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Insolvency and Bankruptcy News

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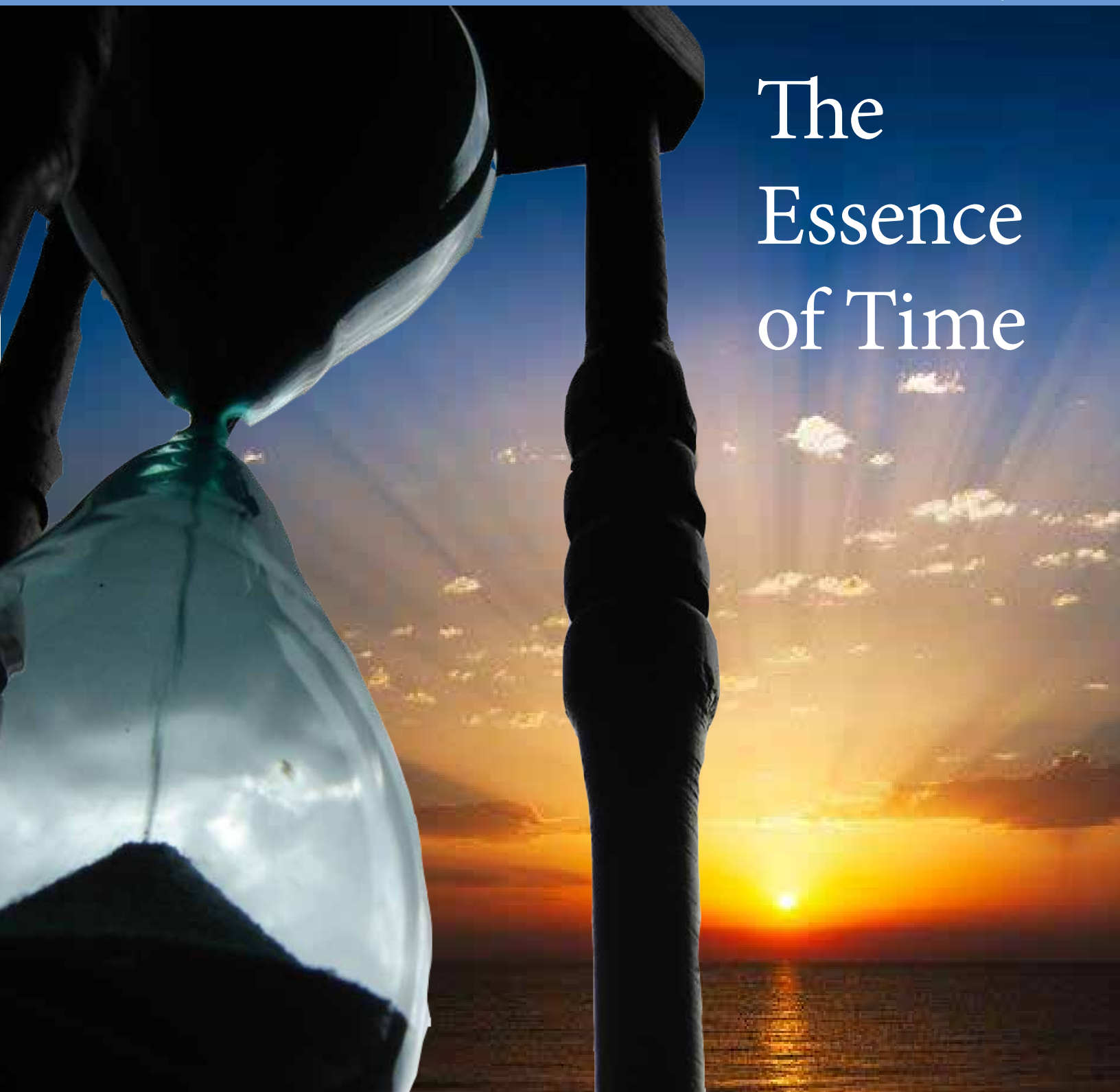

The Essence of Time

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◀ Hon'ble Minister of State for Finance and Corporate Affairs, Shri Arjun Ram Meghwal with guests at the inauguration of the premises of the IBBI on 29th March 2017.

180 Days for Resolution Process: Too Long or too Short?

Insolvency process needs to be completed fast to capture value and promote growth.

A firm may fail to deliver as planned for a variety of reasons. Most often it is due to competition and innovation where efficient firms drive out inefficient ones or new order drives out old one. It is also due to faulty design of the business model, inefficient execution, economic downturn, or in rare cases, *mala fide* design. Regardless of the reason, failure impacts the macro economy in multiple ways and, therefore, needs to be addressed expeditiously. If it cannot be addressed, the firm needs to exit the space with minimum cost and disruptions. The Insolvency and Bankruptcy Code, 2016 (Code) provides a mechanism to address honest failures and also the ultimate economic freedom, the freedom to exit, and thereby promotes inclusive growth. Undoubtedly, it constitutes a giant stride in economic reforms.

A failure usually manifests as default in repayment obligations, though there can be occasions when a firm may default without failure and vice versa. Default is a state of insolvency. The failure and consequent insolvency needs to be prevented. Where prevention is not possible, it needs to be resolved: (a) preferably within the firm as a going concern, as closure of the firm destroys organisational capital; (b) at the earliest, preferably at the very first default, to prevent it ballooning to un-resolvable proportions; (c) in a time bound manner as undue delay reduces organizational capital of the firm making resolution difficult; (d) by stakeholders who have a claim against the firm; and (e) in a calm environment when nobody disturbs the firm. Where resolution is neither possible nor desirable, the firm needs to exit seamlessly. The Code addresses all these – endeavours to prevent insolvency, provides a market determined and time bound mechanism for resolution of insolvency, wherever possible, along with facilitators for quick and effective resolution, and promotes ease of exit, wherever required.

The Code has laudable objectives. Its preamble states: "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 transactions 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 corporate insolvency resolution process (CIRP). It permits one time extension up to 90 days by the NCLT in deserving cases. However, insolvency resolutions of all corporate 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 corporate persons 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 transaction, some find it short while others find it long. In fact, it depends on the context such as persons carrying out the transaction and resources at their disposal, the facilitators available, and the complexity of the transaction. Further, a timeline that appears short to start with may prove long as time passes with emergence of supporting institutions, technologies and skills. Every transaction takes less time today than it was taking yesterday. For example, while a period of two months was short for transfer of securities at one time, one minute is long today after dematerialisation.

The timeline for CIRP needs to be seen from three perspectives. First, there is enough incentive for adherence to time line. 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. 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 insolvency professionals, who provide assistance throughout the process. There are provisions for calm period when nobody disturbs the corporate under CIRP and also interim finance. There would be information utilities which would expeditiously provide relevant information required for CIRP. Third, as number of CIRPs goes through, the processes would get streamlined, and standardized and often automated. There is a practice called pre-pack in some jurisdictions, where a stakeholder triggers 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 timeline. The corporate debtor was not in pink of its health when it defaulted and hence required resolution. During the CIRP period, an insolvency professional exercises the powers of the Board of Directors and manages the operations of the corporate as a going concern and there is uncertainty about ownership and control of the corporate, post resolution. If such a state of affairs continues too long, it is likely that organisational capital will diminish making resolution difficult. A very long CIRP period is likely to push the corporate towards liquidation, while reducing its liquidation value. Further, a longer CIRP period means a larger number of firms under 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.

If the hero in the novel *Around the world in 80 days* could circumnavigate planet Earth in 79 days when transport and communication facilities were rudimentary during the late 19th Century, 180 days is a long period now 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. We should strive to reach there sooner than later.

(Dr. M. S. Sahoo)

▲ Hon'ble Justice S. J. Mukhopadhaya, Chairperson, NCLAT, Hon'ble Justice M. M. Kumar, President, NCLT and Dr. M. S. Sahoo, Chairperson, IBBI at the NCLT colloquium on the IBC Procedure for the Hon'ble Members of NCLT and NCLAT held on 26th-27th March, 2017.

▲ The Insolvency Professionals at the first workshop organised by the IBBI on 27th March, 2017.

▲ Chairperson, Whole Time Members and Senior Officers of IBBI as on 31st March, 2017.

▲ Meeting of Advisory Committee on Service Providers held on 21st February, 2017.

IBBI Updates

Organisational Structure

The Insolvency and Bankruptcy Board of India (IBBI) is a unique regulator. It combines the role of a regulator of a profession as well as that of transactions. Unlike other professions where the regulator only regulates the profession, the IBBI also writes regulations for transactions undertaken by the regulated professionals. 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 transactions are evolving, the 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 Working Group set up by the Ministry of Corporate Affairs on organizational structure and design, the IBBI has structured itself into three separate wings, namely, Research and Regulation Wing, Registration and Monitoring Wing and Administrative Law Wing to avoid intra-institutional bargaining and each of these wings is headed by a separate Whole Time Member (WTM).

Governing Board

The IBBI consists of: (a) a Chairperson; (b) three ex-officio Members from amongst the officers of the Central Government, one each representing the Ministry of Finance, the Ministry of Corporate Affairs and the Ministry of Law, (c) one ex-officio Member nominated by the Reserve Bank of India, and (d) five other Members nominated by the Central Government, of whom at least three are Whole Time Members.

◀ Chairperson administering the oath of office to Smt. Suman Saxena as Whole Time Member on 22nd February, 2017.

Smt. Suman Saxena joined the IBBI as a WTM on 22nd February, 2017. She served as a Member of the Indian Audit and Accounts Service (IA&AS) for 36 years. Her last assignment was as Deputy Comptroller and Auditor General, where she oversaw three important sectors, namely, Defence, Communications and Railways. She has earlier headed the National Academy of Audit and Accounts, Shimla. She holds an M. Phil in Social Sciences.

Smt. Saxena has been designated as WTM (Research and Regulation). Her responsibilities include Corporate Insolvency, Corporate Liquidation, Individual Insolvency, Individual Bankruptcy, Research and Publications, Data Management and Dissemination, and Advocacy, in addition to National Insolvency Programme, Continuing Professional Programme, and Knowledge Management and Partnership.

◀ Chairperson administering the oath of office to Dr. Navrang Saini as Whole Time Member on 31st March, 2017.

Dr. Navrang Saini joined the IBBI as a WTM on 31st March, 2017. He has served the Ministry of Corporate Affairs in various capacities as a Member of the Indian Corporate Law Service and played a key role in implementation of MCA 21. His last assignment was as Director General, Ministry of Corporate Affairs. He also served as a Commissioned Officer in the Territorial Army from July, 1985 to March, 2011 and superannuated as Lt. Colonel. He is a Doctor of Philosophy and has Post-graduation degrees in Management and Law. He is also a qualified Company Secretary.

Dr. Saini has been designated as WTM (Registration and Monitoring). His responsibilities include Insolvency Professionals, Information Utilities, Insolvency Professional Agencies & Entities, Valuers, Surveillance, Investigation and Grievance Redressal, in addition to Legal Affairs and Establishment.

Shri Ajay Tyagi, an ex-officio Member of the IBBI and Additional Secretary, Ministry of Finance, was appointed as Chairman of the Securities and Exchange Board of India. Consequently he ceased to be a Member of the IBBI.

Office Premises

The IBBI was earlier operating from the premises of the Institute of Cost Accountants of India at CMA Bhawan, Lodhi Road, New Delhi. It moved to 7th Floor, Mayur Bhawan, Shankar Market, Connaught Place, New Delhi that was made available by the Ministry of Corporate Affairs. Hon'ble Minister of State for Finance and Corporate Affairs, Shri Arjun Ram Meghwal inaugurated this premises on March 29, 2017.

Speaking on the occasion, Shri Meghwal stated that India has the capability of attaining global leadership and Government has been building the right kind of institutions and undertaking appropriate reforms towards this end. The Insolvency and Bankruptcy Code, 2016 is a key reform in this direction that will facilitate ease of doing business and promote economic growth. He stated that Government accords the highest priority to this reform while appreciating the progress made so far to implement this. He advised that this reform should be suitably disseminated at international fora. He emphasised that a regulator should guide and steer the market forces in the right direction, and not be intrusive.

Notification

The Central Government, vide Notification S.O. 1005(E) dated 30th March, 2017 appointed April 1, 2017 as the date on which certain provisions of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) shall come into force. These provisions relate to Voluntary Liquidation (Section 59), Information Utilities [Section 209-215 and Section 216(1)] and Agreements with Foreign Countries (Section 234-235).

Regulations

The IBBI issued five regulations as under during the quarter:

a. The IBBI (Information Utilities) Regulations, 2017
b. The IBBI (Voluntary Liquidation Process) Regulations, 2017
c. The IBBI (Procedure for Governing Board Meetings) Regulations, 2017
d. The IBBI (Advisory Committee) Regulations, 2017, and
e. The IBBI (Engagement of Research Associates and Consultants) Regulations, 2017.

The IBBI (Information Utilities) Regulations, 2017: These regulations provide for a framework for registration and regulation of information utilities (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 the IBBI to lay down Technical Standards, through guidelines, for the performance of core services and other services by IUs.

The IBBI (Voluntary Liquidation Process) Regulations, 2017: These regulations provide for the process from initiation of voluntary liquidation of a corporate person - companies, limited liability partnerships and any other persons incorporated with limited liability - till its dissolution. 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. 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.

Corporate Insolvency Resolution Process

Applications for CIRP are filed before the National Company Law Tribunal (NCLT). This section presents details as obtained from the web site of NCLT from time to time. 157 applications (64 before the Mumbai Bench, 36 before the Delhi Bench, 14 before the Kolkata Bench and 43 before other Benches) were filed by 31st March, 2017. Of these, 30 - five filed by operational creditors (OCs), seven by financial creditors (FCs) and 18 by corporate debtors (CDs) - were admitted. The default underlying the admitted applications ranges from a few lakh of rupees to a few thousand crore of rupees. The details are presented in Table A. 19 applications were either rejected or withdrawn. The remaining are under process.

Table A: CIRP Applications admitted during January - March, 2017

Sl. No.	Date of Admission	Application by	Name of the Corporate Debtor	Underlying Default (Rs. lakh)
1	17-01-2017	FC	Innoventive Industries Ltd.	10192
2	18-01-2017	CD	UB Engineering Ltd.	11680
3	18-01-2017	CD	Nicco Corporation Ltd.	40500
4	19-01-2017	FC	Bhupen Electronic Ltd.	482
5	25-01-2017	CD	Synergies-Dooray Automotive Ltd.	74133
6	25-01-2017	CD	Rave Scans Pvt. Ltd.	1366
7	30-01-2017	FC	Sree Metaliks Ltd.	10827
8	10-02-2017	CD	VNR Infrastructures Ltd.	110278
9	10-02-2017	CD	Kamineni Steel & Power India Pvt Ltd.	140501
10	14-02-2017	CD	Hind Motors Ltd.	628
11	16-02-2017	CD	Keshav Sponge and Energy Pvt. Ltd.	8548
12	17-02 -2017	FC	Starlog Enterprises Ltd.	2778
13	17-02-2017	OC	Midas Touch Export Pvt. Ltd.	15
14	20-02-2017	CD	Hind Motors Mohali Pvt. Ltd.	309
15	23-02-2017	FC	Raipur Power and Steel Ltd. & Ors.	1737
16	24-02-2017	CD	Chhaparia Industries Pvt. Ltd.	3835
17	24-02-2017	OC	Unimark Remedies Ltd.	61
18	27-02-2017	OC	REI Agro Ltd.	10
19	02-03-2017	CD	Shree Rajeshwar Weaving Mills Pvt. Ltd.	1583
20	03-03-2017	CD	VNR Infra Metal Pvt. Ltd.	8833
21	06-03-2017	OC	MCL Global Steel Pvt. Ltd.	911
22	08-03-2017	CD	Facor Steel Ltd.	3458
23	09-03-2017	CD	Gupta Coal India Pvt. Ltd.	258007
24	15-03-2017	FC	Kadevi Industries Ltd.	17110
25	16-03-2017	CD	Recorders and Medicare Systems Pvt. Ltd.	10109
26	17-03-2017	CD	JEKPL Private Ltd.	10446
27	17-03-2017	CD	JODPL Private Ltd.	133250
28	22-03-2017	CD	Blossoms Oils & Fats Ltd.	31828
29	29-03-2017	OC	Pooja Tex- Prints Pvt. Ltd.	14
30	30-03-2017	FC	MBL Infrastructures Ltd.	727

NB: FC: Financial Creditor, OC: Operational Creditor, CD: Corporate Debtor.

Orders

This section presents a brief of select decisions of judicial and quasi-judicial bodies during the quarter January-March 2017.

High Courts

Innoventive 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 Innoventive Industries Limited was admitted by NCLT on 17th January, 2017. The petitioner, aggrieved by the admission, filed a writ petition before the Hon'ble High Court of Bombay challenging the vires of the Code and seeking 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 Hon'ble High Court observed that 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 for stay the operation of the appointment of the IRP as no prejudice would be caused to the petitioner.

NCLAT

I. Sree Metaliks Ltd. Vs. Srei Equipment Finance Ltd. (Company Appeals (AT) (Insolvency) No.3 of 2017

Vide order dated 30th January, 2017, the NCLT admitted an application filed by FC, namely, Srei Equipment Finance Ltd. under section 7 of the Code and appointed the insolvency resolution professional (IRP). The Appellant, aggrieved by the appointment of the particular IRP, filed an appeal before the NCLAT. On submission of the Respondent that the IRP would step down, the NCLAT, vide its order dated 21st February, 2017, disposed of the appeal.

II. Raipur Power & Steel Ltd. & Ors Vs. Tomorrow Sales Agency Pvt. Ltd. (Company Appeals (AT) (Insolvency) No.4 of 2017

Vide order dated 23rd February, 2017, the NCLT admitted an application filed by a FC, namely, Tomorrow Sales Agency Pvt. Ltd. under section 7 of the Code and appointed the insolvency resolution professional (IRP). The Appellant filed an appeal before the NCLAT, which disposed it of, vide its order dated 6th March, 2017, with the observation: *"… as the Appellant has paid the full and final amount in favour of the respondent-financial creditor (M/s. Tomorrow Sales Agency Pvt. Ltd.), this court is not inclined to decide any issue at this stage nor inclined to pass any further order in view of the assurance given by the appellant that it will clear all dues, if any, payable to any financial creditor or operational creditor".* It further observed: *"If the Tribunal, on the basis of records and the report as may be submitted by the 'interim Resolution Professional', comes to a conclusion that the Appellant has paid all the dues to financial creditor(s) and operational creditor(s), will close the proceeding and release the appellant company from the rigors of law and allow the appellant company to function independently through its Board of Directors*."

NCLT

I. Annapurna Infrastructure Pvt. Ltd. & Ors Vs. Soril Infra Resources Ltd. [C.P. No. (IB).22(PB)/2017]

The OCs, Annapurna Infrastructure Pvt. Ltd. and others filed an application under section 9 of the Code to initiate CIRP against the CD, Soril Infra Resources Ltd. Vide order dated 24th March, 2017, the NCLT dismissed the application with the cost of Rs.1,00,000 for the reasons given hereunder.
An application under section 9 of the Code can be filed only if the OC has delivered a notice to the CD demanding payment of default amount and it has not received in response any notice of existence of dispute and record of the pendency of the suit or arbitration proceedings in relation to such dispute. The issue to be determined was whether there was a pending arbitration proceeding in relation to the dispute before the OC delivered the demand notice. There was an award dated 09.09.2016 passed by the sole arbitrator in favour of the OC granting certain reliefs. The CD challenged the said award under section 34 of the Arbitration and Conciliation Act, 1996. It was, however, dismissed on 19.12.2016. Thereafter, the OC delivered the demand notice on 13.01.2017. The CD disputed the demand on 27.01.17 stating that it has appealed against the award under section 37 of the Arbitration and Conciliation Act, 1996. The OC submitted before the NCLT that as on the date (16.01.2017) of delivery of the demand notice, the arbitration award had attained finality and there was no pendency of arbitration proceeding. The NCLT held: *"It cannot be said that arbitration proceedings have come to an end merely on the dismissal of application under section 34 of the Arbitration Act …. The proceedings are yet to attain finality as appeal under section 37 of the Arbitration Act is pending."*

Further, it came to the notice of the NCLT that the execution proceedings for enforcement of the award have been initiated and is pending for consideration of the Hon'ble High Court on 12.05.2017. In this context, the NCLT observed: *"We are further of the view that already proceedings for execution of the award have been initiated. An effective remedy has been availed by the applicant. We have not been able to accept that a party can invoke more than one remedy simultaneously. It is in fact against the fundamental principles of judicial administration to allow a party to avail more than one remedies.*"

II. 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 installment(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'".

III. 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 the '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 return is not an operational debt and the applicant is not an OC.

IV. K. K. V. Naga Prasad Vs. Lanco Infratech Ltd (CP (IB) No 9/9/HBD/ 2017)

An OC, K. K.V. Naga Prasad filed an application under section 9 of the Code to initiate the CIRP of a CD, M/s. Lanco Infratech Ltd. The NCLT, vide order dated 21st February, 2017 dismissed the application as the 'due' in question was already subject to an existing dispute.

The NCLT 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 ….".*

V. One Coat Plaster and Shivam Construction Company Vs. Ambience Private Ltd. [CP (IB) No. 07/PB/2017] and [CP (IB) No. 08/PB/2017]

The OCs, One Coat Plaster and Shivam Construction Company filed separate applications under section 9 of Code to initiate CIRP of the CD, Ambience Private Ltd. They alleged in the applications that full payment for their work has not been received. They served a demand notice on 25th January, 2017 to the CD. However, they neither received the payment nor reply to the demand notice till they filed applications on 8th and 9th February, 2017. The CD, however, submitted that it had replied to the demand notice. It took a stand that due to defective and the poor quality of work on part of the OCs, no further payment could be made to them, and denied the claims of the OCs. The OCs submitted several documents in support of the claim but failed to submit a report of an architect or a certificate from the CD itself, certifying the quantum of works done by the OCs, being the norm adopted in building contracts.

The NCLT observed that a dispute could be proved by showing that a suit has been filed or arbitration is pending. But it is not exhaustive, but an illustrative means. It relied on the notice of dispute as sent by the CD and rejected the applications vide order dated 1st March, 2017.

IBBI

I. In the matter of XYZ

The IBBI rejected, vide an order dated 2nd March, 2017, the application of XYZ for registration as an Insolvency Professional (IP) on the ground that XYZ 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.*"

II. In the matter of XYZ

The IBBI rejected, vide an order dated 14th March, 2017, the application of XYZ for registration as an IP. It noted that the ROC has filed three criminal proceedings against the applicant, among others, for non-compliance with the three orders of the CLB and these proceedings are pending. It observed that pendency of three criminal proceedings against the applicant adversely impacts his reputation and makes him not a person fit and proper to become an IP.

The 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."*

Service Providers

Insolvency Professionals

Till 31st December, 2016, 977 individuals were granted registration as IPs for a limited period (six months). Since 31st December, 2016, individuals, who have the required qualification and experience and passed the Limited Insolvency Examination, are being registered as IPs. In this category, 96 individuals were registered during the Quarter January - March, 2017, as given in Table B.

Table B: Registration of Insolvency Professionals

City/Region	Enrolled with			Total
	Indian Institute of Insolvency Professionals of ICAI	ICSI Insolvency Professionals Agency	Insolvency Professional Agency of Institute of Cost Accountants of India	
Delhi	5	19	7	31
Rest of the Northern Region	5	13	3	21
Mumbai	11	4	0	15
Rest of the Western Region	4	5	0	9
Chennai	0	1	0	1
Rest of the Southern Region	2	5	0	7
Kolkata	6	3	1	10
Rest of the Eastern Region	0	1	1	2
All India	**33**	**51**	**12**	**96**

Workshop for IPs

With a view to build capacity of newly registered IPs, the IBBI arranged a two-day workshop on 27-28th March, 2017 in Delhi. Dr. M. S. Sahoo, Chairperson, IBBI inaugurated the workshop. Eminent experts, including Dr. T. K.Vishwanathan, Chairman of the Bankruptcy Law Reforms Committee (BLRC) and Shri Amardeep Singh Bhatia, Joint Secretary, Ministry of Corporate Affairs addressed the IPs. 42 IPs participated in the workshop. The IBBI intends to organize more such workshops in future.

Insolvency Professional Entities

The Regulation provide for recognition of Insolvency Professional Entities (IPEs). As IP may use the organizational resources of an IPE of which he is a partner or director. Three IPEs individuals were recognized during the Quarter January – March, 2017, as given in Table C.

Table C: Recognition of Insolvency Professional Entities during April – March, 2017

Sl. No.	Date of Recognition	Name of IPE
1	1st March, 2017	IRR Insolvency Professionals Private Ltd.
2	1st March, 2017	AAA Insolvency Professionals LLP
3	30th March, 2017	Witworth Insolvency Professionals Private Ltd.

Limited Insolvency Examination

The Regulations allow chartered accountants, company secretaries, cost accountants and advocates with 10 years of post-membership experience (practice or employment) or graduates with 15 years of post-qualification managerial experience to be registered as IPs on passing the Limited Insolvency Examination. The IBBI has been conducting the Limited Insolvency Examination since 31st December, 2016 through the National Institute of Securities Markets (NISM). The examination is available from 100 + locations in the country daily. As on March 31, 2017, 267 candidates have cleared the Examination.

The Board is revising the syllabus and question bank for the examination to be conducted from 1st July, 2017. The revised syllabus will be available on its website from 31st May, 2017.

Diary of an IRP

Shri Kunal Banerjee*

I was one of the privileged persons to be registered as an Insolvency Professional on 30th November, 2016, the very first day registration commenced. I was also privileged to act as the Interim Resolution Professional (IRP) for the first CIRP initiated by a corporate debtor (CD), which happened to be the second CIRP in the country under the Code. An IRP has up to 30 days from the initiation of the CIRP to complete certain key activities such as, issue of public notice, appointment of registered valuers, receipt, verification and collation of creditors' claims, constitution of Committee of Creditors (CoC), filing compliance with the NCLT, holding and conducting first meeting of the CoC, amongst others.

On repeal of the Sick Industrial Companies (Special Provisions) Act, 1985 on 1st December, 2016, the cases pending before BIFR abated. One such case related to Nicco Corporation Ltd. (NCL), which filed an application on 20th December, 2016, as a CD for CIRP before the NCLT. The application came up for hearing on 16th January, 2017. The NCLT admitted the application on 18th January, 2017 along with orders providing for Moratorium, Public Announcement and Appointment of the IRP. The CIRP commenced on this date and has to be completed within 180 days.

The biggest challenge for me was to take charge of the CD, take custody and control of its assets and run it as a going concern. On the first day, I obtained the complete list of fixed and other assets and details of all bank accounts, confirmation of balances in the accounts, bank reconciliation statement, details of unused cheques, etc. I instructed the managerial personnel to:

a) run the CD as a going concern pursuant to the provisions of the Code;
b) support for compliance with the provisions of section 18 of the Code;
c) make payments only with prior approval of the IRP;
d) prepare weekly budgets and cash flow statements for approval of the IRP; and
e) affect no change in the staff/workmen by fresh recruitment or retrenchment.

I issued the Public Announcement on the first day and hosted it on the website of the CD. I appointed two Government Registered Valuers pursuant to Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to determine the liquidation value of the CD in accordance with Regulation 35 of the said Regulations. These Regulations prescribe a time limit of 14 days for receipt of all claims and to constitute CoC immediately after verification of claims. Claims from 8 out of a total of 19 financial creditors (FCs) were received on the penultimate day. No claims were received from operational creditors (OCs). The CoC was constituted with 8 FCs and filed with the NCLT. The first meeting was convened within the due date.

Collection of Claims: How to collect the claims from balance creditors - both FCs and OCs. I had a feeling that a single public announcement may not catch their attention that a CD is under CIRP. I sought guidance from the CoC which decided that the IRP should write to all OCs (above a threshold limit) as well as to the remaining FCs requesting them to submit their claims.

E-voting facility: The Regulations enjoin making available e-voting facility. I had to explain the requirements and design the format of e-voting screen for this purpose. However, it was not used in the first meeting of the CoC since there was 100% attendance. For the second meeting, all the creditors had confirmed their presence in advance and e-voting facility was not required. Because of cooperation of the creditors, the expenses on e-voting could be saved.

Recording of proceedings of CoC**:** In order to avoid dissent while confirming minutes as also to ensure transparency, I undertook the following measures:

a) Filling of details of participants on pre-printed attendance sheet;
b) Prior circulation of detailed agenda items with explanatory notes and supporting documents along with meeting notice to stakeholders ensuring their preparedness;
c) Circulation of proposed resolutions on each agenda item which were signed by the members of the CoC at the meeting after deliberations. Any modification to the resolutions was carried out at the meeting and the final amended resolutions were only signed by the authorised person noting 'Yes/ No/Abstained' on the resolution sheet. This ensured transparency in decisions of the CoC.
d) The entire proceedings were recorded on audio and video.

Notice from Income Tax Department**:** I received a notice under section 226(3) of the Income Tax Act, 1961 which was issued by the IT Department to all the Bankers of the CD seizing the bank accounts for certain old disputed claims. Initially, IT Department was informed about the moratorium but in the absence of a quick revert, I filed an application to NCLT which directed the IT Department to unfreeze the bank accounts and show caused them for their action despite a moratorium.

Signing of accounts of the company for the Third Quarter: The CD is a listed company and hence is obliged to publish its quarterly audited accounts. A clarification was sought from the NCLT regarding signing of 3rd quarter accounts. The NCLT directed the IRP to sign the accounts along with office bearers of the CD, viz., MD, CFO and Company Secretary.

An IRP needs to be a methodical and systematic team person. Drawing up and adherence to time schedule, clear communication with the creditors, understanding of the provisions of the Code and Regulations, transparency in actions and professionalism are key ingredients for successful completion of tasks.

** Disclaimer: The views expressed are those of the author.*

"*The Insolvency and Bankruptcy Code, the National Company Law Tribunal, a new arbitration framework and a new IPR regime are all in place. New commercial courts have also been set up. These are just a few examples of the direction in which we are going. My Government is strongly committed to continue the reform of the Indian economy.*"

- Hon'ble Prime Minister, Shri Narendra Modi at the inauguration of the Vibrant Gujarat Global Summit, 2017 on 10th January, 2017.

"*The focus on resolution of stressed legacy accounts of Banks continues. The legal framework has been strengthened to facilitate resolution, through the enactment of the Insolvency and Bankruptcy Code and the amendments to the SARFAESI and Debt Recovery Tribunal Acts.*"

- Hon'ble Union Finance Minister, Shri Arun Jaitley, Budget Speech 2016-17, 1st February, 2017.

"*Government accords the highest priority to this reform (The Insolvency and Bankruptcy Code, 2016*)."

- Hon'ble Minister of State for Finance and Corporate Affairs, Shri Arjun Ram Meghwal, during the inauguration of the premises of the IBBI on 29th March, 2017.

"*The Insolvency and Bankruptcy Code, 2016 provides for a market determined, time-bound mechanism for orderly resolution of insolvency, wherever possible, and ease of exit, wherever required.*"

- Dr. M. S. Sahoo, Chairperson, IBBI.

"*Four key reforms in India were passed in 2016. First, a bankruptcy and insolvency code was enacted, making it easier to close failing businesses and recover debts. Second, rules governing FDI underwent sweeping liberalization, allowing for 100 percent ownership in previously restricted sectors. Third, the Goods and Services Tax (GST) Amendment Bill was passed; …….Fourth, the government and the Reserve Bank of India agreed on a monetary policy framework that includes setting up a monetary policy committee …*"

- World Bank Group Flagship Report, Global Economic Prospects: Weak Investments in Uncertain Times, January 2017.

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