भारतीय दिवाला और शोधन अक्षमता बोर्ड

Insolvency and Bankruptcy Board of India

ANNUAL REPORT 2016-17

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ANNUAL REPORT | 2016-17

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.

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

Dr. M. S. Sahoo
Chairperson

बोर्ड-18011/2/2019-आई बी बी आई
31 मई 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 भारतीय दिवाला और शोधन अक्षमता बोर्ड (वार्षिक रिपोर्ट) नियम, 2018 में निर्धारित प्रारूप में 1 अक्टूबर, 2016 से 31 मार्च, 2017 तक की अवधि के लिए भारतीय दिवाला और शोधन अक्षमता बोर्ड की वार्षिक रिपोर्ट की प्रति अग्रेषित कर रहा हूं।

भवदीय,
एम. एस. साहू
(डॉ. एम. एस. साहू)

संलग्नः उपरोक्तानुसार

The Secretary to Government of India
Ministry of Corporate Affairs
'A' Wing, Shastri Bhawan
New Delhi- 110001.

Board/18011/2/2019-IBBI
31st May, 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 October, 2016 to 31st March, 2017, 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, 2017)

Chairperson

Dr. M. S. Sahoo

Whole-Time Members

Ms. Suman Saxena

Dr. Navrang Saini

Ex-officio Members

Mr. Amardeep S. Bhatia
Joint Secretary
Ministry of Corporate Affairs

Mr. G. S. Yadav
Joint Secretary and Legal Adviser
Department of Legal Affairs
Ministry of Law and Justice

Mr. Unnikrishnan A.
Legal Adviser
Reserve Bank of India

CHAIRPERSON, WTMs AND OFFICERS

(As on 31st March, 2017)

(Left to Right)
Sitting: **Ms. Suman Saxena**, WTM; **Dr. M. S. Sahoo**, Chairperson; **Dr. Navrang Saini**, WTM
Standing: **Mr. Sanjeev Pandey**, DGM; **Mr. Ritesh Kavdia**, CGM; **Ms. Ranjeeta Dubey**, DGM; **Ms. Anita Kulshrestha**, DGM; **Mr. I. Sreekara Rao**, DGM; **Mr. Umesh Kumar Sharma**, DGM

CONTENTS

List of Box Items

List of Tables

List of Figures

List of Inscripts

List of Abbreviations

AA	Adjudicating Authority
AC	Advisory Committee
Advisory Regulations	The IBBI (Advisory Committee) Regulations, 2017
AGM	Assistant General Manager
AQR	Asset Quality Review
ARC(s)	Asset Reconstruction Company/Companies
ASSOCHAM	Associated Chambers of Commerce and Industry of India
BCC&I	Bengal Chamber of Commerce and Industry
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 Board Meetings) Regulations, 2017
BSE	Bombay Stock Exchange
Bye-Laws Regulations	The IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016
C&AG	Comptroller and Auditor-General of India
C&I	Competition and Innovation
CCI	Competition Commission of India
CD	Corporate Debtor
CDR	Corporate Debt Restructuring Scheme
CERSAI	Central Registry of Securitisation, Asset Reconstruction and Security Interest
CGM	Chief General Manager
CII	Confederation of Indian Industry
CIRP	Corporate Insolvency Resolution Process
CIRP Regulations	The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
CLB	Company Law Board
CLBA	Competition Law Bar Association
CoC	Committee of Creditors
Code/IBC	Insolvency and Bankruptcy Code, 2016
CPIO	Central Public Information Officer
CRILC	Central Repository of Information on Large Credits
DC	Disciplinary Committee
DGM	Deputy General Manager
DRAT	Debt Recovery Appellate Tribunal

List of Abbreviations	
DRT	Debt Recovery Tribunal
Examination	Limited Insolvency Examination
FC(s)	Financial Creditor/Creditors
FICCI	Federation of Indian Chambers of Commerce and Industry
GB	Governing Board of IBBI
GDP	Gross Domestic Product
Government	Central Government
GM	General Manager
ICAI	Institute of Chartered Accountants of India
ICMAI	Institute of Cost Accountants of India
ICR	Interest Coverage Ratio
ICSI	Institute of Company Secretaries of India
ICSI IPA	ICSI Insolvency Professionals Agency
IGIDR	Indira Gandhi Institute of Development Research
IICA	Indian Institute of Corporate Affairs
IIIP of ICAI	Indian Institute of Insolvency Professionals of ICAI
IIM	Indian Institute of Management
IM	Information Memorandum
IMS	Institute of Management Studies, Ghaziabad
IP(s)	Insolvency Professional / Professionals
IP Regulations	The IBBI (Insolvency Professionals) 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
IRP	Interim Resolution Professional
IU(s)	Information Utility / Utilities
IU Regulations	The IBBI (Information Utilities) Regulations, 2017
LBSNAA	Lal Bahadur Shastri National Academy of Administration
Liquidation Regulations	IBBI (Liquidation Process) Regulations, 2016.
LLP	Limited Liability Partnership
MCA	Ministry of Corporate Affairs
MCCI	Merchants' Chamber of Commerce and Industry
ML&J	Ministry of Law and Justice
MoF	Ministry of Finance
MRU	Maharashtra Relief Undertakings (Special Provisions) Act, 1958
MSME(s)	Micro, Small and Medium Enterprise/Enterprises

List of Abbreviations

NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NeSL	National e-Governance Services Limited
NIPFP	National Institute of Public Finance and Policy
NISM	National Institute of Securities Markets
NLU	National Law University
NPA(s)	Non-Performing Asset/Assets
OC(s)	Operational Creditor / Creditors
OTS	One-time Settlement
PHDCCI	PHD Chamber of Commerce and Industry
PSBs	Public Sector Banks
RA(s)	Resolution Applicant/Applicants
RBI	Reserve Bank of India
RDDBFI	The Recovery of Debts Due to Banks and Financial Institutions Act, 1993
RoC	Registrar of Companies
RP	Resolution Professional
S4A	Scheme for Sustainable Structuring of Stressed Assets
SARFAESI	The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SCBs	Scheduled Commercial Banks
SDR	Strategic Debt Restructuring Scheme
SEBI	Securities and Exchange Board of India
SICA	Sick Industrial Companies (Special Provisions) Act, 1985
TBS	Twin Balance Sheet Problem
TRAI	Telecom Regulatory Authority of India
UNCITRAL	United Nations Commission on International Trade Law
Voluntary Regulations	The IBBI (Voluntary Liquidation) Regulations, 2017
WG	Working Group
WTM	Whole-Time Member

A CHAIRPERSON'S STATEMENT

The Insolvency and Bankruptcy Code, 2016 has changed the narrative from 'Hopeless End' to 'Endless Hope'.

FREEDOM TO EXIT

Mainstream economic thought believes that at any point of time, human wants are unlimited while the resources to satisfy them are limited. The central economic problem, therefore, is inadequacy of resources vis-à-vis ever-increasing, unlimited wants. Mainstream legal thought believes that as a person moves from natural state to economic state, it loses some degree of freedom. The central legal problem, therefore, is inadequacy of freedom to pursue economic interests meaningfully.

Thus, there are twin inadequacies of resources and freedom: resources are limited, so also the freedom. There are twin adequacies too: resources have alternative uses, and firms pursue self-interests. An economy thrives when its limited resources are put to the best possible use. It happens when the self-interested firms have maximum possible freedom to shift resources to more efficient uses continuously and seamlessly.

Freedom unleashes and realises the full potential of every firm and every resource in the economy. It is well established that economic freedom and economic performance have a very high positive correlation. It has, therefore, been the endeavour of States all over the world to provide the right institutional milieu to bring out the best from her people. This happens when it (a) provides, promotes and protects economic freedom and (b) regulates such freedom only to the extent it is necessary for addressing market failure(s).

A firm needs freedom broadly at three stages of business - to start, to continue and to discontinue a business. This enables new firms to emerge continuously. They do business when they are efficient and vacate the space when they are no longer efficient. The first stage ensures allocation of resources to the most efficient use, the second stage ensures efficient use of resources allocated, and the third stage ensures release of resources from inefficient uses. This ensures the most efficient use of resources and consequently optimum economic wellbeing. The economic reform typically endeavours to provide economic freedom at these three stages.

The reforms in India in the 1990s focused on freedom of entry. It ushered in liberalization, privatization and globalization. It dismantled the *license-permit-quota Raj,* when discretionary license gave way to an entitlement of registration. It allowed firms meeting the eligibility requirements to raise resources, without requiring any specific approval from the State, to facilitate freedom of entry.

The reforms in the 2000s focused on creating a free and fair market competition. They moved away from control of monopoly of firms to promote competition among firms at marketplace. Size or dominance, *per se,* was no longer considered bad, its abuse was. The reforms provided a level playing field and competitive neutrality and prohibited firms from restricting the freedom of other firms to do business.

The index of economic freedom, which measures the degree to which the policies and institutions of an economy are supportive of economic freedom, has substantially improved for India since the 1990s. The outcome has been astounding. The average growth rate in the post reforms period since 1992 has been more than double of that in the pre-reforms period. Today, India is the fastest-growing trillion-dollar economy.

The Indian economy moved from socialism with limited entry to market economy without exit, leading to substantial cost of impended exit. After having commenced business, a firm in a market economy fails to deliver, as planned, in two broad circumstances:

(a) The firm belongs to an industry where business is no more viable for exogenous reasons (changes in technology, policy, trade, society, and economy). In such cases, the firm is in economic distress. The only option available is to redeploy the assets of the firm in viable businesses and release the entrepreneur to pursue emerging opportunities; or

(b) The firm belongs to an industry where other firms in the industry are doing well, but the firm in question is not doing well for endogenous reasons (poor organisation, inefficient management, malfeasance, etc.). In such cases, the firm is in financial distress. It is necessary to rescue the firm well in time from the clutches of current management and put it in the hands of a credible and capable management to avoid liquidation.

In either situation, the resources at the disposal of the firm are underutilised and the management / entrepreneur has failed. Where a firm remains in such a state for long, its balance sheet gets stretched. Such failure by many firms, particularly large ones, impacts the balance sheets of creditors, particularly banks. This reduces the availability of funds with the creditors, limiting their ability to lend for even genuinely viable projects, thus restricting credit growth. The impact is pronounced where firms deliberately fail to repay loans. Thus, what emerged in the middle of this decade is popularly referred to as the *'Twin Balance Sheet'* problem, where both the banks and firms were reeling under the stress of bad loans, thereby, hindering overall economic growth.

Given that the resources are scarce, and failures are routine in a dynamic market economy, India needed a codified and structured market mechanism to put the underutilised resources to more efficient uses continuously and free entrepreneurs from failure. The Insolvency and Bankruptcy Code, 2016 (IBC / Code) provides such a market mechanism for (a) rescuing a failing, but viable firm; and (b) liquidating an unviable one and releasing its resources, including entrepreneur(s), for competing uses, and thereby provides the freedom to exit, the ultimate freedom.

ENDLESS HOPE

The Code entitles a stakeholder to trigger corporate insolvency resolution process (CIRP) of a firm on default of a threshold amount and if triggered, the firm moves away from 'debtor-in-possession' to 'creditor-in-control'; the management of the firm and its assets vest in an insolvency professional (IP), who runs the firm as a going concern, and a committee of creditors (CoC) is constituted to evaluate options for the firm. The IP invites feasible and viable resolution plans from eligible and credible resolution applicants (RAs) for resolution of insolvency of the firm. If the CoC approves a resolution plan within the stipulated time with required majority, the firm continues as a going concern. If the CoC does not approve a resolution plan, with the required majority within this period, the firm mandatorily undergoes liquidation.

The Code endeavours to resolve insolvency of the firm as a going concern through a resolution plan. It does not spell out the shape, colour and texture of resolution plan, which is left to the ingenuity of the stakeholders. A plan, however, needs to have a unique combination of business, financial and operational restructuring, immediately or over a period of time, as may be required to resolve insolvency of the firm as a going concern. Given that each resolution plan would have a unique likelihood of resolving insolvency, the Code envisages application of mind by the CoC, through deliberation and voting, for approval of the best resolution plan.

Prior to the enactment of the Code, the insolvency landscape was highly fragmented with multiple overlapping laws - central and provincial - as well as non-statutory schemes that were implemented in different fora without any coordination among them. The outcome was poor, costly and uncertain. The Code addresses four fundamental concerns of the past regime:

(a) A firm is financed through equity and debt. As long as debt is serviced; equity has complete control of the firm. When the firm fails to service the debt, the Code shifts control of the firm to the creditors for resolving insolvency;

(b) Resolution entails commercial as well as adjudicatory decisions. The Code empowers and facilitates the stakeholders of the firm and the Adjudicating Authority (AA) to decide matters within their respective ambit expeditiously;

(c) The enterprise value of the firm reduces exponentially with time, as prolonged uncertainty about its ownership and control and general apprehension surrounding insolvency leads to a flight of customers, vendors, workers, etc. The Code mandates closure of resolution process in a time bound manner and, therefore, preserves the value; and

(d) The firm does not have enough in the pot for everybody. If creditors recover their dues - one after another or simultaneously - from the available assets of the firm, nothing may be left in due course, bleeding the firm to death,. The Code, therefore, prohibits and discourages recovery in several ways during CIRP.

The Code, thus, provides a market mechanism for time bound resolution of insolvency, wherever possible, and facilitates exit, wherever required, for maximisation of the value of assets of the firm concerned, to promote entrepreneurship, availability of credit and balance the interests of all its stakeholders.

The failure of business dampens entrepreneurship if it is onerous for an entrepreneur to exit a business. By rescuing viable businesses and closing non-viable ones, the Code releases the entrepreneurs from failure. It enables them to get in and get out of business with ease, undeterred by failure. As more and more potential entrepreneurs recognise this, the Code would promote entrepreneurship.

As many firms default, the availability of funds with the creditors decline, thereby limiting their 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 become unviable. Through provision for resolution and liquidation, the Code reduces incidence of default, and enables creditors to recover funds from either future earnings, post-resolution 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 the availability of credit.

Default typically reflects relative under-utilisation of resources at the disposal of the firm as compared to other firms in the industry. The Code ensures optimum utilisation of resources at all times by (a) preventing use of resources below the optimum potential; (b) ensuring efficient use of resource(s) within the firm through a resolution plan; or (c) releasing unutilised or under-utilised resources through closure of the firm and thereby, maximising the value of the firm. If the resources, that are currently unutilised or underutilised or rusting, for whatever reason(s), can be put to more efficient uses, the growth rate may well go up by a few percentage points.

By liberating the entrepreneur(s) from failure and releasing resources from *chakravyuha* of unviable firms for continuous recycling, coupled with improved availability of credit and intense competition and innovation in the economy, I believe, the Code has changed the narrative from *'Hopeless End'* to *'Endless Hope'*.

SHARE THE JOURNEY

India did not have any prior experience of a law for insolvency resolution that is proactive, incentive-compliant, market-led and time-bound. Many institutions required for implementation of a modern and robust insolvency regime did not exist. The Code and the reform envisaged under the Code was, therefore, in many ways, a leap into the unknown and a leap of faith. Yet, the entire regulatory framework in respect of corporate insolvency, both resolution and liquidation, and the entire ecosystem for corporate insolvency were in place by the end of 2016, and provisions relating to corporate insolvency process commenced on 1st December, 2016. A firm was admitted into CIRP on 17th January, 2017. The enactment of the Code and its implementation have been very swift, to my knowledge, probably with no parallel anywhere else in the world.

The Central Government (Government) led the reform from the front and soon converted it to *'Share the Journey'*. It subordinated its dues to claims of all stakeholders except equity. It amended several other laws to facilitate

implementation of the Code. It granted supremacy to the Code over all other laws. It established a key pillar of institutional infrastructure, namely, the AA on 1st June, 2016 with several benches across the country. It formed an oversight committee and four working groups (WGs) on 22nd July, 2016 to prepare draft rules, regulations and other matters relating to IBBI, IPs, Insolvency Professional Agencies (IPAs), Information Utilities (IUs) and the corporate insolvency resolution and liquidation processes. It engaged with the three professional institutes, leading to establishment of one IPA each by end of November, 2016. It established another key pillar of the institutional infrastructure, the Insolvency and Bankruptcy Board of India (IBBI) on 1st October, 2016 and tasked it to prepare the ecosystem and regulatory framework to enable commencement of corporate processes on 1st December, 2016.

In sync with the priority and focus of the Government, IBBI proactively engaged with stakeholders. Three professional institutes set up one IPA each. Soon a cadre of IPs tasked with the responsibility to steer the processes under the Code emerged. The IPAs, trade and industry bodies, academia and universities, debtors and creditors, and professionals worked overtime to build institutional capacity to implement the reform. Though the State triggered the reform, the stakeholders played a key role in the formulation of rules and regulations, through WGs and Advisory Committees (ACs), in roundtables, and otherwise. The insolvency reform has been a reform by, for and of the stakeholders. All stakeholders are on the same page to take the business to the next level.

GOING FORWARD

Whenever any major reform is envisaged, particularly when it substantially affects the rights and obligations of the stakeholders as the Code does, there is a usual apprehension about, as well as reluctance to accept, the change and, at times, vigorous efforts, often through court process, are made to cling[1] on to the old order. Further, it takes time to build institutional capacity and develop the markets and practices to implement the reform.

In the days to come, the stakeholders, the ecosystem and the regulatory framework would learn on the job and mature with experience. Insolvency and valuation professions would take deep roots and professionalise insolvency services. The key actors in the insolvency process - financial creditors (FCs), operational creditors (OCs) and debtor firms and RAs would develop practices to tailor the process to the specific needs of the firm undergoing CIRP. Judicial pronouncements would settle emerging contentious issues and resolve grey areas expeditiously. Certainty as regards process, outcome, and time would emerge. The authorities - Government and regulators - would act in unison to facilitate the processes under the Code. In the years to come, markets for interim finance, resolution plans and liquidation assets and other services would develop. Resolution process would be initiated early and concluded expeditiously and consequently, most of the failing firms would be rescued. Only a few unviable ones would be liquidated, to release resources expeditiously to alternate uses. Scarce resources would be utilised at their optimum potential. Entrepreneurs would feel more comfortable to commence new businesses without worrying too much about failure. There would be a surge in competition and innovation. The credit market would expand, and corporate finance would have a balanced mix of debt finance, secured and unsecured, from banks and others. All these will have significant influence on economic growth.

The progress in implementation of the Code in 2016-17, with the entire ecosystem and the regulatory framework in place by November, 2016 and admission of a few firms into CIRP by March, 2017, has been heartening. Coupled with overall enthusiasm of the stakeholders, there is no doubt that insolvency regime is fast transiting to maturity and the processes under the Code would be the preferred mode of insolvency resolution going forward. In this backdrop, this report, which is the first annual report of IBBI, presents developments from its establishment on 1st October, 2016 to 31st March, 2017.

Though a period of six months in the life of an organisation (IBBI) or of an enactment (Code) is too short, it has been eventful and historic. I thank the Ministry of Corporate Affairs (MCA) for

[1] One fails to notice changes in the environment and strives hard to cling on the old order, best illustrated in 'Who Moved My Cheese' by Spenser Johnson

driving the insolvency reform in the country and putting all the pieces together, enabling commencement of corporate insolvency resolution within two months of establishment of IBBI. I thank my member colleagues on the Governing Board of IBBI (GB) for devoting long hours to shape IBBI in its initial days and design the regulatory framework in a fledgling insolvency regime. IBBI had exactly half a dozen officers as on 31st March, 2017. Each of them burnt midnight oil to finish the task despite severe constraints. The IPs and other constituents of the ecosystem rose to the occasion and delivered beyond the expectation. The year 2016-17 has been extremely satisfying and fulfilling. I am hopeful that the year 2017-18 would be rewarding.

(Dr. M. S. Sahoo)

B THE YEAR IN REVIEW

MACROECONOMIC CONTEXT

Impeded Exit

India, as a part of comprehensive economic reforms in the 1990s, made decisive paradigm shift from State provision of goods and services to State regulation for provision of goods and services by market. She has been enacting a new genre of economic laws, which expand *'who, what and how to do'* list, and repealing *'control'* enactments such as the Capital Issues (Control) Act, 1947 and the Import and Export (Control) Act, 1947 that restricted economic freedom. These expanded the contours of economic freedom and consequently the frontiers of development. This allowed entry of new firms and new ideas into the economy and encouraged intense competition and innovation (C&I) at marketplace.

An economy has broadly three sources of growth[2], namely, (a) Factor endowments, (b) Competition, and (c) Innovation. Where the reliance on C&I is relatively less, say about 40%, the economy is in the first stage of development, typically yielding a per capita GDP of less than US $2,000. Where the reliance on C&I is significant, say about 80%, the economy is in the fifth stage of development, typically yielding a per capita GDP of at least US $17,000. The level of C&I explains much of the movement of per capita GDP from $2,000 to $17,000.

Competition helps efficient firms drive out inefficient firms, while innovation helps new order to drive out old order. Thus, both C&I carry the germs of failure of firms. The higher the intensity of C&I, the higher is the incidence of failure. Since C&I are necessary for rapid economic growth and success, the market must deal smartly with failures. It must be easy for those (firm, entrepreneur, capital and resources), who fail at marketplace, to exit with the least cost and disruption to explore other emerging opportunities.

An economy has either of the two broad types of institutions, namely, inclusive and extractive institutions. The inclusive institutions allow everybody to participate in the economy, while extractive institutions restrain them. Inclusive institutions allow every person to undertake any economic activity(ies) (business) of his choice in the manner and the scale he is comfortable with. These unleash and realise the full potential of a person to innovate, invest and contribute to the economy. On the other hand, extractive institutions concentrate power and opportunity in the hands of a few or use energy and creativity of a small set of persons. Obviously, economies with inclusive institutions develop faster as the contribution of all exceeds the contribution of some.

New firms were entering into the market over the years and competing in marketplace. However, those who failed to do well in the face of C&I, did not have a structured route for orderly exit, limiting creative destruction. Thus, the Indian economy moved from socialism with restricted entry to *'marketism'* without exit[3]. It was a kind of *chakravyuha,* which one could enter into, but could not exit. The cost of impeded exit, that is, the cost to keep 'sick' firms alive was becoming prohibitive. The need for orderly exit had become acute by the middle of this decade. For want of an efficient exit route, many were not willing to commence business, and this was coming on the way of inclusive growth.

This was also affecting the ease of doing business in India. The World Bank measures the conduciveness of business regulations of nearly 200 economies and ranks them on their ease of doing business, in terms of ten topics, which includes resolving insolvency. India ranked 142nd in 'Ease of Doing Business' rankings for 2015. In terms of resolving insolvency, she ranked at the 137th position. Government set an ambitious target of breaking into the top 50 ranking countries on ease of doing business index, and initiated a plethora of deep institutional reforms, including an overhaul of the insolvency

[2] World Economic Forum, The Global Competitiveness Report, 2015–2016. This classifies economies into five classes according to their stage of development.
[3] Government of India, Economic Survey, 2015-16.

framework to facilitate rehabilitation of failing firms, wherever possible, and closure of failing firms, wherever required.

Twin Balance Sheet

Firms typically over-expand during a boom time, generally with support of liberal credit. In these cases, their revenues often do not match debt service obligations and their balance sheets get stretched. As they default on their debts, balance sheets of banks also get stretched. This leads to a situation where the firms with stretched balance sheets are unwilling to invest, while other firms cannot invest as banks with stretched balance sheets are not able to lend to them. A surge of borrowing for expansion followed by difficulties in debt servicing, a typical twin balance sheet (TBS) problem hinders growth.

The Indian economy was booming in mid-2000s with growth rates surging to 9-10% per annum[4]. After a brief interruption in sympathy with the global financial crisis, the growth rate improved to about 8.5% from 2009 to 2011. Firms made huge investments with projected double-digit growth rate, funded mostly by credit boom. There is a two-way positive correlation between economic growth and credit growth. Non-food credit by scheduled commercial banks (SCBs) grew by 17% in 2011-12, 13% on average in 2012-2014 and 8.6% on average in 2014-2017[5]. Non-food credit to GDP (at constant prices) ratio has, on an average, been 55% over 2010-11 to 2016-17. The gross advances of SCBs increased from Rs.25,03,431 crore as on 31st March, 2008 to Rs.68,75,748 crore as on 31st March, 2014.

As the firms were making more investments and taking more credit, things started to go wrong[6]. The Economic Survey, 2015-16 delineates three causes for the same. The costs soared far above budgeted level as securing various clearances proved more difficult and time consuming. Revenue collapsed as the actual growth rate turned out to be lower than the projected double-digit growth rate. Financing costs increased as the bank rate moved in sync with inflation. Higher costs, lower revenue and greater financing costs together squeezed cash flow, leading to difficulties in debt servicing. By 2013, one third of corporate debt was owed by firms with an interest coverage ratio (ICR) of less than 1. By 2015, the share of such firms reached 40%. Debts of the top 10 stressed corporate groups tripled during 2010-11 to 2015-16. The firms wanted accommodation and the creditors obliged by giving them more time to service the debt and, on occasions, extending fresh funding to tide over immediate difficulties of stressed firms.

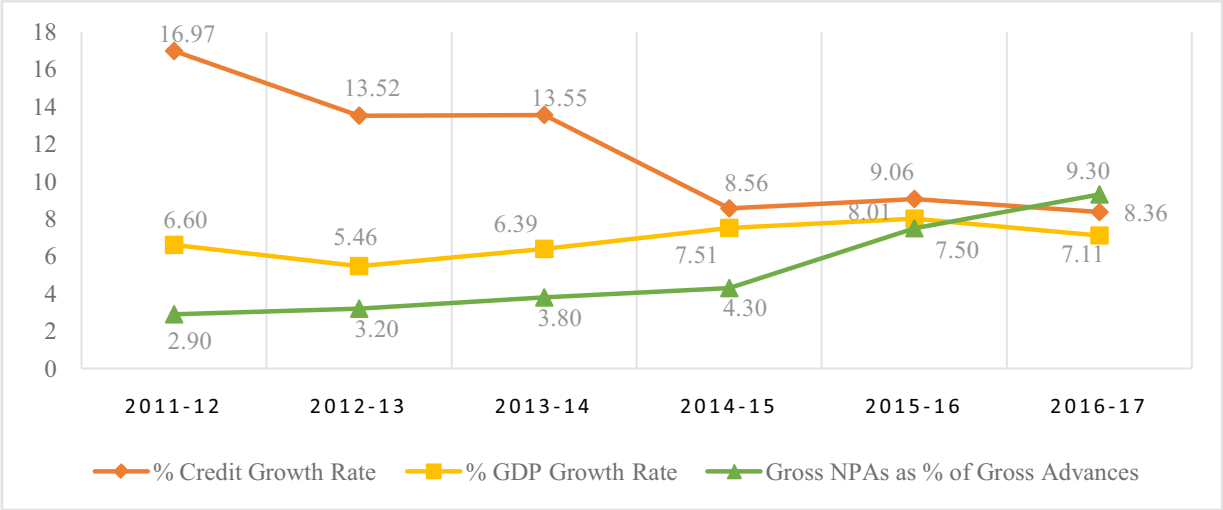
Reserve Bank of India (RBI) conducted an asset quality review (AQR) in July, 2015 which revealed a sharp increase in the non-performing assets (NPAs) of commercial banks in both public and private sector, increasing from 3.2% of gross advances in March, 2013 to 4.3% in March 2015, and further to 9% by September, 2016. It was higher at 12% for public sector banks (PSBs). Gross NPAs of SCBs, on domestic operations, increased from Rs.2,63,015 crore as on 31st March, 2014, to Rs.7,90,268 crore as on 31st March, 2017. Thus, credit growth was followed by an increase in NPAs, which, in turn, caused significant decline in credit growth from 17% in 2011-12 to 9% in 2014-16. The primary reasons for spurt in stressed assets are attributed to *inter alia,* aggressive lending practices, willful default/loan frauds in some cases, and economic slowdown. Figure 1 depicts the rates of growth of GDP, Credit and Gross NPAs as percentage of gross advances since 2011-12.

High NPAs depressed profitability of banks and constrained new lending, specifically in PSBs. Many firms reported ICR of less than 1, meaning that they had little or no capacity to service their debt obligations. This further threatened the banks' balance sheet on account of the over leveraging of their balance sheets. Further, the AQR undertaken by RBI and subsequent transparent recognition of NPAs by PSBs led to the reclassification of stressed accounts as NPAs, so that the expected losses on stressed loans, that had not been provided for earlier, were provided for. The problem continued to fester[7], NPAs kept growing, while credit and investment kept falling - a festering TBS syndrome **(Box 1)**.

In the backdrop of aggravating TBS and impeded cost of exit, an effective insolvency law, that could contribute to resolving NPAs and improve credit availability by enabling swift and cost-effective resolution of stressed assets, was the need of the hour.

[4] Data released Central Statistics Office, Ministry of Statistics and Programme Implementation
[5] RBI database
[6] Government of India, Economic Survey, 2015-16.
[7] Government of India, Economic Survey, 2016-17.

Figure. 1: GDP, Credit and NPA Growth



Source: Economic Survey, RBI database

BANKRUPTCY LAW REFORMS COMMITTEE

The legal and institutional machinery for dealing with debt default had not kept pace with the changes in the Indian economy. The recovery action by creditors, either through the Indian Contract Act, 1872 or through special laws such as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI) and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) did not yield desired outcomes. Similarly, action through The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) and the winding-up provisions under the Companies Act, 1956 were not proving to be very helpful for either recovery by lenders or restructuring of firms. Further, the laws dealing with individual insolvency, namely, the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, were not suitable to the changing needs of the time. This hampered confidence of lenders and consequently debt market. While secured credit from banks was predominant form of credit, the corporate debt market was yet to develop[8].

Prior to the enactment of the Code, the insolvency landscape was highly fragmented with multiple overlapping laws - central and provincial - as well as non-statutory schemes that were implemented in different fora without any coordination among them. Powers of the creditor and the debtor under insolvency were provided for under different statutes. Given the conflicts between interests of creditors and interests of debtors in the resolution of insolvency, the chances for consistency and efficiency in resolution was low. Further, different laws were implemented in different judicial fora. Cases that were decided at the tribunals / Board for Industrial and Financial Reconstruction (BIFR) often came for review to the High Courts. This gave rise to two types of problems in implementation of the resolution framework. The first was the lack of clarity of jurisdiction. In a situation where one forum decides on matters relating to the rights of the creditor, while another decides on those relating to the rights of the debtor, the decisions were appealed against and were either stayed or overturned in a higher court. Secondly, the fora entrusted with adjudicating matters relating to insolvency and bankruptcy did not have the business or financial expertise, information or bandwidth to decide on such matters. This led to delays and extensions in arriving at an outcome and increased the vulnerability to appeals against the outcome. For example, SICA was enacted to revive the sick firms, without specific consideration of whether they were viable or not. Once the process commenced, it served as an iron curtain around the debtor, which prevented the creditors from making recoveries indefinitely.

The delay and poor outcome of the erstwhile regime is attributed to several factors, including: (i) managerial delaying tactics, (ii) requirement of

[8] Ministry of Finance, Press Release dated 11th May, 2016.

Box 1 Addressing Twin Balance Sheet Syndrome

There are broadly three approaches to deal with TBS syndrome: (a) equity in distressed balance sheets of firms, (b) debt in distressed balance sheets of banks, and (c) equity in distressed balance sheets of firms and debt in distressed balance sheets of banks.

(a) *Balance Sheet of Firms:* The securities market allocates capital to the most efficient use through primary market. After capital is allocated through primary market to a firm, there is no guarantee that the firm would always deliver the best potential return. In case it fails, the market for corporate control, popularly known as takeover, allocates firms / productive assets - in the form of going concerns - to more promising equity suppliers, who takeover reins of the firm from the existing equity owners. It is a deal around equity, often under a regulatory framework with negligible role of the State, between existing and prospective equity owners. It improves performance of the firm in two ways: firstly, it deters the firm from operating below its potential to avoid being vulnerable to takeover, and secondly, it brings in more efficient management through takeover of the firm. Thus, takeover contributes to higher return on capital on a continuous basis and consequently, improves the balance sheet of the firms. However, market for corporate control is not visible for most firms, particularly unlisted ones. In the absence of a regulated market for control of unlisted ones, the existing equity owners resist takeover, through formal and informal channels. Further, prospective equity suppliers often fail to see the opportunity due to various market imperfections, particularly in distressed balance sheets having negligible equity value. In the absence of an effective and developed market for corporate control, distress in balance sheet of the firm gets pronounced, if its business is exposed to intense C&I.

(b) *Balance Sheet of Banks:* It is a deal around debt, often under a regulatory framework and at times, with substantive role of the State, between the bank and existing equity owners of the firm to restructure the repayment plan. This has several variants: (i) There are several restructuring schemes such as Corporate Debt Restructuring (CDR), Strategic Debt Restructuring (SDR), Scheme for Sustainable Structuring of Stressed Assets (S4A), etc. which are used, at times repeatedly, to elongate the tenor of loan or not to recognise a default. This improves visual appearance of the balance sheet without improving banks' ability to lend further. The SICA provided a window for restructuring of ailing businesses. Closure of matters through this route took inordinately long time and was used to pre-empt any attempt to recover loan. (ii) The banks sell NPAs to acquirers, including Asset Reconstruction Companies (ARCs), which takes these assets off the balance sheet of the banks, relieves them of collection burden and asset provisioning, and frees up capital for fresh lending. The acquirers of the NPAs step into the shoes of the banks. However, they often failed to effect a turnaround of the assets acquired by them and resorted to sale of those assets whose value depleted further in the meantime. The consideration paid for purchase was also not very attractive. It was proposed to create[9] a 'Public Sector Asset Rehabilitation Agency' to buy specified loans and work on them - resolve the large bad debts on commercial principles with a clear mandate of maximizing recoveries within a specified, reasonably short time period. The idea was given up before it was tried. Secondary market for trading of loans is not very liquid and the sale of debt by banks had limited effect. (iii) Another variant is resolution through Lok Adalats, recovery through Debt Recovery Tribunals (DRTs), sale under the SARFAESI and one-time settlement (OTS). These routes proved time consuming, weakened the negotiating power of creditors and made them desperate to accept any kind of settlement. Consequently, the hair cut was often very deep.

(c) *Balance Sheets of Firms and Banks:* The earlier two approaches entailed dealing with existing equity owners of the firm. The outcome was not encouraging as they did not cooperate, as their interests clashed with the interests of creditors. The way out was involving prospective equity owners into the process, who would compete with the existing equity owners to reorganise the business of the firm and simultaneously empower the creditors to approve re-organisation through the best resolution plan offered by the market. This approach provides for a deal around both debt and equity, under a regulatory framework and with facilitation of State, between the bank and prospective equity owners of the firm to restructure the business, that reduces stress in the balance sheet of the firm, which along with restructuring of repayment plan,

[9] Ibid.

reduces stress in the balance sheet of the bank as well. This is essentially a framework for development of a market for distressed assets, which allows market to find a solution to a market problem. A developed market for distressed assets is usually an effective tool for dealing with the menace of NPAs. It supports corporate restructuring and expands sources of financing. It provides a wider range of institutional investors, such as private equity funds, venture capitalists, asset managers, insurance companies, and pension funds, to assist in corporate restructuring. These institutional investors aid in expansion of non-bank sources of financing. Over time, a distressed debt market could help to promote, more broadly, the reallocation of resources towards more productive corporates and assist in their reorganization and expansion[10]. This requires a sound legal and regulatory framework, specialized insolvency courts, an established hierarchy of claims against distressed firms, an independent professional to run the business in the interim and provide all relevant information to stakeholders for design of resolution plans, empowerment of creditors to take decisions, and incentives and disincentives for the best outcome under the circumstances within a time frame. In other words, a robust insolvency framework is the key to develop a vibrant market for distressed assets, which relieves stress in the balance sheets of the firms and banks. Table 1 presents the distinguishing features of these three approaches.

Table 1: Approaches to Address Twin Balance Sheet Syndrome

Description	Approach A	Approach B	Approach C
Deals Around	Equity	Debt	Equity and Debt
Deal Between	Existing Equity Owners and Prospective Equity Owners	Creditor and Existing Equity Owners	Creditors and Equity Owners both Existing and Prospective
Role of State	Negligible	Indirect; Substantive, at times.	Facilitator
Addresses Stress in the Balance Sheet of	Firms	Banks	Firms and Banks

court approvals and the discretion available with the courts to intervene at every stage, (iii) lack of institutional capacity in terms of resources, number of judges and well-trained officials, (iv) complicated priority regime for distribution in liquidation, (v) abuse by the debtors of the moratorium on debt enforcement during rescue; (vi) pro-rehabilitation approach of the courts and adjudicatory bodies, even in case of unviable businesses, (vii) holdouts by certain creditors in rescue through schemes of arrangement and compromises with creditors, (viii) delayed decision-making by state-owned creditors, and (ix) multiple fora spread across different legislations leading to multiplicity of legal actions on the same cause of action and related conflicts.

In the above backdrop, the Finance Minister, in his budget speech for 2014-15 on 10th July, 2014 stated: *"Entrepreneur friendly legal bankruptcy framework will also be developed for SMEs to enable easy exit."* To take forward this announcement, a Bankruptcy Law Reforms Committee (BLRC) was constituted on 22nd August, 2014, under the Chairmanship of Dr. T. K. Viswanathan, to study the legal framework for corporate bankruptcy in India.

The BLRC submitted an interim report on 11th February, 2015.In his budget speech for 2015-16 on 28th February, 2015, the Finance Minister stated:

"Bankruptcy law reform, that brings about legal certainty and speed, has been identified as a key priority for improving the ease of doing business. SICA (Sick Industrial Companies Act) and BIFR (Board for Industrial and Financial Reconstruction) have failed in achieving these objectives. We will bring a comprehensive Bankruptcy Code in fiscal 2015-16, that will meet global standards and provide necessary judicial capacity."

The BLRC submitted its final report on 4th November, 2015, in two parts: Volume 1 detailing the rationale and design for legislation, and Volume 2 suggesting a draft Insolvency and Bankruptcy Bill. It proposed new insolvency and

[10] IMF Working Paper No. WP/15/24, "A Strategy for Developing a Market for Nonperforming Loans in Italy" Nadège Jassaud and Kenneth Kang, February, 2015.

bankruptcy resolution framework which (a) facilitates the assessment of viability of the enterprise at a very early stage; (b) enables symmetry of information between creditors and debtors; (c) ensures a time-bound process to better preserve economic value; (d) uses a collective process; (e) respects the rights of all creditors equally; (f) ensures that, when the negotiations fail to establish viability, the outcome of bankruptcy must be binding; and (g) provides clarity of priority, and that the rights of all stakeholders are upheld in resolving bankruptcy.

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

Based on the recommendations of the BLRC, a Bill relating to Insolvency and Bankruptcy Code was introduced in the Parliament in December, 2015. After passing of the Bill by Lok Sabha on 28th April, 2016 and Rajya Sabha on 11th May, 2016, Ministry of Finance (MoF) issued a press release on 11th May, 2016 which observed:

"Today is a historical day for economic reforms in India when the Rajya Sabha passed the major economic reform Bill moved by the Government, i.e. "Insolvency and Bankruptcy Code, 2016". This is considered as the biggest economic reform next only to GST... The Insolvency and Bankruptcy Code is thus a comprehensive and systemic reform, which will give a quantum leap to the functioning of the credit market. It would take India from among relatively weak insolvency regimes to becoming one of the world's best insolvency regimes. It lays the foundations for the development of the corporate bond market, which would finance the infrastructure projects of the future. The passing of this Code and implementation of the same will give a big boost to ease of doing business in India."

The Code was notified on 28th May, 2016 **(Inscript 1).** The 'Statement of Objects and Reasons' appended to the said Bill succinctly puts the rationale behind the Code as under:

"There is no single law in India that deals with insolvency and bankruptcy. Provisions relating to insolvency and bankruptcy for companies can be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. These statutes provide for creation of multiple fora such as Board of Industrial and Financial Reconstruction (BIFR), Debt Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT) and their respective Appellate Tribunals. Liquidation of companies is handled by the High Courts. Individual bankruptcy and insolvency is dealt with under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 and is dealt with by the Courts. The existing framework for insolvency and bankruptcy is inadequate, ineffective and results in undue delays in resolution, therefore, the proposed legislation."

Mr. Narendra Modi, Hon'ble Prime Minister of India in his address at National Initiative towards Strengthening Arbitration and Enforcement in India, 23rd October, 2016:

"Towards this end, we have initiated far-reaching legal reforms. Over a thousand archaic laws have been scrapped. We have enacted a comprehensive Insolvency and Bankruptcy Code, 2016, implemented the National Company Law Tribunals.... Further, in harmony with the Bankruptcy Code, we have amended the SARFAESI and DRT Acts this year to suit the changing credit landscape and augment ease of doing business."

The Code consolidates the laws relating to insolvency of companies and limited liability entities [including Limited Liability Partnerships (LLPs) and other entities with limited liability], unlimited liability partnerships and individuals, presently contained in several legislations, into a single legislation. The aim of such consolidation is to provide for greater clarity in law and facilitate the application of consistent and coherent provisions to different stakeholders affected by business failure or inability to pay debt. For this purpose, the Code provides for repealing the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 and makes amendments to 11 legislations, including the Companies Act, 2013, RDDBFI and SARFAESI to give effect to its provisions. The provisions of the Code override other laws to the extent such other law is inconsistent with the Code.

Inscript 1: Enactment of the Insolvency and Bankruptcy Code, 2016

रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—16 REGISTERED NO. DL—(N)04/0007/2003—16

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II — खण्ड 1
PART II — Section 1
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PUBLISHED BY AUTHORITY

सं० 37] नई दिल्ली, शनिवार, मई 28, 2016/ज्येष्ठ 7, 1938 (शक)
No. 37] NEW DELHI, SATURDAY, MAY 28, 2016/JYAISTHA 7, 1938 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 28th May, 2016/*Jyaistha* 7, 1938 (*Saka*)

The following Act of Parliament received the assent of the President on the 28th May, 2016, and is hereby published for general information:—

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

No. 31 OF 2016

[*28th May,* 2016.]

An Act to consolidate and amend the laws relating to 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 including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

PART I

PRELIMINARY

1. (*1*) This Code may be called the Insolvency and Bankruptcy Code, 2016. Short title, extent and commencement.

(*2*) It extends to the whole of India:

Provided that Part III of this Code shall not extend to the State of Jammu and Kashmir.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Salient Features of the Code

(a) *Objective:* As stated in its long title, the objective of the Code is reorganisation and insolvency resolution of corporate persons, partnership firms and individuals, in a time bound manner, 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.

(b) *Applicability:* The Code consolidates laws on insolvency and applies to companies, LLP firms, other body corporates, personal guarantors, partnership firms, proprietorship firms and individuals. However, it is not applicable to financial service providers, except those that are specifically notified as being covered by the processes.

© *Institutional framework*: A key innovation of the Code is the four pillars of institutional infrastructure that it establishes. First of these pillars is a class of regulated persons, IPs. They play a key role in the efficient working of the insolvency, liquidation and bankruptcy processes. The second pillar is a new industry of the IUs. These store facts about lenders and terms of lending in electronic database and eliminate delays and disputes about facts when default does take place. The third is the Adjudicating Authority, namely, the National Company Law Tribunal (NCLT) acting as the forum where corporate insolvency is heard and Debt Recovery Appellate Tribunal (DRAT) where individual insolvencies are heard. The fourth pillar is the regulator, namely, the IBBI which has regulatory oversight over the IPs, IPAs and IUs and has the responsibility for specifying the regulations for various processes under the Code.

Some of the other salient features of the Code are:

(d) *Process:* The Code establishes a linear, collective process which is binding on the debtor, creditor and all other stakeholders. In case of corporate insolvency, it provides creditors a chance to assess the viability of the Corporate Debtor (CD). CIRP ends with a resolution plan rehabilitating the failing CD or commencement of liquidation of the CD. Individual insolvency proceedings can proceed either through a fresh-start process that results in the write off of qualifying debts or through the insolvency resolution process which would provide debtors a chance to negotiate payments. A bankruptcy process, entailing sale of the assets of the debtor, can arise on failure of the insolvency resolution process.

(e) *Timelines:* The Code establishes a time-bound process for the resolution of insolvency. By way of illustration, the insolvency resolution process for corporate person has been mandated to be concluded within 270 days (including a one-time extension of up to 90 days). Similarly, the insolvency resolution process for personal guarantors, partnership and proprietorship concerns and individuals (individual insolvency) is to be concluded within 180 days.

(f) *Control:* Once CIRP is initiated, the management of the CD vests in the hands of the IP, who exercises the powers of the Board of Directors. This ensures information symmetry, enables fair evaluation of the viability of the CD and helps preserve the value of the CD as a going concern during the pendency of CIRP.

(g) *Offences and Penalties:* The Code lays down certain offences and penalties, and the Special Court for trial of offences upon a complaint by IBBI or the Government for contraventions of provisions of the Code.

Corporate Insolvency Process

The provisions relating to corporate processes came into force on 1st December, 2016. The Code provides broadly three corporate insolvency processes - CIRP, Corporate Liquidation Process, and Voluntary Liquidation Process. The details of these processes are described in Section C of this report. The Code provides for divesting the erstwhile management of its powers and vesting it in an, independent professional, to continue the business of the firm as a going concern until a resolution plan is drawn up. Then the management is handed over, under the approved resolution plan, so that the firm can get back on its feet and pay back its debts. All this is done within a period of 180 days with a one-time extension of upto 90 days or else the liquidation process begins.

The Code is a comprehensive and systemic reform, aiming to change the landscape of the insolvency in the country. The key changes, as compared to the erstwhile regime, are summarised in Table 2.

Table 2: Pre-IBC Vs. IBC regime in respect of Corporate Processes

Basis	Pre-IBC Regime	IBC Regime
Institutional Framework	Multiple legislations (civil laws, SICA, RDDBFI, SARFAESI, etc.) and multiple fora (Civil Courts, DRTs, BIFR, High Courts) were in place to deal with matters of insolvency.	A single legislation provides for insolvency processes of corporate persons. NCLT is the AA for corporate insolvency.
Approach	It was generally ex-post. The process began after the default had happened.	It is mostly ex-ante. It endeavours to prevent default. It also provides for a process if default happens despite prevention.
Objective	Most of the legislations envisaged recovery. SICA envisaged restructuring. It was, however, often used to stall recovery.	The objective of the Code is revival and continuation of the firm by protecting it from its own management and from liquidation. It is not liquidation or recovery.
Initiation	Process was initiated on an application by a stakeholder, Government, RBI, etc. on a firm becoming sick under SICA. Liquidation was initiated under the Companies Act, 2013 on grounds of inability to pay debts.	CIRP is initiated on an application by an FC, an OC or the CD, in the event of a default of threshold amount by the CD. Liquidation commences only on conclusion of CIRP. However, a solvent CD may directly initiate voluntary liquidation.
Control during Resolution	Under the SICA, and in non-statutory debt restructuring schemes, the debtor continued to exercise control over the affairs of the insolvent firm (debtor in possession), while the resolution of insolvency of the debtor was negotiated.	It is 'creditor in control' regime, where an independent IP manages the affairs of the CD, under the guidance of a CoC comprising of FCs.
Professionalisation	There were no regulated services and regulator.	There are regulated industries and professions, namely, IPs, IPAs, and IUs. There is a regulator, namely, IBBI which writes regulations for implementation of processes and regulates conduct of service providers.
Moratorium	Continued institution of suits against the CD derailed the resolution process. Though SICA provided for moratorium, it was used to stall recovery.	The Code envisages moratorium on institution or continuation of suits or proceedings against the firm during the resolution period. It prohibits suspension or termination of supply of essential services to the firm to keep it going.
Decision Making	Under SICA, the BIFR decided commercial matters. Further, due to debtor-in-possession approach, the debtor had undue influence in the decision making.	The Code empowers and facilitates the stakeholders of the CD and the AA to decide matters within their respective ambit expeditiously. The CoC determines the viability of the CD as a going concern and decides the manner of resolution of its insolvency. All key decisions require the approval of the CoC.
Time Limit	It was not a time bound process. Inordinate delays characterised every proceeding, making resolution difficult.	The Code mandates closure of resolution process in a time bound manner and, therefore, aids in preservation of value.
Lis	It is often a *lis* between a creditor and a debtor. Further, the interests of debtor and creditors often clashed and hence, they acted at cross purposes. At times, the interests of creditors inter se came in the way of resolution.	The Code empowers creditors to resolve insolvency of debtor. It is not a *lis* between a debtor and creditor. It is a collective mechanism to endeavour for resolution.
Priority in Waterfall	In liquidation waterfall, Government stood at the top of the list.	In liquidation waterfall, Government stands at the bottom of the list, only above the equity.
Management during Liquidation	Under the Companies Act, 2013 the assets of the CD were dealt with by the office of the official liquidators, who were appointed by the High Courts.	An IP acts as a liquidator, who deals with the assets of the CD, under the supervision of the NCLT.
Cross Border Insolvency	Though cases relating to cross-border insolvency were to be governed in accordance with general procedures for coordination of courts under the Code of Civil Procedure, 1908 and Common Law principles applied by courts, governed the management of cross-border insolvency, India did not have any specific legislation on cross border insolvency.	The Code has provisions to deal with cross border insolvency, empowering the Government to make treaties and further empowering the AA, under the Code, to issue a letter of request to a court in a country, with which an agreement has been entered into, to deal with the assets of the CD in a specified manner.

Individual Insolvency Processes

The provisions in the Code relating to individual insolvency are yet to come into force. The Code provides for three individual insolvency processes.

(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 resolution professional (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% 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.

The 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.

IMPLEMENTATION OF THE CODE

The Government of India (Allocation of Business) Rules, 1961 were amended on 29th July, 2016 to entrust the responsibility of administration of the Code to the MCA. It was decided that the implementation of the Code would be taken up in a phased manner in view of the need to, *inter alia*, build institutions as well as capacity amongst professionals required under the Code and that in the first phase, the provisions relating to corporate insolvency would be taken up.

The Government took a number of steps to put in place the institutional infrastructure for implementation of the Code expeditiously. It established the AA and IBBI in quick succession on 1st June, 2016 and 1st October, 2016 respectively. Given the highest priority that the Government placed on the implementation of the Code, it was decided to commence the provisions related to corporate insolvency and bankruptcy with effect from 1st December, 2016 and it commenced on that date. **(Inscript 2)**.

Inscript 2: Communication from MCA

अमरदीप सिंह भाटिया
संयुक्त सचिव
Amardeep S Bhatia
Joint Secretary

सत्यमेव जयते

भारत सरकार
कारपोरेट कार्य मंत्रालय
नई दिल्ली
Government of India
Ministry of Corporate Affairs
New Delhi

DO No. 30/10/2016 – Insolvency
Dated 20th October, 2016

Dear Shri Sahoo

As you are aware, Government is giving the highest priority for commencing the provisions relating to corporate resolution in the Insolvency & Bankruptcy Code, 2016 (Code). In keeping with this priority, and in order to facilitate the Insolvency and Bankruptcy Board of India (IBBI) in taking the minimum time for putting the regulations and other pre-requisites for commencing the provisions in place, a number of activities were initiated pending its establishment. The steps taken have already been outlined to you and were also discussed in the first meeting of the IBBI Board.

2. It has been decided by the Government that the above mentioned provisions should be commenced with effect from **1st December 2016**. In view of this, it is requested that necessary steps may be taken at your end to fast track the remaining activities in order to meet the target date.

With regards,

Yours sincerely,

20/X/2016

(Amardeep S Bhatia)

Shri M S Sahoo,
Chairperson,
Insolvency and Bankruptcy Board of India
CMA Bhawan,
Lodi Road,
NEW DELHI-110003

कमरा नं. 505, 'ए' विंग, शास्त्री भवन, डॉ. राजेन्द्र प्रसाद रोड़, नई दिल्ली-110001
Room No. 505, 'A' Wing, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi-110001
Phone : 011-23389068, Fax : 011-23074213, E-mail : asbhatia@gov.in

The Government constituted four Working Groups (WGs)on 22nd July, 2016 to recommend rules, regulations and other matters required for implementation of the Code and an oversight committee to guide and steer WGs and review their recommendations. The details are presented in Table 3.

Table 3: Oversight Committee and Working Groups

Committee / Group	Chairman / Convenor / Members	Broad Mandate
Oversight Committee	Chairman: Mr. Tapan Ray, Secretary, MCA Members • Dr. T. K. Vishwanathan, Chairman, BLRC • Representative of Department of Financial Services (DFS) • Representative of RBI, and • Representative of Ministry of Law and Justice	Guide and steer the WGs.
WG 1	Convenor: Dr. M. S. Sahoo, Member, CCI Members • Mr. P. K. Nagpal, Executive Director, SEBI • Mr. Ravi Narain, Vice Chairman, National Stock Exchange • Dr. Susan Thomas, Assistant Professor, IGIDR, and • Mr. Rakesh Tyagi, Director, MCA	Organisational Structure and Design of IBBI.
WG 2	Convenor: Dr. Navrang Saini, Director of Inspections, MCA Members • Mr. Birendra Kumar, Chairman, Association of ARCs in India • Mr. Harinderjit Singh, Partner, PwC • Mr. Nirmal Gangwal, Managing Director, Brescon Advisers • Mr. Dinkar Venkatasubramanian, Partner, E&Y • Mr. Shailen Shah, Director, KPMG • Mr. Dhinal Shah, Chairman, Corporate Laws & Corporate Governance Committee of ICAI • Ms. Mamta Binani, President, ICSI • Mr. U. K. Chaudhary, Senior Advocate • Mr. Sanjay Shorey, Director, DFS • Representative of Ministry of Law & Justice, and • Representative of ICMAI	Rules, Regulations and other related matters on IPs and IPAs.
WG 3	Convenor: Mr. N. K. Bhola, Regional Director, MCA Members • Mr. Bahram Vakil, Partner, AZB & Partners • Mr. Varun Gupta, Partner, KPMG • Mr. Abizer Diwanji, Partner, E&Y • Mr. Rajan Wadhawan, Partner, PwC & Co. LLP • Mr. N. S. Kannan, Executive Director, ICICI Bank • Mr. D. P. Ojha, Official Liquidator, Delhi • Mr. Nikhil Shah, Managing Director, Alvarez & Marsal India • Mr. M. R. Umarji, Consultant, Indian Banks Association • Mr. Venkatru Srinivasan, Group Head, Kotak Mahindra Bank • Ms. K. Sripriya, Vice Chairperson, Corporate Laws & Corporate Governance Committee of ICAI • Mr. S. M. Sundaram, Advocate and Representative of ICSI • Mr. Sumant Batra, Chairman, Kesar Dass B & Associates • Representative of RBI, and • Representative of ICMAI.	Rules, Regulations and other related matters for Insolvency Resolution Process, Liquidation Process and NCLT Procedures.
WG 4	Convenor: Mr. K. V. R. Murty, Joint Secretary, MCA Members • Dr. Ajay Shah, Professor, NIPFP • Mr. Mihir Kumar, Director, CERSAI • Mr. Rajinder Kumar, CGM, RBI • Mr. Jayesh Sule, Whole Time Director, NSDL E-Governance • Mr. Mrutyunjay Mahapatra, Dy. Managing Director, SBI; and • Dr. Nivedita Haran, Director, NeSL.	Rules, Regulations and other related matters for Information Utilities

On its establishment, IBBI finalised the draft regulations relating to service providers (IPs, and IPAs) and corporate processes (CIRP and Liquidation Process) developed by the WGs 2 and 3 respectively, on consideration of the comments received from public, inputs received from the stakeholders in round tables and recommendations of the ACs and notified them within two months of its establishment. Government had discussed the establishment of IPAs with professional institutes, who set up IPAs expeditiously. This enabled the registration of three IPAs in the last week of November, 2016. Government, AA, IBBI and stakeholders worked in unison and took several steps to enable the commencement of CIRP on 1st December, 2016. IBBI also finalised the draft regulations relating to IUs developed by WG 4 and following due process, notified them within six months of its establishment. Vidhi Centre for Legal Policy assisted in drafting the first set of Regulations. Mr. Arun Jaitley, Finance Minister observed[11]: *"The Insolvency and Bankruptcy Law not only got passed, but by the end of the year, got effectively implemented."* The swiftness of enactment and implementation of the Code in India perhaps has no parallel anywhere else in the world[12].

CHRONOLOGY OF DEVELOPMENTS

Table 4 chronicles the major steps leading to enactment of the Code and establishment of IBBI and important milestones in the implementation of the Code till 31st March, 2017.

Table 4: Chronology of Developments

Date	Steps in the Journey
10.07.2014	Finance Minister in his budget speech for 2014-15 stated: *"Entrepreneur friendly legal bankruptcy framework will also be developed for SMEs to enable easy exit."*
22.08.2014	BLRC constituted under the Chairmanship of Dr. T. K. Viswanathan to study Corporate Bankruptcy Legal Framework in India.
11.02.2015	BLRC submitted an interim report. MoF sought suggestions / comments on the recommendations in the interim report by 20.02.2015.
28.02.2015	Finance Minister in his budget speech for 2015-16 stated as under: *"Bankruptcy law reform, that brings about legal certainty and speed, has been identified as a key priority for improving the ease of doing business. SICA (Sick Industrial Companies Act) and BIFR (Board for Industrial and Financial Reconstruction) have failed in achieving these objectives. We will bring a comprehensive Bankruptcy Code in fiscal 2015-16, that will meet global standards andprovide necessary judicial capacity."*
04.11.2015	BLRC submitted final report. MoF sought suggestions / comments on the report by 19.11.2015.
21.12.2015	The Insolvency and Bankruptcy Code, 2015 Bill introduced in Lok Sabha.
23.12.2015	Bill referred to Joint Committee.
28.04.2016	The report of the Joint Committee under the Chairmanship of Mr. Bhupender Yadav on the Insolvency and Bankruptcy Code, 2015 presented to Parliament.
05.05.2016	Lok Sabha passed the Insolvency and Bankruptcy Code, 2016 Bill.
11.05.2016	Rajya Sabha passed the Insolvency and Bankruptcy Code, 2016 Bill.
28.05.2016	The Insolvency and Bankruptcy Code, 2016 enacted.
01.06.2016	National Company Law Tribunal and National Company Law Appellate Tribunal established.
22.07.2016	MCA constituted Oversight Committee and Four Working Groups for implementation of the Code.
29.07.2016	MCA was entrusted with the responsibility of administration of the Code.
05.08.2016	The provisions relating to establishment of IBBI in the Code came into force.
19.08.2016	The provisions relating to finance of IBBI and other matters in the Code came into force.
23.08.2016	Mr. Arun Jaitley, Minister of Finance and Corporate Affairs directed the senior officers of the MoF and MCA to take suitable necessary action for implementation of Code in a time bound manner.
01.10.2016	IBBI was established. Head office of IBBI to be in New Delhi. Dr. M. S. Sahoo appointed as Chairperson of IBBI. He was administered oath of office by Mr. Arun Jaitley, Minister of Finance and Corporate Affairs. Four ex-officio Members of IBBI appointed.
07.10.2016	Mr. Arjun Ram Meghwal, Minister of State for Finance and Corporate Affairs addressed the 1st meeting of the Governing Board of IBBI.

[11] At the inauguration of NISM campus on 24th December, 2016.
[12] The Sun also Rises' by Ernest Hemingway has a dialogue: "How did you go bankrupt?"; "Gradually and then suddenly". Most bankruptcies happen that way. Interestingly, the insolvency reforms in India too happened that way. While in the works for many years, the insolvency reforms suddenly took shape.

18.10.2016	IBBI constituted two Advisory Committees: one on Service Providers and the other on Corporate Insolvency Resolution and Liquidation.
01.11.2016	The provisions relating to powers and functions of IBBI in the Code came into force.
15.11.2016	The provisions relating to IPAs and IPs in the Code came into force.
22.11.2016	The IBBI (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 and the IBBI (Insolvency Professional Agencies) Regulations, 2016, notified on 21.11.2016, came into force.
28.11.2016	Mr. Arun Jaitley, Minister of Finance and Corporate Affairs handed over certificates of registration to two IPAs registered with IBBI.
29.11.2016	The IBBI (Insolvency Professionals) Regulations, 2016, notified on 23.11.2016, came into force.
30.11.2016	Mr. Tapan Ray, Secretary, MCA, handed over certificates of registration to 18 IPs.
01.12.2016	The provisions relating to corporate insolvency resolution in the Code came into force. The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, notified on 30.11.2016, came into force. The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, notified on 30.11.2016, came into force.
15.12.2016	The provisions relating to liquidation in the Code, notified on 9th December, 2016, came into force. The IBBI (Liquidation Process) Regulations, 2016 came into force.
31.12.2016	The Limited Insolvency Examination commenced.
17.01.2017	First CIRP initiated by a FC.
18.01.2017	First CIRP initiated by a CD.
31.01.2017	The IBBI (Advisory Committee) Regulations 2017 notified.
17.02.2017	First CIRP initiated by an OC.
30.03.2017	The provisions relating to voluntary liquidation, IUs and cross border insolvency notified to come into force on 1st April, 2017
31.03.2017	The IBBI (Voluntary Liquidation Process) Regulations, 2017 notified. The IBBI (Information Utilities) Regulations, 2017 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 when 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 provision for regulated professional services to stakeholders to conduct the insolvency, liquidation and bankruptcy processes. It provides for three kinds of service providers, namely IPs, IPAs, and IUs.

INSOLVENCY PROFESSIONALS

The Code provides for a class of regulated professionals, namely, IPs. It prohibits a person from rendering services as an IP under the Code unless he is: (a) enrolled as a member of an IPA, and (b) is registered with IBBI. It empowers IBBI to specify the categories of professionals or persons possessing such qualifications to be eligible for registration as IPs.

While elucidating the role of an IP, the BLRC observed: *"This entire insolvency and bankruptcy process is managed by a regulated and licensed professional namely the Insolvency Professional or an IP, appointed by the adjudicator. In an insolvency and bankruptcy resolution process driven by the law there are judicial decisions being taken by the adjudicator. But there are also checks and accounting as well as conduct of due process that are carried out by the IPs. Insolvency professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process."* The Code, therefore, endeavours to build the IP profession as an institution **(Box 2)**.

While recognizing the important role of an IP, the UNCITRAL Legislative Guide on Insolvency Law observed: *"However appointed, the insolvency representative plays a central role in the effective and efficient implementation of an insolvency law, with certain powers over debtors and their assets and a duty to protect those assets and their value, as well as the interests of creditors and employees, and to ensure that the law is applied effectively and impartially. Accordingly, it is essential that the insolvency representative be appropriately qualified and possess the knowledge, experience and personal qualities that will ensure not only the effective and efficient conduct of the proceedings and but also that there is confidence in the insolvency regime."*

IP Regulations

As stated in Section B, the provisions relating to corporate insolvency had to commence on 1st December, 2016. This required the IPs to be in place. There was, however, no IP. The market did not have a mechanism that produced IPs. There was no course on completion of which one would become an IP. It was not possible to design and launch an insolvency course and register those who complete the course by 30th November, 2016. It was also not possible to have a screening test and register those who pass through the test by 30th November, 2016. A novel solution was called for. It was decided to register individuals having specified professional qualifications and experience as IPs to start with.

IBBI notified the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) 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,

Box 2 IP: A Key Institution of Insolvency Regime

IPs constitute a key institution of the insolvency regime. An IP plays an important role in resolution, liquidation and bankruptcy processes of companies, LLPs, partnership firms, proprietorship firms and individuals. For example, an IP exercises the powers of the Board of Directors of the CD under resolution, manages its operations as a going concern, and complies with applicable laws on behalf of the CD. He takes important business and financial decisions having substantial bearing on CD and its stakeholders, receives, collates and verifies claims, resolves conflict of interests, conducts meetings of the CoC, invites and examines resolution plans, reports on irregular transactions and discharges other onerous responsibilities. Section 20 of the Code requires him to make every endeavour to protect and preserve the value of the property of the CD and manage its operations as a going concern. Section 23 requires him to conduct the entire CIRP and manage the operations of the CD. A whole array of statutory and legal duties and powers is vested in him. He is the fulcrum of an insolvency proceeding and the link between the AA and stakeholders - debtor, FCs, OCs and RAs.

An insolvency proceeding is often turbulent and distressing for the CD and its stakeholders. An IP needs to keep the troubled CD stay afloat and where, it is not possible, enable stakeholders to maximise their returns. His work, therefore, affects the lives, and livelihood of both creditors and debtors and often involves dealing with many competing interests. He must have the highest integrity, objectivity, independence and impartiality. He must be a fit and proper person so that the stakeholders have confidence in the insolvency regime and its practitioners. Besides legal obligations, an IP has ethical and moral obligations to creditors, employees and other stakeholders. He must possess not only qualities such as resourcefulness and business acumen, but also a good sense of judgment and fairness when balancing the interests of stakeholders inter se or against other interests and statutory objectives. He also needs written and interpersonal skills to deal with creditors, anxious directors, concerned employees and a range of other stakeholders in the business. He must have a fair degree of appreciation of cultural, social and other factors surrounding an insolvency proceeding. He requires a range of skills to perform his role well. The insolvency profession is not just another profession, but an institution onto itself.

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. There is an assurance of supply of essential goods and services to, and a moratorium on proceedings against, the CD. The Code 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 and engage professional(s) to assist him.

In order to ensure that an IP performs his role, the Code empowers IBBI and the IPA to monitor his performance. It provides for appropriate sanctions for any kind of wrongdoing. Though a client proposes the name of an IP for appointment, he is actually appointed by the AA. He may be removed from a process by the AA if it is not satisfied with his performance. The appointment and removal by the AA secure and sanctify the position of an IP. He has protection for actions taken in good faith. His conduct can only be investigated by IBBI /the IPA which has to follow a due process for the purpose. There is bar on trial of offences against an IP except on a complaint filed by IBBI before the special Court.

The insolvency profession is in its infancy. It is in a stage when reputation is formed. Once the society forms a perception about a profession, it is very difficult to change it. It is, therefore, incumbent upon the IPs to build and safeguard the reputation of the profession which should enjoy the trust of the society and inspire confidence of all the stakeholders. They must justify the exalted status of an institution bestowed on them under the Code.

2016 and such registration was valid for a limited period of six months only. 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 IP Regulations also allowed any other individual to seek registration as an IP on passing the National Insolvency Examination, which is yet to commence.

Emphasizing integrity of an IP in an insolvency proceeding, the BLRC observed : *"In the case of insolvency resolution, a failure of the process may result from two main sources : collusion between the parties involved and poor quality of execution of the process itself. Hence, it is important that the professionals responsible for implementing the insolvency resolution process adhere to certain minimum standards so as to prevent failures of the process and enhance credibility of the system as a whole."* In sync with this thought, the IP Regulations require that only a fit and proper person **(Box 3)** can be registered as an IP and he must abide by a detailed Code of Conduct to demonstrate his integrity, honesty, impartiality and independence. The Code of Conduct requires an IP to *inter alia* adhere to timelines, maintain confidentiality, comply with the restrictions on employment and occupation and avoid conflict of interests.

Under the Code read with the IP Regulations, only an individual is eligible for registration as IP. A company or partnership firm is not eligible for registration. Further, only a person resident in India is eligible for registration as IP. A person, who has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, is not eligible to be an IP.

INSOLVENCY PROFESSIONAL ENTITIES

It was realised that 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 use a structure to develop and access a pool of resources required for processes under the Code. The IP Regulations enable such structure in the form of an IPE. An LLP, a registered partnership firm and a company are 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.

INSOLVENCY PROFESSIONAL AGENCIES

Keeping in view the role of IPs in 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 ongoing basis and to take disciplinary actions against errant IPs, wherever required. The BLRC explains the rationale for the two-tier regulatory structure: *"Thus, the Committee believes that a new model of "regulated self regulation" is optimal for the IP profession. This means creating a two tier structure of regulation. The Regulator will enable the creation of a competitive market for IP agencies under it. This is unlike the current structure of professional agencies which have a legal monopoly over their respective domains. The IP agencies under the Board will, within the regulatory framework defined, act as self-regulating professional bodies that will focus on developing the IP profession for their role under the Code. They will induct IPs as their members, develop professional standards and code of ethics under the Code, audit the functioning of their members, discipline them*

Box 3 Fit and Proper Person

The Code has very noble objectives. The primary objective is rehabilitating the persons (CD and others) in distress, as the life and livelihood of many stakeholders is linked to fate of such persons. The Code makes every necessary facilitation to ensure that the CD revives. It makes provision for professional help of service providers - IP, IPAs and IUs - for stakeholders to revive the CD. Given the important role the service providers play in insolvency and bankruptcy processes under the Code, Regulations require that an individual must be fit and proper person at the time of registration as IP and must remain fit and proper for continued registration as IP. Regulations also require the IPAs and IUs, their promoters, directors on their Governing Boards and their major shareholders must also be similarly be fit and proper persons. For determining whether a person is fit and proper or not, IBBI considers various aspects, including (i) integrity, reputation and character, (ii) absence of convictions and restraint orders, and (iii) competence and financial solvency.

An IP plays an important role in resolution, liquidation and bankruptcy processes of companies, partnership firms and individuals. When a company undergoes CIRP, an IP is vested with the management of the affairs of the company and he exercises the powers of its board of directors. Such company could be one of the largest companies in India with probably Rs.5 lakh crore of market capitalisation. He becomes the custodian of the property of such a company and manages the affairs of the company as a going concern. Further, he examines each resolution plan to confirm that it does not contravene any of the provisions of the law for the time being in force. These responsibilities require the highest level of integrity, reputation and character. In sync with the responsibilities, the Regulations require the Board to take into account integrity, reputation and character of an individual for determining if an applicant is a fit and proper person.[13]

The regulations of Securities and Exchange Board of India (SEBI) have similar provisions for determining fit and proper persons. While dealing with such provision, the Allahabad High Court observed: *"Financial integrity, reputation, character and honesty are matters which have a serious bearing on the objective, transparent and fair functioning of the securities market."*[14]

While dealing with a similar provision, the Securities Appellate Tribunal examined the amplitude of fit and proper person as under: *"Good reputation and character of the applicant is a very material consideration which must necessarily weigh in the mind of the Board (SEBI) in this regard. Reputation is what others perceive of you. In other words, it is the subjective opinion or impression of others about a person and that, according to the Regulations, has to be good. This impression or opinion is generally formed on the basis of the association he has with others and/or on the basis of his past conduct. A person is known by the company he keeps. In the very nature of things, there cannot be any direct evidence in regard to the reputation of a person whether he be an individual or a body corporate. In the case of a body corporate or a firm, the reputation of its whole time director(s) or managing partner(s) would come into focus. The Board as a regulator has been assigned a statutory duty to protect the integrity of the securities market and also interest of investors in securities apart from promoting the development of and regulating the market by such measures as it may think fit. It is in the discharge of this statutory obligation that the Board has framed the Regulations with a view to keep the market place safe for the investors to invest by keeping the undesirable elements out. The Regulations apply across to all sets of regulations and all intermediaries of the securities market including those who associate themselves with the market and they all have to satisfy the criteria of "fit and proper person" before they could be registered under any of the relevant regulations and this criteria they must continue to satisfy throughout the period of validity of their registration and throughout the period they associate with the market. The purpose of the Regulations is to achieve the aforesaid objects and make the securities market a safe place to invest. One bad element can, not only pollute the market but can play havoc with it which could be detrimental to the interests of the innocent investors. In this background, the Board may, in a given case, be justified in keeping a doubtful character or an undesirable element out from the market rather than running the risk of allowing the market to be polluted."*[15]

It is important to keep a person, whose antecedents are doubtful, away from this noble profession. The Supreme Court decided in this regard: *"It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found fit*

[13] Order dated 14th March, 2017 in the matter of IP registration.
[14] Order dated 23rd May 2014 in the matter of U. P. Stock Exchange Brokers Vs. SEBI (Civil Writ Petition 45893 of 2012).
[15] Order dated 6th September, 2006 in the matter of Jermyn Capital LLC Vs. Securities & Exchange Board of India.

and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record and the view taken by the appointing authority in the background of the case cannot be said to be unwarranted as though the candidate was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing Authority, therefore, has rightly focussed this aspect and found him not desirable to appoint."[16]

and take actions against them if necessary." This combines the benefits of statutory regulation and self-regulation and promotes competition among the IPAs.

The BLRC envisioned the establishment of multiple private self-regulatory IPAs functioning under the oversight of a regulator. The IPAs would oversee the functioning of IPs and help in the development of the industry. They would ensure that IPs are competent to perform the variety of tasks they are authorised to and that they are fair and impartial, as also conflict of interests are minimised. They would establish rules and standards for their members through bye-laws, create and update relevant entry barriers, and have mechanisms in place to enforce their rules and standards effectively. Competition amongst the multiple IPAs would help achieve efficiency gains leading to better standards and rules and better enforcement.

An IPA is a mini State having (a) quasi-legislative functions - drafting detailed standards and codes of conduct through bye-laws, that are binding on its members; (b) executive functions - monitoring, inspecting and investigating members on a regular basis, and gathering information on their performance, with the overarching objective of preventing frivolous behaviour and malfeasance in the conduct of their duties; and (c) quasi-judicial functions - addressing grievances of aggrieved parties, hearing complaints against members and taking suitable actions.

IPA Regulations

IBBI notified the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 and the IBBI (Insolvency Professional Agencies) Regulations, 2016 (IPA Regulations) on 21st November, 2016. These two regulations *inter alia* provide for the eligibility norms to be a professional member of an IPA and to be registered with the IBBI as an IPA. Only 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% 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% of its share capital must be fit and proper persons. More than half of the directors of its Governing Board must be independent directors and not more than one fourth of the directors shall be IPs. It shall have Membership Committee(s), Monitoring Committee, Grievance Redressal Committee(s), and Disciplinary Committee(s) for regulation and oversight of professional members.

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 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. IUs are a novel creation and has no parallel in any other jurisdiction.

The BLRC elucidates the rationale: *"Before the IRP can commence, all parties need an accurate and undisputed set of facts about existing credit, collateral*

[16] Order dated 4th October, 1996 in the matter of Delhi Administration and Ors. Vs. Sushil Kumar.

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." Accordingly, the BLRC recommended the creation of a regulated IU that accepts all information from and makes available all information to all stakeholders, in electronic form, for resolving insolvency and bankruptcy. Electronic records would enable quick triggering of default, determination of the identity of creditors and identification of the assets of the debtor (individual or enterprise). This would minimise disputes and cut down on delays in adjudication.

IU Regulations

IBBI notified the IBBI (Information Utilities) Regulations, 2017 (IU Regulations) on 31st March, 2017. 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% 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% of paid up equity share capital, while certain specified persons may hold up to 25% of paid up equity share capital. However, to start with, a person may hold up to 51% of paid-up equity share capital of an IU, but it has to reduce it to 10% or 25%, as the case may be, before expiry of three years from registration.

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 shall, *inter alia*, provide for matters relating to authentication and verification of information to be stored with the IU, registration of users, data integrity and security, porting of information, inter-operability among IUs, etc. The regulations require that each registered user and each information submitted to the IU shall have a unique identifier. The regulations set out the duties to be performed and services to be delivered by an IU. In order to safeguard the interests of the user, the regulations require an IU to have a grievance redressal policy as well as an exit management plan. An IU shall also have a compliance officer who shall ensure compliance with the provisions of the Code and shall, immediately and independently, report to the IBBI any non-compliance of any provision of the Code observed by him.

C.2 CORPORATE 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 failure of some business plans is integral to the process of the market economy. When business failure takes place, the best outcome for society is to have a rapid renegotiation between the financiers, to finance the going concern using a new arrangement of liabilities and with a new management team. If this cannot be done, the best outcome for society is a rapid liquidation. When such arrangements can be put into place, the market process of creative destruction will work smoothly, with greater competitive vigor and greater competition.[17]

The Code, read with the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 govern the CIRP. Broadly, a threshold amount of default (presently Rs.1 lakh) entitles an FC, an OC or the CD itself to file an application to initiate CIRP of the CD and if the said application is admitted, the CIRP commences. It means that (a) the CD moves away from 'debtor-in-possession' to 'creditor-in-control', (b) management of CD and its assets vest in an Interim Resolution Professional (IRP), who

[17] BLRC Report.

runs the CD as a going concern, and (c) there is a moratorium prohibiting the institution or continuation of suits and proceedings against the CD. The IRP makes a public announcement inviting submission of claims. After verification of claims, he constitutes a CoC, which in its first meeting appoints an IP as RP. While running the CD as a going concern, the RP needs approval of the CoC for certain matters. He invites feasible and viable resolution plans from eligible and credible RAs for resolution of insolvency of the CD. He issues an information memorandum (IM) and provides complete, correct and timely information about the CD to prospective RAs to enable them to design resolution plans. On receipt of the resolution plans, he examines each of them to confirm if they comply with the requirements laid down in the Code and Regulations and submits the compliant plans for consideration of the CoC. If the CoC approves a resolution plan within the stipulated time with 75% majority[18], the RP submits the approved plan for approval by the AA. If the AA approves a resolution plan, the CD continues as going concern. If the CoC does not approve a resolution plan with the required majority within this period or the AA does not approve the resolution plan, the CD mandatorily undergoes liquidation.

It is evident from the above that the Code has a strong focus on prevention of default / failure. It enables anyone to submit a resolution plan for resolution of insolvency of the defaulting CD. The existing promoters and management may not submit the most competitive resolution plan or the CoC may opt for liquidation. In such cases, the existing promoter and management may lose the firm for ever. With the Code in place, ownership of firm is no more a divine right.

The credible threat of a CIRP that the control and management of the firm may move away from existing promoters and managers, most probably, forever, deters the management and promoters of the firm from operating below the optimum level of efficiency and motivates them to make the best efforts to avoid default. Further, it encourages debtors to settle default with the creditor(s) at the earliest, preferably outside the Code. The Code would bring in significant behavioural changes and thereby redefine the debtor-creditor relationship. With the Code in place, repayment of loan is no more an option; it is an obligation.

On the other hand, the creditor knows the consequences of default by a debtor, if insolvency proceeding is not initiated or the insolvency is not resolved. It is motivated to resort to more responsible (meritocratic) lending to reduce incidence of default. Further, although a creditor has the right to initiate a proceeding under the Code as soon as there is a default of the threshold amount, it is not obliged to do so at the first available opportunity, if it has reasons for the same. It cannot, however, defer the initiation of proceeding indefinitely, allowing ballooning of default. It may not always be possible to prevent failures / default in the face of C&I and in such cases, the Code envisages a market mechanism to rescue a failing, viable firm in such cases.

Salient Features of CIRP

(a) The Code endeavours **revival** and continuation of the CD by protecting it from its own management and from liquidation. It envisages a plan for resolution of insolvency. It is not a recovery proceeding to recover the dues of the creditors. It does not envisage sale or liquidation of the CD for recovery of loan **(Box 4).** In fact, it attracts penalty if the process under the Code is abused for purposes other than the purposes of the Code.

(b) The Code enables resolution of insolvency **at the earliest**, preferably at the very first default, to prevent it from ballooning to un-resolvable proportions. In early days of default, enterprise value is typically higher than the liquidation value and hence the stakeholders would be motivated to resolve insolvency of the CD rather than liquidate it. Therefore, it entitles the stakeholders to initiate CIRP as soon as there is threshold amount of default.

(c) The Code mandates resolution in a **time bound manner,** as undue delay is likely to reduce the enterprise value of the CD. When the CD is not in sound financial health, prolonged uncertainty about its ownership and control may make the possibility of resolution remote. Time is the essence of the Code **(Box 5)**. The regulations provide a model timeline for each task in the process.

[18] Since reduced to 66% vide Ordinance dated 6th June, 2018.

Box 4 Resolution Plan: The Soul of Code

The soul of the Code is a resolution plan for revival of the firm. The Code facilitates and encourages generation of competing resolution plans and approval of the best of them for revival of the firm. It obliges an IP to manage the affairs of the debtor as a going concern and to protect and preserve the value of its assets. It enables raising interim finances and mandates continuation of essential services for continued business operations of the firm. It ensures a calm period for the firm when nobody disturbs the firm undergoing resolution.

The Code envisages initiation of the process at the earliest, well before the insolvency balloons to an unresolvable proportion. In early days of default, enterprise value of a firm is usually higher than its liquidation value and hence the CoC is motivated to revive the firm to preserve its value rather than liquidate it. However, the enterprise value reduces exponentially with time. When a firm is insolvent, prolonged uncertainty about its ownership and control and general apprehension surrounding insolvency leads to a flight of customers, vendors, workers, etc. The Code, therefore, mandates closure of the process at the latest by 180th day. It segregates commercial aspects of insolvency resolution from judicial aspects and incentivises and empowers the stakeholders to take commercial decisions expeditiously.

Recovery is an individual effort by a creditor to recover its dues through a process that has debtor and creditor on opposite sides. When creditors recover their dues - one after another or simultaneously - from the available assets of the firm, nothing may be left in due course. Thus, recovery bleeds the firm to death, while resolution endeavours to keep it alive. It would be an economic catastrophe if creditors seek recovery from many insolvent firms.

Recovery maximises the value of the creditor alone to the detriment of the firm and other creditors. It serves the interests of creditors on first come first serve basis - the creditor, who initiates recovery first, realises the highest, and who initiates the last, gets the least recovery - and yields inequitable distribution of available assets. Thus, recovery, not being a collective effort, does not maximise the value of the assets of the firm in the interests of all stakeholders, while resolution enables the stakeholders to share the fate of firm. Hence, recovery is an antithesis of resolution .That is why the Code prohibits any action to foreclose, recover or enforce any security interest during resolution process and thereby prevents a creditor(s) from recovering its dues. It does not envisage termination of the process even if dues of the creditor, who had initiated the process, are satisfied.

Liquidation brings the life of a firm to an end. It destroys organisational capital and renders resources idle till reallocation to alternate uses. It considers the claim of the next set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. Thus, liquidation is also antithesis of resolution. The Code, therefore, does not allow liquidation of a firm directly. It allows liquidation only after resolution process fails to yield resolution.

The CoC comprises of FCs, with a view to avoid liquidation. The BLRC explains the rationale for composition of CoC in the words: "*The Committee deliberated on who should be on the creditors committee, given the power of the creditors committee to ultimately keep the entity as a going concern or liquidate it.*" The Committee reasoned that 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. It noted, " *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. The Committee concluded that, for the process to be rapid and efficient, the Code will provide that the creditors committee should be restricted to only the financial creditors.*"

However, the Code recognises that in certain circumstances, liquidation may be the best option for the creditors. There could be firms which are dead in all but name. They may have spent many years in BIFR or in other recovery/restructuring frameworks without any improvement in their situation. Most of their physical and organisational capital would have eroded away. In such cases, it could be obvious upfront that the firm is not viable and resolution plan may not be possible. If the firm has to wait for the CIRP period to be over, the value of the residual assets will further diminish needlessly. Hence, the Code allows the CoC to directly approach the AA for liquidation.

The Code does not envisage a sale or auction of the CD. If it were so, one can put the CD on a trading / auction platform and whosoever pays the highest price would get it. There is no need for voting or

application of mind for approving a resolution plan, as it will be sold at the highest price. One would not need CIRP, IRP, RP, interim finance, calm period, essential services, CoC or resolution applicant and detailed, regulated process for the purpose of sale.

Where a firm has defaulted in repayment obligations, the creditor has broadly two options, namely, recovery and resolution. It has many options for recovering default; so also many options for resolution of insolvency of the firm. It may use the Code for resolution, though he can resolve insolvency outside the Code. It must not use the Code for recovery, though he may recover default amount as incidental to resolution. Further, resolution process under the Code leads to either of the two outcomes, namely, revival of the firm or liquidation of the firm. The CoC must strive to revive the firm if it is viable and must avoid liquidation.

(d) The Code envisages resolution of the CD as a **going concern**, as closure of the CD destroys organisational capital and renders resources idle till reallocation to alternate uses and make the posibility of resolution remote. It, therefore, facilitates continued operation of the CD as a going concern during CIRP. It mandates the CD, its promoters and any other person associated with its management to extend all assistance and cooperation to the IP. It enables raising interim finances and includes the cost of interim finance in insolvency resolution process cost which has super priority. It prohibits suspension or termination of supply of essential services to the CD to keep it going.

(e) The Code envisages a **collective mechanism** for resolution of insolvency. It enables any FC to initiate CIRP even when the firm has defaulted to another FC. This prevents the debtor from granting preferential treatment to a more vocal creditor while ignoring the less vocal ones. It does not envisage termination of the process even if claim of the creditor concerned is satisfied. Once admitted into CIRP, other creditors have a right to file their claims. Thereby, the nature of insolvency proceeding changes to a representative suit and it is no more a lis between a creditor and the CD. Therefore, they alone do not have the right to withdraw the insolvency petition even if the dues of the creditor concerned have been settled. It is a proceeding in rem and not adversarial and there are no opposite parties.

(f) The Code provides for the **best sustainable resolution**. It enables consideration of limitless possibilities of resolution through a resolution plan. A resolution plan may entail a change of management, technology, or product portfolio; acquisition or disposal of assets, businesses or undertakings; restructuring of organisation, business model, ownership, balance sheet; strategy of turn-around, buy-out, merger, acquisition, takeover; and so on.

(g) The Code segregates **commercial aspects** of insolvency resolution from judicial aspects and empowers the stakeholders of the CD and the AA to decide matters within their respective domains expeditiously. It puts the entire process at the disposal of the stakeholders and motivates them with incentives and disincentives to complete the process at the earliest. **(Box 6)**

(h) The Code **balances the interests** of stakeholders in the resolution process. It assumes significance as the CD undergoing CIRP may not have enough at the commencement of CIRP to satisfy the claims of all stakeholders fully. It provides specific balances, such as minimum payment to OCs in priority over FCs. It endeavours to balance the interests of all stakeholders and does not maximise value for FCs. Since it does not envisage recovery during CIRP, it does not provide for a waterfall in distribution of recovered amount among the creditors, as it provides the order of priority for distribution of proceeds from sale of liquidation assets.

(i) The Code requires the resolution plan to be in **compliance with all applicable laws** of the land and it must be implementable. Otherwise, the plan may not be implementable, and the purpose of resolution is defeated. The Code provides severe penal consequences if an approved resolution plan is not implemented.

Box 5 180 Days: Too Long or too Short?

The long title of the Code reads: it is *"An Act to consolidate and amend the law relating to re-organisation and insolvency resolution of corporate persons…...in a time bound manner for maximisation of value of assets, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders……"* These objectives can be achieved only if the insolvency resolution and other processes under the Code are accomplished in a time bound manner. In fact, the 'time bound' feature of the Code distinguishes it from the erstwhile legislations in the matter. The Code permits 180 days for completion of a CIRP. It permits one-time extension up to 90 days granted by the AA in deserving cases. However, CIRP of all CD persons may not entail the same level of complexity and some could be resolved earlier. The Code accordingly provides for a fast track process for certain categories of CDs where the resolution process needs to be completed within 90 days, with provision for one-time extension up to 45 days.

Whenever a timeline is laid down for a process, some find it short, while others find it long. In fact, it depends on the context such as persons carrying out the process and resources at their disposal, the facilitators available, and the complexity of the process. Further, a timeline that appears short to start with may prove long with the emergence of supporting institutions, technologies and skills. Every transaction takes less time today than it took yesterday. For example, while a period of two months was short for transfer of securities at one time, one minute is considered long today after dematerialisation.

The timeline for CIRP needs to be seen from three perspectives. First, there is enough incentive for adherence to a timeline. The stakeholders have the necessary motivation to complete the CIRP early as they stand to gain from the resolution, and they would suffer grave consequences of liquidation if they fail to complete the process within the given time frame. Further, the entire process is under their control, so also implementation of the resolution plan. Second, there are facilitators for quick CIRP. There are qualified, competent and empowered professionals, called IPs, who provide assistance throughout the process. There are provisions for calm period when nobody disturbs the CD under CIRP and also interim finance. Third, as more and more CIRPs are admitted and settled over a period of time, the processes would get streamlined, and standardised and often automated. Probably, standard resolution plans would be available off the shelf. There is a practice called prepack in some jurisdictions, where a stakeholder initiates the process only when it is reasonably ready with a resolution plan and closes it soon thereafter.

It is, however, important to appreciate the significance of timelines. The CD was not in the pink of its health when it defaulted and hence required resolution. During the CIRP period, an IP exercises the powers of the Board of Directors and manages the operations of the CD as a going concern and there is uncertainty about ownership and control of the CD, post resolution. If such a state of affairs continues too long, it is likely that organizational capital will diminish, making resolution difficult. A very long CIRP period is likely to push the CD towards liquidation, while reducing its liquidation value. Further, a longer CIRP period means a larger number of CDs undergoing resolution process at a given point of time, which would impinge economic growth. The CIRP, therefore, needs to be completed as quickly as possible, not later than 180 days.

The hero in the novel *'Around the World in Eighty Days'* could circumnavigate planet Earth in 79 days when transport and communication facilities were rudimentary during the late 19th Century. A period of 180 days may prove to be long with all the advantages of modern technology and well-informed brains. Going forward, a CIRP could possibly be completed in a few days or even hours, particularly with use of artificial intelligence. It should be the endeavour to reach there sooner than later, not only to preserve the USP of the Code, but also, better it. Let's not squander time, for that is, in the words of Benjamin Franklin, *'the stuff the life is made of'*.

Box 6 CoC: An Institution of Public Trust

Failure of a firm to service debt is an outcome of the market. The Code, therefore, envisages market-led solutions to address insolvency. It offers resolution, wherever possible, and liquidation, wherever required, of the firm. The Code believes that a limited liability firm is a contract between equity and debt. As long as debt is serviced; equity, represented by a Board of Directors, has complete control of the firm. When the firm fails to service the debt, control of the firm shifts to creditors, represented by a CoC, for resolving insolvency. The CoC considers resolution plans received from RAs and approves the best of them for insolvency resolution of the firm.

The consideration of resolution plans and approval of the best of them requires two abilities, namely, the ability to restructure the liabilities and the ability to take commercial decisions. The OCs typically do not have the ability and willingness to restructure liabilities. The CoC may opt for liquidation to realise immediately whatever is available, if it comprises OCs. The FCs generally have the resilience to wait for realisation of their dues post reorganisation. They have also the ability to determine if a resolution plan will achieve the objectives of the Code. In view of their abilities, the CoC comprises FCs.

A CoC typically takes four key commercial decisions in a CIRP to reorganise the firm as a going concern to maximise the value of its assets.

(a) A firm in a market economy fails to deliver for two broad reasons. First, it carries on a business which is no more viable for exogenous reasons such as innovation. Most such firms have economic distress and are unviable. However, a few of them may have resources to change the business line and become viable. Second, the firm is not doing well for endogenous reasons such as its inability to compete at marketplace, while other firms in the same business are doing well. Most such firms have financial distress and are viable. However, a few of them may have significantly depleted their resources and become unviable. The CoC needs to correctly identify if the firm under CIRP is viable or not.

(b) If the firm is viable, the CoC must visualise the resolution plan required for reorganisation of the firm. Much in the same way a promoter invites subscription for shares in an IPO, the CoC needs to create visibility of the underlying value of the firm and invite and encourage appropriate resolution plans for reorganisation of the firm. It should express its mind as to what kind of RA can reorganise the firm keeping in view its complexity and scale of business; what can possibly address the failure by the firm; what are parameters to assess the viability and feasibility of the resolution plans; etc. to enable prospective RAs to design and submit competing resolution plans for reorganisation of the firm.

(c) The CoC must ensure that the firm continues as a going concern and its value does not deteriorate during CIRP. For this purpose, it must appoint a competent IP who can run the business of the firm as a going concern at its optimum potential, provide complete, correct and timely information about the firm to RAs for design of resolution plans, and safeguard the assets of the firm. It must facilitate interim finance, and co-operate in detection of avoidance transactions, wherever required. It must expedite various tasks for closure of the CIRP at the earliest.

(d) The Code envisages the CoC to consider only those resolution plans which (i) have been received from credible and capable RAs, (ii) comply with the applicable laws, (iii) are feasible and viable, (iv) have potential to address the default, and (v) have provision for effective implementation of the plan. These considerations ensure that the resolution plan achieves reorganisation of the firm as a going concern, on a sustained basis. Of the plans which meet these requirements, the CoC must approve that resolution plan which maximises the value of the assets of the firm, irrespective of realisation for creditors under the plan.

It is important to note that the commercial decisions are not amenable to a precise mathematical formula. In fact, it requires considerable commercial dexterity and acumen. The CoC must enhance its capacity to distinguish a viable firm from an unviable one and ensure rescue of all viable firms and allow closure of only unviable ones, in the interest of the economy. Only then the economy can reap the full benefits of having the Code and justify its well-founded objects and reasons.

A firm embodies interests of many stakeholders. The CoC or its members do not own the assets of firm. The CoC holds the key to the fate of the firm and its stakeholders. It is the custodian of public trust during resolution process. The BLRC used, *inter alia*, two design principles, namely, (a) the liabilities of all creditors, who are not part of the process, must also be met; and (b) the rights of all creditors shall be respected equally. The Code accordingly envisages resolution for maximising the value of the assets of the firm to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders. Therefore, the CoC must maximise the value of the assets of the firm and balance the interests of all stakeholders, irrespective of its composition.

The gain or pain emanating from resolution, therefore, needs to be shared by the stakeholders within a framework of fairness and equity. That is why the Code mandates that the OCs be paid first and be paid at least the liquidation value. A firm gets credit from FCs and OCs. Neither credit is enough for a firm nor does the State have any reason to promote either. If OCs, for example, are not provided a level playing field, they would not provide goods and services on credit. If their interests are not protected, they will perish. This defeats the objective of promoting the availability of credit.

The CoC should pursue the objectives of the Code. It must pursue resolution and avoid recovery, liquidation, or sale of the firm. While pursuing resolution, it must maximise the value of the firm for the benefit of all stakeholders. It must rise to the occasion to preserve its stature and authority granted under the Code.

CORPORATE LIQUIDATION PROCESS

An order for liquidation may be passed following a CIRP of the CD, when a resolution is not possible. The Code provides four circumstances when the AA issues an order for liquidation:

(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,

(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.

IBBI notified the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) on 15th December, 2016. The Regulations prohibit an IP from acting as a liquidator for a CD if he is not independent of the CD. These prohibit partners or directors of an IPE of which the IP is a partner or director from representing other stakeholders in the same liquidation process. These oblige the liquidator, and registered valuer(s) and professional(s) assisting him in liquidation to make disclosures - initial and continuing –about pecuniary or personal relationship with any of the stakeholders entitled to distribution of assets. These regulations specify the manner and contents of public announcement, receipt and verification of claims of stakeholders, reports and registers to be maintained, preserved and submitted by the liquidator, the manner of realisation of assets and security interest, and distribution of proceeds to stakeholders. These regulations provide that a liquidator should ordinarily sell the assets through auctions. He may sell the assets through private sale only when the asset is perishable; the asset is likely to deteriorate in value significantly if not sold immediately or the asset is sold at a price higher than the reserve price of a failed auction. He may sell an asset on a standalone basis, or assets in a slump sale, assets in parcels or a set of assets collectively. These regulations provide that the fee payable to a liquidator shall form a part of the liquidation cost. These further provide that a liquidator shall be paid such fees and, in such manner, as has been decided by the CoC during the resolution process. In all other cases, the liquidator shall be entitled to a fee as a percentage of the amount realised net of other liquidation costs and of the amount distributed.

The Code read with the Liquidation Regulations govern the liquidation process, as under:

(a) *Commencement of liquidation:* The liquidation process commences on the date of the order of liquidation passed by the AA. The RP appointed for the CIRP acts as the liquidator for the purposes of liquidation, unless he is replaced by the AA.

(b) *Public announcement*: The liquidator makes a public announcement within five days from the date of his appointment in one English and in one regional language newspaper, on the website, if any, of the CD and on the website, if any, designated by the Board for this purpose.

(c) *Appointment of registered valuers*: The liquidator appoints two registered valuers to estimate realisable value of the assets computed in accordance with internationally accepted valuation standards, after physical verification of assets of the CD.

(d) *Verification of claims*: The liquidator verifies the claims within 30 days from the last date for receipt of claims.

(e) *Admission/rejection of claim*: The liquidator may, after verification, either admit or reject the claim, in whole or in part, as the case may be. In the event of rejection of claim, he shall record in writing the reasons for such rejection and communicate his decision to the creditors within seven days of such decision. A creditor may appeal to the AA against the decision of the liquidator within 14 days of receipt of the decision.

(f) *Preparation of list of stakeholders*: The liquidator prepares a list of all the stakeholders and files the same with the AA within 45 days from the last date for receipt of claims. He also makes a public announcement of the same.

(g) *Preliminary Report*: The liquidator prepares a Preliminary Report detailing the capital structure and assets and liabilities of the CD and plan of action for carrying out the liquidation, including timeline and the estimated liquidation cost and submits the same to the AA within 75 days of the liquidation commencement date.

(h) *Asset memorandum*: The liquidator prepares, within 75 days of the liquidation commencement date, an Asset Memorandum providing details of assets, including intended manner of sale and expected amount of realisation and file the same with the AA.

(i) *Submission of Progress Reports*: The liquidator submits the first Progress Reports to the AA within 15 days after the end of the quarter in which he is appointed and subsequent Progress Report(s) within 15 days after the end of every quarter during which he acts as liquidator.

(j) *Distribution of proceeds*: The liquidator distributes the proceeds from realisation on sale of assets in the liquidation estate, within 6 months from the receipt of the amount, to the stakeholders.

(k) *Completion of liquidation process*: The liquidator strives to liquidate the CD within a period of two years, failing which he shall make an application to the AA to continue such liquidation, along with a report explaining why the liquidation has not been completed and specifying the additional time that shall be required for liquidation.

(l) *Submission of final report*: On completion of the liquidation process, the liquidator prepares the final report consisting of audited accounts of the liquidation, disposal of the assets of the CD, sale statement, etc. and submits the same to the AA along with the application for the dissolution of the CD.

(m) *Unclaimed proceeds*: Before the order of dissolution is passed by the AA, the liquidator applies to the AA for an order to pay into the Companies Liquidation Account in the Public Account of India any unclaimed proceeds of liquidation or undistributed assets or any other balance payable to the stakeholders in his hands on the date of the order of dissolution.

(n) *Dissolution*: The AA then passes an order that the CD shall be dissolved from the date of that order and the CD shall be dissolved accordingly.

(o) The liquidator preserves the physical as well as electronic copy of records and minutes for a period of eight years after the dissolution order.

VOLUNTARY LIQUIDATION PROCESS

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.

The Regulations provide that 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. If the liquidator is of the opinion that the liquidation is being done to defraud a person or the corporate person will not be able to pay its debts in full from the proceeds of assets to be sold in the liquidation, he shall make an application to the AA to suspend the process of liquidation and pass any such orders as it deems fit. Most of the provisions (sections 35 to 53 of the Code) relating to liquidation process also apply to a voluntary liquidation proceeding.

The Regulations prohibit an IP from acting as a liquidator for a corporate person if he is not independent of the corporate person. These prohibit partners or directors of an IPE of which the IP is a partner or director from representing other stakeholders in the same liquidation process. These oblige the liquidator, and professional(s) assisting him in liquidation to make disclosures - initial and continuing - about pecuniary or personal relationship with any of the stakeholders or the corporate person.

The Regulations specify the manner and content of public announcement, receipt and verification of claims of stakeholders, reports and registers to be maintained, preserved and submitted by the liquidator, realisation of assets and distribution of proceeds to stakeholders, distribution of residual assets, and finally, dissolution of corporate person. These oblige a liquidator to preserve a physical or an electronic copy of the reports, registers and books of accounts for at least eight years after the dissolution of the corporate person, either with himself or with an IU.

C.3 ADVOCACY AND AWARENESS

While the Government and IBBI may frame policy and lay down legal and regulatory framework for certain 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. The stakeholders need to be familiar with the Code, regulatory framework and ecosystem, all of which are new in the Indian context.

Chairperson, IBBI participated in different capacities (faculty, panellist, speaker, guest of honour, chief guest, etc.) in 45 events (conferences, seminars, roundtables, workshops, etc.) on insolvency and bankruptcy, organized by a host of institutions (RBI, ICSI, ICAI, ICMAI, IPAs, CII, FICCI, ASSOCHAM, PHDCCI, Academics, etc.) across the country, during October, 2016 to March, 2017. The details of these events are presented in Table 5.

While IBBI engages with the stakeholders to get their inputs into policy making, it is also important to report back to them about the working of the regulator, informing them about the tasks being carried out by the regulator and the outcomes being achieved. Thus, IBBI has been publishing a quarterly newsletter since its inception. A soft copy of the same is placed on the website of IBBI for larger dissemination. During the year under review, two newsletters for the period October - December, 2016 and January - March, 2017 were published. The newsletter informed about the felt need for a comprehensive insolvency and bankruptcy law and the developments leading up to the enactment of the Code. It also presented the initial tasks performed by IBBI as regards putting in place the requisite regulations to implement certain provisions of the Code.

Table 5: Events attended by Chairperson, IBBI

Sl.	Date	Venue	Organiser	Event	Subject
1	17.10.16	Mussoorie	LBSNAA	Training	Regulatory Framework for Insolvency & Bankruptcy
2	21.10.16	New Delhi	NLU	Training	Competition Law and Insolvency Law
3	24.10.16	Mumbai	BSE	Roundtable	Draft CIRP and Liquidation Regulations
4	24.10.16	Mumbai	MINT, HT Media	Conference	Insolvency and Bankruptcy Reforms
5	25.10.16	Chennai	ICSI	Roundtable	Draft IP and IPA Regulations
6	26.10.16	Kolkata	ICMAI	Roundtable	Draft IP and IPA Regulations
7	28.10.16	New Delhi	ASSOCHAM	Roundtable	Draft CIRP and Liquidation Regulations
8	12.11.16	New Delhi	CLBA	Conference	Competition Law and Sectoral Regulations
9	17.11.16	Gandhinagar	ICSI	Convention	Powering Governance and IBC
10	17.11.16	Ahmedabad	ICAI	Seminar	IBC
11	28.11.16	New Delhi	IBBI	Ceremony	Commencement of Registration of IPAs
12	30.11.16	New Delhi	IBBI	Ceremony	Commencement of Registration of IPs
13	01.12.16	Manesar	IICA	Colloquium	IBC Regulations
14	10.12.16	Bhubaneswar	ICMAI	Conference	IBC: Inching Towards Global Standards
15	10.12.16	Bhubaneswar	ICMAI	Roundtable	CIRP and Liquidation Regulations
16	11.12.16	Bhubaneswar	ICSI	Seminar	IBC
17	16.12.16	Mumbai	ICSI	Conclave	IBC
18	16.12.16	Mumbai	IGIDR	Conference	IBC
19	16.12.16	Mumbai	IGIDR	Panel	Implementation of IBC
20	16.12.16	Mumbai	MINT, HT Media	Conference	IBC
21	16.12.16	Mumbai	MINT, HT Media	Panel	Stressed Assets Investment
22	17.12.16	New Delhi	ICSI	Conference	IBC
23	23.12.16	Mumbai	ICMAI	Seminar	IBC
24	27.12.16	Tirupati	Indian Economic Association	Memorial Lecture	Debt Market and Insolvency
25	12.01.17	Kolkata	CII	Seminar	IBC – Impact Analysis
26	12.01.17	Kolkata	MCCI	Session	IBC – An Insight
27	13.01.17	Kolkata	BCC&I	Seminar	IBC
28	13.01.17	Kolkata	ICMAI	Seminar	IBC
29	14.01.17	Kolkata	ICSI	Seminar	IBC
30	15.01.17	New Delhi	ICAI	Seminar	IBC
31	28.01.17	Mumbai	ICAI	Seminar	IBC
32	02.02.17	Delhi	NIPFP & TRAI	Training	Executive Functions of Regulators
33	10.02.17	New Delhi	IIM, Kashipur	Conference	Harmonizing Regulatory Objectives and Architecture

34	12.02.17	Ghaziabad	IMS, Ghaziabad	Conference	Corporate Governance: Retrospect and Prospects
35	17.02.17	Mumbai	RBI	Roundtable	Draft IU Regulations
36	18.02.17	New Delhi	ASSOCHAM	Roundtable	Draft IU Regulations
37	28.02.17	New Delhi	ASSOCHAM	Roundtable	Draft Regulations for Voluntary Liquidation
38	07.03.17	New Delhi	PHDCCI & ICSI	Seminar	Opportunities and Challenges for IPs
39	10.03.17	New Delhi	Bhartiya Vitta Salahakar Samiti	Seminar	IBC
40	19.03.17	Lucknow	ICMAI	Conference	Reinforcing India with CMAs and IPs
41	24.03.17	Mumbai	CII	Conference	IBC – Impact Analysis
42	25.03.17	Mumbai	ICSI	Seminar	IBC
43	26.03.17	New Delhi	IICA	Colloquium	IBC: Potential Challenges and Prospects
44	26.03.17	New Delhi	O. P. Jindal Global University	All India Moot	Economic Laws
45	27.03.17	New Delhi	IBBI	IP Workshop	IBC

D FUNCTIONS OF THE BOARD

The Code provides for establishment of the Board along with its functions and duties. However, it was anticipated that establishing the Board and making it operational would take some time. To avoid loss of time on account of this, the Code enabled Government to designate a financial sector regulator to exercise the powers and functions of the Board till it is established. It provided for designation of a financial sector regulator, apparently because the structure, domain, duties and functions of the Board, as envisaged in the Code, are similar to those of a financial sector regulator. Instead of using the transitory provision, Government established the Board on 1st October, 2016.

Like a financial regulator, IBBI has broadly three sets of functions, namely, (a) Quasi-legislative functions: The Board makes regulations for market intermediaries and processes; (b) Executive functions: The Board to register and regulate service providers for the insolvency process and take measures for professional development and expertise for the market intermediaries through education, examination, training and continuous professional education; and (c) Quasi-judicial functions: which requires it to adjudicate service providers to ensure their orderly functioning.

QUASI-LEGISLATIVE FUNCTIONS

The Code empowers IBBI to make regulations and guidelines on matters relating to insolvency and bankruptcy and issue guidelines to the IPAs, IPs, and IUs. This is 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.

Before IBBI was established, draft of most of the regulations, which were issued in early days, were prepared by WGs set up by MCA. However, before finalising these regulations, IBBI adopted a transparent and consultative process to effectively engage with stakeholders in making regulations. The consultation process factors in ground reality and enables collective choice. The participation of the public, particularly the stakeholders and the regulated, in the regulation making ensures that the regulations are informed by the legitimate needs of those interested in and affected by regulations. IBBI engaged through broadly 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 public, through an electronic platform, on each draft regulation and sub-regulation; and (c) It obtained 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. IBBI notified 10 regulations in the year 2016-17, as presented in Table 6.

Table 6: Regulations Notified in 2016-17

Date of Notification	Regulations
21.11.2016	The IBBI (Insolvency Professional Agencies) Regulations, 2016
21.11.2016	The IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016
23.11.2016	The IBBI (Insolvency Professionals) Regulations, 2016
30.11.2016	The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
15.12.2016	The IBBI (Liquidation Process) Regulations, 2016
31.01.2017	The IBBI (Procedure for Governing Board Meetings) Regulations, 2017
31.01.2017	The IBBI (Advisory Committee) Regulations, 2017
31.01.2017	The IBBI (Engagement of Research Associates and Consultants) Regulations, 2017
31.03.2017	The IBBI (Voluntary Liquidation Process) Regulations, 2017
31.03.2017	The IBBI (Information Utilities) Regulations, 2017

Advisory Committee

ACs generally serve as a sounding board for emerging ideas and to lend professional wisdom and market knowledge to the regulator. IBBI constituted two standing ACs to meet immediate needs pending notification of the IBBI (Advisory Committee) Regulations, 2017, as under:

(a) Advisory Committee on Service Providers: It was constituted on 18th October, 2016 with the composition given in Table 7.

Table 7: 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. Amarjit Singh Chandhiok, Senior Advocate	Member
6	Mr. J. Ranganayakulu, Executive Director, SEBI	Member
7	Mr. Ravi Narain, Vice Chairman, NSE	Member
8	President, The Institute of Chartered Accountants of India	Member
9	President, The Institute of Company Secretaries of India	Member

(b) Advisory Committee on Corporate Insolvency Resolution: It was constituted on 18th October, 2016 with the composition given in Table 8

Table 8: 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. Somshekhar Sundaresan, Legal Counsel	Member
7	President, The Institute of Cost Accountants of India	Member
8	President, NCLT and NCLAT Bar Association	Member

EXECUTIVE FUNCTIONS

Insolvency Professionals

The IP Regulations came into force on 29th November, 2016. 18 IPs were registered and given certificates of registration by the hands of Mr. Tapan Ray, Secretary, MCA in a function on 30th November, 2016. Till 31st December, 2016, 977 individuals were registered as IPs under regulation 9. Their registration has a validity of six months. Their registrations expired by 30th June, 2017. Since 31st December, 2016, individuals, who have the required qualification and experience and have passed the Examination are being registered as IPs under regulation 7. In this category, 96 individuals were registered as IPs as on 31st March, 2017. Details of the progress in registrations, on a quarterly basis are presented in Table 9. Region wise distribution of IPs registered up to 31st March, 2017 is reported in Table 10.

An individual enrolled with an IPA makes an

Table 9: Registration of Insolvency Professionals **(Number)**

Quarter	IPs Registered During Quarter				IPs at the end of Quarter			
	IIIP of ICAI	ICSI IPA	IPA of ICMAI	Total	IIIP of ICAI	ICSI IPA	IPA of ICMAI	Total
Oct-Dec, 2016	713	221	43	977	713	221	43	977*
Jan-March, 2017	33	51	12	96	33	51	12	96

*Registration of these IPs expired by 30th June, 2017.

application seeking a certificate of registration to carry on the activities as an IP. On consideration of an application, IBBI may grant registration. If it, however, forms a prima facie opinion that the registration ought not be granted, it communicates the same to the applicant, providing him an opportunity to explain why registration should be granted to him. On considering the submission of the applicant and hearing him, if IBBI decides to reject the application, it does so by a reasoned order. During 2016-17, IBBI issued two such orders rejecting two applications - one on the ground that the applicant was not a fit and proper person and the other on the ground that the applicant was in employment.

Given that the insolvency profession is new and the processes under the Code are very complex, it has been endeavour of IBBI to build capacity of the IPs in the area of corporate insolvency. To supplement the efforts and initiatives of the market and the IPAs in this regard, IBBI commenced a two-day workshop for IPs. The first such workshop was conducted on 27th and 28th March, 2017 in New Delhi.

Table 10: Regional Distribution of Insolvency Professionals **(Number)**

City / Region	IIIP of ICAI under Regulation		ICSI IPA under Regulation		IPA of ICMAI under Regulation		Total	
	9	7	9	7	9	7	9	7
New Delhi	224	5	77	19	18	7	319	31
Rest of Northern Region	109	5	36	13	2	3	147	21
Mumbai	100	11	29	4	4	0	133	15
Rest of Western Region	75	4	26	5	9	0	110	9
Chennai	41	0	5	1	1	0	47	1
Rest of Southern Region	53	2	23	5	2	0	78	7
Kolkata	81	6	18	3	6	1	105	10
Rest of Eastern Region	30	0	7	1	1	1	38	2
Total	**713**	**33**	**221**	**51**	**43**	**12**	**977**	**96**

Insolvency Professional Entities

As on 31st March, 2017, three IPEs were recognised by the Board, as indicated in Table 11.

Insolvency Professional Agencies

The IPA Regulations came into force on 22nd November, 2016. Two IPAs, namely, Indian Institute Insolvency Professionals of ICAI (IIIP of ICAI), and ICSI Insolvency Professionals Agency[19] (ICSI IPA) were registered and given certificates of registration by the hands of Mr. Arun Jaitley, Minister for Finance and Corporate Affairs in a function on 28th November, 2016. Another IPA, namely, Insolvency Professional Agency of Institute of Cost Accountants of India (IPA of ICMAI) was granted registration on 30th November, 2016. Thus, there were three IPAs registered on 31st March, 2017, as presented in Table 12.

Table 11: IPEs Recognised as on 31st March, 2017

Sl. No.	Date of Recognition	Name of IPE
1	01.03.2017	IRR Insolvency Professionals Private Limited
2	01.03.2017	AAA Insolvency Professionals LLP
3	30.03.2017	Witworth Insolvency Professionals Private Limited

Table 12: IPAs Registered as on 31st March, 2017

Sl. No.	Date of Registration	Name of IPA	Promoted by
1	28.11.2016	Indian Institute Insolvency Professionals of ICAI	Institute of Chartered Accountants of India
2	28.11.2016	ICSI Insolvency Professionals Agency	Institute of Company Secretaries of India
3	30.11.2016	Insolvency Professional Agency of Institute of Cost Accountants of India	Institute of Cost Accountants of India

[19] Name of the IPA was subsequently changed to ICSI Institute of Insolvency Professionals

Limited Insolvency Examination

Subject to meeting other requirements, an individual is eligible for registration as an IP if he has passed the Limited Insolvency Examination (Examination). IBBI published the syllabus, format and frequency of the Examination on 30th November, 2016 and the Examination commenced on 31st December, 2016. It put out a sample question paper for the benefit of candidates taking the Examination. The said syllabus, etc. is applicable for the Examinations conducted from 31st December, 2016 to 30th June, 2017. 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. The Examination is administered by the National Institute of Securities Market (NISM). Till 31st March, 2017, 789 candidates made a total of 1183 attempts and 266 (34%) passed the Examination successfully. The performance of candidates in the Examination is summarised in Table 13.

Table 13: Limited Insolvency Examination, 2016-17

Region	No. of Attempts	No. of Successful Attempts
East	159	32
North	491	109
West	354	34
South	179	91
All India	**1183**	**266**

QUASI-JUDICIAL FUNCTIONS

No quasi-judicial action was taken during the period under report.

E ANALYSIS OF OUTCOMES

This Section presents the outcomes achieved under the Code since the time of its enactment till 31st March, 2017 in terms of CIRPs initiated and resolved and details of liquidation cases. The Section also summarizes the emerging jurisprudence in terms of the interpretation of the Code and various rules and regulations under it by NCLT, NCLAT, IBBI and the High Courts.

CORPORATE INSOLVENCY RESOLUTION

The CIRP Regulations came into force on 1st December, 2017. Till 31st March, 2017, 37 CIRPs were initiated. The category wise initiation of these CIRPs is provided in Table 14.

Table 14: Initiation of CIRPs

CIRPs Initiated by	No. of Corporate Debtors
Financial Creditors	8
Operational Creditors	7
Corporate Debtors	22
Total	**37**

The default underlying the admitted applications ranged from a few lakh rupees to a few thousand crore rupees. The details are presented in Tables 15 and 16. One application was closed on appeal. The remaining were under process as on 31st March, 2017.

The sector-wise details of CIRPs initiated are presented in Table 16

A CIRP normally takes 180 days. Since the CIRPs were admitted in the last quarter, no CIRP got completed during the year. Hence, no liquidation process commenced till 31st March, 2017.

EMERGING JURISPRUDENCE

This section presents a brief of select decisions of judicial and quasi-judicial bodies on matters pertaining to the Code, till 31st March, 2017.

HIGH COURTS

Innovative Industries Ltd. Vs. Union of India & Ors [WP(LDG.) No. 143 of 2017]

An application under section 7 of the Code to initiate CIRP against Innovative Industries Limited was admitted by NCLT on 17th January, 2017. The petitioner, aggrieved by the admission, filed a writ petition before the High Court of Bombay challenging the vires of the Code and seeking an ad-interim relief of stay. It also filed an appeal before the NCLAT against the admission. While dismissing the petition, vide its order dated 23rd February, 2017, the High Court observed: *"Since the main order has become subject matter of challenge before the statutory appellate authority, challenge to the vires becomes academic."* It also opined that there was no need to stay the operation of the appointment of the IRP as no prejudice would be caused to the petitioner.

ADJUDICATING AUTHORITY

ICICI Bank Ltd. Vs. M/s Innoventive Industries Limited [C.P. No. 01/I &BP/NCLT/MAH/2016]

As an FC, ICICI Bank filed an application under section 7 of the Code for initiating CIRP of the CD, Innoventive Industries Limited. However, the CD filed an objection that the liabilities of the CD and remedy against the CD have been suspended for one year by Government of Maharashtra under the Maharashtra Relief Undertaking (Special Provisions) Act, 1958 (MRU Act). Further the non-obstante clause in section 4 of the MRU Act stays any remedy and all proceedings relating to liabilities of the CD. It was further argued that though both the Code and the MRU Act have non-obstante clauses, they operate in different fields. Since the object (preventing unemployment) of the MRU Act is more laudable, the non-obstante clause thereof would not be disturbed by non-obstante clause in the Code. The AA noted that the Code came into existence subsequent to the MRU Act and, therefore, the non-obstante clause in the Code prevails over any other law for the time being in force, including the MRU Act. It also noted that the objective of the MRU Act is to prevent unemployment of the existing employees and admission of the CD into CIRP does not mean destruction of employment. While admitting the application vide order dated 17th January, 2017, the AA held:*"...it is evident that the Corporate Debtor defaulted in making payments as mentioned above, and he has placed the record of the default with Information Utility and he also placed the name of the*

Table 15: Admission of Applications into CIRP

Sl. No.	Date of Admission	Application by	Name of Corporate Debtor	Underlying Default (Rs. crore)
1	17-01-2017	FC	Innoventive Industries Ltd.	101.92
2	18-01-2017	CD	Nicco Corporation Ltd.	405.01
3	18-01-2017	CD	UB Engineering Ltd.	116.80
4	19-01-2017	FC	Bhupen Electronic Ltd.	4.82
5	23-01-2017	CD	Synergies-Dooray Automotive Ltd.	741.33
6	25-01-2017	CD	Rave Scans Pvt. Ltd.	13.66
7	30-01-2017	FC	SreeMetaliks Ltd.	108.27
8	10-02-2017	CD	Kamineni Steel and Power India Pvt. Ltd.	1405.01
9	10-02-2017	CD	VNR Infrastructures Ltd.	1102.78
10	14-02-2017	CD	Hind Motors Ltd.	6.29
11	16-02-2017	CD	Keshav Sponge and Energy Pvt. Ltd.	85.48
12	17-02-2017	OC	Midas Touch Export Pvt. Ltd.	0.15
13	17-02-2017	FC	Starlog Enterprises Ltd.	27.78
14	20-02-2017	CD	Hind Motors Mohali Pvt. Ltd.	3.09
15	23-02-2017	FC	Raipur Power and Steel Ltd.	17.37
16	24-02-2017	CD	Chhaparia Industries Pvt. Ltd.	38.35
17	24-02-2017	OC	Unimark Remedies Ltd.	0.61
18	27-02-2017	OC	Rei Agro Limited	0.10
19	02-03-2017	CD	Shree Rajeshwar Weaving Mills Pvt. Ltd.	15.83
20	03-03-2017	CD	VNR Infra Metals Pvt. Ltd.	88.33
21	06-03-2017	OC	MCL Global Steel Pvt. Ltd.	9.11
22	06-03-2017	CD	Ultra Drytech Engineering Ltd.	18.39
23	08-03-2017	CD	Facor Steel Ltd.	34.58
24	09-03-2017	CD	Gupta Coal lndia Pvt. Ltd.	2580.07
25	09-03-2017	CD	Hind Motors India Ltd	3.33
26	15-03-2017	OC	Janata Chemicals Pvt. Ltd.	0.23
27	15-03-2017	FC	Kadevi Industries Limited	171.10
28	16-03-2017	CD	Recorders and Medicare Systems Pvt. Ltd.	101.09
29	17-03-2017	CD	JEKPL Pvt. Ltd.	104.46
30	17-03-2017	CD	JODPL Pvt. Ltd.	1332.50
31	20-03-2017	CD	Marmagoa Steel Ltd.	81.52
32	21-03-2017	CD	Gupta Energy Pvt. Ltd.	691.34
33	22-03-2017	CD	Blossoms Oils & Fats Ltd.	318.28
34	29-03-2017	OC	Pooja Tex- Prints Pvt. Ltd.	0.14
35	30-03-2017	FC	MBL Infrastructures Ltd.	7.27
36	31-03-2017	FC	Hotel Gaudavan Pvt. Ltd.	45.34
37	31-03-2017	OC	Swiber Offshore Pvt. Ltd.	0.48

Table 16: Sector-wise Distribution of CIRPs.

Sector	No. of CIRPs		
	Closed	Ongoing	Total
Manufacturing	1	19	
Food, Beverages & Tobacco Products		1	1
Chemicals & Chemical Products		1	1
Electrical Machinery & Apparatus		2	2
Fabricated Metal Products		1	1
Machinery & Equipment		2	2
Textiles, Leather & Apparel Products		3	3
Wood, Rubber, Plastic & Paper Products		0	0
Basic Metals	1	5	6
Others		4	4
Real Estate, Renting & Business Activities		3	3
Construction		1	1
Wholesale & Retail Trade		4	4
Hotels & Restaurants		2	2
Electricity & Others		1	1
Transport, Storage & Communications		4	4
Others		2	2
Total	**1**	**36**	**37**

Insolvency Resolution Professional to act as interim resolution Professional, having this Bench noticed that default has occurred and there is no disciplinary proceedings pending against the proposed resolution professional, therefore, the Application under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this application declaring Moratorium ...'' This is the first CD admitted into CIRP under the Code.

Nikhil Mehta and Sons (HUF) & Ors Vs. AMR Infrastructures Ltd. [C.P. No. (ISB) -03 (PB)/2017]

Nikhil Mehta and Sons (HUF) and others filed an application under section 7 of the Code to initiate the CIRP of AMR Infrastructure Ltd. The NCLT, vide order dated 23rd January, 2017, dismissed the application.

The Applicants booked properties (office space, shop and flat) in projects of the Respondent. As per the Memorandum of Understanding (MoU) executed between the parties, the Applicant would be paid a monthly 'assured returns' till the possession of the flat. The Respondent defaulted in payment of such assured returns.

The NCLT observed that the essential element for a debt to qualify as a 'financial debt' is that it is 'disbursed against the consideration of time value of money'. It would include such financial transactions where a sum is received today to be paid over a period of time in the future in a single or series of instalment(s). The instant case is a pure and simple agreement of sale or purchase of a property. It observed: *''Merely because some 'assured amount' of return has been promised and it stands breached, such a transaction would not acquire the status of a 'financial debt' as the transaction does not have consideration for the time value of money, which is a substantive ingredient to be satisfied for fulfilling requirements of the expression 'Financial Debt.''*

Col. Vinod Awasthy Vs. AMR Infrastructures Ltd. [C.P. No. (IB)-10 (PB)/2017]

Col. Vinod Awasthy, filed an application under section 9 of the Code to initiate CIRP of AMR Infrastructure Ltd. in respect of default in payment of assured returns till possession of a flat, as contemplated under an MoU executed between the parties. The NCLT, vide order dated 20th February, 2017, dismissed the application.

The NCLT observed that 'operational debt' under the Code is a claim in respect of provision of goods or services, including dues on account of employment or a debt in respect of repayment of dues arising under any law for the time being in force and payable to Central or State Government or local authority. Hence operational debt is confined to four categories like goods, services, employment and Government dues. It is not any debt other than financial debt. Hence, non-payment of aforesaid assured returns is not an operational debt and the applicant is not an OC.

K. K. V. Naga Prasad Vs. Lanco Infratech Ltd. [CP (IB) No 9/9/HDB/ 2017]

An application was filed under section 9 of the Code to initiate the CIRP of a CD, M/s. Lanco Infratech Ltd. The AA, vide order dated 21st February, 2017, dismissed the application as the 'due' in question was already subject to an existing dispute. The AA observed: *"The Tribunal cannot go in to roving enquiry into the disputed claims of parties as the object of IBC... is to ensure reorganization and insolvency resolution of corporate persons, individuals, etc., in a time bound manner...."*

IBBI

In the matter of ABC

IBBI rejected the application of ABC for registration as an IP on the ground that ABC is engaged in employment. It observed: *" .. a person must not play two roles - profession and employment - simultaneously. It is like the requirement that a person in employment must not practise as an Advocate and vice versa. The solemn objective behind such a requirement is that a professional must have undivided loyalty and unflinching attention towards his professional obligations. It assumes further significance in case of an IP who renders time critical services under the Insolvency and Bankruptcy Code, 2016. This Code, for example, mandates resolution plan to be submitted within 180 days of the resolution commencement date and if it is not done, the corporate person is pushed into liquidation."*

In the matter of XYZ

IBBI rejected the application of XYZ for registration as an IP. It noted that the Registrar of Companies (RoC) has filed three criminal proceedings against the applicant, among others, for non-compliance with the three orders of the Company Law Board (CLB) and these proceedings are pending. It observed that pendency of three criminal proceedings against the applicant adversely impacts his reputation and makes him a person not fit and proper to become an IP.

IBBI observed: *"An IP plays an important role in resolution, liquidation and bankruptcy processes of companies, and individuals. Take the example of corporate insolvency resolution process of a company. When a company undergoes this process, an IP is vested with the management of the affairs of the company and he exercises the powers of its board of directors. Such company could be one of the largest companies in India with probably Rs.5 lakh crore of market capitalisation. He becomes the custodian of the property of such a company and manages the affairs of the company as a going concern. Further, he examines each resolution plan to confirm that it does not contravene any of the provisions of the law for the time being in force. These responsibilities require the highest level of integrity, reputation and character. In sync with the responsibilities, the Regulations require the Board to take into account integrity, reputation and character of an individual for determining if an applicant is a fit and proper person."*

F IMPACT OF THE CODE

The Code provides a collective mechanism for resolving insolvency within a framework of equity and fairness to all stakeholders, while preserving the economic value of the person concerned. It aims to provide a time bound and orderly resolution of insolvency, wherever possible, and facilitates ease of exit, wherever required, aiming to promote entrepreneurship and availability of credit in the economy as a whole.

The Code was enacted in 2016-17. The ecosystem and regulatory framework in respect of corporate insolvency was put in place in 2016-17. Provisions relating to CIRP came into force on 1st December, 2016. The corporate processes commenced in the last quarter of the year. It typically takes 180 days for conclusion of a CIRP. Resultantly, no CIRP concluded in 2016-17. Hence, it is too early to assess the impact of the Code for the period under review. Paucity of data at this point in time also inhibits any quantitative assessment. However, presented below are some expectations about the likely impact of the coming into force of the Code, as also envisioned by the BLRC Report in terms of the stated objectives of the Code.

As stated in its long title, the Code has the following four foundational objectives:

(a) *Maximisation of value of assets*: The Code enables maximisation of value of the assets of the CD by requiring the creditors to make a collective endeavor to revive the failing CD and improve utilisation of the resources at its disposal. If revival is not possible, the Code releases resources for other efficient uses. In either case, the value of the assets of the CD improves. It prevents depletion of value by enabling early initiation of process for revival and expeditious conclusion of process. In fact, the CD would be tempted to initiate process early with a view to minimise potential loss to creditors. It makes provision for information symmetry which would enable discovery of best value.

The Code mandates the RP and the liquidator to determine if the CD has been subject to irregular transactions, such as preferential transactions, fraudulent transactions, undervalued transactions, and extortionate transactions in the past, and if so, he is obliged to file an application with the AA for appropriate directions. This exercise will not only recover lost value for the stakeholders, but also deter the management from indulging in such transactions. This will cleanse the corporate governance and improve confidence of stakeholders.

(b) *Promoting entrepreneurship:* A firm fails to deliver as planned in the face of C&I and consequently, defaults in payment of its obligations. The Code reduces the incidence of failure, by incentivising prevention of failure, rescuing failing businesses, wherever possible, and releasing resources from failed businesses, wherever required. It enables an honest entrepreneur to make an orderly exit if his enterprise fails despite his best of intentions and efforts. Thus, the possibility of failure does not hold up an entrepreneur from commencing a business or implementing a new idea.

(c) *Enhances availability of credit*: Corporate finance is presently skewed, with very negligible corporate debt, non-bank loans, and unsecured loans. As explained in Section B, there is an acute TBS syndrome. Through provisions for resolution and liquidation, the Code enables creditors to recover their dues from either future earnings, post-resolution or sale of liquidation assets. It incentivises creditors - secured and unsecured, bank and non-bank, financial and operational, foreign and domestic - to extend credit at lower costs, particularly when they have rights under the Code to initiate CIRP in case the CD defaults.

Further, the rising NPAs create a vicious cycle where entrepreneurs with feasible projects are priced-out and lenders end up financing the riskier ventures who are willing to borrow at such high costs. Through provisions for resolution and liquidation, it is expected that the Code would enable lenders to recover funds from either future earnings, post-resolution or sale of liquidation assets. The Code would also help address the problem of rising NPAs and enable optimum utilization of resources.

(d) *Balancing interests of all stakeholders:* The stakeholders have different rights on the assets of the CD under contracts or special enactments. Government was at the top of the waterfall in case of liquidation in the erstwhile regime. The Code alters and resets the priority of stakeholders in the waterfall in case of liquidation. Since one gets his dues after a stakeholder with higher priority is paid his dues fully, the Code discourages liquidation and facilitates resolution. It prescribes certain minimum protection for certain stakeholders at the stage of CIRP. It requires the resolution of insolvency within a framework of fairness and equity.

Beyond the explicit statutory objectives, the Code rescues failing CDs and thereby rescues employment and income. In the absence of CIRP, the CD would have suffered a natural death. The Code also promotes C&I and thereby promotes growth to the extent growth is dependent on C&I.

An important impact of the Code is likely to be behavioural changes in both creditors and debtors. For example, it is expected that the promoters and managers would be much more careful to repay their debt on time for fear of losing control over the firm. It is envisaged that the working capital management of firms should improve. Currently, trade credit is typically for 30 days, but many firms do not repay their suppliers in time, because they are confident that the suppliers have no recourse but to continue supplying them. Since the Code makes it easier for OCs to move an insolvency petition, firms would be incentivised to improve their working capital management processes. This would lead to shorter working capital cycles and more efficient supply chains.

In another example, it is expected that more CIRPs are likely to be resolved through private negotiations, which are considered to be more efficient and reach better outcomes when 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 done under the procedures under the Code. Efficient resolution plans, which are privately negotiated, could involve various schemes under the Companies Act, 2013 (sections 230-234), which are already available to the stressed firm. The Code presents the threat of the worst-case scenario triggering a behavioural change among debtors and creditors.

It is also expected that shareholders of many stressed firms may prefer to sell off the business at an early stage of distress, when they know how things are going to work out under the Code. While this may be a completely non-IBC transaction, e.g., promoters selling to a buyout private equity, but it is envisaged that the Code would be shaping the incentives of promoters. In such an environment, it is expected that stressed firms would like to negotiate with lenders in a more workable manner towards a restructuring. These gains are intangible but are among the desired outcomes of the insolvency reform.

In addition to the above, it is expected that the Code would enhance recoveries from failed businesses. Till the time Code was enacted, the 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 being able to recover only 20% of the value of debt on Net Present Value basis. From the viewpoint of creditors, a good realisation can be obtained if the firm is sold as a going concern. Thus, in cases of delays inducing liquidation, there is value destruction. Even in case a firm is going in for liquidation, the realisation is lower when there are delays. Such delays, thus, cause value destruction. With the Code envisaging a time bound manner of resolution of insolvency, there is likely to be enhanced recoveries for all the stakeholders in the insolvent firm.

Summing up, an effective insolvency regime aims to ensure the safety of viable businesses and quick exit of non-viable businesses from the market, creating space for new players by allowing the redeployment of assets to more productive firms. Achieving these dual goals, requires the law to balance interests of creditors and debtors, maximise recovery and provide a safety net for financially distressed debtors. As implementation of the Code starts bearing results in the near future, all the results enumerated above are likely to be visible.

G PERFORMANCE OF THE BOARD

IBBI is one of the key pillars of the ecosystem responsible for implementation of the Code. It is a unique regulator which regulates market processes as well as professionals. It has a host of statutory duties and functions.

The details of quasi-legislative functions, executive functions and quasi-judicial functions performed by the Board has been presented in Section D of the Report.

One of the most important functions of the Board is to provide regulatory framework for the insolvency and resolution processes and service providers in the insolvency ecosystem. To this effect, the Board put in place important regulations as mentioned in Table 6.

The details of registration and regulation of service providers have been presented in Section D of this Report.

Advocacy and Stakeholder Consultations

Considering that the Code was a paradigm shift from the erstwhile legal framework for insolvency and bankruptcy regime in the country, it was important to engage with the stakeholders to make them aware of the change in the offing and also take their inputs for an inclusive process of rulemaking. As detailed in Section C.3 of the Report, IBBI engaged proactively with the stakeholders in various formats, namely, conferences, seminars, roundtables, workshops, etc and in various capacities, namely, faculty, panellist, speaker, guest of honour, chief guest, etc.

Promoting Market Institutions

The Code envisaged creation of a whole new set of market intermediaries to deal with the insolvency and bankruptcy regime under the Code, namely, IPs, IPAs and IUs. The Code was notified on 28th May, 2016 and its provisions, as regards corporates, were enforced with effect from 1st December, 2016. To commence processes, IPs and IPAs were needed. There was a need for innovative, immediate solutions for the Code to be effective immediately. Taking proactive action, the Board put in place regulations for registration of service providers, namely, IPs and IPAs by 1st December, 2016. The Board allowed the statutorily regulated professionals, namely, Chartered Accountants, Company Secretaries, Cost Accountants, and Advocates with 15 years of practice to register as IPs, but their registration was valid for only six months. Thus, a cadre of 977 IPs was created instantly to provide services as IPs. Further, the IPAs were registered by the Board as well.

Limited Insolvency Examination

Given the critical need to put in place a cadre of IPs to be able to commence the CIRP under the Code, along with not compromising on quality, the Board commenced the Limited Insolvency Examination in shortest possible time. NISM was authorised by the Board to administer the Examination, which commenced on 31st December, 2016. The Examination Committee, set up by IBBI, has since been augmenting the question bank on a regular basis. IBBI leveraged technology in the interest of efficiency and accuracy and conducted the Examination online on daily basis from several locations.

Collection of Data and Dissemination

IBBI commenced publication of all information related to regulations, service providers and examination on its official website. The Quarterly Newsletter of IBBI captured information on various processes under the Code such as number of CIRPs admitted and the number of IPs, IPAs and IPEs recognized. Moreover, the Newsletter presented a brief of select decisions of judicial and quasi-judicial bodies. IBBI maintains and updates a comprehensive database on the CIRP process, IPs, IPAs, IPEs and other relevant stakeholders under the Code.

H PERFORMANCE OF THE GOVERNING BOARD

It is a standard practice to distinguish between the organisation - an office, employees, assets and other resources - and its governing arrangement. The GB is charged with steering the organisation, establishing its objectives, and holding the organisation accountable for delivering on those objectives. In sync with this approach, the IBBI (Procedure for Governing Board Meetings) Regulations, 2017 (Board Regulations), notified on 30th January, 2017, earmark specific responsibilities of the GB and specifies the manner of transacting business.

The matters to be dealt by the GB include:

(a) Regulations to be made under the Code;

(b) Annual Accounts of the Board;

(c) Annual Budget of the Board;

(d) Annual Report of the Board;

(e) Delegation of Powers;

(f) Operations manuals for various activities;

(g) Timelines for disposal of various activities;

(h) Expenditures above Rs.5 crore;

(i) Location of office premises;

(j) Number and categories of employees and their compensation; and

(k) Accommodation for Chairperson and WTMs.

Procedure for Meetings: The Board Regulations require that there shall be at least four meetings of the GB in a year and at least one meeting in each quarter. The regulations lay down the procedure for convening the meetings, details of notice to be given to members, quorum and voting procedure in the meeting. The regulations also facilitate a member attending the meeting through video conferencing and transaction of a business by a resolution passed by circulation of an agenda to the members.

Charter of Conduct for Members of the Board: The Board Regulations specify a Charter of Conduct for Members of the Board. This Charter aims to ensure that the GB conducts in a manner that does not compromise its ability to accomplish its mandate or undermine the public confidence in the ability of Member(s) to discharge his responsibilities.

Meetings of the Governing Board

The GB had its first meeting on 7th October, 2016. Minister of State for Finance and Corporate Affairs, Mr. Arjun Ram Meghwal, addressed the Members at the first meeting of the GB and shared his thoughts about the implementation of the Code and role of IBBI therein.

Minister of State for Finance and Corporate Affairs, Mr. Arjun Ram Meghwal, addressing the 1st Board meeting of the GB on 7th October, 2016

Thereafter, the GB met four times during 2016-17. The details of attendance at meetings of the GB are provided in Table 17.

Table 17: Attendance in Board Meetings

Sl. No.	Name	Position	No. of Board Meetings in 2016-17	
			Held when in office	Attended
1	Dr. M. S. Sahoo	Chairperson	4	4
2	Mr. Ajay Tyagi	*Ex-officio* Member	3	2
3	Mr. Amardeep S. Bhatia	*Ex-officio* Member	4	4
4	Mr. G. S. Yadav	*Ex-officio* Member	4	3
5	Mr. Unnikrishnan A.	*Ex-officio* Member	4	4
6	Ms. Suman Saxena	WTM	1	1
7	Dr. Navrang Saini	WTM	0	0

Since the period under review was the formative period, when IBBI had just been set up, the initial meetings of the GB focused on putting in place the key regulations to be able to commence CIRP and enrolment of IPs to facilitate the same. The GB also considered regulations pertaining to liquidation of CDs. Administrative issues such as organisational structure of the Board, office premises, recruitment of Research Associates and Consultants were also important aspects which were considered and decided upon by the GB.

Looking Ahead

Promotion of a conducive and robust ecosystem to support the implementation of the insolvency and bankruptcy regime is the mandate of the Board under the Code. In the coming year, IBBI will consolidate the progress made in 2016-17 while facilitating implementation of the provisions in the Code which are yet to be notified. These would include:

(a) The next year 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, within the confines of the Code, and build the capacity of the IPs and other constituents to take the insolvency reforms to the next level.

(b) The next year would see implementation of the regulations relating to voluntary liquidation and IUs, which were notified on 31st March, 2017. Some provisions of the Code, which are yet to be notified, are likely be notified in the next year. For example, the work has commenced to bring into effect the provisions relating to fast track insolvency procedures which enable Micro, Small and Medium Enterprises (MSMEs) to derive benefits from the new insolvency regime. IBBI will facilitate and develop support structure for operationalisation of these provisions.

(c) IBBI 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 could be made available to crowd source the ideas from stakeholders.

(d) The objective of the Code is resolution of insolvency for value maximisation. This requires a framework for objective determination of value and comparison of different options in terms of their value. IBBI will endeavour to promote an accountable and competent valuation profession for use in the insolvency regime.

(e) 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 organise and participate in advocacy events.

(f) The realisation of noble objectives of the Code requires the service providers to have the highest integrity. In addition to preventing persons, who are not fit and proper, to enter insolvency ecosystem, IBBI will continue to monitor conduct of every service provider and remove a service provider, who renders himself not fit and proper to continue as a service provider.

I FINANCIAL PERFORMANCE OF THE BOARD

The Code requires 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 IBBI shall be audited by the C&AG. Accordingly, 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 IBBI for financial year 2016-17. A summary of financial performance of IBBI is presented in Table 18.

Table 18: Income and Expenditure Statement, 2016-17 **(Figures in Rs. lakh)**

Income	2016-17*	Expenditure (out of)	2016-17*
Grants-in-Aid-Salaries	275.00	Grants-in-Aid-Salaries	66.99
Grants-in-Aid-Capital	192.86	Grants-in-Aid-Capital	-
Grants-in- Aid- General	203.28	Grants-in- Aid- General	49.15
Spent by MCA for IBBI	136.47	Spent by MCA on behalf for IBBI	136.47
Internal generated Revenue	89.73		
Total	**897.34**	**Total**	**252.61**

* For the period October, 2016-March, 2017

IBBI received a total grant of Rs.807.61 lakh, including Rs.136.47 lakh spent directly by MCA on gazette notifications, in 2016-17 from Government. It earned a fee of Rs.89.73 lakh from service providers. It spent a total of Rs. 252.61 lakh, including Rs.136.47 lakh spent directly by MCA on Gazette Notifications, in 2016-17.

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 a low income and high expenses in the initial years, a regulator generally depends on exogenous contribution. IBBI has been relying on Government for grants in 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 to be funded 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, the contours of the insolvency and bankruptcy intermediation industry would be visible and then IBBI should be able to enforce a fee upon all IPs, IPAs and IUs that will pay for its expenses.

J ORGANISATIONAL MATTERS

ESTABLISHMENT

IBBI was established on 1st October, 2016, vide notification dated 1st October, 2016 **(Inscript 3)** under section 188 of the Code. The said notification specified that its head office shall be at New Delhi.

Inscript 3: Establishment of IBBI

रजिस्ट्री सं० डी० एल०-33004/99 REGD. NO. D. L.-33004/99

भारत का राजपत्र
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कारपोरेट कार्य मंत्रालय

अधिसूचना

नई दिल्ली, 1 अक्तूबर, 2016

का.आ. 3110(अ).– केन्द्रीय सरकार, दिवाला और शोधन अक्षमता संहिता, 2016 (2016 का 31) की धारा 188 की उपधारा (1) और उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तारीख 01 अक्तूबर, 2016 को भारतीय दिवाला और शोधन अक्षमता बोर्ड की स्थापना की तारीख के रूप में नियत करती है। भारतीय दिवाला और शोधन अक्षमता बोर्ड का मुख्यालय नई दिल्ली में होगा।

[फा.सं. 30/2/2016-इंसोल्वेंसी अनुभाग]

अमरदीप सिंह भाटिया, संयुक्त सचिव

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 1st October, 2016

S.O. 3110(E).-In exercise of the powers conferred by sub-section (1) and (3) of section 188 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints 01st October, 2016 as the date of establishment of Insolvency and Bankruptcy Board of India. The head office of the Insolvency and Bankruptcy Board of India shall be at New Delhi.

[F. No. 30/2/2016-Insolvency Section]

AMARDEEP SINGH BHATIA, Jt. Secy.

4683 GI/2016 (1)

IBBI is a key pillar of the ecosystem responsible for implementation of the Code having the following broad responsibilities:
(a) Registration and regulation of service providers, including IPs, IPAs and IUs;
(b) Regulation of processes relating to Corporate Insolvency, Corporate Liquidation, Individual Insolvency, and Individual Bankruptcy;
(c) Building capacity of the service providers and promoting best practices relating to processes;
(d) Oversight of processes and monitoring performance of service providers, through inspections, investigations and adjudication; and
(e) Maintaining records and information and conducting research.

GOVERNING BOARD

In terms of section 189 of the Code, the GB consists of the following members:
(a) a Chairperson;
(b) three members from amongst the officers of Government representing the Ministry of Finance, the Ministry of Corporate Affairs and Ministry of Law and Justice, *ex-officio;*
(c) one member nominated by the Reserve Bank of India, *ex-officio*; and
(d) five other members nominated by Government of whom at least three are whole-time members.

Dr. M. S. Sahoo was appointed, vide notification dated 1st October, 2016, as Chairperson of the Board under section 189 of the Code. He was administered oath of office by Mr. Arun Jaitley, Union Minister of Finance and Corporate Affairs, on the same day.

Union Finance Minister administering oath of office to Dr. M. S. Sahoo, as Chairperson, IBBI

The following *ex-officio* members were appointed to the Board vide notification dated 1st October, 2016:
(a) Mr. Ajay Tyagi, Additional Secretary, Department of Economic Affairs, Ministry of Finance ;
(b) Mr. Amardeep S. Bhatia, Joint Secretary, Ministry of Corporate Affairs
(c) Mr. G. S. Yadav, Joint Secretary & Legal Adviser, Department of Legal Affairs, Ministry of Law and Justice; and
(d) Mr. Unnikrishnan A., Legal Adviser, Legal Department, Reserve Bank of India.
Subsequently, two WTMs were appointed to the Board. The details of the members appointed to the Board during 2016-17 are presented in Table 19.

Table 19: Appointment of Members of the Governing Board

Sl. No.	Name	Position at the time of Appointment	Appointed as	Representing	Date of Appointment
1	Dr. M. S. Sahoo	Member, CCI	Chairperson	NA	01.10.16
2	Mr. Ajay Tyagi	Additional Secretary, MoF	*Ex-officio* Member	MoF	01.10.16
3	Mr. Amardeep S. Bhatia	Joint Secretary, MCA	*Ex-officio* Member	MCA	01.10.16
4	Mr. G. S. Yadav	Joint Secretary, ML&J	*Ex-officio* Member	ML&J	01.10.16
5	Mr. Unnikrishnan A.	Legal Adviser, RBI	*Ex-officio* Member	RBI	01.10.16
6	Ms. Suman Saxena	Former Deputy C&AG	WTM	NA	22.02.17
7	Dr. Navrang Saini	Director General, MCA	WTM	NA	31.03.17

ORGANISATIONAL STRUCTURE

As detailed in Section B, the Government had constituted a WG on 'Building the Insolvency and Bankruptcy Board of India' to *inter alia* recommend the organisational structure and design of IBBI, keeping in view the powers and functions to be performed by it under sections 196 and 197 of the Code as well as structures of other regulators like SEBI. The WG considered the following principles to design the organisational structure:

(a) *Functional separation*: The quasi-legislative, quasi-executive and quasi-judicial functions must be separately organised.

(b) *Functional specialisation*: Functional groups within IBBI must be structured in a way that facilitates the development of human capital over time.

(c) *Modern office*: Modern office infrastructure including office space, workflow automation with a paperless office, etc. should be provided to enable high productivity.

(d) *High standards of accountability and transparency*: The organisational structure should be conducive to clarity of purpose, measurement of performance and accountability to the GB and the public.

IBBI combines the role of a regulator of a profession as well as that of processes under the Code. As a regulator, it is a mini State and carries on quasi-legislative, executive and quasi-judicial functions simultaneously. Further, given that both the profession and processes are evolving, IBBI would have considerable developmental responsibilities in its initial years, in addition to regulation. Keeping this in view, and on consideration of the recommendations of the WG, IBBI has structured itself into three separate wings, namely, Research and Regulation Wing, Registration and Monitoring Wing and Administrative Law Wing **(Figure 2)** to avoid intra-institutional bargaining and each of these wings is headed by a separate WTM **(Box 7)**.

DELEGATION OF POWERS

The Board Regulations have reserved certain matters to be dealt with by the GB only. Section 191 of the Code enables the Chairperson to exercise powers of general superintendence and direction of the affairs of the Board and such other powers as may be delegated to him by the Board. Section 230 of the Code enables the Board to delegate to any member or officer of the Board, such of its powers and functions under the Code, except the power to make regulations under section 240 of the Code, subject to such conditions, if any, as may be specified in the order of delegation.

The Board issued the IBBI (Delegation of Powers and Functions) Order, 2017 on 24th January, 2017, delegating various powers and functions to WTMs and officers of the Board. Such delegations are in addition to, and not in derogation of delegation of powers and functions under the Code or rules or regulations made thereunder. The powers and functions delegated to any WTM or officer of the Board may be exercised by an officer or authority higher in grade or position to him in reporting hierarchy.

Box 7 Regulatory State

The emergence of regulators to share governance with the government is a reality; governance through regulators constitutes one of the most significant institutional reforms in recent decades. The regulators in the areas of securities market, insurance, electricity, telecom, competition, petroleum and gas, airport, etc. are now well established and in many other areas are coming up in response to need of the market economy.

A regulator is an institution with many unique features. It sits in the middle of a hierarchy[20] of agencies, government and market. It shares a principal-agent relationship with the government. It carries out governance on behalf of the government in a pre-defined framework. It resembles the government in terms of powers and responsibilities. It has responsibilities - consumer protection, development and regulation - similar to those discharged by the government. It has powers - legislative, executive and judicial - similar to those of the government.

There are significant advantages of governance through a regulator. It generally does not share the 'social' obligations of the government; nor is it expected to be affected by the pressures of 'interest' groups. It provides a level playing field to all participants. It builds expertise matching the complexities of the tasks assigned to it and evolves processes to enforce authority rapidly and proactively. It is better placed than the government to take unpleasant, but necessary decisions.

There are significant concerns too. The fusion of legislative, executive and judicial powers in one entity carries the tension of potential misuse. It suffers from democratic deficit as it is not directly accountable to people or their representatives. Government continues to remain accountable for the governance carried out through the regulator, which presents a classic example of the principal-agent problem. In case of exigencies, government is called upon to explain and carry out rescue operations. The challenge is to minimise the trade-off between the advantages of governance through the regulator and the apparent threat to democratic accountability, through state-of-the-art design[21] of regulator with appropriate arrangements for governance, independence and accountability matching its mandate.

The thinking about and design of regulators have evolved considerably in the last three decades. The Insolvency and Bankruptcy Code, 2016 captures some of the contemporary thinking on design of regulators. For example, it provides for Part-Time Members on the GB, advisory and executive committees and public consultations before notification of any regulations which strengthens IBBI's democratic legitimacy.

Three considerations are particularly important in design of a regulator. Firstly, there is a broad separation of powers among the agencies associated with law - the legislature makes the law; the executive and the judiciary respectively administer and enforce it. This provides a system of checks and balances for one another to prevent misuse of power. Highlighting the concern, the Supreme Court observed: "*Integration of power by vesting legislative, executive and judicial powers in the same body (SEBI), in future, may raise a several public law concerns as the principle of control of one body over the other was the central theme underlying the doctrine of separation of powers.*"[22] A regulator follows the principle of separation of powers for discharge of quasi-legislative, executive and quasi-judicial functions to serve as mutual checks and balances.

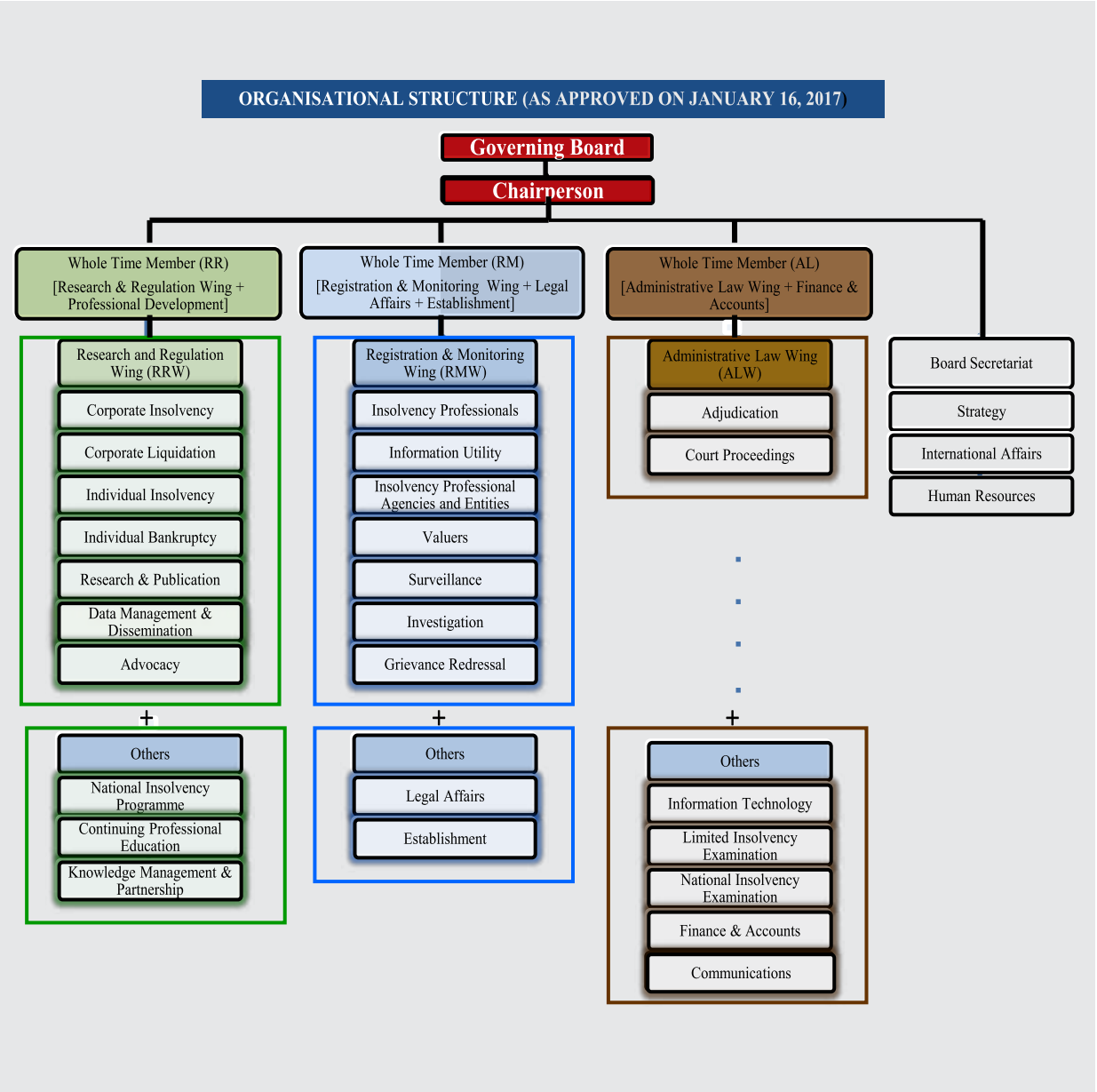
Secondly, each of the functions is discharged in a manner that considers the interests of stakeholders and maintains absolute integrity of the process. Given that Regulations have the force of law, quasi-legislative function is discharged with due care and diligence. Highlighting the importance of the subordinate legislation, the Supreme Court observed: "*We find that, subject to certain well defined exceptions, it would be a healthy functioning of our democracy if all subordinate legislation were to be "transparent" ... we would exhort Parliament to take up this issue and frame a legislation along the lines of the U.S. Administrative Procedure Act (with certain well defined exceptions) by which all subordinate legislation is subject to a transparent process by which due consultations with all stakeholders are held, and the rule or regulation making power is exercised after due consideration of all stakeholders' submissions, together with an explanatory memorandum which broadly takes into account what they have said and the reasons for agreeing or disagreeing with them.*"[23] Similarly, quasi-judical functions are discharged by a reasoned order, in a time bound manner, after following the principles of natural justice.

Thirdly, a regulator needs to have independence to be held accountable on its mandate. It requires resources and powers matching its responsibilities and must discharge responsibilities without fear or favour. However, in a democratic set up, every agency is accountable to ensure that it does not drift away from its mandate. The accountability arrangements usually provide for periodic evaluations of performance by the regulator itself and by external agencies and a series of continuous and event specific disclosures and reports in the interest of transparency.

The WG on 'Building the Insolvency and Bankruptcy Board of India', considering the role of IBBI under the Code and the state-of-the-art knowledge required for its efficient functioning, recommended a regulatory design, and processes and governance arrangements to induce high performance. The recommendation has been broadly accepted and implemented.

[20] Braun, Dietmar and Fabrizio Gilardi (2006), "Introduction" in Dietmar Braun and Fabrizio Gilardi (eds) Delegation in Contemporary Democracies, Psychology Press.
[21] A guide is available in the Report of the Financial Sector Legislative Reforms Commission, March, 2013, Government of India.
[22] Judgement dated 25th August, 2004 of the Supreme Court of India in the matter of Clariant International & Anr. Vs. SEBI [Appeal (Civil) 3183 of 2003].
[23] Judgement dated 11th May, 2016 in the matter of Cellular Operators Association of India Vs. Telecom Regulatory Authority of India.

Figure 2: Oraganisational Structure



ADVISORY COMMITTEES

ACs play an important role in the initial days of a regulator when it does not have a strong repository of knowledge or much of regulatory capacity. They continue to serve a useful purpose over time as well as new services, new products, new initiatives, new technologies continue to emerge and change the regulatory landscape, in addition to bridging the democratic deficit. Section 197 of the Code enables the Board to constitute ACs for efficient discharge of its functions in the manner specified by regulations.

In view of the urgency, pending notification of Regulations, IBBI constituted two ACs on 18th October, 2016, to advise it on regulations related to service providers and corporate processes to enable commencement of corporate insolvency and resolution processes on 1st December, 2016, as under:

(a) Advisory Committee on Service Providers with Mr. T. V. Mohandas Pai (Chairman, Manipal Global Education) as Chairperson; and

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

The WG on 'Building the Insolvency and Bankruptcy Board of India' in its report in

December, 2016 suggested that IBBI be assisted by at least two ACs, one on corporate insolvency and the other on individual insolvency. The Board notified the IBBI (Advisory Committee) Regulations, 2017 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) Advisory Committee on Service Providers;

(b) Advisory Committee on Corporate Insolvency and Liquidation;

(c) Advisory Committee on Individual Insolvency and Bankruptcy; and

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

DISCIPLINARY COMMTTEE

The Code envisages Disciplinary Committee (DC) comprising WTMs of the Board only to consider and dispose of show cause notices. The Board constituted a DC comprising Dr. M. S. Sahoo, Chairperson, IBBI on 1st February, 2017, in the absence of any other WTM.

OFFICIAL LANGUAGE

IBBI has taken several measures for implementation of the official language to ensure compliance with the official language policy of the Government of India. This included notification of all ten sets of regulations made in 2016-17 in Hindi and English simultaneously. The employees are encouraged to use Hindi in their day to day office work.

HUMAN RESOURCES

Prior to the establishment of IBBI, MCA had obtained a list of officers from various organisations to provide transit period staff on temporary secondment / deputation basis to support the establishment of IBBI. Pending a view on organisational structure, notification of Regulations relating to human resources and creation of posts at various levels, the Board recruited six officers during 2016-17 on secondment from the lists obtained by the MCA to meet immediate human resource needs.

In order to keep the organisation less hierarchical for quick decision making, while providing career progression to officers, the Board decided to have four levels in the hierarchy of officers, each level with two Grades, as presented in Table 20.

Table 20: Hierarchy of Officers in IBBI

Level	Type	Grade	Post
I	Junior Management	A	Assistant Manager
		B	Manager
II	Middle Management	C	Assistant General Manager
		D	Deputy General manager
III	Senior Management	E	General Manager
		F	Chief General Manager
IV	Top Management		Executive Director

The officers in Grade A / B (Level I) report to officers in Grade C / D (Level II), who report to officers in Grade E / F (Level III), who report to Executive Director. All officers in the same Grade have same designation irrespective of the Department / Division they work in or the responsibilities they discharge.

The Board decided to adopt pay and benefits as available to employees of SEBI, given that it is structured on the lines of SEBI and its employees do not have access to Government accommodation.

Research Associates

Pending notification of Regulations, the Board engaged seven Research Associates during 2016-17 from the panel of Competition Commission of India (CCI) on contract basis on the same terms on

which they were shortlisted for recruitment by CCI. It notified the IBBI (Engagement of Research Associates and Consultants) Regulations, 2017 on 30th January, 2017. These Regulations provide for five levels of Research Associates / Consultants in three disciplines, namely, Economics / Public Policy, Law and Business Management and their qualifications, experience, selection, remuneration, evaluation of performance, and terms and conditions of engagement. A Research Associate / Consultant is engaged on contractual basis for not less than six months and not more than two years. The Board decided to engage not more than 25 Research Associates / Consultants of all levels together at any time.

Recruitment

Table 21 presents the actual strength of employees vis-à-vis the approved strength as on 31st March, 2017.

Table 21: Employees of IBBI as on 31st March, 2017

Position	Approved Strength	Actual Strength	
		Number	Mode of Recruitment
Executive Director	3	0	NA
GM / CGM	10	1	Secondment
AGM / DGM	10	5	Secondment
Manager / AMs	20	0	NA
Research Associates & Consultants	25	7	Contractual
Assistant Section Officer	4	1	Deputation
Total	**72**	**14**	

Capacity Building

In its endeavour to enhance the capacity of its employees in the emerging discipline of insolvency and bankruptcy, IBBI deputed officers to several seminars and training programmes. It commenced a Distinguished Lecture Series, under which eminent persons are invited to share their thoughts on issues of interest to IBBI and interact with the employees of the Board.

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 from its inception. The key initiatives taken by IBBI 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.

Online Examinations: IBBI commenced an IT enabled Limited Insolvency Examination on 31st December, 2016. The Examination is delivered online on daily basis from several locations. The entire process, including registration, payment, enrolment, generation of question paper and evaluation, is automated.

Public Consultation: It has been the endeavour of IBBI to effectively engage stakeholders through a transparent and consultative process for making regulations. It puts out draft regulations on a structured electronic platform for receiving and processing of comments and suggestions.

PREMISES

Accepting an offer of the ICMAI, the MCA housed IBBI at CMA Bhawan, 3, Institutional Area, Lodi Road, New Delhi to start with. IBBI operated from CMA Bhawan for about six months. In the meantime, the MCA took on lease 7th Floor of Mayur Bhawan, Connaught Place, New Delhi from New Delhi Municipal Corporation to house IBBI and carried renovation of the same. On completion of renovation, the Minister of State for Finance and Corporate Affairs, Mr. Arjun Ram Meghwal, inaugurated the premises on 29th March, 2017 and IBBI shifted its operations from CMA Bhawan to Mayur Bhawan.

RIGHT TO INFORMATION

In the interest of transparency, IBBI makes various disclosures relating to regulations, circulars, and adjudications and details of service providers and the processes under the Code on its web site. It made the stipulated disclosures under section 4 of the Right to Information Act, 2005 (the Act). It designated Ms. Anita Kulshrestha, DGM as the Central Public Information Officer (CPIO) under section 2(h) of the Act for providing information to any citizen on an application made under the Act. The details of receipts and disposal of applications under the Act during 2016-17 is given in Table 22.

Table 22: Receipt and Disposal of RTI Applications, 2016-17

Sl. No.	Description	Number
1	Applications seeking information under the Act, received by the CPIO	2
2	Applications for which information has been provided by the CPIO	2
3	Applications pending with CPIO	0
4	First Appeals filed against the order of CPIO	0

Minister of State for Finance and Corporate Affairs, Mr. Arjun Ram Meghwal, inaugurating the premises of IBBI on 29th March, 2017.

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

7th Floor, Mayur Bhawan,
Shankar Market, Connaught Circus,
New Delhi -110001