such fees, and such fees shall be paid to his / its bank account.
16.01.18	**Disclosures by IPs and other Professionals appointed by IPs conducting Resolution Processes** In the interest of transparency, the IBBI directed that an IP and every other professional appointed by the IP for a resolution process shall make certain disclosures to the IPA of which he is a member. An IP shall disclose his relationship, if any, with the CD within three days of his appointment; with other professional(s) engaged by him within three days of appointment of the other professional; with FCs within three days of the constitution of the CoC; with interim finance provider(s) within three days of the agreement with him, and with prospective RA(s) within three days of the supply of IM to it. The IBBI also directed that an IP shall ensure disclosure of the relationship, if any, of the other professional(s) engaged by him with himself; the CD; the FC; interim finance provider(s), and prospective RA(s) to the IPA of which he is a member, within the time specified. The IPA was required to facilitate receipt of the disclosures and disseminate such disclosures on its website within three working days of receipt of the same.
16.02.18	**Confidentiality of information relating to processes under the Code.** Unauthorised access to or leakage of information relating to processes under the Code has the potential to impact these processes. Accordingly, IBBI directed that an IP, whether acting as IRP, RP or Liquidator, except to the extent provided in the Code and Rules, Regulations or Circulars issued thereunder, (i) shall keep every information related to the processes confidential; and (ii) shall not disclose or provide access to any such information to any unauthorised person.

23.02.18	**Designated website for publishing Forms under the regulations.** Various regulations under the Code require Public Announcements on the website, if any, designated by IBBI. For this purpose, the IBBI designated its website www.ibbi.gov.in. It also provided the details of the manner of publishing such announcements on the designated website.

Orders of the Board

An individual enrolled with an IPA is required to make an application to the Board for grant of a certificate of registration to carry on the activities of an IP in accordance with IP Regulations. On consideration of an application for certificate of registration, the Board may form a *prima facie* opinion that the registration ought not be granted in accordance with the IP Regulations. The Board, having regard to the principles of natural justice, gives the applicant an opportunity to explain why the application should be accepted. If the Board is not satisfied even after the explanation submitted by the applicant, it rejects the application by a reasoned order. It had rejected two applications in 2016-17. It rejected six applications for registration as IP in 2017-18. Out of a total of eight applications, seven were rejected on the grounds of the applicant not being a "fit and proper" person for registration as IP. One application was rejected as the IP was in employment.

As per regulation 4(g) of the IP Regulations, no individual shall be eligible to be registered as an IP if he is not a "fit and proper" person. For determining whether an individual is "fit and proper" under the regulations, the Board may take account of any consideration as it deems fit, including but not limited to the following criteria: (i) integrity, reputation and character; (ii) absence of convictions and restraint orders, and (iii) competence, including financial solvency and net worth.

In 2017-18, the Board de-recognised an IPE, namely, Nangia Insolvency Professionals LLP, as it failed to meet the eligibility requirements.

QUASI-JUDICIAL FUNCTIONS

Section 220 of the Code provides that the Board shall constitute a DC for consideration of an inspection or investigation report. Accordingly, a DC comprising of Dr. M. S. Sahoo, Chairperson, IBBI was constituted on 1st February, 2017. It was reconstituted on 23rd August, 2017, comprising of Dr. (Ms.) Mukulita Vijayawargiya, WTM of the Board.

E ANALYSIS OF OUTCOMES

This Section presents the outcomes under the Code during 2017-18 in terms of corporate insolvency processes initiated and concluded. It also summarises the emerging jurisprudence in terms of the interpretation of the Code and various Rules and Regulations thereunder by the AA, the NCLAT, the HCs and the SC.

CORPORATE PROCESSES

Generally, the insolvency laws are designed by perception and judgement of a set of well-meaning and experienced professionals, with little reliance on empirical data. However, it is reformed to keep it relevant and effective in the changing market dynamics, based on empirical assessment of its working. The authorities usually collate and track various trends with appropriate classification to measure efficiency and effectiveness of an insolvency regime.

Insolvency Resolution

Since the coming into force of the provisions of CIRP with effect from 1st December 2016, 542 CIRPs have commenced by the end of March, 2018, as presented in Table 24 of these, 85 have been closed on appeal or review or settled; 91 have ended in orders for liquidation and 23 have ended in approval of resolution plans. The month-wise distribution of the admitted cases is indicated in Figure 3.

Table 24

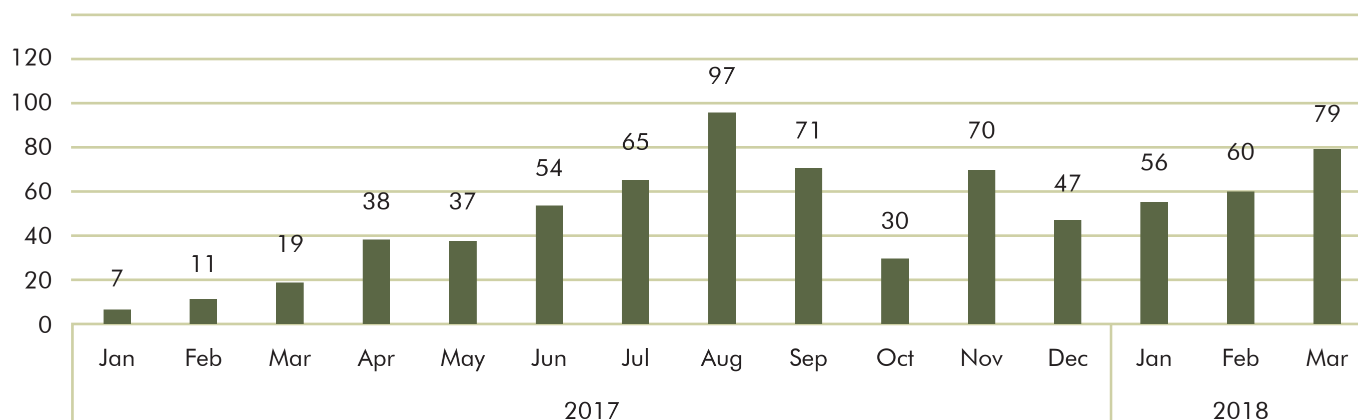
Corporate Insolvency Resolution Process

(Number of CIRPs)

Quarter	CIRPs at the beginning of the Quarter	Admitted	Closure by			CIRPs at the end of the Quarter
			Appeal/ Review/ Settled	Approval of Resolution Plan	Commencement of Liquidation	
Jan-Mar, 2017	0	37	1	0	0	36
Apr-June, 2017	36	129	8	0	0	157
July-Sept, 2017	157	233	18	2	8	362
Oct-Dec, 2017	362	147	38	8	24	439
Jan-Mar, 2018	439	195	20	13	59	542
Total	**NA**	**741**	**85**	**23**	**91**	**542**

Figure 3

Month-wise Admission of CIRPs



The distribution of CIRPs admitted, as on 31st March, 2018, as per the jurisdiction of benches of the AA is indicated in Table 25. A maximum of 180 CIRPs have been admitted by the Mumbai Benches followed by 142 by New Delhi Benches and 134 by the Chennai Bench.

Table 25

CIRPs Admitted

Sl. No.	Bench of NCLT	No. of Corporate Debtors
1	Ahmedabad	76
2	Allahabad	13
3	Bengaluru	28
4	Chandigarh	49
5	Chennai	134
6	Guwahati	2
7	Hyderabad	41
8	Kolkata	76
9	Mumbai	180
11	Principal and New Delhi Bench	142
Total		**741**

The distribution of stakeholders, who triggered resolution process, is presented in Table 26. OCs triggered 43.3 per cent of the CIRPs, followed by about 39 per cent by FCs and remaining by the CDs. Initially, the CDs were the prime users, as they perceived that the CIRP would yield haircuts for creditors, while the control and management would remain unchanged. This perception changed with section 29A, which was introduced in November, 2017 by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, to prohibit persons having certain disabilities to submit resolution plans. The credible threat of a CIRP that may shift the control and management of the CD away from existing promoters and managers, most probably, for ever, deterred the CD from filing applications for CIRP. The number of applications by CDs reduced sharply post this amendment. The applications by FCs increased following the Banking Regulations (Amendment) Ordinance, 2017 which empowered the RBI in May, 2017 to direct banks to file applications for CIRP in case of a default by a CD. It got a further boost in February, 2018 when the RBI substituted all extant instructions on the resolution of stressed assets with a harmonized and simplified generic framework for resolution of stressed assets.

Table 26

Initiation of CIRPs

Quarter	No. of CIRPs Initiated by			Total
	Financial Creditors	Operational Creditors	Corporate Debtors	
Jan - Mar, 2017	8	7	22	37
Apr - Jun, 2017	37	58	34	129
Jul - Sep, 2017	94	100	39	233
Oct - Dec, 2017	66	67	14	147
Jan - Mar, 2018	84	89	22	195
Total	**289**	**321**	**131**	**741**

Sector-wise distribution of CDs admitted into CIRP is presented in Table 27. The largest number of CIRPs have been initiated in the Real estate, Renting & Business Activities sector, with the second largest being in the Construction sector, followed by the Wholesale & Retail Trade sector. The status of CIRPs is presented in Table 28.

Table 27

Sector-wise Distribution of CIRPs

Sector	No. of CIRPs		
	Closed	Ongoing	Total
Manufacturing	**94**	**236**	**330**
Food, Beverages & Tobacco Products	8	28	36
Chemicals & Chemical Products	7	20	27
Electrical Machinery & Apparatus	9	12	21
Fabricated Metal Products	5	17	22
Machinery & Equipment	9	16	25
Textiles, Leather & Apparel Products	15	36	51
Wood, Rubber, Plastic & Paper Products	6	21	27
Basic Metals	18	46	64
Others	17	40	57
Real Estate, Renting & Business Activities	**28**	**92**	**120**
Real Estate Activities	2	16	18
Computer and Related Activities	3	12	15
Research and development	0	1	1
Other business activities	23	63	86
Construction	15	60	75
Wholesale & Retail Trade	29	56	85
Hotels & Restaurants	5	14	19

Electricity & Others	6	11	17
Transport, Storage & Communications	6	16	22
Others	16	57	73
Total	**199**	**542**	**741**

Table 28

Status of CIRPs

Status	Number
Admitted	741
Closed on Appeal / Review	85
Closed by Resolution	23
Closed by Liquidation	91
Ongoing CIRP as on 31st March, 2018	542
> 270 days	67
> 180 days ≤ 270 days	158
> 90 days ≤ 180 days	128
≤ 90 days	189

Note: The number of days is from the date of admission.

The processes ending with resolution plans have yielded different degrees of realisation for creditors. It is observed that in many cases, the FCs have realised a percentage of their claims from resolution. However, they have realised reasonably well in comparison to the liquidation value. Let us take a hypothetical example. A CD has an aggregate claim of Rs.1000, the value realised under the resolution value is Rs.100, and the liquidation value is Rs.10. If insolvency of the CD is resolved, the claimants get Rs.100, that is, 10 per cent of their claims or 10 times of the liquidation value. Of the CIRPs yielding resolutions as on 31st March, 2018, the FCs have realised about 49.68 per cent of the amount claimed by them. However, they have realised 168.35 per cent of liquidation value, as presented in Table 29. If the CD was liquidated, they would have got 100 per cent of liquidation value minus the costs. The excess of 68.5 per cent is on account of resolution under the Code.

This kind of realisation is consistent with the expectation under the Code in initial days of its implementation. The CIRP yields good outcomes when it is initiated in early days of default and concluded expeditiously. If it is initiated very late, as it happened in many of these cases, after decades of sickness, the CD is only worth its liquidation value, which decays further with time. When that is not done, the CIRP yields either liquidation or abysmal realisation. A few years down the line, it is expected that CDs would come up for resolution at the earliest instance of default of threshold amount, that is, when they have reasonably good health and hence the outcome of CIRP would then be better.

Table 29

CIRPs Yielding Resolution, 2017-18

(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	Realisation by FCs as % of their Claims Admitted	Realisation by FCs as % of the Liquidation Value
1	Synergies-Dooray Automotive Limited	Yes	23.01.17	02.08.17	CD	972.15	8.17	54.70	5.63	669.52
2	Chhaparia Industries Private Limited	Yes	24.02.17	29.09.17	CD	49.75	17.15	20.60	41.41	120.12
3	Prowess International Private Limited	No	20.04.17	17.10.17	OC	2.88	NA	2.88	100.00	NA
4	Sree Metaliks Ltd.	Yes	30.01.17	07.11.17	FC	1287.22	340.62	607.31	47.18	178.30
5	West Bengal Essential Commodities Supply Corpn Ltd.	No	29.05.17	20.11.17	FC	344.93	NA	185.84	53.88	NA
6	Shirdi Industries Limited	Yes	18.05.17	12.12.17	CD	673.88	103.05	176.36	26.17	171.14
7	Hotel Gaudavan Private Limited	No	31.03.17	13.12.17	FC	70.44	36.12	44.20	62.75	122.37
8	Nandan Hotels Limited	No	17.08.17	14.12.17	OC	0.00	NA	0.00	0.00	NA
9	JEKPL Private Limited	No	17.03.17	15.12.17	CD	606.57	222.06	162.00	26.71	72.95
10	Trinity Auto Components Limited	Yes	25.05.17	22.01.18	CD	17.38	20.82	17.38	99.98	83.49
11	Kalyanpur Cements Ltd.	Yes	01.05.17	31.01.18	OC	131.05	119.74	98.60	75.24	82.34
12	Palogix Infrastructure Private Limited	No	12.05.17	12.02.18	FC	154.39	48.86	56.84	36.81	116.34
13	Shree Radha Raman Packaging Private Limited	No	28.04.17	15.02.18	OC	0.89	2.88	0.96	107.00	33.24
14	Kohinoor CTNL Infrastructure Company Private Limited	No	16.06.17	21.02.18	FC	2528.40	329.90	2246.00	88.83	680.81
15	Kamineni Steel & Power India Private Limited	Yes	10.02.17	27.11.17	CD	1509.00	760.00	600.00	39.76	78.95
16	Sharon Bio -Medicine Limited	No	11.04.17	28.02.18	FC	891.38	182.69	294.03	32.99	160.95
17	Precision Engineers & Fabricators Pvt. Ltd.	No	04.04.17	01.02.18	OC	79.27	27.24	35.06	44.23	128.71
18	Burn Standard Co Ltd.	Yes	31.05.17	06.03.18	CD	58.77	593.00	65.47	111.40	11.04
19	Forward Shoes (India) Private Limited	No	19.06.17	27.03.18	OC	120.62	79.69	120.62	100.00	151.36
20	Divya Jyoti Sponge Iron Private Limited	No	23.08.17	13.03.18	FC	77.20	16.83	34.25	44.37	203.51

21	Propel Valves Private Limited	No	11.08.17	19.03.18	OC	1.71	0.38	1.71	99.87	450.00
22	Kalptaru Alloys Private Limited	Yes	05.09.17	20.03.18	FC	51.20	27.48	31.60	61.72	114.99
23	Haldia Coke and Chemicals Private Limited	Yes	11.07.17	27.03.18	CD	343.69	6.61	98.50	28.66	1490.17
Total						**9972.77**	**2943.28**	**4954.91**	**49.68**	**168.35**

First Resolution Plan

The AA approved the first resolution plan under the Code on 2nd August, 2017 for resolution of Synergies Dooray Automotive Limited (Dooray). The CIRP of Dooray served as the laboratory for evolution of best practices and as the school for IPs and other elements of the ecosystem. It paved the doorway for thousands others to follow and changed the trajectory of insolvency resolution forever **(Box 5)**. It engendered amendments in the Code in 2017, preventing undeserving persons from taking over a CD through a CIRP, which in a sense is another dimension of *Swachh* India.

Box 5

Dooray Paved Doorway

Synergies Dooray Automotive Limited (Dooray) had a negative net worth at the end of March, 2004 and consequently was declared a sick company by the BIFR on 14th February, 2007. As on 30th September , 2004, it had an outstanding debt of Rs. 212 crore. Some creditors of Dooray assigned their debts constituting a substantial amount of the outstanding debt on the balance sheet to a related party, Synergies Castings Limited (Castings) over 2008-11. Years later, Castings assigned a substantial amount of debt at a discounted consideration to Millennium Finance Limited (MFL), a NBFC, on 24th November , 2016.

The Central Government, vide notification dated 25th November, 2016, appointed 1st December , 2016, as the date on which the provisions of the Sick Industrial Companies (Repeal) Act, 2003 shall come into force. Accordingly, any reference made to BIFR, any inquiry pending before BIFR, any appeal preferred to Appellate Authority for Industrial and Financial Reconstruction (AAIFR), or any proceedings pending before BIFR/AAIFR automatically stood abated with effect from 1st December , 2016. Dooray applied for CIRP under section 10 of the Code. The application was admitted and CIRP commenced on 23rd January , 2017.

Dooray had total assets of Rs. 11.95 crore in the books with a liquidation value of Rs. 8.17 crore at the commencement of the CIRP. On the same date, it had an outstanding debt of Rs. 972.15 crore, including interest, as under:

Sl. No.	Financial Creditor	Amount of Debt (Rs. crore)		Percentage share in	
		Before November 24, 2016	After November 24, 2016	Debt	Voting Power
1	Alchemist Asset Reconstruction Company Ltd. (AARC)	122.06	122.06	12.56	13.83
2	Edelweiss Asset Reconstruction Company Ltd. (EARC)	86.92	86.92	8.94	9.84
3	Millennium Finance Limited (MFL)	00.00	673.91	69.32	76.33
4	Synergies Castings Limited (Castings)	763.17	89.26	9.18	0.00
Total		**972.15**	**972.15**	**100.00**	**100.00**

Three RAs, namely, SMB Ashes Industries, Suiyas Industries Private Limited and Castings submitted resolution plans. The CoC approved the resolution plan submitted by Castings with 90.16 per cent voting share, with certain modifications. The minority creditor, EARC abstained from voting. The AA approved the plan on 2nd August , 2017. The plan provided for amalgamation of the Dooray with Castings, a related party with effect from 31st March , 2017. It provided for similar treatment to all FCs, whether they voted in favour of the plan or abstained from voting. It provided for realisations by claimants as under:

Sl. No.	Claimant	Amount of Claim (Rs. lakh)	
		Admitted	Realisations (Over time)
1	Insolvency resolution process cost	NA	50.00
2	Financial Creditors	**97215**	**5469.68**
2(a)	Alchemist Asset Reconstruction Company Ltd.	12206	686.77
2(b)	Edelweiss Asset Reconstruction Company Ltd.	8692	489.00
2(c)	Millennium Finance Limited (MFL)	67391	3791.75
2(d)	Synergies Castings Limited (Castings) (Notional, being resolution applicant))	8926	502.16
3	Deferred Sales Tax	NA	351.69
4	Current Liabilities	NA	1.16
5	Statutory Dues	NA	43.13
6	Shareholders	NA	93,275 shares of face value of Rs.10 each, accounting for 0.37 per cent of shares of Castings.

Realisations by Creditors

The FCs realised less than six per cent of their claims under the resolution plan. It set the alarm bells ringing. It was argued that if the very first resolution plan was any indication, the banks should just write off the NPAs rather than realise only about six per cent after a 'tortuous legal process and fat process costs'. Or, the Code should be junked. It is, however, important to note that the FCs realised about six times the liquidation value. In the absence of the Code, Dooray would have continued with BIFR for 'n' years more and liquidation value would have depleted further. After 'n' years, Dooray would have been liquidated, which would have returned the liquidation value of Rs.8.17 crore minus depletion minus cost of liquidation. Consequently, the FCs would have realised less than one percent of their claims, after 'n' years, as against realisation of about six per cent under the resolution plan. More importantly, realisation for FCs was a secondary outcome while the primary outcome was revival of Dooray.

Section 29A

In this CIRP, Castings, a related party, took over Dooray, where the FCs took a haircut of about 94 percent. It was argued that the promoters, who drove the CD into the ground, wrested control of the CD through a process under the Code, while the only outcome of the process was haircut for FCs. This was not acceptable that the Code would reward unscrupulous persons at the expense of creditors. The Code made course correction with promulgation of an Ordinance on 23rd November , 2017, which inserted section 29A to prohibit certain persons from submitting resolution plans, who on account of their antecedents, may adversely impact the credibility of the process under the Code. This ensured that only capable and credible people take control of the CD in the interest of sustainable resolution.

Related Party

A substantial amount of outstanding debt was assigned by Castings, a related party, to a third party NBFC, MFL, on 24th November, 2016, one day before the notification of the SICA (Repeal) Act, 2003. While Castings being a related party was not eligible to be a member of the CoC, MFL found a seat in the CoC with more than 75 per cent of voting share. At that time, the resolution plan required approval by 75 per cent of voting share. If the debt was not assigned, Castings as well as MFL would have remained outside the CoC. It was alleged that the debt was assigned with the ulterior motive of including a related party in the CoC to control the process as well as outcome of the process and, therefore, such assignment was illegal. Therefore, the resolution plan approved by the CoC, which included Castings through MFL having more than 75 per cent of voting share, was in contravention of the Code. The AA dismissed these contentions.

Amalgamation of CD

The resolution plan provided for amalgamation of Dooray with Castings. It was argued that the Code did not envisage amalgamation, which has the effect of extinguishment of the CD itself. Further, amalgamation of Dooray with Castings violated sections 230-232 of the Companies Act, 2013 and thus, failed to satisfy section 30(2)(e) of the Code.

The issues such as related party, amalgamation of the CD was agitated before the Appellate Authority, which in due course did not find any irregularity and upheld the resolution plan.

Corporate Liquidation

A CIRP may end either in a resolution plan or in an order for liquidation of the CD. Under the Code, the decision to approve a resolution plan or to go for liquidation rests with the CoC, which consists of the FCs as voting members. The commercial decisions of the CoC are not generally open to any analysis, evaluation or judicial review by the AA or the appellate authority.

A relatively large number of corporates undergoing CIRP ending up in liquidation is on expected lines, as many of them have long pending defaults and hence are left with little going-concern value. Till 31st March, 2018, a total of 91 CIRPs yielded liquidation as detailed in Table 30. Further distribution of these 91 CIRPs in terms on whether they were in BIFR or non-functional and relation between resolution value and liquidation value, is presented in Table 31.

Table 30

CIRPs Yielding in Liquidation

CIRP initiated by	No. of CIRPs	Liquidation value (in Rs. crore)	Amount of admitted claims (in Rs. crore)
OC	26	418.40	9449.30
FC	20	619	16649.77
CD	45	2729.17	26719.16
Total	**91**	**3766.43**	**52818.23**

Table 31

Distribution of CIRPs Ending in Liquidation

State of Corporate Debtor at the Commencement of CIRP	No. of CIRPs initiated by			
	Financial Creditors	Operational Creditors	Corporate Debtors	Total
Either in BIFR or Non-functional or both	17	23	37	77
Resolution Value ≤ Liquidation Value	19	25	35	79
Resolution Value > Liquidation Value	1	1	10	12

** Note:. There were 11 CIRPs, where CDs were in BIFR or non-functional but had resolution value higher than liquidation value.*

Twelve Large Accounts

Banks initiated CIRP of 12 large accounts, as directed by the RBI. 11 accounts had Rs.3.45 lakh crore claims against liquidation value of Rs.73,220.23 crore. The claims pertaining to one account was not available at the end of the year. Details of these 12 accounts are presented in Table 32.

Table 32

Status of 12 Large Accounts

Sl. No.	Corporate Debtor	Sector	Date of Admission	Claims Admitted (Rs. crore)	Status as on 31st March, 2018
1	Alok Industries Ltd.	Textiles	18.07.17	30241.64	Extended for 90 days
2	Amtek Auto Ltd.	Auto Component	24.07.17	12718.97	Extended for 90 days
3	ABG Shipyard Ltd.	Ship Building	01.08.17	18532.00	Extended for 90 days
4	Bhushan Steel Ltd.	Steel	26.07.17	56862.56	Extended for 90 days
5	Bhushan Power and Steel Ltd.	Steel & Power Generation	26.07.17	48122.94	Extended for 90 days
6	Electrosteel Steels Ltd.	Steel	21.07.17	13301.84	Extended for 90 days
7	Era Infra Engineering Ltd.		08.05.18	NA	Yet to be admitted
8	Essar Steel Ltd.	Steel	02.08.17	51848.00	Extended for 90 days
9	Jyoti Structures Ltd.	Power Transmission	04.07.17	8194.77	Approved by CoC.
10	Jaypee Infratech Ltd.	Infrastructure Development	09.08.17	10379.61	Extended for 90 days
11	Lanco Infratech Ltd.	Power Generation	07.08.17	53157.90	Extended for 90 days
12	Monnet Ispat and Energy Ltd.	Steel	18.07.17	10379.61	Extended for 90 days

Voluntary Liquidation

A corporate person may initiate voluntary liquidation proceeding if majority of the directors or designated partners of the corporate person make a declaration to the effect that (i) the corporate person has no debt or it will be able to pay its debts in full from the proceeds of the assets to be sold under the proposed liquidation, (ii) the corporate person is not being liquidated to defraud any person.

The first voluntary liquidation was initiated on 7th April, 2017. At the end of 31st March, 2018, 182 corporate persons initiated voluntary liquidation, the details of which are given in Table 33. The reasons for initiation of the process by them are reported in Table 34. The total paid up capital of the 182 corporate persons is Rs. 1598 crore with an outstanding credit of Rs.144 crore. The status of the voluntary liquidation of these 182 corporates is reported in Table 35. The final reports have been submitted to the AA, respective registrar of companies and to IBBI in respect of 11 corporate persons. The AA has passed orders for dissolution of two corporate persons.

Of the 171 ongoing voluntary liquidation processes, 70 cases have been pending for less than 90 days, 57 have been pending for greater than 90 days but less than 180 days. 9 cases have crossed 270 days since initiation but are still less than 360 days old.

Of the 182 corporate persons who have initiated voluntary liquidation proceedings, 33 belong to the manufacturing sector, 82 belong to the real estate, renting and business activities and 15 to the transport sector. (Table 36). Most of these corporate persons are small entities. The liabilities of 163 of them are less than Rs.1 crore (Table 37). 128 of them have paid up equity capital less than Rs.1 crore. 14 of them have paid-up capital exceeding Rs.5 crore (Table 38).

Table 33

Voluntary Liquidations

(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	12	17	35	9	-	-
Jul-Sept, 2017	42	199	380	31	-	-
Oct-Dec, 2017	58	259	276	81	4	1
Jan-Mar, 2018	70	1123	272	23	7	1
Total	**182**	**1598**	**963**	**144**	**11**	**2**

Table 34

Reasons for Voluntary Liquidation

Sl. No.	Reasons for Voluntary Liquidation	No. of Corporate Persons
1	Not carrying business operations	100
2	Commercially unviable	33
3	Running into losses	5
4	No revenue	8
5	Promoters unable to manage affairs	2
6	Purpose of the company accomplished	2
7	Contract termination	3
8	Miscellaneous	29
	Total	**182**

Table 35

Phasing of Voluntary Liquidations

Status	No. of Liquidations
Initiated	182
Closed by Dissolutions	02
Final Reports Submitted	11
Ongoing	171
> 360 days	--
> 270 days ≤ 360 days	9
> 180 days ≤ 270 days	35
> 90 days ≤ 180 days	57
≤ 90 days	70

Table 36

Sector-wise Distribution of Voluntary Liquidations

Sector	Number
Manufacturing	**33**
Food, Beverages & Tobacco Products	1
Chemicals & Chemical Products	5
Electrical Machinery & Apparatus	2
Fabricated Metal Products	0
Machinery & Equipment	7
Textiles, Leather & Apparel Products	5
Wood, Rubber, Plastic & Paper Products	3
Basic Metals	2
Others	8
Real Estate, Renting & Business Activities	**82**
Real Estate Activities	8
Computer and related activities	26
Research and development	0
Renting of machinery and equipment without operator and of personal and household goods	2
Other business activities	46
Construction	**10**
Wholesale & Retail Trade	**10**
Hotels & Restaurants	**0**
Electricity & Others	**3**
Transport, Storage & Communications	**15**
Others	**29**
Total	**182**

Table 37

Distribution of Liabilities of Voluntary Liquidations

Sl. No.	Liabilities (Amt in Rs. crore)	No. of Corporates
1	≤ 1	163
2	> 1 ≤ 2	6
3	> 2 ≤ 3	3
4	> 3 ≤ 5	7
5	> 5	3
	Total	**182**

Table 38

Distribution of Assets of Voluntary Liquidations

Sl. No.	Assets (Amount in Rs. crore)	No. of Corporates
1	≤ 1	99
2	> 1 ≤ 2	21
3	> 2 ≤ 3	15
4	> 3 ≤ 5	17
5	> 5	30
	Total	**182**

EMERGING JURISPRUDENCE

An economic legislation is typically a skeletal structure. Judicial pronouncements provide flesh and blood to it. It takes several years, at times decades, for a major economic law to settle down and for there to be complete clarity, certainty and predictability for stakeholders. The AA, the NCLAT and the SC have delivered numerous landmark orders to explain several conceptual issues and settle contentious issues and resolve grey areas with alacrity. These orders have imparted clarity to the roles of various stakeholders in the resolution process and as to what is permissible and what is not, thereby streamlining the process for future.

Mandate of the Nation

The year began with an empathic assertion from the AA in *M/s. DF Deutsche Forfait AG and Anr. Vs. M/s. Uttam Galva Steel Ltd*.[2] that the Code is the mandate of the nation. It observed: *"then we remain where we are, perhaps we will go down further; …. we cannot wish away the mandate of this nation come through Parliament."* It also made clear that the Code envisages a team effort to resolve insolvency. It observed that there is *"no pleading or defending party, the terminology like petitioner/respondent or plaintiff/defendant is not present under this Code…."* . The insolvency proceeding therefore is not an adversarial proceeding.

Paradigm Shift

In *Innoventive Industries Ltd. Vs. ICICI Bank and Anr.*[3], the SC extensively interpreted the Code with a message: *"we thought it necessary to deliver a detailed judgment so that all Courts and Tribunals may take notice of a paradigm shift in the law. Entrenched managements are no longer allowed to continue in management if they cannot pay their debts."* It summed up the Code: *"The scheme of the Code, therefore, is to make an attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency, to continue the business of the corporate body as a going concern until a resolution is drawn up, in which event the management is handed over under the plan so that the corporate body is able to pay back its debts and get back on its feet. All this is to be done within a period of 6 months with a maximum extension of another 90 days or else the chopper comes down and the liquidation process begins."*

The Code consolidates the fragmented laws pertaining to insolvency and repeals and modifies provisions of various laws to address conflicts with it and to reduce the uncertainty that arises from the application of multiple laws administered by different authorities, and the consequent delay and reduction in value. Interpreting the non-obstante clause in section 238 of the Code, the SC held that the Maharashtra Relief Undertakings (Special Provisions) Act, 1958 was repugnant to the Code since a consolidating and amending act like the Code *"forms a code complete in itself and is exhaustive of the matters dealt with therein"* and *"In the present case it is clear, therefore, that unless the Maharashtra Act is out of the way, the Parliamentary enactment will be hindered and obstructed in such a manner that it will not be possible to go ahead with the insolvency resolution process outlined in the Code."* It further held: *"It is clear that the later non-obstante clause of the Parliamentary enactment will also prevail over the limited non- obstante clause contained in Section 4 of the Maharashtra Act."*

Constitutional Validity

The Code is a deep institutional reform. It affects rights and obligation of stakeholders. It is, therefore, natural that the provisions of the Code are challenged on various grounds, including constitutional validity. In *Sree Metaliks Limited Vs. Union of India and Anr.*[4], the constitutionality of section 7 of the Code was challenged on the ground that it does not provide the CD an opportunity to be heard before an application to initiate a CIRP against it is admitted. Relying on section 424 of the Companies Act, 2013, the High Court held: *"Where a statute is silent on the right of hearing and it does not in express terms, oust the principles of natural justice, the same can and should be read into in."* Accordingly, the AA is obliged to give reasonable opportunity to be heard to the CD before admission of an application.

In *Innoventive Industries Ltd. Vs. ICICI Bank and Anr.*[5], the NCLAT held: *"…we are of the view and hold that the Adjudicating Authority is bound to issue a limited notice to the corporate debtor before admitting a case for ascertainment of existence of default based on material submitted by the corporate debtor..."* It made clear that, the moment the AA is satisfied that a default has occurred, the application must be admitted. However, adherence to the principles of natural justice would not mean that in every situation the AA is required to afford reasonable opportunity of hearing to the CD before passing its order. Therefore, though the Code does not explicitly require the AA to follow principles of natural justice while admitting an application for initiation of CIRP of a CD, the AA, NCLAT and Courts have been following natural justice to the extent required to establish default.

[2] *C.P No. 45/I&BP/NCLT/MAH/2017*
[3] *Civil Appeal Nos. 8337-8338 of 2017*
[4] *W.P. 7144(W) of 2017*
[5] *CA(AT)(Insolvency) No. 1 & 2 of 2017*

In *Akshay Jhunjhunwala & Anr. Vs. Union of India & Ors*[6]., the validity of sections 7, 8 and 9 was challenged. It was argued that the differentiation made between the OCs and FCs in these sections does not have a rational or intelligible basis and is, therefore, liable to be struck down. The High Court noted from the Report of the BLRC, which had reasoned: *"members of the creditors committee have to be creditors both with the capability to assess viability, as well as to be willing to modify terms of existing liabilities in negotiations. Typically, operational creditors are neither able to decide on matters regarding the insolvency of the entity, nor willing to take the risk of postponing payments for better future prospects for the entity... for the process to be rapid and efficient, the Code will provide that the creditors committee should be restricted to only the financial creditors."* Accordingly, the Court held: *"the Bankruptcy Committee gives a rationale to the financial creditors being treated in a particular way vis-à-vis an operational creditor in an insolvency proceeding with regard to a company. The rationale is a plausible view taken for an expeditious resolution of an insolvency issue of a company. Courts are not required to adjudge a legislation on the basis of possible misuse or the crudities or inequalities that may be perceived to be embedded in a legislation. The rationale of giving a particular treatment to a financial creditor in the process of insolvency of a company under the Code of 2016 cannot be said to offend any provisions of the Constitution of India."*

In *Shivam Water Treaters Pvt. Limited Vs. Union of India*[7], the SC requested the Gujarat High Court to refrain from entering the debate relating to the *"…validity of the Insolvency and Bankruptcy Code, 2016 or the constitutional validity of the National Company Law Tribunal."* However, it did not bar the petitioner from challenging the same before the SC under Article 32.

Timelines

The long title to the Code states that it is an Act for reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner. The Code prescribes timelines for various activities of the CIRP. However, following the timelines has been very challenging for stakeholders, including the AA, IPs and the CoC, while there was lack of clarity as to which timeline is mandatory or directory, the AA and Courts have adopted a pragmatic approach to strike a balance between the strict compliance of timelines and rendering of justice to prevent companies from liquidation.

At the stage of admission of an application for initiating insolvency proceedings, the Code provides 14 days' time to the AA to make a decision regarding admission or rejection. Before rejecting an application, the AA is required to provide 7 days' time to the applicant to rectify defects, if any, in the application. There was lack of clarity on whether this was mandatory or directory. In *JK Jute Mills Company Ltd. Vs. M/s Surendra Trading Company*[8], the NCLAT held as that the 14 days' timeline is a directive, and the AA has inherent powers to extend the 14-day period on a case-to-case basis in the interest of fairness and justice. It further observed that the 7 days' time period provided for rectification of defects is mandatory. It held timeline of 30 days for the IRP as directory and the timeline of 180 days for completion of CIRP as mandatory.

On appeal, while confirming that the 14 days' timeline is directory in *Surendra Trading Company Vs. Juggilal Kamlapat Jute Mills Company Limited and Others*, the SC held that this would equally apply while interpreting proviso to sub-section (5) of section 7, section 9 or sub-section (4) of section 10 as well. It observed: *"it is well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory."* It, however, held that the time of seven days prescribed in the Code for removal of defects by an applicant is directory.

As regards timelines for disposal of applications by AA and NCLAT under section 64 of the Code, in *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*[9], the SC observed: *"The strict adherence of these timelines is of essence to both the triggering process and the insolvency resolution process. As we have seen, one of the principal reasons why the Code was enacted was because liquidation proceedings went on interminably, thereby damaging the interests of all stakeholders, except a recalcitrant management which would continue to hold on to the company without paying its debts. Both the Tribunal and the Appellate Tribunal will do well to keep in mind this principal objective sought to be achieved by the Code and will strictly adhere to the time frame within which they are to decide matters under the Code."*

Apart from the timeline given for admission of cases, the Code also provides a strict timeline for the completion of the entire resolution process. It permits 180 days for completion of CIRP and an one-time extension up to 90 days by the AA in deserving cases. After the expiry of 180 days or 270 days, as the case may be, in the

[6] *W.P No. 672 of 2017*
[7] *SLP(C)NO. 1740/2018*
[8] *CA(AT)No.9 of 2017*
[9] *Civil Appeal No. 9405 of 2017*

event a resolution plan is not submitted, or if submitted, it is rejected under section 31 of the Code, the CD mandatorily undergoes liquidation. Therefore, these timelines are mandatory. The SC in *Innoventive Industries Ltd. Vs. ICICI Bank & Anr*[10]., while noting the purpose of the Code, it referred to the important paragraph of BLRC report on the importance of time line as: *"Speed is of essence for the working of the bankruptcy code, for two reasons. First, while the 'calm period' can help keep an organisation afloat, without the full clarity of ownership and control, significant decisions cannot be made. Without effective leadership, the firm will tend to atrophy and fail. The longer the delay, the more likely it is that liquidation will be the only answer. Second, the liquidation value tends to go down with time as many assets suffer from a high economic rate of depreciation. From the viewpoint of creditors, a good realisation can generally be obtained if the firm is sold as a going concern. Hence, when delays induce liquidation, there is value destruction. Further, even in liquidation, the realisation is lower when there are delays. Hence, delays cause value destruction. Thus, achieving a high recovery rate is primarily about identifying and combating the sources of delay."*

The time period prescribed by the Code is the maximum time provided for the completion. There may be instances, where a CIRP can be completed before the maximum time period. In *Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd.*[11], the NCLAT observed: *"Thereafter, in case(s) where all creditors have been satisfied and there is no default with any other creditor, the formality of submission of resolution plan under section 30 or its approval under section 31 is required to be expedited on the basis of plan if prepared. In such case, the Adjudicating Authority without waiting for 180 days of resolution process, may approve resolution plan under section 31, after recording its satisfaction that all creditors have been paid/ satisfied and any other creditor do not claim any amount in absence of default and required to close the Insolvency Resolution Process. On the other hand, in case the Adjudicating Authority do not approve resolution plan, will proceed in accordance with law."*

Existence of Dispute

The Code enables a CD to raise an existence of dispute to prevent admission of an application to initiate CIRP. However, the scope of dispute was neither clear, nor when should the dispute be raised. In *Essar Projects India Ltd. Vs. MCL Global Steel Pvt. Ltd.*[12] and in *DF Deutsche Forfait AG and Ors. Vs. Uttam Galva Steel Ltd.*[13], the AA gave a strict interpretation and observed that dispute in existence means and includes raising disputes in the court of law or Arbitral Tribunal before receipt of notice under section 8 of the Code.

In *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*[14], the SC clarified that what is material is that a dispute must exist in fact. It should not be spurious, hypothetical or illusory and it should not be a patently feeble legal argument or an assertion of fact unsupported by evidence. It is not material whether the dispute would succeed or not and it is not necessary to examine the merits of the dispute at this stage.

Moratorium

The scope of moratorium has been of intense debate. In *Canara Bank Vs. Deccan Chronicle Holdings Limited*[15], the NCLAT determined whether the moratorium under section 14 of the Code covers proceeding before HCs or the SC. It observed: *"The Hon'ble Supreme Court has power under Article 32 of the Constitution of India and Hon'ble High Court under Article 226 of Constitution of India which power cannot be curtailed by any provision of an Act or a Court. In view of the aforesaid provision of law, we make it clear that 'moratorium' will not affect any suit or case pending before the Hon'ble Supreme Court under Article 32 of the Constitution of India or where an order is passed under Article 136 of Constitution of India. 'Moratorium' will also not affect the power of the High Court under Article 226 of Constitution of India. However, so far as suit, if filed before any High Court under original jurisdiction which is a money suit or suit for recovery, against the 'corporate debtor' such suit cannot proceed after declaration of 'moratorium, under Section 14 of the I&B Code."*

In *State Bank of India Vs. Mr. V. Ramakrishnan & M/s. Veesons Energy Systems Pvt. Ltd.*[16], the FC invoked its right under SARFAESI Act against the personal guarantor. The CD invoked section 10 of the Code which was admitted and an order of moratorium was passed. After declaration of the moratorium, the FC continued to take measures under SARFAESI Act and proceeded against the property of the personal guarantor. The AA restrained the FC from proceeding against the personal guarantor till the period of moratorium was over. The issue involved was whether moratorium is applicable on the property of the CD as well as on the personal guarantor. The NCLAT observed that the resolution

[10]*Civil Appeal Nos. 8337-8338 of 2017*

[11]*CA(AT)(Insol.) No. 89 0f 2017*

[12]*C.P. No. 20/1 & BP/NCLT/MAH/2017*

[13]*C.P No. 45/I&BP/NCLT/MAH/2017*

[14]*Civil Appeal No. 9405 of 2017*

[15]*CA(AT)(Insolvency) No. 147 of 2017*

[16]*CA(AT)(Insolvency)No. 213 of 2017*

plan, if approved by the CoC and also by AA, is not only binding on the CD, but also on its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan, including the personal guarantor. Therefore, it held that the moratorium will not only be applicable to the property of the CD but also on the personal guarantor.

In *Alchemist Asset Reconstruction Company Ltd. Vs. M/s. Hotel Gaudavan Pvt. Ltd. & Ors.*[17], the SC observed that the mandate of the Code is that the moment an insolvency application is admitted, the moratorium that comes into effect under section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against the CD. It held that arbitration that has been instituted after the imposition of moratorium is non est in law.

Amit Spinning Industries Ltd. had filed a reference before BIFR in October, 2011 and was declared sick. Despite availing several opportunities, it did not come up with any viable scheme before BIFR for almost five years, but enjoyed moratorium. While admitting an application for CIRP, the AA observed in *M/s Amit Spinning Industries Ltd.*[18]: *"The Facts of the present case also reveal that the Corporate Applicant has already availed the moratorium as provided under Section 22(1) of SICA. Therefore, we feel it would be in fitness of things that the Insolvency Resolution Process in the present case should be speedy preferably within a period of 100 days."*

Resolution

The thrust of the Code is resolution. Several pronouncements of the AA reiterate prohibition on recovery. In the matter of *M/s Nowfloats Technologies Pvt. Ltd.*[19], the AA reiterated that resolution process is initiated for the benefit of the general body of creditors and is a representative action and not for the recovery of money of an individual creditor. In the matter of *Parker Hannifin India Pvt. Ltd.*[20], the AA observed that after the resolution process commences, the nature of proceeding changes to representative suit and the lis does not remain only between a creditor and the debtor. Therefore, they alone do not have the right to close the process because the creditor has been paid its dues. In the matter of *Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd*[21]., the NCLAT clarified: *"It is made clear that Insolvency Resolution Process is not a recovery proceeding to recover the dues of the creditors. I & B Code, 2016 is an Act relating to reorganisation and insolvency resolution of corporate persons, …"*.

Settlement

The IBBI (Application to Adjudicating Authority) Rules, 2016 allows for the withdrawal of the application before it is admitted. However, there was a lack of clarity if an application can be withdrawn application after its admission.

In *Mother Pride Dairy India Pvt. Ltd. Vs. Portrait Advertising & Marketing Pvt. Ltd*[22]., the NCLAT took the view that once an application is admitted, it cannot be withdrawn since other creditors are entitled to raise claims pursuant to public announcement. It, however, made it clear that the order admitting application for CIRP will not come in the way of the appellant to satisfy and settle the claim of other creditors. In *Lokhandwala Kataria Construction Pvt. Ltd. Vs. Nisus Finance & Investment Manager LLP*[23], the NCLAT declined the request to close an insolvency proceeding. It observed that even the FC cannot be allowed to withdraw the application once admitted, and matter cannot be closed till claim of all the creditors are satisfied by the CD.

On appeal, the SC closed the matter with observation: *"..since all the parties are before us today, we utilize our powers under Article 142 of the Constitution of India to put a quietus to the matter before us."*. In *Uttara Foods and Feeds Private Limited Vs. Mona Pharmachem*[24], the SC, while allowing settlement between the parties after the admission of an insolvency application, observed: *"We are of the view that instead of all such orders coming to the Supreme Court as only the Supreme Court may utilise its powers under Article 142 of the Constitution of India, the relevant Rules be amended by the competent authority so as to include such inherent powers. This will obviate unnecessary appeals being filed before this Court in matters where such agreement has been reached."*.

The Insolvency Law Committee deliberated on this issue and stated: *"on a review of the multiple NCLT and NCLAT judgments in this regard, the consistent pattern that emerged was that a settlement may be reached amongst all creditors and the debtor, for the purpose of a withdrawal to be granted, and not only the applicant creditor and the debtor. On this basis read with the intent of the Code, the Committee unanimously agreed that the relevant rules may be amended to provide for withdrawal post admission if the CoC approves of such action by a voting share of ninety per cent."*

---

[17] *Civil Appeal No. 16929 of 2017*

[18] *IB-131(PB)/2017*

[19] *CP (IB) 45(PB) of 2017*

[20] *I.A No. 226/KB/2017 C.P. (IB) No. 150/KB/2017*

[21] *CA (AT) (Insol.) No. 89 of 2017*

[22] *CA (AT) (Insolvency) No. 94 of 2017*

[23] *CA (AT) (Insolvency) No. 95 of 2017*

[24] *Civil Appeal No. 18520 of 2017*

Insolvency Professional

There have been several orders of the AA and NCLAT elaborating on the role of an IP in CIRP and supporting him in discharge of his responsibilities. The IRP made efforts to take charge of the assets of the CD, but there was stout resistance from the CD. He, therefore, prayed for police assistance to discharge his functions as IRP. In the *Central Bank of India and the State Bank of India Vs. M/S. Ashok Magnetics Ltd*[25]., the AA observed: *" …, we direct the Superintendent of Police in whose jurisdiction the Registered Office of the Corporate Debtor viz., M/S. Ashok Magnetics Ltd., is situated, i.e. at B, 73, SIPCOT Industrial Complex, Gummidipoondi, 601 201; the Commissioner of Police, Chennai, having jurisdiction over Royapettah/Teynampet Police Station where Corporate Office of the Corporate Debtor is situated and the Superintendent of Police, Puducherry having jurisdiction over Erripakkam Village, Nettapakkam Commune, Pondicherry where the Factory of the Corporate Debtor is situated, to give proper Police assistance and personal security to the IRP so that he can take charge of the assets of the Corporate Debtor and perform the functions as per the provisions of I&B code, 2016….. The Director of the Corporate Debtor are also directed to furnish the books of accounts, list of assets, list of Financial and Operational Creditors, list of documents and other relevant particulars as envisaged in the I&B Code, 2016 and extend all co-operation to the IRP…"*

The IRP prayed for protection for all acts done by him in good faith and to save him from the frivolous allegations made in a FIR. In *M/s Alchemist Asset Reconstruction Co. Ltd Vs. M/s Hotel Gaudavan Pvt. Ltd*[26]., the AA observed: *"If, there is any complaint against the Insolvency Professional then the IBBI is competent to constitute a disciplinary committee and have the same investigated from an Investigating Authority as per the provision of section 220 of the Code. If, after investigation 'IBBI' finds that a criminal case has been made out against the Insolvency Resolution Professional then the 'IBBI' has to file a complaint in respect of the offences committed by him. It is with the aforesaid object that protection to action taken by the IRP in good faith has been accorded by section 233 of the Code. There is also complete bar of trial of offences in the absence of filing of a complaint by the 'IBBI' as is evident from a perusal of section 236(1)(2) of the code. Therefore, a complaint by Harenda Singh Rathore, a former director with the SHO, Police Station would not be maintainable and competent as the complaint is not lodged by the IBBI. ..the jurisdiction would vest with Investigation Officer only when a complaint is filed by 'IBBI'.".*

The RP sought necessary assistance and security to him to visit factory premises of the CD to carry out statutory duties and obligations peacefully. In *Punjab National Bank Vs. Divyajyoti Sponge Iron Pvt Ltd*[27]., the AA ordered: *"Keeping in view of the direct threatening by the corporate debtor it is hereby ordered that copy of this order may be served on the Director General of Police, West Bengal, Superintendent of Police, Bankura and in-charge of Mejia P.S. for making proper and effective assistance to the Resolution Professional in valuation of the company. In discharge of his duty any interference in the work of the Resolution Professional, action shall be initiated against the corporate debtor and it will be presumed that that corporate debtor is not obeying the order of the Court. It is expected that corporate debtor should fully cooperate with the Resolution Professional.".*

It is not unusual to have challenges to provisions of a new law. What is interesting is that the Courts have been settling the matters with utmost speed. It is interesting to note that with every judgement delivered by the AA, NCLAT and Courts, the insolvency reforms have developed deeper and stronger roots.

---

[25] CP/551 (1B)/CB/2017

[26] CP/CA. No. (IB)-23(PB)/2017

[27] CA (IB) No. 570/KB/2017 in C.P (IB) No. 363/KB/17

F IMPACT OF THE CODE

The immense benefits of an effective insolvency and bankruptcy regime are well recognised. The World Bank Development Report, 2014 states: *"Bankruptcy law and the depth of resale markets are particularly important to liberate productive resources from an unproductive enterprise and to ensure that creditors and potential investors in other enterprises are protected if a business fails."* While conceptualising the insolvency framework for India, the BLRC observed: *"We hope that the implementation of this report will increase GDP growth in India by fostering the emergence of a modern credit market, and particularly the corporate bond market. GDP growth will accelerate when more credit is available to new firms including firms which lack tangible capital. While many other things need to be done in achieving a sound system of finance and firms, this is one critical building block of that edifice."*

The objective of the Code is time-bound reorganisation and insolvency resolution of firms for maximisation of value of assets of the firm concerned, to promote entrepreneurship and availability of credit and balance the interests of all its stakeholders. One needs to see the impact of the Code in terms of the objectives, namely, resolution, maximisation of value of assets of the firm, promoting entrepreneurship, availability of credit and balancing the interests. Hence, it is too early to assess the impact of the Code for the period under review, though one needs to watch for some early indications.

EASE OF DOING BUSINESS

The DBR of the World Bank recognised India's efforts at making resolving insolvency easier. While lauding India's efforts in this regard, the Report observed: *"India made resolving insolvency easier by adopting a new Insolvency and Bankruptcy Code that introduced a reorganization procedure for corporate debtors and facilitated continuation of the debtor's business during insolvency proceedings."* India's ranking in resolving insolvency improved from 136 in the DBR for 2017 (released in October, 2016) to 103 in the DBR for 2018 (release in October, 2017).

The DBR studies the time, cost and outcomes of insolvency proceedings involving domestic entities as well as the strength of the legal framework applicable to judicial liquidation and reorganisation proceedings, to arrive at the score for this parameter for a country. With the enactment of the Code, India scored high on the strength of legal framework, indicating a better insolvency legislation in place for rehabilitating viable firms and liquidating unviable ones. The improvements in various elements of resolving insolvency are presented in Table 39.

Table 39

DBR: India's Performance in Resolving Insolvency

Particulars	As per EODB released in October			Outcomes under the Code*
	2015	2016	2017	2017-18
Rank in Resolving Insolvency	136	136	103	NA
Score for Resolving Insolvency (0 -100)	32.59	32.75	40.75	NA
Time (years)	4.3	4.3	4.3	243 days
Cost (per cent of estate)	9.0	9.0	9.0	NA
Recovery rate (cents on the dollar)	25.7	26.0	26.4	49.6**
Strength of insolvency framework index (0 -16)	6.0	6.0	8.5	NA

1.: In respect of 23 CIRPs yielding resolution plans by March, 2018.*
*2. **: percentage of claims realised by FCs.*

It is obvious that the improvements in outcome in terms of time and recovery are not reflected in DBR . The Report probably believed that the secured creditors recover debt only through lengthy and burdensome foreclosure proceedings. However, the Code provides an effective option for reorganisation, while strengthening the hands of creditors in initiating and conducting an insolvency proceeding. The resolution plans have yielded about 168.35 per cent of liquidation value for creditors. They are realising on an average 49.68 per cent of their claims through resolutions plans under a process with significantly lower time and costs involved as compared to previous insolvency regime in the country. Further, it is important to note that realisation under the Code is only a bi-product of the process of revival of failing firms facilitated by the Code, and not an objective of the Code.

An efficient and effective insolvency regime strengthens rights of creditors and hence enhances the availability of credit for viable projects. Therefore, improvement in insolvency regime gets partially reflected in the indicator on "Getting Credit". While noting the improvement in this regard, the DBR, 2018 observed: *"India strengthened access to credit by amending the rules on priority of secured creditors outside reorganization proceedings and by adopting a new law on insolvency that provides a time limit and clear grounds for relief to the automatic stay for secured creditors during reorganization proceedings."* India substantially improved its ranking from 44 in DBR for 2017 to 29 in DBR for 2018 on this indicator.

RECOVERY BY BANKS

The primary focus of the Code is resolution. Recovery is only incidental. RBI's report on Trends and Progress of Banking in India, 2017-18, presents a comparison of recoveries under CIRP and other mechanisms. According to the report, the SCBs recovered 49.6 per cent of the amount involved under CIRP, as opposed to 24.8 per cent under the SARFAESI and 5.4 per cent under Debt Recovery Tribunals (DRTs), as reported in Table 40.

Table 40

NPAs of SCBs Recovered through various channels

(Amount in Rs. billion)

Recovery Channel	2016-17				2017-18 (P)			
	No. of cases Referred	Amount Involved	Amount Recovered*	Col. (4) as % of Col. (3)	No. of cases Referred	Amount Involved	Amount Recovered	Col. (8) as % of Col. (7)
1	2	3	4	5	6	7	8	9
Lok Adalats	3,555,678	361	23	6.3	3,317,897	457	18*	4.0
DRTs	32,418	1,008	103	10.2	29,551	1,333	72*	5.4
SARFAESI	199,352	1,414	259	18.3	91,330	1,067	265*	24.8
IBC	37@	-	-		701@	99#	49^	49.6
Total	**3,787,485**	**2,783**	**385**	**13.8**	**3,439,477**	**2,956**	**404**	**13.7**

Source: *RBI's Report on Trends and Progress of Banking in India, 2017-18*

Notes:
1. *P: Provisional*
2. **: Refers to amount recovered during the given year, which could be with reference to cases referred during the given year as well as during the earlier years.*
3. *@: Cases admitted by NCLTs*
4. *#: Claims admitted of FCs on 21 companies for which resolution plans were approved.*
5. *^ : Realisation by FCs from 21 companies for which resolution plans were approved*

SHORT TO MEDIUM TERM IMPACTS

The BLRC had envisaged that the performance of the Code would be based on three measures, namely, (a) Low time to resolution, (b) Low loss in recovery, and (c) Higher levels of debt financing across a wide variety of debt instruments.

Resolution time

Time is of essence in an insolvency resolution proceeding to preserve the value of the assets of the CD. The Code lays down 180 days for completion of CIRP. It permits one-time extension of up to 90 days to be granted by the AA in deserving cases. In order to reduce the time for resolution, the Code envisages a competitive industry of IUs who hold an array of information about all firms at all times, thus addressing lack of complete and undisputed information as a source of delay. It envisages many benches of AA spread all over the country. The AA is being strengthened on an ongoing basis. The insolvency service is getting professionalised. Consequently, the timeframe for completion of the CIRP has reduced. 115 CIRPs concluded by 31st March, 2018. Of them 23 yielded resolution plans. They took on average 243 days for completion. The balance 92 yielded the orders for liquidation, on an average in 224 days.

Recovery rates

Recovery rates from a corporate or individual resolution process in India were, as reported by the BLRC, among the lowest in the world, with lenders recovering only 20 per cent of the value of debt on net present value (NPV) basis. With the time delays in insolvency resolution process being addressed under the Code, recovery rates are witnessing an upward trend. Table 29, in Section E, indicates that as on 31st March, 2018, a total of 23 CIRPs yielded resolution. In these CIRPs, the FCs realised Rs.4954.91 crore, while the total liquidation value was Rs.2943.28 crore. They realised 168.35 per cent of the liquidation value, while the realisation by them in comparison to their claims was 49.68 per cent. If these CIRPs ended in liquidation, the FCs would have got at best the liquidation value, that is, 27 per cent of their claims.

Increased flow of bank credit

Since the enactment of the Code and the consequent resolution of NPAs, the flow of financial resources to the commercial sector in India has increased substantially as a result of financial debts being repaid. Credit given by banks and financial institutions to the commercial sector (other than food) has increased from Rs.4952.24 crore in 2016-2017 to Rs.9161.09 crore in 2017-2018, as per RBI data. The total flow of resources to the commercial sector in India, both bank and non-bank, and domestic and foreign (relatable to the non-food sector) has increased from a total of Rs.14530.47 crore in 2016-2017 to Rs.18469.25 crore in 2017-2018. These figures, in some way, reflect the salutary impact of the Code on the credit flow in the economy.

A vibrant market for stressed assets improves secondary market liquidity for loans and attracts a wider range of institutional investors to assist in corporate restructuring. A strengthened insolvency framework is essential for a vibrant market for stressed assets. The Code provides a legal structure, well-defined processes, responsibilities and timelines for stressed asset resolutions. In due course, a vibrant market for stressed assets should be a reality, which will improve credit market further.

LONG TERM IMPACT

It is expected that the Code would boost economic growth in the long term through three main routes:

Promoting entrepreneurship

One of the flagship initiatives of the Government is 'Start-up India', which aims to build a strong ecosystem that encourages entrepreneurs to start businesses in the country, transforming India into a country of job creators. It is normal for some start-ups to succeed while some others fail. Failure dampens entrepreneurship if it is onerous for an entrepreneur to exit a business. By rescuing viable businesses through CIRP and closing non-viable ones through liquidation, the Code releases the entrepreneurs from failure. It enables them to get in and get out of business with ease, undeterred by genuine business failures. As more and more potential entrepreneurs recognise this, the Code would promote entrepreneurship.

By improving recovery for creditors, the Code promotes venture capital funding to support entrepreneurship and innovation. By strengthening creditor rights, it promotes access to credit for entrepreneurs. Entrepreneurs often commit personal assets to start a business, and personally guarantee loans for their new ventures. In such a scenario, a safety net, in the form of individual insolvency resolution regime, which is yet be notified, will provide the much needed protection and encourage the risk-taking necessary for entrepreneurship and innovation.

Credit markets

When a firm fails, it typically defaults in service of its debt obligations. As many firms default, the availability of funds with the creditor declines, limiting thereby its ability to lend for even genuinely viable projects. On the other hand, low and delayed recovery pushes up the cost of lending, and consequently, credit becomes available at a higher cost at which many projects may become unviable. Through provisions for resolution and liquidation, the Code reduces incidence of default, and enables creditors to recover funds either through revival of the firm or sale of liquidation assets. It incentivises creditors - secured and unsecured, bank and non-bank, financial and operational - to extend credit for projects and thereby enhances availability of credit.

The BLRC had noted that lenders prefer extending credit against collateral. They do not look at future cash flows of a firm as a consideration for extending credit. This enables lending to firms who have fixed assets. The businesses, which are asset light, generally face financing constraints. The RDBA has enabled recovery of bank credit. The SARFAESI has enabled recovery of secured credit. This has skewed lending in favour of bank credit and secured credit. Consequently, a small set of safe borrowers are seen to be availing credit, prompting others to use more equity financing, which is expensive.

The BLRC had further noted that the corporate bond markets, which should have been one of the natural sources of finance for large companies, are not widely used in India due to, *inter-alia*, the fact that corporate bond holders have had bad recovery rates under the extant arrangements. With recovery rates improving, one would expect an increase in non-bank based borrowing and an increase in unsecured borrowing in the total debt portfolio of the firms and firms are likely to be more leveraged to generate returns on risk capital.

Optimal resource utilisation

Firms encounter distress in the face of competition and innovation. That reflects relative under-utilisation of resources at the disposal of the firm as compared to other firms in the industry. The economy needs to get the maximum value out of failed firms. These failures need to be well managed so as to ensure redeployment of assets to more productive firms and improvement in economic efficiency. Creditors (both operational and financial) should get their maximum possible dues back, and the debtor should be able to legally discharge maximum possible debt.

The Code ensures optimum utilisation of resources at all times by preventing use of resources below the optimum potential, ensuring efficient use of resources within the firm through a resolution plan or releasing unutilised or under-utilised resources through closure of the firm and thereby maximising the value of the firm. With the Code coming into force, a large number of CDs where the value had significantly diminished, are coming up for resolution. It is envisaged that overtime as CDs come up in the early days of default, more CDs would be resolved as a going concern as opposed to ending up in liquidation. Further, as realisation rate increases, the overall productivity of assets deployed in the economy would improve.

Behavioural change

Beyond realisation for creditors and revival of firms, the Code has ushered in significant behavioural changes resulting in substantial recoveries for creditors outside the Code and improving performance of firms. The credible threat of a resolution process that may shift the control and management of the firm away from existing promoters and managers, most probably, for ever, is acting as a deterrent for the management and promoters of the firm from operating below the optimum level of efficiency. It is further motivating them to make the best efforts to avoid default. Further, it encourages the debtor to settle default with the creditor(s) at the earliest, preferably outside the Code. There have been several instances where debtors have settled their debts voluntarily or settling immediately on filing of an application for CIRP with the AA before the application is admitted. There are also cases of settlements after an application is admitted. The Code has thus brought in significant behavioural changes and thereby redefined the debtor-creditor relationship. With the Code in place, non-repayment of loan is no more an option.

It is expected that more defaults are likely to be resolved through private negotiations, which may be more efficient and yield better outcomes as compared with the formal process of bankruptcy law. In out-of-court negotiations, debtors and creditors have more flexibility on the structure of the resolution as compared with what is permissible under the Code. The Code provides the threat of the worst-case scenario, triggering a behavioural change among debtors and creditors.

It is also expected that shareholders of stressed firms may prefer to sell off the business at an early stage of distress. For example, promoters may sell the firm to a buyout private equity fund. These would happen

outside the Code, but will be driven by the incentives and disincentives under the Code. Such gains are intangible but are among the desired outcomes of the insolvency reform.

In Conclusion

A beneficial insolvency law is characterized as one that is able to *'recognise that the effects of insolvency are not limited to the private interests of the insolvent and his creditors, but that other interests of society or other groups in society are vitally affected by the insolvency and its outcome, and to ensure that these public interests are recognised and safeguarded.'*[28]

The legal framework of insolvency and bankruptcy impacts a number of economic indicators such as credit growth, job preservation, employment creation, and entrepreneurship and in turn, overall economic growth. It also causes behavioural changes in terms of affecting the willingness of investors, banks, companies, and entrepreneurs to take risks. The implementation of Code has started showing its results on each of these fronts and as the new regime matures, further progress is likely to be visible.

[28]*Goode R, Principles of Corporate Insolvency Law, 3rd ed., Sweet and Maxwell (London: 2007), p2*

G PERFORMANCE OF THE BOARD

The IBBI is one of the key pillars of the ecosystem responsible for implementation of the Code. There is probably no parallel to an insolvency regulator, such as the IBBI, around the world. Set up as a unique regulator which regulates a profession as well as processes, the IBBI has regulatory oversight over IPs, IPAs, IPEs and IUs. It writes and enforces rules for processes, namely, corporate insolvency resolution, corporate liquidation, fresh start, individual insolvency resolution and individual bankruptcy under the Code. It has also been designated as the 'Authority' under the Valuers Rules for regulation and development of the profession of valuers in the country. It carries out quasi-legislative, executive and quasi-judicial duties and functions in pursuance of its mandate under the Code.

In sync with the priority and focus of the Government and under the guidance of the Government, IBBI has, since its establishment on 1st October, 2016, been proactively engaging with the stakeholders in building the elements of the ecosystem and providing the regulatory framework to support insolvency reform as under:

(i) **Ecosystem**: The IBBI engaged with the three professional institutes, leading to the establishment of three IPAs by end of November, 2016. In association with IPAs, it created an institutional framework for development and regulation of a cadre of IPs by the end of November, 2016. To extend a helping hand to IPs, a structure called IPE was created. An IU came up in due course. The IBBI created and is administering the Limited Insolvency Examination every day from several locations across the country, for screening individuals for the purpose of registration as IPs. With the helping hands of IPAs, trade and industry bodies, academia and universities, and professionals, the much-needed institutional capacity to implement the insolvency and bankruptcy reforms in the form of the Code, was built in an unprecedented short amount of time. This professionalised the insolvency resolution services with three private competitive industries, namely, IPs, IPAs and IUs. As of end March, 2018, 75 IPEs, about 1800 IPs and three IPAs were in place.

An exercise similar to that of IPs has been undertaken in respect of valuers. The Valuers Rules provides a framework for development and regulation of the valuation profession. IBBI created and is administering examinations for three asset classes, namely, Land and Building, Plant and Machinery, and Financial Assets or Securities, for screening individuals for the purpose of registration as RVs.

The regulatory framework to register, regulate and monitor the conduct and performance of service providers, namely, IPAs, IPs, IUs; their inspection and investigation and redressal of grievances and complaints against them are in place. Disciplinary actions are being taken in adherence to principles of natural justice.

(ii) **Market Processes**: The entire regulatory framework for corporate insolvency and the related service providers was put in place by 30th November, 2016 to enable commencement of corporate insolvency processes by 1st December, 2016. These included Regulations for corporate insolvency resolution, fast track resolution, corporate liquidation and voluntary liquidation. IBBI has been constantly monitoring the process and refining regulatory framework to address the emerging difficulties, with the assistance and guidance of WGs, ACs, and consultation with stakeholders in roundtables and through electronic platforms. It provides an electronic platform for crowd sourcing ideas, that enables stakeholders to contemplate, at leisure, the important issues in the extant regulatory framework that hinder transactions and offer alternate solutions to address them, in addition to responding urgently to draft regulations. In order to drive the best outcomes from the processes, IBBI has been undertaking capacity development programmes for various constituents. It is collecting and disseminating data about the processes and outcomes. Details about the processes and service providers are available on the website of IBBI. It has been organising and participating in advocacy and awareness programmes to share the progress in implementation of the Code, disseminate the learning, and to develop interest in investments in distressed assets.

(iii) **Organisation**: Insolvency and bankruptcy is a new and dynamic area. It has been the endeavour of IBBI to lead knowledge management, build capacity in the

ecosystem, have regulations grounded on realities, and drive efficient market solutions to insolvency and bankruptcy. It uses technology intensively for dissemination of information and engagement with stakeholders. It holds a Strategy Meet annually to draw the Strategic Action Plan for the organisation, outlining the objectives, strategies, specific actions and sub-actions for the coming year and a broad vision for next three years. It has structured itself into three wings, namely, Research and Regulation Wing (RRW), Registration and Monitoring Wing (RMW) and Administrative Law Wing (ALW) to avoid intra-institutional bargaining. Each of these wings is headed by a separate WTM. There are several instruments, namely, IBBI (Procedure for Governing Boards Meetings) Regulations, 2017 (Board Regulations), Advisory Committee Regulations, Delegation Order, etc. to ensure good governance within IBBI.

(iv) **Proactive Measures**: It has been the endeavour of the IBBI to deliver on its mandate and devise innovative and timely solutions to address the emerging needs. Two such measures are:

(a) The CIRP Regulations initially provided for Forms for submission of claims by FCs and OCs. However, it was realised that there could be claims from creditors, other than FCs and OCs, and there could be difficulty in determining, expeditiously, whether a particular claim is an operational debt or financial debt. In such cases, the creditors experienced difficulty in submitting claims. To meet the emerging needs, IBBI provided a Form, by an amendment on 16th August, 2017, for submission of claims by a creditor, other than a FC or OC. This enabled homebuyers to submit their claims immediately. Subsequently, the Code was amended to treat homebuyers as FCs.

(b) The Code enables the CoC to approve a resolution plan. The CoC, however, needs detailed information to carry out due diligence to be satisfied that the resolution plan is realistic and viable, and the RAs are capable and credible. Otherwise, the only outcome would be haircut for creditors, while resolution plan will not be implemented. IBBI amended CIRP Regulations on 7th November, 2017 to provide that a resolution plan shall disclose details of the RA and other connected persons to enable the CoC to assess credibility of such applicant and other connected persons, aiding them to take a prudent decision while considering the resolution plan for its approval. Subsequently, the Code was amended to prohibit persons with certain disabilities from submitting a resolution plan.

Further, the IBBI has been performing its role, as prescribed under the Code, in the manner enumerated below.

(i) The IBBI has been servicing the following regulations as on 31st March, 2018:

Sl.No.	Regulations
1	IBBI (Model Bye-laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016
2	IBBI (Insolvency Professional Agencies) Regulations, 2016
3	IBBI (Insolvency Professionals) Regulations, 2016
4	IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
5	IBBI (Liquidation Process) Regulations, 2016
6	IBBI (Engagement of Research Associates and Consultants) Regulations, 2017
7	IBBI (Advisory Committee) Regulations, 2017
8	IBBI (Procedure for Governing Boards Meetings) Regulations, 2017
9	IBBI (Voluntary Liquidation Process) Regulations, 2017
10	IBBI (Information Utilities) Regulations, 2017
11	IBBI (Inspection and Investigation) Regulations, 2017
12	IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017
13	IBBI (Employees' Service) Regulations, 2017
14	IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017

(ii) The IBBI has been servicing the following service providers as 31st March, 2018:

Sl. No.	Service Provider	Number as on 31st March	
		2017	2018
1	Insolvency Professionals	96*	1812
2	Insolvency Professional Entities	03	75
3	Insolvency Professional Agencies	03	03
4	Information Utilities	Nil	01
5	Registered Valuer Organisations	Nil	03
6	Registered Valuers	Nil	Nil

**Excluding 977 individuals whose registrations expired by 30th June 2017.*

(iii) The IBBI conducts the following Examinations online as on 31st March, 2018:

Sl.No.	Examination
1	Limited Insolvency Examination
2	Valuation Examination (Land and Building)
3	Valuation Examination (Plant and Machinery)
4	Valuation Examination (Securities or Financial Assets)

(iv) The IBBI makes the data available in respect of the following through its website and newsletter:

(a) Corporate insolvency resolution process

(b) Corporate liquidation process

(c) Voluntary liquidation process

(d) Service Providers

(e) Examinations, and

(f) Advocacy and awareness programmes.

(v) The IBBI issued various orders during 2017-18 as under:

Sl.No.	Type of Order	Authority	No. of Orders Issued during	
			2016-17	2017-18
1	Rejecting applications for registration as IP	Board	02	06
2	Disposing of show cause notices	Disciplinary Committee	Nil	Nil
3	Appeals against the orders of CPIO	First Appellate Authority	Nil	05

(vi) The IBBI organises and participates in several capacity building, advocacy and awareness programmes, details of which have been provided in Section C of this Report.

The IBBI envisions itself as a dynamic and proactive institution driving efficient outcomes from processes under the Code. It endeavours to be predictable and accountable for its performance to enjoy the respect of stakeholders. It focuses in the short and medium term on the following:

(a) Engagement and partnership with stakeholders to ensure that the regulatory framework and the capacity of the ecosystem matches the evolving market dynamics, while fostering confidence among the stakeholders;

(b) Continuous review of the regulations based on stakeholder inputs, evolving jurisprudence and emerging difficulties to ensure efficient outcomes of the processes;

(c) Promote competition in the market for IPs, IPAs, IPEs, RVOs, RVs and IUs to ensure quality service at reasonable prices;

(d) Use of technology for engagement with stakeholders, serving the service providers, maintaining databases, enabling online filing and monitoring, conducting examinations, etc.

(e) Promotion of best practices across processes and professional ethics and standards and capacity of IPs and RVs;

(f) Transparent and objective disciplinary processes and swift action against miscreants, while addressing grievances and complaints of stakeholders;

(g) Development of markets for interim finance, resolution plans, liquidation assets, distressed assets, and

(h) Building capacity of IBBI and promote transparency in its decision making to be able to address the emergent challenges.

H PERFORMANCE OF THE GOVERNING BOARD AND WAY FORWARD

The Board is a body corporate having perpetual succession. It holds and disposes of property, enters into contracts and sues and is sued in its own name. The GB provides strategic direction to the Board, establishes its objectives, and controls and monitors the management. Further, the GB reviews the performance of the Board and holds it accountable for delivering on its objectives as laid down under the Code. While the Code specifies the duties and functions of the Board, the Code read with the Board Regulations, notified on 30th January, 2017, specify the business of the GB and the manner of transacting the said business. The business of the GB includes approval of regulations, annual accounts, annual budget, annual report, delegation of powers, etc.

Quasi-legislative functions are in the exclusive domain of the GB. Quasi-judicial functions are in the exclusive domain of the DC comprising of WTMs. The executive functions are delivered by various functionaries of the Board in accordance with the IBBI (Delegation of Powers and Functions) Order, 2017 (Delegation Order), issued on 24th January, 2017 with the approval of the GB. The Board Regulations specify a Charter of Conduct for members of the Board. The Charter aims to ensure that the GB conducts in a manner that does not compromise its ability to accomplish its mandate or undermine public confidence in the ability of members to discharge their responsibilities.

The GB had five meetings during 2017-18. The details of attendance at the meetings are presented in Table 41.

Table 41

Attendance in Board Meetings

Name	Position	No. of Board Meetings in 2017-18	
		Held when in office	Attended
Dr. M. S. Sahoo	Chairperson	5	5
Ms. Suman Saxena	WTM	5	4
Dr. Navrang Saini	WTM	5	5
Dr. (Ms.) Mukulita Vijayawargiya	WTM	5	4
Mr. Amardeep S. Bhatia	*Ex-officio* Member	4	4
Mr. G. S. Yadav	*Ex-officio* Member	5	5
Mr. Unnikrishnan A.	*Ex-officio* Member	5	4
Dr. Shashank Saksena	*Ex-officio* Member	5	4
Mr. Gyaneshwar Kumar Singh	*Ex-officio* Member	1	1

With the approval of the GB, the Board notified four new Regulations (Inspection and Investigation, Fast Track Insolvency Resolution Process for Corporate Persons, Employees' Service, and Grievance and Complaint Handling Procedure) during 2017-18. It also notified 16 amendment Regulations during the year amending existing Regulations to address the challenges and issues emerging from the implementation of the insolvency reform. Most of these Regulations were made in consultation with the stakeholders online, in roundtables, and with the ACs.

Based on deliberations and guidance of the GB, the Board provided inputs for regulation of the profession of valuers, inputs on insolvency for consideration of the ILC and inputs for notification for formulation of the Rules relating to annual report and annual accounts of the Board. The GB reviewed activities and performance of the Board in the areas of service providers (IPs, IPAs, IPEs, IU, RVs), Limited Insolvency Examination, Valuation Examinations, CIRP, liquidation process and voluntary liquidation. The GB approved the annual accounts of the Board for the year 2016-17. It also approved guidelines for handling complaints received under section 236 of the Code. It constituted the Audit Committee during the year, specified its duties and approved the 'Audit Committee Guidelines'.

WAY FORWARD

The insolvency reforms are being implemented in a dynamic socio-economic environment. The regulatory framework and the ecosystem, therefore, need to demonstrate extra-ordinary dynamism to address the pressing concerns of resolving insolvency, in sync with emerging market realities. In the coming year, IBBI will consolidate the progress made till 2017-18 and strengthen the capacity of the ecosystem further, while facilitating implementation of the provisions in the Code which are yet to be notified and enrich the corporate processes with value added features. The following could drive the agenda of the GB in the next year.

Individual Insolvency

Part III of the Code makes provisions for insolvency resolution and bankruptcy of individuals and partnership firms. The Insolvency and Bankruptcy Code (Amendment) Act, 2017 classified individuals into three classes, namely, personal guarantors to CDs, partnership firms and proprietorship firms and, other individuals, to enable implementation of individual insolvency in a phased manner on account of the wider impact of these provisions. It proposed to start with personal guarantors of CDs to further strengthen the CIRP. This would put personal guarantors and corporate guarantors on a level playing field. The learning from the implementation of the earlier phases would help facilitate a smoother roll out of the later phases. The provisions of the Code dealing with insolvency of partnership and proprietorship firms may be implemented in the second phase. In the third phase, the provisions of the Code dealing with insolvency of other individuals may be implemented. Based on the recommendations of the WG on individual insolvency and of the AC on individual insolvency, and on consideration of public comments, the GB approved Regulations for insolvency resolution process for personal guarantors to CD. It is expected that these Regulations would come into force in the next year as Government finalises the related Rules and notifies provisions of Part III of the Code **(Box 6)**.

Box 6

Individual Insolvency: The Next Big Thing

After having passed several milestones in corporate insolvency, it is time to chart the route for individual insolvency with clear phasing, sequencing, timing and destination. Individual insolvency framework pursues the objectives enshrined in the Code. It prevents creditors from harming the debtor by racing to be the first to recover their dues, and thereby facilitates resolution of insolvency. It facilitates an individual to get in and get out of business, undeterred by honest business failure, and thereby promotes entrepreneurship. It increases creditor's expected returns and thereby promotes availability of credit. It does not take away future income of the debtor after fresh / earned start and thereby does not undermine incentive to work. It relieves the debtor of the burden of debt and isolates minimum assets for his subsistence, while improving the prospects of realisation for creditors, thereby ensuring fairness and equity. These objectives are extremely important in the Indian context, where proprietorship and partnership firms have significant contribution to income and employment, and informal FCs account for a significant share of credit.

Vis-à-vis Erstwhile Framework

In case of default by an individual, a creditor typically had two remedies - against the person of the debtor and / or against his property. Historically, the remedy was directed against the person. In ancient times, the creditor had the liberty to take the debtor, and often his family, into debt slavery. The 19th century insolvency enactments provided considerable relief to debtors from harassment, while allowing creditors relief against the property of the debtor.

Two enactments, namely, the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, are in force today. The Code makes several improvements over these two enactments. With its focus on rehabilitation of the debtor as opposed adjudging

him as insolvent, the Code: (a) provides an objective trigger for initiation of insolvency resolution process instead of relying on the commission of an 'act of insolvency'; (b) mandates a moratorium which provides a breathing space for the debtor and creditors to negotiate a repayment plan; (c) uses independent and qualified professionals to assist the stakeholders and the AA in conduct of processes; (d) prescribes a linear process, in which bankruptcy typically follows the failure of the insolvency resolution process; (e) enables automatic discharge instead of requiring that discharge be granted by the AA on the satisfaction that the insolvent has conducted himself well in the run up to and during insolvency; (f) provides a more comprehensive regime, including a debt relief in the form of 'fresh start', and keeps certain assets of the debtor beyond the reach of creditors for the subsistence of the debtor.

Part III

Part III of the Code provides for three processes for individual insolvency resolution, on default of a threshold amount:

(a) **Fresh Start Process:** This is available only to those debtors who have an annual income ≤ Rs.60,000, assets ≤ Rs.20,000, debts ≤ Rs.35,000 and do not have a dwelling unit. Only the debtor can file an application for fresh start for discharge of his debt. A RP examines the application and submits a report to the AA, recommending acceptance or rejection of the application. On consideration of the report of the RP, the AA passes an order, either admitting or rejecting the application. If the application is admitted, the creditors have an opportunity to object to the process on limited grounds. On conclusion of the process, the AA passes an order for the discharge of the debtor or revokes the admission of the application. The discharge order writes off the unsecured debts, allowing the debtor to start afresh, subject to an entry in the credit history.

(b) **Insolvency Resolution Process:** This provides a framework for the debtor and creditors to collectively renegotiate a repayment plan under the supervision of an RP. The debtor or a creditor may make an application for initiation of the process. If the application is admitted by the AA, a public notice is issued inviting claims from all creditors. The debtor then prepares a repayment plan, in consultation with the RP. If the plan is approved by 75 per cent of the voting share of the creditors, and thereafter by the AA, the RP supervises its implementation. On execution of the repayment plan, the AA issues a discharge order releasing the debtor from its liability in terms of the plan, and the debtor gets an 'earned start'.

(c) **Bankruptcy Process:** If resolution process fails or repayment plan is not implemented, the debtor or creditor may make an application for the initiation of bankruptcy process. If the application is admitted, the AA passes a bankruptcy order and appoints a bankruptcy trustee, followed by an invitation of claims from creditors. The bankruptcy trustee investigates the affairs of the bankrupt, realises the estate of the bankrupt and distributes the proceeds in accordance with the priority provided in the Code. He submits a report of administration of the estate of the bankrupt to the CoC for approval. On expiry of one year from the bankruptcy commencement date or within seven days of the approval by the CoC, the bankruptcy trustee applies for a discharge order and the AA passes a discharge order. This discharge order releases the debtor from the bankruptcy debt. The bankrupt, however, suffers certain disabilities during the period of bankruptcy process.

Vis-à-vis Corporate Insolvency

Individual insolvency framework differs from that of corporate insolvency on many aspects:

(a) Corporates are artificial persons with a broadly uniform structure. The Code provides a uniform process for resolution of their insolvency. It, however, categorises individuals into three categories and expects customised processes for resolution of each of the categories.

(b) There is no automatic debt relief in case of corporate entities. Individual insolvency, however, offers a fresh start process which grants automatic debt relief for a set of debtors where chance of recovery is low as compared to the efforts involved. While a corporate resolution process may yield into liquidation process, fresh start process never yields into bankruptcy process.

(c) A corporate entity and its business can be re-organised or liquidated and sold in bits and pieces. The business, if any, of an individual can be re-organised. The individual cannot, however, be liquidated or sold.

(d) Commencement of liquidation is automatic on failure of corporate resolution process. However, it is not so in the case of individual insolvency. A fresh application needs to be made either by the debtor or a creditor for commencement of the bankruptcy process, after failure of resolution process.

(e) Only on completion of liquidation, a corporate is dissolved. The bankruptcy process does not affect or is not affected by the existence of the debtor. It is not closed even on the death of the debtor.

(f) The Code does not envisage an RP to supervise the implementation of resolution plan for corporates. However, he supervises implementation of repayment plan under the individual insolvency.

(g) The NCLT is the AA for insolvency of corporate entities and personal guarantors to corporate entities undergoing corporate processes. The DRT is the AA for insolvency of individuals.

Phasing

The Code envisages insolvency resolution of three categories of individuals, namely, personal guarantors to CDs, partnership firms and proprietorship firms, and other individuals. Each category is unique and needs a separate dispensation for resolution of its insolvency. A category may have several sub-categories, each of which may require customised process. The insolvency framework needs to address unique needs of each individual and factor in the socio-cultural setting which may glorify or stigmatise the financial failure of the individual. Further, the stakeholders need guidance on how to use the insolvency processes to their advantage. Given the scale of the country with 1.3 billion citizens, the road to implementing the insolvency regime for individuals is an uphill one and the learning curve is very steep. An appropriate phasing and sequencing of implementation of individual insolvency is essential, in sync with the legislative intention.

Group Insolvency

A business is usually organised in the form of a company. This form separates the company from the individuals - promoters, suppliers of funds, and managers - who form and manage it. Consequently, while the liability of the company is unlimited, that of the individuals constituting the company is limited. This feature makes company the most popular business structure. The law usually provides a process for resolution of insolvency of a company if its business fails. However, there is an increasing preference to organise business(s) in a group of companies to harness synergies among businesses and to gain from *'spill-over benefits within the group'*. They help in diversifying the risk of promoter shareholders. Reportedly, conglomerates accounted for 56 per cent of the combined assets of all non-financial firms in India in 2015-16, up from 37.5 per cent in 2000-01. They accounted for nearly half of corporate India's revenues and profits in 2015-16.[29] The top 100 American public corporations, with the highest annual revenues, are reported to have an average of 245 major subsidiaries.[30] The stakeholders sometimes view the group companies as single economic entities in view of their financial and operational inter-dependencies. Creditors often prefer to deal with them on the strength of group balance sheet. This calls for an insolvency framework to deal with the insolvency of a group of companies together, wherever required, to preserve synergies among the group companies for value maximisation **(Box 7)**. Such a framework, however, needs to be carefully calibrated to ensure that it does not disregard separate legal personality of each company and asset partitioning among them, without adequate justification. It also needs to prevent perverse behaviour of companies in a group, pre or post resolution.

Box 7

Group Insolvency

Given that resolution of a group of companies together can be value-maximising in some circumstances, as compared to separate insolvency proceeding for each company in distress, some jurisdictions are contemplating to make available an enabling framework for the same. Resolution of insolvency of group companies entails some degree of synchronsation of insolvency proceedings of group companies. The UNCITRAL Legislative Guide (Part III) recognises two broad types of synchronisation of insolvency proceedings of group companies:

(a) **Procedural Coordination:** This approach coordinates the insolvency proceedings, while keeping the assets of each group company separate, for sharing of information, to obtain a comprehensive evaluation of the situation of various companies. It may require appointment of a single insolvency representative; the establishment of a single creditor committee; cooperation between the courts, including coordination of hearings; cooperation between insolvency representatives, including information sharing and coordination of negotiations; joint provision of notice; coordination between creditor committees; coordination of procedures for submission and verification of claims; and coordination of avoidance proceedings.

[29] *Kant, Krishna (2017), The end of conglomerates?, Business Standard, 17th March, 2017.*

[30] *Squire, Richard (2011), Strategic Liability in the Corporate Group, University of Chicago Law Review, 78, 605-669.*

(b) **Substantive Consolidation:** This approach consolidates the assets and liabilities of different group companies and treats them as part of a single insolvency estate for the purpose of reorganisation or distribution in liquidation. It disregards the separate identity of each company and consolidates their assets and liabilities as part of a single estate for the general benefit of all creditors of all companies in the group. It disregards asset partitioning either partially or fully. Where the consolidation prejudices the interests of some creditors, they may be excluded from the scope of consolidation. In some other cases, there is consolidation of all claims for the purposes of voting, distribution, etc., but the final entities emerging post the plan are still organised as different entities for the purpose of post-petition funding. This is adopted where entity separateness has value. In other cases, assets of the companies may be pooled in essence for the purposes of post reorganisation financing, but the claims of different stakeholders may not be disturbed.

A comprehensive model for group insolvency is yet to evolve. Working Group V of the UNCITRAL is working on the draft model law on enterprise group insolvency. However, a few jurisdictions have adopted some degree of synchronisation of proceedings of group companies.

European Union: The Insolvency Regulation, 2015, which came into force in 2017, provides procedural rules for coordination of the insolvency proceedings of members of a group of companies for the purpose of ensuring efficiency of coordination, while respecting the principle of separate legal personality. In addition to promoting cooperation and communication between courts and between courts and insolvency practitioners, the Regulation broadly provides that group coordination proceedings should be opened for effective administration of insolvency proceedings of group members and in the interests of creditors. An insolvency practitioner who is appointed in the insolvency proceedings of one group company may request for the opening of group coordination proceedings, outlining the essential elements of the coordination and appointing a group coordinator. Other insolvency practitioners may object to inclusion in group coordination proceedings. The coordinator may propose a coordination plan for the synchronised resolution of the insolvency of these companies, which each separate company could choose to adopt or not.

Germany: The German law to facilitate group insolvency, which came into effect in 2018, envisages procedural coordination. Broadly, it provides for concentration of proceedings in one court, appointment of single insolvency representative, cooperation of courts and representatives, establishment of a group creditors' committee and the use of a group coordination procedure that could enable the creation of an overarching, synchronised strategy for the resolution of insolvency of different group companies.

United States: The case laws in the United States empower the courts to treat affiliated debtors as a single entity, collapsing the affiliates into one pool of assets, with their respective claims all being paid out of the single pool. This consolidation ignores the separate existence of each corporate affiliate and cancels all inter-corporate contracts and claims. Broadly, courts may order substantive consolidation when creditors dealt with the entities as a single economic unit, or the affairs of the debtors are so entangled that consolidation would benefit all creditors.

Australia: The Australian legislation allows for pooling with the approval of unsecured creditors, by virtue of which (a) each company in the group is taken to be jointly and severally liable for each debt payable by, and each claim against, each other company in the group; (b) each debt payable by a company or companies in the group to any other company or companies in the group is extinguished; and (c) each claim that a company or companies in the group has against any other company or companies in the group is extinguished.

A Framework for India

It may be advisable to provide for an optional framework to enable some degree of synchronisation of insolvency proceedings of group companies where it promotes the objective of value maximisation. It may start with procedural coordination, while substantive consolidation could be considered later depending on the experience and need. Only the companies, which are admitted into CIRP and belong to a group, may constitute 'group' for the purpose of group insolvency. The companies may be admitted into CIRP at different benches as per jurisdiction under the Code. An application for coordination may be filed at any of the benches. The CoCs of the companies in a group may choose a bench of the AA, by the required majority, on the basis of convenience and accordingly seek transfer of all pending applications / CIRPs to it. The resolution process may give an option to RAs to submit resolution plans for every company in the group, for some companies in the group, or for all companies in the group. Procedural co-ordination may end with conclusion of CIRP. Since 'group' means different things for different purposes, one of the existing statutory definitions of group, which is already in use, may be used instead of creating a new one to avoid disputes and interpretations around the same.

Cross-Border Insolvency

The BLRC developed a framework for insolvency and bankruptcy from a domestic perspective. However, the Joint Parliamentary Committee on the Insolvency and Bankruptcy Code, 2015 felt that the Code would not be complete without provisions for cross border insolvency given that Indian firms have claims against defaulting global firms and global persons have claims against defaulting Indian firms. At the insistence of the Committee, sections 234 and 235 were incorporated to enable the Government to enter into an agreement with the Government of any other country for enforcing the provisions of the Code.

Issues of cross-border insolvency arise where foreign creditors have rights/claims over a debtor's assets in another jurisdiction where insolvency proceedings are underway; where a debtor has branches/assets in several jurisdictions, including a jurisdiction other than where the insolvency proceedings are underway; and where a debtor entity is subject to insolvency proceedings simultaneously in one or more jurisdictions. These give rise to complex situations since each nation would have its own law and institutions governing the insolvency proceeding.

In such instances, it is necessary to have a mechanism for coordination and cooperation between courts and insolvency authorities such as administrators/Liquidators of different countries, in order to protect and maximise the value of the debtor's assets. With considerable progress in implementation of the provisions relating to corporate insolvency, it is time to think about a more comprehensive, internationally acceptable, cross-border insolvency regime.

The UNCITRAL Model Law on Cross-Border Insolvency, which is globally recognised and accepted, is available for guidance. It ensures full recognition of a country's domestic insolvency law by giving precedence to domestic proceedings and allowing denial of relief under the Model Law if such relief is against the public policy of the country. It addresses the issues relating to recognition of foreign proceedings; coordination of proceedings concerning the same debtor; the rights of foreign creditors; rights and duties of foreign insolvency representatives; and cooperation between authorities in different jurisdictions. It could be considered with suitable modification to suit India's specific requirements.

Automation of Loan Contracts

The Code envisages IUs to store financial information that helps to establish defaults as well as verify claims expeditiously and thereby facilitates completion of processes under the Code in a time bound manner. To ensure that IUs capture the information necessary for the resolution of insolvency and bankruptcy, the Code makes data submission mandatory for FCs, and imposes an obligation on IUs to accept such data. To ensure accuracy and preclude disputes, the Code mandates that such records be co-verified with all concerned parties. It often takes time and effort to receive the information from one of the parties to a loan agreement and then seek verification from the other party before the information is fit for use. Standardisation and dematerialisation of loan agreements and their online execution will speed up the processes under the Code and obviate the need for explicit authentication **(Box 8)**.

Box 8

Automating the Wheels of Commerce

Contract is the wheel of commerce. It is the most influential innovation of commerce. It is the foundation of every business and market innovation and one cannot think of the world without it. Literally, there are contracts on contracts, contracts within contracts and one contracts to contract to contract. It is under continuous metamorphosis to meet every business need.

The securities market undertakes transactions probably with the highest efficiency, speed and security, thanks to three institutional developments, namely, standardisation, dematerialisation and online execution of contracts, which are key components of contract automation. It trades in demat contracts; every trade is a contract executed online.

A share is the simplest contract traded in securities market. It is a contract between a shareholder and the company, subject to the Articles and the Statutes. It provides specific terms in respect of a class of shares of the company. The Articles of Association of a company provide generic terms in respect of all shares of the company. The specific statutes (the Companies Act, 2013), which enable issue of shares, provide the global terms in respect of all shares across companies. The general statutes (the Indian Contract Act, 1872) provide the universal terms in respect of all contracts across contracting parties. On the bedrock formed by its Articles,

the Companies Act, 2013, and the Indian Contract Act, 1872, a company issues a class of shares. Neither the company nor the prospective shareholders negotiate details of every term in case of each issue of shares. Nor do they prepare, sign and preserve bulky contracts. Even a transfer of shares from one person to another does not require a fresh contract between the company and the incoming shareholder.

The terms relating to shares have been standardised by the parties over centuries of transactions. Most of them have found place in course of time in the Articles, specific statutes and general statutes. Consequently, a share certificate is sleek with only a few terms. This eliminates protracted negotiation by the parties, delay in conclusion of transactions, and the possibility of unfavourable terms for the weaker party. It facilitates development of jurisprudence around standard terms, and significantly reduces costs, avoids disputes, and promotes contract enforcement. The securities market provides an electronic platform for online execution of contracts. The platform matches the interests of the parties and executes a standardised contract, online between them, with the least effort, cost and time. Once executed, the contract evidences unmistakable meeting of minds and irrefutable rights and obligations, and thereby avoids any concerns of contract enforcement.

Preparation, preservation and servicing of paper-based contracts are very costly, in addition to being susceptible to theft, forgery and mutilation. The securities market has addressed these concerns by dematerialising the contracts. A company issues demat shares; a depository holds demat shares; a stock exchange provides trading of demat shares; an investor deals in demat shares and the Government levies taxes on issue and trading of demat shares. This enables almost instantaneous transfer as well as consummation of contracts, while facilitating storage, retrieval, validation and authentication of contracts.

Following the experience in securities market, other business activities have been adopting standardisation and dematerialisation (S&D) of agreements. Standardised negotiable warehouse receipts are now held and transferred in demat form. Standardised lease rental agreements are prepared, signed and stored in electronic / demat form. A policy holder holds demat insurance plan with one of the insurance repositories. The National Pension Scheme investments are made online and held in a demat form. The academic certificates are stored in demat form with a depository. The State has been facilitating such S&D. The market has been finding innovative uses of S&D. For example, there is an increasing preference to use standardised, electronic wills. These help in storage, retrieval, validation and authenticity of records and facilitates contract enforcement.

The standardisation, dematerialisation and electronic execution of loan agreements can harness benefits similar to those achieved in securities markets. Depending on the amount of loan, purpose of loan, nature of security, creditworthiness of the counterparty, etc. each loan agreement appears unique despite the similar covenants. However, each agreement has a finite number of terms and parameters, and all possible terms in all possible agreements is also finite. A new term is innovated in extremely rare situations. Probably, a lengthy template carrying all possible parameters / terms can be devised for loan agreements and the parties may fill up the template according to the terms they agree upon. Or, there can be 'n' templates to meet the needs of each kind of loan and the parties may pick up the template relevant for their loan. The template may even provide flexibility to parties to modify or specify a special term to meet their requirements. It can be made sleek by parking common terms outside the contract. Many lenders today use a templated approach for a variety of credit contracts. Borrowing through credit cards is an example of a fully automated contract. The loan agreements thus can be standardised, and thereafter, they can be dematerialised, which can be followed by their online execution.

The advantages of automation of loan agreements are:

(a) Saving resources on negotiations to create a fresh agreement
(b) Consumer protection through avoidance of unreasonable terms
(c) Quick conclusion of transactions
(d) Improved contract enforcement and avoidance of disputes
(e) Negligible cost of maintaining and servicing loan agreements
(f) Development of secondary market for loans
(g) Incidental benefits (verification of default for insolvency, encumbrance of properties, transfer of loans, development of markets, etc.)

The automation (standardisation, dematerialisation and on-line execution of loan agreements) would make contracting efficient and consequently improve ease of doing business and facilitate early resolution of insolvency.

Graduate Insolvency Programme

IPs constitute a key institution of the insolvency regime and market economy. An IP plays an important role in resolution, liquidation and bankruptcy processes of companies, LLPs, partnership firms, proprietorship firms and individuals in distress. He needs an array of abilities to deliver on his statutory duties and obligations in an ever-evolving market environment. It is the endeavour of IBBI to make available a cadre of competent and accountable IPs, matching the dynamic market realities. Keeping this in view, the Regulations made by IBBI specify the eligibility for registration as an IP. An individual is eligible for registration as an IP if he has ten years of post-membership experience as a Chartered Accountant, Company Secretary, Cost Accountant, or Advocate, or 15 years of experience in management after bachelor's degree. However, an individual, who has completed the GIP approved by the IBBI, is also eligible for registration as an IP. GIP is visualised to be a programme of global standard that aims at producing top-quality IPs who can deliver world-class services as RPs, Liquidators or in other capacities at a level that surpasses the expectations of the market and the regulator in general and their consumers in particular.

Review of Regulatory Framework

The next years would see conclusion of several CIRPs and liquidation processes. Judicial pronouncements will resolve grey areas. The stakeholders will develop best practices. The operation of the insolvency regime will generate new knowledge. The deficiencies in the framework as well as the possibility of misuse of any provision by a miscreant will come to the fore. IBBI would keep a close watch on these developments and take note of lessons. It would modify the regulatory framework to address the challenges and to plug the loopholes, if any, and build the capacity of the IPs and other constituents to take the insolvency reforms to the next level. It would endeavour to review the regulations framed by it, in a timely and structured manner, in consultation with various stakeholders. There is a need to keep the regulation making process malleable so as to be able to respond proactively to stakeholder consultations and demands of emergent situations, going forward in the implementation process. A structured electronic arrangement has been made available to crowd source the ideas from stakeholders. Given that insolvency law is a brand new law, IBBI will continue to engage with academia, industry, professionals and other stakeholders to create awareness about it and build their capacity to use the Code for insolvency resolution. It will continue to organize and participate in advocacy events. It would intensify engagement with the stakeholders to ensure that insolvency reforms remain as reforms by the stakeholders, for the stakeholders and of the stakeholders.

FINANCIAL PERFORMANCE OF THE BOARD

The Code requires the IBBI to maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India (C&AG). It further requires that the accounts of the IBBI shall be audited by the C&AG. Accordingly, the IBBI forwarded the annual statement of accounts and balance sheet, duly approved by the Audit Committee and its GB, to C&AG for audit. The C&AG audited the accounts of the IBBI for financial year 2017-18 and forwarded audit report on 29th January, 2019. Table 42 presents a summary of financial performance of the Board.

Table 42

Income and Expenditure Statement, 2017-18

(Figures in Rs. lakh)

Income	2016-17*	2017-18	Expenditure (out of)	2016-17*	2017-18
Grants-in-Aid-Salaries	275.00	300.00	Salaries	66.99	508.01
Grants-in-Aid-Capital	192.86	-	Capital	3.09	66.23
Grants-in- Aid- General	203.28	333.00	General	46.06	490.22
Spent by MCA for IBBI	136.47	-	Spent by MCA on behalf for IBBI	136.47	-
Internal generated Revenue	89.73	330.41	Internal generated Revenue	-	420.14
Total	**897.34**	**963.41**	**Total**	**252.61**	**1484.60**

**2016-17 is for the period October, 2016 - March, 2017.*

IBBI received a total grant of Rs. 633 lakh in 2017-18 from the Government. It earned a fee of Rs.330.41 lakh from service providers. It spent a total of Rs.1484.60 lakh in 2017-18.

A regulator usually starts levying fees at a low rate initially and increases it to an appropriate level over time. It levies fees on a lower base (number and volume of transactions being less in initial years) which increases as the market size grows. While the base as well as the rate is low, it needs to incur huge capital expenses in the initial years. Faced with low income and high expenses in the initial years, a regulator generally depends on exogenous contribution. IBBI has been relying on the Government for grants in the initial years.

The BLRC believed that as a good practice, the Board should fund itself from the fees collected from its regulated entities. However, the industry of regulated professionals and entities focused on bankruptcy and insolvency will develop over time, while the Board requires to perform its supervisory functions from the start. As a result, there would be a period in which the Board would need funding by the Government.

The WG on 'Building the Insolvency and Bankruptcy Board of India' recognised that in the initial phase of the building up of IBBI, budgetary grants from the Government would be the main source of funding. However, in a few years, as the contours of the insolvency and bankruptcy intermediation industry would develop further, IBBI will be in a position to enforce a fee upon all IPs, IPAs and IUs, that will pay for its expenses.

J COMPLIANCES WITH STATUTORY OBLIGATIONS

The Board is a creation of a statute. It needs to comply with the provisions in the statute as well as other applicable laws. Table 43 presents brief details of compliances by the Board.

Table 43

Statement of Compliance with Statutory Obligations

Statute	Compliances Required	Status of Compliances
The Insolvency and Bankruptcy Code, 2016	**Section 16(4)**:The Board shall recommend within ten days of receipt of reference from the AA, the name of an IP where the application for insolvency resolution process has been made by an OC and no proposal for an IRP is made.	The Board has responded to 103 such references by the AA in the year 2017-18. Also, panels of IPs were created for appointment as IRP by the AA directly, without referring to the Board, thereby eliminating the delay.
	Section 22(4): The Board shall confirm the name of the RP proposed by the CoC.	The Board has provided an online facility to AA to check the disciplinary status of the IP, thereby eliminating the delay. Nevertheless, the Board has responded to 92 such references by the AA in year the 2017-18.
	Section 34(6): The Board shall propose within ten days of direction of the AA, the name of an IP to be appointed as a Liquidator, on a direction from the AA.	No such reference was received by the Board during 2017-18. Panels of IPs were created for appointment as Liquidator by the AA directly without referring to the Board, thereby eliminating the delay.
	Section 207 read with the IP Regulations: An application for registration as an IP may be rejected after providing an opportunity to explain why the application should be accepted.	The Board rejected six applications for registration as IP in 2017-18. It rejected all these applications, after considering written and oral submissions of the applicants, through a speaking order.
	Section 220 read with Inspection Regulations: The DC shall dispose of a Show Cause Notice (SCN) by a reasoned order in adherence with the principles of natural justice within 180 days of issue of SCN.	5 SCNs were issued in 2017-18. These shall be disposed of in accordance with section 220 read with Inspection Regulations.
	Section 223: The Board shall make proper accounts and such accounts shall be audited by the C&AG.	The Board prepared accounts in accordance with the IBBI (Form of Annual Statement of Accounts) Rules, 2018. The C&AG audited the accounts of the Board for 2017-18 and forwarded the audit report vide its letter dated 29th January, 2019.
	Section 230 read with section 240: Regulations shall be made by Governing Board of IBBI.	The Board made four Regulations during 2017-18 and amended 16 existing Regulations. All these Regulations were approved by the Governing Board and were notified promptly.
	Section 240: The Board needs to make Regulations on matters specified in the section.	The Board has made Regulations in respect of corporate insolvency processes and service providers. The Regulations in respect of individual insolvency will be made in sync with the notification of the applicable provisions in the Code.

	Section 241: Regulations shall be laid before each House of Parliament.	The Board sent 23 Regulations (10 notified in 2016-17 and 13 notified in 2017-18) to Government for laying before Parliament during 2017-18. Balance 7 Regulations notified in 2017-18 were sent to Government in 2018-19.
The Income-tax Act, 1961	The Board shall deduct and deposit tax deducted at source (TDS) within prescribed timelines, in respect of salaries, contracts and professional services.	The Board has duly deducted TDS, deposited the same every month within the prescribed timelines for the financial year 2017-18 and filed quarterly TDS returns.
	The Board shall file the Income Tax Returns (ITR).	The Board has filed the ITR for the financial year 2017-18.
The Central Goods and Services Tax Act, 2017 (GST)	The Board shall collect and deposit GST and file returns.	The Board has collected and deposited the GST every month and filed monthly GSTR1 and GSTR 3B. The annual GSTR - 9 for the financial year 2017-18 is due to be filed by 30th November, 2019.
The Right to Information Act, 2005	**Section 4(1)(b)**: The Board shall make *suo moto* disclosures on the specified matters on its website.	The Board made disclosures in accordance with section 4(1)(b) of the RTI Act, 2005 and updated the same.
	Section 7(1): The CPIO shall provide information to applicants within 30 days of receipt of application.	The CPIO provided information to 65 applicants. It provided the information in all cases within the timelines laid down by the RTI Act, 2005.
	Section 19(6): The FAA shall dispose of appeals within 45 days.	The FAA disposed of all 5 appeals received during the year within the stipulated time.
The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013	The Board shall constitute an Internal Complaints Committee.	The Board constituted the Committee on 1st September, 2017.
Employee Related Rules	Provident Fund / Pension for employees: The Board shall deduct and deposit provident fund and pension contributions of employees.	The Board deducted subscription of employees towards provident fund and remitted the same to their respective employers, along with employer's contribution, in respect of the employees on deputation. The Board did not have any officers in its own cadre during the year and hence, contribution for National Pension System was not applicable. The Board deducted subscription of Chairperson and WTMs towards Contributory Provident Fund and deposited the same, along with employer's contribution, in a fixed deposit.
	Reservation in recruitment	The Board has reserved posts in its advertisement for recruitment of Grade 'A' officers in accordance with Government Rules.
General Financial Rules, 2017	As a grantee institution, the Board is required to maintain a Register of Grants and submit utilisation certificate every financial year.	The Board maintains a Register of Grants and submitted the utilisation certificate for 2017-18 on 13th April, 2018.
The Minimum Wages Act, 1948	As a principal employer, the Board is required to ensure that the provisions of the Act are followed with respect to the manpower engaged on contract basis.	The Board has ensured compliance by the manpower service provider.

K ORGANISATIONAL MATTERS

RESPONSIBILITY CENTRES

Governing Board

During 2017-18, the Government appointed Dr. (Ms.) Mukulita Vijayawargiya, a member of the Indian Legal Service and Additional Secretary in the Legislative Department of the Ministry of Law and Justice (MoL&J), as a WTM. It also appointed Dr. Shashank Saksena, Adviser (Capital Markets), Department of Economic Affairs, Ministry of Finance (MoF), as an *ex-officio* member in place of Mr. Ajay Tyagi, who ceased to be a member of the Board, on being appointed as the Chairman of SEBI. It further appointed Mr. Gyaneshwar Kumar Singh, Joint Secretary, MCA, as an *ex-officio* member in place of Mr. Amardeep Singh Bhatia, who ceased to be a member, on being appointed as the Director of the Serious Fraud Investigation Office. Table 44 presents the details of the members of the Governing Board as on 31st March, 2018.

Table 44

Governing Board of IBBI as on 31st March, 2018

Name	Position at the time of Appointment to the Board	Appointed as	Representing	Date of Appointment
Dr. M. S. Sahoo	Member, CCI	Chairperson	NA	01.10.16
Mr. G. S. Yadav	Joint Secretary, MoL&J	*Ex-officio* Member	MoL&J	01.10.16
Mr. Unnikrishnan A.	Legal Adviser, RBI	*Ex-officio* Member	RBI	01.10.16
Ms. Suman Saxena	Former Deputy C&AG	WTM	NA	22.02.17
Dr. Navrang Saini	Director General, MCA	WTM	NA	31.03.17
Dr. (Ms.) Mukulita Vijayawargiya	Additional Secretary, MoL&J	WTM	NA	13.04.17
Dr. Shashank Saksena	Adviser, MoF	*Ex-officio* Member	MoF	24.05.17
Mr. Gyaneshwar Kumar Singh	Joint Secretary, MCA	*Ex-officio* Member	MCA	22.02.18

Audit Committee

The Audit Committee typically assists the GB in areas of financial reporting, internal control systems, risk management systems and the audit functions. The GB, in its fifth meeting held on 29th May, 2017, constituted the Audit Committee with a majority of non-WTMs under the chairmanship of a non-WTM as under:

(a) Mr. Amardeep S. Bhatia as Chairman;

(b) Mr. Unnikrishnan A. as Member; and

(c) Dr. Mukulita Vijayawargiya as Member.

In its meeting held on 15th March, 2018, the GB reconstituted the Audit Committee to comprise as under:

(a) Mr. Gyaneshwar Kumar Singh as Chairman;

(b) Mr. Unnikrishnan A. as Member; and

(c) Ms. Suman Saxena as Member.

In the said meeting, the GB approved the "Audit Committee Guidelines" as under:

(a) The Audit Committee shall consist of three members, as may be nominated by the GB.

(b) The majority of the members of the Audit Committee shall be non-WTMs.

(c) The Chairperson of the Audit Committee shall be a non-WTM.

(d) The term of a Member of the Audit Committee shall ordinarily be two years.

(e) The Audit Committee shall meet at least twice a year.

(f) The quorum for the meetings of the Audit Committee shall be two members.

(g) The Secretary to the Governing Board shall act as the Secretary to the Audit Committee.

The GB also specified that the duties of the Audit Committee shall include:

(a) Finalisation of principles, policies and standards for financial reporting and modification thereof;

(b) Oversight of the financial reporting process;

(c) Recommending to the Board, the appointment, re-appointment and, if required, the replacement or removal of the internal auditors and the fixation of audit fees; and

(d) Reviewing, with the management, the annual financial statements, before submission to the GB, for approval.

Disciplinary Committee

The Code envisages DC comprising WTM(s) to consider and dispose of show cause notices. The Board had constituted a DC comprising Dr. M. S. Sahoo, Chairperson, IBBI on 1st February, 2017, since IBBI did not have any WTM in position. IBBI reconstituted the DC comprising Dr. (Ms.) Mukulita Vijayawargiya, WTM on 28th August, 2017.

Advisory Committees

The Code enables the Board to constitute ACs in accordance with Regulations for efficient discharge of its functions. Accordingly, the Board notified the Advisory Committee Regulations on 30th January, 2017. The Regulations provide for the constitution, composition, and meetings of the AC, its mandate and conduct of its members. They provide that an AC shall have a mix of two sets of members, namely, (a) professional members, who are eminent academicians or practitioners in the relevant area, and (b) general members, who are eminent citizens not having direct involvement or interest in the area. It may advise IBBI on any issue under its purview on its own and shall advise and provide professional support on any issue under its purview on a request from IBBI. The Regulations enable IBBI to constitute the following committees:

(a) AC on Service Providers;

(b) AC on Corporate Insolvency and Liquidation;

(c) AC on Individual Insolvency and Bankruptcy; and

(d) Any other subject specific AC as IBBI may consider expedient from time to time.

The Board had constituted two ACs in October, 2016 in view of urgency, pending notification of the Regulations. After the regulations were notified, the Board constituted the following three ACs during 2017-18:

(a) AC on Service Providers with Mr. Mohandas Pai (Chairman, Manipal Global Education) as Chairperson;

(b) AC on Corporate Insolvency and Liquidation with Mr. Uday Kotak (Executive Vice Chairman and Managing Director, Kotak Mahindra Bank) as Chairperson; and

(c) AC on Individual Insolvency and Bankruptcy with Mr. Justice (Retd.) B. N. Srikrishna as Chairperson.

Technical Committee

The IU Regulations, enables the Board to lay down Technical Standards, through Guidelines, for the performance of core services and other services by an IU, based on recommendations of a Technical Committee. IBBI constituted the Technical Committee on 3rd May, 2017 under the chairmanship of Dr. R. B. Barman, Chairman, National Statistical Commission.

Internal Complaints Committee

In accordance with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Board constituted an Internal Complaints Committee on 1st September, 2017 to inquire into the complaints of sexual harassment of women employees. The committee comprises of:

(a) Dr. (Ms.) Mukulita Vijayawargiya, WTM, IBBI as Presiding Officer;

(b) Ms. Bina Jain, External Expert;

(c) Ms. Ranjeeta Dubey, GM, IBBI as Member; and

(d) Mr. Ritesh Kavdia, ED, IBBI as Member Secretary.

PROFESSIONAL MEMBERSHIP

FOIR Membership

Forum of Indian Regulators (FOIR) provides a common platform to discuss emerging issues in regulatory procedures and practices, to evolve common strategies to meet the challenges before regulators in India and to share information and experiences. In its meeting held on 16th June, 2017, FOIR inducted IBBI as an Institutional Member (Central Infrastructure Sector) and

Dr. M. S. Sahoo, Chairperson, IBBI, as an Honorary Vice-Chairman.

FSDC Membership

The Central Government, vide a notification in the Official Gazette dated 18th September, 2017, modified the constitution of the Financial Stability and Development Council (FSDC) to include the Secretary, MCA and the Chairperson, IBBI as its Members. The Council is chaired by the Hon'ble Finance Minister and includes Governor, RBI; Finance Secretary and/Secretary, Department of Economic Affairs; Secretary, Department of Financial Services; Chief Economic Adviser, MoF; Chairman, SEBI; Chairman, IRDAI, and Chairman, PFRDA. The mandate of the Council includes dealing with issues relating to financial stability, financial sector development, inter-regulatory cooperation, financial literacy, financial inclusion, macro-prudential supervision of the economy, coordinating India's international interface with Financial Action Task Force, Financial Stability Board, etc.

IAIR Membership

The International Association of Insolvency Regulators (IAIR) brings together the collective experiences and expertise of insolvency regulators from jurisdictions around the world. It aims to promote liaison and cooperation and provides a forum for discussion amongst insolvency regulators and thereby, contributes to a wider understanding of insolvency issues, procedures and practices and the development of approaches that reflect the different legal, socio-economic, historical, cultural and institutional frameworks of the countries from which members come. The IBBI joined the IAIR on 11th January, 2018, as its 31st member.

HUMAN RESOURCES

IBBI is responsible for developing and building capacity of two professions, namely, insolvency profession and valuation profession. It is also responsible for professionalising the market for insolvency resolution. These responsibilities require IBBI to be a knowledge organisations. It has been the endeavour of IBBI to attract the right talent, train them for the tasks and motivate them for excellence.

Research Associates Regulations

The IBBI (Engagement of Research Associates and Consultants) Regulations, 2017, which were notified on 30th January, 2017, provide for functions, qualifications, experience and other conditions of service of research associates and consultants. In accordance with these regulations, IBBI engaged research associates and consultants from disciplines of Economics, Public Policy, Law and Business Management, on contractual basis. It had seven research associates / consultants on 31st March, 2017 which increased to 19 as on 31st March, 2018.

Employees' Service Regulations

IBBI notified the IBBI (Employees' Service) Regulations, 2017 on 24th August, 2017. These Regulations provide for recruitment, probation, superannuation and retirement of Officers, Personal Assistants and General Assistants. The Board has followed the structure followed by SEBI and other financial sector regulators. Table 45 provides the brief details of eligibility for various levels of employees.

Table 45

Eligibility for various positions

Position	Eligibility for			
	Direct Recruitment	Promotion (No. of years in the next below Grade)	Deputation from	
			Government in Grade Pay	RBI, Banks, FIs, etc. (No. of years as officer)
Executive Director	NA	03	Rs.10000 / 8 years in Rs.8700 or above in PB-4	20
CGM	NA	03	3 years in Rs. 8700 or above in PB-4	17

GM	NA	03	Rs.8700 / 3 years in Rs.7600	14
DGM	NA	03	Rs.7600 / 3 years in Rs.6600	11
AGM	NA	03	Rs.6600	08
Manager	NA	03	3 years in Rs.5400	04
AM	**Age**: ≤ 28 years **Qualification** (Essential): CA/CS/CMA/LL.B./MBA with Finance / Masters in Economics /M. Com. /B. Tech in Computer Science / Computer Engineering /MCA.	NA	Rs.5400 / 2 years in Rs.4600	02
Assistant Grade-III	NA	07	NA	NA
Assistant Grade-II	NA	07	NA	NA
Assistant Grade-I	**Age**: ≤ 27 years. **Qualification** :Graduate	NA	NA	NA

Compensation for Employees

The Board has decided to adopt pay and benefits on the pattern of SEBI.

Recruitment

Table 46 presents the actual strength of employees vis-à-vis the approved strength as on 31st March, 2018.

Table 46

Employees of IBBI

Position	Actual Strength as on 31st March, 2017	Approved Strength as on 31st March, 2018	Actual Strength	
			As on 31st March, 2018	Mode of Recruitment
Executive Director	00	04	03	Deputation and Secondment
GM / CGM	01	12	03	Deputation and Secondment
AGM / DGM	05	12	07	Deputation and Secondment
Manager / AMs	00	24	00	NA
Assistant Section Officers	01	10	02	Deputation
Assistants	00		00	-
Total	**07**	**62**	**15**	**-**

Three Executive Directors joined the Board during 2017-18 as under:

(a) Dr. (Ms.) Mamta Suri, who was serving as CGM at IRDAI, joined on 16th August, 2017;

(b) Mr. Ritesh Kavdia, an Indian Telecommunication Service Officer, who was serving as CGM on secondment in IBBI, joined on 1st February, 2018; and

(c) Mr. K. R. Saji Kumar, an Indian Legal Service Officer, who was serving as Joint Secretary and Legislative Counsel in the Legislative Department, joined on 9th February, 2018.

IBBI continued to take officers on deputation at senior levels. It initiated the recruitment of the first batch of 18 Grade 'A' officers in accordance with the regulations in February 2018.

Internship Guidelines

The IBBI Internship Guidelines, 2017, notified on 16th August, 2017, provide an opportunity of internship to students who wish to pursue a professional career in insolvency, liquidation, bankruptcy or any other related field. A student who is pursuing a five-year or three-year degree course in law or post-graduation course in Economics, Commerce, Finance, Management, or Law, and has completed the penultimate year or stage of such degree course or post-graduation course; or a student pursuing M. Phil. / Ph. D. course in Economics, Commerce, Finance, Management, or Law, is eligible to join as an intern with IBBI. During 2017-18, six students interned at IBBI.

DELIVERY DESIGN

Official Language

IBBI conducted various activities during the year to popularise Hindi as the official language of the Union of India and to promote its use further in official work. It notified all the regulations in Hindi and English simultaneously. It encourages its employees to use Hindi in official work.

Organisation Structure

The GB, in its meeting held on 16th January, 2017, approved an organisational structure, which envisages three Wings, namely, a RRW to perform the quasi-legislative functions; a RMW to perform the executive functions and an ALW to perform the quasi-judicial functions. These three wings are headed by a WTM each to ensure broad separation of powers.

Delegation of Powers

The Code enables the Board to delegate to any member or officer of the Board, its powers and functions except the power to make regulations. The Delegation Order, issued on 24th January, 2017, specifies the level of officer who has delegated authority to dispose of a matter. The powers and functions delegated to an officer can, however, be exercised by an officer higher in grade or position to him in the reporting hierarchy.

The Valuers Rules were notified by the Government on 18th October, 2017. Vide notification dated 23rd October, 2017, the MCA delegated its powers and functions under section 247 of the Companies Act, 2013 and the Valuers Rules to IBBI and designated it as the 'authority' under the said Rules. The Delegation Order was modified on 1st December, 2017 to provide for levels of officers for disposal of matters under the Valuers Rules. It was modified further on 15th March, 2018 to provide for delegation of powers to deal with matters under the Grievance Regulations which was notified on 7th December, 2017 and related matters.

Strategy Meet

Strategic planning provides a sense of direction and outlines measurable goals for an organisation. It helps to build shared vision, set priorities, focus energy and resources on priority areas, and outline specific actions and sub-actions to achieve desired outcomes. With the aforesaid objectives, IBBI held its first annual strategy meet on 21st -22nd July, 2017 at TERI Retreat Centre, Gurugram to chart its path for the balance period of 2017-18. It held the second strategy meet on 29th -30th March, 2018 at NIFM, Faridabad to prepare an action plan for 2018-19.

Parliamentary Committee

Dr. M. S. Sahoo, Chairperson accompanied by all three WTMs, Ms. Suman Saxena, Dr. Navrang Saini and Dr. (Ms.) Mukulita Vijayawargiya, appeared before the Joint Committee on 'The Financial and Resolution and Deposit Insurance Bill, 2017' on 22nd January, 2018 and presented their views on the said Bill.

Capacity Building

It is a constant endeavour of IBBI to enhance its capability in the dynamic area of insolvency and bankruptcy. It has

Strategy Meet at NIFM, 29th-30th March, 2018

adopted a multi-pronged strategy for this purpose.

Distinguished Lecture Series

IBBI invites eminent persons to share their thoughts and interact with the officers of IBBI. Table 47 presents details of lectures delivered by them during 2017-18.

Table 47

Distinguished Lectures in 2017-18

Sl. No.	Date	Name of the Speaker	Position / Organisation	Subject
1	26.04.17	Mr. Sanjeev Sanyal	Principal Economic Adviser, MoF	Individual Insolvency
2	27.04.17	Mr. Justice Kannan Ramesh	Justice, Supreme Court of Singapore	Insolvency Law Reforms in Singapore
3	27.04.17	Mr. Adam Harris	President, INSOL International	Role of INSOL International
4	10.05.17	Dr. Jamini Bhagwati	Professor, ICRIER and Former High Commissioner to UK	Cross Border Insolvency
5	06.06.17	Dr. Ajay Shah	Professor, NIPFP	Measuring Performance / Outcome of the Implementation of the IBC
6	05.07.17	Mr. Arun Maira	Management Consultant and Former Member, Planning Commission	Developing Strategic Action Plan
7	13.07.17	Dr. Bibek Debroy	Member, NITI Aayog	Ongoing Legal Reforms
8	21.07.17	Mr. P. P. Choudhary	Minister of State for Law and Justice and Ministry of Corporate Affairs	Building the IBBI
9	27.12.17	Mr. Justice M. M. Kumar	President, NCLT	Evolving Insolvency Jurisprudence

10	01.02.18	Dr. Ms. Punam Sahgal	Management Consultant and Trainer	Team Building and Leadership
11	27.02.18	Dr. Gyana Ranjan Parija	Manager, Analytics & Optimization Research, IBM Research - India	Artificial Intelligence, Blockchain and Cognitive Technology
12	01.03.18	Dr. Omkar Goswami	Chairperson, CERG Advisory Private Limited	Challenges in Implementing the IBC
13	25.03.18	Dr. Ranjan Kumar Bal	Professor, Utkal University	Time Management
14	27.03.18	Dr. Arun Tripathy	Professor, Management Development Institute	Strategy for a Regulatory Organisation
15	29.03.18	Mr. Sumant Batra	Insolvency Lawyer and Past President of INSOL International	Reality Check on IBC Implementation
16	30.03.18	Mr. U. K. Sinha	Former Chairman, SEBI	Regulator, Regulations and Regulatory Challenges

Training Programmes

Table 48 presents the details of training programmes where IBBI officers participated during the period under review to enhance their knowledge and skills in the area of insolvency and bankruptcy. In order to gain international perspective, a few officers were sent on study tour abroad. Besides, officers were nominated to participate in a number of seminars/conferences organised by stakeholders.

Table 48

Training Programmes Attended by Officers of IBBI

Sl. No.	Month	Kind	Venue	Training Provider	Scope of Training	No. of Officers (including WTMs and Chairperson)
1	May. 2017	Training	Faridabad	NIFM	Management Development	03
2	Aug, 2017	Training	Singapore	The Law Society of Singapore	Singapore Insolvency Conference, 2017	02
3	Nov, 2017	Training	Kuala Lumpur, Malaysia	World Bank	BNM–WBG Credit Infrastructure Programme	02
4	Sept, 2017	Training	Faridabad	NIFM	Public Management Financial System	01
5	Sep, 2017	Study Tour	United Kingdom	Insolvency Services, UK	UK Insolvency Regime	03
6	Oct, 2017	Study Tour	Australia	Australian Restructuring Insolvency and Turnaround Association	Australian Insolvency Regime	02
7	Feb, 2018	Workshop	New Delhi	IBBI	Induction Workshop for Officers	30
8	Feb, 2018	Workshop	New Delhi	Insolvency Services, UK	Best Practices in Insolvency	05
9	Feb, 2018	Workshop	United Kingdom	British High Commission	UK Insolvency Regime	03

Collaboration with Reserve Bank of India

RBI and IBBI entered into a Memorandum of Understanding (MoU) on 12th March, 2018 to assist and cooperate with each other for the effective implementation of the Code, to facilitate a quick and efficient resolution process. The MoU provides for: (a) sharing of information and resources with each other; (b) engagement to discuss matters of mutual interest; (c) cross-training of staff in order to enhance each party's understanding of the other's mission for effective utilisation of collective resources; (d) capacity building of IPs and FCs; (e) joint efforts towards enhancing the level of awareness among FCs about the importance and necessity of swift insolvency resolution process of various types of borrowers in distress under the provisions of the Code; etc.

Information Technology

IBBI is a modern age regulator. In the interest of efficiency and transparency, it started using information technology for delivery of its services since its inception. The key initiatives taken in this regard are as under:

Website

IBBI registered the domain name www.ibbi.gov.in and started a website for dissemination of its activities in November, 2016. It quickly scaled it up to disseminate details about the service providers, regulatory framework, examinations, Orders by the Courts and Tribunals under the Code, Orders passed by the Board and the DC, etc. It also hosts details of various processes under the Code to facilitate the stakeholders to take decisions in time.

Online Examinations

Subject to meeting other requirements, an individual is eligible to be registered as an IP if he has passed the Examination. IBBI introduced an IT enabled Examination with effect from 31st December, 2016. The examination is delivered online on a daily basis from several locations across the country. Similarly, to be registered as a valuer, one needs to pass the valuation examination of the relevant asset class. IBBI made available an IT enabled Examination for three asset classes, namely, Land and Building, Plant and Machinery, Securities or Financial Assets under the Valuers Rules from 31st March, 2018. The entire process, including registration, payment, enrolment, generation of question paper and evaluation is automated.

Online Registration

The entire process of registration, including submission of application, and payment of registration fee, as an IP is automated. IBBI accepts applications online as well as fees for registration as IPs through the respective IPAs and grants registration online. The details of a registered IP(s) become available on website as soon as he is registered.

Public Consultation

It has been the endeavour of the IBBI to effectively engage with stakeholders through a transparent and consultative process for making Regulations. It puts out draft Regulations on its website that provides a structured electronic platform for receiving and processing of comments and suggestions. It also provides a structured electronic platform for crowdsourcing of comments and suggestions on the existing regulatory framework.

Access to Database

An IP may be appointed as IRP, RP or a Liquidator, whether proposed by the applicant or the CoC in respect of a CIRP, only if there is no disciplinary proceeding pending against him. It would take considerable time if the AA makes a reference to IBBI to enquire if a disciplinary proceeding is pending against the IP, and for IBBI's response to reach the AA. Given that time is the essence of the Code, IBBI has provided access to live database of IPs to the AA which enables the AA to appoint an IP instantaneously and consequently ensures faster disposal.

Citizen Services

IBBI deals with applications and appeals under the RTI Act, 2005 online. It also deals with complaints received at CPGRAMS online. It uses the Government e-Marketplace for transparent and accountable procurement.

Premises

IBBI continued to operate from 7th Floor, Mayur Bhawan, Connaught Place, New Delhi. In view of its increasing need for space, MCA allotted 2nd Floor of Jeevan Vihar, Parliament Street, New Delhi to IBBI. IBBI shall occupy the said place on completion of renovation.

RIGHT TO INFORMATION

In order to foster transparency and accountability in its operations, IBBI makes various disclosures relating to regulations, circulars, and adjudications and details of service providers and the processes under the Code on its website. It made the stipulated disclosures under section 4 of the Right to Information Act, 2005 (RTI Act), in addition to providing information to any citizen on an application being addressed to it.

IBBI appointed Ms. Ranjeeta Dubey as the Transparency Officer. It designated Ms. Anita Kulshrestha, DGM as the Central Public Information Officer (CPIO) under section 2(h) of the RTI Act for providing information to the RTI applicants. It designated Dr. (Ms.) Mukulita Vijayawargiya as the First Appellate Authority (FAA) for the disposal of appeals against the orders of the CPIO under section 19(1) of the RTI Act. Table 49 presents the details of receipt and disposal of applications and first appeals under the RTI Act, during 2017 -18.

Table 49

Receipt and Disposal of Applications and Appeals in 2017-18

Sl. No.	Description	Number
1	Applications seeking information under the RTI Act, received by the CPIO	74
2	Applications for which information has been provided by the CPIO	65
3	Applications pending with CPIO	9
4	First Appeals against the order of CPIO before the FAA	5
5	Appeals disposed of by the FAA	5
6	Appeals pending with the FAA	0
7	Applications/ Appeals not disposed of in the stipulated time frame	0

भारतीय दिवाला और शोधन अक्षमता बोर्ड

Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan
Shankar Market, Connaught Circus
New Delhi - 110 001