



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

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Azadi Ka
Amrit Mahotsav

ANNUAL REPORT 2020-21



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



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ANNUAL REPORT 2020-21

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
www.ibbi.gov.in

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

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बोर्ड-18011/1/2021-आई.बी.आई.

31 दिसंबर, 2021

सचिव,

कारपोरेट कार्य मंत्रालय, भारत सरकार

'ए' विंग, शास्त्री भवन

नई दिल्ली - 110001

महोदय,

मैं, दिवाला और शोधन अक्षमता संहिता, 2016 की धारा 229 के उपबंधों के अनुसार, भारत के राजपत्र में तारीख 1 मई, 2018 को अधिसूचित भारतीय दिवाला और शोधन अक्षमता बोर्ड (वार्षिक रिपोर्ट) नियम, 2018 में विहित प्ररूप में भारतीय दिवाला और शोधन अक्षमता बोर्ड की 1 अप्रैल, 2020 से 31 मार्च, 2021 तक की अवधि के लिए वार्षिक रिपोर्ट की एक प्रति अग्रेषित करता हूँ।

भवदीय,

नवरंग सैनी
(डॉ. नवरंग सैनी)

संलग्न: उपरोक्तानुसार

BOARD-18011/1/2021-IBBI

31st December, 2021

The Secretary to Government of India

Ministry of Corporate Affairs

'A' Wing, Shastri Bhawan

New Delhi- 110 001

Dear Sir,

In accordance with the provisions of section 229 of the Insolvency and Bankruptcy Code, 2016, I forward herewith a copy of the Annual Report of the Insolvency and Bankruptcy Board of India for the period 1st April, 2020 to 31st March, 2021, 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,

नवरंग सैनी
(Dr. Navrang Saini)

Encl.: As above.

THE GOVERNING BOARD

(As on March 31, 2021)

CHAIRPERSON



Dr. M. S. Sahoo

WHOLE-TIME MEMBERS



Dr. Navrang Saini



Dr. Mukulita Vijayawargiya



Mr. Sudhaker Shukla

EX-OFFICIO MEMBERS



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



Mr. Gyaneshwar Kumar Singh
Joint Secretary
Ministry of Corporate Affairs



Dr. Rajiv Mani
Joint Secretary and Legal Adviser
Department of Legal Affairs
Ministry of Law and Justice



Mr. Unnikrishnan A.
Legal Adviser
Reserve Bank of India

PART TIME MEMBERS



Mr. B. Sriram
Former Managing Director & CEO of
IDBI Bank Ltd.



Dr. Krishnamurthy Subramanian
Chief Economic Advisor to the
Government of India

OFFICERS OF IBBI

(As on March 31, 2021)



Mr. Ritesh Kavdia
ED



Dr. Anuradha Guru
ED



Mr. Santosh Kumar Shukla
ED



Mr. Debajyoti Ray Chaudhuri
CGM



Mr. Rajesh Kumar Gupta
CGM



Mr. Appala Subrahmanyam
CGM



Mr. Dilip Arjun Khandale
DGM



Dr. Kokila Jayaram
DGM



Mr. Sunil Kumar
DGM



Mr. Sushanta Kumar Das
DGM



Mr. Ramachandra Rao
DGM



Mr. B. Sankaranarayanan
DGM



Mr. Keshav Kumar Giridhari
DGM



Mr. Nitish Saini
AGM



Mr. Mayank Mehta
AGM



Mr. Pankaj Kumar
AGM



Mr. Rahul Khanna
AGM



Mr. Aniket Sharma
Manager



Mr. Prateek Jain
Manager



Mr. Pankaj Dhapodkar
Manager



Mr. Radha Raman Kumar
Manager



Mr. Abhishek Mittapally
AM



Mr. Anshul Agrawal
AM



Ms. Archana Sharma
AM



Mr. Asit Behera
AM



Mr. Deeptanshu Singh
AM



Ms. Manpreet Kaur
AM



Ms. Medha Shekar
AM



Ms. Namisha Singh
AM



Mr. Om Prakash
AM



Mr. Ombir Singh
AM



Ms. Pooja Singla
AM



Mr. Raghav Maheshwari
AM



Mr. Rammilan Singh Yadav
AM



Mr. S. K. Behera
AM



Mr. Saram Santosh
AM



Mr. Sourav Manohar Sardar
AM



Ms. Tuhina Mardi
AM



Mr. Vinay Pandey
AM



Mr. Yadwinder Singh
AM

EXECUTIVE DIRECTORS

(As on March 31, 2021)

Name	Divisions
Mr. Ritesh Kavdia	Corporate Insolvency, Corporate Liquidation, Establishment, Valuation Examination, Insolvency Examination, Information Technology
Dr. Anuradha Guru	International Affairs, Board Secretariat, Strategy, Individual Insolvency, Individual Bankruptcy, National Insolvency Programme, Research and Publication, Data Management & Dissemination, Human Resources, Parliament Cell, Graduate Insolvency Programme, Communication and RTI, Continuing Professional Education, Knowledge Management and Partnership, Advocacy.
Mr. Santosh Kumar Shukla	Registered Valuers, Organisations (IU, IPA, IPE, RVO), Insolvency Professionals and Insolvency Professional Agencies, Surveillance, Investigation, Grievances, Finance and Accounts, Legal Affairs, Adjudication, Court Proceeding.

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List of Abbreviations

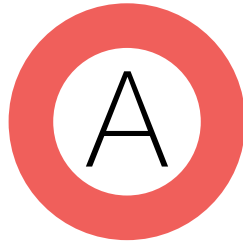
AA	Adjudicating Authority
AC	Advisory Committee
Advisory Committee Regulations	IBBI (Advisory Committee) Regulations, 2017
ACST	Assistant Commissioner of State Tax
ADR	Alternate Dispute Resolution
AFA	Authorisation for Assignment
AGM	Assistant General Manager
ALW	Administrative Law Wing
AM	Assistant Manager
AR	Authorised Representative
ARC	Asset Reconstruction Company
ASSOCHAM	Associated Chambers of Commerce and Industry of India
BCIC	Bangalore Chamber of Industry and Commerce
BIFR	Board for Industrial and Financial Reconstruction
BLRC	Bankruptcy Law Reforms Committee
Board/IBBI	Insolvency and Bankruptcy Board of India
Board Regulations	IBBI (Procedure for Governing Board Meetings) Regulations, 2017
BSE	Bombay Stock Exchange Limited
BT	Bankruptcy Trustee
Bye-Laws Regulations	IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016
C&AG	Comptroller and Auditor-General of India
CARES Fund	Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund
CCI	Competition Commission of India
CD	Corporate Debtor
CEO	Chief Executive Officer
CERC	Central Electricity Regulatory Commission
CEV	Council for Engineers and Valuers
CFI	Consolidated Fund of India
CGM	Chief General Manager
CGST	Central Goods and Service Tax
CII	Confederation of Indian Industry
CIN	Corporate Identification Number
CIRP(s)	Corporate Insolvency Resolution Process/Processes
CIRP Regulations	IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
CMS	Central Management System
CoC	Committee of Creditors
Code/ IBC	Insolvency and Bankruptcy Code, 2016
CoE	Committee of Experts
CoP	Certificate of Practice

CPE	Continuing Professional Education
CPIO	Central Public Information Officer
CPGRAMS	Centralized Public Grievance Redress and Monitoring System
CVSRTA	Centre for Valuation Studies, Research and Training Association
DC	Disciplinary Committee
DEA	Department of Economic Affairs
DGM	Deputy General Manager
DGFT	Directorate General of Foreign Trade
DHFL	Dewan Housing Finance Corporation Limited
DID	Difference-in-Differences
DRT	Debt Recovery Tribunal
DTRTI	Direct Taxes Regional Training Institute
DVI	Deccan Value Investors
EAC PM	Economic Advisory Council of the Prime Minister
EBITDA	Earnings Before Interest, Taxes, Depreciation & Amortization
ED	Executive Director
EIRC of ICAI	Eastern India Regional Council of ICAI
Eoi	Expression of Interest
Examination	Limited Insolvency Examination
EXIM	Export-Import Bank of India
EY	Ernst & Young
FAA	First Appellate Authority
Fast Track Regulations	IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017
FAQs	Frequently Asked Questions
FC/FCs	Financial Creditor/ Financial Creditors
FCDO	Foreign, Commonwealth and Development Office
FICCI	Federation of Indian Chambers of Commerce & Industry
FMC	Forward Market Commission
FOIR	Forum of Indian Regulators
FPC	Fair Practices Code
FSLRC	Financial Sector Legislative Reforms Committee
FSDC	Financial Stability and Development Council
FiSP	Financial Service Provider
FiSP Rules	Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019
FSR	Financial Stability Report (RBI)
GB	Governing Board
GDP	Gross Domestic Product
GeM	Government e Marketplace
GFCE	Gross Fixed Consumption Expenditure
GFCF	Gross Fixed Capital Formation

GIA	Grants-in-aid
GIP	Graduate Insolvency Programme
GNLU	Gujarat National Law University
GNPA	Gross Non-Performing Asset
Gol	Government of India
GST	Goods and Services Tax
GVA	Gross Value Added
HC	High Court
IA	Inspecting Authority
IAIR	International Association of Insolvency Regulators
IBA	Indian Banks' Association
ICAI	Institute of Chartered Accountants of India
ICC	Internal Complaints Committee
ICD	Insolvency Commencement Date
ICFAI	Institute of Chartered Financial Analysts of India
ICAI (Cost)	Institute of Cost Accountants of India
ICLS	Indian Corporate Law Service
ICSI	Institute of Company Secretaries of India
ICSI IIP	ICSI Institute of Insolvency Professionals
IDBI	Industrial Development Bank of India
IDF	India Development Foundation
IEG	Institute of Economic Growth
IEPF	Investor Education and Protection Fund
IES	Indian Economic Service
IFC	International Finance Corporation
IFSCA	International Financial Services Centre Authority
IIBF	Indian Institute of Banking and Finance
II	International Insolvency Institute
IIPI	Indian Institute of Insolvency Professionals of ICAI
IIM	Indian Institute of Management
IIP	Index of Industrial Production
ILC	Insolvency Law Committee
IM	Information Memorandum
IMF	International Monetary Fund
Inspection Regulations	Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017
INSOL	International Association of Restructuring, Insolvency & Bankruptcy Professionals
IOV	Institution of Valuers
IOV RVF	IOV Registered Valuers Foundation
IP/IPs	Insolvency Professional/ Professionals
IP Regulations	IBBI (Insolvency Professional) Regulations, 2016
IPA/IPAs	Insolvency Professional Agency/ Agencies

IPA Regulations	IBBI (Insolvency Professional Agencies) Regulations, 2016
IPA ICAI	Insolvency Professional Agency of ICAI (Cost)
IPE/IPEs	Insolvency Professional Entity/Entities
IRDAI	Insurance Regulatory and Development Authority of India
IRP	Interim Resolution Professional
IRPC	Insolvency Resolution Process Cost
ISTM	Institute of Secretariat Training and Management
IU/IUs	Information Utility/Utilities
IU Regulations	IBBI (Information Utilities) Regulations, 2017
LIC	Life Insurance Corporation
Liquidation Regulations	IBBI (Liquidation Process) Regulations, 2016
LLP	Limited Liability Partnership
LNCT	Lakshmi Narain College of Technology, Bhopal
MCA	Ministry of Corporate Affairs
MCCI	Merchant's Chamber of Commerce & Industry
MD	Managing Director
MIS	Management Information System
MoF	Ministry of Finance
MoL&J	Ministry of Law and Justice
MoU	Memorandum of Understanding
MSME	Micro, Small and Medium Enterprises
NBCC	National Buildings Construction Corporation Limited
NCAER	National Council of Applied Economic Research
NeSL	National E-Governance Services Limited
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NI Act	Negotiable Instruments Act, 1881
NIC	National Industrial Classification
NIPFP	National Institute of Public Finance and Policy
NLIU, Bhopal	National Law Institute University, Bhopal
NLU	National Law University
NLUD	National Law University Delhi
NPA	Non-Performing Asset
NPS	National Pension System
NSO	National Statistical Office
OC/OCs	Operational Creditor/ Creditors
OECD	Organisation for Economic Co-operation and Development
PFRDA	Pension Fund Regulatory and Development Authority
PFCE	Private Final Consumption Expenditure
PG/PGs	Personal Guarantor/Guarantors
PHDCCI	PHD Chamber of Commerce and Industry
PNB	Punjab National Bank

PMO	Prime Minister's Office
PSB/PSBs	Public Sector Bank/Banks
PMLA	Prevention of Money Laundering Act, 2002
PPIRP	Pre-packaged Insolvency Resolution Process
PVAI	Practising Valuers Association of India
PWC	PricewaterhouseCoopers
QFC	Qualified Financial Contract
R1	First Respondent
R2	Second Respondent
RA	Resolution Applicant
RBI	Reserve Bank of India
RERA	Real Estate (Regulation and Development) Act, 2016
RBSA	RBSA Advisors
RFRP	Request for Resolution Plan
RP	Resolution Professional
RMW	Registration and Monitoring Wing
RRW	Research and Regulation Wing
RTI	Right to Information
RV/RVs	Registered Valuer/ Valuers
RVE	Registered Valuer Entity
RVO/RVOs	Registered Valuer Organisation/ Organisations
SAP	Strategic Action Plan
SARFAESI	The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SBI	State Bank of India
SC	Supreme Court of India
SCC	Stakeholders' Consultation Committee
SCBs	Scheduled Commercial Banks
SCN	Show Cause Notice
SEBI	Securities and Exchange Board of India
SLP	Special Leave Petition
SME	Small and Medium Enterprises
SoA	Scheme of Compromise or Arrangement
UNCITRAL	United Nations Commission on International Trade Law
Valuation Rules	Companies (Registered Valuers and Valuation) Rules, 2017
Voluntary Liquidation Regulations	IBBI (Voluntary Liquidation Process) Regulations, 2017
WG	Working Group
WIRC of ICAI	Western India Regional Council of ICAI
WTM	Whole Time Member



CHAIRPERSON'S STATEMENT

The Insolvency and Bankruptcy Code, 2016 (IBC/Code) is a noble law since it endeavours to address stress of a person, be it a company, a Limited Liability Partnership (LLP), a proprietorship, or partnership firm, or an individual. However, I am limiting this statement to companies and LLPs, as provisions of the IBC relating to individuals, except in relation to personal guarantors (PGs) to corporate debtors (CD), are yet to come into force.

Sometimes for reasons under its control and at other times beyond its control, a company may experience stress, that is, it is unable to repay the debt in time, implying that it has assets less than claims against it. Elementary economics tells us that when a company has inadequate assets, claim of an individual creditor may be consistent with its assets while claims of all creditors put together may not. In such a situation, creditors may rush to recover their claims before others do, triggering a run on the company's assets. They recover on a first come first served basis till the assets of the company are exhausted, bleeding the company to death. This is a negative-sum game.

On the other hand, the IBC provides for reorganisation to rescue the company if its business is viable or close it if it's unviable, through a market process. In case of rescue, the company is reorganised as a going concern. The claims of creditors are restructured, which may be paid to them immediately and or over time. In case of closure, the assets of the company are sold, and the proceeds are distributed to creditors immediately as per the priority rule. The IBC entrusts the responsibility of reorganisation of a stressed company to financial creditors (FCs), as they have the capability and the willingness to restructure their claims. They are likely to rescue a company having going concern surplus which aligns interests of the company and of FCs, making it a positive-sum game. In this background, it is desirable to track how the IBC is delivering on its objectives.

METRICS FOR OUTCOMES

Every economic reform, including insolvency reform, somewhat recasts the rules of the game for market participants with a view to increase overall economic well-being. As such it affects interests of stakeholders: some stand to gain while others may lose, as compared to the old order. It is unlikely that the losers or gainers, who are generally blinded by self-interest, will use a metric that holistically and objectively assesses outcome of the reform. They tend to cite isolated examples to buttress their perspectives. A beneficiary of the old order may cite the

likes of Ghotaringa Mineral Limited and Orchid Healthcare Private Limited to cry foul of insolvency reforms. He may claim that liquidation of these two companies under the Code realised precious little for creditors as against their claim of a few thousand crore rupees. He may not, however, posit that these companies had absolutely no assets when they entered insolvency proceedings. The choice of metric for assessment depends on which side of the table the stakeholder sits.

A dispassionate analyst, who looks at the reform from a macro perspective, is likely to use a metric that is readily available, easily understood, and amenable to analysis, rather than what is the most appropriate. Reliable figures about recovery through an insolvency proceeding are readily available. Recovery, both in absolute and relative sense, is easily understood. It can be used to compare resolution of one company with that of another, or to compare different options of resolution and recovery. Some analysts may prefer to use recovery as the metric to assess outcome of insolvency reforms because of its convenience, even though it is not an explicit objective of insolvency reforms, and it arises as a by-product of some insolvency proceedings. Time taken for closure of an insolvency proceeding is another convenient metric. An optimist may observe time taken under the Code as compared to that under erstwhile regimes, while a pessimist may consider the gap between the time actually taken and the time envisaged under the Code.

Some of the convenient metrics could be misleading. Recovery, though a precise metric, is not unambiguous. The resolution plans under the Code recover, on average, say X% of admitted claims. Such level of recovery could be good for someone as it recovers the best of the available options. This may not be good for others, as creditors take a haircut of Y% (100 - X) of the admitted claims. Further, recovery as a percentage of admitted claims may not make much sense as these are often not reflected either in the books of the debtor or of the creditor. What could be realised is reflected by the value of assets available in the books of the debtor and what should be realised is reflected by the written down value of the debt in the books of the creditor. Recovery as compared to what should or could be realised presents a picture entirely different from X%.

A student of law and economics looks at insolvency reform from a much deeper perspective. He believes that every economic actor has bounded rationality and cannot address or anticipate all possible contingencies/outcomes. That is why

it enters into contracts and renegotiates and modifies its terms as and when circumstances change, and yet every contract remains an incomplete one, with gaps and missing provisions. Nobel laureate in Economic Sciences, Mr. Oliver D. Hart argues that a firm enters into a series of incomplete contracts which allow every creditor foreclosure rights over firm's assets in lieu of credit. Every creditor feels comfortable on standalone basis and the firm meets commitment towards each creditor in normal course and life goes on. However, when the firm is stressed, it can honour claims of one or a few creditors fully, but not all creditors simultaneously. If every creditor sticks to its pre-insolvency rights, neither resolution of stress is possible, nor can a creditor realise its dues. The insolvency framework endeavours to resolve stress while discharging obligations towards creditors to the extent realistically possible under the circumstances. Insolvency reform is thus an overarching contract, that completes all incomplete bilateral contracts, makes claims of all creditors consistent and prevents a value reducing run on the assets of the firm. In the absence of an overarching contract, the parties would enforce the series of incomplete contracts, which would wipe out the debtor and write off some creditors. The overarching contract enforces all the incomplete contracts, while trying to save the debtor and creditors. Assume that the contract enforcement takes four years in a country while an insolvency proceeding takes a year. A student of law may use time saved in contract enforcement as the metric, while a student of economics may use the loss avoided to the debtor and creditors.

Freedom is paramount for a businessman. Higher the level of freedom, easier it is to do business in an economy. As Mahatma Gandhi observed: *"Freedom is not worth having if it does not include the freedom to make mistakes."* A businessman needs freedom to start a business when he finds an opportunity, and freedom to get out of the business when he fails. He typically commences a business when he has reassurance of exit. He fails when he becomes a victim of Schumpeterian 'gale of creative destruction', where his business is either outdated or does not earn normal profits. Higher the intensity of competition and innovation in an economy, higher is the rate of failure, higher is the incidence of sunrise businesses replacing the sunset ones, and higher is the need for freedom to exit. An honest businessman uses the degree and quality of freedom to exit from business as the metric to assess the outcome of insolvency reform.

We are familiar with the parable of the blind men and an elephant, where each of the seven blind men describes an elephant based on his limited experience. Similarly, no single metric may adequately capture the outcome of insolvency reform. The World Bank Doing Business Report uses a composite of metrics, which study the time, cost, and recovery of insolvency proceedings and also strength of the insolvency framework to arrive at a score for resolving insolvency for an economy. It has its limitations given that the methodology has been drawn up to cater to about 200 countries, each of which has had a unique experience in the insolvency outcomes.

A single metric or a composite of metrics often does not capture softer aspects such as humanitarian approach to dealing with

insolvency, or behavioural changes of stakeholders. They also generally do not capture the systemic gains such as induced resolutions outside the Code, rescue of entrepreneurs from deeper perils, rescue of companies in deep distress, release of idle resources for productive uses, and improved availability of credit. A metric tends to capture what can be measured and ignore what matters but can't be measured. As Elliot Eisner puts: *"Not everything that matters can be measured, and not everything that can be measured matters."*

A well laid metric, instead of measuring outcome, may influence the outcome. In other words, when we set one specific parameter as a measure of outcome, there is a tendency to score high on that parameter, and even game the same, overlooking other equally, or even more important aspects and dimensions of the outcome. Goodhart's Law cautions: *"When a measure becomes a target, it ceases to be a good measure."*

A metric is not a one-time affair. It requires careful nurturing and improvisation over years and provision of authentic data and information for generation of metrics. In different spheres, specialised organisations have come up to maintain and service different metrics. It is the time to sow the seeds of a sound metric(s) for measuring the outcomes when the insolvency reform is taking deeper roots. The metric(s) should holistically and objectively measure the outcome, involving evaluation of the structure, processes and designs of the market contributing to its fairness, integrity, and credibility in each of the segments, namely, corporate insolvency and liquidation, and individual insolvency and bankruptcy. If no guidance is available as to what is an appropriate metric, and there is no provision of data / information to service such a metric, the market may use any metric of convenience, which may do more harm than good to the cause of reform.

Once the suitable metric is available and can be populated, it can be harnessed towards data-driven policy making for the future course of the law. It will allow authorities to improve their risk management abilities and produce potent results. It has the additional benefit of generating rational public debate on policies and thereby helps in crowdsourcing of ideas for good policy response. Designing policies without robust data is a difficult task and equally difficult is to measure the outcomes of such policies. It is imperative to have a framework that would steer relevant data creation and dissemination and at the same time encourage useful research in the matters of policy design and implementation.

Without anyway limiting the debate on development of metrics, one may explore metrics to measure outcomes of the Code based on its six foundational objectives. These are: (a) resolution of stress in a time bound manner; (b) maximisation of value of assets (c) promoting entrepreneurship; (d) enhancing availability of credit; (e) balancing the interests of all stakeholders, and (f) establishing an insolvency ecosystem. These objectives can be translated into six possible layers of outcomes of an insolvency and bankruptcy regime, as under:

(a) The growth, strength and efficiency of the *insolvency ecosystem* consisting of Insolvency Professionals (IPs),

Insolvency Professional Agencies (IPAs), Insolvency Professional Entities (IPEs), Registered Valuers (RVs), Registered Valuer Organisations (RVOs), Information Utilities (IUs), Adjudicating Authority (AA), Appellate Tribunal, Insolvency and Bankruptcy Board of India (IBBI/Board), Government, Courts, etc.;

(b) The strength, efficiency, and efficacy of *processes*, namely, corporate insolvency resolution (CIRP), corporate liquidation, voluntary liquidation, pre-packaged insolvency resolution, fresh start, resolution of PGs to CDs, resolution of proprietorship and partnership firms, individual insolvency resolution, and bankruptcy;

(c) The growth and efficiency of *markets* such as markets for interim finance, resolution plans, liquidation assets, insolvency services, along with cost efficiency, information efficiency, etc.;

(d) The impact on *businesses* in terms of cost of capital, capital structure, availability of credit, entrepreneurship, capacity utilisation, creative destruction, competition and innovation, etc.;

(e) *Behavioural changes* amongst the debtors and creditors, trust of the creditors in debtors, meritocratic lending, non-observable impact, humanitarian considerations, and proactive/preventive impact of the Code; and

(f) The *overall impact* on employment and economic growth of the nation.

IMPROVING THE OUTCOMES

Institutionalisation of metrics to track outcomes of IBC is some time away. However, some details are available in terms of outcomes such as number of resolutions and liquidations, realisations through insolvency processes, and time and cost involved in processes, which have been presented in respective sections of this report. Though such outcomes are better than pre-IBC days, these point out scope for further improvements. There are three broad criticisms of outcomes as stated below.

(a) More Liquidations

It is argued that as many as 1277 CIRPs ended up in liquidation while only 348 have witnessed resolution, until March, 2021. One who watches only the end game sees about 1600 cases reaching the finishing line. However, more than 18,000 cases were closed, either before or after admission, but before reaching the finishing line. If the entire universe of companies touching IBC is considered, the percentage of companies proceeding for liquidation is negligible. Even at the end game, what matters is the value of stressed assets rescued. In value terms, the companies accounting for 70% of the stressed assets were rescued, while the companies accounting for 30% of the stressed assets proceeded for liquidation.

Further, of the companies proceeding for liquidation, three-fourth were defunct, and of the companies rescued, one-third were defunct. This means that of the companies touching the finishing line, two-third were defunct to start with. The companies ending up with liquidation had assets valued, on average, at about 7% of the claims against them, when they entered the IBC. If a company has been sick for years,

and the assets have depleted significantly, market is likely to liquidate it. The Code provides for reorganisation in two ways, first by a resolution plan, failing which, by liquidation. It is the market which makes the choice, and the law is only an enabler. Liquidation is not the end, rather a means for efficient recycling of resources. Nevertheless, there is scope for reducing number of liquidations.

(b) Huge Haircut

Some consider that the IBC has turned out to be a tool for haircut. It is axiomatic that a company coming to IBC does not have adequate assets to repay all its creditors. The companies, which have been rescued through IBC till March, 2021 had assets valued, on average, at 20% of the amount due to creditors when they entered the IBC. This means that the creditors were staring at a *haircut* of 80% to start with. The IBC not only rescued these companies, but also reduced the *haircut* to 61% for FCs. The IBC has witnessed *haircuts* ranging from zero to 100%. The question arises why does IBC yield zero *haircut* in one case and 100% in another? It depends on several factors, including the nature of business, business cycles, market sentiments and marketing effort. It, however, critically depends at what stage of stress, the company enters the IBC, as much as at what stage a patient arrives in the hospital. The best hospital can do little if the patient reaches with substantial *haircut* to his health. Post disposal of pre-IBC legacy matters, as IBC deals with relatively 'recent' stress cases, *haircuts* would perhaps look decent.

Haircut is typically the amount of realisation in relation to the amount of claim. The amount of realisation often does not include the amount that would be realised from equity holding post-resolution, and through reversal of avoidance transactions and insolvency resolution of guarantors. The amount of claim often includes non-performing asset (NPA), which might have been completely written off, and interest on such NPA. It may include loans as well as the guarantee against such loans. The claims are not marked-to-market. These project a higher *haircut* than it is.

It may be appropriate to see *haircut* in relation to the assets available on the ground and not the claims of the creditors. The former may make better sense, because market offers a value in relation to what a company brings on the table, and not what it owes to creditors. IBC maximises the value of the assets at the commencement of the process, not of the assets which probably existed earlier. Since it redeems a part of the going concern surplus, the rescue is realising, on average, 188% of the liquidation value of the existing assets, generating 88% bonus, instead of *haircut*. In fact, it is realising, on average, almost 100% of the fair value of the CDs. In addition to rescuing the company, IBC realises, of the available options for creditors, the highest in percentage terms. Nevertheless, there is scope for reducing the so-called *haircut*.

(c) Longer time

The IBC promises time bound resolution and pegs it at 330 days, including litigation time, for conclusion of CIRP. The

outcome, as compared to pre-IBC days when it took more than four years, is extremely good. However, as compared to the legislative intent, it is not so good. There is tremendous scope to improve performance on this parameter.

IMPROVING PROCESSES

A CIRP is like an orchestra where many constituents have specific roles. The AA, IPs, creditors and committee of creditors (CoC), the CD and its erstwhile management, resolution applicants (RAs), and professionals appointed by an IP to assist him need to play their roles actively and effectively. If any of them does not cooperate or resorts to active non-cooperation or *malafide* actions, the process may not either conclude in time or yield the optimum outcome. For example, the CIRP may be completely frustrated if the successful RA does not implement the resolution plan, after its approval by the AA. I believe that if the stakeholders effectively play their roles, as envisaged in the Code, the outcomes will be far better. A little more care by constituents, as suggested below, can improve the outcomes substantially.

(i) IBC is a tool in the hands of stakeholders to be used in the right case, at the right time and in the right manner. They should use it in early days of stress, when value of the company is almost intact, and close the process quickly before value recedes further, to minimise the possibility of liquidation or even avoid *haircut* in a resolution plan. A CD in stress needs immediate relief. The longer it remains in stress, the higher is the loss of its value. Its value decreases if there is delay in filing of application for initiation of CIRP or its admission. Its value depletes further if there is delay in concluding the process and submitting resolution plan for approval of the AA. The value depletes further if approval of resolution plan is delayed at the AA. With passage of time, the possibility of resolution of stress by a resolution plan decreases or resolution plan yields larger *haircut*. If the process is delayed too long, when the business scenario has changed, the successful RA may not find the implementation of resolution plan viable. If it is forced to implement an unviable plan, it would refrain from submitting resolution plan at the first instance. This may yield liquidations for want of RAs. The stakeholders may refrain from using IBC if they have to wait for years for a process to begin or to conclude. All three criticisms mentioned earlier would be addressed to a large extent if CIRP is initiated and concluded faster.

(ii) IBC aims at maximisation of value of assets of the CD. If CIRP yields a higher value, the possibility of liquidation or *haircut* is less. In addition to initiating and concluding process faster, several other measures can enhance value realisation. A few examples are: (a) The IBC envisages value maximisation through a resolution plan. It defines resolution plan which resolves insolvency of the CD as a going concern. It envisages limitless possibilities of resolution through a resolution plan, including restructuring by way of merger, amalgamation, or demerger. 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, or

balance sheet; strategy of turn-around, buy-out, acquisition, or takeover; and so on. Regulation 37 of the CIRP Regulations provides an illustrative list of measures that a resolution plan may provide. The CoC, which lays down the rules of the game through the invitation of resolution plans, needs to envisage many possibilities of resolution, which can enhance the value; (b) The CD, IP and CoC have access to all information and, therefore, know the potential of the CD. The IP and the CoC need to visualise the potential value of the CD and bring such value to the notice of prospective RAs, the way promoters do in case of an Initial Public Offer of a company. The IBC enables the CoC to seek the best resolution from the market, unlike earlier mechanisms that allowed creditors to negotiate a resolution only with existing promoters. The CoC should drive the market to notice the underlying value of the CD and come up with several competitive resolution plans; (c) The IBC provides for clawback of value through avoidance transactions. If such transactions are undone and the lost value is retrieved, the value of the CD becomes higher. The IP needs to identify such transactions and apply to the AA for claw back, and the AA needs to dispose of such applications before consideration of resolution plan. The creditors and the erstwhile directors and promoters of the CD need to facilitate this process; (d) Market offers a higher value for an operational business than a non-operational one. The IP must ensure that the CD remains a going concern throughout the CIRP. This requires cooperation of erstwhile management, creditors, and Government agencies; and (e) It is important to keep the CIRP expenses to the minimum. Both IP and CoC should exercise extreme care to ensure that the ailing CD is not burdened by avoidable expenses.

(iii) The IBC entitles the stakeholders to initiate CIRP as soon as there is threshold amount of default to prevent the stress from ballooning to unresolvable 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 firm rather than to liquidate it. The CD is the first to notice stress. It should initiate the process immediately. If creditors are vigilant, they can also initiate. Both may evaluate available options for resolution under the circumstances and may initiate CIRP if they consider it the best option. Several measures can facilitate early commencement of CIRP: (a) The commencement of CIRP gets generally delayed on account of resistance by the CD on frivolous grounds. It is necessary to disincentivise such resistance. Section 66(2) of the IBC holds the directors of the CD liable for the loss to the creditors that arise during twilight zone. The twilight zone begins from the time when a director knew or ought to have known that there was no reasonable prospect of avoiding the commencement of resolution process till the company enters the resolution process. During this period, a director has an additional responsibility to exercise due diligence to minimise the potential loss to the creditors and he is liable to make good such loss. If IP files an application under section 66(2) in case of every CIRP and the AA disposes it of promptly, the CDs are unlikely to resist admission; (b) Highly leveraged companies generally have representatives of creditors on their Boards. Therefore, the creditors may get early signal

of stress in the CD as compared to other stakeholders. The FCs, especially banks, should initiate CIRP in such cases at early stage; (c) The admission can be faster if authenticated information about default is available to the AA. The IBC envisages an IU for this purpose. It may be mandatory for the creditors and debtors having debt above a threshold to submit financial information to and authenticate the same with an IU. Once authenticated information about default is available, the admission should be automatic; and (d) The bench capacity of the AA needs to be enhanced matching its workload so that no application remains pending for more than the statutorily permitted 14 days. The IBC may also clarify that the AA needs to be satisfied only about the commitment of threshold default by the CD and nothing else for admission of an application into CIRP.

(iv) FCs hold the key to the fate of the CD. They can rescue the life of the CD and minimise the haircut depending on their business acumen. They must understand the business of the CD and the operating environment and take prompt measures such as: (a) They must sense any impending stress and take appropriate remedial measures well in time. Depending on their assessment of business, they need to decide quickly whether to initiate a CIRP or not; (b) The CoC must play an active role in making the market notice the value of the CD and offer several competitive resolution plans, as discussed earlier; (c) The AA has, in certain matters, found the conduct of CoC unacceptable. The CoC must play its assigned role with utmost discipline. It must not encroach upon the role of IP. For example, it must not venture to decide whether a creditor is an FC or not. It must not influence the IP to do things which are not permissible; and (d) The CoC must be represented by such persons who are competent and are authorised to take decisions on the spot, without deferring decisions for want of any internal approval from the FCs.

(v) The IBC provides a market process, with minimum role of State. The AA needs to be quick in terms of admission applications for CIRP, disposal of several miscellaneous applications and approval of resolution plans. If it does not deliver on these aspects, despite market participants playing their respective roles, it would be failing IBC. Several measures can be taken to enhance the capacity of the AA: (a) There may be a dedicated, exclusive AA to deal with all kinds of insolvency, liquidation and bankruptcy processes of corporates and individuals; (b) The bench capacity / number of members needs to be a multiple of what it is today; (c) The bench may have only one member given that proceedings are not adversarial; (d) The bench may have career insolvency members, who will build capacity for a career. (e) The number of adjournments may be restricted and so must be the time available to a party to present its case before the AA; (f) The AA may focus only on what is essential and discourage filing of frivolous miscellaneous applications. It may not look into commercials of decisions while approving a resolution plan or consider factors other than default while admitting an application into CIRP. It may avoid trappings of courts; and (g) The support system needs to be enhanced. The bench may have adequate legal and research support. Information

technology should be used to manage the cases and their scheduling. The administration may scrutinise the applications / filings for accuracy, completeness, and compliance with the requirements, so that disposal by the bench becomes faster. Simultaneously, simpler processes such as fresh start and voluntary liquidation, which do not entail many disputes, may be handled administratively outside the AA. Mediation and conciliation may be used for resolution to reduce load on the AA.

(vi) The IP is key to the integrity of the insolvency process. Its reputation is at risk today as some IPs have allowed or been party to outrageous / patently illegal actions. IPs need to substantially enhance their competence and ethical standards. They must not favour any party / stakeholders of a CIRP or tolerate any irregularity and must render services without fear or favour.

(vii) There are several instances of misconduct on the part of promoters and directors of the CD, FCs and the CoC, and even RAs. In such situations, the most that the IBBI can do is to file a complaint before the special court against them. The complaint may not succeed for want of required evidence which the IBBI may not be able to gather for want of appropriate jurisdiction. Successful implementation of the Code requires that all stakeholders must be subject to regulatory discipline. They may be brought under the jurisdiction of the IBBI. A parallel may elucidate the point. In its early days, SEBI was not being perceived as very effective in protecting the interest of investors. It was essentially because it did not have jurisdiction over the issuers of securities. It was directing its efforts only at the Lead Managers and Merchant Bankers, who are intermediaries and signatories to the prospectus, requiring them to make disclosures on behalf of companies. Even this was being challenged in courts of law, as this was being perceived beyond the jurisdiction of SEBI. This infirmity was addressed by the Securities Laws (Amendment) Act, 1995, which incorporated section 11A (which has been further strengthened in 2002) in the SEBI Act, 1992 to expand SEBI's regulatory jurisdiction over corporates in the issuance of capital, transfer of securities and other related matters.

(viii) A key objective of the Code is maximisation of value of assets of the CDs in distress. A critical element towards achieving this objective is transparent and credible determination of value of the assets to facilitate comparison and informed decision making. Valuations serve as reference for evaluation of choices, including liquidation, and selection of the choice that decides the fate of the firm and consequently the stakeholders. If valuation is not right, a viable firm could be liquidated and an unviable firm could be rehabilitated, which are disastrous for the economy. As an interim arrangement, a framework was created under the Companies Act, 2013 enabling IBBI to groom valuation profession. To take the profession to the next level, a Committee of Experts has recommended establishment of National Institute of Valuers to steer regulation and development of valuation profession. Further, another committee has recommended asset class specific valuation standards. The enactment of the Valuers Act and notification of valuation standards should get priority.

(ix) With a view to improve ease of doing business, countries are competing to provide multiple options for resolution of stress and enriching the existing options with value added features. Explicit provisions for resolution of group insolvency and cross border insolvency would add considerable value to corporate insolvency processes.

(x) India is the fastest-growing, trillion-dollar economy. All vital statistics such as index for competitiveness and index for innovation have been improving over the years. In the face of competition and innovation, it is natural that some businesses will experience distress. Given the size of the economy and its growth potential, there will be a continuous flow of distressed assets into market. The market should have enough depth so there are many resolution plans for every distressed asset. The rules should promote market for distressed assets in terms of allowing investors across the globe to participate in the market while assuring predictability of outcomes. They may promote platforms where distressed assets are available for resolution with full transparency.

(xi) Given that India's insolvency regime is still nascent and unique, data systems in respect of insolvency are just emerging. The importance of having an ex-ante strategy for ex-post evaluation highlights the data requirements of the evaluation and, by doing so, allows early collection of the necessary information. The time is ripe to harness the data being generated under the Code and decipher measurable impacts of the Code. It is imperative to have a clearly defined framework of indicators to monitor and measure outcomes of the Code that are tracked and reported on a regular basis against the objectives/ benchmarks. It will facilitate informed public debate on policies and thereby help in crowdsourcing of ideas for good policy response. Data based analysis will not only enrich the policymaker's toolkit for sound policy making, that have a direct bearing on the beneficiaries or stakeholders of the Code but will also be useful for other purposes like supervision of banks and financial institutions, monitoring of financial systems, or general macroeconomic models.

(xii) I have not suggested any improvements for IBBI. This must not be construed that the IBBI does not need any improvement. Since my views are likely to be biased, I leave it to readers, policy makers and stakeholders to suggest improvements in respect of IBBI. To help them do so, I dwell upon some structural design aspects of the IBBI.

IBBI: REGULATOR LIKE NO OTHER

The IBBI is a recent addition to the regulatory world. It, however, seems to be a novel experiment, with no parallel either in the Indian regulatory milieu or in the insolvency space elsewhere. I wish to dwell upon a few facets of IBBI's role and its functioning, as I understand, which make it an idiosyncratic regulator.

Facets of role

The IBBI has regulatory oversight over (a) professionals and related institutions - IPs, IPAs, IPEs and IUs - in the insolvency space, and (b) insolvency processes - CIRP, pre-packaged

insolvency resolution, corporate liquidation, voluntary liquidation, fresh start, individual insolvency resolution and individual bankruptcy - under the Code.

Three-in-one regulator: A regulator of a profession develops and regulates the profession. It does not regulate markets where these professionals serve. Nor does it specify the rules to be followed by them in the market / for transactions. A regulator of markets promotes development of, and regulates, markets. It does not develop and regulate the professionals, who render services in these markets. A regulator of utilities sets standards and fixes tariffs to address competition concerns and attract investment to utilities. The IBBI develops and regulates the insolvency profession. It specifies the regulations to be followed by IPs in the market / for transactions and also regulates the markets where the IPs serve. It sets standards to ensure quality of services of an IU and endeavours to provide a competitive environment. It blends the duties of a regulator of profession, a regulator of markets, and a regulator of utilities, though its role is vastly different from that of any of them.

Ambit of authority: The SEBI has statutory objectives to protect the interests of the investors in securities and to promote the development of, and to regulate, the securities market. It has mandate to undertake any measure in furtherance of its objectives. It has authority to make regulations to carry out the purposes of the Act. Its jurisdiction extends over all participants in securities markets, including issuers of securities in relation to issue and trading of their securities. On the other hand, the IBBI has specific statutory functions, subject to general direction of the Government. It has authority to make regulations to carry out the provisions of the Code. Its jurisdiction extends over service providers (IPs, IPAs, and IUs) and not the market participants (debtors and creditors, promoters, CoC and RAs). The ambit of authority of IBBI is different as compared to that of a market regulator.

Regulator vis-à-vis Tribunal: A regulator applies and interprets the Regulations it has made, through enforcement and adjudicatory actions. Such actions and interpretations are challenged before an Appellate Tribunal. The Tribunal, however, has no role as regards quasi-legislative or executive functions of the regulator. On the contrary, the IBBI is not required to apply and interpret the Regulations it has made, except in relation to service providers. The stakeholders and the IPs conduct processes in accordance with Regulations and submit it to the AA for approval. The AA applies and interprets the law, including Regulations, through its decisions. It is, however, not the appellate authority for actions of IBBI. Since no ecosystem, either in India or elsewhere, has two parallel institutions like IBBI and AA, it required significant efforts towards appreciation of each other's role in initial years.

Unique in insolvency space: Most insolvency jurisdictions have two layers in the hierarchy of regulation, namely, Government department dealing with insolvency and membership organisations regulating insolvency practitioners. Wherever there is another agency in between, such agency is not dedicated to insolvency. In contrast, the Indian jurisdiction has three layers in the hierarchy wherein the IBBI is

interspersed between the Government and the IPAs. The IBBI is entrusted with tasks, some of which are either in the realm of Government or professional bodies in other jurisdictions. As there is no comparable regulator to learn from, either in India or elsewhere, IBBI is an evolving experimentation in terms of its role.

Facets of functioning

While discharging its statutory duties and functions, the IBBI has charted a slightly different path, as compared to most other regulators, albeit within the permissible boundaries of the statute.

Responsiveness: Speed is the essence of the Code. The IBBI, being a creation of the Code, imbibed speed from day one. It was established on October 1, 2016. It was instructed to commence corporate insolvency by December 1, 2016. This required nothing short of a miracle. The immediate tasks included: market volunteering to set up IPAs; individuals with right calibre to enrol with IPAs and seek registration with the IBBI as IPs; regulations relating to IPs, IPAs, CIRP and liquidation process to be in place; advocacy to spread the message of the Code and make the stakeholders aware of their role, and the IBBI to have the capacity to work on these. With active support of the Government, the IBBI delivered all these, making roll out of CIRP possible on December 1, 2016. Promptitude has been a part of its work culture since then.

Regulators are created to address the concerns proactively or at least immediately after a concern has surfaced. Two illustrations of proactive actions are: (a) In the CIRP of Jaypee Infratech Limited, public announcement was made on August 10, 2017 seeking claims by August 24, 2017. It was not clear whether an allottee of a real estate project would submit claims as FC and operational creditor (OC). To ensure that claims are submitted by August 24, 2017, the IBBI amended the CIRP Regulations on August 16, 2017 to enable submission of claims by allottees. In course of time, the Code was amended on June 6, 2018 to explicitly consider such allottees as FCs. (b) The first resolution plan under the Code was approved on August 2, 2017, whereby Synergies Dooray Automotive Limited got amalgamated with a group company, while the creditors took a haircut of 94%. This appeared like rewarding the promoters, who probably drove the company to the ground, at the expense of the creditors. To maintain integrity of CIRP, the IBBI amended the CIRP Regulations on November 7, 2017, requiring disclosure of the antecedents - convictions, criminal proceedings, wilful defaults, debarments - of the RA and its connected persons to enable an assessment of the credibility of such applicant. Subsequently, the Code was amended on November 23, 2017, prohibiting persons with such antecedents from submitting resolution plans.

The AA appoints an IP to conduct a process. When the stakeholders have identified an IP, the AA needs to verify the credentials of the IP from the IBBI before appointing him. The IBBI makes available the database of all eligible IPs with the AA in advance so that it can appoint the IP instantaneously. Similarly, where the stakeholders have not proposed an IP, the

AA needs to make a reference to the IBBI for a recommendation. The IBBI makes available a Panel of recommended IPs with the AA in advance, which serves as an instant solution for appointments. The Code initially envisaged 14 days for appointment of an IRP. This innovative solution, however, has made appointments instantaneous. In recognition of this, the Insolvency Law Committee (ILC) recommended doing away with 14 days for appointment of an IRP and section 16(1) was accordingly amended in December, 2019.

Governance: There have been concerns emanating from integration of powers in a regulator. To address this, the IBBI has structured itself into three separate wings, namely, Research and Regulation Wing, Registration and Monitoring Wing, and Administrative Law Wing and each of these wings is headed by a separate Whole-time Member, to avoid intra-institutional and public law concern.

The Code does not explicitly distinguish between the IBBI and its Governing Board (GB). However, in its first meeting held on October 7, 2016, the GB identified the businesses which it alone should transact, pending formal Regulations. The formal Regulations were notified on January 31, 2017, earmarking the businesses to be transacted by the GB. The Regulations provide for a Charter of Conduct for Members of the GB to ensure that the GB conducts in a manner that does not compromise its ability to accomplish its mandate or undermine public confidence in the ability of Members to discharge their responsibilities. The Non-executive Members of the GB have been meeting officers of the IBBI and other stakeholders once a year for a direct and independent feedback on the working of the insolvency regime.

The GB has been conscious of its performance from the very beginning. It has been evaluating itself since 2018-19 to assess if it is meeting the expectations of external scrutiny and improving both organisational and board performance and to identify the strengths, weaknesses, and opportunities to improve its performance. The IBBI evaluates its performance independent of evaluation of the GB. Keeping in view the inadequacy of self-evaluation, the GB directed evaluation of the performance of IBBI, as distinct from that of the Code, by an external agency. The National Council of Applied Economic Research has been commissioned to make an evaluation. The GB is now seized with a desire to reimagine IBBI with changing times and challenges ahead. It is examining afresh the *raison d'être* of IBBI as to whether its continued existence is warranted in the light of the outcomes of the processes being overseen by IBBI and whether these are eventually leading to enhanced economic performance.

The IBBI has always endeavoured to engage with stakeholders in every possible format. It makes Regulations after extensive consultations with them, in roundtables, and electronically, and having advice of working groups (WGs) and advisory committees (ACs). It has a standing arrangement to enable any stakeholder to seek any new regulation or suggest any change in any of the existing regulations, throughout the year. This puts every stakeholder into the shoes of a regulator and crowdsources ideas and perspectives. Consequently, the

universe of ideas available with the regulator is much larger and the possibility of a more conducive regulatory framework much higher.

Building profession: The IBBI has been shepherding two emerging professions, namely, insolvency profession and valuation profession. While using the standard toolbox to build professions, the IBBI has made some innovations.

The IBBI led an industry initiative to conceptualise the Graduate Insolvency Programme (GIP) to take the insolvency profession to the next level. It is a one of its kind programme in the world to produce top-quality IPs who can deliver world-class services. It provides an avenue for young professionals, having talent but lacking experience, to take up the insolvency profession. It is a 24-month programme consisting of an intensive residential classroom component of 12 months and a hands-on internship component at the cutting edge of the practice for 12 months. The Indian Institute of Corporate Affairs (IICA) commenced GIP in the academic year 2019-20. The National Law Institute University, Bhopal (NLIU, Bhopal) is scheduled to commence GIP from academic year 2022-23.

The credibility of a profession depends upon credibility of its members. A distinct requirement of the insolvency profession (also valuation profession), as compared to most other professions, is that it lets only those individuals in, who the profession would feel proud of, and prevents entry of those individuals, whose antecedents are doubtful or questionable. It allows entry of only those individuals who are 'fit and proper' and requires them to remain 'fit and proper' as a condition of continued registration. For determining whether a person is 'fit and proper' or not, the IBBI considers various aspects, including but not limited to (a) integrity, reputation, and character, (b) absence of convictions and restraint orders, and (c) competence and financial solvency.

The IBBI strives to be a knowledge organisation given its role in respect of two new professions. In association with IPAs, it has been engaging with researchers, academia and practitioners to produce and capture emerging knowledge and build capacity of professionals at the time of entry and on a continuing basis. It conducts the valuation examination for three asset classes, namely, land & building, plant & machinery and securities or financial assets and the insolvency examination for entry into the professions. It has made available study material, developed by experts, to prepare candidates for these examinations. Of these, the study material for plant & machinery, and land & building, developed by Centre for Valuation Studies, Research and Training Association, are used by many valuer organisations across the world. The IBBI and IPAs bring out several publications, and research studies, and actively encourage and support academia to do so.

Institutional legitimacy: What distinguishes an organisation from an institution is its legitimacy. An organisation needs to be accepted by the stakeholders for what it does and how it does, rather than only for its statutory mandate. This requires the organisation to build social capital by consistent conduct and performance over years or even decades. To my understanding, the IBBI has begun the journey of legitimacy.

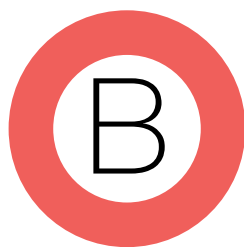
Perhaps in recognition of its role and performance, the IBBI finds a place in important fora such as Financial Stability and Development Council, Forum of Indian Regulators, Competition Law Review Committee, ILC and International Association of Insolvency Regulators. It provided leadership to important committees in insolvency space such as Sub-Committee of the ILC on Resolution of Financial Service Providers; Committee of Experts on Institutional Framework for Regulation and Development of Valuation Professionals; and Sub-Committee of the ILC on Pre-packaged Insolvency Resolution Process.

A distinguished visitor to IBBI once described it as a 'start-up'. I quite tend to agree and wish it remains so. The IBBI has all the features of a start-up, namely, it is young, innovating, flexible, agile, and has focus on outcome. Team IBBI, led by its GB, is ever vigilant and available to any stakeholder with a legitimate concern to help address it within the four walls of the legal framework in place.

CONCLUSION

Into its fifth year, the insolvency reforms in the country have crossed many important milestones and have delivered outcomes in keeping with its objectives. I thank the Ministry of Corporate Affairs (MCA) for making all efforts to ensure the success of this reform. I am indebted to all the members of the GB of the IBBI for providing their unflinching support to the IBC and the IBBI to help accomplish the goal of an efficient and effective insolvency regime in the country in a short span of time.

(Dr. M. S. Sahoo)



THE YEAR IN REVIEW

MACROECONOMIC CONTEXT

As the year 2019-20 was ending, the outbreak of the COVID-19 pandemic posed unique challenges to the health sector, economy, and financial markets globally. It had adverse impact on the macroeconomic trends in all economies, necessitated structural changes in economies and societies, extinguished several jobs and posed corporate solvency challenges. Governments and policy makers acted swiftly to mitigate the adverse effects of the health crisis with fiscal and monetary packages to the tune of nearly USD 10 trillion, which is three times more than the response to the 2008–09 financial crisis.¹ The IMF estimated a contraction in global economic growth of -3.1 per cent in 2020², thus indicating that the present health crisis is the worst recession since the Great Depression, and far worse than the Global Financial Crisis.

However, the vaccine approvals and administration of the same in several economies coupled with additional fiscal support from governments, has raised hopes of economic recovery in 2021. The global economy is now projected to grow 5.9 per cent in 2021 and 4.9 per cent in 2022.³ While the global economy is getting back on track, countries and regions are moving at different speeds. With passage of time, as certain sectors will adapt to the 'new normal' of less contact-intensive activities and roll out of vaccines will give way to strengthening contact-intensive activities again, the economic recovery is expected to gain momentum in the second half of 2021 as per the IMF. However, economies still need to be wary of potential surging of infections (including new variants of the virus), lockdowns, delays in vaccine distribution, and threat to employment and incomes due to potential surge in corporate and household insolvencies⁴, to ensure a sustained recovery and curb the damage caused from sharp contraction in 2020. As policy measures such as insolvency moratoriums expire, a wave of bankruptcies and loan defaults may follow, thereby necessitating strengthening of insolvency regimes with a focus on fast-track procedures to restructure debt.⁵

FY21 proved to be a challenging year for India as well with slow recovery witnessed towards the end. The early start of

lockdowns by end of March, 2020 and uncertainties created by the pandemic put a sudden halt to all economic activities. Falling incomes and consumption added to the ongoing contraction. A closer look at macroeconomic variables for the year reflects the underlying reasons for the decelerating growth.

The first quarter of FY 21 saw the Gross Domestic Product (GDP) contract 24 per cent.⁶ The Gross Value Added (GVA) also fell 22 per cent in the same quarter. Sectors that experienced severe contractions were manufacturing, construction and electricity. The pandemic had negligible impact on agriculture and forestry, in fact, it is the sector that reported a positive growth rate. Non-disruption of farm activities due to the lockdown explains the positive rates. The worst hit sector was hotel, transports and communications that shrunk by a steep 47 per cent from the previous financial year.⁷ Negative investment sentiments and fall in consumption expenditure aggravated the slowdown and left room for little to no recovery in the second quarter. Though the margins of decline narrowed, sectoral growth was largely negative.

Investments as reflected by Gross Fixed Capital Formation (GFCF), stood 24.4 percent of GDP in Q1 of FY21 compared to 31.6 percent of GDP in Q4 of FY20. The annual contraction of investment by 12 per cent furthered the sluggish recovery. GFCF as share of GDP in FY21 fell to 30.9 per cent from 32.5 per cent in FY20. In addition to lower investments, consumption demand captured by Private Final Consumption Expenditure (PFCE) also contracted by 9 per cent over FY21. Job losses, and pay cuts strained the falling household demand. Manufacturing sector employed 40.1 million people in FY20. This declined to 27.4 million in FY21. Real estate and construction sectors followed suit. It employed 53.7 million people compared to 60.9 million people in FY20.⁸

After having battled one of the biggest economic slowdowns, the third quarter of FY21 displayed signs of recovery. Easing of restrictions and allowing industries to resume operations, even at half capacity, put India back on its growth path. Vaccination drives gathering momentum painted a brighter

¹ "The \$10 trillion rescue: How governments can deliver impact", McKinsey & Company Report, June 2020, <https://www.mckinsey.com/~/media/McKinsey/Industries/Public%20Sector/Our%20Insights/The%2010%20trillion%20dollar%20rescue%20How%20governments%20can%20deliver%20impact/The-10-trillion-dollar-rescue-How-governments-can-deliver-impact-vF.pdf>

² World Economic Outlook Update, October 2021, IMF.

³ World Economic Outlook Update, October 2021, IMF.

⁴ Global Financial Stability Report Update, January 2021, IMF.

⁵ Global Financial Stability Report Update, April 2021, IMF

⁶ RBI Annual Report 2020-21

⁷ Ministry of Statistics and Programme Implementation Press Notes, 2020-2021

⁸ Bhardwaj, A. (2021). *Manufacturing Employment Halves in 5 years*. CEDA-CMIE Bulletin.

picture for faster revival of economic health. The big push in the form of a stimulus package restored the lost confidence in the markets. The share of Government Final Consumption Expenditure (GFCE) in GDP increased from 10.6 per cent in FY 20 to 11.8 per cent in FY21. These investments and spike in government expenditure have multiplier effects and was seen in the slow but positive growth rates exhibited in Q4. PFCE rose 2.7 per cent in Q4 after contraction of 2.8 percent in Q3. The GVA stood at 1 per cent and 3.7 per cent in Q3 and Q4 respectively. After several bouts of negative growth rate, GDP grew at 1.6 percent in Q4.⁹

As in any recessionary spell, the monetary policy, complements the fiscal policy. The Reserve Bank of India (RBI) has maintained an accommodative monetary policy stance with the repo rate cut to 4 per cent from over 5 per cent in FY20. In light of expansionary measures, the fiscal health of the economy has been under stress. Even though the fiscal deficit closed at 9.3 per cent, lower than the revised estimate 9.5 per cent for FY21¹⁰, the shadow of second wave is bound to persist and exert an upward pressure on estimates.

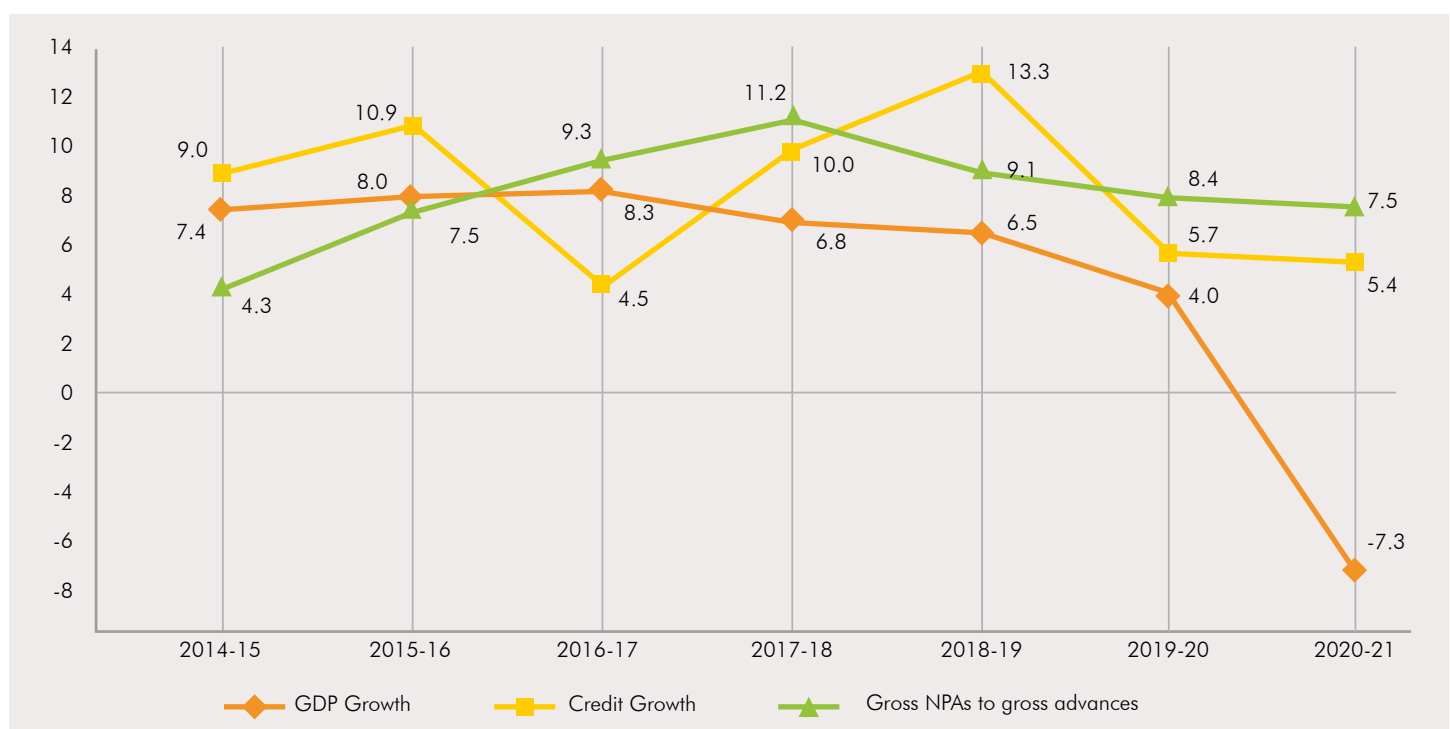
While domestic demand remained subdued, India's external sector benefitted in Q1 of FY21. The pandemic-imposed restrictions reduced the overall demand for imports. However, the pent-up demand and possibly savings, reversed this trend in the last two quarters of FY21. Exports as share of GDP stagnated at 19.5 per cent over FY20 and FY21. Imports of goods and services share in GDP declined 10 per cent in FY 21 and stood at 20.4 per cent, leaving India as net importer. However, India's exports increased over the month of March -

April 2021 owing to the global rebound in demand. This surge in exports provides the much-needed mechanism to counter unemployment challenges and reduced incomes.

Overall, India's real GDP fell to 4.0 per cent in FY20 (6.1 per cent a year ago), and contracted by 7.3 per cent in FY 21, as per estimates by the National Statistical Office (NSO). All components of domestic demand were driven down, except government final consumption expenditure, which stood at 11.7 per cent of GDP in FY 21, which provided sustained support to aggregate demand. On the supply side, activity in manufacturing, construction and transportation witnessed a fall due to sector-specific impediments. With dwindling confidence and imposition of lockdown, the demand for non-essential items plummeted. The index of industrial production (IIP) shrank by 0.8 per cent during FY20 from 3.8 per cent in FY19 and further by 8.6 per cent in FY21. In the manufacturing sector, which constitutes three-fourths of industry, 22 of 23 industry groups (exception being pharmaceuticals, medicinal and botanical products) recorded contraction. Credit growth decelerated to 5.7 per cent in 2019-20 and further to 5.4 per cent in 2020-21. GNPA ratio improved from 8.4 per cent to 7.5 per cent in 2020-21.

As India battles with the second wave, since March, 2021, the challenge of recovery continues. While the first two quarters hit the economy hard, the growth potential exhibited in Q3 and Q4 cannot be overlooked. The second wave has surely delayed the growth plans, revising the GDP growth estimates to 9.5 per cent for FY22, as per RBI, from the projected 12 per cent. In line with global output recovery, the IMF has

Figure 1: Growth rates of GDP, Credit and GNPA



Source: NSO and RBI database

⁹ Ministry of Statistics and Programme Implementation database

¹⁰ CGA Financial Reports, 2020-21

projected India's growth to be 9.5 per cent in 2021, indicative of a stronger-than-expected recovery in 2020 after nationwide lockdowns and restrictions were eased, and 8.5 per cent in 2022.¹¹

Impact on Businesses

The COVID-19 pandemic took the world by surprise; with people falling easy victims and government establishments worldwide caught off guard. The first reaction of Governments across the world was to save lives. What followed were unprecedented "lockdowns" across the world to contain the spread of the virus and minimise casualties. While lives were being saved, livelihoods were vanishing, causing the further fear of losing lives for reasons other than the virus. Businesses, which are the lifelines of any economic system, need to be saved from untimely deaths to save the lives dependent on these businesses. Countries across the world have taken recourse to all policy weapons available to them to save businesses - fiscal, monetary and prudential. Fiscal stimulus packages ranging from 21 per cent of GDP in Japan; 16 per cent in Canada and 14 per cent in Australia to 5-6 per cent in many countries have been announced and implemented.

As FY21 commenced, many countries around the world were under lockdowns to contain the spread of the pandemic. With many economic activities coming to an almost complete halt, businesses shut, supply chains broken, demand for non-essentials plummeting and working capital drying up, many businesses are going through difficult times. Given that many countries imposing travel restrictions and some completely locking down to contain the spread of the virus, industries such as restaurants, retail businesses and hospitality industry, are being severely impacted. Some examples of big companies filing for bankruptcy were seen across the world.

The spread of COVID-19 in India was comparatively delayed and comparatively controlled due to early imposition of lockdown. The first wave of the pandemic saw its peak in September, 2020. However, the impact on businesses in the country was severe. From airlines to hospitality and tourism industry to manufacturing firms, all bore the brunt of the lockdown, demand dwindled, and supply chains were ruptured. Several companies, many of them Micro, Small and Medium Enterprises (MSMEs), witnessed receding top lines. Economic stress on the industry arising out of the nationwide lockdown forced by the COVID-19 health emergency grew over the year in tandem with the spread of the virus and related containment measures taken by the Government.

The RBI's Financial Stability Report (FSR) of January, 2021 informs that the private corporate business sector had been experiencing a deterioration in performance even before the pandemic. This became accentuated with the outbreak of COVID-19. However, the brunt of the pandemic's impact was mainly concentrated in Q1 FY21. Signs of recovery became visible in Q2 FY21. The contraction in sales at (-) 4.3 per cent was a significant improvement from the precipitous

decline of 41.1 per cent in the preceding quarter for listed private manufacturing companies. Enabled by cost cutting as reflected in a larger reduction in expenses relative to sales, the manufacturing sector posted improvements in operating profits and in debt servicing, the latter being reflected in the improvement in their interest coverage ratio (ICR). Sales growth of the IT sector, on the other hand, remained resilient through H1:FY21. Although profit margins improved across sectors, manufacturing companies reduced leverage during H1:FY21 vis-à-vis the previous half-year and built-up precautionary cash positions, as reflected in the unaudited balance sheets of 1249 listed private manufacturing companies. Further, their investment in fixed assets remained subdued.

The response of the Government across the world in terms of changes in the insolvency law to stem the impact of the pandemic on businesses was quick and almost on similar lines. **Box 1** informs the details.

The impact of various measures taken to ameliorate the pain of businesses and individuals announced by the Governments around the world is yet to be fully visible. However, what is clearly visible is that some businesses have been temporarily saved from facing the gallows. What should be the future course of action to save the corporates, what kind of policy interventions will help in this regard etc. need detailed deliberations. The G30, in its report '*Reviving and Restructuring the Corporate Sector Post-COVID: Designing Public Policy Interventions*',¹² released on December 15, 2020 provides a blueprint for why, when, and how of the interventions that policy makers can make (**Box 2**).

MAJOR POLICY DEVELOPMENTS

The year under review witnessed various novel developments, including the occurrence of a global pandemic which is a rare black swan event. The times are not normal. The entire world is in grip of COVID-19, with no quick solution in sight. Nevertheless, the government has left no stone unturned to save the CDs in distress. In response to these emerging issues, the Code was evolved accordingly with inclusion of various developments in its journey during the year. Some of the important developments during the year 2020-21 are outlined here.

Facilitations by Government

Aatmanirbhar Bharat Abhiyan

The Union Minister of Finance and Corporate Affairs, while detailing '*Aatmanirbhar Bharat*, Part V: Government Reforms and Enablers' on May 17, 2020, proposed the following IBC related measures to further enhance ease of doing business:

- (a) Minimum threshold to initiate insolvency proceedings raised to Rs. 1 crore from Rs. 1 lakh, which largely insulates MSMEs;
- (b) Special insolvency resolution framework for MSMEs to be notified under section 240A of the Code;

¹¹ World Economic Outlook Update, October 2021, IMF.

¹² <https://group30.org/publications/detail/4820>

Box 1: Insolvency Law Response to COVID-19

These are not normal times. The world is in the grip of the COVID-19, with no quick solution in sight. It is fast snowballing to an economic crisis. Some believe that it may hurt deeper than the deepest health pandemonium (1918 Spanish flu), the worst economic disaster (1930 Great Depression), or the most-devastating financial crash (2008 financial crisis), or may be, all of them put together.

As around the world, in India as well, the impact of COVID-19 on the economy has been severe. In view of demand contraction and supply chain disruptions arising from primarily two external factors, namely, COVID-19 and consequential imposition of nationwide lockdown, many companies may have receding top line and bottom line and some of them may default in servicing debt obligations.

While the impact of the external variables on the economy is very deep, similar shocks of a comparatively lower intensity in the past have witnessed a sharp increase in corporate and personal insolvencies all over the world. In our recent memory, the 2008 global financial crisis had resulted in a similar situation of declining demand, decreasing availability of external finance, declining investments, causing firms around the world to face insolvencies and bankruptcies.¹³

International Response

Such a rare black swan event required a matching response from humanity to save 'lives', that required saving 'livelihoods', which in turn required saving lives of firms. Governments around the world have adopted an accommodative stance and acted swiftly to prevent corporates and individuals from being forced into insolvency and bankruptcy. Measures such as moratorium on loan repayments, sector specific forbearance, infusion of liquidity into the banking system to provide credit to financially distressed firms, relief in asset classification banking norms, flexibility in director's obligations to initiate insolvency proceeding, relief from compliance with specific legal obligations etc., have been taken to deal with the situation.

Both World Bank and IMF¹⁴ have listed out the challenges and key responses required to meet those challenges to prevent the economies from facing a fate like the Great Depression. They suggest the implementation of those responses in a three-phased approach to help the economy transition smoothly towards the positive side of the graph. In the first phase, copious interim measures need to be taken to halt insolvency and debt enforcement activities. In the second phase, when a huge wave of insolvencies is anticipated, it may be addressed by transitional measures, such as special out-of-court workouts, to 'flatten the curve' of insolvencies. The third phase calls for regular debt resolution tools to address the remaining debt overhang and support economic growth in the medium term. The key challenges and responses in three phases in the wake of COVID-19 outbreak are as under:

Phases	Key Challenges	Critical Responses
Phase 1: "Freeze" phase to deal with immediate impact of the health emergency by taking interim measures.	Preventing viable firms from prematurely being pushed into insolvency.	Implementing one or more extraordinary measures for a limited period of time: <ul style="list-style-type: none"> Increasing barriers to creditor-initiated insolvency filings; Suspending director's duty to file and associated liability; Ensuring complementarities with debt repayment emergency measures.
Phase 2: "Transition" phase for response after the pandemic subsides and economic activity resumes.	Responding to the increased number of firms that will not survive this crisis without going through insolvency.	Ensuring smooth functioning of workouts and debt restructuring mechanisms such as: <ul style="list-style-type: none"> Establishing informal out-of-court or hybrid workout frameworks; Facilitating business rescue through bridge financing; Extending procedural deadlines for a limited period of time; Suspending the requirement to proceed to liquidation if the business activity of the debtor has stopped while undergoing reorganisation; Encouraging e-filings, virtual court hearings and out-of-court solutions in insolvency cases.
Phase 3: "Fighting debt overhang" during the phase when situation stabilises and there are after-effects to deal with.	Addressing individual financial distress resulting from the crisis.	<ul style="list-style-type: none"> Implementing modern consumer bankruptcy frameworks; Ensuring there are flexible options for debt rescheduling and repayment plans; Enabling a debt forgiveness mechanism or discharge is important for facilitating a fresh start.

Response in India

The Government of India has taken several measures to ameliorate the pains emanating from COVID-19. This piece discusses measures in the space of insolvency only. When every firm, every industry and every economy is reeling under stress, the likelihood of finding a white knight to rescue a failing firm is remote. If all failing firms were to undergo insolvency proceeding, most of them may end up with liquidation for want of saviours to rescue them. Upon such liquidation, the firms would have a premature death, while the assets would have distress sale, realising abysmally little. Rescuing lives of firms being the prime objective of the Code, it must not be used to take away their lives prematurely during these unusual times.

This unprecedented situation called for another experimentation requiring a choice between two competing policy options, namely, suspend the operations of the Code or continue its operations as usual. If the first option is exercised, the market would fail to liquidate

¹³ World Bank Policy Research Working Paper 5448, "The Challenges of Bankruptcy Reform", October, 2010

¹⁴ World Bank Group, Financial Series, COVID-19 Notes, "COVID-19 Outbreak:

Implications on Corporate and Individual Insolvency", April, 2020 and IMF Special Series on COVID-19, "Private Debt Resolution Measures in the Wake of the Pandemic", May, 2020.

an unviable firm. This is not good for an economy, but this can be rectified in the following quarter or the following year. If the second option is exercised, the market would liquidate a viable firm forever, which can never be undone. Rescuing a viable firm is, therefore, far more important than failing to liquidate an unviable one. Further, firms, which are failing solely on account of COVID-19, may bounce back on their own as soon as normalcy restores. Alternatively, they would at least recalibrate their operations and businesses to an 'all-new normal'. The choice, therefore, fell on the first option, which provides breathing time for firms and furthers the objectives of the Code.

The first option has two sub-options, namely, suspend the Code in its entirety or suspend some elements, as may be warranted. The first sub-option would not allow liquidation of a failing firm, whether it was unviable before COVID-19 or became unviable on account of it. It would also not allow rescue of a failing firm even if it were viable before the COVID-19 or remains viable despite it. A delay in rescue of a viable firm may make its rescue impossible. The policy should, therefore, protect those firms which are victims of pandemic, and not protect the undeserving. The choice, therefore, fell on the second sub-option which suspends only such provisions of the Code, for such purposes and for such period, as are necessary under the circumstances, avoiding any unintended consequences.

Contrary to general belief that the Code has been suspended for a year, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 is a keyhole surgery that suspends a tiny part of the Code. It suspends filing of applications for initiation of insolvency proceeding against a company for any default arising during COVID-19 period, which is six months commencing on March 25, 2020 to start with, but can be extended up to a year, if warranted. It insulates a company, which did not have a default as on March 25, 2020 but commits a default during the COVID-19 period, from being pushed into an insolvency proceeding.

The Ordinance does not absolve the company of a COVID-19 default. It does not even exclude such default from the ambit of default under the Code. Such default remains a default for all purposes under the Code, except for the purpose of initiating insolvency proceeding against the company. For example, such default can be the basis for submission of claim in an insolvency proceeding or initiation of insolvency proceeding against a PG.

The COVID-19 crisis is not the first crisis that has hit the world. The world has fought and overcome many battles in the past. This too shall pass, preparing mankind for still bigger challenges in the future. This war has many warriors in the insolvency space - the Government, the regulator, the service providers (IPAs, IPs, IUs, RVOs, RVs) and the AA. As the Government prepares the insolvency landscape of the country for the post COVID-19 phase in the longer term, one is hopeful that the measures taken in the short and medium term will be successful in preserving the life of companies and livelihood of persons in distress. It must, however, be appreciated that insolvency law is not the panacea to deal with stress of all firms impacted by the COVID-19. It, however, provides a valuable breathing space while the companies as well as the authorities can put in place a comprehensive strategy to wade the economy through the pandemic.

(c) Suspension of fresh initiation of insolvency proceedings up to one year depending upon the pandemic situation; and

(d) Empowering Central Government to exclude COVID-19 related debt from the definition of "default" under the Code for the purpose of triggering insolvency.

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020

The President of India promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 on June 5, 2020 to further amend the Code to prohibit filing of applications for initiation of CIRP for any default arising on or after March 25, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified. This would prevent companies which are experiencing distress on account of unprecedented situation, from being pushed into insolvency proceedings, when it is difficult to find adequate number of RAs to rescue them. The Ordinance clarifies that applications for initiation of CIRPs may be filed for defaults committed before March 25, 2020. It further provides that no application shall be filed by an RP in respect of liability for contribution to the assets of the CD, in respect of default against which initiation of CIRP is suspended. This provides protection to directors of the CD against the liability under section 66(2) of the Code dealing with exercise of due diligence to minimise the potential loss to creditors.

Further, the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 was enacted on September 23, 2020 to replace the Ordinance.

Suspension of initiation of CIRP

The Government had, through an amendment to the Code on June 5, 2020 suspended filing of applications for initiation of CIRP under sections 7, 9 and 10, in respect of any default arising during the period of six months commencing on March 25, 2020. In exercise of the powers conferred by section 10A of the Code, this suspension was further extended twice, vide notification dated September 24, 2020 and vide notification dated December 22, 2020 by periods of three months each. Accordingly, the suspension expired on March 24, 2021.

Definition of MSMEs

The Central Government has, vide notification dated June 1, 2020, under the Micro, Small and Medium Enterprises Development Act, 2006 modified definition of MSMEs as under:

- (a) a micro enterprise, where the investment in Plant and Machinery or Equipment does not exceed Rs. 1 crore and turnover does not exceed Rs. 5 crore;
- (b) a small enterprise, where the investment in Plant and Machinery or Equipment does not exceed Rs. 10 crore and turnover does not exceed Rs. 50 crore; and
- (c) a medium enterprise, where the investment in Plant and Machinery or Equipment does not exceed Rs. 50 crore and turnover does not exceed Rs. 250 crore.

Committee on Experts on Valuation Professionals

The Committee of Experts (CoE), which was constituted by Government under the Chairmanship of Dr. M. S. Sahoo,

Box 2: Rescuing businesses to save lives and livelihoods: Policy prescriptions from the G30

When the COVID-19 pandemic took the world by surprise, with people falling easy victims, caught off guard, the first reaction of Governments across the world was to save lives. The Hon'ble Prime Minister of India gave the mantra *"jaan hai toh jahan hai"*. What followed were unprecedented "lockdowns" to contain the spread of the virus and minimise casualties, with the word "lockdown" winning title of Collins Dictionary's word of the year 2020 for its "unifying experience for billions" and for one that "sums up the year" for most people.

While lives were being saved, livelihoods were vanishing, causing the further fear of losing lives for reasons other than the virus. The mantra changed to *"jaan bhi aur jahan bhi"*. Businesses, which are the lifeblood of any economic system, needed to be saved from untimely deaths to save the lives dependent on them. Swift fiscal and monetary responses followed to ensure liquidity. Full impact of these stimulus packages is yet to be fully visible. Pertinent policy questions which Governments and think tanks may need to ponder over are - How much and for how long should these stimulus packages continue? Who should bear the cost of such packages? What should be the medium to long term plan to rescue, revive and revitalise businesses? How to handle the issue of moral hazard while taking such rescue measures? These are also the key policy considerations for the Government in India, as also around the world.

The G30, an independent global body of economic and financial leaders drawn from various spheres, has provided a blueprint for why, when, and how of the interventions that policy makers can make for "reviving and restructuring the corporate sector post-COVID". With luminaries like Dr. Raghuram Rajan, Former Governor, RBI, and Dr. Mario Draghi, Former President, ECB as co-chairs for this report, it is useful to see what insights it has to offer.

Governments need to act urgently to tackle the growing corporate solvency crisis with the health crisis prolonging and threatening economic stagnation. Sooner than later corporate solvency crisis will raise its head, having been artificially controlled by a slew of quick measures, such as temporary adjustments in insolvency laws, maintaining consumption levels of households etc., taken across the world. This first phase of liquidity focused policy measures has done its part in preventing a deluge of corporate insolvencies. It is time to reorient interventions with more targeted approach; be future centric and mindful of rising public debt levels which could easily become unsustainable.

The way the scarce availability of coronavirus vaccine is being targeted to the most vulnerable population to start with, scarce economic resources also need to be targeted to businesses most in need based on an objective criterion. The report suggests spelling out policy goals to identify target group of firms which most deserve to be saved and prevent the problem of zombie financing. Priorities need to be identified and certain questions addressed - Is it the large corporates or the Small and Medium Enterprises (SMEs) which command more attention? Should we prioritise job preservation or allow "creative destruction"? How much fiscal headroom does the Government have? Can foreign sources of private funding be mobilised to support the corporates?

A good set of firms to target would be those where market failure due to COVID-19 pandemic could have substantial social costs. These would include SMEs; large firms which are highly leveraged but economically sound and non-SME firms which are otherwise at low leverage but have uncertain sustainable business models. Based on this underlying framework, the report proceeds to triage firms and suggest policy focus based on parameters such as economic viability, degree of leverage and nature of financial constraint. This exercise yields five category of firms, viz. healthy firms; financing constrained; liquidity challenged; solvency challenged and structurally unsound firms. The report recommends four types of interventions suitable to these firm categories: (a) better target credit to support firms which need it the most; (b) encourage equity or equity-like investments in viable firms; (c) put in place restructuring and bankruptcy procedures which ensure speedy exchange of debt for equity; restructuring of loan terms etc., and (d) over the long term, prepare for future pandemic business interruptions through government backed insurance.

All these tools may be used together or in combinations as appropriate to an economy's situation. Design of the intervention will be contingent upon available resources at the disposal of the Government, institutional capacities, and social and political priorities. Any intervention zeroed in should be cognisant of the danger of creating moral hazard problems, especially for companies which were already at high leverage levels before the pandemic struck. Further, intervention design may need to be differentiated for MSMEs. The report makes detailed recommendations on each of these aspects.

Possibility of the real sector crisis spilling over to the balance sheets of banks and financial institutions is recognised as being likely by the report. It suggests additional policy actions to encourage efficient and effective methods of dealing with large volumes of bad debt as a product of this crisis. These include Governments buying or guaranteeing bad assets; establishing "bad bank" structures and encouraging the use of specially designed asset management companies to take on NPAs.

To sum up, the report recommends the following core principles for policy makers in developing their policy response to support the corporate sector in the aftermath of the pandemic: act urgently; target carefully; adapt to new business realities; government intervention only to address market failure allocations; tap private sector expertise to optimise resource; balance national objectives with business support measures; minimise risks and share losses; take care of moral hazard issues; work out timing, staging and longevity of interventions and anticipate spill overs to financial sector and prepare accordingly.

Going forward, once the pandemic is controlled, nations should endeavour not to lose lives because of lack of livelihoods. Preparing the ground now for that post-pandemic world requires focus on saving businesses which provide bread and butter to survive. This is also essential for long-term economic resilience and growth.

Chairperson, IBBI to examine the need for an institutional framework for regulation and development of valuation professionals, submitted its report to the Government on April 2, 2020 along with a draft of 'Valuers Bill, 2020'. The report of

the Committee is available on the website of IBBI.

The CoE had extensive consultation with the stakeholders - RVOs, RVs, other valuers and other professionals, professional institutes, trade and industry, and academicians.

It studied the valuation landscape in India, both in terms of institutional arrangements for development and regulation of valuation professionals, and legal and regulatory requirements surrounding valuation services. It considered the institutional framework for valuation professionals in advanced jurisdictions, the attempts made in the past in India to provide such a framework, and experience of institutional / regulatory frameworks in respect of other professions in India. It explored the contemporary thought on the role of regulatory state and design of regulatory architecture in respect of markets and professions. It has recommended the least disruptive, yet modern and robust, institutional framework that learns from the experience of valuation profession in India and abroad, and of other professions in India, while addressing the concerns of today and tomorrow, and ensuring respectability for valuation professionals and accountability for valuation services.

The CoE has, *inter alia*, recommended enactment of an exclusive statute to provide for the establishment of the National Institute of Valuers (NIV) to protect the interests of users of valuation services in India and to promote the development of, and to regulate the profession of valuers and market for valuation services. This should also ensure that valuers enjoy an enviable reputation amongst the stakeholders, while being accountable for their services, and which could be a model for other professions. The stakeholders should use valuation services because they find value, and not because of a legal mandate.

Committee on Cross Border Insolvency Rules

The Committee on Cross Border Insolvency Rules and Regulations, which was constituted by Government under

chairpersonship of Dr. K. P. Krishnan to propose the rules and regulatory framework that would enable the implementation provisions relating to cross border insolvency, submitted its report to the Government on June 15, 2020. The committee is working on the extended scope to study and analyse UNCITRAL Model Law for Enterprise Group Insolvency and make recommendations in the context of the Code.

Advisory to banks

The Department of Financial Services, Ministry of Finance (MoF), issued an advisory to all nationalised banks, on August 26, 2020, informing them that the provisions of the Code as regards insolvency and bankruptcy of PGs to CDs have come into force with effect from December 1, 2019 that empowers creditors to file insolvency applications against PGs to CDs before the NCLT. Apropos the same, it advised the banks to consider putting in place mechanisms for monitoring the cases which may require initiation of individual insolvency process before the NCLT against PGs to CDs and setting up IT systems to collate data regarding PGs to CDs in all such cases.

Pre-packaged Insolvency Resolution Process

The sub-committee of the ILC submitted its Report on Pre-packaged Insolvency Resolution Process (PPIRP) on October 31, 2020 to the MCA. Taking note of the progress in insolvency reforms, maturity of the systems and practices relating to insolvency in the country and learning from the experience of pre-packs in other jurisdictions, the sub-committee has designed a pre-pack framework within the basic structure of the Code for the Indian market. The salient features of proposed pre-pack vis-à-vis CIRP are presented as under:

Parameter	CIRP	Proposed Pre-pack
Objective	Resolution through a resolution plan	Resolution through a resolution plan
Legal framework	Relatively more in the statute and less in regulations	Relatively less in the statute and more in regulations
Applicability	Companies and LLPs	Companies and LLPs
Initiation of process	Default above Rs. 1 crore, excluding COVID-19 default	Pre and post default stress, including COVID-19 default. In a phased manner, if required
Initiation by	FC, OC, or CD	CD, with consent of majority of unrelated FCs
Management of the CD	IP-in-possession with creditor-in-control	Debtor-in-possession with creditor-in-control
Role of IP	IRP appointed by the applicant and then RP by the CoC	RP, to be appointed with consent of majority of unrelated FCs
	Managing affairs of the CD and conducting the process	Conducting the process
Claim collation	IRP to invite and collate	CD to provide. RP to verify.
Information memorandum	Prepared by RP	Draft prepared by CD and finalised by RP
Moratorium	Moratorium under section 14	Limited Moratorium
Interim finance	Yes	Yes
Avoidance transactions	Yes	Yes
Valuation	By two valuers	By two valuers
IRPC	Includes cost of running operations	Does not include cost of running operations
Invitation for resolution plans	Public process	First right of offer to promoters, Swiss Challenge
Ineligibility for resolution plan	Section 29A applies	Section 29A to apply

Early closure of process	Under section 12A, on request of the applicant	With approval of 66% of voting share, present and voting; <i>Suo moto</i> by CoC
Approval of resolution plan by CoC	66% of voting share	66% of voting share, present and voting
Consequence of termination of process	No termination allowed	Liquidation, with 75% of voting share of CoC
Consequence of failure of pre-pack	Liquidation	Closure
Binding outcome	Resolution plan binding	Resolution plan binding
Regulatory benefits	Yes	Yes
Clean Slate, post resolution	Yes	Yes
Role of IP and AA	Relatively more	Relatively less
Timeline	180 days till approval of resolution plan by the AA	90 days for filing of resolution plan with the AA plus 30 days for the AA to approve it
Cooling off	12 months between two CIRPs	Three years between two Pre-packs

Mining Rules

The Ministry of Mines, vide notification dated March 24, 2021, notified the Minerals (Other than Atomic and Hydrocarbons Energy Minerals) Concession (Amendment) Rules, 2021. The amended Rules specify the manner of transfer of letter of intent to the transferee consequent to the conclusion of insolvency, liquidation, or bankruptcy proceedings, as the case may be, of the original holder of the letter of intent (transferor) by the competent Tribunal or the Court under the provisions of the Code.

Facilitations by Regulators

Reserve Bank of India

Among other measures taken, RBI vide a notification dated April 17, 2020 reviewed the resolution timelines under the prudential framework on resolution of stressed assets. In terms of the prudential framework, lenders are required to implement a resolution plan in respect of entities in default within 180 days from the end of review period of 30 days. On a review, RBI excluded the period from March 1, 2020 to May 31, 2020 from the calculation of the 30-day review period, in respect of accounts which were within the review period as on March 1, 2020. In respect of all such accounts, the residual review period shall resume from June 1, 2020, upon expiry of which the lenders shall have the usual 180 days for resolution. Further, in respect of accounts where the review period was over, but the 180-day resolution period had not expired as on March 1, 2020, the timeline for resolution shall get extended by 90 days from the date on which the 180-day period was originally set to expire. Consequently, the requirement of making additional provisions of 20 per cent required under the prudential framework shall be triggered as and when the extended resolution period expires.

On a further review, vide another notification dated May 23, 2020, RBI excluded the period from March 1, 2020 to August 31, 2020 from the calculation of the 30-day review period, in respect of accounts which were within the review period as on

March 1, 2020. In respect of all such accounts, the residual review period shall resume from September 1, 2020, upon expiry of which the lenders shall have the usual 180 days for resolution. Further, in respect of accounts where the review period was over, but the 180-day resolution period had not expired as on March 1, 2020, the timeline for resolution shall get extended by 180 days from the date on which the 180-day period was originally set to expire. Consequently, the requirement of making additional provisions of 20 per cent required under the prudential framework shall be triggered as and when the extended resolution period expires.

Measures to Ease Financial Stress

To further ease the financial stress caused by COVID-19, RBI in its Statement on Developmental and Regulatory Policies dated May 22, 2020 announced the following measures:

(a) RBI had earlier permitted lending institutions to allow a moratorium of three months on payment of instalments in respect of all term loans outstanding as on March 1, 2020. In view of the extension of the lockdown and continuing disruptions on account of COVID-19, RBI permitted them to extend the moratorium on term loan instalments by another three months, i.e., from June 1, 2020 to August 31, 2020. Accordingly, the repayment schedule and all subsequent due dates, as also the tenor for such loans, have been shifted across the board by another three months.

(b) RBI permitted the lending institutions to allow a deferment of interest in respect of working capital facilities sanctioned in the form of cash credit/overdraft for another three months, from June 1, 2020 to August 31, 2020, in addition to the three months allowed on March 27, 2020 on payment of interest in respect of all such facilities outstanding as on March 1, 2020.

(c) RBI permitted the lending institutions to convert the accumulated interest on working capital facilities over the deferment period (up to August 31, 2020) into a funded interest term loan which shall be repayable not later than the end of the current financial year (March 31, 2021). This will ameliorate the difficulties faced by borrowers in repaying the

accumulated interest in one shot.

(d) As the moratorium/deferment is being provided specifically to enable borrowers to manage the disruptions caused by COVID-19, this will not be treated as change in loan agreements between borrowers and lenders and, consequently, will not result in asset classification downgrade. This moratorium will also not qualify as a default for the purposes of supervisory reporting and reporting to credit information companies by the lending institutions.

Fair Practices Code for Asset Reconstruction Companies

RBI advised Asset Reconstruction Companies (ARCs) registered with it to put in place Fair Practices Code (FPC) approved by their Board to ensure transparency and fairness in dealing with their stakeholders and in their operations, vide its communication dated July 16, 2020. It specified the minimum regulatory expectation from the FPC. For sale of secured assets, an ARC shall publicly solicit participation in auction and follow the spirit of section 29A of the Code in dealing with prospective buyers. It shall not resort to harassment of the debtor in recovery of loans. It shall ensure that recovery agents are properly trained to handle their responsibilities with care and sensitivity, particularly in aspects such as hours of calling, privacy of customer information, etc.

Resolution framework for COVID-19 stress

The economic fallout of the COVID-19 pandemic has led to significant financial stress for borrowers across the board which can potentially impact the long-term viability of many otherwise economically viable firms. Such widespread impact could impair the entire recovery process, posing significant financial stability risks. Considering this situation with the intent to facilitate revival of real sector activities and mitigate the impact on the ultimate borrowers, RBI provided a window under the Prudential Framework, vide circular dated August 6, 2020, to enable the lenders to implement a resolution plan in respect of corporate borrowers having stress on account of COVID-19, without change in ownership, while classifying such exposures as standard, subject to specified conditions. Only those accounts which were classified as standard and not in default for more than 30 days with any lending institution as on March 1, 2020 (i.e., not beyond SMA-0) and which continue to remain standard till invocation of resolution process, are eligible. RBI shall constitute a Committee to recommend a list of financial parameters which, in their opinion, would be required to be factored into the assumptions that go into each resolution plan, and the sector specific benchmark ranges for such parameters.

Financial parameters for COVID-19 stress

The Expert Committee, as envisaged under resolution framework for COVID-19 related stress, submitted its report on September 4, 2020. Based on its recommendations, RBI, vide its circular dated September 7, 2020, directed that all lending institutions shall mandatorily consider the key ratios, namely, Total Outside Liabilities / Adjusted Tangible Net Worth,

Total Debt / EBITDA, Current Ratio, Debt Service Coverage Ratio, and Average Debt Service Coverage Ratio, while finalising the resolution plans in respect of eligible borrowers. It also required the lending institutions to consider the sector-specific thresholds (ceilings or floors), for each of the key ratios in respect of 26 sectors. The lending institutions are free to consider other financial parameters as well while finalising the resolution assumptions. They should make their own assessment in respect of other sectors.

Securities and Exchange Board of India

Relaxations for Listed Companies

SEBI, vide notification dated June 22, 2020, inserted regulation 164A to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 to relax the pricing norms for preferential issues by listed companies. Regulation 164A provides that price of shares shall not be less than the average of the weekly high and low of the volume weighted average prices of the related equity shares during the two weeks preceding the relevant date. This relaxation is available for issue of equity shares made by a company which meets any two of the following criteria:

- (a) the issuer has disclosed all defaults on payment of interest/repayment of principal amount on loans and such default is continuing for a period of at least 90 calendar days after occurrence of such default;
- (b) there is an inter-creditor agreement in terms of RBI (Prudential Framework for Resolution of Stressed Assets) Directions, 2019 dated June 7, 2019; and
- (c) the credit rating of the financial instruments (listed or unlisted), credit instruments / borrowings (listed or unlisted) of the listed company have been downgraded to "D".

SEBI amended the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 vide notification dated June 22, 2020 to exempt any acquisition of shares or voting rights by way of preferential issue under regulation 164A of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 from open offer obligations.

Valuation by RVs

The SEBI, vide its circular dated November 3, 2020, modified its circular dated March 10, 2017, which lays down the framework for schemes of arrangements (SoA) by listed entities. The modification requires all listed entities to submit a valuation report from a RV in SoA. RV is a person, who being a member of a RVO, is registered with IBBI in accordance with section 247 of the Companies Act, 2013 read with the Rules.

Minimum Public Shareholding

The SEBI decided to recalibrate the minimum public shareholding norms for the companies which continue to remain listed after implementation of the resolution plan under the Code. Such companies shall have at least 5 per cent public shareholding at the time of their admission to dealing on stock exchange, as against no minimum requirement at

present. Further, such companies will have to achieve public shareholding of 10 per cent within 12 months from the date such shares of the company are admitted to dealings on stock exchange and 36 months to achieve public shareholding of 25 per cent from the said date. The lock-in period on the equity shares allotted to the RA under the resolution plan shall not be applicable to the extent to achieve 10 per cent public shareholding within 12 months.

Listing and Disclosure Obligations

SEBI, vide its notification dated January 8, 2021, amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The Regulations require disclosure of specific features and details of the resolution plan as approved by the AA under the Code, not involving commercial secrets, namely, pre and post net-worth of the company, details of assets of the company post CIRP, other material liabilities imposed on the company, details of funds infused in the company, creditors paid-off and brief description of business strategy. The Regulations also require disclosure of proposed steps to achieve the minimum public shareholding, quarterly disclosure of the status of achieving such minimum public

shareholding and details as to the delisting plans, if any, approved in the resolution plan.

International Financial Services Centre Authority

Qualified Financial Contracts

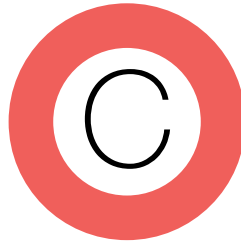
International Financial Services Centre Authority (IFSCA), vide notification dated February 2, 2021, introduced a wide and exhaustive definition of Qualified Financial Contract (QFC) under the Bilateral Netting of Qualified Financial Contracts Act, 2020. The notification defined the QFC as any privately negotiated bilateral financial contract executed outside a stock exchange, including any terms and conditions incorporated by reference in any such financial contract, pursuant to which payment or delivery obligations that have a market price are due to be performed at a certain time or within a certain period. Some of these contracts are currency, cross-currency or interest rate swap; commodity swap; and securities contract etc. Table 1 chronicles the important policy and regulatory developments during 2020-2021.

Table 1 : Chronology of policy and regulatory developments, 2020-2021.

Date	Development
02.04.20	The CoE submitted its report to the Government, recommending enactment of an exclusive statute for establishment of National Institute of Valuers and other measures to promote the development and regulation of valuation profession in India.
17.04.20	The RBI reviewed the resolution timelines under the Prudential Framework on Resolution of Stressed Assets.
20.04.20	The IBBI amended the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 to facilitate IPs in obtaining Authorisation for Assignment (AFA) to practice.
20.04.20	The IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, extending the date for filing of CIRP Forms after due date of submission, whether by correction, updation or otherwise.
20.04.20	The IBBI amended the IBBI (Liquidation Process) Regulations, 2016 to provide that the period of lockdown imposed in the wake of COVID-19 pandemic shall not be counted for the purpose of compliance with timelines in relation to any liquidation process with effect from April 17, 2020.
23.04.20	The IBBI issued a Circular clarifying that a member of the promoter organisation, which has promoted an RVO, shall not be eligible to be an independent director of the RVO.
05.05.20	The Government notified that the IRP/RP will be treated as a distinct person of the CD under the Central Goods and Services Tax Act, 2017 and shall be liable to take a new registration in each of the States or Union territories where the CD was registered earlier.
12.05.20	The NCLT directed that the applications under section 7 of the Code should be filed along with the default record from an IU.
17.05.20	The Central Government proposed various IBC related measures as part of 'Aatmanirbhar Bharat, Part V: Government Reforms and Enablers' to further enhance ease of doing business.
23.05.20	The RBI further reviewed the timelines under the 'COVID-19 Regulatory Package – Review of Resolution Timelines under the Prudential Framework on Resolution of Stressed Assets', given the continued challenges to resolution of stressed assets.
01.06.20	The Government notified the modified definition for classification of MSMEs under section 7 of Micro, Small and Medium Enterprises Development Act, 2006.
02.06.20	The IBBI issued the Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2020 to govern preparation of common panel of IPs for appointments during the period July 1, 2020 to November 25, 2020.
05.06.20	The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 was promulgated to prohibit filing of applications for initiation of CIRP for any default arising on or after March 25, 2020 for a period of six months or such further period, not exceeding one year from such date.
15.06.20	The Committee on Cross Border Insolvency Rules and Regulations submitted its report to the Government proposing the framework for implementation of provisions relating to cross border insolvency.

22.06.20	The SEBI amended the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 to exempt any acquisition of shares or voting rights by way of preferential issue under regulation 164A of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, from open offer obligations.
22.06.20	The SEBI amended the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 by inserting regulation 164A to relax the pricing norms for preferential issues by listed companies.
30.06.20	The IBBI amended the IBBI (Insolvency Professionals) Regulations, 2016, to allow IPEs to provide support services to any IP.
10.07.20	The IBBI issued the IBBI (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020 to govern the online delivery of educational courses by IPAs and RVOs.
16.07.20	The RBI issued a Circular on Fair Practices Code for ARCs advising ARCs to put in place a Fair Practice Code to ensure transparency and fairness in dealing with their stakeholders and in their operations.
05.08.20	The IBBI amended the IBBI (Voluntary Liquidation Process) Regulations, 2016, to enable a corporate person to replace the Liquidator by appointing another IP as Liquidator by a resolution of members or partners, or contributories, as the case may be.
05.08.20	The IBBI amended the IBBI (Liquidation Process) Regulations, 2016, to clarify that where a liquidator realises any amount, but does not distribute the same, he shall be entitled to a fee corresponding to the amount realised by him.
05.08.20	The IBBI issued a Facilitation Note listing the significant directions and observations from the orders and judgements of the AA, NCLAT and High Courts, for use by IPs while conducting the liquidation process.
06.08.20	The RBI issued the circular on Resolution Framework for COVID-19-related Stress to enable the lenders to implement a resolution plan in respect of corporate borrowers having stress on account of COVID-19, without change in ownership, while classifying such exposures as Standard, subject to specified conditions.
07.08.20	The IBBI amended the IBBI (Corporate Insolvency Resolution Process) Regulations, 2016, to provide that the three IPs offered by the IRP to act ARs must be from the State or Union Territory, which has the highest number of creditors in the specific class; the AR shall seek voting instructions only after circulation of minutes of meeting and vote accordingly and the CoC shall vote on all compliant resolution plans simultaneously.
13.08.20	The NCLT modified its order dated May 12, 2020 directing filing of default record from the IU along with new petitions filed under section 7 of the Code, wherever available, with the IU.
26.08.20	The Government issued an advisory to all nationalised banks to put in place mechanisms for monitoring cases which may require initiation of individual insolvency process against PGs to CDs and setting up IT systems to collate data for the same.
07.09.20	The RBI issued a Circular directing all lending institutions to consider various key financial ratios as recommended by the Expert Committee on resolution framework for COVID-19 related stress while finalising resolution plans in respect of eligible borrowers.
23.09.20	The Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 was enacted to replace the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020.
24.09.20	The Central Government notified extension of suspension of the Code for a further period of three months from September 25, 2020 under section 10A of the Code.
09.10.20	The IBBI issued a Circular on conduct of meetings of the Disciplinary Committee and Appellate Panel of the RVOs and procedures to be followed for the same.
29.10.20	The IBBI issued a Circular regarding availability of online facility on IBBI website, allowing applicants to serve a copy of the application filed for initiation of CIRP online to the Board.
31.10.20	The sub-committee of the ILC submitted its report on PPRIP to the Government recommending a pre-pack framework designed within the basic structure of the Code for the Indian market.
03.11.20	The SEBI issued a Circular modifying its Circular dated March 10, 2017 requiring all listed entities to submit valuation reports from a RV under the schemes of arrangement (SoA) framework.
13.11.20	The IBBI amended the IBBI (Information Utilities) Regulations, 2017 to specify the public announcement made under the Code as financial information and requiring dissemination of the public announcement to registered users of IU, who are creditors of the CD undergoing insolvency proceeding.
13.11.20	The IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to specify two 'other record or evidence of default' and to provide for submission of list of creditors by the RP on the electronic platform for dissemination on IBBI website and intimation by him to each claimant, the principle, or formulae, for payment of debts under the resolution plan.
13.11.20	The IBBI amended the IBBI (Liquidation Process) Regulations, 2016 to enable the Liquidator to assign or transfer a 'not readily realisable asset' to any person in consultation with the stakeholders' consultation committee (SCC).
23.11.20	The IBBI issued Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) (Second) Guidelines, 2020, to govern preparation of zone-wise panel of IPs for appointments during January - June, 2021.
27.11.20	The IBBI issued a Circular requiring filing of list of creditors or updation of the same by the IRP or RP on the electronic platform on IBBI website.

16.12.20	The SEBI recalibrated the minimum public shareholding norms for companies which continue to remain listed after implementation of the resolution plan under the Code.
22.12.20	The Central Government notified extension of suspension of the Code for a further period of three months from December 25, 2020 under section 10A of the Code.
24.12.20	The NCLT advised all its benches to start implementation of second phase of e-court with Automatic Case Number Generation with effect from January 1, 2021.
06.01.21	The IBBI issued a circular directing the IPs to preserve an electronic copy of all the records of a CIRP handled by them for a minimum period of eight years and a physical copy of all records for a minimum period of three years.
08.01.21	The SEBI amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 mandating <i>inter alia</i> disclosures of specific features and details of the resolution plan, not involving commercial secrets, as approved by the AA under the Code.
14.01.21	The IBBI amended the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 to specify the eligibility norms for an individual to be a shareholder director on the Governing Board of an IPA.
02.02.21	The IBBI issued a Circular regarding online facility on IBBI website allowing applicants to serve a copy of the application filed for initiation of insolvency resolution process of a PG to CD to the Board online.
02.02.21	The IFSCA introduced a wide and exhaustive definition of Qualified Financial Contract under the Bilateral Netting of Qualified Financial Contracts Act, 2020.
04.03.21	The IBBI issued a Circular requiring the Liquidator to file the list of stakeholders of the respective CD under liquidation on the electronic platform of the Board for dissemination on its website.
04.03.21	The IBBI amended the IBBI (Liquidation Process) Regulations, 2016 requiring the Liquidator to file the list of stakeholders, as modified from time to time, on the website of the Board.
09.03.21	The IBBI issued the Guidelines for Appointment of IPs as Administrators under the SEBI (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018 to facilitate appointment of IPs as Administrators with effect from April 1, 2021.
11.03.21	The IBBI extended the validity of the IBBI (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020 till September 30, 2021.
15.03.21	The IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to provide for updation of claim by a creditor after insolvency commencement date (ICD) and specified activities, which if not completed, will have to be filed by the IRP/RP through CIRP Form 7 within three days of the due date.
18.03.21	The IBBI issued a circular directing the IPs to report the status of ongoing CIRPs through Form CIRP 7.



POLICIES, PROGRAMMES AND ACTIVITIES

The insolvency framework under the Code hinges on an ecosystem comprising of important institutions. It promotes corporate governance and enables time bound insolvency resolution with the help of various service providers like IPAs, IPs and IUs. The Code has made a positive headway in the last four years by swiftly polishing its structure to build a solid path and strengthen the entire ecosystem. This section elaborates the regulatory measures, guidelines, advisories and circulars issued during the year to strengthen service providers and processes under the Code. This section elaborates the advocacy efforts of IBBI to educate stakeholders and spread larger awareness amongst them about the objectives and use of the Code, rationale behind various regulations under it, emerging best practices and what lies ahead in the insolvency and bankruptcy space of the country. Details of various capacity building initiatives of the Board to strengthen service providers like IPs and RVs, capacity enhancement of the institution of CoC and various departments of the Government have been presented in this section.

C.1 SERVICE PROVIDERS

The Code provides for a slew of service providers to facilitate stakeholders to carry out various insolvency resolution processes. They are mandated to make the market processes fair, effective and transparent to achieve the overall objectives enshrined under the Code. While the Code has created certain new professions and associated institutions, viz, IPs, IPEs, and IPAs, it has also reinvented a few others, such as valuers, accountants, advocates with specialisation in insolvency and bankruptcy. With the usage of the Code increasing over time, the demand for these professionals and sophistication of their services has increased. This section describes the developments in the regulatory space for the service providers, viz. IPs, IPEs, IPAs, RVs, RVOs and IUs. It also presents the status of growth of these professions.

INSOLVENCY PROFESSIONALS

An IP is a key pillar of insolvency ecosystem. He plays many different roles, namely, IRP or RP in a CIRP, Liquidator in liquidation processes, RP in individual insolvency processes and Bankruptcy Trustee (BT) in bankruptcy proceedings. Unlike the erstwhile regime, the Code makes provision for professional services for various processes under it. While elucidating the role of an IP, the Bankruptcy Law Reforms Committee (BLRC), which conceptualised the Code, 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.”

Thus, an IP is a crucial pillar responsible for the effective, timely and credible functioning of the entire CIRP. In administering the resolution outcomes, the role of the IP encompasses a wide range of functions, which include adhering to procedure of the law, as well as general management and finance related functions. The IP is required to adhere to a strict code of conduct while performing his obligations under the Code and ensuring there are adequate procedures and policies laid down and implemented by him or his team deployed on any ongoing CIRP. An IP is pivotal to the creditor-in-control process and acts as a bridge between the AA, the CoC and other stakeholders. Being vested with the power of board of directors and responsible for the management of affairs of the CD, an IP plays a key role in the lifecycle of CIRP. The IPs are to work to the highest standards of professionalism, to attain the highest levels of performance, and at all times comply with the provisions of the Code and regulations made thereunder as also terms and conditions specified in the bye-laws of the IPAs of which they are professional members and take reasonable care and diligence while performing their duties.

The Code prohibits any person from rendering his services as IP without being enrolled as a member of an IPA and registered with the IBBI. Thus, the IBBI acts the principal regulator of the insolvency profession, while the IPAs are frontline regulators. The provisions of the Code read with those in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations) and the Insolvency and Bankruptcy Board of India (Model Bye-laws and Governing Board of Insolvency Professional Agencies), Regulations, 2016 (Model Bye-Laws Regulations) govern the insolvency profession.

The IBBI has been actively grooming and regulating the insolvency profession. It has been taking various steps to build the capacity of the professionals through several skill development initiatives. It has promoted a Graduate

Insolvency Programme (GIP) to take the profession to the next level. Details of these efforts are presented in Section D of the report.

IP Regulations

In common parlance, a professional is a person, who has a right to practice a profession. A regulator (state, statutory regulator, or self-regulator) of the profession confers this right on a person to practice the profession, after following the due process and on being satisfied of the eligibility and credentials of that person. Such person practices the profession under the oversight of the regulator, which can take away the right, if he is found abusing it or loses the status of a 'fit and proper person'. It is because the right to regulate practice comes from right of the people to protect themselves.¹⁵ It is, therefore, important to put in place regulations to restrict the practice of profession to only those persons who meet the standards set for the profession. A person demonstrates his capability to deserve the right to practice the profession. He usually undergoes a course that equips him with the knowledge, skills, and expertise which a member of the profession must have before he seeks the right.

There is a fundamental distinction between a professional activity and commercial activity. Regulations distinguish a profession from an occupation and set and uphold professional standards in the interest of the stakeholders. Professional activity is carried on by an individual by his personal skill and intelligence.¹⁶ It involves certain amount of skill as against commercial activity where it is more of a matter of things or business activity. In commercial activity one works for gain or profit and as against this, in profession, one works for his livelihood.¹⁷ Regulator sets the standards of professional and ethical conduct for members of the profession.

The IP Regulations, notified on November 23, 2016, *inter alia* provide for registration, regulation, and oversight of IPs. As an immediate measure to enable enforcement of the Code on December 1, 2016, the IP Regulations allowed Chartered Accountants, Company Secretaries, Cost Accountants, and Advocates who had been in practice for 15 years to register as IPs. However, this window for registration was available till December 31, 2016 and such registrations were valid for a limited period of six months, i.e., till June 30, 2017. This provided valuable breathing time to put in place a regular arrangement. The IP Regulations allowed Advocates, Chartered Accountants, Company Secretaries and Cost Accountants with 10 years of post-membership experience (practice or employment) and graduates with 15 years of post-qualification managerial experience to seek registration as IPs on passing the Limited Insolvency Examination (Examination).

The IBBI has amended the IP Regulations from time to time to meet the emerging needs. Taking note of the fact that IPs and IPEs may find it difficult to adhere to various timelines stipulated in the IP Regulations in the wake of COVID - 19, it

amended the IP regulations, vide notification dated March 28, 2020, extending the last date for payment of fee for the year 2019-20 from April 30, 2020 to June 30, 2020. It also allowed time up to 30 days for the IPEs to inform the Board about appointment and cessation of its directors / partners from the date of such appointment or cessation.

Facilitation Notes

For IPs conducting liquidation process

The AA, the NCLAT, and High Courts, through their orders and judgements, have guided liquidators in the conduct of liquidation process. The IBBI issued a Facilitation Note on August 5, 2020, listing a few significant directions and observations from these orders and judgements, which an IP may find useful. These have been presented under the six broad categories, namely, taking charge as liquidator, scope of liquidation estate, sale of assets, attachments, managing the affairs, and powers and duties.

For IPs on Avoidance Transactions

The Code read with Regulations mandates the RP and the liquidator to determine if the CD has been subject to avoidance transactions such as preferential transactions, fraudulent transactions, undervalued transactions, and extortionate transactions in the past, and if so, casts an obligation on him to file an application to the AA for appropriate directions. To help an IP to discharge his role in respect of avoidance transactions, IBBI issued a facilitation note on 'Avoidance Transactions – Red Flags' on August 7, 2020 to guide the IPs to identify situations which would merit avoidance transaction review and resultant application to the AA. This note collates and places the red flags under six broad categories, namely, (a) Entity, Group and Operations, (b) Maintenance of Books and Records, (c) Regulatory Compliance and Litigation, (d) Independent Auditor Reports, (e) Financial Statements and Board Reports, and (f) Classification and Reporting of Frauds (as covered under RBI Master Directions).

Mistakes Committed by IPs

The IBBI and IPAs have come across some mistakes being committed by some of the IPs in conduct of CIRPs. These mistakes are costs to the CD and the economy, and often amount to contravention of provisions of the law. Most of these are probably unintentional and can be avoided with a little more vigil, care, and diligence. IBBI issued a Facilitation Note on November 13, 2020, listing few such mistakes committed by IPs in conduct of CIRPs with the hope that such mistakes will not be committed.

Panel of IPs

Since June, 2017, the IBBI has been preparing six-monthly bench-wise panels of IPs for appointments as IRPs and liquidators by the AA and sharing the same with the AA in advance, in accordance with Guidelines. The AA may pick up

¹⁵ Browne, Lionel, (1935), "Regulation of Professions by the State - The Right to Regulate, Reasons Therefor, Methods in Use, and Attitude of Regulatory Bodies and the Courts, with Relation Thereto", Cal West Med., August, 43(2), pp. 119-23.

¹⁶ Supreme Court, Chairman, M.P. Electric Board and On Vs. Shiv Narayan and Anr., Appeal (Civil No. 1065 of 2000).

¹⁷ Supreme Court, L.M. Chitala Vs. Commissioner of Labour (AIR 1964 Madras 131, 133).

any name from the panel for appointment of IRP or liquidator for a CIRP or liquidation process. This saves considerable time in an insolvency proceeding.

The IBBI issued the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2020 on June 2, 2020 to govern preparation of zone-wise panels for appointments from July 1, 2020 to November 25, 2020, replacing the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2019. Accordingly, the panel of IPs was prepared on June 25, 2020. Another panel of IPs was prepared on November 23, 2020 under the provisions of the above Guidelines for appointments from November 26, 2020 to December 31, 2020.

The IBBI issued the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2020 on November 23, 2020 to govern preparation of zone-wise panels for appointments during January - June, 2021.

The SEBI (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018 provide for appointment of IPs as Administrators for the purposes specified therein. Since April, 2019, the IBBI has been preparing zone-wise panels of IPs for appointments as Administrators every six months and sharing the same with the SEBI in advance, in accordance with the Guidelines. It issued the Guidelines for Appointment of Insolvency Professionals as Administrators under the SEBI (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018 on September 5, 2020 for preparation of panel of IPs for appointments during October, 2020 - March, 2021. Similarly, it issued Guidelines on March 9, 2021 for preparation of panel of IPs for appointments during April - September, 2021.

Pre-registration Educational Course

IPAs conduct pre-registration educational courses and continuing professional education for their members. In the wake of COVID-19, it had become difficult for IPAs to deliver educational courses and continuing professional education through classroom mode due to travel restrictions and social distancing norms. IBBI initially allowed IPAs to deliver courses online to minimise difficulties for the IPs and prospective IPs. To ensure that online delivery of courses is as effective as class-room delivery of education, the IBBI issued the IBBI (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuer Organisations) Guidelines, 2020 on July 10, 2020, which was in force till March 31, 2021. These Guidelines specify various aspects such as technical requirements, administration, and compliance responsibility. Further, it extended these guidelines till September 30, 2021 vide notification dated March 11, 2021, in view of the pandemic situation.

INSOLVENCY PROFESSIONAL ENTITIES

IPE is an institutional arrangement which enables IPs to build organisational capacity to render support services to any of them, subject to the condition that the IPE shall be jointly and severally liable for all acts of omission or commission of its partners or directors as IPs. An IPE cannot act as IP under the Code. An LLP, a registered partnership firm and a company is recognised as an IPE if (a) its sole objective is to provide support services to IPs, who are its partners or directors; (b) it has a net worth of not less than Rs. 1 crore; (c) majority of its shares are held by IPs, who are its directors, or majority of capital contribution is made by IPs, who are its partners; (d) majority of its partners or directors are IPs; (e) majority of its whole-time directors are IPs in case it is a company; and (f) none of its partners or directors is a partner or a director of another IPE.

The IBBI has amended the IP Regulations from time to time to meet the requirement with respect to the IPE. It amended the IP Regulations, vide notification dated June 30, 2020 to allow the IPEs to provide support services to any IP. Prior to this amendment, an IPE could provide support services only to an IP who was its partner or director. This will further professionalise insolvency services and enable IPs access to regulated support services.

INSOLVENCY PROFESSIONAL AGENCIES

Keeping in view the important role of IPs in the insolvency regime, the Code envisages a two-tier regulated self-regulation comprising of IPAs, as the front-line regulator, and IBBI, as the principal regulator of IPs. The IBBI (Insolvency Professional Agencies) Regulations, 2016 (IPA Regulations) govern registration and regulation of IPAs. A company registered under section 8 of the Companies Act, 2013 having the sole object to carry functions of an IPA and a minimum net worth of Rs. 10 crore and a paid-up capital of Rs. 5 crore is eligible to be an IPA. At least 51 per cent of the share capital of the IPA must be held, directly or indirectly, by persons resident in India. No person shall at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than 5 per cent of the paid-up equity share capital in an IPA. However, certain entities, namely, a stock exchange, depository, banking company, insurance company, public financial institution and multilateral financial institution may, acquire or hold, directly or indirectly, either individually or together with persons acting in concert, up to 15 per cent of the paid-up equity share capital of an IPA. Further, the Central Government, a State Government and statutory regulator may acquire or hold, directly or indirectly, up to 100 per cent of paid-up equity share capital of an IPA. The IPA, its promoters, its directors, and shareholders need to be 'fit-and-proper' persons.

The Bye-laws Regulations require an IPA to adopt bye-laws that are consistent with the Model Bye-Laws. The GB of an IPA consists of MD, independent directors and shareholder directors. The MD is not considered either as an independent director or shareholder director. An individual may serve as an independent director for a maximum of two terms of three

years each or part thereof, or up to the age of seventy-five years, whichever is earlier. An IPA, subject to the guidelines issued by IBBI from time to time, determine the qualification and experience, manner of appointment, terms and conditions of appointment and other procedural formalities associated with selection and appointment of the MD. The appointment, renewal of appointment and termination of service of the MD shall be subject to prior approval of IBBI. The MD is an *ex-officio* member of Membership Committee, Monitoring Committee, Grievance Redressal Committee and Disciplinary Committee (DC).

There are presently three IPAs registered with IBBI, viz. The Indian Institute of Insolvency Professionals of ICAI (IIPI), ICSI Institute of Insolvency Professionals (ICSI IIP) and IPA of Institute of Cost Accountants of India (IPA ICAI).

The IBBI amended the Model Bye-Laws Regulations vide notification dated March 28, 2020, allowing IPAs to issue AFA within one month from the date of application for the same. It further relaxed the time for filing an appeal against order of rejection of AFA application within one month from date of receipt of such order. It further amended the IPA Regulations vide notification dated January 14, 2021, enabling the GB of an IPA to specify the eligibility norms for an individual to be a shareholder director. It provides for self-evaluation of the GB every year within three months of the closure of the year. It requires that an IPA shall designate or appoint a compliance officer, who shall be responsible for ensuring compliance with the provisions of the Code and regulations, circulars, guidelines, and directions issued thereunder. He shall, immediately and independently, report to the Board any non-compliance of the provisions.

The IBBI meets the MDs of IPAs on the 7th of every month, in addition to subject specific meetings, to share developments and address difficulties encountered by them. IPAs are monitoring the conduct and performance of their members and initiate appropriate action against their members who do not comply with the provisions of the Code/ Regulations.

INFORMATION UTILITIES

The success of insolvency proceedings critically depends on availability of complete, correct, and up-to-date information about the debtor. This information may not be available with every stakeholder in equal measure. The non-availability of information may impede resolution and compromise the objective of value maximisation, while asymmetry of information may contribute to uneven sharing of value. To address these issues, the Code envisages IUs as repositories of financial information about debtors for expeditious completion of various processes under the Code. An IU is required to provide core services in respect of financial information. The IU, as visualised and implemented under the Code, has no parallel anywhere in the world.

Keeping in view the importance of services of an IU in various processes, the Code read with the IU Regulations provides for stringent norms for registration as an IU. An IU must have: (a) the sole object to provide core services under the Code, (b) a minimum net worth of Rs. 50 crore, (c) 'fit-and-proper'

persons as promoters, directors, key managerial personnel, and shareholders holding more than 5 per cent of shares, (d) independent directors who constitute not less than 50 per cent of the GB, (e) specified shareholding norms (f) reliable and recoverable secure systems for information flows along with business continuity plans, (g) data processing systems which prevents unauthorised access, alteration, destruction, disclosure or dissemination of information, (h) functionality to ensure privacy and confidentiality of information, and (i) its operations in compliance with Technical Standards.

To ensure accuracy of information and to prevent raising of disputes about claims and defaults, the Code mandates that such information be authenticated by the concerned parties. A set of Technical Standards apply to submission of information, authentication of information, data integrity, etc. These measures ensure that the information with IUs is admissible as evidence. After recording the status of information of default, the IU communicates the status of authentication to the registered users, who are: (a) creditors of the debtor who has defaulted, and (b) parties and sureties, if any, to the debt in respect of which the information of default has been received.

The Code defines 'financial information' to mean certain records and 'such other information as may be specified'. In exercise of this power, the IBBI amended the IBBI (Information Utilities) Regulations, 2017 (IU Regulations), vide notification dated November 13, 2020, to specify the public announcement made under the Code as financial information. It mandated the IUs to disseminate the public announcement to its registered users, who are creditors of the CD undergoing insolvency proceeding. This is in addition to publishing the public announcement in the newspapers and websites as required in the Regulations.

Technical Standards

The IU Regulations enable IBBI to lay down technical standards, through guidelines, for the performance of core services and other services by IUs, based on the recommendations of a Technical Committee. The technical standards ensure reliability, confidentiality, and security of financial information to be stored by the IUs. Accordingly, the Board constituted a Technical Committee on May 4, 2017. Based on its recommendations, the Board laid down technical standards on December 13, 2017. These standards relate to terms of service; registration of users; unique identifier for each record and each user; submission of information; identification and verification of persons; authentication of information; verification of information; data integrity; consent framework for providing access to information to third parties; security of the system; security of information; risk management framework; preservation of information; and purging of information. The composition of the Technical Committee as on March 31, 2021 is as under:

- (a) Dr. R. B. Barman, Chairman, National Statistical Commission, as Chairperson
- (b) Dr. Nand Lal Sarda, Emeritus Fellow, Indian Institute of Technology, Bombay
- (c) Dr. Pulak Ghosh, Professor, IIM, Bangalore, and

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

Based on recommendations of the Technical Committee, the submitter is given an option of providing officially valid documents such as passport, driving license, Permanent Account Number, Voter's Identity Card issued by Election Commission of India, and Aadhaar letter/card or the e-Aadhaar

(an electronically generated letter from the website of Unique Identification Authority of India).

National E-Governance Services Limited

NeSL, promoted by State Bank of India (SBI), Canara Bank, Bank of Baroda and others, was registered as an IU by IBBI on September 25, 2017. Table 2 presents the details of information held by NeSL as on March 31, 2021.

Table 2: Details of information with NeSL

(Number, except as stated)

At the end of Year / Month	Creditors having agreement with NeSL		Creditors who have submitted information		Debtors whose information is submitted by		Loan records on-boarded by		Amount of underlying debt (₹ crore)		User registrations	Loan records authenticated by debtors		No. of Defaults authenticated by debtors
	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	Financial	Operational	No. of Debtors	No. of Records	Value (₹ crore)	
2018 - 19	173	NA	114	169	1266445	230	1955230	316	4114988	16224	15148	13799	48,428	54
Jun, 2019	209	NA	160	231	2531930	570	3911146	52766	4910552	20455	23565	22363	73,706	374
Sep, 2019	226	NA	218	297	2737049	1764	4421280	86766	5625318	28016	32177	35621	83,686	586
Dec, 2019	246	NA	321	408	2926030	2121	4803931	125526	6919463	32038	48551	68766	93,852	82,824
Mar, 2020	267	NA	381	543	6551739	6191	9417317	167719	7873689	31910	73332	109726	118428	2,40,075
Jun, 2020	269	NA	456	574	7464854	8336	10721829	204568	9855538	33151	106840	149533	299294	3,38,585
Sep, 2020	276	NA	548	635	8228576	8979	12126772	206957	12299081	34374	120896	186091	373678	4,27,226
Dec, 2020	284	NA	587	654	8572919	9024	13666166	253955	12875496	35803	129839	215015	451935	4,35,774
Mar, 2021	289	NA	621	675	8988348	9066	14565545	292206	13195075	36770	139908	283839	499957	4,42,584

NA: Not Available

REGISTERED VALUERS

The Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules) provide a unified institutional framework for development and regulation of valuation profession, though its remit is limited to valuations required under the Code and the Companies Act, 2013. This framework, however, does not affect the conduct of valuations under any law other than the Companies Act, 2013 and the Code. With effect from February 1, 2019, only an RV will be appointed by an IP to conduct any valuation under the Code or any of the regulations made thereunder.

The Valuation Rules broadly follow the model of insolvency profession. An individual having specified qualification and experience needs to enroll with an RVO, complete the educational course conducted by the RVO, pass the examination conducted by IBBI and subsequently, seek registration with IBBI as a valuer. An entity (partnership firm and company) is also eligible for registration as a valuer. The Valuation Rules also provide for valuation standards and Code of Conduct for RVs. The IBBI performs the functions of the Authority under the Valuation Rules. It recognises RVOs and registers valuers and exercises oversight over them. It has published the syllabus, format, and frequency of the valuation examination for all three Asset Classes, namely, (a)

Land and Building, (b) Plant and Machinery, and (c) Securities or Financial Assets, in consultation with the stakeholders. It conducts computer-based online valuation examinations every day from several locations across the country for all three asset classes from March 31, 2018. It has specified the details of educational course for the three asset classes, which a member of an RVO is required to complete before taking the valuation examination. While a few universities offer specialised courses in valuation, the IBBI had made available a detailed, world class study material for two asset classes, namely, (a) Land and Building and (b) Plant and Machinery, prepared by the Centre for Valuation Studies, Research and Training Association (CVSRTA), on its website for free download by users. It made available the study material for the asset class, Securities or Financial Assets, prepared by the IOV Registered Valuers Foundation on its website on May 14, 2019 for free download by users.

On August 13, 2019, the IBBI reiterated that (a) appointment of any person, other than a RV on or after February 1, 2019 to conduct any valuation required under the Code or any regulations made thereunder is illegal and amounts to violation of the law; and (b) payment, whether as fee or otherwise, to any person, other than a RV for any valuation shall not form part of the IRPC or liquidation cost. The IBBI, vide circular dated September 16, 2019, listed the provisions of the

Companies Act, 2013 and the Code under which valuations are required to be conducted by a RV for ready reference of the stakeholders.

Use of Caveats, Limitations and Disclaimers in Valuation Reports

The Companies (Registered Valuers and Valuation) Rules, 2016 mandate that the RVs shall state 'caveats, limitations and disclaimers' to the extent they explain or elucidate the limitations faced by valuer but shall not limit his responsibility for the valuation report. This Rule aims to ensure that a valuation report does not carry any disclaimer, which has the potential to dilute the responsibility of the RV or make the valuation unsuitable for the purpose for which it was conducted.

Considering the recommendations of an expert committee and in consultation with the RVOs, IBBI issued the IBBI (Use of Caveats, Limitations, and Disclaimers in Valuation Reports) Guidelines, 2020 on September 1, 2020 to provide guidance to the RVs in the use of 'Caveats, Limitations, and Disclaimers' in the interest of credibility of the valuation reports. These also provide an illustrative list of the Caveats, Limitations, and Disclaimers which shall not be used in a valuation report. The Guidelines came into force in respect of valuation reports of valuations to be completed by RVs on or after October 1, 2020.

Valuation by Registered Valuers

The SEBI, vide its circular dated November 3, 2020, modified its circular dated March 10, 2017 which lays down the framework for schemes of arrangements (SoA) by listed entities. The modification requires all listed entities to submit a valuation report from a RV in SoA. RV is a person, who being a member of a RVO, is registered with IBBI in accordance with section 247 of the Companies Act, 2013 read with the Rules.

Educational Course and Continuing Education

The Valuation Rules require that a RVO shall conduct educational courses in valuation for its valuer members, in accordance with the syllabus determined by the Authority. In pursuance of this, the IBBI, being the Authority, has determined the syllabus and has been reviewing it from time to time. It has specified that, effective for valuation examinations from April 1, 2019, the educational courses shall be delivered by an RVO in not less than 50 hours in classroom mode. Further, the Rules require an RVO to provide continuing education to its members. It was decided in the 12th monthly meeting of CEOs/MDs of RVOs, held on February 7, 2019 that the continuing education would be conducted in classroom mode. The advisories issued by various authorities in the wake of COVID-19 made it difficult for RVOs to deliver educational courses and continuing education through classroom sessions. To minimise difficulties for the RVs and valuer members, the IBBI decided that educational courses completed online, and continuing education undertaken online shall be considered valid. To ensure that online delivery of courses is as effective as class-room delivery of education, the IBBI issued the IBBI (Online Delivery of Educational Course and Continuing Professional Education

by Insolvency Professional Agencies and Registered Valuer Organisations) Guidelines, 2020 on July 10, 2020, which was in force till March 31, 2021. These Guidelines specify various aspects such as technical requirements, administration, and compliance responsibility. Further, it extended these guidelines till September 30, 2021 vide notification dated March 11, 2021, in view of the pandemic situation.

REGISTERED VALUERS ORGANISATIONS

The Valuation Rules envisage RVOs to act as front-line regulators for development and regulation of the valuation profession. They provide an institutional arrangement for the oversight, development, and regulation of RVs. They grant membership to valuers who comply with the eligibility norms provided in the Valuation Rules, conduct educational courses in valuation and provide training for the individual members before a CoP is issued. They also lay down standards of professional conduct and monitor their members for adherence to standards. They may take appropriate action to ensure that compliance with the Valuation Rules is strictly adhered to by their members.

Transfer of Membership

The Valuation Rules envisage a competitive industry of RVOs, where they compete with one another to provide better valuation services through their professional members, in the interest of the users, and other stakeholders of valuation services. These also envisage that a member may shift membership from one RVO to another, subject to prior permission of the Authority for the same. The Valuation Rules require an RVO to employ fair, reasonable, just and non-discriminatory practices for enrolment and regulation of its members. It was, however, observed that a few RVOs were restricting transfer of membership by using dilatory tactics, charging unreasonable transfer fee, etc. The IBBI, vide circular dated January 28, 2020, outlined the process of transfer of membership from one RVO to another, and timelines for specific actions by RV and RVOs. If the application for transfer complies with the requirements, the RVO shall issue no objection to transfer of his membership within seven days of receipt of the application. If no response is received from RVO-1 within seven days of the receipt of application, it shall be deemed that the RVO has issued no objection to transfer of membership.

Governance Structure of the Registered Valuers Organisation

The Valuation Rules prescribe the composition of GB of an RVO, and manner of discharge of its powers and functions. The IBBI clarified that a member of the promoter organisation, which has promoted an RVO, shall not be eligible to be an independent director of the RVO. A promoter organisation may have its members - shareholder member in case the promoter is a company, a trustee in case the promoter is an association of persons/trust, or a professional member in case the promoter is a professional body - as directors on the GB of the RVO. However, such directors shall not be appointed as independent directors.

Disciplinary Committee and Appellate Panel of the RVOs

The RVOs were following different practices in conducting the meetings of the Disciplinary Committee (DC) and Appellate Panel (AP). Therefore, it was advised to the RVOs to ensure that the meetings of the DC and AP be held only if there is an agenda for the meeting; the meetings should be preferably held through VC; one week's notice should be given for the meeting; the minutes shall be signed by the members of the committee present during the meeting; the tenure of IBBI's

nominee shall ordinarily be for two years from the date of appointment etc.

CIRCULARS

The Board issues circulars from time to time to monitor IPs, IPAs, and IUs to facilitate its monitoring function, facilitate implementation of provisions of the Code and Regulations, or clarify or explain certain aspects of the Regulations. Some of the important circulars issued by the Board over the period under review are listed in Table 3.

Table 3: Circulars issued by the Board in 2020-21

Date	Content
23.04.20	Governance Structure of the Registered Valuers Organisation. The circular clarifies the eligibility of an independent director that a member of the promoter organisation, which has promoted an RVO, shall not be eligible to be an independent director of the RVO.
09.10.20	Disciplinary Committee and Appellate Panel of the RVOs. The circular ensures the common practice among the RVOs in conducting the meetings of the DC and AP.
29.10.20	Serving of copy of the application to initiate CIRP to the Board. Rules 4(3), 6(2) and 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 mandate the applicant to serve a copy of the application for initiation of CIRP, inter alia, to the IBBI. For convenience of applicants, the IBBI made available a facility on its website for serving a copy of the application online to it. On submission of the application online, the applicant shall get an acknowledgement.
27.11.20	Filing of list of creditors. The clause (ca) of sub-regulation (2) of regulation 13 of the CIRP Regulations require the IRP or RP to file the list of creditors on the electronic platform of the IBBI for dissemination on its website. In pursuance to the same, the IBBI made available an electronic platform for filing of list of creditors as well as update thereof. The platform permits multiple filings by the IRP or RP as and when the list of creditors is updated by him.
06.01.21	Retention of records relating to CIRP. The Code read with Regulations require an IP to maintain several records in relation to the assignments conducted by him. Regulation 39A of the CIRP Regulations mandates the IRP and the RP to preserve a physical as well as an electronic copy of the records relating to the CIRP, as per the record retention schedule as communicated by the Board in consultation with IPAs. Keeping this in view, in consultation with the IPAs, the IBBI directed the IPs to preserve an electronic copy of all the records for a minimum period of eight years and a physical copy of all records for a minimum period of three years. It also directed that an IP shall preserve records relating to that period of a CIRP when he acted as IRP or RP, even though he did not take up the assignment from its commencement or continued the assignment till its conclusion. Further, the IP shall preserve the records at a secure place and ensure that unauthorised persons do not have access to the same. Notwithstanding the place and manner of storage, the IP shall be obliged to produce records as may be required under the Code and the Regulations.
02.02.21	Providing copy of the application to the Board for initiation of insolvency resolution process for PGs to CDs. Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 requires the applicant to provide a copy of the application for initiation of insolvency resolution process of a PG to a CD, inter alia, to Board for its records. For the convenience of applicants, the IBBI made available a facility on its website for providing a copy of the application online to the Board.
04.03.21	Filing of list of stakeholders. The IBBI (Liquidation Process) Regulations, 2016 requires the liquidator to file the list of stakeholders on the electronic platform of the Board for dissemination on its website. Through the circular the IPs are directed to file the list of stakeholders of the respective CD under liquidation and modification thereof, in the prescribed format, within three days of the preparation of the list or modification thereof. For convenience, the Board, made available a facility on its website for filing of list of stakeholders as well as updating it.
18.03.21	Reporting of status of ongoing CIRPs through Form CIRP 7. Regulation 40A of the CIRP Regulations, provides a model timeline for carrying out various activities envisaged in a CIRP. Further, to enable monitoring the progress of CIRP regulation 40B of the CIRP regulations require an IRP / RP to file a set of forms (CIRP 1 to CIRP 6) within seven days of completion of specific activities. The circular directs the IRP/RP file Form CIRP 7 within three days of the due date, where any of the activities such as Public Announcement, Appointment of RP, Issue of Information Memorandum (IM), Request for Resolution Plan (RFRP), and closure of CIRP is not made within the timelines enshrined in the Code and Regulations.

C.2: PROCESSES

The Code provides for four processes for insolvency resolution of corporate persons, namely, CIRP, fast track resolution process, liquidation process and voluntary liquidation process under Part II. These processes have come into force in 2016 and 2017. It also provides three processes for insolvency resolution and bankruptcy for individuals and partnership firms, namely fresh start process, insolvency resolution process and bankruptcy process under Part III. Only the insolvency resolution process and bankruptcy process of PGs to CDs have come into force in 2019. This sub-section lists the regulatory developments in each of these processes during the year under review.

CORPORATE INSOLVENCY RESOLUTION PROCESS

CIRP enables the market to first attempt to resolve stress through a resolution plan whereby the company survives.

When market concludes that there is no feasible and viable resolution plan to rescue the company or liquidation maximises the value as compared to rescue, the company proceeds for liquidation. Thus, the Code enables two ways of resolution of stress, first by a resolution plan, failing which, by liquidation. The market usually rescues a viable company and liquidates an unviable one. Liquidation or rescue is an outcome of the market forces; the law is only an enabler giving choices and nudges towards value maximising outcomes. The stakeholders decide whether to seek resolution and, if so, the mode of resolution. They weigh various options and choose the one that best suits their needs.

The CIRP Regulations, which are in operation since December 1, 2016, govern the insolvency resolution process of corporate persons. The same have been amended from time to time to meet the emerging needs of the markets, in consultation with the stakeholders. Table 4 presents various amendments in the CIRP Regulations in 2020-21 and the rationale for the same.

Table 4: Amendments to CIRP Regulations during 2020-21

Date of Notification	Amendment
20.04.20	<p>Extension of date for filing of Forms: The amendment provides for the extension of the date for filing of Forms after due date of submission, whether by correction, updation or otherwise, till September 30, 2020. Such submission after October 1, 2020 shall be accompanied by a fee of Rs. 500 per Form for each calendar month.</p> <p>Period of Lockdown: The IBBI took cognisance of the difficulties for the IPs to continue to conduct the process, for members of CoC to attend the meetings, and for prospective RAs to prepare and submit resolution plans, during the period of lockdown. Therefore, it may be difficult to complete various activities during a CIRP within the timelines specified in the CIRP Regulations. To address the difficulty, it amended the CIRP Regulations to provide that the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of timeline for any activity that could not be completed due to the lockdown, in relation to a CIRP, subject to the overall time-limit provided in the Code.</p>
07.08.20	<p>Appointment of an authorised representative (AR): (a) The Code provides for appointment of an AR by the AA to represent FCs in a class. For this purpose, the Regulations require the IRP to offer a choice of three IPs in the public announcement, and the creditors in a class to choose one of them to act as their AR. The amendment provides that the three IPs offered by the IRP must be from the State or Union Territory, which has the highest number of creditors in the class as per records of the CD. This will facilitate ease of coordination and communication between the AR and the creditors in the class he represents.</p> <p>Voting instructions: The Regulations envisage that the AR shall seek voting instructions from creditors in a class at two stages, namely, (i) before the meeting; and (ii) after circulation of minutes of meeting. The amendment provides that the AR shall seek voting instructions only after circulation of minutes of meeting and vote accordingly. He shall, however, circulate the agenda, and he may seek preliminary views of creditors in the class before the meeting, to enable him to effectively participate in the meeting.</p> <p>Simultaneous voting on all compliant resolution plans: The Regulations provide that the CoC shall evaluate all compliant resolution plans as per evaluation matrix to identify the best of them and may approve it. The amendment to the regulation, provides that after evaluation of all compliant resolution plans as per evaluation matrix, the CoC shall vote on all compliant resolution plans simultaneously. The resolution plan, which receives the highest votes, but not less than 66% of voting share, shall be considered as approved.</p>
13.11.20	<p>Evidence of Default: The FC, along with the application, is required to furnish 'record of the default recorded with the information utility or such other record or evidence of default as may be specified'. IBBI amended the Regulations to specify two 'other record or evidence of default', namely, (i) certified copy of entries in the relevant account in the bankers' book, and (ii) order of a court or tribunal that has adjudicated upon the non-payment of a debt.</p> <p>Filing the list of creditors: The Regulations provide that the IRP / RP shall verify every claim and further maintain a list of creditors and update it. He is required to file the list of creditors with the AA and display it on the website, if any, of the CD. The amendment to the regulation, provides that the IRP/RP is required to submit the list of creditors on an electronic platform for dissemination on its website.</p> <p>Intimation to each claimant: The amended Regulations direct the RP to intimate each claimant under a resolution plan, the principle, or formulae, for payment of debts under such resolution plan, within 15 days of the order of the AA approving the said resolution plan.</p>

15.03.21	<p>Update of creditors claim: The Code enshrines that the claims shall be submitted by the creditors, on or before the last date mentioned in the public announcement. The amendment requires a creditor to update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the ICD</p> <p>Filing of Form CIRP 7: The amendments require the IRP/RP to file Form CIRP 7 within three days of the due date, where any of the activities such as Public Announcement, Appointment of RP, Issue of IM, RFRP and closure of CIRP is not made within the timelines enshrined in the Code and Regulations.</p>
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FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS

While it is likely that the creditors and debtors themselves chose to wind down negotiations in a shorter period than the default maximum period allowed, the BLRC was of the view that there is merit in creating explicit provisions for cases where the CIRP is to be necessarily carried out in shorter time periods than the most complex case. These cases could be carried out under a Fast-track CIRP. Keeping with these recommendations, sections 55 to 58 of the Code, which relate to fast-track process apply to such CDs with assets and income below a certain threshold or such class of creditors or such amount of debt or such categories of corporate persons, as may be notified by Central Government. The MCA has notified the categories of CDs for this process. The IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 (Fast Track Regulations) lay down the process from initiation of insolvency resolution of eligible CDs till its conclusion with approval of the resolution plan by the AA under a fast-track process.

CORPORATE LIQUIDATION

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

- (a) the AA rejects resolution plan, which has been submitted by RP for approval, for non-compliance with the specified requirements;
- (b) the AA does not receive a resolution plan approved by the CoC within time permissible for completion of the CIRP;
- (c) the CoC has decided with required majority, at any time during CIRP period, to liquidate the CD and the RP has intimated the same to the AA; or
- (d) where an application has been made by any person other than the CD to AA for a liquidation order on the ground that the approved resolution plan has been contravened by the concerned CD.

The Liquidation Regulations, *inter alia*, provide for the details of activities from issue of liquidation order under section 33 of the Code to dissolution order under section 54. Table 5 presents various amendments in the Liquidation Regulations in 2020-21 and the rationale for the same.

Table 5: Amendments to Liquidation Process Regulations during 2020-21

Date of Notification	Amendment
20.04.20	Exclusion of period of lockdown: The amended regulations provides that the period of lockdown imposed by the central government in the wake of COVID-19 outbreak shall not be counted for the purpose of compliance with the timelines for any task that could not be completed due to the lockdown, in relation to any liquidation process.
05.08.20	Fee payable to Liquidator: The Liquidation Regulations require the CoC to fix the fee payable to the liquidator. In case, the fee has not been fixed by the CoC, the Regulations provide for a fee as a percentage of the amount realised and of the amount distributed by the liquidator. The amended regulations clarify that where a liquidator realises any amount, but does not distribute the same, amended regulations provides that liquidator shall be entitled to a fee corresponding to the amount realised by him. Likewise, where a liquidator distributes any amount, which is not realised by him, he shall be entitled to a fee corresponding to the amount distributed by him.
13.11.20	<p>Assignment of not readily realisable assets: The Code envisages early closure of liquidation process so that the assets of the CD are released for alternate uses expeditiously. However, the process takes longer where the liquidation estate includes a 'not readily realisable asset'. The amended regulations enable the liquidator to assign or transfer a 'not readily realisable asset' to any person in consultation with the SCC to facilitate quick closure of the liquidation process. For this purpose, 'not readily realisable asset' means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets, and assets underlying proceedings for preferential, undervalued, extortionate and fraudulent transactions. Thus, a liquidator shall attempt to sell the assets at the first instance, failing which he may assign or transfer an asset to any person, in consultation with the SCC, and failing which he may distribute the undisposed of assets amongst stakeholders, with the approval of the AA.</p> <p>Transfer of debt due to creditors: There may be a creditor who may not be willing to wait for completion of liquidation process for realisation of his debt. The amended regulations enable a creditor to assign or transfer the debt due to it to any other person in accordance with the laws for the time being in force dealing with such assignment or transfer.</p>
04.03.21	Filing the list of stakeholders: The amended regulations require the liquidator to file the list of stakeholders, as modified from time to time, on the website of the Board. This amendment discontinues the requirement of announcement of filing of list of stakeholders with the AA in the newspapers.

Corporate Liquidation Account

The Liquidation Regulations require the IBBI to maintain and operate an account to be called the Corporate Liquidation Account in the Public Accounts of India. It further provides that until the Corporate Liquidation Account is operated as part of the Public Accounts of India, the IBBI shall open a separate bank account with a scheduled bank for deposit of the amount of unclaimed dividends, if any, and undistributed proceeds, if any, in a liquidation process. For this purpose, it opened two separate bank accounts (one for Liquidation Process and the other for Voluntary Liquidation Process) with PNB, and informed the details, vide circular dated January 9, 2020 and January 20, 2020.

The Liquidation Regulations also require a liquidator to deposit the amount of unclaimed dividends, if any, and undistributed proceeds, if any, in a liquidation process along with any income earned thereon, into the Corporate Liquidation Account before he submits an application for dissolution of the corporate person. It also provides a process for a stakeholder to seek withdrawal from the said account. The details of these accounts at the end of March, 2021, are presented in Table 6.

Table 6: Corporate Liquidation Accounts as on March 31, 2021

(Amount in Rs. lakh)

Period	Opening Balance	Deposit during the period	Withdrawn during the period	Balance at the end of the period
2019 - 20	0.00	476.26	0.21	476.05
Apr - Jun, 2020	476.05	41.40	0.00	517.45
Jul - Sep, 2020	517.45	9.60	0.00	527.05
Oct - Dec, 2020	527.05	56.66	0.00	583.71
Jan - Mar, 2021	583.71	8.52	0.00	592.23

VOLUNTARY LIQUIDATION

Section 59 of the Code provides that a corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of Chapter V of the Code. The Voluntary Liquidation Regulations provide the process for initiation of voluntary liquidation of a corporate person - companies, LLPs and any other persons incorporated with limited liability - till its dissolution.

The Code enables a corporate person to initiate voluntary liquidation process if it has no debt or it will be able to pay its debts fully from the proceeds of the assets. The corporate person appoints an IP as liquidator to conduct the voluntary liquidation process by a resolution of members or partners, or contributories, as the case may be. However, there can be situations which may require appointment of another IP as the liquidator. IBBI amended the Voluntary Liquidation Regulations vide notification dated August 5, 2020, to enable the corporate person to replace the liquidator by appointing

another IP as liquidator by a resolution of members or partners, or contributories, as the case may be.

The Voluntary Liquidation Regulations require a liquidator to deposit the amount of unclaimed dividends, if any, and undistributed proceeds, if any, in a voluntary liquidation process along with any income earned thereon, into the corporate voluntary liquidation account before he submits an application for dissolution of the corporate person. It also provides a process for a stakeholder to seek withdrawal from the said account. The details of these accounts at the end of March, 2021, are presented in Table 7.

Table 7: Corporate Voluntary Liquidation Accounts as on March 31, 2021

(Amount in Rs. lakh)

Period	Opening Balance	Deposit during the period	Withdrawn during the period	Balance at the end of the period
2019 - 20	0.00	109.70	0.00	109.70
Apr - Jun, 2020	109.70	8.35	0.00	118.05
Jul - Sep, 2020	118.05	28.46	0.00	146.51
Oct - Dec, 2020	146.51	56.27	0.00	202.78
Jan - Mar, 2021	202.78	18.98	0.00	221.76

FINANCIAL SERVICE PROVIDERS

The provisions of the Code relating to CIRP, Liquidation Process and Voluntary Liquidation Process for a CD, *mutatis mutandis*, apply to a process for a FiSP, subject to certain modifications. Therefore, regulations relating to these processes for a CD also apply to process for a FiSP. The first application for initiation of CIRP of an FiSP was filed by the RBI to initiate CIRP against Dewan Housing Finance Corporation Ltd. (DHFL). Mr. R. Subramaniakumar was appointed as the Administrator. The Administrator has the same duties, functions, obligations, responsibilities, rights, and powers of an IP undertaking a process under the Code.

INDIVIDUAL INSOLVENCY RESOLUTION AND BANKRUPTCY

The Code classifies individuals into three classes, namely, PGs to CDs, partnership firms and proprietorship firms, and other individuals, to enable implementation of individual insolvency in a phased manner. The Central Government, vide a notification dated November 15, 2019, appointed December 1, 2019 as the date for commencement of the provisions of the Code relating to PGs to CDs. It also notified the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 on the same date. These Rules provide for the process and forms of making applications for initiating insolvency resolution and bankruptcy proceedings against

PGs to CDs, withdrawal of such applications, forms for public notice for inviting claims from the creditors, etc.

Thereafter, on November 20, 2019 the IBBI notified the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (IRP for PG to CD Regulations) to specify the details of the insolvency resolution process for PGs to CDs and the IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (Bankruptcy Regulations) to provide the details of the bankruptcy process for PGs to CDs.

The IRP for PG to CD Regulations specify (a) eligibility to act as RP for an insolvency resolution process; (b) manner of receipt and verification of claims of creditors; (c) manner of preparation of list of creditors, holding the meetings of the creditors and voting in the meeting; (d) contents of the repayment plan; and (e) procedure of filing of application for issuance of discharge order, etc.

The Bankruptcy Regulations specify (a) eligibility to act as a BT for the bankruptcy process; (b) manner of preparation of reports and timeline for submission by the BT; (c) manner of collating claims and formation of CoC, holding meetings of the committee and voting in the meeting; and (d) manner of realisation of assets of the bankrupt and its distribution, etc.

C.3 ADVOCACY AND AWARENESS

While the Government and regulators may frame policy or provide the legal framework for certain transactions in the economy, it is important that these are made known to the stakeholders and their feedback obtained to further refine the policy or legal framework. 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. Advocacy thus, assumes importance to promote or reinforce a change in policy or legislation. This also serves as a manner of gaining support of the stakeholders for such changes. In the context of insolvency reforms, the stakeholders need to be familiar with the Code, regulatory framework, and ecosystem, all of which are relatively new in the Indian context.

Table 8 presents a snapshot of advocacy and awareness programmes conducted by the Board and programmes in which members and officers of the Board participated.

Chairperson, Whole-time Members (WTMs) and officers of IBBI participated in different capacities (faculty, panellist, speaker, guest of honour, chief guest, etc.) in 85 events (seminar, conference, roundtable, study circles, workshop, etc.) on insolvency and bankruptcy, organised by a host of institutions across the country, as presented in Table 9. The details of these events are presented in Table 10.

Table 8: Advocacy and awareness activities of the Board

Programmes	2016-17	2017-18	2018-19	2019-20	2020-21
Workshop for IPs	1	2	7	15	3
Training Programmes for Market Participants	-	9	2	3	3
Roundtables with Stakeholders	8	45	25	20	19
Advocacy and Awareness Programmes	-	-	10	105	48
Programmes organised by other organisations where Members and Officers Participated	36	78	82	66	85
Total	45	134	126	209	158

Table 9: Participation in Programmes by Officers of IBBI

Officers	No. of Events				
	2016-17	2017-18	2018-19	2019-20	2020-21
Dr. M. S. Sahoo, Chairperson	45	83	86	63	38
Mrs. Suman Saxena, WTM	0	9	0	NA	NA
Dr. Navrang Saini, WTM	0	13	14	11	9
Dr. Mukulita Vijayawargiya, WTM	NA	20	14	17	14
Mr. Sudhaker Shukla, WTM	NA	NA	NA	2	7
Other Officers	0	9	12	104	17
Total	45	134	126	197	85

Table 10: Details of Participation in Programmes in 2020-21

Sl. No.	Date	Organiser	Subject	Participation
1	11.04.20	IICA	GIP Prospectus	Chairperson
2	11.04.20	IICA	Interface of IBC and Competition Act, 2002	Chairperson
3	11.04.20	IIPI	Impact of COVID-19 on IBC regime	Chairperson
4	13.04.20	IPAs	Inspection of IPs	Chairperson
5	13.04.20	ICSI IIP	Pre-Registration Educational Course	Mr. Saji Kumar, ED
6	20.04.20	ICSI IIP	IP: Crisis Manager and Manager in Crisis	Mr. Saji Kumar, ED
7	20.04.20	IIIP ICAI	Pre-Registration Educational Course	Mr. Saji Kumar, ED
8	21.04.20	FICCI	IBC Reforms	Chairperson
9	21.04.20	ASSOCHAM	COVID-19: Relief on IBC	Dr. Vijayawargiya, WTM
10	24.04.20	IPA ICAI	Appearance before NCLT/NCLAT - Court Craft	Mr. Saji Kumar, ED
11	28.04.20	ICAI RVO	Draft Valuers Bill, 2020	Chairperson
12	29.04.20	PVAI RVO	Draft Valuers Bill, 2020	Dr. Saini, WTM
13	01.05.20	PVAI RVO	Start-up Valuation and ABCDRI	Chairperson
14	08.05.20	PHDCI	Impact of COVID-19 on Insolvency	Mr. Pawan Kumar, ED
15	09.05.20	IOV RVF	Valuation Standards	Mr. Pawan Kumar, ED
16	12.05.20	RICS	New Valuers Bill - A Game Changer	Chairperson
17	16.05.20	IOV RVO	Draft Valuers Bill, 2020	Chairperson
18	23.05.20	ASSOCHAM	Corporate Restructuring, M&A and Joint Venture	Mr. Pawan Kumar, ED
19	26.05.20	IIIP ICAI	Address to Governing Board	Chairperson
20	26.05.20	IOV RVF	Development in Valuation Profession Global perspective	Mr. Shukla, WTM
21	27.05.20	ICAI RVO	Draft Valuers Bill, 2020	Dr. Saini, WTM
22	28.05.20	DTRTI, Chandigarh	Quality Assessment	Mr. Pawan Kumar, ED
23	31.05.20	IBBI and LNCT University, Bhopal	Moot Court Competition	Mr. Saji Kumar, ED
24	06.06.20	NITI Aayog	Online Dispute Resolution	Chairperson
25	09.06.20	INSOL India	How should IPs tackle the 'New Normal'?	Chairperson
26	12.06.20	IIPI	Insolvency Resolution: Public Interest & Ethics	Mr. Saji Kumar, ED
27	20.06.20	ENCUBE	Impact of COVID-19 on Insolvency and the Way Forward	Chairperson
28	24.06.20	IICA	Regulatory Policy and Ensuring Quality of Regulations	Dr. Vijayawargiya, WTM
29	24.06.20	IIPI ICAI and IFC, World Bank	Impact of COVID-19 on the insolvency and bankruptcy regime- Global and Indian responses	Dr. Guru, ED
30	24.06.20	DTRTI, Chandigarh	Quality Assessment	Mr. Pawan Kumar, ED
31	25.06.20	City of London	Hitting a pause in a Pandemic - Insolvency & Bankruptcy Policy, 2020 and Beyond	Dr. Vijayawargiya, WTM
32	27.06.20	EIRC of ICAI	Are we ready for the change?	Dr. Saini, WTM
33	01.07.20	IICA	Inauguration of second batch of GIP	Chairperson
34	17.07.20	Economic Times	Tackling Bankruptcy: Restructuring from the shambles	Chairperson

35	23.07.20	RBSA	Valuation	Chairperson
36	25.07.20	IICA	Assignments per IP	Chairperson
37	01.08.20	PVAI VPO	Valuation	Dr. Saini, WTM
38	04.08.20	ICLS Academy	IBC for ICLS Officers	Chairperson
39	12.08.20	FICCI	Pre-pack for Stressed Assets	Chairperson
40	14.08.20	Corporate Professionals	IBC: Current Developments and Road Ahead from Ease of Doing Business to Economic Growth	Chairperson
41	21.08.20	ASSOCHAM	Impact of COVID-19 and one-year suspension on stakeholders	Chairperson
42	10.09.20	ASSOCHAM	India Corporate Governance Stewardship	Chairperson
43	21.09.20	IIPI	IBC - A Boon for NPA Resolution: Myths Vs. Realities	Mr. Shukla, WTM
44	25.09.20	ICAI	IBBI and expectations from Professionals	Dr. Saini, WTM
45	12.10.20	INSOL	Practical challenges arising from the crisis	Dr. Vijayawargiya, WTM
46	13.10.20	GNLU	Overview of IBC 2016, IBBI, IPA and IU	Mr. Chaudhuri, CGM
47	14.10.20	FICCI	Investment Opportunities for Stressed Assets in India	Mr. Shukla, WTM
48	16.10.20	INSOL	Impact of the Pandemic on SMEs	Dr. Vijayawargiya, WTM
49	24.10.20	IIPI	Insolvency Resolution Paradigm: Global Headwinds & Responses	Dr. Vijayawargiya, WTM
50	25.10.20	IIPI	International Perspective Managing Cross Border Insolvency	Dr. Vijayawargiya, WTM
51	24.10.20	IIPI	Group Insolvency Framework: Early Lessons	Dr. Saini, WTM
52	11.11.21	Indian Banks' Association	IBBI: Shepherding Valuation Profession with members of Indian Banks' Association	Dr. Saini, WTM
53	12.11.20	WIRC of ICSI	Insolvency and Bankruptcy of Personal Guarantors	Mr. Das, DGM
54	11.12.20	IOV RVF	IOV Congress	Dr. Saini, WTM
55	12.12.20	EBC Publishing	IBC Book Release	Chairperson
56	19.12.20	ICSI IIP	Insolvency in Real Estate	Chairperson
57	29.12.20	ICSI IIP	Personal Guarantors to Corporate Debtors	Mr. Das, DGM
58	30.12.20	IICA	Capstone Exercise	Chairperson
59	05.01.21	BCIC	Four Years' Journey of IBC: Milestones	Chairperson
60	07.01.21	NLUD & Ors.	Insolvency Resolution, Promoting Entrepreneurship post the pandemic	Chairperson
61	07.01.21	NLUD & Ors.	Implementing Bankruptcy, Integrating Pre-Insolvency Proceedings, Pre-Packs into the Legal Regime	Dr. Saini, WTM
62	10.01.21	INSOL & Ors.	Insolvency Moot	Chairperson
63	19.01.21	IICA	GIP	Chairperson
64	21.01.21	PNB	IBBI: Shepherding Valuation Profession	Chairperson
65	22.01.21	IEG	Insolvency Reforms	Chairperson
66	22.01.21	ASSOCHAM	National E-summit on <i>Udyog Jagat- ki -Soch & Manthan for Atma Nirbhar Bharat</i>	Dr. Vijayawargiya, WTM
67	22.01.21	LIC	IBBI: Shepherding Valuation Profession	Mr. Shukla, WTM
68	27.01.21	Central Bank of India	IBBI: Shepherding Valuation Profession	Mr. Shukla, ED
69	30.01.21	PHDCCI	IBC and MSME: The Unfinished Story	Dr. Vijayawargiya, WTM

70	04.02.21	National Defence College	The Constitution of India: Framing and evolution and New India	Dr. Vijayawargiya, WTM
71	05.02.21	NeSL	Leveraging IU for Insolvency Proceedings	Chairperson
72	08.02.21	FOIR	Effective Regulation and Stakeholders Engagement	Chairperson
73	12.02.21	IDBI Bank & Ors.	IBBI: Shepherding Valuation Profession	Mr. Shukla, ED
74	17.02.21	III & Ors.	Pre-arranged Insolvency Proceedings in India: Lessons learned from USA and UK	Chairperson
75	18.02.21	IIPI	Capacity Building of IPs /IBC	Mr. Shukla, WTM
76	23.02.21	IRDAI & Ors.	IBBI: Shepherding Valuation Profession	Chairperson
77	24.02.21	IFSCA	Financial Sector Reforms, Regulations and Emerging Challenges	Chairperson
78	08.03.21	ICMAI RVO	International Women's Day: Perspectives on Valuation	Dr. Vijayawargiya, WTM
79	09.03.21	FICCI	Distressed Debt in Indian infrastructure sector	Chairperson
80	10.03.21	CII & Ors.	Impact of COVID-19 on proceedings under IBC	Dr. Vijayawargiya, WTM
81	19.03.21	ICMAI & Ors.	Role of IPs under IBC	Dr. Vijayawargiya, WTM
82	20.03.21	ETCFO & Ors.	IBC at Crossroads - What's next?	Mr. Shukla, WTM
83	26.03.21	CII	Insolvency and Bankruptcy Code	Chairperson
84	26.03.21	CII	Pre-pack framework	Mr. Shukla, WTM
85	27.03.21	MCCI & Ors.	Ethics for Insolvency Professionals	Dr. Vijayawargiya, WTM

PROGRAMMES

In addition to various events where IBBI officials participated, IBBI itself, or in collaboration with Government/other institutions, organised several awareness and advocacy events. The details of some of these events are provided below.

International Engagements

Opportunities for Investment in Stressed Assets in India

IBBI in association with FICCI and the Consulate General of India in New York organised a conference on 'Investment Opportunities in Stressed Assets in India' on September 17, 2020. The conference brought together potential investors, financiers, legal and other consultants, etc. for discussion on the opportunities for investors in stressed assets in India and to encourage the community of large institutional investors in US to participate in the turnaround opportunities available in India.

Awareness Programmes

Programmes in the wake of COVID-19 pandemic

In the wake of COVID-19, it was felt that it would be difficult to deliver educational courses and continuing professional education through classroom mode due to social distancing norms. Accordingly, the Board allowed online delivery of said courses. The Board in association with the IIPI organised two interactive sessions in the wake of COVID-19 through video conferencing. The first session was with the IRP/RPs and the second session with the liquidators on May 6, 2020 and

May 9, 2020 respectively on issues faced by them during the pandemic. It also organised a programme on May 15, 2020 on "Valuations under IBC - Impact on account of COVID-19 pandemic". The webinar covered the discussion on the impact of COVID-19 pandemic on valuations under the Code.

The Insolvency and Bankruptcy Code (Amendment) Ordinance 2020 was promulgated on June 5, 2020 suspending the operation of sections 7, 9 and 10 of the Code with respect to default arising on or after March 25, 2020 for a period of six months, extendable up to maximum of one year from such date as may be notified. The Board organised a webinar on the said Ordinance on June 7, 2020 for all stakeholders and Chairperson, IBBI addressed the same.

Programme for the officers of various State Governments

With a view to discuss various aspects of the Code and rights, safeguards and responsibilities of officers of state agencies in relation to the Code, to facilitate implementation of the Code, the Board organised 10 awareness programmes for officers of various agencies of State Governments and Central Government through video conferencing during the year. The details are provided below:

Sl. No.	Date(s)	Participants
1	04.08.20 to 05.08.20	Trainee officers of Indian Corporate Law Service
2	03.11.2020	Officers of Industries Department, Government of Rajasthan
3	10.11.2020	Officers of Government of Odisha
4	19.11.2020	Officers of DGFT, Ministry of Commerce

5	25.11.2020	Officers of CT and GST Department of Government of Odisha
6	22.12.2020	Officers of DGFT, Ministry of Commerce
7	08.01.2021	Officers of Government of Madhya Pradesh
8	18.01.2021	Officers of Government of Jharkhand
9	14.02.21 to 19.02.21	Trainee Officers of Indian Economic Service
10	04.03.2021	Officers of Government of Bihar

IP Workshops

IBBI has been organising workshops for IPs with the aim to deliver specialised and deep level learning through intensive classroom sessions. In view of social distancing norms, it organised the 7th Advanced Workshop for IPs on the theme 'Sale as Going Concern during Liquidation under the Code' online on August 21, 2020. The 8th Advanced Workshop was organised on the theme 'Analysis of Financial Statements of CDs and their Personal Guarantors' on December 14, 2020. It also organised the 19th Basic Workshop for IPs through online mode on March 17, 2021.

Programme on IBC for journalists

The IBBI, in association with the Press Relations & Information Division of the Ministries of Finance and Corporate Affairs, organised a virtual seminar on August 18, 2020 on 'IBC - For Journalists' for the sole purpose of education and awareness to explain the provisions of the Code, its rationale and approach. The seminar had five sessions namely, Big Picture and Four-Year Journey; IBC Ecosystem; Corporate Insolvency Processes; Myths and Outcomes; and Recent Changes and Way Forward. Dr. M. S. Sahoo, Chairperson, IBBI; Dr. Navrang Saini, WTM, IBBI; Mr. K. R. Saji Kumar, ED, IBBI; Mr. Pawan K. Kumar, ED, IBBI; Dr. Anuradha Guru, ED, IBBI; and Mr. Methil Unnikrishnan, GM, IBBI addressed the participants.

CoC Workshops

IBBI has been organising workshops for senior officers of banks to build their capacity as members of the CoC. This year also, it organised three such workshops - fifth, sixth and seventh in the series, on January 29, 2021, February 3, 2021, and February 11, 2021, on the theme 'Committee of Creditors: An Institution of Public Trust'. 31 senior officers (GM and above) representing 15 SCBs and Financial Institutions (FIs) participated in the workshop.

These workshops were organised in e-mode, in association with SBI and IBA. The faculty in these workshops included Hon'ble Justice B. S. V. Prakash Kumar, Acting President, NCLT; Mr. Rajesh Verma, Secretary, MCA; Dr. M. S. Sahoo, Chairperson, IBBI; Mr. G. K. Singh Joint Secretary, MCA; Mr. M. Rajeshwar Rao, Deputy Governor, RBI; Mr. Dinesh Kumar Khara, Chairman, SBI; Mr. C. S. Setty, MD, SBI; Mr. Sunil Mehta, Chief Executive, IBA; Mr. S. S. Mallikarjuna Rao, MD, Punjab National Bank; Mr. Sanjeev Krishan, Chairman, PWC India; Mr. Sumant Batra, Managing Partner, Kesar Dass B. & Associates; Mr. Bahram Vakil, Managing Partner, AZB and Partners; Mr. Mohit Saraf, Senior Partner, L&L Partners; Mr.

Shailendra Ajmera, Partner, EY; Mr. Rashesh Shah, Chairman, Edelweiss Group; and Mr. Shardul Shroff, Managing Partner, Shardul Amarchand Mangaldas.

Webinars

Management of Corporate Debtor as a Going Concern - Operations Management

The IBBI in association with ICSI IIP organised a webinar on 'Management of Corporate Debtor as Going Concern; Operations Management' on May 22, 2020. The webinar covered the discussion on the issues and challenges faced by IPs in managing a CD as a going concern, particularly operations management.

Contemporary Developments in the IBC

IBBI in association with Centre for Business and Commercial Laws, National Law Institute University, Bhopal organised a webinar on 'Contemporary Developments in the Insolvency and Bankruptcy Code, 2016'. The webinar covered the discussion to understand the latest developments in the Indian insolvency landscape, especially in light of temporary suspension of sections 7, 9 and 10 of the Code. It covered the discussion on the impact that IBC has had on distressed assets and the challenges lying ahead.

Issues faced in Liquidation Process & Overview of Liquidation Framework in UK & Applicability in Indian context

The IBBI in association with the British High Commission organised a webinar on 'Issues faced in Liquidation Process & Overview of Liquidation Framework in UK & Applicability in Indian context' on October 23, 2020. The objective of the webinar was to deliberate and mitigate various issues being faced by liquidators during the different stages of liquidation process with the help of a case study. The webinar sought to provide an overview of the liquidation framework in the UK and endeavour to apply its best practices and learnings to liquidation proceedings in India, to the extent applicable.

Determination of Avoidance Transaction under the IBC

The IBBI, in association with the Foreign Commonwealth and Development Office (FCDO), United Kingdom organised a webinar on 'Determination of Avoidance Transactions under the IBC', on February 5, 2021. The participants were given an overview of the avoidance transactions and the regulatory landscape which impacts transaction audits. Practical examples and case studies with useful insights for detection of avoidance transactions and information sources which can be utilised to collect evidence were also covered.

Pre-Packaged Insolvency Resolution Process

The IBBI organised a webinar on 'Pre-Pack Insolvency Resolution Process: Report of the Sub-Committee of the ILC' on March 19, 2021, based on the report of the sub-committee of the ILC on PPIRP, as an additional tool for resolution of insolvency.

Sale under liquidation process and UK best practices for better realisation for stakeholders

The IBBI, in association with the British High Commission jointly organised a webinar on '*Sale under Liquidation Process and UK best practices for better realisation for stakeholders*' on March 23, 2021, for the benefit of stakeholders of the IBC ecosystem. The panellists explained the effective sale process and practical challenges which are usually faced by liquidators. Sale process in the UK, best practices and learnings which can be applied to in the Indian context were also discussed.

IBBI: Shepherding Valuation Profession

As an effort for advocacy of new regime of valuation under the Valuation Rules, five webinars were conducted on the topic '*IBBI: Shepherding Valuation Profession*'. These webinars were conducted for the benefit of officials of Punjab National Bank on January 21, 2021; Life Insurance Corporation on January 22, 2021; Central Bank of India on January 27, 2021; IDBI Bank, IIFCL, Canara Bank and Exim Bank on February 12, 2021; and RBI and Insurance Regulatory and Development Authority of India (IRDAI) on February 23, 2021.

ACADEMIC ENGAGEMENTS

Graduate Insolvency Programme

The IICA commenced the first batch of GIP on July 1, 2019. The GIP is a 24-month programme consisting of a residential class-room component of 12 months and a hands-on internship component at the cutting edge of practice of 12 months. It aims to deliver a cadre of top-quality IPs who can deliver world class services as IPs, liquidators or in other capacities. A student completing the GIP would be eligible for registration as IP. The first batch of GIP comprised of 37 students. The next batch of 41 students commenced their classes on July 1, 2020.

Insolvency Moot

The IBBI, as a knowledge partner of LNCT University, Bhopal, conducted the 1st INNOVIS-LNCT IBC E-Moot Court Competition from May 28-31, 2020. This provided the law students of the country a unique experience in terms of dealing with technical and legal aspects of corporate law, especially the IBC, and to practice their mooting skills in a virtual online environment. A total of 34 teams participated in the four days long event. The team from Rajiv Gandhi National University of Law, Patiala, comprising of Mr. Priyank Pandey, Mr. Vaibhav Mukhraya and Ms. Ashish Pajwal was the winner. The team of ICAI Law School, Hyderabad comprising of Mr. Apoorv Gupta, Mr. Akash Krishnan and Ms. Pooja Gandhi was runner-up. Mr. K. R. Saji Kumar, ED, IBBI addressed the participants and adjudged the final round of the competition.

The National Law University Delhi, in collaboration with IBBI, INSOL India, Society of Insolvency Practitioners of India and the UNCITRAL Regional Centre for Asia and the Pacific, had instituted a Moot Competition on Insolvency and Bankruptcy (IBMC) in 2017. It was conceived as a platform to enable students at the Law Universities and Schools of Management

and Economics to engage with various stages of the insolvency process with simulations as close as possible to the actual proceedings before the NCLT. The 4th edition of IBMC was virtually conducted from January 8-10, 2021. About 50 teams representing institutions from around the world registered and participated in the competition. School of Law, Christ University, Bengaluru was adjudged as winner of the moot, while Ram Manohar Lohiya National Law University, Lucknow was runner up. National University of Singapore bagged the award for the best newcomer performance. Dr. M. S. Sahoo, Chairperson, IBBI chaired the jury for IBMC and shared his thoughts as the Guest of Honour in the valedictory session. The Chief Guest, Hon'ble Mr. Justice Sanjay Kishan Kaul, Judge, Supreme Court of India, delivered the valedictory address.

Essay Competition

The IBBI, in its endeavour to create awareness about the insolvency and bankruptcy regime amongst the students of higher education, promoted essay competitions through Institutes of Learning. Students of graduation and postgraduation courses of any discipline at universities, deemed universities and professional institutes (viz. ICAI, ICMAI and ICSI) in India can participate in this competition. The IBBI, through the Institute of Learning, is issuing certificates of participation to all participants in the essay competition, a cash prize of Rs. 10,000 to the student who has written the best essay, and a cash prize of Rs. 5,000 to the student who has written the second-best essay. Three Essay Competitions were concluded during the year in association with (i) National Law University, Delhi, (ii) Gujarat National Law University, and (iii) Institute of Law, Nirma University.

National Online Quiz on IBC

The IBBI, in collaboration with MyGov.in, conducted 'National Online Quiz on Insolvency and Bankruptcy Code, 2016' from July 1-31, 2020, to promote awareness and understanding of the Code among various stakeholders across the country. The Quiz was open for all Indian citizens above 18 years of age, except for individuals working in IBBI, service providers registered with IBBI, and their immediate family members. The Quiz received an overwhelming response from a wide range of stakeholders, including students, professionals, and employees with 1,25,781 participants. There were participants from every State and every Union Territory. Uttar Pradesh accounted for the highest participation with 15.7% of total participants, followed by Maharashtra with 11.7% and Delhi with 6.9%. Top 10% of the participants, as per their performance, were awarded 'Certificates of Merit'. The following were the three best performers in the Quiz:

Rank	Name	Award
Best Performer	Mr. Aritra Saha	Gold Medal
Second Best Performer	Mr. Pawan Khandelwal	Silver Medal
Third Best Performer	Ms. Vakati Venkata Gnanusha	Bronze Medal

Training of ICLS and IES probationers

The IBBI organised a two-day training programme for 2018 batch of Indian Corporate Law Service (ICLS) officers from August 4-5, 2020. The programme exposed the officers comprehensively to the Code, processes under the Code, its outcomes, the service providers and frontier areas like cross border insolvency, individual insolvency and group insolvency. Chairperson, IBBI and other senior officials of IBBI addressed the participants.

IBBI organised a one-week training programme for 2019 batch of 30 Indian Economic Service (IES) officers from February 15-19, 2021. The programme exposed the officers comprehensively to the insolvency reforms, its implementation and outcomes, the ecosystem, the issues and challenges, and the road ahead. They were also provided a special opportunity to undertake the Examination. The three best performers, namely, Mr. Anshuman Kamila, Ms. Archana Kumari and Ms. Saumya Gautam were felicitated by award of Gold, Silver and Bronze medals, respectively.

The eminent external faculty included Dr. K. P. Krishnan, IEPF Chair Professor, NCAER; Dr. Shashank Saksena, Senior Economic Adviser, Ministry of Finance; Mr. B. Sriram, Former MD, IDBI Bank; Dr. (Ms.) Aparna Ravi, Partner, Samvad Partners; Mr. Ashok Haldia, Chairman, IIPI; Mr. S. Ramann, MD, NeSL; Dr. Subhashis Gangopadhyay, Research Director, IDF; Mr. Anurag Das, MD, International Asset Reconstruction Company; Mr. Satish Kumar Gupta, IP; Dr. (Ms.) Renuka Sane, Associate Professor, NIPFP and Ms. Sripriya Kumar, IP.

NEWSLETTER

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 insolvency regime, including the regulator, informing the tasks being carried out and the outcomes of the processes. In this endeavour, IBBI has been publishing Quarterly Newsletters since its establishment. First of these newsletters was published for the quarter of October-December, 2016. Soft copies of the newsletters are available on the website of IBBI for larger dissemination. The newsletters encapsulate the legal and regulatory developments; status of all the processes and service providers under the Code; capacity building initiatives and advocacy and awareness generation activities undertaken by IBBI during the quarter. During this year newsletters were published in e-Book format and MS Excel format for better reading and research experience.

C.4 RESEARCH

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

IBBI Research Initiative

IBBI, in its endeavour to promote research - legal, economic and interdisciplinary - and discourse in areas relevant for the evolving insolvency and bankruptcy regime in general, and that in India, announced the IBBI Research Initiative, 2019 on July 1, 2019. This initiative has been updated as on July 31, 2020. A researcher may submit a research proposal which is screened by IBBI to verify that it is properly structured and is covered under the Initiative. It will be reviewed by an external referee on the criteria: (a) Does the proposal address an important issue in insolvency and bankruptcy regime in India; and (b) Does the proposal offer a clear methodology to address the said issue. If the proposal is accepted by the IBBI on advice of an external referee, the researcher needs to submit the research paper within six months. The research paper is reviewed similarly by an external referee.

Two research scholars, namely, Mr. M. P. Ram Mohan and Ms. Vishakha Raj completed a research paper on the topic '*Merger control for IRPs: Do acquisitions of distressed firms warrant competition scrutiny?*'. The paper finds that while green channelling to give automatic approval to resolution plans will make the insolvency resolution process easier for the stakeholders involved in the insolvency process, the effects of combinations under resolution plans may be felt beyond the insolvency regime and extend to stakeholders such as consumers, and upstream and downstream businesses, etc. It suggests that the existing mechanisms of coordination between the two regimes as an alternative to green channelling.

Another research paper on the topic '*Assessment of Corporate Insolvency and Resolution Timeline*' was submitted by Dr. (Ms.) Neeti Shikha and Ms. Urvashi Shahi. This paper examines the stage wise delay in CIRP and the relationship of delay to sectoral differentiations and debt size of the CD. The study finds that delays in CIRP are happening due to reasons such as non-cooperation by CD, lack of proper documentation of information by the CD, inadequate capacity of NCLT and difficulty in marketing stressed assets.

Annual Publication

To develop awareness by sharing views, news, and opinion, and to disseminate detailed information in a structured manner with authenticity, and to improve the understanding of the Code, the IBBI introduced the Annual Publication as a collection of articles with wisdom on insolvency and bankruptcy framework. The IBBI published its second publication with title '*Insolvency and Bankruptcy Regime in India: A Narrative*' which was released on October 1, 2020 by Mr. Anurag Singh Thakur, Hon'ble Minister of State for Finance and Corporate Affairs. The publication consists of 36 insightful articles written by experts in the field, on various issues in insolvency, bankruptcy, finance, and economic sphere. It presents the thoughts and perspectives of practitioners, policymakers, subject experts, and academicians that elucidate and stimulate thought around the journey of the IBC thus far and road ahead. It is an attempt to generate a scholarly debate and policy discourse around insolvency law.

Compendium of emerging jurisprudence

As a dynamic and progressive economic legislation, the Code has been endowed with rich jurisprudence. For the benefit of stakeholders, IBBI published '*Section-wise jurisprudence on IBC up to March 31, 2021*' which provides a user-friendly guidance on jurisprudential development in corporate insolvency proceedings.

Handbook on 'Understanding the IBC: Key Jurisprudence and Practical Considerations'

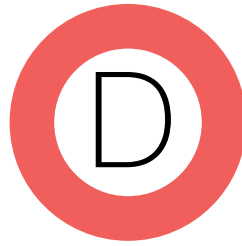
The IBBI released a handbook for IPs titled '*Understanding the IBC: Key Jurisprudence and Practical Considerations*' prepared by International Financial Corporation, World Bank Group, in pursuance of a cooperation agreement with the IBBI. The handbook captures the evolving discipline of insolvency with all its nuances and is intended to serve as a single point of reference for IPs, and all others in the ecosystem, who wish to delve into this emerging area of law and practice.

Handbook on ethics for IPs

Dr. Navrang Saini, WTM, IBBI, in presence of Ms. Natalie Toms, Chief Economist and Counsellor, British High Commission, released a publication titled '*Handbook on Ethics for Insolvency Professionals: Ethical and Regulatory Framework*', in a webinar on March 19, 2012. The handbook prepared by the IBBI in association with British High Commission is based on inputs on the best practices followed by the IPs in the United Kingdom and aims to stimulate the highest standards of ethics and professionalism among the IPs. This handbook serves as a ready reckoner and a tool to assist the IPs and other stakeholders in the insolvency ecosystem, for imbibing and practicing an ethical code of conduct.

Handbook on jurisprudence for IPs

A handbook for IPs titled '*Understanding the IBC: Key Jurisprudence and Practical Considerations*' prepared by International Financial Corporation, World Bank Group, in pursuance of a cooperation Agreement with the IBBI was released on October 1, 2020. The handbook captures the evolving discipline of insolvency with all its nuances and is intended to serve as a single point of reference for IPs, and all others in the ecosystem, who wish to delve into this emerging area of law and practice.



FUNCTIONS OF THE BOARD

The Board is one of the four key pillars of the ecosystem responsible for implementation of the Code. In sync with its objectives, the Code charges IBBI with a host of statutory duties and functions. It regulates the insolvency profession as well as insolvency processes. It has regulatory oversight over IPs, IPAs, IPEs, and IUs. It has been tasked to make regulations for various processes under the Code, namely, corporate insolvency resolution, fast track resolution, corporate liquidation, voluntary liquidation, fresh start, individual insolvency resolution and individual bankruptcy. It has the responsibility to promote the development of, and regulate the working and practices of the IPs, IPAs, and IUs and other institutions in furtherance of the purposes of the Code. It collects, organises, and disseminates relevant data and information about each insolvency and bankruptcy process and conducts and promotes research and studies in insolvency and bankruptcy. It is also the 'Authority' under the Valuation Rules for regulation and development of the profession of valuers in the country.

A regulator typically lays down rules and procedure of the game, monitors the conduct and performance of service providers and compliance with the rules, and then reviews the rules to address the emerging concerns and ensure that they are achieving the intended objectives. It operates in a cycle of 'make-operate-review' of regulations.¹⁸ Section 196 of the Code enumerates 'make-operate-review' functions of the Board, which can be broadly grouped into three sets, namely,

- (a) Quasi-legislative functions: The Board makes regulations to regulate service providers and processes;
- (b) Executive functions: The Board registers and monitors service providers for the insolvency process and takes measures for professional development through education, examination, training and CPE; and
- (c) Quasi-judicial functions: The Board adjudicates upon contraventions by service providers to ensure their orderly functioning.

The actions taken by the Board during 2020-21 in furtherance of each of these functions are enumerated in this Section.

QUASI-LEGISLATIVE FUNCTIONS

The regulator is entrusted with the task of developing regulatory policy into regulatory instruments. It entails identification

of the objective of intervention and assessing the case for action, considering various alternatives to meet the identified objectives, evaluating each of them and making the choice. In other words, this is the regulatory impact assessment (RIA) exercise required to be undertaken before making any regulation/reviewing an existing one.

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

A rigorous process is followed for making regulations to ensure that it addresses the identified market failure at the least possible cost and is not excessive. It has been the endeavour of the Board to effectively engage with stakeholders through a structured arrangement that makes the regulation making process transparent and participative. The participation of the public, particularly the stakeholders and the regulated, in the regulatory process ensures that the regulations are informed by the legitimate needs of those interested in and affected by regulations. This provides democratic legitimacy while warding off perception of undue influence of any interest group.

The process usually starts with a Working Group (WG) making draft regulations. The practice of setting up of WGs to study issues in detail and make recommendations on important aspects of regulations was used by the Government in the early stages of implementing the provisions of the Code. In keeping with this practice, the IBBI constitutes WGs to delve deeper into regulatory issues and suggest draft regulations. It then discusses the draft regulations in roundtables with the stakeholders to revalidate the understanding of the issues the said regulations seek to address, and the appropriateness of such regulations to address these issues. It obtains comments of the public, through an electronic platform, on each draft regulation and sub-regulation; and obtains the advice of the relevant AC on draft regulations. The process of regulation making culminates with the GB finalising and approving the regulations, after considering public comments, the feedback received at roundtables and advice of the AC. The IBBI

¹⁸ OECD (2014), The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, <http://dx.doi.org/10.1787/9789264209015-en>

has issued the IBBI (Mechanism for Issuing Regulations) Regulations, 2018 on October 22, 2018 to govern the process of making regulations.

Despite the best of efforts and intentions, a regulator may not always have a complete perspective on the ground realities, as much and as early as the stakeholders may do, particularly in a dynamic environment. The stakeholders could, therefore, play a more active role in making regulations. They may contemplate, at leisure, the important issues in the extant regulatory framework that hinder transactions and offer alternate solutions to address them. In addition to usual consultation seeking feedback on proposed regulations within specified time, the IBBI provides an opportunity to stakeholders to suggest regulations they need. This is akin to crowdsourcing of ideas. This enables every idea to reach the regulator. Consequently, the universe of ideas available with the regulator is much larger and the possibility of a more conducive regulatory framework much higher. The IBBI invited comments from stakeholders on the existing Regulations in April, 2019. It processed the comments received till December, 2019 and following the due process, modified the Regulations, to the extent necessary, by March, 2020.

The Board had notified ten Regulations in 2016-17. It notified four new Regulations in 2017-18 and one in 2018-19. In 2019-20, the Board notified two new Regulations. No new Regulations were notified in 2020-21. However, amendments were made to some of the existing Regulations from time to time, as detailed in Table 11. The details of each of these Regulations and amendments have been provided under the relevant sub-sections of Section C of the Report.

Table 11: Regulations notified in 2020-21

Sl. No.	Notification Date	Regulations
1	20.04.20*	IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2020
2	20.04.20**	IBBI (Insolvency Professionals) (Amendment) Regulations, 2020
3	20.04.20**	IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2020
4	20.04.20^	IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020
5	20.04.20	IBBI (Liquidation Process) (Second Amendment) Regulations, 2020
6	30.06.20	IBBI (Insolvency Professionals) (Second Amendment) Regulations, 2020
7	05.08.20	IBBI (Voluntary Liquidation Process) (Second Amendment) Regulations, 2020
8	05.08.20	IBBI (Liquidation Process) (Third Amendment) Regulations, 2020
9	07.08.20	IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2020

10	13.11.20	IBBI (Liquidation Process) (Fourth Amendment) Regulations, 2020
11	13.11.20	IBBI (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020
12	13.11.20	IBBI (Information Utilities) (Amendment) Regulations, 2020
13	14.01.21	IBBI (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2021
14	04.03.21	IBBI (Liquidation Process) (Amendment) Regulations, 2021
15	15.03.21	IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2021

Note: *Effective from March 25, 2020; ** Effective from March 28, 2020; ^ Effective from March 29, 2020

To reach out to various stakeholders and get their feedback on draft regulations/policies, the IBBI itself or in collaboration with the industry, professional institutes, IPAs and RVOs, organises roundtables across India before finalising its regulations. A list of such roundtables, organised in the period under review, have been provided in Table 10 of section C. Table 12 is a summary of the number of roundtables for various subjects.

Table 12: Subject wise Roundtable Events

Subject	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Service Providers under the Code	04	02	--	01	02	07
Corporate Insolvency Processes - Insolvency Resolution, Fast Track Resolution, Liquidation and Voluntary Liquidation	04	11	07	03	08	33
Individual Insolvency Processes	--	10	01	02	-	13
Valuation	--	18	--	11	-	29
Cross Border Insolvency	--	--	03	--	-	03
Going Concern Sale & Group Insolvency	--	--	04	--	-	04
Prepacks/MSME	--	--	--	--	04	04
Others	--	04	10	07	05	26
Total	08	45	25	24	19	121

Advisory Committees

Most statutes establishing regulators usually provide for constitution of standing ACs to serve as a sounding board for emerging ideas and to lend professional wisdom and domain

knowledge to the regulator. Many regulators have voluntarily constituted ACs. The IBBI has constituted three standing ACs in accordance with the IBBI (Advisory Committee) Regulations, 2017 (Advisory Committee Regulations). These Committees comprise of two sets of members, namely, professional members who are eminent academicians and practitioners in the relevant area, and general members who are eminent citizens not having any association with the area, roughly in the ratio of 2:1. No person can be a member of more than one AC at any point of time and the term of a member does not exceed three years, though he may be reappointed. An AC may advise the Board 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 the Board.

(a) Advisory Committee on Service Providers: It was constituted on October 18, 2016. With the issue of Advisory Committee Regulations, the Committee was reconstituted on August 30, 2017 for a period of three years. On completion of its three-year tenure, the Committee was reconstituted on May 26, 2020. Its composition as on March 31, 2021 is given in Table 13.

Table 13: Composition of Advisory Committee on Service Providers

Sl. No	Name and Position	Position in the Committee
1	Mr. T. V. Mohandas Pai, Chairman, Manipal Global Education Services	Chairperson
2	A representative of the MCA	Member
3	Mr. Akhil Gupta, Chairman, Bharti Infratel Ltd.	Member
4	Dr. Bimal N. Patel, Director General, Raksha Shakti University	Member
5	Dr. Binoy J. Kattadiyil, MD, IIP of ICSI	Member
6	Mr. Chinna Veerappan Rajendran, MD & CEO, CSB Bank	Member
7	Mr. J. Ranganayakulu, Former ED, SEBI	Member
8	Mr. P. R. Ramesh, Former Chairman, Deloitte India	Member
9	Dr. Punam Sahgal, Former Dean & Professor, IIM, Lucknow	Member
10	Dr. Sameer Sharma, DG & CEO, IICA	Member
11	Mr. Shrikrishna Kulkarni, Chairman, Board of Governors, IIM, Calcutta	Member
12	Mr. Vellayan Subbiah Murugappa, MD, Tube Investments of India Ltd.	Member

(b) Advisory Committee on Corporate Insolvency and Liquidation: It was constituted on October 18, 2016. With issue of Advisory Committee Regulations, the Committee was reconstituted on August 25, 2017 for a period of three years. On completion of its three-year tenure, the Committee was reconstituted on September 26, 2020. Its composition as on March 31, 2021 is given in Table 14.

Table 14: Composition of Advisory Committee on Corporate Insolvency and Liquidation

Sl. No	Name and Position	Position in the Committee
1	Mr. Uday Kotak, Executive Vice Chairman and MD, Kotak Mahindra Bank	Chairperson
2	A representative of the MCA	Member
3	Mr. Ashish Kumar Chauhan, MD & CEO, BSE Limited	Member
4	Ms. Ashu Suyash, MD & CEO, CRISIL	Member
5	Mr. M. V. Nair, Chairman, Credit Information Bureau (India) Limited	Member
6	Mr. Nirmal Mohanty, Former Chief Economist, National Stock Exchange of India Limited	Member
7	Prof (Dr.) Ranbir Singh, Vice Chancellor, National Law University, Delhi	Member
8	Mr. R. K. Nair, Formerly Whole Time Member, IRDAI	Member
9	Mr. R. Shankar Raman, Whole-time Director & Chief Financial Officer, Larsen & Toubro Limited	Member
10	Rashesh Shah, Chairman & CEO, Edelweiss Group	Member
11	Mr. Somasekhar Sundaresan, Legal Counsel	Member
12	Chairman, Indian Banks' Association	Member
13	MD, IPA of ICAI	Member

(c) Advisory Committee on Individual Insolvency and Bankruptcy: It was constituted on September 15, 2017 for a period of three years. The committee was not reconstituted after the completion of its tenure.

EXECUTIVE FUNCTIONS

Operating regulations is the process of applying the notified Regulations on a day-to-day basis to achieve the intended objectives. To effectively operate the regulations, several activities, which are in the nature of executive functions, are undertaken.

Insolvency Professionals

As on December 31, 2016, 977 individuals were granted registration as IPs under regulation 9 of the IP Regulations for a limited period of six months. Since December 31, 2016, individuals, who have the required qualification and experience, have passed the Examination, and completed Pre-registration Educational Course after being enrolled as a professional member of an IPA (w.e.f April 1, 2018), are registered as IPs. In this category, 3520 individuals were registered as IPs as on March 31, 2021 out of which registrations of four individuals have been cancelled through due disciplinary proceedings, two failed to meet the eligibility norms and 10 have died. An individual needs to be enrolled first with an IPA for getting registered as an IP with IBBI. There were three IPAs registered

on March 31, 2021. Details of the registrations of IPs, IPA wise, is presented in Table 15. Region wise distribution of IPs registered as on March 31, 2021 is presented in Table 16.

Table 15: Registration and Cancellation of Registrations of IPs

Quarter	During the Quarter/Year				Registered at the End of the Quarter			
	Registered	Cancelled on account of			IIPI	ICSI IIP	IPA ICAI	Total
		Disciplinary Process	Failing to Meet Eligibility Norms	Death				
Oct-Dec, 2016*	977	0	0	0	713	221	43	977
2016-17	96	0	0	0	33	51	12	96
2017-18	1716	0	0	0	1069	509	138	1812
2018-19	648	4	0	0	418	173	53	2456
2019-20	554	0	1	5	338	164	46	3004
Apr - Jun, 2020	120	0	1	1	79	29	10	118
Jul - Sep, 2020	61	0	0	1	38	13	9	60
Oct - Dec, 2020	129	0	0	2	74	32	21	127
Jan - Mar, 2021	196	0	0	1	131	45	19	195
Total	3520	4	2	10	2180	1016	308	3504

* These registrations expired by June 30, 2017.

An IP needs an AFA to take up an assignment under the Code with effect from January 1, 2020. The IBBI made available an online facility to enable an IP to make an application for issuance/renewal of AFA to the respective IPA and enable the IPA to process such applications electronically. As on March 31, 2021, 2532 IPs were issued AFAs.

Table 16: Distribution of IPs as on March 31, 2021

(Number)

City / Region	IIPI	ICSI IIP	IPA ICAI	Total
New Delhi	407	255	75	737
Rest of Northern Region	396	188	59	643
Mumbai	377	140	34	551
Rest of Western Region	266	105	38	409
Chennai	129	83	12	224
Rest of Southern Region	350	197	62	609
Kolkata	199	36	22	257
Rest of Eastern Region	60	23	7	90
Total Registered	2184	1027	309	3520
Cancellation & Deceased	7	7	2	16
Total	2177	1020	307	3504

The geographical distribution of IPs as on March 31, 2021 is presented in **Figure 2**.

An individual with 10 years of experience as a member of the ICAI, ICSI, ICAI (Cost) or the Bar Council or an individual with 15 years of experience in management is eligible for registration as an IP on passing the Examination. Table 17 presents distribution of IPs as per their eligibility (an IP may be a member of more than one Institute) as on March 31, 2021. Of the 3504 IPs, 318 IPs, accounting for about 9 per cent of the registered IPs, are female. Table 18 presents the age profile of the IPs registered as on March 31, 2021.

Table 17: Distribution of IPs as per their Eligibility as on March 31, 2021

Eligibility	No. of IPs		
	Male	Female	Total
Member of ICAI	1748	157	1905
Member of ICSI	523	101	624
Member of ICAI (Cost)	168	15	183
Member of Bar Council	204	24	228
Managerial Experience	543	21	564
Total	3186	318	3504

Figure 2: Geographical Distribution of IPs as on March 31, 2021

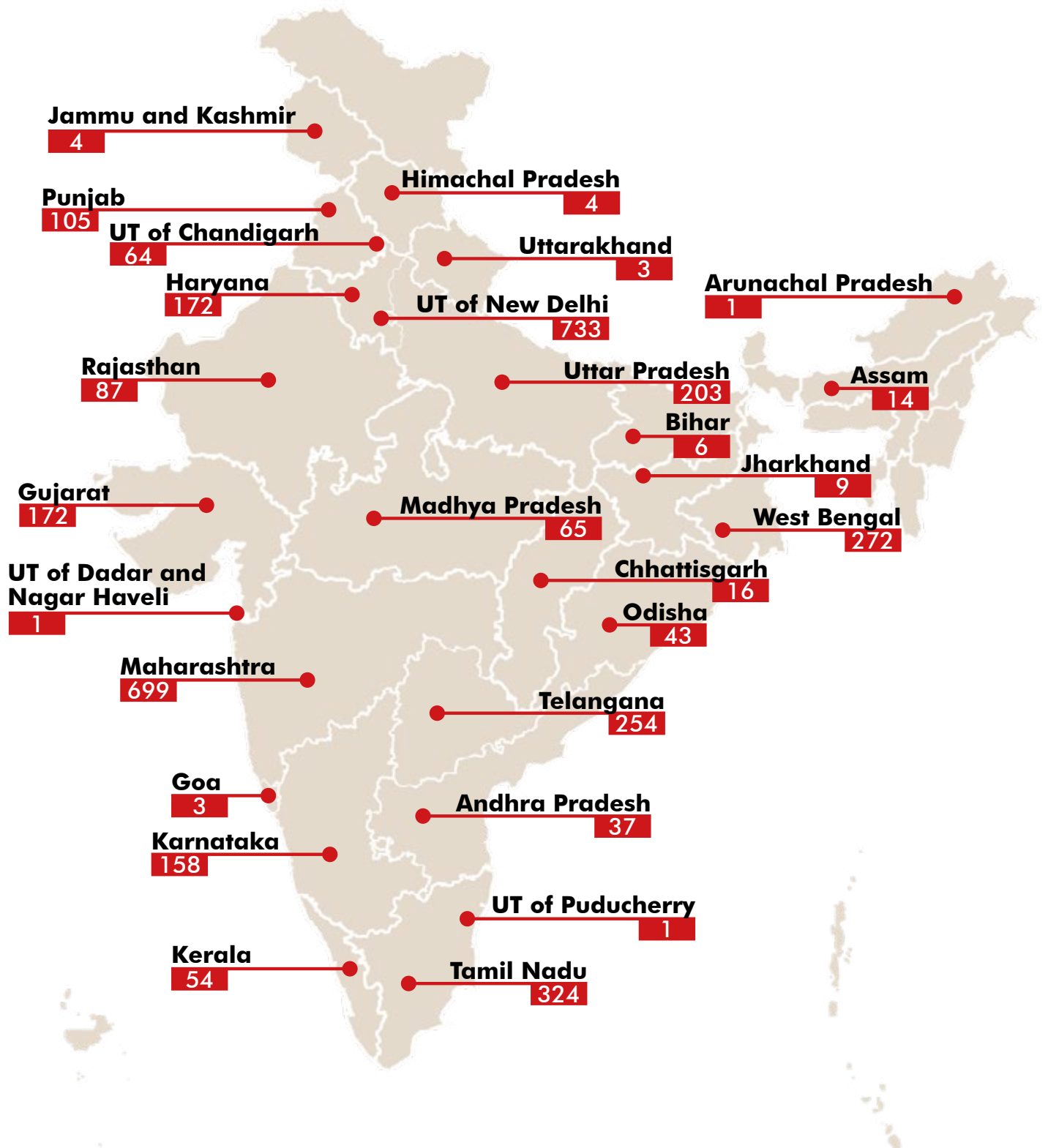


Table 18: Age Profile of IPs as on March 31, 2021

Age Group (in Years)	Registered IPs				IPs having AFA			
	IIPI	ICSI IIP	IPA ICAI	Total	IIPI	ICSI IIP	IPA ICAI	Total
≤ 40	255	63	6	324	174	49	4	227
> 40 ≤ 50	775	363	50	1188	564	272	40	876
> 50 ≤ 60	684	277	78	1039	497	211	55	763
> 60 ≤ 70	429	288	163	880	312	224	130	666
> 70 ≤ 80	30	26	8	64	NA	NA	NA	NA
> 80 ≤ 90	3	3	2	8	NA	NA	NA	NA
> 90	1	0	0	1	NA	NA	NA	NA
Total	2177	1020	307	3504	1547	756	229	2532

NA: Not Applicable

Insolvency Professional Entities

An IPE provides support services to IPs who are its partners or directors. As on March 31, 2021, there were 83 IPEs. The quarterly details of recognition of IPEs are given in Table 19.

Table 19: Recognised IPEs as on March 31, 2021

Year / Quarter	No. of IPEs		
	Recognised	Derecognised	At the End of the Quarter
2016-17	3	0	3
2017-18	73	1	75
2018-19	13	40	48
2019-20	23	2	69
Apr - Jun, 2020	4	0	73
Jul - Sep, 2020	1	0	74
Oct - Dec, 2020	3	0	77
Jan - Mar, 2021	6	0	83
Total	126	43	83

Replacement of IRP with RP

Section 22(2) of the Code provides that the CoC may, in its first meeting, by a majority vote of not less than 66 per cent of the voting share of the FCs, either resolve to appoint the IRP as the RP or to replace the IRP by another IP to function as the RP. Under section 22(4) of the Code, the AA shall forward the name of the RP, proposed by the CoC under section 22(3) (b) of the Code, to IBBI for its confirmation and shall make such appointment after such confirmation. However, to save time in such reference, a database of all the IPs registered with IBBI has been shared with the AA, disclosing whether any disciplinary proceeding is pending against them and the status of their AFAs. While the database is currently being used by various benches of AA, in a few cases, IBBI receives references from the AA and promptly responds to the AA. Till March 31, 2021, a total of 3538 IRPs have been appointed as RPs, as shown in Table 20.

Table 20: Replacement of IRP with RP till March 31, 2021

CIRP initiated by	No. of CIRPs	
	Where RPs have been appointed	Where RP is different from the IRP
Corporate Applicant	259	111
Operational Creditor	1621	557
Financial Creditor	1658	338
Total	3538	1006

Panel of IPs

The IBBI prepared four panels during the year as under:

(i) In accordance with Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2020, the IBBI prepared bench-wise panel for appointments during July 1, 2020 - November 25, 2020 as IRPs, liquidators, RPs and BTs;

(ii) In accordance with the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2020, the IBBI prepared zone-wise panel for appointments during November 26, 2020 - June 30, 2021 as IRPs, Liquidators, RPs and BTs;

(iii) In accordance with the Guidelines for Appointment of Insolvency Professionals as Administrators under the SEBI (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018, the IBBI prepared a panel of IPs for appointments during October, 2020 - March, 2021 as Administrators; and

(iv) In accordance with the Guidelines for Appointment of Insolvency Professionals as Administrators under the SEBI (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018, the IBBI prepared a panel of IPs for appointments during April - September, 2021 as Administrators.

The process of empanelment is automated whereby IPs

express their intention online to be in the panel. The details of these panels are presented in Table 21.

Table 21: Panels of IPs prepared during 2020-21

Sl. No.	Date of Panel	Panel under the	No. of Zones in the Panel	No. of IPs in Panel
1	04.06.20	Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2020	15	978
2	24.09.20	Guidelines for Appointment of Insolvency Professionals as Administrators under the SEBI (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018	15	698
3	23.11.20	Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2020	15	344
4	26.12.20	Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2020	15	824
5	30.03.21	Guidelines for Appointment of Insolvency Professionals as Administrators under the SEBI (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018	13	617

Capacity Building

Workshops for IPs and CoC

It is the endeavour of IBBI to build capacity of the service providers and other elements of the ecosystem around insolvency and bankruptcy. It organises workshops, webinars

and training sessions for IPs, the details of which are provided in Table 22. IBBI also organised events for other stakeholders such as students, government officials, general public, which are detailed in Table 23. The programmes organised by IBBI for FCs are listed in Table 24. Given the pandemic situation in the country, all these events were held in online mode.

Table 22: Workshops, webinars, conferences and other similar events organised for IPs in 2020-21

Sl. No.	Event	Theme	Date
1	Webinar	Do's and Don'ts - Inspections and Impact of IBC on Ease of Doing Business	01.04.20
2	Webinar	Relaxation of IBC threshold and Impact of IBC on Ease of Doing Business	02.04.20
3	Webinar	Online CIRP Forms and Relationship Disclosures; and Impact of IBC on Ease of Doing Business	03.04.20
4	Webinar	Impact and practical issues during and post lockdown on IBC process and Impact of IBC on Ease of Doing Business	07.04.20
5	Webinar	Insolvency Resolution and Bankruptcy of PG to CD and Impact of IBC on Ease of Doing Business	08.04.20
6	Webinar	Code of Conduct for IPs; Disciplinary Proceedings & Impact of IBC on Ease of Doing Business	11.04.20
7	Webinar	Insolvency and Bankruptcy of PG to CD & Impact of IBC on Ease of Doing Business	14.04.20
8	Webinar	Scope of Mediation in Insolvency Proceedings & Impact of IBC on Ease of Doing Business	17.04.20
9	Webinar	Interactive Session with IRP/RPs - Issues faced by them in CIRPs with respect to COVID-19 pandemic	06.05.20
10	Webinar	Interactive Session with liquidators - Issues faced by them in liquidations with respect to COVID-19 pandemic	09.05.20
11	Webinar	Information Utility – a key pillar of IBC ecosystem; Recent developments	12.05.20
12	Webinar	Experience Sharing Session with Mr. R. Subramaniakumar, Administrator, DHFL	13.05.20
13	Webinar	Valuations under IBC – Impact on account of COVID-19 pandemic	15.05.20
14	Webinar	Management of CD as going concern during CIRP; Operations Management	22.05.20
15	Webinar	Reviewing and Challenging Avoidable Transactions under IBC: How to maximise the assets	28.05.20
16	Webinar	The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020	07.06.20
17	IP Workshop	7th Advanced IP Workshop on Sale as Going Concern during Liquidation under the Code	21.08.20
18	Colloquium	CIRP: Understanding emerging issues and challenges	19.09.20
19	Webinar	Resolution of Stressed Assets: Road Ahead	26.09.20

20	Webinar	Issues faced in liquidation process & overview of liquidation framework in UK & applicability in Indian context	23.10.20
21	Training Programme	E-Professional Development Program on Professional Ethics and Regulations on Code of Conduct for IPs under IBC	21.11.20 & 22.11.20
22	Webinar	Importance of Negotiation Skills for IPs	26.11.20
23	Webinar	Pre-Pack Insolvency Resolution as a Mechanism of Corporate Rescue	30.11.20
24	IP Workshop	8th Advanced Workshop for IPs	14.12.20
25	Webinar	Importance of maintaining Ethical Standards for IPs	16.12.20
26	Conference	Insolvency Law & CISG@40	18.12.20
27	Webinar	Determination of Avoidance Transactions under the IBC	05.02.21
28	Webinar	Seminar on International Women's Day	08.03.21
29	IP Workshop	19th Basic Workshop for IPs	17.03.21
30	Webinar	Pre-Pack Insolvency Resolution Process: Report of the Sub-Committee of the ILC	19.03.21
31	Webinar	Sale under liquidation process and UK best practices for better realisation for stakeholders	23.03.21

Table 23: Workshops, webinars, conferences and other similar events organised for other stakeholders in 2020-21

Sl. No.	Event	Theme	Date
1	Webinar	IBC and National Online Quiz on IBC	19.07.20
2	Webinar	Contemporary Developments in the IBC	20.07.20
3	Webinar	Career opportunities under IBC	23.07.20
4	Webinar	IBC	10.08.20
5	Webinar	IBC for Journalists	18.08.20
6	Conference	Conference on Opportunities for Investment in Stressed Assets in India	17.09.20
7	Training Programme	Orientation session on IBC for select officers of Industries Department, Government of Rajasthan	03.11.20
8	Training Programme	Orientation session on IBC for select officers of Government of Odisha	10.11.20
9	Training Programme	Orientation session on IBC for select officers of DGFT, Ministry of Commerce	19.11.20
10	Webinar	IBC & the Regulator: Road Ahead	20.11.20
11	Training Programme	Orientation session on IBC for select officers of CT and GST Department of Government of Odisha	25.11.20
12	Training Programme	Interactive session on IBC for select officers of DGFT, Ministry of Commerce	22.12.20
13	Symposium	IBC	07.01.21
14	Training Programme	Orientation session on IBC for Officers of Government of Madhya Pradesh	08.01.21
15	Training Programme	Orientation session on IBC for Officers of Government of Jharkhand	18.01.21
16	Training Programme	Orientation session on IBC for Officers of Government of Bihar	04.03.21

Table 24: CoC workshops organised in 2020-21

Sl. No.	Date	Theme	Partnership with
1	29.01.21	CoC - An Institution of Public Trust	SBI
2	03.02.21	CoC - An Institution of Public Trust	SBI
3	11.02.21	CoC - An Institution of Public Trust	SBI

IPAs are also undertaking various measures to build capacity of their members. Table 25 presents details of programmes organised by them in 2020-21. The details of different publications by IPAs for the benefit of their members are presented in Table 26.

Table 25: Programmes conducted by IPAs in 2020-21

Programme	No. of Programmes organised by				No. of Beneficiaries
	IPA ICAI	ICSI IIP	IIPI	Total	
Preparatory Course	2	6	1	9	181
Pre-registration Course	2	5	7	14	658
Webinars	38	19	33	90	82,483
Workshops	4	16	2	22	3682
Roundtables	6	7	10	23	1383
Seminars/Conferences	1	-	6	6	255
Total	53	53	59	164	88,642

Table 26: Details of Publications by IPAs in 2020-21

Sl. No.	Nature of Publication	Name of Publication	Periodicity	Published in	No. of Issues
IPA ICAI					
1	E-Journal	The Insolvency Professional: Your Insight Journal	Monthly	April, 2020 - March, 2021	12
2	Daily Update	IBC-AU Courant	Daily (Monday – Friday)	April, 2020 - March, 2021	249
3	Casebook	Casebook	Weekly	April, 2020- March, 2021	36
4	Case laws	IBC Dossier	Weekly	April, 2020- March, 2021	52
ICSI IIP					
1	Bare Act	Insolvency and Bankruptcy Code, 2016 – With Rules & Regulations	As and when updated	2020	6
2	Handbook	Interim Resolution Professional- A Handbook, 3rd Edition	As and when updated	2019	3
3	Handbook	Voluntary Liquidation - A Handbook	As and when updated	2019	1
4	Book, Commentary	Practical Aspects of Insolvency Law, 4th Edition	As and when updated	2019	4
5	Case Law compilation	100 landmark NCLAT judgments	As and when updated	2019	1
6	Case Law compilation	IBC Judicial/Regulatory Rulings for Stakeholders, 2nd Edition	As and when updated	2019	2
7	Case Law compilation	IBC Learning Curves Compilation	As and when updated	2020	1
8	Case Law compilation	Final Word on IBC	As and when updated	2020	1
9	Book	LIE preparatory Guide	As and when updated	2020	1
10	Journal	Resolve: IBC Journal	Monthly	Since 2018	-
11	Knowledge Initiative	IBC Knowledge Capsules	Monthly	Since 2019	25
12	Knowledge Initiative	IBC Learning Curve	Daily	Since 2019	524
13	Report	Performance analysis reports on the CIRP of Ruchi Soya Industries Ltd. and Jyoti Structures Ltd.	One time	2021	1
IIPI					
1	Journal	The Resolution Professional (Soft Copy and Print Version)	Quarterly	October, 2020 and January, 2021	2
2	News	IIPI Newsletter (Soft Copy)	Weekly	April, 2020 - March, 2021	41
3	Case Laws	IBC Case Snippets (renamed IBC Case Law Capsules from March 19, 2021) (Soft Copy)	Weekly	April, 2020 - March, 2021	39
4	CIRP Case Studies/ Success Stories of IPs	Case study: Performance analysis of Binani Cement Ltd.	Occasionally	October, 2020	2
		Case Study of Essar Steel India Ltd. (Soft Copy)	Occasionally	February, 2020	
5	Research Studies	Research-cum Study on Timeliness & Effectiveness of Litigation under IBC	Occasionally	October, 2020	3
		Procedural and Substantive aspects of Group Insolvency: Learnings from Practical Experiences (Soft Copy and Print Version)	Occasionally	March, 2021	
		CoC's Role in CIRP under IBC: Recommendations on Best Practices (Soft Copy and Print Version)	Occasionally	March, 2021	
6	Report	Report IIPI's International Conference on October 24-25, 2020 (Soft Copy and Print Version)	Occasionally	November, 2020	1
7	Electronic Judgement Reference	E-Juris	Quarterly	June, 2020	1

Continuing Professional Education Guidelines

An IP needs to continuously upgrade himself through CPE to remain relevant and provide value added services. The IP Regulations accordingly provide that an IP shall undergo CPE to keep his registration valid. The IBBI, in consultation with the IPAs, issued the IBBI (Continuing Professional Education for Insolvency Professionals) Guidelines, 2019 on August 6, 2019. These Guidelines are effective from January 1, 2020. These, however, do not apply to IPs who have completed the age of sixty-five years. These require an IP to undertake a minimum of 10 credit hours of CPE each calendar year and a minimum of 60 credit hours of CPE in each rolling block of three calendar years. AFA shall not be issued or renewed to an IP who fails to comply with these Guidelines. The IPAs are required to monitor and maintain records of CPE in respect of their professional members in a manner accessible to IPs and the Board. Details of CPE hours earned by IPs are presented in Table 27.

Table 27: CPE hours undertaken by IPs as on March 31, 2021

Period	Number of CPE Hours earned by members of			
	IIPI	ICSI IIP	IPA ICAI	Total
Jan - Mar, 2020	1160	695	320	2175
Apr - Jun, 2020	8198	5575	2373	16139
Jul - Sep, 2020	778	527	344	1649
Oct - Dec, 2020	5675	1584	885	8103
Jan - Mar, 2021	3814	1060	800	3749
Total	19625	9441	4722	31815
Average CPE hours per registered IP	9.01	9.26	15.38	9.08

Registered Valuers Organisations

RVOs are frontline regulators for the RVs. They are responsible for development and regulation of the profession of RVs. At the end of March 31, 2021, 16 entities were recognised as RVOs. There are 14 RVOs each in asset classes Land & Building and Plant & Machinery and 15 RVOs in Securities or Financial Assets. A person meeting the 'fit and proper' criteria and enrolled with an RVO as a valuer member and has the required qualification and experience and has passed the Valuation Examination of the relevant asset class, is registered as a valuer. The details of RVs, RVO-wise, as on March 31, 2021, is given in Table 28. The registration of RVs, quarter-wise, till March 31, 2021 is given in Table 29.

Table 28: RVs as on March 31, 2021

(Number)

Registered Valuer Organisation	Asset Class			Total
	Land & Building	Plant & Machinery	Securities or Financial Assets	
RVO Estate Managers and Appraisers Foundation	58	12	13	83
IOV Registered Valuers Foundation	1245	199	148	1592
ICSI Registered Valuers Organisation	0	0	161	161
IIV India registered Valuers Foundation	140	40	47	227
ICMAI Registered Valuers Organisation	21	16	244	281
ICAI Registered Valuers Organisation	NA	NA	782	782
PVAI Valuation Professional Organisation	280	49	82	411
CVSRTA Registered Valuers Association	189	57	NA	246
Association of Certified Valuators and Analysts	NA	NA	2	2
CEV Integral Appraisers Foundation	77	24	2	103
Divya Jyoti Foundation	24	8	28	60
Nandadeep Valuers Foundation	0	0	0	0
All India Institute of Valuers Foundation	2	2	9	13
International Business Valuers Association	1	0	4	5
All India Valuers Association	0	0	0	0
Assessors and Registered Valuers Foundation	0	0	0	0
Total	2037	407	1522	3966

NA: Not Applicable since the RVO has not got recognition for the Asset Class.

Table 29: Registration of RVs as on March 31, 2021

(Number)

Year / Quarter	Land & Building	Plant & Machinery	Securities or Financial Assets	Total
2017 - 2018	0	0	0	0
2018 - 2019	781	121	284	1186

2019 - 2020	848	204	792	1844
Jun, 2020	20	8	72	100
Sep, 2020	149	27	104	280
Dec, 2020	130	22	185	337
Mar, 2021	110	25	85	220
Total	2038	407	1522	3967

Note: Registration of 1 individual was cancelled in February, 2021.

RVs are permitted to form an entity (partnership / company) for rendering valuation services. There are 40 such entities registered as RVs as on March 31, 2021, as presented in Table 30. 18 entities are registered for all three asset classes, 4 entities in two asset classes and 18 entities in one asset class.

Table 30: Registered Valuers Entities as on March 31, 2021
(Number)

Registered Valuer Organisation	Number of Entities Registered	Registrations in the Asset Class		
		Land & Building	Plant & Machinery	Securities or Financial Assets
RVO Estate Managers and Appraisers Foundation	3	3	2	2
IOV Registered Valuers Foundation	15	12	9	12
ICSI Registered Valuers Organisation	1	0	0	1
IIV India registered Valuers Foundation	1	1	1	1
ICMAI Registered Valuers Organisation	6	3	4	6
ICAI Registered Valuers Organisation	8	0	0	8
PVAI Valuation Professional Organisation	2	2	2	2
All India Institute of Valuers Foundation	1	1	1	1
CEV Integral Appraisers Foundation	1	1	1	0
Divya Jyoti Foundation	2	1	1	2
Total	40	24	21	35

Of the RVs registered as on March 31, 2021, 1075 RVs (constituting 27 per cent of the total RVs registered) are from

metros while 2891 RVs are from non-metro locations (Table 31). The geographical distribution of RVs as on March 31, 2021 is presented in **Figure 3**.

Table 31: Region wise RVs as on March 31, 2021

(Number)

City / Region	Land & Building	Plant & Machinery	Securities or Financial Assets	Total
New Delhi	69	33	186	288
Rest of Northern Region	312	56	253	621
Mumbai	104	48	237	389
Rest of Western Region	561	107	244	912
Chennai	110	36	120	266
Rest of Southern Region	828	106	361	1295
Kolkata	23	14	95	132
Rest of Eastern Region	30	7	26	63
Total	2037	407	1522	3966

The average age of RVs as on March 31, 2021 stood at 47 years across asset classes. It was 49 years for Land and Building, 53 years for Plant and Machinery and 43 years for Securities or Financial assets (Table 32). Of the 3967 RVs, 372 RVs (constituting about nine per cent of the total RVs) are females.

Table 32: Age profile of RVs as on March 31, 2021

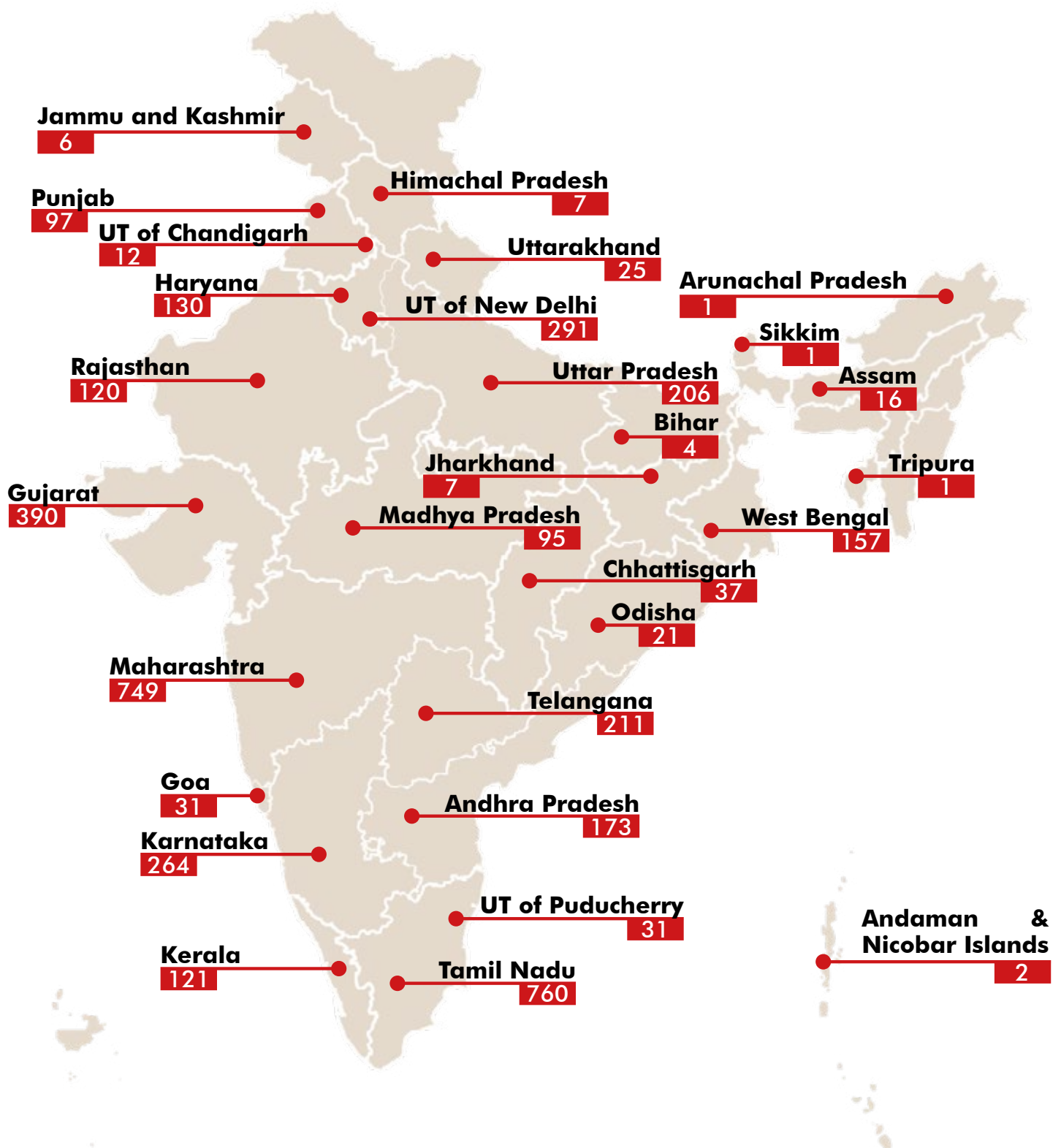
(Number)

Age Group (in years)	Land & Building	Plant & Machinery	Securities or Financial Assets	Total
≤ 30	117	6	103	226
> 30 ≤ 40	288	57	609	954
> 40 ≤ 50	511	93	451	1055
> 50 ≤ 60	856	123	243	1222
> 60 ≤ 70	230	86	113	429
> 70 ≤ 80	34	40	3	77
> 80	1	2	0	3
Total	2037	407	1522	3966

Limited Insolvency Examination

Subject to meeting other requirements, an individual is eligible for registration as an IP if he has passed the Examination within 12 months of the date of application for enrolment with IPA subject to meeting other requirements. The IBBI publishes the syllabus, format, etc. of the Examination and reviews the same continuously to keep it relevant in tune with the dynamics of the market. It commenced the Examination on December 31, 2016. The second, third, fourth, fifth and

Figure 3: Geographical Distribution of RVs as on March 31, 2021



sixth phase of Examination, each with a revised syllabus and question bank, commenced on July 1, 2017, January 1, 2018, November 1, 2018, July 1, 2019 and January 1, 2021 respectively. The Examination is conducted online (computer-based in a proctored environment) with objective multiple-choice questions. It is available from several locations across the country.

Till March 31, 2021, a total of 12,893 candidates made 35,526 enrolments. Out of these 12,893 candidates, 10,913 candidates appeared for the Examination and made a total of 27,259 attempts, out of which 4913 attempts (18.02 per cent of attempts or 38.11 per cent of candidates) were successful. Out of them, 476 are from East Zone, 1869 are from North Zone, 1412 are from West Zone and 1156 are from South Zone. The performance of candidates in the Examination is summarised in Table 33.

Table 33: Region-wise Limited Insolvency Examination till March 31, 2021

Phases	No. of Attempts (some candidates made more than one attempt) in Zone					No. of Successful Attempts in Zone				
	East	North	West	South	India	East	North	West	South	India
First Phase (Dec, 2016 – Jun, 2017)	758	1952	1581	1038	5329	160	434	391	216	1201
Second Phase (Jul, 2017 – Dec, 2017)	528	2204	1699	1806	6237	86	401	316	309	1112
Third Phase (Jan, 2018 - Oct, 2018)	557	2338	1778	1671	6344	86	389	286	252	1013
Fourth Phase (Nov, 2018 – Jun, 2019)	252	1201	798	774	3025	45	218	127	115	505
Fifth Phase (Jul, 2019 – Dec, 2020)	514	2162	1485	1699	5860	95	397	279	245	1016
Sixth Phase (Jan, 2021 – Mar, 2021)	34	182	118	130	464	4	30	13	19	66
Total	2643	10039	7459	7118	27259	476	1869	1412	1156	4913

Note: Examinations were suspended from March 23, 2020 till May 26, 2020 on account of lockdown due to COVID-19 pandemic.

Valuation Examinations

IBBI, being the 'Authority' under section 247 of the Companies Act, 2013 publishes the syllabus, format, and frequency of Valuation Examinations for all three asset classes, namely, (a) Land and Building, (b) Plant and Machinery, and (c) Securities or Financial Assets. It commenced the Valuation Examinations for three asset classes on March 31, 2018. The second and third phase of Valuation Examinations, each with a revised syllabus and question bank, commenced on April 1, 2019 and June 1, 2020 respectively. These examinations are conducted

online and are available from several locations across the country.

Land and Building

Till March 31, 2021, a total of 4777 candidates made 20,690 enrolments. Out of the 4777 candidates, 4618 candidates appeared for the Valuation Examination and 159 candidates did not appear for the Valuation Examination. 4618 candidates made a total of 17,282 attempts, out of which 2460 attempts were successful. The performance of candidates in the Valuation Examination is summarised in Table 34.

Table 34: Region-wise Valuation Examination in the asset class Land and Building

Phases	No. of Attempts (some candidates made more than one attempt) in Zone					No. of Successful Attempts in Zone				
	East	North	West	South	India	East	North	West	South	India
Phase 1 (Mar'18 - Mar '19)	271	1162	2482	5554	9469	46	231	568	*903	1748
Phase 2 (Apr'19 -May' 20)	314	1143	902	1421	3780	23	138	96	*123	380
Phase 3 (Jun'20 - Mar' 21)	170	1080	1049	1734	4033	10	97	104	121	332
Total	755	3385	4433	8709	17282	79	466	768	1147	2460

**One candidate passed the exam twice. | Note: Examinations were suspended from March 23, 2020 till June 15, 2020 on account of lockdown due to COVID-19 pandemic.*

Plant and Machinery

Till March 31, 2021, a total of 1066 candidates made 3976 enrolments. Out of the 1066 candidates, 1010 candidates appeared for the Valuation Examination and 56 candidates did not appear for the Valuation Examination. These 1010 candidates made a total of 3415 attempts, out of which 488 attempts were successful. The performance of candidates in the Valuation Examination is summarised in Table 35.

Table 35: Region-wise Valuation Examination in the asset class Plant and Machinery

Phases	No. of Attempts (some candidates made more than one attempt) in Zone					No. of Successful Attempts in Zone				
	East	North	West	South	India	East	North	West	South	India
Phase 1 (Mar'18 - Mar '19)	95	267	564	739	1665	16	61	136	111	324
Phase 2 (Apr'19 -May' 20)	98	204	184	271	757	10	28	24	33	95
Phase 3 (Jun'20 - Mar' 21)	99	254	306	334	993	6	20	23	20	69
Total	292	725	1054	1344	3415	32	109	183	164	488

Note: Examinations were suspended from March 23, 2020 till June 15, 2020 on account of lockdown due to COVID-19 pandemic.

Securities or Financial Assets

Till March 31, 2021, a total of 4761 candidates made 17,201 enrolments. Out of the 4761 candidates, 4392 candidates appeared for the Valuation Examination and 369 candidates did not appear for the Valuation Examination. These 4392 candidates made a total of 13,709 attempts, out of which 1796 attempts were successful. The performance of candidates in the Examination is summarised in Table 36.

Table 36: Region-wise Valuation Examination in the asset class Securities or Financial Assets

Phases	No. of Attempts (some candidates made more than one attempt) in Zone					No. of Successful Attempts in Zone				
	East	North	West	South	India	East	North	West	South	India
Phase 1 (Mar'18-Mar '19)	450	1052	1198	1796	4496	58	159	225	265	707
Phase 2 (Apr'19-May' 20)	461	1848	1126	1360	4795	46	241	*201	168	656
Phase 3 (Jun'20- Mar' 21)	387	1249	1214	1568	4418	43	119	138	133	433
Total	1298	4149	3538	4724	13709	147	519	564	566	1796

*One candidate passed the exam twice. | Note: Examinations were suspended from March 23, 2020 till June 15, 2020 on account of lockdown due to COVID-19 pandemic.

Refusal to grant Registration

The IBBI refused to grant registrations to 6 applicants for RV in 2020-21 (Table 37). It also withdrew registration of one IP on failing to meet eligibility norms.

Table 37: Rejection of Applications for Registration as IPs and RVs

Year	No. of Applications Rejected by IBBI		Registration of IPs withdrawn on failing to meet eligibility	Recognition of IPEs withdrawn on failing to meet eligibility
	For Registration as IP	For Registration as RV		
2016-17	3	0	NIL	NIL
2017-18	6	0	NIL	1
2018-19	3	1	NIL	38*
2019-20	3	3	1	2
2020-21	NIL	6	1	NIL

*Additionally, two IPEs have voluntarily surrendered their certificate of recognition.

Complaints & Grievances

The IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 provide for an objective and transparent procedure for receipt and disposal of grievances and complaints by the IBBI, that does not spare a mischievous service provider, but does not harass an innocent service provider. A stakeholder may file a grievance that shall state the details of the conduct of the service provider that has caused the suffering to the aggrieved; details of suffering, whether pecuniary or otherwise, the aggrieved has undergone; how the conduct of the service provider has caused the suffering of the aggrieved; details of his efforts to get the grievance redressed from the service provider; and how the grievance may be redressed. It may file a complaint in the specified form along with a fee of Rs. 2500. A complaint needs to state the details of the alleged contravention of any provision of the

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

Apart from this, the grievances and complaints are received from the Centralised Public Grievance Redress and Monitoring System (CPGRAMS), Prime Minister's Office (PMO), MCA, other authorities, and public. The receipt and disposal of grievances and complaints till March 31, 2021 is given in Table 38.

Table 38: Receipt and Disposal of Grievances and Complaints till March 31, 2021

(Number)

Year / Quarter	Complaints and Grievances Received						Total		
	Under the Regulations		Through CPGRAMS/ PMO/MCA/Other Authorities)		Through Other Modes		Received	Disposed	Under Examination
	Received	Disposed	Received	Disposed	Received	Disposed			
2017 - 18	18	0	6	0	22	2	46	2	44
2018 - 19	111	51	333	290	713	380	1157	721	480
2019 - 20	153	177	239	227	1268	989	1660	1393	747
2020 - 21	268	260	358	378	990	1364	1616	2002	361
Total	550	488	936	895	2993	2735	4479	4118	361

It is observed that no complaint has been received in respect of 87.22 per cent of processes. There are complaints in respect of 12.78 per cent of processes. Top 10 processes in terms of complaints account for 58.64 per cent of total complaints, while the rest account for 41.36 per cent of complaints.

It is observed that no complaint has been received in respect of 72.98 per cent of IPs, who have conducted any process. There are complaints in respect of 27.02 per cent of IPs only. Top 10 IPs in terms of complaints account for 59.34 per cent of total complaints, while the rest account for 40.66 per cent of complaints. It is observed that most complaints are received from promoters and directors of CDs, while most of the grievances are received from home buyers.

Inspection and Investigation

Inspections and investigations serve as standard mechanisms to verify compliance with applicable provisions of law. Based on such verification, appropriate enforcement actions, if required, are initiated. Since inspection and investigation entail infringement of freedom of service providers besides imposing a cost on them and the outcome of such inspection and investigation could be an enforcement action, there should be clear governance principles to minimise the pains

of inspection and investigation to concerned stakeholders and to avoid unwarranted enforcement actions, as required under section 196(1)(m). The IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) govern initiation, conduct and closure of inspections and investigations.

These Regulations enable the Board to conduct inspection of a certain number of service providers every year, in addition to inspection emanating from a complaint, grievance or any other input. For conducting an inspection, it needs to issue an order appointing an Inspecting Authority (IA) to conduct inspection of records of a service provider for specified purposes. The order indicates the scope of inspection; composition of IA; timelines for conducting the inspection; reporting of progress in inspection; submission of inspection report, etc. The Board and the IA make every effort to keep the inspection confidential and to cause the least burden on, or disruption to, the business of the service provider under inspection. The Inspection Regulations provide the manner of conduct of inspection and consideration of inspection report, including disposal of SCN wherever issued. IPAs also conduct inspections for monitoring compliances by their members. The details of inspections of IPs conducted by the Board and IPAs are presented in Table 39.

Table 39: Inspections of IPs conducted by the Board and IPAs

(Number)

Year	Inspections by IBBI				Inspections completed by IPAs		
	Ongoing at beginning	Inspections Ordered	Inspections Closed	Ongoing at the end	IPA ICAI	ICSI IIP	IIPI
2016-17	NA	NA	NA	NA	-	-	-
2017-18	0	2	0	2	-	-	-
2018-19	2	10	3	9	-	-	-
2019-20	9	55	27	37	8	5	5
2020-21	37	62	53	46	5	15	19
Total	NA	67	30	NA	13	20	24

Prosecution action by IBBI

A Court may take cognisance of any offence punishable under the Code, only on a complaint filed by the IBBI or Central Government. Till March 2021, courts had taken cognisance in 30 matters. During the year, Special Courts took cognisance of the offences based on complaints filed by IBBI seeking prosecution of several persons for contravention of provisions of the Code as presented in Table 40.

Table 40: Prosecution actions by IBBI

Sl. No.	Complaint Details	Special Court	Contraventions
1	IBBI v. Ravi Kant Gupta & Ors., CC/315/2020	Dwarka	Ex-directors of Alpfly Pvt. Ltd. for not extending cooperation to the IRP, which is in contravention of sections 68(i)(b), 70(1)(a) and (c), 72, 77(a) and section 19(1) read with section 235A of the Code
2	IBBI v. Rajive Kaul & Ors., CC/53/2020	Kolkata	Ex-directors of NICCO Corporation Limited for non-cooperation and refusal to handover assets of the CD to the liquidator which is in contraventions of sections of sections 19(1), and 34(3) read with section 70(1)(b) of the Code.
3	IBBI v. Om Prakash & Ors., COMA/35/2020	Gurugram	Ex-directors of M/s. Mahabir Techno Limited for non-disclosure of property, books, and papers of the CD and non-cooperation which is in contraventions of sections 68 (i) (a) (b) and (c) and 70 (i) (a) and (c) of the Code
4	IBBI v. Vinay Bhadauria & Anr, SC/38/2021	Gwalior	Ex-directors of NIIL Infrastructure Pvt. Ltd. for concealment of property, transactions defrauding creditors and misconduct, which is in contravention of sections 19(1), 68, 69, 70 and 74 read with section 235A of the Code.
5	IBBI v. Nitin Jayantilal Sandesara & Ors., Spl. Case No. 46/2021	Pune	Ex-directors of PMT Machines Ltd. Sandesara & Ors. for statutory non-compliance, misrepresentation to creditors and misconduct, which is in contravention of sections 19(1), 70, and 73 read with 235A of the Code
6	IBBI v. Sudhakar Haribhau Mulay & Ors., Spl Case/100031/2021	Mumbai	Ex-directors and RA of Fortune Pharma Pvt. Ltd. for failure to comply with the terms of resolution plan, which is in contravention of sections 31(1) and 74(3) read with section 235A of the Code.
7	IBBI v. Sweety Aggarwal & Anr., COMA/30/2020	Gurugram	Ex-directors of Maruti Kesari Nandan Agrofoods for not extending cooperation to the IRP, which is in contravention of section 70(1)(a), (b), (c) and (e) and section 19(1) read with section 235A of the Code
8	IBBI v. Vijaypal Garg & Ors., CC/370/2020	Dwarka	Ex-directors of M/s Gee Ispat Pvt. Ltd. for not extending cooperation to the IRP and making false representation to creditors by showing non-existent debtors in their accounts, which is in contravention of sections 19(1), 70, 73 and 235A of the Code
9	IBBI v. Formation Textiles LLC & Ors, Spl Case/0100303/2021	Mumbai	Ex-directors and RA of Textiles LLC & Ors. Mandhana Industries Ltd. for failure to comply with the terms of resolution plan, which is in contravention of sections 31(1) and 74(3) read with section 235A of the Code
10	IBBI v. Gagan Shukla & Ors., CC/170/2020	Dwarka	Ex-directors of Star Mineral Resources Pvt. Ltd. for not extending cooperation to the RP, which is in contravention of section 70(1)(a) and (c) and section 19(1) read with section 235A of the Code
11	IBBI v. Utkarsh Trivedi & Ors., Spl Case/0100852/2020	Mumbai	Ex-directors of Neo Corp International Ltd. for not extending cooperation to the RP, which is in contravention of sections 19(1) and 70(1)(a) and (c) read with section 235A of the Code
12	IBBI v. Satyanarayan Malu & Anr., Spl Case/0100853/2020	Mumbai	Ex-directors of SBM Paper Mills Pvt. Ltd. for misrepresentations made to creditors, which is in contravention of section 73(a) of the Code and regulation 30A of the CIRP Regulations read with section 235A of the Code

13	IBBI v. Prakash Kumar Singh & Anr., PCR No.66/2020	Bangalore	Ex-directors of M/s. Sovereign Developers and Infrastructure Private Limited for concealment of property and for not furnishing information and which is in contravention of sections 68, 70, 74 and 235A of the Code
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QUASI-JUDICIAL FUNCTIONS

The rule of law requires that the regulator must enforce observance of or compliance with a law, rule, regulation, or obligation, if it is not voluntarily done, to induce the desired conduct of professionals. A key element of enforcement is disciplinary proceeding against professionals. In the interest of fair and objective enforcement of the law, disciplinary proceedings commence with the issuance of a SCN, based on findings of a fact-finding process. The SCN states the details of any alleged contravention by the noticee and the measures or direction the regulator intends to take or issue if the allegations are established to enable the noticee to respond adequately. Based on findings of inspection or on material otherwise available, the IBBI and the IPAs initiate disciplinary actions against recalcitrant service providers. The details of disciplinary actions by them against IPs during 2020-21 are presented in Table 41.

Table 41: Issue and Disposal of Show Cause Notices against IPs

(Number)

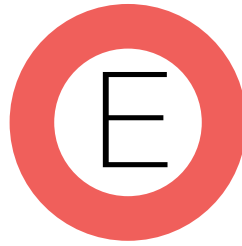
Year	Show cause notices by IBBI				Show cause notice disposed by IPAs		
	Ongoing at beginning	Issued	Disposed of	Ongoing at the end	IPA ICAI	ICSI IIP	IIIP
2016-17	NA	NA	NA	NA	-	-	-
2017-18	0	4	0	4	-	-	-
2018-19	4	9	11	2	2	1	-
2019-20	2	14	7	9	-	3	5
2020-21	9	50	48	11	8	20	14
Total	NA	77	66	11	10	24	19

A disciplinary proceeding provides a reasonable and effective opportunity of hearing to the noticee to defend himself and disposes of the SCN by a reasoned order, in the interest of principles of natural justice. The Code provides for a DC to dispose of SCNs and to impose a monetary penalty, or suspend or cancel the registration, as may be warranted. The DC completed 48 disciplinary proceedings and issued orders during 2020-21. The details of these proceedings are presented in Table 42.

Table 42: Closure of Disciplinary Proceedings in 2020-21

Sl. No.	Date of Order	Name of IP	Penalty Imposed
1	20.04.20	Mr. Koteswara Rao Karuchola	Monetary penalty of Rs. 1 lakh.
2	21.04.20	Mr. Bhupesh Gupta	Direction to deposit an amount of Rs. 31,09,000/- in the Liquidation Estate of CD with liberty to claim liquidator fee in accordance with the provisions of regulation 4(3) of the Liquidation Regulations.
3	27.04.20	Mr. Ashwini Mehra	Suspension of registration for six months and direction to secure reimbursement from CoC of an amount of Rs. 73,87,642/- and an amount of Rs. 50,74,000/- which were charged to IRPC.
4	30.05.20	Mr. M. L. Jain	Monetary penalty of Rs. 34,22,500/- to be deposited within 45 days of issue of the order.
5	02.06.20	Mr. Kanwal Chaudhary	Shall not seek or accept any process or assignment or render any services under the Code for a period of three months.
6	08.06.20	Mr. Vijay Kumar Garg	Monetary penalty of 25% of IP fees that he will receive has been imposed. No amount beyond the reasonable fee, as determined by the Expert Committee, is paid to D&P. IP shall undergo pre-registration educational course and pass the Limited Insolvency Examination again.
7	24.08.20	Mr. Rajneesh Singhvi	Shall not seek or accept any process or assignment or render any services under the Code for a period of three months.
8	04.09.20	Mr. Avishek Gupta	Shall not seek or accept any process or assignment or render any services under the Code for a period of two months.
9	11.09.20	Mr. Ravi Sharma	No direction.
10	18.09.20	Mr. Dinesh Sood	Shall not seek or accept any process or assignment or render any services under the Code for a period of three months.

11	01.10.20	Mr. Arun Raja Bhau Joshi	No direction.
12	12.10.20	Mr. Pranav Kumar	No direction.
13	13.10.20	Mr. Ajay Kumar	No direction.
14	15.10.20	Mr. Kishan Gopal Somani	No direction.
15	29.10.20	Mr. Dushyant C. Dave	Warning.
16	29.10.20	Mr. Sundaresh Bhat	A penalty equal to 25% of the fee he received in the process.
17	06.11.20	Mr. Manmohan Jhawar	Shall not seek or accept any process or assignment or render any services under the Code for a period of six months.
18	06.11.20	Mr. S. Radha Krishna	No direction.
19	09.11.20	Mr. Pritpal Singh Dua	No direction.
20	11.11.20	Mr. Vinod Kumar Kothari	No direction.
21	13.11.20	Mr. Kamalesh Kumar Singhania	Shall undergo pre-registration educational course from his IPA.
22	13.11.20	Mr. S. Rajagopal	No direction.
23	19.11.20	Mr. Kamal Garg	No direction.
24	24.11.20	Mr. Nitesh Kumar Sinha	No direction.
25	01.12.20	Mr. Arun Mohan	Shall not seek or accept any process or assignment in any capacity under the Code, till he is exonerated of the charges.
26	01.12.20	Mr. Sanjay Kumar Agarwal	Shall not seek or accept any process or assignment in any capacity under the Code, till he is exonerated of the charges.
27	01.12.20	Mr. Ajay Gupta	Shall not seek or accept any process or assignment or render any services under the Code for a period of six months.
28	04.12.20	Mr. Pinaki Sirkar	No direction.
29	04.12.20	Mr. Satinder Kapur	No direction.
30	04.12.20	Mr. Balaknath Bhattacharyya	Shall not seek or accept any process or assignment or render any services under the Code for a period of six months.
31	07.12.20	Mr. Sarvesh Kashyap	No direction.
32	08.12.20	Mr. Romesh Chander Sawhney	No direction.
33	14.12.20	Mr. Sajeve Bhushan Deora	No direction.
34	14.12.20	Mr. Ajay Gulati	No direction.
35	14.12.20	Mr. Satya Narayan Guddeti	No direction.
36	15.12.20	Mr. Rajesh Samson	No direction.
37	15.12.20	Mr. Abhay Narayan Manudhane	No direction.
38	16.12.20	Mr. Manoj Kumar Jain	No direction.
39	17.12.20	Ms. Sonu Jain	Warning.
40	17.12.20	Mr. Venkata Sivakumar	No direction.
41	01.01.21	Mr. Anil Goel	No direction
42	05.01.21	Mr. A. Arumugam	Shall not accept any new assignment under the Code for a period of two months.
43	07.01.21	Mr. Kedarram Ramratan Laddha	No direction
44	11.01.21	Mr. Girish Siriram Juneja	No direction
45	11.01.21	Mr. U. Balakrishna Bhat	No direction
46	02.02.21	Mr. Vijaykumar V. Iyer	No direction
47	05.03.21	Mr. Venkatesan	Shall not seek or accept any process or assignment or render any services under the Code for a period of three months.
48	15.03.21	Mr. Kiran Chinubhai Shah	Shall not seek or accept any process or assignment or render any services under the Code for a period of two months.



ANALYSIS OF OUTCOMES

This Section presents the outcomes during 2020-21 based on outcomes of insolvency proceedings, using the data, as provided by RPs. It also presents a summary of the emerging jurisprudence. Other outcomes of the Code have been captured in other sections of this report.

CORPORATE INSOLVENCY RESOLUTION

The insolvency reforms witnessed several milestones during the year which pushed resolution of stressed assets to a higher trajectory. The confluence of minds and efforts of three arms of the Government, the Regulator and the stakeholders helped to expeditiously surmount several difficulties that came on the way of implementation of the Code in the wake of outbreak of COVID-19 pandemic. The Code was amended to suspend initiation of CIRP under sections 7, 9 and 10 for any default arising on or after March 25, 2020 for a period of one year. The minimum of threshold of default for initiation of CIRP was raised from Rs. 1 lakh to Rs. 1 crore under the Code to prevent businesses, especially MSMEs from being pushed into insolvency on account of COVID-19 induced financial stress. While the Code was in abeyance for a year as regards initiation of fresh CIRPs under sections 7, 9 and 10, the amendment did not suspend applications that had

already been filed with the AA for initiation of CIRP or pending admission, and ongoing CIRPs, including voluntary liquidation. Further, the amendment did not suspend provisions relating to and ongoing insolvency proceedings in the case of PGs and FiSPs. In this backdrop, this section presents the outcomes of CIRPs till end of March, 2021.

Insolvency Resolution

CIRP enables market to first attempt to resolve stress through a resolution plan whereby the CD survives. When market concludes that there is no feasible and viable resolution plan to rescue the CD or liquidation maximises value as compared to rescue, the CD proceeds for liquidation. Thus, the Code enables two ways of resolution of stress, first by resolution plan, failing which, by liquidation.

Since the coming into force of the provisions of CIRP with effect from December 1, 2016, 4376 CIRPs have commenced by the end of March, 2021, as presented in Table 43. Of these, 617 have been closed on appeal or review or settled; 411 have been withdrawn; 1277 have ended in liquidation and 348 have ended in approval of resolution plans. The month-wise admission during the year of CDs into CIRP is presented in Figure 4.

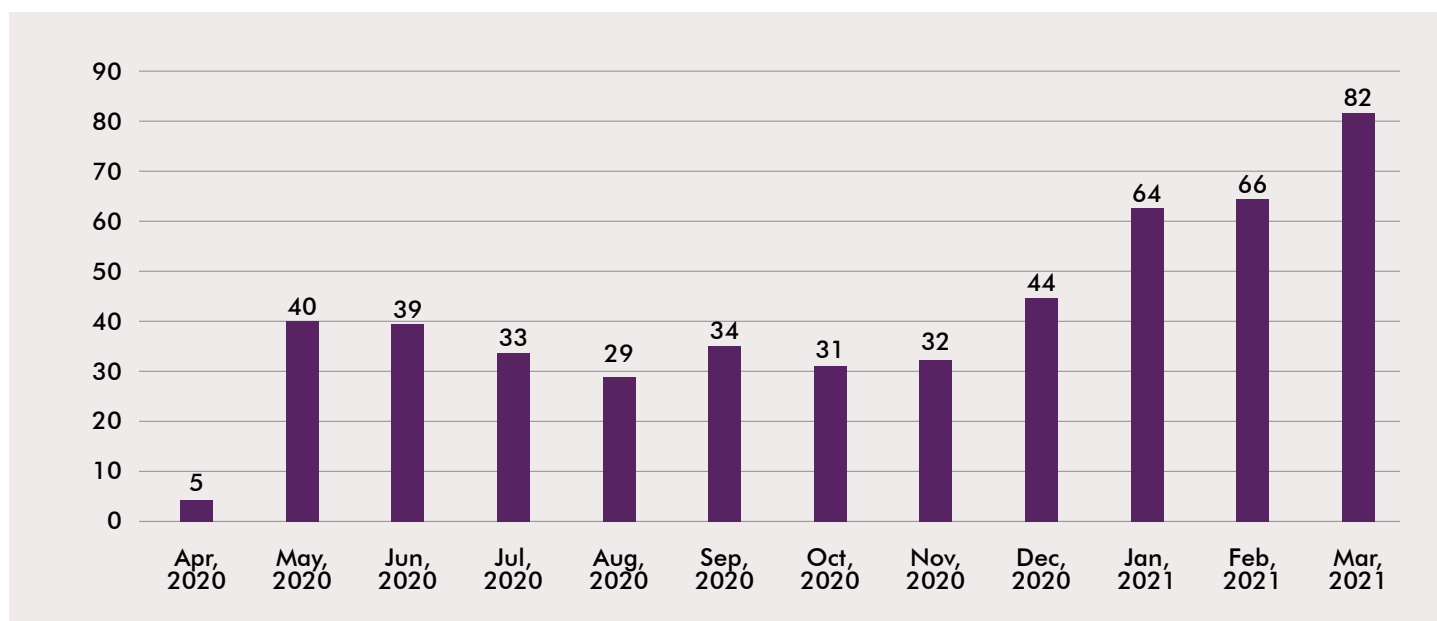
Table 43: Corporate Insolvency Resolution Process till March 31, 2021

(Number)

Quarter	CIRPs at the beginning of the Quarter	Admitted	Closure by				CIRPs at the end of the Quarter
			Appeal/ Review/ Settled	Withdrawal under Section 12A	Approval of Resolution Plan	Commencement of Liquidation	
2016-17	0	37	1	0	0	0	36
2017-18	36	706	94	0	20	91	537
2018-19	537	1156	149	97	79	305	1063
2019-20	1063	1978	319	201	141	542	1838
Apr-Jun 2020	1838	84	13	27	20	26	1836
Jul-Sept, 2020	1836	96	25	35	35	81	1756
Oct-Dec, 2020	1756	107	8	30	24	83	1718
Jan-Mar, 2021	1718	212	8	21	29	149	1723
Total	NA	4376	617	411	348	1277	1723

Source: Compilation from website of the NCLT and filings from IPs

Figure 4: Month-wise Admission of CDs into CIRPs



The distribution of CIRPs admitted, as on March 31, 2021, as per the jurisdiction of benches of the AA, is indicated in Table 44. A maximum of 1046 CIRPs have been admitted by the New Delhi Bench followed by 988 by Mumbai Bench and 482 by the Kolkata Bench.

Table 44: Bench-wise Admission and Closure of CIRPs till March 31, 2021

Sl. No.	Benches of NCLT at	No. of CIRPs		
		Admitted	Closed #	Ongoing
1	Ahmedabad	430	244	186
2	Allahabad	103	58	45
3	Amaravati	24	6	18
4	Bengaluru	163	120	43
5	Chandigarh	190	121	69
6	Chennai	479	339	140
7	Cuttack	28	13	15
8	Guwahati	26	16	10
9	Hyderabad	301	178	123
10	Indore	16	1	15
11	Jaipur	62	39	23
12	Kochi	38	18	20
13	Kolkata	482	317	165
14	Mumbai	988	530	458
15	New Delhi	1046	653	393
Total		4376	2653	1723

Closed on Appeal/Review/Settled, Withdrawal under Section 12A, Approval of Resolution Plan, and Commencement of Liquidation, by March 31, 2021.

The distribution of stakeholders, who triggered resolution process, is presented in Table 45. OCs triggered 50.84 per

cent of the CIRPs, followed by about 42.85 per cent by FCs, and remaining by the CDs. Initially, the CDs were the prime users, as they perceived that the CIRP would yield haircuts for creditors, while the control and management would remain unchanged. This perception changed with section 29A, which was introduced in November, 2017. The credible threat of a CIRP that may shift the control and management of the CD away from existing promoters and managers, most probably, for ever, deterred the CDs from filing applications for CIRP. The number of applications by CDs reduced sharply post this amendment. The applications by FCs increased following the Banking Regulations (Amendment) Ordinance, 2017 in May, 2017, which empowered the RBI to direct banks to file applications for CIRP in case of a default by a CD. It got a further boost in February, 2018 when the RBI substituted all extant instructions on the resolution of stressed assets with a harmonised and simplified generic framework for resolution of stressed assets.

Table 45: Initiation of Corporate Insolvency Resolution Process

Quarter	No. of CIRPs Initiated by			
	Operational Creditor	Financial Creditor	Corporate Debtor	Total
2016-17	7	8	22	37
2017-18	310	285	111	706
2018-19	570	515	71	1156
2019-20	1048	879	51	1978
Apr-Jun, 2020	53	26	5	84
Jul-Sept, 2020	61	31	4	96
Oct-Dec, 2020	58	45	4	107
Jan-Mar, 2021	118	86	8	212
Total	2225	1875	276	4376

Sector-wise distribution of CDs admitted into CIRP is presented in Table 46. The largest number of CIRPs have been initiated in the manufacturing sector, with the second largest being in the real estate, renting & business activities sector, the third largest in the wholesale & retail trade sector, followed by the construction sector. The status of CIRPs is presented in Table 47.

Table 46: Sectoral Distribution of CDs under CIRP as on March 31, 2021

Sector	No. of CIRPs		
	Closed	Ongoing	Total
Manufacturing	1124	660	1784
Food, Beverages & Tobacco Products	138	90	228
Chemicals & Chemical Products	119	56	175
Electrical Machinery & Apparatus	82	54	136
Fabricated Metal Products	65	32	97
Machinery & Equipment	127	71	198
Textiles, Leather & Apparel Products	202	102	304
Wood, Rubber, Plastic & Paper Products	128	86	214
Basic Metals	185	123	308
Others	78	46	124
Real Estate, Renting & Business Activities	519	343	862
Real Estate Activities	95	110	205
Computer and Related Activities	77	50	127
Research and development	3	2	5
Other business activities	344	181	525
Construction	262	196	458
Wholesale & Retail Trade	267	175	442
Hotels & Restaurants	65	34	99
Electricity & Others	64	70	134
Transport, Storage & Communications	83	49	132
Others	269	196	465
Total	2653	1723	4376

Note: The distribution is based on the CIN of CDs and as per National Industrial Classification (NIC 2004).

Table 47: Status of CIRPs as on March 31, 2021

Status of CIRPs	No. of CIRPs
Admitted	4376
Closed on Appeal / Review / Settled	617
Closed by Withdrawal under Section 12A	411
Closed by Resolution	348

Closed by Liquidation	1277
Ongoing CIRP	1723
> 270 days	1358
> 180 days ≤ 270 days	67
> 90 days ≤ 180 days	88
≤ 90 days	210

Note 1. The number of days pending is from the date of admission.

Note 2. The number of days pending includes time excluded by the Tribunals.

Till March, 2021, a total of 411 CIRPs have been withdrawn under section 12A of the Code. The distribution of claims and reasons for withdrawal in these CIRPs are presented in Table 48.

Table 48: Closure of CIRP by withdrawal till March 31, 2021

Amount of Claims Admitted (Amount in Rs. crore)	No. of CIRPs
≤ 01	197
> 01 ≤ 10	104
> 10 ≤ 50	70
> 50 ≤ 100	15
> 100 ≤ 1000	19
> 1000	6
Reasons for Withdrawal	
Full settlement with the applicant	153
Full settlement with other creditors	34
Agreement to settle in future	25
Other settlements with creditors	89
Others	110
Total	411

About 48.13 per cent of the CIRPs, which were closed, yielded orders for liquidation, as compared to 13.12 per cent ending up with a resolution plan. However, 74.08 per cent of the CIRPs ending in liquidation were earlier with BIFR and / or defunct. The economic value in most of these CDs had already eroded before they were admitted into CIRP. These CDs had assets, on average, valued at less than 7.5 per cent of the outstanding debt amount.

Till March, 2020, 240 CIRPs had yielded resolution plans, as reported in the last annual report. During 2020-21, 108 CIRPs yielded resolution plans with different degrees of realisation as compared to the liquidation value as presented Table 49. During 2020-21, value realisable by FCs under resolution plans in comparison to liquidation value is 149.20 per cent. Till March, 2021, value realisable by FCs under resolution plans in comparison to liquidation value is 179.88 per cent, while the realisation by them in comparison to their claims is 39.26 per cent.

Table 49: CIRPs yielding Resolution Plans as on March 31, 2021

(Amount in Rs. crore)

Quarter	No. of CDs	Admitted Claims of FCs	Liquidation Value	Realisable Amount by FCs	Realisation by FCs as % of	
					Admitted Claims	Liquidation Value
2016-17	0	0	0	0	NA	NA
2017-18	20	8263.89	2076.35	4199.23	50.81%	202.24%
2018-19	79	194809.50	48126.63	107426.59	55.14%	223.22%
2019-20	141	183972.30	45014.10	64992.12	35.33%	144.38%
Apr-Jun 2020	20	29840.18	4715.55	9119.31	30.56%	193.39%
Jul-Sept, 2020	35	19945.29	2878.94	4114.68	20.63%	142.92%
Oct-Dec, 2020	24	61826.06	6328.09	8173.16	13.22%	129.16%
Jan-Mar, 2021	29	17389.73	3504.00	4592.71	26.41%	131.07%
Total	348	516046.95	112643.66	202617.80	39.26%	179.88%

Note: Based on data as furnished by IPs.

The outcome of CIRPs, initiated stakeholder-wise, as on March 31, 2021 is presented in Table 50. About 32.85 per cent of OC initiated CIRPs were closed on appeal, review, or withdrawal. Such closures accounted for about 71.11 per cent of all closures by appeal, review, or withdrawal. Relatively,

a higher percentage of CIRPs initiated by FCs is yielding resolution plans. Almost 54.89 per cent of CIRPs that yielded resolution were initiated by FCs, while almost 44.87 per cent of CIRPs that yielded liquidation were initiated by OCs.

Table 50: Outcome of CIRPs, initiated stakeholder-wise, as on March 31, 2021

Outcome	Description	Unit	CIRPs initiated by			
			Financial Creditor	Operational Creditor	Corporate Debtor	Total
Status of CIRPs	Closure by Appeal/Review/Settled	No.	164	447	6	617
	Closure by withdrawal u/s 12A	No.	120	284	7	411
	Closure by approval of resolution plans	No.	191	116	41	348
	Closure by Commencement of liquidation	No.	548	573	156	1277
	Ongoing	No.	852	805	66	1723
	Total	No.	1875	2225	276	4376
CIRPs yielding Resolution Plans	Liquidation value	Rs. crore	94709.8	10846.5	7087.4	112643.7
	Amount of admitted claims	Rs. crore	438362.7	81997.6	56608.8	576969.1
	Liquidation value as % of claims	%	21.6	13.2	12.5	19.5
	Realisation by creditors as % of claims	%	42.8	16.2	18.5	36.6
	Realisation by creditors as % of liquidation value	%	197.9	122.7	147.5	187.5
	Realisation by FCs as % of liquidation value	%	191.6	113.8	143.0	181.2
	Realisation by FCs as % of their Claims	%	45.3	16.5	25.3	39.6
	Average time taken for closure of CIRP	No. of days	463	458	439	459
CIRPs yielding Liquidations	Liquidation value	Rs. crore	31735.8	11004.0	5594.6	48334.4
	Amount of admitted claims	Rs. crore	470854.4	123118.0	56338.1	650310.5
	Liquidation value as % of claims	%	6.8	8.9	9.9	7
	Average time taken for closure of CIRP	No. of days	366	344	324	351

Avoidance transactions.

The Code enables to undo avoidance transactions and thereby claw back the value lost through such transactions. If transactions are undone and the lost value is retrieved, the creditors stand to realise value from vulnerable transactions as well as from the existing assets. Higher the value creditors can realise from the corporate in stress, the higher is the likelihood of resolution of stress by a resolution plan, which is the primary objective of insolvency law in India. Further, the Code requires the beneficiary of such transactions to disgorge the value, and thereby takes away the incentive to indulge in vulnerable transactions. Since such transactions are considered criminal in certain circumstances, particularly when it is fraudulent, it disincentivises a potential miscreant. Such incentives and disincentives are likely to ensure that there is no vulnerable transaction. In such a case, value resides with the company and consequently, the possibility of a company getting into stress is less. In this sense, the Code prevents stress.

Section 66(2) of the Code makes the directors liable for the loss to the creditors that arise during twilight zone. The twilight zone begins from the time when a director knew or ought to have known that there was no reasonable prospect of avoiding the commencement of resolution process till the company enters resolution process. During this period, a director has an

additional responsibility to exercise due diligence to minimise the potential loss to the creditors and he is liable to make good such loss. This incentivises the corporate as well as its promoters and managers to seek resolution in early days of stress when possibility of resolution is higher. Generally, when an avoidance transaction is avoided, the underlying property returns from the beneficiary to the CD. Section 66(2), however, provides recourse against the director who made the transaction, and not the beneficiary. This provision has been rarely used. If used, this would take away incentive of promoters to resist admission, making the admission much faster and enable commencement of resolution process when chances of resolution are high.

In view of gains from vulnerable transactions, the law empowers the AA to undo any such transaction. It undoes these transactions based on an application of an IP, either as RP or as liquidator. To ensure that IP discharges his responsibility in respect of avoidance transactions, the CIRP Regulations requires the RP to form an opinion whether the CD has been subjected to any avoidance transaction on or before the 75th day of the ICD, make a determination on or before the 115th day of the ICD, and apply to the AA for appropriate relief on or before the 135th day of the ICD. The details of applications filed by RPs and Liquidator are presented in Table 51.

Table 51: Avoidance Transactions in Corporate Insolvencies

Year of Filing / Disposal	Application filed during CIRP period in case of CIRPs closed by						Application filed during Liquidation period in case of Liquidations		Application filed during CIRP period in case of ongoing CIRPs	
	Approval of Resolution Plans		Orders for Liquidation		Otherwise					
	No.	Amount (Rs. in Crore)	No.	Amount (Rs. in Crore)	No.	Amount (Rs. in Crore)	No.	Amount (Rs. in Crore)	No.	Amount (Rs. in Crore)
Applications Filed										
2017-18	11	11936.80	12	5651.78	0	0	0	0	1	128.59
2018-19	47	17039.10	83	34317.46	10	1520.17	18	22395.73	20	6341.76
2019-20	41	7791.21	60	14477.47	5	278.33	18	5896.76	50	7992.45
2020-21	8	260.53	26	2122.74	7	1207.42	10	1198.72	70	12947.68
Total	107	37027.64	181	56569.45	22	3005.92	46	29491.21	141	27410.48
Applications Disposed of										
2017-18	0	0	1	1.25	0	0	0	0	0	0
2018-19	2	0	2	0	1	0	0	0	1	0
2019-20	6	1.2*	4	0	1	0	2	0	1	0.01
2020-21	3	0	4	2.43	1	0	0	0	2	1.38
Total	11	1.2*	11	3.68	3	0	2	0	4	1.39
Applications Pending										
2017-18	10	6436.80	11	5650.53	0	0	0	0	1	128.59
2018-19	41	16655.98	77	29205.81	8	1424.58	17	22044.09	18	6318.60
2019-20	37	7374.66	56	14129.87	5	278.33	17	5842.00	49	7991.07
2020-21	8	260.53	26	2122.74	6	1204.34	10	1198.72	69	12947.51
Total	96	30727.97	170	51108.95	19	2907.25	44	29084.81	137	27385.77

Note: - The data is based on validated information available in 497 cases. Year is categorised based on date of filing of application with AA.

*Excludes-Jaypee Infratech Limited – CD has got the possession of 758 acres out of total 858 acres of land, back. 858 acres of land was earlier valued at Rs. 5500 crore.

CORPORATE LIQUIDATION

Although the Code has rescued 348 CDs, it has sent 1277 CDs to liquidation till March 31, 2021. However, it is important to note that about 74 per cent CDs of the CIRPs ending in liquidation (946 out of 1277) were earlier with BIFR and / or defunct (Table 52). The economic value in most of these CDs had already eroded before they were admitted into CIRP. The status of liquidation process as on March 31, 2021 is presented in Table 53.

Table 52: CIRPs ending with Orders for Liquidation

State of Corporate Debtor at the Commencement of CIRP	No. of CIRPs initiated by			
	Financial Creditors	Operational Creditors	Corporate Debtors	Total
Either in BIFR or Non-functional or both	384	444	118	946
Resolution Value ≤ Liquidation Value	75	44	27	146
Resolution Value > Liquidation Value*	473	530	128	1131

Note: 1. There were 67 CIRPs, where CDs were in BIFR or non-functional but had resolution value higher than liquidation value.

*Includes cases where no resolution plans were received and cases where liquidation value is zero or not estimated.

Table 54: Details of Liquidations closed till March 31, 2021

Quarter	No. of CDs	Amount of Admitted Claims	Liquidation Value	Amount Realized	Amount Distributed to Stakeholders	Realisation by FCs as % of	
						(their) Admitted Claims	Liquidation Value
2016-17	0	0.00	0.00	0.00	0.00	0.00	0.00
2017-18	1	11.15	0.85	0.85	0.71	5.56	71.95
2018-19	7	4674.99	-	-	-	NA	NA
2019-20	63	5445.18	210.41	152.35	147.03	2.47	60.98
Apr-Jun 2020	12	1051.39	67.50	99.62	94.48	8.64	112.41
Jul-Sept, 2020	9	115.77	6.71	9.98	8.72	8.15	129.96
Oct-Dec, 2020	12	349.42	7.70	20.58	14.28	2.13	78.44
Jan-Mar, 2021	34	5225.89	357.38	350.00	336.48	7.10	90.05
Total	138	16873.79	650.55	633.38	601.70	3.45	83.22

Till March 31, 2021, six CDs, namely, M/s. Emmanuel Engineering Private Limited, M/s. K.T.C. Foods Private Limited, M/s. Southern Online Bio Technologies, M/s. Smaat India Private Limited, M/s. Winwind Power Energy Private Limited and M/s. Topworth Pipes & Tubes Private Limited were closed by sale as a going concern under liquidation process. These CDs had claims amounting to Rs. 4325.16 crore, as against the liquidation value of Rs. 290.03 crore. The liquidators in

Table 53: Status of Liquidation Processes as on March 31, 2021

Status of Liquidation	Number
Initiated	1277*
Final Report submitted#	240
Closed by Dissolution	128
Closed by Going Concern Sale	6
Closed by Compromise / Arrangement	4
Ongoing	1037
> Two years	265
> One year ≤ Two years	448
> 270 days ≤ One year	29
> 180 days ≤ 270 days	65
> 90 days ≤ 180 days	82
≤ 90 days	148

*This excludes 10 cases where liquidation order has been set aside by NCLT / NCLAT / High Court / Supreme Court.

This includes 10 cases where application for early dissolution has been filed with the NCLT.

Till March, 2021, 138 liquidation processes were closed by dissolution/going concern sale/compromise or arrangement whose details are presented in Table 54.

(Amount in Rs. crore)

these cases realised Rs. 336.76 crore, while the CDs were rescued.

The liquidator makes a public announcement calling upon stakeholders to submit their claims as on the liquidation commencement date, within 30 days from the liquidation commencement date. The details of the claims admitted by the liquidators vis-à-vis amount realised are presented in Table 55.

Table 55: Claims in 240 Liquidation Processes where Final Report Submitted

(Amount in Rs. crore)

Stakeholders under Section	Number of Claimants	Amount of claims Admitted	Liquidation Value	Amount Realised	Amount Distributed
52	23	726.14	94.52	100.74	100.17
53 (1) (a)	NA	NA	1004.67	956.34#	47.99
53 (1) (b)	1409	26961.71			825.29
53 (1) (c)	698	10.87			1.74
53 (1) (d)	270	1325.27			29.15
53 (1) (e)	187	2413.94			11.79
53 (1) (f)	879	1610.00			34.50
53 (1) (g)	4	11.54			0.10
53 (1) (h)	96	26.27			1.51
Total (A)	3566	33085.74	1099.19	1057.08#	1052.24

Inclusive of unclaimed proceeds of Rs. 4.84 crore under liquidation

TWELVE LARGE ACCOUNTS

Resolution of 12 large accounts were initiated by banks, as directed by RBI. Together they had an outstanding claim of Rs. 3.45 lakh crore as against liquidation value of Rs. 73,220 crore. Of these, resolution plan in respect of nine CDs have been approved and orders for liquidation have been passed in respect of two CDs. Therefore, CIRP in the respect of one CD and liquidation in respect of two CDs were ongoing at the end of March, 2021. The status of the 12 large accounts is presented in Table 56.

Table 56: Status of 12 Large Accounts

(Amount in Rs. crore)

Name of Corporate Debtor	Claims of Financial Creditors Dealt Under Resolution			Realisation by all Claimants as % of Liquidation Value	Resolution Applicant
	Amount Admitted	Amount Realised	Realisation as % of Claims		
Electrosteel Steels Ltd.	13175	5320	40.38	183.45	Vedanta Ltd.
Bhushan Steel Ltd.	56022	35571	63.50	252.88	Bamnipal Steel Ltd.
Monnet Ispat & Energy Ltd.	11015	2892	26.26	123.35	Consortium of JSW and AION Investments Pvt. Ltd.
Essar Steel India Ltd.	49473	41018	82.91	266.65	Arcelor Mittal India Pvt. Ltd.
Alok Industries Ltd.	29523	5052	17.11	115.39	Reliance Industries Limited, JM Financial Asset Reconstruction Company Ltd., JMFARC – March 2018 Trust
Jyoti Structures Limited	7365	3691	50.12	387.44	Group of HNIs led by Mr. Sharad Sanghi.
Bhushan Power & Steel Ltd.	47158	19350	41.03	209.12	JSW Limited
Jaypee Infratech Ltd.*	23176	23223	100.20	130.82	NBCC (India) Limited
Amtek Auto Ltd.	12641	2615	20.68	169.65	Deccan Value Investors L.P. and DVI PE (Mauritius) Ltd.
Era Infra Engineering Ltd.	Undergoing CIRP				
Lanco Infratech Ltd.	Undergoing Liquidation				
ABG Shipyard Ltd.	Undergoing Liquidation				

*The resolution was challenged and CoC was ordered to consider the resolution plans submitted afresh.

VOLUNTARY LIQUIDATION

A corporate person may initiate voluntary liquidation proceeding if majority of the directors or designated partners of the corporate person make a declaration to the effect that (i) the corporate person has no debt or it will be able to pay its debts in full out of 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 first voluntary liquidation was initiated on April 7, 2017. 907 corporates had initiated voluntary liquidation proceedings by March 31, 2021, the details of which are given in Table 57.

Table 57: Commencement of Voluntary Liquidations till March 31, 2021

(Number)

Quarter	Liquidations at the beginning	Liquidations Commenced	Liquidation closed by		Liquidations at the end
			Withdrawal	Final Reports Submitted	
2017-18	0	184	0	11	173
2018-19	173	229	6*	97	299
2019-20	299	271	1	128	441
Apr-Jun 2020	441	10	0	24	427
Jul-Sept, 2020	427	59	0	49	437
Oct-Dec, 2020	437	63	0	54	446
Jan-Mar, 2021	446	91	0	37	500
Total	NA	907	7	400	500

* Vide order dated February 2, 2021, the Hon'ble NCLT has recalled its order dated September 28, 2018 which suspended the voluntary liquidation process of M/s Central Inland Water Transport Corporation Limited.

Most of these corporate persons are small entities. 496 of them have paid-up equity capital of less than Rs. 1 crore. Only 100 of them have paid-up capital exceeding Rs. 5 crore. The corporate persons, for which details are available, have an aggregate paid-up capital of Rs. 5591 crore (Table 58).

Table 58: Details of 900 Liquidations (excluding 7 withdrawals)

(Amount in Rs. crore)

Details of	No. of Liquidations	Paid up capital	Assets	Outstanding debt	Amount paid to creditors	Surplus
Liquidations for which final reports submitted	400	1570*	3618	25	25	3308
Ongoing liquidations	500	4021#	1697#	**		
Total	900	5591	5315	**		

*Paid up capital is not available in case of one company as it is a limited by guarantee company where there exist no shareholders and paid-up capital.

**For ongoing liquidations, outstanding debt amount is not available.

Paid up capital and assets of 387 and 377 cases, respectively, are available.

The distribution of liabilities and assets of 900 of these corporate persons (excluding 7 withdrawals) is presented in Table 59. The liabilities of 602 and assets of 443 of them are not more than Rs.1 crore.

Of the 907 corporate persons who have initiated voluntary liquidation proceedings, 196 belong to the manufacturing sector, 382 belong to the real estate, renting and business activities and 68 to the whole sale and retail trade sector (Table 60). The reasons for initiations of these voluntary liquidations are presented in Table 61.

Table 59: Distribution of Liabilities and Assets of Corporate Persons under Voluntary Liquidations

Sl. No.	Amount in Rs. crore	No. of Corporate Persons	
		Having liabilities	Having Assets
1	≤ 1	602	443
2	> 1 - ≤ 2	26	101
3	> 2 - ≤ 3	13	63
4	> 3 - ≤ 5	14	56
5	> 5	19	108
Total		674*	771*

* Data for other processes not available.

Table 60: Sector-wise distribution of Voluntary Liquidations

Sector	Number
Manufacturing	196
Food, Beverages & Tobacco Products	9
Chemicals & Chemical Products	27
Electrical Machinery & Apparatus	10
Fabricated Metal Products	9
Machinery & Equipment	46
Textiles, Leather & Apparel Products	20
Wood, Rubber, Plastic & Paper Products	14
Basic Metals	14
Others	47
Real Estate, Renting & Business Activities	382
Real Estate Activities	25
Computer and related activities	114
Research and development	10
Renting of machinery and equipment without operator and of personal and household goods	2
Other business activities	231
Construction	33
Wholesale & Retail Trade	68
Hotels & Restaurants	6
Electricity & Others	12
Transport, Storage & Communications	40
Others	170
Total	907

Table 61: Reasons for Voluntary Liquidation

Sl. No.	Reason for Voluntary Liquidation	No. of Corporate Persons
1	Not carrying business operations	547
2	Commercially unviable	118
3	Promoters unable to manage affairs	18
4	Purpose for which company was formed accomplished / Contract termination	23
5	Miscellaneous	86
Total		792*

* Data for other processes not available.

Final reports in respect of 400 voluntary liquidations have been submitted by March 31, 2021.

226 liquidations have closed. Of the 500 ongoing voluntary liquidation processes, 92 are less than 90 days old, 144 have crossed two years (Table 62).

Table 62: Phasing of Voluntary Liquidations

Status of Liquidation	No. of Liquidations
Initiated	907
Closed by withdrawal	7
Final Report Submitted	400
Closed by Dissolution	226
Ongoing	500
> Two years	144
> One year ≤ Two years	146
> 270 days ≤ One year	13
> 180 days ≤ 270 days	46
> 90 days ≤ 180 days	59
≤ 90 days	92

Corporate Liquidation Accounts

The Regulations require a liquidator to deposit the amount of unclaimed dividends, if any, and undistributed proceeds, if any, in a liquidation process along with any income earned thereon into the corporate liquidation account before he applies for dissolution of the corporate person. It also provides a process for a stakeholder to seek withdrawal from the said account. Similar provisions exist for voluntary liquidation processes. The details of these accounts at the end of March, 2021, are presented in Table 63.

Table 63: Corporate Liquidation Accounts as on March 31, 2021

(Amount in Rs. lakh)

Name of Account	Opening Balance as on 01.04.2020	Deposit during 2020-21	Withdrawn during 2020-21	Balance at the end of the period, i.e. 31.03.2021
Corporate Liquidation Account	476.05	116.18	0.00	592.23
Corporate Voluntary Liquidation Account	109.70	112.06	0.00	221.76

Summary of Outcomes

(a) The primary objective of the Code is rescuing lives of CDs in distress. The Code has rescued 348 CDs till March, 2021 through resolution plans, one third of which were in deep distress. However, it has referred 1277 CDs for liquidation. The CDs rescued had assets valued at Rs. 1.11 lakh crore, while the CDs referred for liquidation had assets valued at Rs. 0.46 lakh crore when they were admitted to CIRP. Thus, in value terms, around three fourth of distressed assets were rescued. Of the CDs sent for liquidation, three-fourth were either sick or defunct and of the firms rescued, one-third were either sick or defunct.

(b) The realisable value of the assets available with the 348

CDs rescued, when they entered the CIRP, was only Rs. 1.11 lakh crore, though they owed Rs. 5.67 lakh crore to creditors. The resolution plans recovered Rs. 2.09 lakh crore, which is about 188 per cent of the realisable value of these CDs. Any other option of recovery or liquidation would have recovered at best Rs. 100 minus the cost of recovery/liquidation, while the creditors recovered Rs. 188 under the Code. The excess recovery of Rs. 88 is a bonus from the Code. Though recovery is incidental under the Code, the FCs recovered around 40 per cent of their claims, which only reflects the extent of value erosion by the time the CDs entered CIRP, yet it is the highest among all options available to creditors for recovery. These realisations are exclusive of realisations that would arise from resolution of PGs to CDs and from disposal of applications for avoidance transactions.

(c) The 1277 CDs ending up with orders for liquidation had an aggregate claim of Rs. 6.47 lakh crore. Unfortunately, they had assets, on the ground, valued only at Rs. 0.46 lakh crore. Till March 31, 2021, 240 CDs have been completely liquidated. Many of these CDs did not have any job or asset when they entered the IBC process. These included Ghotaringa Minerals Limited and Orchid Healthcare Private Limited, which owed Rs. 8163 crore, while they had absolutely no assets and employment. These 240 CDs together had outstanding claims of Rs. 33,086 crore, but the assets valued at Rs. 1099 crore. Rs. 1057 crore were realised through liquidation of these companies.

(d) A distressed asset has a life cycle. Its value gradually declines with time if distress is not addressed. The credible threat of the Code, that a CD may change hands, has changed the behaviour of debtors. Thousands of debtors are resolving distress in early stages of distress. They are resolving when default is imminent, on receipt of a notice for repayment but before filing an application, after filing application but before its admission, and even after admission of the application, and making best effort to avoid consequences of resolution process. Most companies are rescued at these stages. Till March, 2021, 17,305 applications for initiation of CIRPs of CDs having underlying default of Rs. 5,33,145 crore were resolved before their admission. Only a few companies, who fail to address the distress in any of earlier stages, pass through the entire resolution process. At this stage, the value of the company is substantially eroded, and hence some of them are rescued, and others liquidated. The recovery may be low at this stage, but recovery in early stages of distress is much higher, and it is primarily because of the Code.

(e) The Code endeavours to close the various processes at the earliest. It prescribes timelines for some of them. The 348 CIRPs, which have yielded resolution plans by the end of March, 2021, took on average 406 days (after excluding the time excluded by the AA) for conclusion of process. Similarly, the 1277 CIRPs, which ended up in orders for liquidation, took on average 351 days for conclusion. Further, 240 liquidation processes, which have closed by submission of final reports till March 2021 took on average 410 days for closure against the 126 liquidation processes, which had taken on average 307 days for submission of final reports till March, 2020.

Similarly, 400 voluntary liquidation processes, which have closed by submission of final reports till March, 2021, took on average 383 days for closure against the 236 voluntary liquidation processes, which had taken on average 324 days for submission of final reports till March, 2020. The increase in the average number of days for submission of final reports in both liquidation and voluntary liquidation processes up to March 2021 vis-à-vis March, 2020 can be substantially attributed to the delays / lockdown resulting from the onset of COVID-19 pandemic in 2020 in the country.

(f) Till March, 2021, a total of 348 CIRPs have yielded resolution plans. The cost details are available in respect of 322 CIRPs. The cost works out on average 0.92 per cent of liquidation value and 0.49 per cent of resolution value.

RESOLUTION OF FINANCIAL SERVICE PROVIDERS

On an application filed by the RBI to initiate CIRP against Dewan Housing Finance Corporation Ltd (DHFL), the AA admitted the application on December 3, 2019. Mr. R. Subramaniakumar was appointed as the Administrator. This is the first FiSP admitted for resolution under the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019, which were notified on November 15, 2019. The Administrator has the same duties, functions, obligations, responsibilities, rights, and powers of an IP undertaking a process under the Code.

The RBI vide their letter dated February 16, 2021 has communicated their no-objection for change in control/ ownership/management in DHFL in terms of Rule 5(d)(iii) of the FiSP Rules and also in terms of Para 3 of NHB Master Circular-Housing Finance Companies-Approval of acquisition or transfer of control (NHB) Directions, 2016, subject to certain conditions. The resolution plan submitted by RA, Piramal Capital & Housing Finance Limited was approved by the CoC and awaiting approval by the AA.

INDIVIDUAL PROCESSES

The provisions relating to insolvency resolution and bankruptcy relating to PGs to CDs came into force on December 1, 2019. As per the information received from IPs, 132 applications have since been filed as of March 31, 2021. Out of them 16 applications have been filed by the debtors and 116 applications by the creditors under sections 94 and 95 of the Code, respectively. Among them seven have been filed before different benches of DRT and 125 have been filed before different benches of NCLT (Table 64).

Table 64: Insolvency Resolution of Personal Guarantors

(Amount in Rs. crore)

Period	Applications filed by									
	Debtor (u/s 94)			By Creditor (u/s 95)			Total			Adjudicating Authority
	Number	Debt Amount	Guarantee Amount	Number	Debt Amount	Guarantee Amount	Number	Debt Amount	Guarantee Amount	NCLT DRT
Dec - Mar, 2020	3	50.28	44.5	13	3254.26	4472.86	16	3304.54	4517.36	15 1
Apr - Jun, 2020	2	277.92	34	2	36.02	NA	4	313.94	34	4 0
Jul - Sep, 2020	5	107.01	36.75	12	2152	213.25	17	2259.01	250	14 2
Oct - Dec, 2020	0	0	0	38	5743.7	4759.19	38	5743.7	4759.19	38 0
Jan - Mar, 2021	6	2369.75	1004.3	51	3013.21	1818.26	57	5382.96	2822.56	53 4
Total	16	2804.96	1119.55	116	14199.19	11263.56	132	17004.15	12383.11	125 7

Note: (i) NA - Not Available.

(ii) Default data not available in 5 cases and Guarantee data not available in 29 cases.

EMERGING JURISPRUDENCE

The doctrine of *stare decisis* (binding nature of precedents) enhances legal certainty and clarity. In fact, precedents convey information that allow the decision makers and stakeholders to predict, within certain bounds, the likely legal consequences of different choices and infer the possible range of outcomes of potential disputes and differences. Legal discourse, in large part, determines the rules of the game and informs the players of those rules so that they can best seek out their potential within the confines of the law. Precedents serve as a primary source of legal research, insights and analysis, while stimulating the development of law. They illuminate on the interpretive strides made by the Courts when wading through the statutes. Legal research often begins with statutes or regulations, the primary law passed by the legislature or regulatory agency in the relevant jurisdictions. However, matters interpreting the terms and intent of the statute are invaluable source of law. It is essential to acquire familiarity with this body of law to determine the elements of a cause of action, the latest and updated stance of the Courts, and to increase an understanding of the litigation process.

In this context, the judiciary have addressed the concerns and difficulties that have arisen in the due course of implementation of the Code with alacrity. They have settled several conceptual and contentious issues, and delivered many landmark orders and judgements, bringing in clarity as to what is permissible and what is not, and streamlining the process for the future. The insolvency regime of India today boasts of probably the largest body of jurisprudence in terms of sheer volume of case laws (Box 3).

Constitutional validity of provisions of the Code

In the matter of *Manish Kumar Vs. Union of India and Another*¹⁹, the SC while upholding the constitutionality of the

Insolvency and Bankruptcy Code (Amendment) Act, 2020 whereby sections 7 and 11 were amended and section 32A was inserted in the Code, *inter-alia* observed the following:

(i) *First proviso to section 7*: The legislative policy reflects an attempt at shielding the CD from what it considers would be either for frivolous or avoidable applications. The amendment is likely to ensure that the filing of an application is preceded by a consensus at least by a minuscule percentage of similarly placed creditors and that the time has come for undertaking a legal odyssey which is beset with perils for the applicants themselves apart from others. As regards the percentage of applicants contemplated under the proviso, it cannot be dubbed as an arbitrary or capricious figure.

(ii) *Second proviso to section 7*: (a) 'allotment' means allotment in the sense of documented booking as mentioned in section 11(1)(b) of the RERA. A person to whom allotment of a plot, apartment, or a building has been made is an allottee. The allottee would also include a person who acquires the allotment either through sale, transfer or otherwise; (b) To successfully move an application under section 7, there must be a default. Such default need not be *qua* the applicant(s). Any number of applicants, without any amount being due to them, could move an application under section 7, if they are FCs and there is a default, even if such default is owed to none of the applicants but to any other FC; (c) In case of a joint allotment of an apartment, plot or a building to more than one person, the allotment will be treated as a single allotment. The objective is to ensure that there is a critical mass of allottees, who agree that the time is ripe to submit to the inexorable processes under the Code, with all its attendant perils. If an apartment is taken in the names of 100 persons, the allottees of that apartment would not represent a critical mass of the allottees of the project; and (d) The law does not interdict the creation of a class within a class absolutely. Should there be a rational basis for creating a sub-class within a class, it is not impermissible. A class within a sub-class is, indeed, not antithetical to the guarantee of equality under Article 14.

¹⁹ W.P.(C) No. 26 of 2020 with 40 other writ petitions

Box 3: Code, Rules and Regulations – A Successful Odyssey

The Code has been a key economic and institutional reform which brought in a paradigm shift in the insolvency regime and ecosystem. It has laid the foundation for time bound resolution mechanism and balanced the interests of all stakeholders. Every organ of the State, the legislature, executive and the judiciary actively facilitated the smooth implementation of the processes under the Code. In this process, several legislative initiatives faced challenges on grounds of constitutional validity. All such provisions of the Code, the Rules and Regulations framed thereunder, have passed the judicial test. The judiciary has upheld all such legislative initiatives in its numerous landmark judgements while explaining several conceptual issues and laid down the jurisprudence in the insolvency regime through a number of case laws. Few such judgements since inception of the Code are enumerated below.

- In *Pioneer Urban Land and Infrastructure Limited and Another Vs. Union of India & Others*²⁰ the SC held that the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 does not infringe Articles 14, 19(1)(g) read with Article 19(6), or 300-A of the Constitution of India.
- In *Innoventive Industries Ltd. Vs. ICICI Bank & Anr.*²¹ the SC observed that “One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the objective of speeding up the insolvency process”.
- In *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.*²², the SC upheld the constitutionality of the Code and observed that the experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster..
- In *Akshay Jhunjhunwala & Anr. Vs. Union of India through the Ministry of Corporate Affairs & Ors.*²³, the Calcutta HC held that “the rationale of giving a particular treatment to a financial creditor in the process of insolvency of a company under the Code of 2016 cannot be said to offend any provisions of the Constitution of India”.
- In *Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta & Others*²⁴, the SC upheld the constitutional validity of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.
- In *Kridhan Infrastructure Pvt. Ltd. Vs. Venkatesan Sankaranarayan & Ors.*²⁵ the SC observed that “Liquidation of the Corporate Debtor should be a matter of last resort. The IBC recognizes a wider public interest in resolving corporate insolvencies and its object is not the mere recovery of monies due and outstanding.”
- In *Central Bank of India Vs. RP of the Sirpur Paper Mills Ltd. & Ors.*²⁶, NCLAT observed that “IBBI may make regulations, but it should be consistent with the Code and rules made thereunder, to carry out the provisions of the Code. The provisions made by IBBI cannot override the provisions of the Code, nor can it be inconsistent with the Code”.
- In *CA. Venkata Siva Kumar Vs. Insolvency and Bankruptcy Board of India & Others*²⁷, Madras HC upheld the constitutional validity of Regulation 7(2)(ca) of IP Regulations.
- In *CA V. Venkata Sivakumar Vs. IBBI & Ors.*²⁸, Madras HC held that the IBBI is empowered to frame Regulation 7A of the IP Regulations and Regulation 12A of the Model Bye-Laws Regulations. It upheld the constitutional validity of Regulation 7A of the IP Regulations & 12A the Model Bye-Laws IPA Regulations.
- In *Manish Kumar Vs. Union of India and Another*²⁹, the SC upheld the constitutionality of three provisos to section 7(1), an additional explanation to section 11, and section 32A in the Code inserted vide sections 3, 4, and 10 of the Insolvency and Bankruptcy Code (Amendment) Act 2020.
- In *Arun Kumar Jagatramka Vs. Jindal Steel and Power Ltd. & Anr.*³⁰, the SC held that “the introduction of the proviso to Regulation 2B was a step in this direction which sought to clarify the position with respect to the applicability of the disqualifications set out in Section 29A of the IBC to Section 230 of the Act of 2013 in tandem with the legislative intendment. As such, Regulation 2B of the Liquidation Process Regulations, specifically the proviso to Regulation 2B(1), is also constitutionally valid”. The SC also observed that, “the enactment of the IBC has marked a quantum change in corporate governance and the rule of law. IBC perceives good corporate governance, respect for and adherence to the rule of law as central to the resolution of corporate insolvencies. It perceives corporate insolvency not as an isolated problem faced by an individual business entities but places it in the context of a framework which is founded on public interest in facilitating economic growth by balancing diverse stakeholder interests. It attributes a primacy to the business decisions taken by creditors acting as a collective body, on the premise that the timely resolution of corporate insolvency is necessary to ensure the growth of credit markets and encourage investment. In its diverse provisions, the IBC ensures that the interests of corporate enterprises are not conflated with the interests of their promoters; the economic value of corporate structures is broader in content than the partisan interests of their managements”.

²⁰ WP(C) No. 43/2019 and other petitions.

²¹ Civil Appeal Nos. 8337-8338 of 2017

²² WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019

²³ W.P. No. 672 of 2017

²⁴ Civil Appeal No. 8766-67/2019 Diary No. 24417/2019 with other Civil Appeals and WP(C)s

²⁵ CA No. 3299/2020

²⁶ CA (AT) (Ins.) No. 526 of 2018

²⁷ W.P. No. 9132 of 2020 and W.M.P. No. 11134 of 2020

²⁸ W.P.No.13229 of 2020

²⁹ WP(C) No. 26 of 2020 with 40 other writ petitions

³⁰ Civil Appeal No. 9664 of 2019

(iii) *Third proviso to section 7:* (a) If a petitioner moves an application in respect of the same default, as covered in its earlier application under unamended section 7, within a period of two months from the date of the order, in compliance with either the first or the second proviso under section 7(1), it will be exempted from payment of court fees; and (b) If an application under (a) above is accompanied by an application under section 5 of the Limitation Act, 1963, the period of delay shall be condoned for the period, during which the earlier application was pending with the AA.

(iv) *Explanation II to section 11:* The intention of the legislature was always to target the CD only insofar as it purported to prohibit application by the CD against itself, to prevent abuse of the provisions of the Code. It could never have been the intention to create an obstacle in the path of the CD, in any of the circumstances contained in section 11, from maximising its assets by trying to recover the liabilities due to it from others. Not only does it go against the basic common-sense view, but it would frustrate the very object of the Code. Being retrospective in nature, this clarificatory amendment will certainly apply to all pending applications also.

(v) *Section 32A:* Attaining public welfare very often needs delicate balancing of conflicting interests. As to what priority must be accorded to which interest must remain a legislative value judgement and if seemingly the legislature in its pursuit of the greater good appears to jettison the interests of some, it cannot, unless it strikingly ill squares with some constitutional mandate, suffer invalidation.

Constitutional validity of Regulations framed by IBBI

In the matter of *CA V. Venkata Sivakumar Vs. IBBI & Ors.*³¹ the Madras HC upheld the constitutional validity of (i) regulation 7A of the IP Regulations which requires an IP to obtain an AFA for taking up assignments under the Code with effect from January 1, 2020 and (ii) regulation 12A of the Model Bye-Laws Regulations which empowers an IPA to issue or renew an AFA if he has not attained the age of 70 years. While dismissing the petition, the HC observed that –*“on examining the said sections of the IBC, the undoubted position that emerges is that the IBBI is empowered to frame regulation 7A of the IP Regulations and regulation 12A of the Model Bye-Laws IPA Regulations. In turn, the IPAs, including the second Respondent, are empowered to frame bye-laws in consonance with the model bye-laws. Given the fact that the IBBI has framed the Model Bye Laws IPA Regulations and IPAs, such as the IIIPI, have framed bye-laws in consonance with the model bye-laws, it cannot be said that there is excessive delegation. Indeed, section 205 of the IBC expressly stipulates that, subject to the provisions of the IBC and rules and regulations thereunder, after obtaining the approval of the IBBI, an IPA should frame bye-laws that are consistent with the model bye-laws framed by the IBBI.....”*. Further, it had upheld the criteria imposed for eligibility for AFA and

observed that *“we do not find anything ex facie arbitrary about the specified criteria.Thus, the said criteria are clearly not unreasonable or arbitrary but appear to be germane for deciding the eligibility of an IP for such AFA. In our view, these measures are intended to regulate the profession and not to deprive a person of the right to practice the profession. Hence, we conclude that Articles 14, 19 and 21 are not violated.”*

In the matter of *CA. Venkata Siva Kumar Vs. IBBI*³², the HC of Madras upheld the constitutional validity of regulation 7(2) (ca) of the IP Regulations, which stipulates that an IP shall pay a fee calculated at 0.25% of the professional fee earned for services rendered as such in the preceding financial year to the IBBI. While dismissing the petition, the HC observed: *“... we conclude that the IBBI does provide significant services, including in relation to IPs and that there is broad correlation between fees and services. Given the fact that direct or arithmetical correlation as between the fee received and service rendered is not necessary especially in the context of regulatory fees, we are of the view that regulation 7(2)(ca) of the IP Regulations does not suffer from any constitutional infirmity on account of the absence of quid pro quo.”* It held that the conferment of the power to charge a fee and the charging of such fee by using the annual remuneration as a measure does not amount to delegation of an essential legislative function to the IBBI. As regards competence of the IBBI to levy fee, the HC observed: *“From the above, we find that there can be no question whatsoever with regard to the powers of the IBBI to frame regulations with regard to the fee payable by IPs and insolvency professional agencies. As regards the charging of fees as a percentage of remuneration, we note that the fee making power is not subject to any fetters except that it should be for carrying out the purposes of the IBC. Given this statutory framework, we conclude that the IBBI is duly empowered under sections 196 and 207 of the IBC to levy a fee on IPs, including as a percentage of the annual remuneration as an IP in the preceding financial year.”*

In *Arun Kumar Jagatramka Vs. Jindal Steel and Power Ltd. & Anr.*³³, the constitutional validity of regulation 2B of the Liquidation Process Regulations which imposed a limitation on persons barred under section 29A of the Code to be a party to a compromise or arrangement under section 230 of the Code was upheld by the SC. The SC held that prohibition in section 29A and section 35(1)(f) of the Code must also attach to a scheme of compromise or arrangement under section 230 of the Companies Act, 2013 (scheme), where a company is undergoing liquidation under the Code. Even in the absence of said regulation, a person ineligible under section 29A read with section 35(1)(f) is not permitted to propose a scheme for revival of a company undergoing liquidation under the Code. In case of a company undergoing liquidation pursuant to the provisions of Chapter III of the Code, a scheme is a facet of the liquidation process. It would lead to a manifest absurdity if the very persons who are ineligible for submitting a resolution plan, participating in the sale of assets of the

³¹ WP No. 13229/2020

³² W.P. No. 9132/2020 and W.M.P. No. 11134/2020

³³ CA No. 9664/2019

company in liquidation or participating in the sale of the CD as a 'going concern', are somehow permitted to propose a scheme. The same rationale which permeates the resolution process under Chapter II (by virtue of the provisions of section 29A) permeates the liquidation process under Chapter III [by virtue of the provisions of section 35(1)(f)]. The SC clarified that three modes of revival are contemplated under the Code. The first is in the form of the CIRP elucidated in the provisions of Chapter II. The second is where the CD or its business is sold as a going concern within the purview of clauses (e) and (f) of regulation 32. The third is when a revival is contemplated through the modalities provided in section 230 of the Companies Act, 2013. It further clarified that the scheme cannot certainly be equated with a withdrawal simpliciter of an application, as contemplated under section 12A of the Code. It also observed that *"...the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from the NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC."*

Limitation Act vis-à-vis Code – a few dimensions

In *Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.*³⁴, the SC set aside the orders of the AA and NCLAT on the ground that the application under section 7 of the Code is barred by limitation. In this case, the AA, by an order dated August 9, 2018, admitted an application filed in March 2018, seeking initiation of CIRP in respect of default that arose on July 8, 2011. On appeal against the said order, the NCLAT observed that the Code having come into force on December 1, 2016, the application made in 2018 is within limitation. It further observed that mortgage security having been provided by the CD, the limitation period of 12 years is available for the claim as per Article 61(b) of the Limitation Act, 1963 and hence the application is within limitation.

The SC noted the following basics of the Code:

- (a) the Code is a beneficial legislation intended to put the CD back on its feet and is not a mere money recovery legislation;
- (b) CIRP is not intended to be adversarial to the CD but is aimed at protecting the interests of the CD;
- (c) intention of the Code is not to give a new lease of life to debts which are time-barred;
- (d) the period of limitation for an application seeking initiation of CIRP under section 7 of the Code is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues;
- (e) the trigger for initiation of CIRP by an FC is default on the part of the CD, that is, the right to apply under the Code accrues on the date when default occurs;

(f) the default referred to in the Code is that of actual non-payment by the CD when a debt has become due and payable;

(g) if default had occurred over three years prior to the date of filing of the application, the application would be time-barred, save and except in those cases where, on facts, the delay in filing may be condoned; and

(h) an application under section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act does not apply to the application.

The SC also observed that the date of the Code coming into force is wholly irrelevant to the triggering of any limitation period for the purposes of the Code. There is nothing in the Code to even remotely indicate if the period of limitation for the purpose of an application under section 7 is to commence from the date of commencement of the Code itself. Similarly, nothing provided in the Limitation Act could be taken as the basis to support the proposition.

In *Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr.*³⁵, the SC dealt with the following issues:

(a) Whether delay beyond three years in filing an application under section 7 can be condoned, in the absence of an application for condonation of delay made under section 5 of the Limitation Act, 1963? The SC observed that section 5 of the Limitation Act does not speak of any application. It enables the Court to admit an application or appeal if the applicant satisfies the Court that it had sufficient cause for not making the application, within the time prescribed. Although, it is the general practice to make a formal application under section 5 of the Limitation Act to enable the court to weigh the sufficiency of the cause for the inability of the appellant to approach the Court within the time prescribed by limitation, there is no bar to exercise by the Court of its discretion to condone delay, in the absence of a formal application.

(b) Whether section 14 of the Limitation Act applies to applications under section 7 of the Code? The SC observed that section 238A of the Code makes the provisions of the Limitation Act, as far as may be, applicable to proceedings under the Code. All provisions of the Limitation Act are applicable to proceedings in the NCLT/NCLAT to the extent feasible. Section 14 excludes the time spent in proceeding in a wrong forum, which is unable to entertain the proceedings for want of jurisdiction. Therefore, the entire period consumed during SARFAESI proceedings should be excluded.

It further held: *"Legislature has in its wisdom chosen not to make the provisions of the Limitation Act verbatim applicable to proceedings in NCLT/NCLAT, but consciously used the words 'as far as may be'. The words 'as far as may be' are not meant to be otiose. Those words are to be understood in the sense in which they best harmonise with the subject matter of the legislation and the object which the Legislature has in view. The Courts would not give an interpretation to*

³⁴ CA No. 6347/2019

³⁵ Civil Appeal No. 9198 of 2019

those words which would frustrate the purposes of making the Limitation Act applicable to proceedings in the NCLT/ NCLAT 'as far as may be.'

Development of profession of IP

There have been several orders elaborating on the role of an IP in CIRP and supporting him in discharge of his responsibilities. Their role has been under scrutiny and has seen both praise and criticism in a variety of decisions.

In *State Bank of India Vs. M/s Metenere Limited*³⁶, NCLAT, by the impugned order, upheld the order of the AA requiring substitution of IRP. While disposing of the appeal, the SC observed that merely because a person was in the service of the FC and is getting pension does not disentitle him to act as the IRP. It, however, noted that the parties have agreed to substitute the IP. It observed that the substitution of the IP shall not reflect adversely upon the integrity of the IP concerned and the impugned order shall not be treated as a precedent.

In *Ranjeet Kumar Verma Vs. Committee of Creditors of Straight Edge Contract Pvt. Ltd.*³⁷, the NCLAT held that the IRP has no *locus standi* to maintain an appeal against the decision of the CoC to replace him with another RP. He cannot claim invasion of any of his legal rights under the Code as he has no vested legal interest and is not a stakeholder. Also, he cannot argue that the constitution of CoC was bad as it was constituted by himself.

In *Subrata Monindranath Maity (Bhatia Coke and Energy Ltd.) Vs. Surender Singh Bhatia & 4 Ors.*³⁸, AA observed that if every RP is bombarded with criminal prosecution and police investigation, then no RP shall be able to conduct CIRP without fear or favour. For lawful discharge of duty as RP, accelerating criminal charges and using police to register complaint of criminal nature is not appropriate. If there are any irregularities on the part of the RP, the complaint could be filed with the IBBI. The AA advised that the RP and his family members shall be given adequate protection. It permitted the police to proceed as per Criminal Procedure Code but directed that no action or harassment or arrest shall be made until the disposal of the application.

In *Avil Menezes, Resolution Professional of AMW Auto Component Ltd. Vs. M/s. Shah Coal Pvt. Ltd.*³⁹, the NCLAT while dismissing the appeal filed by RP against order of the AA regarding inclusion of a creditor's claim in the category of FC, held that RP has no *locus standi* to file the appeal and observed that '*it is flabbergasting to find that the appeal has been preferred by the RP who is part of the CIRP mechanism and in terms of sub-section (1) of section 21, he is only supposed to collate the claims which implies comparison with the record and verification. Unlike a Liquidator who is empowered to admit or reject a claim under section 40 of the Code against which an appeal lies to the AA, the RP is not vested with any adjudicatory powers and being a part of the*

mechanism all actions taken by him are subject to control of the AA.'

In *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors.* (vide Order dated March 2, 2021)⁴⁰, the SC held that it was appalled with the developments leading to arrest of the IRP, who was working pursuant to the order passed by the Court and entrusted with the functioning of the CD. It observed that the police official dealing with the case is not familiar with the provision of privilege of IRP appointed by the Court in terms of section 233 of the Code. While directing immediate release of the IRP, the SC directed the Investigation Officer not to take any coercive action against the IRP.

Effect of Moratorium under the Code

Moratorium declared under section 13 of the Code for the purposes of section 14, on the admission of an application, has been a contentious issue in many matters. Moratorium is suspension of certain activities against the CD under CIRP, in order to temporarily freeze adverse action against it. It helps CD to protect value of assets and enables it to explore resolution and ensure value maximisation.

In *Sandip Kumar Bajaj & Anr. Vs. State Bank of India & Anr.*⁴¹, the petitioners, who are erstwhile promoters/directors and the guarantors for the debt of CD, taking the shelter of moratorium in respect of the CD challenged the SCN issued by SBI calling upon the petitioners to show cause as to why their names should not be included in the list of willful defaulters as per RBI Guidelines. The HC of Calcutta held that section 14(3) (b), that prohibits institution or continuation of suits and other proceedings against the CD, does not extend to a surety.

In *UCO Bank Vs. Mr. G. Ramachandran*⁴², the bank adjusted an amount of Rs. 2.27 crore from two fixed deposits made by the CD towards security for loan taken by two group of companies from the bank. The AA directed the bank to restore the credit to the CD. The NCLAT observed that once CIRP was initiated and moratorium applied, such an adjustment by the bank cannot be maintained and lack of knowledge of initiation of CIRP is not relevant.

The question whether institution or continuation of a proceeding under section 138 of the Negotiable Instruments Act, 1881 (NI Act) can be said to be covered by the moratorium under section 14 was considered by the SC in *P. Mohanraj & Ors. Vs. M/s. Shah Brothers Ispat Pvt. Ltd.*⁴³. It observed that:

(a) A quasi-criminal proceeding which would result in the assets of the CD being depleted as a result of having to pay compensation which can amount to twice the amount of the cheque that has bounced would directly impact the CIRP in the same manner as the institution, continuation, or execution of a decree in such suit in a civil court for the amount of debt or other liability. Judged from the point of view of this objective,

³⁶ CA No. 2570/2020

³⁷ CA(AT)(Ins.) No. 1129 of 2020

³⁸ IA/05/2021 in IBA/307/2019

³⁹ CA(AT)(Ins.) No. 63 of 2021

⁴⁰ CA No. 3395/2020

⁴¹ I.A. No. G.A. 1/2020 in W.P.O. 236/2020

⁴² CA(AT)(Ins.) No. 761/2020

⁴³ Civil Appeal No. 10355 of 2018

it is impossible to discern any difference between the impact of a suit and a section 138 proceeding, insofar as the CD is concerned, on it getting the necessary breathing space to get back on its feet during CIRP.

(b) Section 14(1)(a) refers to monetary liabilities of the CD and section 14(1)(b) refers to the CD's assets, and together, these two clauses form a scheme which shields the CD from pecuniary attacks against it during the moratorium period so that the CD gets breathing space to continue as a going concern in order to ultimately rehabilitate itself. Any crack in this shield is bound to have adverse consequences.

(c) A moratorium does not extinguish any liability, civil or criminal, but only casts a shadow on proceedings already initiated and on proceedings to be initiated, and such shadow is lifted when the moratorium period comes to an end.

(d) A section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's clothing", as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed, in the victim alone moving a court in cheque bouncing cases.

(e) A quasi-criminal proceeding contained in Chapter XVII of the NI Act would, given the object and context of section 14 of the Code, amount to a "proceeding" within the meaning of section 14(1)(a) and therefore, the moratorium attaches to such proceeding.

(f) Moratorium would apply only to the CD, and the natural persons mentioned in section 141 of the NI Act shall continue to be statutorily liable under Chapter XVII of the NI Act.

Commercial wisdom and supremacy of CoC

Relying on its earlier decisions in *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & ors.*, and, *K. Sashidhar vs. Indian Overseas Bank*, the SC in the matter of *The Karad Urban Cooperative Bank Ltd. Vs. Swvapnil Bhingardevay & Ors.*⁴⁴, observed that "If all the factors that need to be taken into account for determining whether or not the corporate debtor can be kept running as a going concern have been placed before the Committee of Creditors and the CoC has taken a conscious decision to approve the resolution plan, then the adjudicating authority will have to switch over to the hands off mode".

In *Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Ltd. & Anr.*⁴⁵, the SC while setting aside an order of the NCLAT which had annulled the decision of the CoC to accept a resolution plan, *inter-alia* observed that (a) The commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the Code; (b) There is an intrinsic assumption, that FCs are fully informed about the viability of the CD and feasibility of the proposed resolution plan. The opinion expressed by CoC after due deliberations in the meetings through voting, as per voting shares, is a collective business decision; (c) The legislature

has consciously not provided any ground to challenge the "commercial wisdom" of the individual FCs or their collective decision before the AA and that the decision of CoC's 'commercial wisdom' is made non-justiciable; (d) Appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same, and (e) The commercial wisdom of CoC is not to be interfered with, except the limited scope as provided under sections 30 and 31 of the Code.

In *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors.*⁴⁶, the resolution plan already approved by CoC was approved by AA, with certain modifications. The order of AA was challenged in appeal before NCLAT. In the appeal proceedings, an interim order was passed by the NCLAT permitting the implementation of the resolution plan subject to final outcome of the appeal and constituting an interim monitoring committee for its implementation. Various appeals were filed in the SC against this interim order. The SC, while dealing with appeals related to resolution plan of Jaypee Infratech Ltd., *inter alia* made the following observations:

(a) The role of CoC is akin to that of a protagonist, giving finality to the process (subject to approval by the AA), who takes the key decisions in its commercial wisdom and the consequences thereof. The power of judicial review in section 31 of the Code is not akin to the power of a superior authority to deal with the merits of the decision of any inferior or subordinate authority. The AA has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by sections 30(2) and 31 read with the parameters delineated by the SC in its various judgments. Within its limited jurisdiction, if the AA finds any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the CoC for re-submission after satisfying the parameters delineated by Code and expounded by the SC.

(b) The process of simultaneous voting over two plans for electing one of them cannot be faulted. The legislature itself has made the position clear by way of a later amendment with effect from August 7, 2020, by specifically making stipulations for simultaneous voting over more than one resolution plan by the CoC, particularly with amendment of sub-regulation (3) of regulation 39 of CIRP Regulations and insertion of sub-regulations (3A) and (3B) thereto.

(c) The dissenting FC is entitled to receive the amount payable in monetary terms and not in any other term. It cannot be forced to remain attached to the CD by way of equities or securities.

(d) The homebuyers as a class having assented to the resolution plan of NBCC, any individual homebuyer or any association of homebuyers cannot maintain a challenge to the resolution plan and cannot be treated as a dissenting FC or an aggrieved person.

⁴⁴ CA Nos. 2955/2020 and 2902/2020

⁴⁵ Civil Appeal Nos. 2943-2944 of 2020

⁴⁶ Civil Appeal No. 3395 of 2020

In exercise of the powers under Article 142, the SC extended the time for completion of CIRP by 45 days while extending opportunity to the RAs (Suraksha Realty and NBCC) to submit modified/fresh resolution plans, which are compliant with the requirements of the Code and the CIRP Regulations and are in accord with the observations and findings in this judgment.

In *Vishal Vijay Kalantri Vs. Shailen Shah (RP of Dighi Port Limited) & Ors.*⁴⁷, the appellant challenged the order of the AA approving a resolution plan *inter alia* on grounds that the settlement offer was superior to the resolution plan and the resolution plan did not have approval of the Competition Commission of India before its approval by CoC. While dismissing the appeal, the NCLAT held that the superiority of settlement offer in terms of maximisation of the value of the assets of the CD in comparison to the resolution plan cannot be accepted as it is a business decision resting upon the commercial wisdom of the CoC and is not amenable to judicial review.

Jurisdiction/powers of AA

The scope of jurisdiction of the AA under the Code has been a matter of contention in various matters.

In *Univalve Projects Pvt. Ltd. Vs. The Union of India & Ors.*⁴⁸, the petitioners challenged the order of the NCLT requiring all FCs to submit record of default from the IU along with the application under section 7 of the Code and requiring the parties to submit such records in respect of applications filed earlier but waiting for admission. As regards authority of the NCLT, the HC observed: “while both the NCLT and NCLAT have been conferred with powers to regulate their own procedure, such use of its power is circumscribed and subject to *inter alia*, the principles of natural justice as well as the provisions of CA, 2013 or the IBC, 2016, inclusive of any rules/ regulations made under the IBC, 2016 by the regulatory body, IBBI. Therefore, the powers of the NCLT and NCLAT is limited both by principles of natural justice as well as statutory provisions and regulations framed under such legislations.”

In *Gujarat Urja Vikas Nigam Ltd. Vs. Amit Gupta & Ors.*⁴⁹, the SC held that the NCLT/NCLAT can exercise jurisdiction under section 60(5)(c) of the Code to stay termination of contracts solely on account of CIRP being initiated against the CD, and held that AA has the jurisdiction to adjudicate disputes, which relate to the insolvency of the CD; however, in doing so, the AA and NCLAT must ensure that they do not usurp the legitimate jurisdiction of other courts and tribunal. They cannot do what the Code consciously did not empower them to do. The jurisdiction of the AA cannot be invoked in matters where a termination of contracts may take place on the grounds unrelated to the insolvency of the CD. It cannot even be invoked in the event of a legitimate termination of a contract based on an *ipso facto* clause, if such termination will not have the effect of making certain the death of the CD.

In *Sodexo India Services Pvt. Ltd. Vs. Chemizol Additives Pvt. Ltd.*⁵⁰, the NCLAT observed that the AA has only two options under section 9, either to admit application or to reject the same and no third option or course is postulated by law. As regards observation of the AA that the CD *prima facie* appears to be a solvent company, the NCLAT observed that the Code does not permit the AA to make a roving enquiry into the aspect of solvency or insolvency of the CD except to the extent of the FC or the OC, who sought triggering of CIRP.

In *Alok Kaushik Vs. Bhuvaneshwari Ramanathan and Ors.*⁵¹, SC ordered that the AA is sufficiently empowered under section 60(5)(c) of the Code to make a determination of the amount which is payable to an expert valuer as an intrinsic part of the CIRP costs, even in a situation where the CIRP is eventually set aside by the AA or by the Appellate Authority, as the case may be. It further observed that the availability of a grievance redressal mechanism against an IP does not divest the NCLT of its jurisdiction under section 60(5)(c) of the Code. The purpose of such a grievance redressal mechanism is to penalise errant conduct of the RP and not to determine the claims of other professionals which form part of the CIRP costs.

Government dues vis-à-vis approved resolution plan

In *Electrosteel Steels Limited Vs. The State of Jharkhand & Ors.*⁵², the petitioner had filed an application challenging the order issued against it in lieu of tax dues. It submitted that the state government being an OC should have filed its claim before RP and having failed to do so prior to the finalisation of the resolution plan, the tax liability of the petitioner stood barred under section 31 of the Code. The Jharkhand HC noted that the Code read with regulations require the public announcement to be made in the newspapers with wide circulation at the location of the registered office and principal office of the petitioner, both of which are situated in the State of Jharkhand, but no public announcement of the CIRP was made in the State. Therefore, the respondent had no occasion to have any knowledge about the CIRP and was deprived of making the claim before the IRP. Since it was not involved in the resolution process, the resolution plan cannot be said to be binding on the State Government under section 31 of the Code.

The Rajasthan HC emphasised on the binding nature of resolution plans on pending government dues in the case of *Ultra Tech Nathdwara Cement Ltd. Vs. Union of India & Ors.*⁵³ After implementation of resolution plan, the Central GST Department issued several demand notices to the CD on the pretext that the RP/CoC did not pay entire dues of the Department as claimed in the resolution process and they were not heard at the time of approval of resolution plan. The HC observed that the Code has been enacted to ensure that a CD under distress does not fade into oblivion and can be

⁴⁷ CA(AT)(Ins) No. 466/2020

⁴⁸ W.P. No. 5595 (W)/2020 with C.A.N. 3347/2020

⁴⁹ Civil Appeal No. 9241 of 2019

⁵⁰ CA(AT)(Ins.) No. 1094/2020

⁵¹ Civil Appeal No. 4065 of 2020

⁵² W.P.(T). No. 6324-6327 of 2019

⁵³ D.B. Civil Writ Petition No. 9480-2019

revived through a resolution plan. It noted that resolution plan once approved by the AA is binding on all concerned to whom CD may be having statutory dues, in terms of section 31. It set aside the notice issued by the Department as illegal and arbitrary, observing that, “*the authorities should have adopted a pragmatic approach and immediately withdrawn the demands rather than indulging in a totally frivolous litigation*”.

A similar issue arose in the matter of *State of Haryana Vs. Uttam Strips Ltd. and Ors.*⁵⁴, wherein AA rejected an application to look into claim of Excise & Taxation officer after the implementation of the resolution plan. On appeal, the NCLAT observed that though the claim is a statutory due which is an operational debt, the appellant has failed to file the same before the RP. Relying on *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta*⁵⁵, the NCLAT held that since the appellant failed to submit its claim before the RP and the resolution plan has been implemented after approval of the AA, the successful RA cannot be burdened with the past liabilities. Such an act will make it impossible for the successful RA to run the business of the CD, ultimately defeating the entire purpose and mechanism of the Code.

Resolution Plan

In *Kundan Care Products Ltd. Vs. Mr. Amit Gupta and Ors.*,⁵⁶ the appellant, who is successful RA assailed the impugned order rejecting its application for withdrawal of its resolution plan, on the ground that there is no legal basis for holding that an application for withdrawal of a resolution plan post approval is not maintainable. The NCLAT observed that a RA whose resolution plan stands approved by CoC cannot be permitted to alter his position to the detriment of various stakeholders. It rejected the argument that specific performance of the resolution plan cannot be compelled on four major grounds, namely, (a) There is no provision in the Code entitling the successful RA to seek withdrawal after its plan stands approved by the CoC; (b) The successful resolution plan incorporates contractual terms binding the RA, but it is not a contract of personal service which may be legally unenforceable; (c) The RA is estopped from wriggling out of the liabilities incurred under the approved plan and the principle of estoppel by conduct would apply to it; and (d) The value of the assets of the CD depletes with passage of time consumed in CIRP and in the event of successful RA walking out with impunity, the CD's depleting value would leave all stakeholders in a state of devastation.

A similar view was adopted by NCLAT in *Committee of Creditors of Educomp Solutions Ltd. Vs. Ebix Singapore Pte. Ltd. & Anr.*,⁵⁷ wherein the AA allowed withdrawal of resolution plan with cost and subject to other legal consequences, as the RA has chosen to withdraw the plan which has created doubt about its implementation. The respondents supported the impugned order on the grounds that the resolution plan was rendered commercially unviable on account of lapse of substantial time and severe and inordinate delays in the

CIRP qua the CD; severe mismanagement and gross financial irregularities and fraud in the affairs of CD during 2014-2018 was subsequently uncovered; resolution plan is an offer and it binds the offeror only when it is accepted as per its term; etc. The NCLAT observed that the AA cannot enter the arena of the majority decision of the CoC other than the grounds mentioned in section 32. It further noted that after due deliberations, when the RA had accepted the conditions of the resolution plan especially keeping in mind the ingredients of section 25(2)(h) of the Code to the effect that no change or supplementary information to the resolution plan shall be accepted after the submission date of resolution plan then it is not open to the RA to take a ‘topsy turvy’ stance and is not to be allowed to withdraw the approved resolution plan. It set aside the impugned order.

In *Seroco Lighting Industries Pvt. Ltd. Vs. Ravi Kapoor, RP for Arya Filaments Pvt. Ltd. & Ors.*,⁵⁸ the AA turned down the prayer of the appellant for revision of the approved resolution plan. Dismissing the appeal, the NCLAT observed that the successful RA cannot be permitted to withdraw the approved resolution plan, coupled with the fact in the instant case being the sole RA in the CIRP, which is an MSME and having knowledge of the financial health of the CD as a promoter or as a connected person, cannot be permitted to seek revision of the approved plan, on the ground which would not be a material irregularity within the ambit of section 61(3) of the Code.

Recently, in *Committee of Creditors of AMTEK Auto Ltd. through Corporation Bank Vs. Dinkar T Venkatasubramanian & Ors.*,⁵⁹ while dismissing an IA filed by Deccan Value Investors (DVI), the SC had ordered on June 18, 2020 that “*the application made by the applicant for withdrawal of the offer is hereby rejected and in case he indulges in such kind of practice, it will be treated as contempt of this Court in view of the various orders passed by this Court at his instance.*” Subsequently on July 9, 2020, the AA passed an order approving the resolution plan submitted by DVI. DVI filed an appeal before the NCLAT challenging the order of the AA. While the appeal was pending, DVI, vide mail dated September 3, 2020, sought termination of resolution plan in view of outbreak of COVID-19 which constituted a ‘*Force Majeure Event*’. It filed an IA on September 10, 2020 in the pending appeal before the NCLAT seeking cancellation and return of the performance bank guarantee. The CoC filed a contempt petition on the ground that DVI was in breach of the order of the SC dated June 18, 2020 by seeking to withdraw the resolution plan, while DVI filed an application for rectification of the order dated June 18, 2020 of the SC. Dismissing the application for rectification, the SC observed that the application is an attempt to renege from the resolution plan which DVI submitted and to resile from its obligations. This is a devious attempt which must be disallowed. The SC noted that plea seeking to re-examine the impact of the pandemic and to re-negotiate the terms of the resolution plan makes it

⁵⁴ CA(AT)(Ins)No. 319 of 2020

⁵⁵ Civil appeal no. 8766-67/2019 and other petitions

⁵⁶ CA(AT)(Ins) No. 653/2020

⁵⁷ CA(AT)(Ins) No. 203/2020

⁵⁸ CA(AT)(Ins) No. 1054/2020

⁵⁹ IA No. 58156/2020 in CA No. 6707/2019

clear that DVI was not willing to fulfill its obligations. To assert that there was any scope for negotiations and discussions after the approval of the resolution plan by the CoC would be plainly contrary to the terms of the Code. The SC concluded that undoubtedly, the conduct of DVI has not been bona fide. It noted the statement on behalf of DVI that it will not set-up a plea of force majeure. It held: *"However lacking in bona fides the conduct of DVI was, we must be circumspect about invoking the contempt jurisdiction as setting up an untenable plea (force majeure) should not in and by itself invite the penal consequences which emanate from the exercise of the contempt jurisdiction. Likewise, the default of DVI in fulfilling the terms of the resolution plan may invite consequences as envisaged in law. On the balance, we are of the considered view that it would not be appropriate to exercise the contempt jurisdiction of this Court."*

Avoidance Transactions

Avoidance of preferences is a common provision in insolvency legislation across jurisdictions. The Code mandates RP/liquidator to determine if CD has been subject to avoidance transactions such as preferential, fraudulent, undervalued, and extortionate in the past, and if so, casts obligation on him to file application with AA for appropriate directions.

In *M/s Venus Recruiters Private Limited Vs. Union of India & Ors.*⁶⁰, the HC considered whether an application filed under section 43 of the Code for avoidance of preferential transactions survives beyond the conclusion of the CIRP and the jurisdiction of the NCLT and the role of the RP in relation to such an application, after the conclusion of the CIRP. It, inter alia, held as under:

(a) Avoidance applications cannot survive beyond the conclusion of the CIRP. It is meant to give benefit to the creditors of the CD and not to the CD in its new avatar, after the approval of the resolution plan.

(b) The NCLT has the jurisdiction to deal with all applications and petitions 'in relation to insolvency resolution and liquidation for corporate persons'. After the approval of the resolution plan and the new management has taken over the CD, no proceedings remain pending before the NCLT, except issues relating to the resolution plan itself, as permitted under section 60. It has no jurisdiction to entertain and decide avoidance applications, in respect of a CD which is now under a new management unless provision is made in the final resolution plan.

(c) The RP cannot continue to act on behalf of the CD under the title of 'Former RP', once the plan is approved and the new management takes over. His continuation beyond the closure of the CIRP would in effect mean an interference in the conduct and management of the company.

(d) The successful RA cannot file an avoidance application, as it is neither for the benefit of the RA nor for the CD after the resolution is complete.

(e) Section 26 of the Code cannot be read in a manner to mean that an application for avoidance of transactions under section 25(2)(j) can survive after the CIRP. Once the CIRP process itself comes to an end, an application for avoidance of transactions cannot be adjudicated. If the CoC or the RP are of the view that there are any transactions which are objectionable in nature, the order in respect thereof would have to be passed prior to the approval of the resolution plan.

(f) The above findings are only in the context of CIRP and would, however, not apply in case of liquidation proceedings, which has not been examined in this matter.

In *Mohan Lal Jain, in the capacity of Liquidator of Kaliber Associates Pvt. Ltd. Vs. Lalit Modi & Ors.*⁶¹, the liquidator invoked the provisions of sections 43/66 for taking action in regard to preferential transactions and fraudulent trading/wrongful trading. The AA, having regard to different versions regarding such transactions emanating from parties, observed that it would be beyond the scope of its powers to look into the transactions. On appeal, the NCLAT clarified that the allegations of preferential transaction as also fraudulent trading/wrongful trading carried on by the CD during the insolvency resolution can be inquired into by the AA.

Suspension of initiation of CIRP

The Code provides a time-bound process to resolve insolvency among companies and individuals. COVID-19 pandemic has impacted business, financial markets and economy all over the world, including India, and created uncertainty and stress for business for reasons beyond control. A nationwide lockdown was also in force since March 25, 2020 to combat the spread of COVID-19 which added to disruption of normal business operations. This made it difficult to find adequate number of RAs to rescue the corporate persons who may default in discharge of their debt obligation. Therefore, it was considered expedient to suspend sections 7, 9 and 10 of the Code to prevent corporate persons which are experiencing distress on account of unprecedented situation, being pushed into insolvency proceedings under the Code. The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020, promulgated on June 5, 2020, which was replaced by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020, barred filing of application for initiation of CIRP in respect of defaults arising after March 25, 2020. It provided for insertion of Section 10A to the Code for temporary suspension of initiation of CIRP. The suspension on initiation of CIRP under sections 7, 9 and 10 ended on March 25, 2021. In *Ramesh Kymal Vs. Siemens Gamesa Renewable Power Pvt. Ltd.*⁶², the issue before the SC was whether section 10A prohibits an application filed before June 5, 2020 in respect of a default that occurred after March 25, 2020. The SC observed that the substantive part of section 10A is to be construed harmoniously with the first proviso and the explanation. Reading the provisions together, it is evident that the Parliament intended to impose a bar on the filing of

⁶⁰ WP(C) 8705/2019 & CM Appl. 36026/2019

⁶¹ CA(AT)(Ins) No. 944/2020

⁶² Civil Appeal No. 4050 of 2020

applications for the commencement of CIRP in respect of a CD for a default occurring on or after March 25, 2020. It further observed that the retrospective bar on the filing of applications for the commencement of CIRP during the stipulated period does not extinguish the debt owed by the CD or the right of creditors to recover it.

Liability of guarantors

Under contract law, a guarantor's liability is co-extensive with that of the principal debtor. In other words, the liability of a principal debtor and the liability of a surety are separate and co-extensive liabilities. The creditor is not bound to exhaust his remedy against the principal debtor before seeking remedy against the surety. Accordingly, it is possible to proceed against either the guarantor or the principal debtor in the first instance, or against both. If the claim is successful against the guarantor, the guarantor then steps into the shoes of the creditor and can proceed against the principal debtor, which is known as subrogation. Section 60(2) of the Code provides that *"where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before the National Company Law Tribunal."*

In *Laxmi Pat Surana Vs. Union Bank of India & Anr.*⁶³, an FC had extended a credit to a proprietorship firm, which failed to repay the amount. The credit was guaranteed by a company. The FC filed an application under section 7 for CIRP of the CD (guarantor company). The application was contested on the ground that the principal borrower was not a corporate person. The AA admitted the application as the CD was co-extensively liable to repay the debt, and the NCLAT confirmed it. While dismissing the appeal, the SC held: *"The principal borrower may or may not be a corporate person, but if a corporate person extends guarantee for the loan transaction concerning a principal borrower not being a corporate person, it would still be covered within the meaning of expression 'corporate debtor' in Section 3(8) of the Code."*

In *Kiran Gupta Vs. State Bank of India & Anr.*⁶⁴, the HC considered whether a bank can institute or continue with proceedings against a guarantor under the SARFAESI Act when proceedings under the Code has been initiated against the principal borrower. Noting that neither section 14 nor section 31 of the Code place any fetters on a bank from initiation and continuation of proceedings against the guarantor, it held that the liability of the principal borrower and guarantor remain co-extensive, and a bank is entitled to initiate proceedings against the PG under the SARFAESI Act during the continuation of the CIRP against the principal borrower.

In *State Bank of India Vs. Athena Energy Ventures Private Limited*⁶⁵, the AA declined to admit an application against the

corporate guarantor, as it was on the same set of facts on which CIRP of the CD was in progress. While allowing the appeal, the NCLAT observed that in the matter of guarantee, CIRP can be proceeded against the principal borrower as well as guarantor. It further observed that the law laid down by the HCs for respective jurisdiction and the SC for the whole country are binding.

However, as on date the Notification dated November 15, 2019 which brought into force the provisions of the said Code related to PGs to CDs is under challenge.

Overriding effect of the Code

On the issue of maintainability of an application under Section 7 of the Code during the pendency of winding up proceedings under the Companies Act, the SC in *A Navinchandra Steels Pvt. Ltd. Vs. SREI Equipment Finance Ltd. & Ors.*⁶⁶, while dealing with an insolvency application in respect of CD, against whom a winding up petition has already been admitted, observed that the Code is a special statute dealing with revival of the companies under distress and winding up only being resorted to in cases where all attempts of revival of the CD fail. The Companies Act, 2013 is a general statute; whereas the Code is not only a special statute which must prevail in the event of conflict, but also has a non-obstante clause contained in section 238, which makes it clear that in case of conflict, the provisions of the Code will prevail.

In *Chennai Metro Rail Ltd. Vs. Lanco Infratech Ltd. (Represented by the Liquidator) & Ors.*⁶⁷, a dispute between the applicant and the first respondent (R1) was under arbitration. In the meantime, CIRP and subsequently liquidation process was initiated against R1, which brought R1 under moratorium. The applicant contended that leave of the NCLT is required under section 279 of the Companies Act, 2013 for continuance of arbitration proceeding. However, R1 took a stand that no leave is required under section 33(5) of the Code, which requires leave only for initiating new proceeding. The HC held: (i) section 279 of the Companies Act, 2013 applies only in cases of winding up under the Companies Act, 2013 and not the Code; (ii) section 279 of the Act deals with both pending suits and institution of new suits, while section 33(5) of the Code deals with new proceedings; and (iii) section 33(5) of the Code overrides section 279 of Act, by virtue of section 238 and by the principle 'special law overrides general law'. It concluded that no leave is required to continue the arbitral proceedings.

In *Om Prakash Agrawal, Liquidator of S. Kumars Nationwide Ltd. Vs. Chief Commissioner of Income Tax (TDS) & Anr.*⁶⁸, the NCLAT observed that in regard to recovery of the Government dues (including income tax) from the company in liquidation under the Code, there is inconsistency between section 194-IA of the Income Tax Act, 1961 (IT Act) and section 53(1)(e) of the Code. Therefore, by virtue of section 238 of the Code, section 53(1)(e) of the Code shall have overriding effect on the

⁶³ Civil Appeal No. 2734 of 2020

⁶⁴ WP(C) 7230/2020

⁶⁵ CA(AT)(Ins) No. 633/2020

⁶⁶ Civil Appeal Nos.4230-4234 of 2020

⁶⁷ Application No. 2826/2019

⁶⁸ CA(AT)(Ins.) No. 624 of 2020

provisions of the section 194-IA of the IT Act. It further clarified that the liquidator under the Code is not required to file IT Return, then there is no question of claiming refund of TDS deducted under Section 194-IA of the IT Act.

Timelines under the Code

The Code prescribes timelines for various activities of the CIRP. This came up for consideration of the Courts several times.

In *Kridhan Infrastructure Pvt. Ltd. (now known as Krish Steel and Trading Pvt. Ltd.) Vs. Venkatesan Sankaranarayan & Ors.*⁶⁹, the order of liquidation was stayed earlier by the SC based on submission of the RA that it would deposit Rs. 50 crore by February 25, 2021. The RA submitted that it would be unable to raise funds from the term lenders who are insisting that the status of the CD should change from a company under liquidation to an active status. The SC observed that ultimately, what the request of the RA reduces to, is that it would raise funds on a mortgage of the assets of the CD and unless the CD is brought out of liquidation, it would not be able to raise funds, and this is unacceptable. It further observed that “time is a crucial facet of the scheme under the Code and to allow such proceedings to lapse into an indefinite delay will plainly defeat the object of the Code.” A good faith effort to resolve an insolvency is a preferred course. However, an RA must be fair in its dealings as well. Accordingly, the SC forfeited the sum of Rs. 20 crore already deposited by the RA and vacated the stay on liquidation.

In *Maharashtra Seamless Ltd. Vs. State Bank of India & Ors.*⁷⁰, the NCLAT observed that the CIRP must be carried on in accordance with the Code which prescribes timelines. Although withdrawal of the applications based on the consideration by the CoC and settlement are part of the same process, whatever emerges should materialise within the prescribed timelines. In view of the same, it directed the AA to ensure that the CIRP is carried forward having regard to the prescribed timelines.

Increased threshold for triggering CIRP

With the intent to prevent MSMEs from being pushed into insolvency for their inability to meet their repayment obligations due to business disruptions, the Government, vide notification dated March 24, 2020, increased the threshold amount of default required to initiate an insolvency proceeding from Rs. 1 lakh to Rs. 1 crore.

In *Pankaj Agarwal Vs. Union of India*⁷¹, a petition was filed against an order of admission of application by the AA under section 9 of the Code. The petitioner, who is classified as an MSME, submitted that without appreciating the fact that the jurisdiction of the AA has been increased to Rs. 1 crore with effect from March 24, 2020, the AA admitted the application on a default exceeding Rs. 1 lakh. It owes at best Rs. 10 lakhs to one of the respondents. The HC observed that the purpose

of the notification increasing the threshold was to ensure that the SMEs and MSMEs are not subjected to insolvency proceedings during the lockdown or immediately thereafter. It, *prime facie*, found this as an error by the AA. It stayed the insolvency proceeding till the next date of hearing, subject to the petitioner depositing an amount of Rs. 10 lakh with the Registrar General of the HC.

In *Madhusudan Tantia Vs. Amit Choraria & Anr.*⁷², the AA, by the impugned order dated May 20, 2020, admitted an application filed under section 9 in respect of default of Rs. 90 lakh. The appellant contended that in view of the notification dated March 24, 2020 enhancing the threshold for triggering insolvency proceeding from Rs. 1 lakh to Rs. 1 crore, the application should have been dismissed as the claim amount is less than Rs. 1 crore. The NCLAT held that the enhancement of threshold is prospective in nature and would not apply to the pending applications, filed prior to the issuance of the aforesaid notification, and dismissed the appeal.

Financial Debt and Related parties

In *M/s. Radha Exports (India) Pvt. Limited Vs. K.P. Jayaram & Anr.*⁷³, the promoter of the appellant company had obtained a loan from the respondent. After part payment of the debt, the respondent requested the appellant company in 2004 to convert the balance amount into share application money for issuance of shares in the appellant company. The respondent requested the appellant company in 2007 to issue shares in the name of Mr. Krishnan against the said share application money and the amount would be treated as a personal loan from him to Mr. M. Krishnan. The respondents issued a demand notice on December 7, 2017, to which the appellant company, by a letter dated December 14, 2017, refuted the claims in the demand notice, *inter alia* claiming that all amounts due and payable to the respondent had duly been paid within 2007 and 2008. Thereafter, the respondent filed section 7 application as an FC in 2018. The AA did not admit the application holding that the respondents were not FCs, and in any case the claim of the respondents was hopelessly barred by limitation. On appeal, the NCLAT set aside the order of the AA. The appellant challenged the order of the NCLAT admitting the CD into CIRP. While setting aside the order of the NCLAT, the SC held that a personal loan to a promoter or a director of a company cannot trigger the CIRP. It also held: “the payment received for shares, duly issued to a third party at the request of the payee as evident from official records, cannot be a debt, not to speak of financial debt.”

The question whether commercial transactions between parties that are collusive in nature, would constitute a ‘financial debt’ under the Code was considered by SC in *Phoenix ARC Pvt. Ltd. Vs. Spade Financial Services Ltd. & Ors.*⁷⁴. It held that (a) The collusive commercial arrangements between FCs and the CD would not constitute a ‘financial debt’; (b) The objects and purposes of the Code are best served when the CIRP is driven by external creditors, so as to ensure that

⁶⁹ Civil Appeal No. 3299 of 2020

⁷⁰ CA(AT)(Ins) No. 1039/2020

⁷¹ W.P.(C) 3685/2020 & CM APPLs. 13194/2020, 13195/2020, 13196/2020

⁷² CA(AT)(Ins) No. 557/2020

⁷³ CA No. 7474/2019

⁷⁴ Civil Appeal No. 2842 of 2020 with 3063 of 2020

the CoC is not sabotaged by related parties of the CD. The purpose of excluding a related party of a CD from the CoC is to obviate conflicts of interest; (c) Exclusion under the first proviso to section 21(2) is related not to the debt itself but to the relationship existing between a related party FC and the CD; and (d) The FC, who is not a related party, would not be debarred from being a member of the CoC. However, in case where the related party FC divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating in the CoC and sabotage the CIRP, it would be in keeping with the object and purpose of the first proviso to section 21(2), to debar the former related party creditor. Similarly, in *Phoenix Tech Power Pvt. Ltd. Vs. Dr. K. V. Srinivas & Ors.*⁷⁵ Telangana State Trade Promotion Corporation Ltd. which was holding 11% of shares in the CD, having two nominee non-executive directors on the board of the CD and was having significant influence in the functioning of the CD, was held as a related party as per clauses (a), (h), (j), (l) and (m) of section 5(24) of the Code.

In *Phoenix ARC Pvt. Ltd. Vs. Ketulbhai Ramubhai Patel*⁷⁶, the SC reiterated that a person having only security interest over the assets of CD, even if falling within the description of 'secured creditor' by virtue of collateral security extended by the CD, would not be covered by the definition of 'financial creditor' under the Code. The creditor in such a case will at best be secured creditor qua CD and not the FC qua CD.

In *State Bank of India Vs. Rajendra Bhuta, IRP of Prabhat Technologies (India) Ltd. & Ors.*⁷⁷, the AA observed that the amount raised under a Forward Purchase Agreement would not come within the definition of a 'financial debt' unless it bears the dual attributes of having been disbursed against the consideration for time value of money and has the commercial effect of a borrowing.

Arbitration vis-à-vis CIRP Proceedings

In *Indus Biotech Pvt. Ltd. Vs. Kotak India Venture (Offshore) Fund (earlier known as Kotak India Venture Ltd.) & Ors.*⁷⁸, the appellant filed an application under section 7 of the Code. The respondent filed an application under section 8 of the Arbitration and Conciliation Act, 1996 seeking a direction to refer the parties to arbitration. The AA allowed the section 8 application and dismissed section 7 application observing that there was no default. The appellant filed the SLP contending that the AA erred in entertaining section 8 application in the backdrop of the legal duty cast on it to proceed strictly in accordance with the procedure contemplated under section 7. The SC held that a dispute will be non-arbitrable when a proceeding is in rem and a proceeding under the Code is in rem only after it is admitted. It observed: "*On admission, third party right is created in all the creditors of the corporate debtors and will have erga omnes effect. The mere filing of the petition and its pendency before admission, therefore, cannot be construed as the triggering of a proceeding in*

rem." It further observed: "*..the process cannot be defeated by a corporate debtor by raising moonshine defence only to delay the process. In that view, even if an application under Section 8 of the Act, 1996 is filed, the Adjudicating Authority has a duty to advert to contentions put forth on the application filed under Section 7 of IB Code, examine the material placed before it by the financial creditor and record a satisfaction as to whether there is default or not.*" If the irresistible conclusion by the AA is that there is default and the debt is payable, the bogey of arbitration to delay the process would not arise despite the position that the agreement between the parties indisputably contains an arbitration clause. Since the AA had concluded that there was no default, dismissal of section 7 application was justified.

Existence of a dispute

In *Anuj Khanna Vs. Wishwa Naveen Traders & Anr.*⁷⁹, the NCLAT, while adjudicating on the 'existence of a dispute', observed that section 5(6) is an inclusive provision and does not confine the AA from considering the existence of a dispute from a broader angle. Therefore, dispute in terms of section 8(2)(a) of the Code shall not be limited to instances specified in the definition under section 5(6), as it has far arms, apart from pending suit or arbitration.

In *Naresh Sevantilal Shah Vs. Malharshanti Enterprises & Anr.*⁸⁰, the NCLAT held that only disputes raised prior to the first demand notice are relevant to determine its pre-existence and disputes raised thereafter are totally irrelevant.

Liquidation

In *Union Bank of India Vs. Siripuram Developers Pvt. Ltd. & Ors.*⁸¹, the NCLAT while setting aside the order of AA which directed the applicant bank to not take any coercive steps such as sale of the properties mortgaged by the subsidiary companies of the CD observed that section 36(4)(d) of the Code prohibits the inclusion of the assets of any Indian or foreign subsidiary of the CD in the liquidation estate. On the same lines, it observed that the exclusive security provided by the subsidiary company cannot form a part of the liquidation estate.

In *Gaurav Jain Vs. Sanjay Gupta, Liquidator of Topworth Pipes and Tubes Pvt. Ltd.*⁸², the AA noted that even though there is no specific provision in the Code for "sale of the Company as a going concern", the Liquidation Process Regulations provide guiding principles in dealing with the case. It held that "going concern" sale, in normal parlance, is transfer of assets along with the liabilities. However, as far as the 'going concern' sale in liquidation is concerned, there is a clear difference that only assets are transferred and the liabilities of the CD has to be settled in accordance with section 53 of the Code and hence the purchaser of the assets takes over the assets without any encumbrance or charge and free from the action of the creditors. The legal entity of the CD survives and the

⁷⁵ IA No. 555/2020 in CP(IB) No. 143/7/HDB/2019

⁷⁶ Civil Appeal No. 5146 of 2019

⁷⁷ IA No. 440 of 2020 in C.P. No. 1874/MB/2019

⁷⁸ Arbitration Petition (Civil) No. 48/2019 with Civil Appeal No.1070/2021 @ SLP (C) No. 8120/ 2020

⁷⁹ CA(AT)(Ins) No. 555/2020

⁸⁰ CA(AT)(Ins.) No. 415 of 2020

⁸¹ CA(AT)(Ins.) No. 890 of 2020

⁸² IA No. 2264 of 2020 in CP (IB) No. 1239-MB-2018

assets with claims, limitations, licenses, permits or business authorisations remain with the CD. Only the ownership of the CD is acquired by the successful bidder and all creditors of the CD get discharged.

Applicability of Section 32A in Liquidation proceedings

The question whether an application under Section 32A of the Code can be made during the pendency of liquidation process by the liquidator was considered by AA in *SBER Bank Vs. Varsana Ispat Limited*⁸³. The liquidator filed an application under sections 60(5) and 32A of the Code seeking permission to sell the assets of the CD which were attached by the Enforcement Directorate (ED), in view of section 32A. The ED objected to the application on three grounds: (a) An application under section 32A can be made only after the liquidation process is over or resolution plan is approved; (b) An application under section 32A can be filed only by the successful RA and not the liquidator; and (c) the rights of the parties had already been crystallised through proceedings before the PMLA Appellate Authority and hence subsequent change in law (insertion of section 32A) would not take away such rights which had attained finality. The AA held that section 32A is also applicable to the assets of the CD undergoing liquidation and a liquidator can file an application like the one in hand. It further held that a liquidator could proceed with the sale of the assets even if it is under attachment by the ED, to continue the time bound process of liquidation under the Code and upon completion of the sale proceedings, the buyer can take appropriate steps to release the attachment. The attachment and confiscation of properties of a CD undergoing CIRP or liquidation is void under section 32A of the Code.

Liquidation value

Valuation of assets is one of the core features of CIRP. The term 'liquidation value' has been defined in regulation 2(k) of the CIRP Regulations. It is defined as the estimated realisable value of the assets of the CD, if it were to be liquidated on the ICD. The object of such valuation process is to assist CoC to take the most appropriate decision on resolution plans. Once a resolution plan is approved by CoC, the statutory mandate on AA under section 31(1), is to ascertain if resolution plan meets the requirement of sub-sections (2) and (4) of section 30. In *Oriental Bank of Commerce Vs. Lotus Auto Engineering Ltd. & Ors.*⁸⁴, while considering an application for extension of time in liquidation, the AA noticed that as against value of Rs. 100 crore under resolution plans during CIRP, the liquidator is setting reserve price of Rs. 40 crore for selling the CD as going concern. The AA observed that though it is in the realm of the CoC to approve or reject a plan and of the liquidator to determine the value of the assets, such huge variations in values call for enquiry. Considering the fact that the CoC failed to approve a resolution plan that was valued double the liquidation value and the liquidator set very low reserve price, the AA directed IBBI to enquire into as to why

valuation has become so low after liquidation is ordered and the Oriental Bank of Commerce to enquire as to whether its representatives acted to maximise the value of the CD. It directed the liquidator not to proceed with the sale of the assets until this matter is decided.

Winding up proceedings under the Companies Act, 2013

In *Action Ispat and Power Pvt. Ltd. Vs. Shyam Metalics and Energy Ltd.*⁸⁵, the Division Bench upheld a single judge's order transferring a winding up proceeding pending before the HC to the AA. On appeal, the SC observed that where the petition has not been served in terms of rule 26 of the Companies (Court) Rules, 1959, winding up proceeding is compulsorily transferable to the AA for resolution under the Code. Even post issue of notice but prior to admission, the same result would ensue. It is only where actual sale of the immovable or movable properties have taken place or the winding up proceedings have reached an irreversible stage, the HC must proceed with the winding up, instead of transferring the proceedings to the AA. Further, whether this stage is reached or not would depend upon the facts and circumstances of each case.

In *M/s. Kaledonia Jute and Fibres Pvt. Ltd. Vs. M/s. Axis Nirman and Industries Ltd. and Ors.*⁸⁶, on a petition by second respondent (R2), the Company Court passed an order directing the winding up of the first respondent (R1) on the ground that it has been unable to pay its debts and that it was just and equitable to wind it up. Thereafter, the R1 filed an application for recalling the order of winding up. It paid the entire amount due to R2, who did not raise objection to the recall of the order. However, the official liquidator, who had already taken over the assets of R1, opposed the recall on the ground that the R1 owed money to various creditors and that unless the said amount was paid, the order of winding up could not be recalled. Meanwhile, the appellant moved a section 7 application before the AA. It also moved an application before the Company Court seeking a transfer of the winding-up petition to the AA, which was rejected. On appeal, the SC allowed transfer of the winding-up proceedings before the Company Court to the AA to be heard along with its application under section 7. It observed that the entire object of the Code would be thrown to the winds if the Company Court proceeds with the winding up while the AA entertains section 7 application.

Interface of IBC with Tax Authorities

In *Pinakin Shah – Liquidator of Brew Berry Hospitalities Pvt. Ltd. Vs. The Assistant Commissioner of State Tax & Anr.*⁸⁷, the Asst. Commissioner of State Tax (ACST) advised Kotak Mahindra Bank to freeze the bank account of the CD under section 44 of the Gujarat Value Added Tax Act, 2003. The liquidator filed an application with the AA for unfreezing the bank account. The AA dismissed the application and directed

⁸³ IA(IB) No. KB/2020 in CP(IB) No. 543/KB/2017

⁸⁴ IB-31(PB)/2018

⁸⁵ CA No. 4041/2020 arising out of SLP(C) NO.26415/2019

⁸⁶ CA No. 3735/2020

⁸⁷ CA(AT)(Ins.) No. 32 of 2021

the liquidator to approach the competent authority to redress his grievances. On appeal, the liquidator contended that ACST is an OC and one OC cannot march over the other claimants without standing in queue under section 53 of the Code. All the creditors are entitled to get their dues only in terms of section 53 and different creditors cannot be allowed to resort to different proceedings and enactments. Further, the Code will override anything inconsistent contained in any other enactment. He cannot be made to run to the parties and authorities under the Sales Tax Act to get the account unfrozen. The NCLAT accepted these submissions of the appellant and set aside the impugned order and directed Kotak Mahindra Bank to unfreeze the bank account of the CD.

In *Bhavarlal M Jain & Anr. Vs. Metal Link Alloys Ltd. & Ors.*⁸⁸, the AA passed an order of liquidation on May 11, 2018. The GST Authority passed an order of assessment on June 18, 2018 and issued recovery notice on September 12, 2018. The NCLT considered whether the proceedings under GST laws is in contravention of the Code. It observed that the moratorium under section 14 of the Code comes to an end on passing of the order of liquidation. As per section 33(5) of the Code, the legal proceedings can be continued against the CD during liquidation.

Initiation of CIRP by corporate applicant

In *Prithviraj Spinning Mill Private Limited Vs. Indian Overseas Bank, Coimbatore & Ors.*⁸⁹, the CD changed its name from M/s. Prithviraj Spinning Mills Private Limited to M/s Marappur Textiles Private Limited. However, the change of name and address were not amended in the application filed with the AA. AA observed that the change of name of the CD and its registered office pending disposal of the application has great direct and indirect impact. If the application is admitted, being a proceeding in rem, it is binding upon the public at large. The stakeholders, who are not party to the application, would not be able to file their claims since they may not be able to identify the CD in its new name. It suggested that section 10 be tightened to avoid misuse such that when a company chooses to file an application under section 10 it should maintain *status quo* as on date of filing of the application. The AA dismissed the application as it cannot pass an order of CIRP against Prithviraj Spinning Mill Private Limited which is not in existence as on date.

Demand Notice

Demand notice means a notice served by an OC to the CD demanding payment of the operational debt in respect of which the default has occurred. As per section 9 of the Code, an OC can file an application for initiation of CIRP against the CD only after the expiry of 10 days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8.

In *Rajendra Bhai Panchal Vs. M/s. Jay Manak Steels & Ors.*⁹⁰,

the NCLAT observed that a mistake in a demand notice does not necessarily mean it is defective, and if a CD wants to question the validity of the demand it must show that a prejudice was suffered as a result of the defect. It further observed that if there is a mistake in the demand, but the creditor is clearly owed the statutory minimum figure or more, the fact that the amount of debt is misstated may not automatically invalidate the demand.

In *Sri D. Srinivasa Rao Vs. Vaishnavi Infratech Ltd.*⁹¹, the NCLAT held that where the CD refused to accept delivery of notice, the AA would not be justified to conclude that notice had not been served on the CD. The only inference available in the circumstances is that the CD was aware of the consequences, and it deliberately refused to acknowledge the notice. The fault lies on the part of the CD for which it cannot be rewarded. The NCLAT set aside the order and remanded the matter to the AA to pass an order under section 9.

In *Shubham Jain Vs. Gagan Ferrotech Ltd. & Anr.*⁹², the NCLAT held that the mandate under section 8 of the Code was fulfilled, as it is apparent that the demand notice was duly served on the functional address as well as to the director of the CD. It also observed that unclaimed demand notice will also be a valid service of notice. It also held that under section 2(59) of the Companies Act, 2013, a director is an officer and under section 20 of the Act, a document served on a company, or an officer thereof is service recognised. Therefore, the service of notice on the director of the CD would satisfy the requirements of the Code and the same would be a valid service.

Direct Dissolution

In *Mandar Wagh, IRP of M/s. Synew Steel Private Limited*⁹³, the RP submitted that all FCs are related parties and hence he is not able to constitute the CoC. There are no assets except cash balance of Rs. 729 and hence RP is unable to carry out CIRP. There is no business in the past three years and hence there is no revenue. The entire capital is eroded. Considering the facts and legal provisions in sections 33(2), 54 and regulation 14 of the Liquidation Regulations and Rule 11 of the NCLT Rules, the AA observed that no purpose would be served to keep the CD under CIRP or place it under a liquidation process. It allowed dissolution of the CD.

⁸⁸ IA 361 of 2018 in CP(IB) 67 of 2017

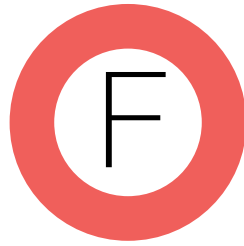
⁸⁹ JBA/120/2020

⁹⁰ CA(AT)(Ins) No. 592/2020

⁹¹ CA(AT)(Ins.) No. 880 of 2020

⁹² CA(AT)(Ins.) No. 1008 of 2020

⁹³ CP (IB) No. 96/BB/2020



IMPACT OF THE CODE

The objective of insolvency and bankruptcy law is to provide an orderly process for reorganisation or liquidation of insolvent entities. This involves providing a legislative mechanism for collection of all debts of an entity and its distribution among the contending claimholders in the event of its winding up due to economic failure. On the other hand, in case of a financial failure of the firm, the process provides for a reorganisation mechanism where the debts can be restructured, creditors paid off in agreed manner and business is resurrected in a new form with new or revamped management. In other words, the law provides comfort in the form of a safety net for business activity by offering mechanisms for rescue or value maximising exit from business. An effective system for insolvency and business exit must be able to quickly distinguish between those firms that can be saved and those that must exit fast.

Researchers find that there is empirical evidence to suggest that more efficient bankruptcy systems in terms of time, cost and recovery rate lead to better availability of debt and hence higher investment/GDP ratio in an economy.⁹⁴ The growth of gross GDP is found to be positively associated with an efficient bankruptcy system.⁹⁵

In the Indian context, the enactment of the Code in May 2016, ushered in a modern insolvency and bankruptcy regime in the country. The Code has been hailed as one of the most important economic legislations in recent times, having reformed the much-needed exit mechanism for corporates, to start with, and having addressed an important aspect of ease of doing business in the country. The law, being preventive in nature, is also being touted as having brought about a cultural shift in the dynamics between lenders and borrowers, and promoters and creditors. The Code has made an impact in the way repayment of debts are being viewed and treated by promoters and management of the defaulting firms. The first signs of distress now serve as early warnings for management to take corrective actions to avoid defaults. One can posit that the Code is emerging as a behavioural law aiming to draw various stakeholders of the entity in distress to work together, in a non-adversarial manner, towards laid down objectives of the law viz. *‘...reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such*

*persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders...*⁹⁶.

Section E of the report has presented the outcomes from the implementation of the Code in terms of service providers and processes, consequences of the processes on companies and stakeholders, and the emerging jurisprudence. This section presents the impact of the Code in terms of its far-reaching influence on various stakeholders in the insolvency and bankruptcy space, viz. creditors (financial and operational), corporate debtors, and economy at large. These are its broader, primary, and secondary long-term effects, largely behavioural in nature and of great importance. The Code, through its processes, nudges all stakeholders to exhibit their best behaviour, firstly to prevent triggering of an insolvency and if triggered, to ensure that interests of all stakeholders are taken care of. Taking recourse to the Code is voluntary. Where one exercises its voluntary options in favour of the Code, the fall out is compulsory for all other stakeholders.

Creation of an insolvency ecosystem

Unlike the previous insolvency regimes in the country, the Code has created a thriving ecosystem of its own, with each element of the ecosystem contributing towards the efficiency and efficacy of outcomes under the Code. The ecosystem has grown over the last five years. There are three IPAs, 83 IPEs, one IU which is offering a host of services and 16 RVOs. The AA has grown to have presence in more than a dozen cities and two benches of the Appellate Authority have been constituted. The army of newly created class of professionals viz. IPs and RVs has grown to reach more than 7400 registered professionals. **Figure 5** shows how the number of IPs and RV in terms of registrations have grown over the period.

Impact on the larger economy

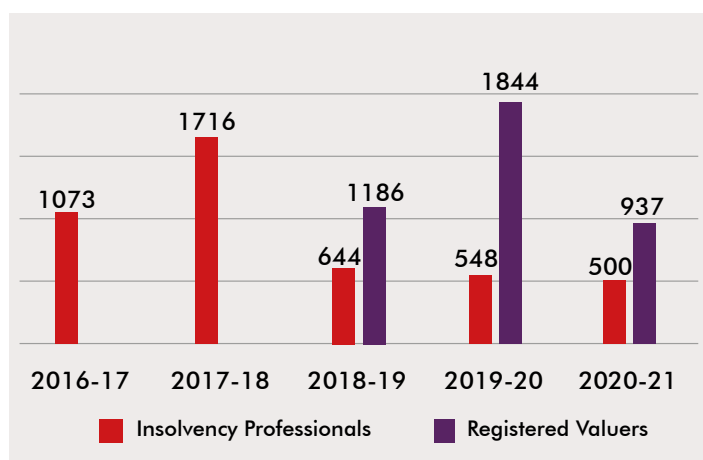
The impact of an insolvency law on the economy can be a measure of the extent to which there exists a connection or contribution of the insolvency system with the higher-level system like the legal, economic and financial systems. An efficacious insolvency law would ensure securing the objective of protection and maximisation of the value of an insolvent for all the stakeholders and the economy in general. The impact

⁹⁴ Succorò, Mariana (2008), “Bankruptcy Systems and Economic Performance Across countries: Some Empirical Evidence”, Department of Economics and Statistics, University of Colombia, Italy.

⁹⁵ Jackson, Thomas H and Skeel Jr, David A. (2013), “Bankruptcy and Economic Recovery”, University of Pennsylvania, Law School.

⁹⁶ Long title of the Code.

Figure 5: Year-wise registration of professionals



Note: 2016-2017 period is from October 1, 2016 to March 31, 2017. Registration of IPs during this period includes 977 registrations which expired by June 30, 2017.

of the Code can be evaluated based on the positive spill-over effects of the Code on the stakeholders and on the economy in general. Some of the key outcomes of the Code in this context are as follows.

Rescuing lives of companies

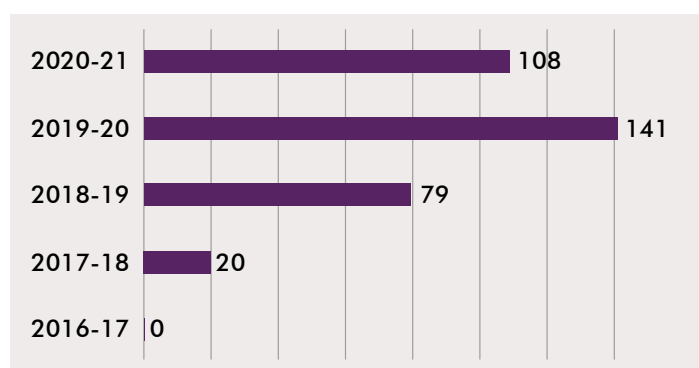
The Code provides a new lifeline to rescue a company when it experiences a serious threat to its life. Code empowers creditors, represented by a CoC to rescue a company, when it experiences a serious threat to its life. For this, the CoC has a *trishul*: (a) it can take or cause a haircut of any amount to any or all stakeholders for rescuing the company; (b) it seeks the best resolution from the market (unlike earlier mechanisms that allowed creditors to find a resolution only from existing promoters); and (c) the resolution plan can provide for any measure that rescues the company. It may entail a change of management, technology, or product portfolio; acquisition or disposal of assets, businesses or undertakings; restructuring of organisation, business model, ownership, or balance sheet; strategies of turn-around, buy-out, merger, amalgamation, acquisition, or takeover; etc. The Code provides a competitive, transparent market process, which identifies the person, who is best placed to rescue the company and selects the resolution plan, which is the most sustainable under the circumstances. The Code has rescued 348 CDs till March, 2021 through resolution plans, one third of which were in deep distress.

Figure 6 shows year-wise approval of resolution plans under the Code till FY 2020-21. Barring 2020-21, the year of the COVID-19 pandemic which affected the availability of RAs for effectuating resolution plans, the number of resolutions has been consistently increasing as insolvency reforms gained traction with each passing year. Even for a pandemic year, 108 resolutions are a commendable feat.

Ensuring optimum Resource Utilisation

Mainstream economic thought believes that at any point in time, human wants are unlimited while the resources to satisfy them are limited. The central economic problem, therefore, is the

Figure 6: Year-wise resolution from 2016-17 to 2020-21



Note: 2016-2017 period is from October 1, 2016 to March 31, 2017

inadequacy of resources *vis-à-vis* ever-increasing, unlimited wants. Resources have alternative uses, and firms pursue self-interests. An economy thrives when the self-interested firms have the maximum possible freedom to shift resources to more efficient uses continuously and seamlessly. There are occasions when the resources at the disposal of a firm are underutilised, as compared to other firms in the industry. Unused or under-used productive resources is anathema for growth of a country and people. The state intervention should facilitate optimum utilisation of resources at all times by preventing the use of resources below the optimum potential, ensuring efficient use of resources within the firm or releasing unutilised or underutilised resources for other uses, through the closure of the firm. By rescuing viable businesses through the insolvency process and closing non-viable ones through liquidation, the Code is releasing resources, including entrepreneurs. The reallocation of resources to more efficient uses is essential to keep the economic cycle going. By shifting viable businesses to more efficient managers and providing an exit mechanism to unviable businesses, this law ensures efficient allocation of economic resources from non-viable entities to viable initiatives.

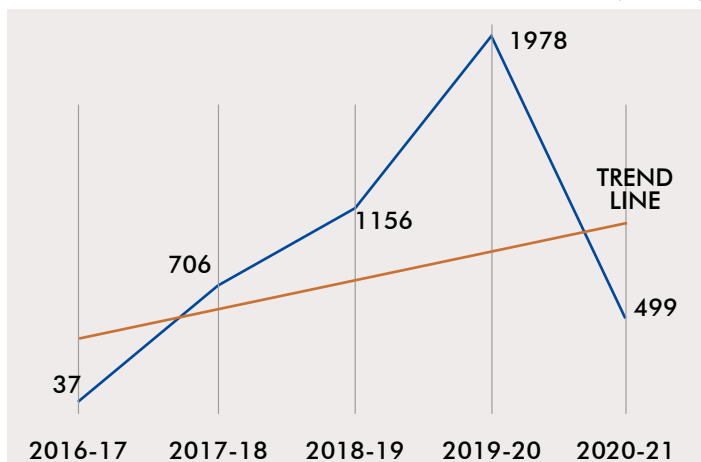
Figures 7 and 8 indicate the degree to which stakeholders resorted to the Code to resolve financial stress of CDs. From 2016-17 to 2019-20, there is a sustained increase in the number of admissions of CIRP and closure of CIRPs thereof. Thereafter, in 2020-21 the number of admissions fell substantially, as much as 75 per cent *vis-à-vis* 2019-20, as recourse to the Code was suspended under sections 7, 9 and 10 during this period on account of COVID-19 pandemic. However, closure of CIRPs through resolution plans, liquidation, withdrawals and settlements/appeals/reviews continued during 2020-21 as CIRPs that were already admitted continued unabated and were taken to their logical end.

Development of Entrepreneurship

A sizable literature in political economics and law has focused on the importance of a 'fresh start' for entrepreneurs who find themselves in financial insolvency⁹⁷. The Economist had remarked the following in the context of insolvency law and

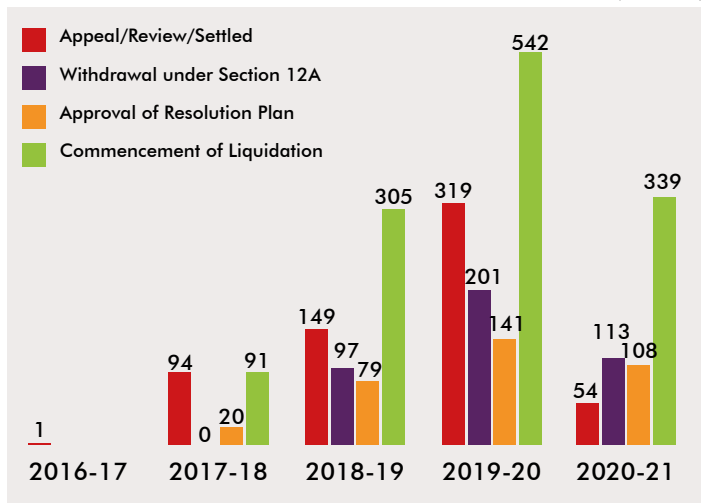
⁹⁷ Hallinan, C. G. (1986), "Fresh start policy in consumer bankruptcy: a historical inventory and an interpretive theory", University of Richmond Law Review, 21, 49.

Figure 7: Trend of CIRPs admitted from 2016-17 to 2020-21
(Number)



Note: 2016-2017 period is from October 1, 2016 to March 31, 2017

Figure 8: Year-wise closure of CIRPs
(Number)



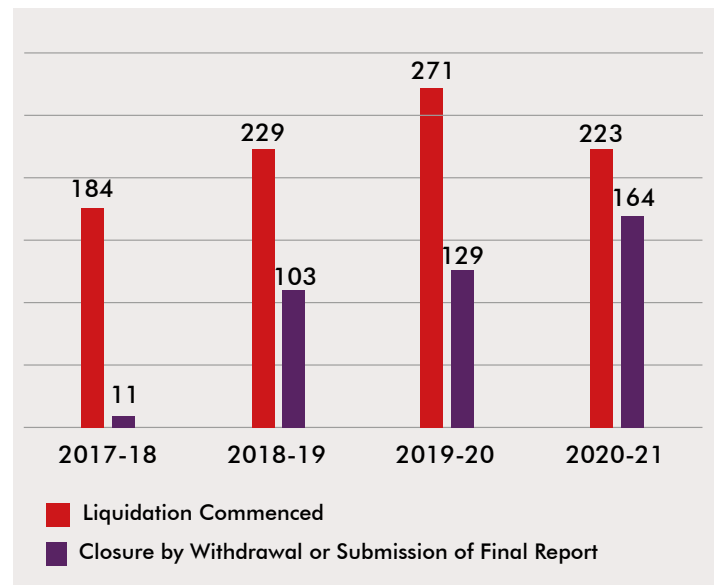
Note: 2016-2017 period is from October 1, 2016 to March 31, 2017

entrepreneurship in the backdrop of the global financial crisis of 2008: "Making it easier to close a business may not sound as inviting as announcing yet another 'enterprise fund' or 'innovation initiative' but it is more vital to reviving the world's moribund economy. In the short run, enlightened bankruptcy laws reduce unemployment by keeping viable companies alive. In the long run they boost rates of entrepreneurship. The best way to get more people to start businesses is to make it easier to wind them up."⁹⁸ Rescuing firms has many beneficial spill overs for the economy in terms of new products and services, job creation and tax payments. On the other hand, by increasing the life of unviable firms that cannot be revived leads to negative returns for the entrepreneur, fewer jobs and smaller tax revenue for the government.

The Code promotes entrepreneurship by reducing 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. The Code also provides an opportunity to entrepreneurs to voluntarily liquidate themselves. This presents an opportunity for entrepreneurs to get out of business easily and move on to another business venture which may prove to be more viable and productive for the economy. Figure 9 shows that CDs have been liquidating themselves voluntarily consistently over the period 2017-18 to 2020-21.

Figure 9: Voluntary liquidations by CDs



Start-up India in its recent report⁹⁹ recognised the role played by the Code in releasing entrepreneurs from failed start-ups. The report observed: "A complex and tedious winding-up process was yet another restriction for startup enthusiasts as it was considered that "shutting down" a company is far more difficult than starting a company. The costs involved in closure were few of the main reasons why several firms had continued to remain dormant without legally shutting operations. They would be required to bear costs for maintenance and compliance with annual filings, failing which would entail penal consequences by the relevant authorities. The Insolvency and Bankruptcy Code, 2016 (Code) provides for insolvency resolution of corporate persons, partnership firms and individual in a time bound manner. The Code has improved business climate in the country by making it easier for enterprises to exit in case of difficulties."

The Global Entrepreneurship Monitor introduced the National Entrepreneurship Context Index in 2018, which summarises, in one number, the average state of an economy's environment for entrepreneurship. One of the sub-elements of this index is the availability of a safety net for risk-taking by an entrepreneur. On a scale of 1 to 10, a score of 5 or above indicates that an economy has an environment for entrepreneurship that is just sufficient or better. In its 2020-21 report, India ranked 4th in a

⁹⁸ The Economist (2010). Making a success of failure. Economist, 68(Jan 9).

⁹⁹ Evolution of Start-up India: Capturing the 5-year story, 2020, Department for Promotion

of Industry and Internal Trade, Ministry of Commerce and Industry, https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/5_years_Achievement_report%20-%20PRINT.pdf

Box 4: Insolvency law and Credit Channels

The COVID-19 pandemic has disrupted normal life and triggered a massive economic slowdown driving corporate failures around the world including in India. In such a scenario, it is important that a strong bankruptcy system can enable financially distressed companies to access the credit market and make them survive under these stressed scenarios. An efficient bankruptcy process that allows liquidity-constrained firms to reorganise and continue running their businesses, can help support the credit market by relaxing their financial constraints, hence resulting in greater entrepreneurship and better access to debt markets. How effective has the IBC been in terms of its effectiveness in improving financial performance of distressed firms?

In this regard, a recent study (Bose et al., 2021)¹⁰⁰ provides novel evidence on the impact of the IBC reform, that balances the rights of both creditors and debtors, on the performance of financially distressed firms via exploring the credit flow channels. Using a panel of 33,845 non-financial Indian firms for the period 2008-2019 with a difference-in-differences (DID) analysis, the study examines the impact of the law on the availability of debt financing and cost of credit, and then its subsequent effect on financial performance of distressed firms as compared to non-distressed firms.

IBC and “credit channels”

As firms closer to the point of financial distress are most likely to be supported by a bankruptcy law, Bose et al. (2021) conduct a DID analysis by constructing the treated and control groups based on firms’ status of being in financial distress. As the IBC helped to strengthen creditor rights in India, it is likely to affect both supply of and demand for credit by distressed firms. An efficient bankruptcy law tries to determine how to compensate creditors, while maximising the value of firms in financial distress before they file for bankruptcy. During this phase, managers of distressed firms have strong incentives to make risky investments so that if the project succeeds, bankruptcy can be avoided or delayed. Hence, there may not be a decline in long-term demand for debt or a decline in corporate risk taking. On the supply side, due to stronger creditor rights in the post-legislation period, there can be an improvement in bank credit supply, as the credit suppliers are more protected in the post-IBC era. Overall, the IBC can help in expanding credit availability without restricting credit demand, unlike the legislation of SARFAESI that protected the secured creditors which resulted in a decrease in credit demand.

Bose et al. (2021) is the first study to provide evidence on the impact of the IBC policy on the “credit channels” of distressed firms. The notion “credit channels” is referred to as the access to long-term and short-term financing, and cost of credit. The study finds that after the enactment of the IBC, distressed firms were able to increase their access to long-term debt by 6.3 per cent, short-term debt by 1.4 per cent, and reduce their cost of financing by 0.8 per cent as opposed to non-distressed firms due to better and faster debt recovery mechanisms under the IBC framework.

Moreover, the research suggests that distressed firms that benefit from both increased access to debt and reduced cost of borrowing (as shown in the figure) are further able to improve their performance resulting in higher growth opportunities, compared to their non-distressed counterparts. Furthermore, the evidence shows that the performance benefits stemming from the implementation of the IBC are more prominent for those financially distressed firms that are larger, younger and more collateralised.

Figure: Pattern in debt structure for distressed and non-distressed groups



Notes: The above figure displays the real total debt (in INR millions), and cost of borrowing among distressed (treated) and non-distressed (control) firms.

These results are relevant to the current academic and policy debates on safeguarding and preserving businesses, especially in the midst of the current COVID-19 crisis, which is driving many businesses into bankruptcies. Given the profound implications of the pandemic, a strong bankruptcy system can not only support financially distressed companies to benefit from a quick and long-lasting revival process, but it can also make lenders more confident to lend to firms under stressed scenarios.

¹⁰⁰ U. Bose, S. Filomeni and S. Mallick (2020), “Does bankruptcy law improve the fate of distressed firms? The role of credit channels”, Journal of Corporate Finance.

group of 44 economies with a score of 6¹⁰¹. This is a reflection of ease of doing business in the country including ease of exit and availability of a safety net for genuine risk taking by entrepreneurs.

Development of Credit Market

The Code is also helping in resolving the NPA problem of the banking system and thereby strengthening the lending capacity of the credit market. The impact of the Code on credit channels is discussed in **Box 4**. Some of the large cases of NPAs, such as Bhushan Steel, Electrosteel Steels, Alok Industries, Jyoti Structures Ltd. and Monnet Ispat & Energy Ltd. have been resolved, and FCs have realised their dues. The Code has created a conducive environment for growth of corporate bonds market in India. CRISIL¹⁰² estimates that the quantum of corporate bonds outstanding in the Indian market grew at 13 per cent in the five years through fiscal 2020 to reach Rs. 33 lakh crore in value. It estimates that on account of the government's push to infrastructure, innovation by way of asset pooling, well-capitalised credit guarantee enhancement corporation and proposal to create a market-making entity for investment grade bonds is likely to double the quantum of corporate bonds outstanding to Rs. 65-70 lakh crore by end of fiscal 2025.

Impact on creditors

Ease of access to credit is the cornerstone of economic development of any country. An established body of literature points to the positive influence of well-functioning credit markets on economic performance. The willingness of banks and investors to support new businesses is, to an extent, a function of the rules that govern the procedures when they fail, i.e. the ease of exit of capital. Effective insolvency regimes, while coming into play at the end of the business life cycle, have an overwhelming impact on the commencement of the cycle, ensuring the willingness of banks and investors to lend and that of entrepreneurs to enter the market taking some amount of risk.

Financial creditors

The provisions of the Code are motivating creditors to resort to more responsible (meritocratic) lending to reduce incidence of default. They are encouraged to initiate insolvency proceedings against a CD at the very first incidence of default or later, as it deems fit, rather than deferring initiation of insolvency proceeding and allowing default amount to balloon up. These behavioural changes are visible on the ground since the enactment of the Code.

Through provision for resolution and liquidation, the Code reduces incidence of default, and enables creditors to recover their dues through revival of the firm 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 a lower cost for projects

and thereby enhances availability of credit. Table 65 shows amount realised by creditors by way of withdrawal of cases before admission of CIRP and through the IBC process after admission. This positive impact of the Code has been recognised by the World Bank in its Doing Business Report, 2020, noting as follows: *"With the reorganization procedure available (through the Insolvency and Bankruptcy Code, 2016), companies have effective tools to restore financial viability, and creditors have access to better tools to successfully negotiate and have greater chances to revert the money loaned at the end of insolvency proceedings."*

Table 65: Realisations by creditors

Sl. No	Item	Amount realised (Rs. crore)
1	Through withdrawal before admission	5,33,145
2	Through resolution	2,09,198
3	Through liquidation	1057
4	Through voluntary liquidation	25
Total		7,43,425

As per the RBI database¹⁰³, the GNPA ratio of SCBs declined from 8.4 per cent at end-March 2020 to 7.5 per cent at end-March 2021. Prudent provisioning by banks, over and above regulatory prescriptions for accounts availing moratorium and undergoing restructuring, resulted in an improvement in the provision coverage ratio of SCBs to 67.4 per cent at end-March, 2021 from 66.6 per cent in March, 2020. The resolutions enabled by the Code have contributed to the resolution of NPAs of banks overtime.

Operational creditors

OCs of CDs, i.e the suppliers of goods and services, who extend credit to businesses, suffer when the CD is in distress. The OCs are largely MSMEs and need to have continuous flow of financial resources to stay afloat. The Code has brought about a behavioural change wherein the CDs are trying to settle dues of OCs due to the fear of being pushed into the insolvency proceedings by OCs. The OCs are able to realise their dues before admission of insolvency petitions and post admission through negotiations for settlement. It is seen that about 51 per cent of applications were filed by OCs reflecting their confidence in the IBC process.

Impact on credit culture

The Code has brought about a cultural shift in the dynamics between lender(s) and borrower(s), and promoter(s) and creditor(s). The biggest gains for the economy have come from the extent to which the threat of the IBC has spawned modified behaviour on the part of managers and lenders. The Code has made an impact in the way repayment of debts are viewed and treated by promoters and management of the defaulting firms. Thousands of debtors are resolving distress

¹⁰¹ Global Entrepreneurship Monitor Report 2020-21, <https://www.gemconsortium.org/file/open?fileId=50691>

¹⁰² CRISIL Yearbook on the Indian Debt Market 2021

¹⁰³ RBI Report on Trends and Progress of Banking in India 2020-21

in early stages of distress. They are resolving when default is imminent, on receipt of a notice for repayment but before filing an application, after filing application but before its admission, and even after admission of the application, and making best effort to avoid consequences of resolution process. Most companies are rescued at these stages. Till March, 2021, 17,305 applications for initiation of CIRPs of CDs having underlying default of Rs. 5,33,145 crore were resolved before their admission. Only a very small percentage of firms actually go through entire CIRP. For the 4376 firms admitted into CIRP, nearly 24 per cent are closing mid-way by way of withdrawals under section 12A or appeal/settlement/review. Another 37 per cent CIRPs closed with either resolution or liquidation. Remaining are ongoing.

Table 66: Impact on credit culture

Particulars	No. of Corporates	Amount (Rs. crore)	
		Liquidation Value	Realisation Value
Applications withdrawn before admission	17305	NA	NA
Process commenced	4376	NA	NA
Process closed mid-way	1028	NA	NA
Process closed by resolution plan	348	1,12,643.66	2,09,198.09
Process closed by liquidation	1277	48,334.40	NA
Ongoing processes	1723	NA	NA

Impact on corporate debtors

The Code provides an orderly process for the reorganisation or liquidation of CDs. It provides comfort in the form of a safety net for business activity by offering mechanisms for rescue or value maximising exit from business. An effective system for insolvency and business exit must be able to timely distinguish between those firms that can be saved and those that must

exit fast. The Code mandates a moratorium which provides a breathing space for the debtor and creditors to negotiate a repayment plan. To this effect 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. 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. The Code ensures that the CD runs as a going concern while the insolvency proceedings are ongoing so that its value does not deteriorate further.

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 entrepreneur to get in and get out of business with ease, undeterred by honest business failures and thereby promotes entrepreneurship.

The corporate persons have been using the Code both for the purpose of achieving resolution upon default and as an exit route through voluntary liquidation where there is no default. As on March 31, 2021, 348 CDs have been resolved and 907 corporate persons have initiated voluntary liquidation.

The IBC safeguards and maximises the value of the company and consequently, value for all its stakeholders. Table 67 shows that the realisable value of the assets available with the 348 firms rescued, when they entered the CIRP, was only Rs. 1.13 lakh crore. The resolution plans recovered Rs. 2.09 lakh crore, which is about 188 per cent of the realisable value of these firms. Any other option of recovery or liquidation would have recovered at best Rs. 100 minus the cost of recovery/liquidation, while the creditors recovered Rs. 188 under the Code. The excess recovery of Rs. 88 is a bonus because of the Code. Further, one-third of the companies rescued were defunct, three-fourth of companies ordered for liquidation were defunct.

Table 67: Rescue of stressed assets

Description	Companies Rescued	Companies Ordered for Liquidation	Total
No. of Companies	348	1277	1625
Aggregate Claims	5,769,69.10	6,50,310.50	12,27,279.60
Liquidation Value	1,12,643.66	48,334.40	1,60,978.06
Assets available % of Aggregate Claims	19.50%	7%	13.12%
Resolution Value	2,09,198.09	NA	NA
Resolution Value as % of Liquidation Value	187.50%	NA	NA
Resolution Value as % of Aggregate Claims	36.60%	NA	NA
Average time taken	459	351	NA
Cost as % of Resolution Value	0.49%	NA	NA

The Code maximises value by striking a balance between resolution and liquidation. It encourages and facilitates resolution in most cases where creditors would receive at least as much as they would in liquidation. This would happen where the enterprise value is sufficiently higher than the liquidation value. In such cases, resolution preserves and maximises the enterprise value as a going concern. In the remaining cases, the Code facilitates liquidation as that maximises the value for the stakeholders. While the prime objective is resolution, however, the Code recognises that in certain circumstances, liquidation may be the best option for the creditors. There could be firms that are defunct, or they may have spent many years in BIFR or in other recovery/restructuring frameworks without any improvement in their situation and value eroded to a great extent.

Resolution Time

The Code mandates that a CIRP should be completed in 330 days (Amendment Act of 2019) including any extension of time as well as any exclusion of time on account of legal proceedings. To reduce the time for resolution, the Code envisages a competitive industry of IUs, many benches of AA spread all over the country and professionalisation of insolvency services. The average time taken for completion of resolutions and liquidation is on higher side and requires intervention in terms of augmentation of capacity of AA.

Table 68: Average Time for completion of process under the Code

Sl. No.	Parameter	No. of Processes covered	Time (In days)
Corporate Insolvency Resolution Processes			
1	Approval of resolution plans by Adjudicating Authority	348	459
2	Order for Liquidation by Adjudicating Authority	1277	351
Liquidations			
3	Submission of final report for Liquidations	240	410
4	Submission of final report under Voluntary Liquidation	400	383

Average Resolution Cost

The Code has been successful in lowering the total costs of a CIRP compared to the erstwhile regime wherein the total cost was as high as 9 per cent of the estate value of the company as per World Bank's Doing Business Report.

As per data available from 322 CDs which have been resolved, the cost incurred towards engaging various service providers for the insolvency process and holding of meetings for the process, is at an average of 0.92% of liquidation value and 0.49% of resolution value. The cost may further go down with development of competitive market for various services and reduction in time for resolution.

Conclusion

The outcome through CIRPs has been encouraging. As per the data available, undoubtedly, it can be stated that the Code has created an environment of better financial organisation and discipline and has reformed the behaviour of stakeholders.

The Legislative Guide on Insolvency Law of the United Nations Commission on International Trade Law (UNCITRAL) provides that: *'When a debtor is unable to pay its debts and other liabilities as they become due, most legal systems provide a legal mechanism to address the collective satisfaction of the outstanding claims from assets (whether tangible or intangible) of the debtor. A range of interests needs to be accommodated by that legal mechanism...Generally, the mechanism must strike a balance not only between the different interests of these stakeholders, but also between these interests and the relevant social, political and other policy considerations that have an impact on the economic and legal goals of insolvency proceedings.'*

The Code is a proactive, dynamic, and time-bound insolvency regime which believes in rescuing the life of a company when it is in serious threat. The on-going works are being placed in further improving the 'resolving insolvency' and 'ease of doing business' by refining the insolvency regime with innovative possibilities with prime focus on time-bound insolvency resolution. Further, new initiatives for resolution of stress under the Code are being planned to further improve the effectiveness and efficiency of the Code. The progress is likely to be seen in the coming period.



PERFORMANCE OF THE BOARD

The economic reforms in India envisioned shifting from regulation of markets being run by departments of government, to oversight by specialised regulators. Regulators were given legislative powers to write subordinate legislation, executive power for licensing and investigations and judicial powers to adjudicate over the conduct of regulated entities under their ambit. Regulators are thus akin to Governments in many ways. They provide public goods in public interest just as the government does. They have responsibilities - consumer protection, development and regulation - similar to those discharged by the government. They have powers - legislative, executive and judicial - similar to those of the government. They resemble government in many respects, yet they are not the 'government'. They are, in a sense, governments within the government, and carry out governance on behalf of the government in a pre-defined framework. However, the government is ultimately accountable to the citizens for governance through the regulators. Through the administrative ministries, the regulators lay on the Table of the Parliament subordinate legislation, annual report detailing their activities and performance, and statement of accounts audited by the C&AG. The departmental standing committees scrutinise their activities while approving their demand for grants or the demand for grants of their administrative ministries, as the case may be.¹⁰⁴ These are, in effect, various checks and balances to ensure that the regulator works within the ambit of its functions laid down for it by the government.

Section 196 of the Code enumerates the powers and functions of the IBBI. It is a unique regulator, which regulates service providers, including insolvency profession, as well as insolvency processes. It has the responsibility to promote the development of, and regulate the working and practices of the IPs, IPAs, and IUs and other institutions in furtherance of the purposes of the Code. It collects, organises, and disseminates relevant data and information about each insolvency and bankruptcy process and conducts and promotes research and studies in insolvency and bankruptcy. It also acts as the 'Authority' under the Companies (Registered Valuers and Valuation) Rules, 2017 for regulation and development of the profession of valuers in the country. As the Authority, it registers and regulates RVs and RVOs. These responsibilities entail exercise of quasi-legislative, executive, and quasi-judicial powers to carry out the functions enumerated in section 196.

Several aspects of the functioning of IBBI have been presented in various sections of the report. Section D presents the operational performance of IBBI in its executive, quasi-legislative and quasi-judicial functions, while Section H presents an assessment of the performance of its Governing Board. Financial performance, compliances with legal and statutory obligations, and organisational performance of the Board are delineated in Sections I, J and K respectively. This Section is an endeavour to encapsulate its working that has a bearing on the quality of functions performed by the Board and consequently the outcomes. Good regulatory governance has been recognised to be pillared upon certain desirable elements namely, effective and responsive regulation; appropriate institutional ecosystem; effective engagement with stakeholders, assessment of institutional performance from time to time and coordination with other agencies in fulfilling its mandate. The manner in which the Board is fairing in terms of these aspects is presented here.

A. Effective and Responsive Regulation

Regulation making is the most important task of a regulator. Regulations try to resolve issues involving many interested parties in constant engagement with each other to find solutions to a legal problem. It is, at times, not possible to identify the stakeholders or quantify the impact of regulations. The role of the regulator, thus, involves, being aware of the entire situation in an evolving environment, have more than one option to resolve the matter and focus only at addressing the market failure prompting regulation. Thus, regulation making is more of an art: wherein a standard 'one-size-fits-all' formulation may not always work. The regulator needs to adapt to changing operating environment and market failures, have different strategies and approaches available to choose from and design an appropriate regulation that addresses different market failures with no or negligible unintended consequences. In essence, it needs to be flexible and have the ability to assess such changes and modify regulations to meet the changing needs.

A responsive regulator designs and modifies regulations, proactively with changing needs of the market, without unduly restricting freedom of the participants. While it is not possible to have standard regulations to address a market failure, it is essential to have a standard process for making regulations to

¹⁰⁴ Sahoo M. S. (2019), "Reforming the Regulatory State", Journal of Indian School of Political Economy, Vol 31, No. 3, July- September.

ensure that the regulations are effective as well as responsive, yet not excessive. With this in mind, the IBBI has put in place the IBBI (Mechanism for Issuing Regulations) Regulations, 2018 to govern the process of making regulations.

Literature on effectiveness and responsiveness of regulation recognises the importance of cost benefit analysis of regulations and strengthened engagement with stakeholders to ensure efficient decision making. Literature conceives responsiveness as responsiveness to the behaviour of regulated actors. Researchers have recognised a number of features of responsive regulation. Some of the best practices listed in this regard include formal consultation exercises- its documentation; formal or informal hearings; clear time frame for decisions and providing inputs and genuine chance of influencing decisions i.e. accountability for inputs.¹⁰⁵

In keeping with this understanding, the IBBI has a standing arrangement to enable any stakeholder to seek any new regulation or any change in any of the existing regulations, throughout the year. This puts every stakeholder in the shoes of the regulator. The IBBI also puts out discussion papers along with draft of the proposed regulations in public domain seeking comments thereon. This makes every stakeholder a partner in design of any regulation. All comments and suggestions received from stakeholders along with the views of the operating division of the IBBI are placed before the GB of IBBI for a decision. The agenda notes of the GB are also placed on the website for stakeholders to see the details of consultation process carried out by IBBI and the basis for the final decision. This facilitates multi-directional flow of information between the IBBI and the stakeholders and amongst the stakeholders themselves when regulations are being framed. Further to reach out to various stakeholders and understand their perspective on draft regulations, the IBBI itself or in collaboration with the industry/institutes/organisations, organises roundtables in various cities on the proposed regulations. It also organises such roundtables to convey the intent of regulations so made to stakeholders and facilitates implementation of the regulations. Table 69 presents the Regulations the IBBI is servicing as on March 31, 2021.

Table 69: Regulations as on March 31, 2021

Sl. No.	Regulations
1	IBBI (Model Bye-laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016
2	IBBI (Insolvency Professional Agencies) Regulations, 2016
3	IBBI (Insolvency Professionals) Regulations, 2016
4	IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
5	IBBI (Liquidation Process) Regulations, 2016
6	IBBI (Engagement of Research Associates and Consultants) Regulations, 2017

7	IBBI (Advisory Committee) Regulations, 2017
8	IBBI (Procedure for Governing Board Meetings) Regulations, 2017
9	IBBI (Voluntary Liquidation Process) Regulations, 2017
10	IBBI (Information Utilities) Regulations, 2017
11	IBBI (Inspection and Investigation) Regulations, 2017
12	IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017
13	IBBI (Employees' Service) Regulations, 2017
14	IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017
15	IBBI (Mechanism for Issuing Regulations) Regulations, 2018
16	IBBI (Insolvency Process for Personal Guarantors to Corporate Debtors) Regulations, 2019
17	IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019

Amendments to these regulations are carried out as and when necessary to meet the emerging requirements of the markets. For example, during 2020-21, amendments were made to the CIRP Regulations and Liquidation Regulations four times and IP Regulations were amended twice. While the regulations for all processes and service providers are in place, wherever any clarifications on the extant legal position is required, the Board has been providing the same through circulars and guidelines. It has been the endeavour of IBBI to facilitate compliance with regulations.

B. Institutional Ecosystem

Proper implementation of any legislation requires that good governance structures are in place to ensure that institutions of the ecosystem responsible for implementation of the law can best target and serve those in need while, at the same time, operate responsively and effectively. A key function of the Board is to promote the development of the working and practices of the institutional ecosystem established under the Code comprising of IPs, IPAs, IPEs, IUs, RVs and RVOs in furtherance of the objectives of the Code. Given the critical role played by each of these institutions in the implementation of the Code, the IBBI has designed regulations under the statute to ensure that individuals/ persons who wish to render these services are not only technically competent, but also possess the highest standards of ethics and professionalism. In other words, they must pass the test of being a 'fit and proper person'. The Valuation Rules made under the Companies Act, 2013 have similar provisions for RVs and RVOs to ensure minimum standards of performance.

Shepherding professions

The IBBI has been shepherding two emerging professions, namely, insolvency profession and valuation profession. While using the standard toolbox to build professions, the IBBI has made some innovations.

¹⁰⁵ Stern, J., (1999), "Regulatory governance: criteria for assessing the performance of regulatory systems - an application to infrastructure in the developing countries of Asia", Regulation initiative discussion paper series number 20; Dixit, S., Dubash, N. K., Maurer, C., & Nakhoda, S., (2007), "Benchmarking best practice & promoting accountability in the electricity sector;" Ayres, I. & Braithwaite, J., (1992), Responsive regulation: transcending the deregulation debate, Oxford University Press.

Graduate Insolvency Programme: The IBBI led an industry initiative to conceptualise GIP to take the insolvency profession to the next level. It is a one of its kind programme in the world to produce top-quality IPs who can deliver world-class services. It provides an avenue for young professionals, having talent but lacking experience, to take up the insolvency profession. It is a 24-month programme consisting of an intensive residential classroom component of 12 months and a hands-on internship component at the cutting edge of the practice for 12 months. The Indian Institute of Corporate Affairs commenced GIP in the academic year 2019-20. The National Law Institute University, Bhopal is scheduled to commence GIP from academic year 2022-23.

Fit and Proper Person: The credibility of a profession depends upon credibility of its members. A distinct requirement of the insolvency profession (also valuation profession), as compared to most other professions, is that it lets only those individuals in, who the profession would feel proud of, and prevents entry of those individuals, whose antecedents are doubtful or questionable. It allows entry of only those individuals who are 'fit and proper' and requires them to remain fit and proper as a condition of continued registration. For determining whether a person is 'fit and proper' or not, the IBBI considers various aspects, including but not limited to (a) integrity, reputation, and character, (b) absence of convictions and restraint orders, and (c) competence and financial solvency.

Valuation Profession: A key objective of the Code is maximisation of value of assets of the persons in distress. A critical element towards achieving this objective is transparent and credible determination of value of the assets to facilitate comparison and informed decision making. Valuations serve as reference for evaluation of choices, including liquidation, and selection of the choice that decides the fate of the firm and consequently the stakeholders. If valuation is not right, a viable firm could be liquidated and an unviable firm could be rehabilitated, which are disastrous for the economy. As an interim arrangement, a framework was created under the Companies Act, 2013 enabling IBBI to groom valuation profession. To take the profession to the next level, a Committee of Experts has recommended establishment of National Institute of Valuers to steer regulation and development of valuation profession.

Insolvency Professional Entities

As an IP has numerous responsibilities to discharge within a stipulated period, it may not be possible for him to do everything on his own, particularly in case of large and complicated processes. For example, it may not be possible for him to take inventory of every resource of the CD when he takes over as IRP. While he must take over the CD, he may need assistance in taking inventory. Therefore, the regulations envisage IPEs to provide support services to an IP who are its partners or directors. The law also empowers him to engage the services of professionals to assist him in matters which he may not have expertise in.

Information Utility

The resolution process is information intensive. The Code provides for a competitive industry of interoperable IUs to store financial information that helps to establish defaults as well as verify claims expeditiously and thereby facilitates early commencement and time bound completion of processes under the Code.

Insolvency Professional Agencies and Registered Valuer Organisations

IPAs and RVOs are frontline regulators responsible for developing and regulating the insolvency profession and valuation profession, respectively. They compete among themselves to groom their members for the tasks under the Code. The IBBI meets MDs / CEOs of IPAs, RVOs and the IU on 7th of every month to discuss the issues arising from their governance and operations, practices of insolvency and valuation professionals, and insolvency and liquidation proceedings to arrive at collective solutions and develop best practices to deal with emerging problems. The IBBI, IPAs, RVOs, academic institutions and the market offer a variety of capacity-building programmes for professionals as well as other stakeholders like FCs.

Thus, the IBBI has been servicing the following service providers as on March 31, 2021:

Sl. No.	Service Provider	Number as on March 31		
		2019	2020	2021
1	Insolvency Professionals	2456	3004	3504
2	Insolvency Professional Entities	48	69	83
3	Insolvency Professional Agencies	03	03	03
4	Information Utilities	01	01	01
5	Registered Valuer Organisations	11	12	16
6	Registered Valuers	1186	3030	3966

The IBBI conducts the following Examinations online as on March 31, 2021:

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

The IBBI has been organising basic workshops for newly registered IPs with a view to build and augment their existing capacity. With a view to further enhance the expertise of IPs in niche areas, IBBI had initiated a series of Advanced Workshops for such IPs who have already undergone the Basic IP Workshop. It is also encouraging and assisting IPAs to

organise similar workshops and webinars. Table 70 presents details of capacity building programmes organised by IBBI.

Table 70: Capacity Building Programmes for IPs

(Number)

Year / Quarter	Number of			
	Basic workshops	Advanced workshops	Other workshops	Webinars / roundtables
2016-17	01	-	-	04
2017-18	06	-	1	04
2018-19	07	-	-	14
2019-20	04	06	09	20
2020-21	01	02	-	47
Total	19	08	10	89

The IBBI registers IPs, IPAs, IUs, RVs, and RVOs on receipt of an application for the same. It has a well-established process for processing the applications. Only 'fit and proper' persons meeting the eligibility requirements are registered by the Board. Where the Board forms a *prima facie* view that an application for registration is to be rejected, it conveys the said view along with the reason(s) for the same. The applicant is given an opportunity to explain as to how he is eligible to be registered. A WTM hears him and either grants registration or rejects the application for registration. He rejects the application only by a way of a reasoned order. The IBBI issued various orders during 2020-21 given as in Table 71.

Table 71: Various orders issued by IBBI during 2020-21

Sl. No.	Type of Order	Authority	No. of Orders Issued in		
			2018-19	2019-20	2020-21
1	Rejecting applications for registration as IP	Board	03	04	NIL
2	Rejecting applications for registration as RV	Board	01	03	6
3	Disposing of SCNs	Disciplinary Committee	11	07	48
4	Disposing of appeals against the orders of CPIO	First Appellate Authority	29	19	39

C. Engagement with Stakeholders

The stakeholders in the insolvency and bankruptcy ecosystem are diverse. They include all existing and potential creditors and debtors; professionals and institutions that are integral parts of the process of insolvency and bankruptcy resolution; foreign creditors and foreign firms that have business relations with domestic debtors; the judges and courts, as well as the departments of government and the Parliament through which the law is implemented. Each of these stakeholders have specific requirements. Effective communication with stakeholders to secure support for various regulatory interventions and quality work is an essential element of

engaging with stakeholders on a regular basis. By consulting all affected parties, stakeholder engagement enhances the inclusiveness of policies and supports the development of a sense of ownership of regulations. This in turn strengthens trust in government, social cohesion and compliance with regulations.

Trusting relationships with stakeholders is the foundation of a credible organisation. To this end, the IBBI is engaging with each of its stakeholders in multiple ways and responding to emerging situations with transparency, consistency, and objectivity. Considering that the Code is a paradigm shift in law from the erstwhile insolvency and bankruptcy regime, it is important to engage with the stakeholders to make them aware of the provisions of the new regime and manner of using the same in case of need, while seeking their inputs for strengthening and streamlining the processes under the Code.

The IBBI has evolved a consultative process to make regulations as mentioned in point A above. The process generally starts with a WG which considers the issue and explores alternate options for resolving the same. These issues, along with the inputs from the WG, are also deliberated often by the concerned AC. With the approval of the GB, the IBBI puts out a discussion paper with draft regulations in public domain seeking comments thereon. It allows at least twenty-one days for public to submit their comments. It holds roundtables to discuss draft regulations with the stakeholders to understand their perspective. The regulation making process culminates with the GB of IBBI approving regulations and the final notification by IBBI. However, if the GB decides to approve regulations in a form substantially different from the proposed regulations, it repeats the entire process. In case of emergency, regulations may be made without complying with the aforesaid process. This process enables the IBBI to factor in ground reality, secure ownership of regulations, impart democratic legitimacy and make regulations robust and precise, relevant to the time and for the purpose.

The IBBI (Mechanism for Issuing Regulations) Regulations, 2018 require the IBBI to upload the following material on its website seeking comments from the public: (a) draft of proposed regulations; (b) the specific provision of the Code under which the Board proposes regulations; (c) a statement of the problem that the proposed regulations seek to address, (d) an economic analysis of the proposed regulations; (e) a statement carrying norms advocated by international standard setting agencies and the international best practices, if any, relevant to the proposed regulations; (f) the manner of implementation of the proposed regulations, and, (g) the manner, process and timelines for receiving comments from the public. The preparation of these materials requires certain skill set which is not readily available inside the organisation. No training programme to build capacity of the IBBI in this area is available in the country. The IBBI is gradually learning preparation of these materials, and, therefore, it would take some time to have the right quality and coverage of these materials.

OECD's 'Best Practice Principles for Stakeholder Engagement in Regulatory Policy' suggest *inter-alia*, certain features that regulators should adopt in their engagements with stakeholders to make the process of stakeholder engagement more effective:

- (a) Set clear objectives for stakeholder engagement
- (b) Transparency, predictability and uniformity in the engagement process.
- (c) Accessible, proactive and inclusive engagement
- (d) Provide information to stakeholders to build understanding of issues and keep them informed

(a) Set clear objectives for stakeholder engagement

The IBBI engages with stakeholders with defined objectives and purposes. The overall objective is to improve the operation and outcomes of the regulatory framework. To achieve this, it engages with stakeholders for the following purposes.

(a) *Formulating policy*: Public comments are invited and given due consideration before issuing any regulation, guidelines, etc. by the Board. The Board has also adopted the policy of periodical review of all regulations in the light of feedback from stakeholders.

(b) *Promoting awareness*: The Code is a modern economic legislation. Its effective implementation requires that all stakeholders understand the same in its letter and spirit. Awareness initiatives also empower stakeholders by making them aware of their rights and responsibilities under the Code.

(c) *Building capacity*: The Board has proactively engaged with professional bodies and academia to build capacity in terms of human resources and also to promote research in areas of insolvency and bankruptcy.

(d) *Receiving feedback*: Being a deep structural reform affecting a wide range of stakeholders, the Code was expected to have some teething troubles and rightly so. However, engagement with stakeholders ensured that the Board receives timely feedback from stakeholders, enabling it to make timely course corrections.

(e) *Facilitating implementation*: The effective implementation of Code requires support of various stakeholders. Once a CD is admitted for CIRP, its erstwhile management is replaced by an IP. Then the IP runs the CD as a going concern during CIRP. Engagement with government agencies like local civil authorities, tax authorities, etc. eases the hurdles faced by IPs in this process of takeover and running of CD as going concern.

(f) *Attracting investments*: One of the objectives of the Code is to maximise the value of assets of the CD. The Board by engaging with industry, international organisations, investors, etc. has promoted investment in stressed assets in the country, in turn promoting the objectives of the Code.

(b) Transparency, predictability and uniformity in the engagement process

Over the last four years, the IBBI has laid down the standard

engagement process, instituting various forums through which it engages with stakeholders. These forums are promoted by the IBBI on its website for larger dissemination to stakeholders and are generally open for all stakeholders to join. The format of stakeholder engagement has become uniform over the years. The IBBI plans all its stakeholder engagements in advance and for this purpose prepares a calendar of events in the beginning of each year. The IBBI is presently using the following forums for stakeholder engagement:

(a) *Roundtables*: The IBBI usually holds roundtables to discuss issues, receive comments and feedback on proposals and create awareness among the stakeholders, at large, about new developments. The feedback obtained in these roundtables are documented and analysed internally while framing the regulations. The interactions help to understand the difficulties that various stakeholders are facing in the implementation of the Code as well as to educate market participants about the Code.

(b) *Awareness Programmes*: The IBBI itself and, in association with IPAs, RVOs, trade associations, banks, universities, Government Departments and other stakeholders, organises awareness programmes to make stakeholders familiar with the Code, regulatory framework and ecosystem, and the manner of using them.

(c) *Participation in Events*: Chairperson, WTMs and senior officers of IBBI participate in different capacities (faculty, panellist, speaker, guest of honour, chief guest, etc.) in a large number of events (seminars, conferences, roundtables, study circles, workshops, etc.) on insolvency and bankruptcy and allied subjects, organised by a host of institutions across the country and abroad.

(d) *Advisory Committees, Technical Committees and Working Groups*: There are three standing ACs constituted in accordance with the AC Regulations. They examine various issues and make recommendations thereon. The Regulations enable IBBI to lay down technical standards, through guidelines, for the performance of core services and other services by IUs, based on the recommendations of a Technical Committee. Accordingly, the IBBI constituted a standing Technical Committee.

(e) *Roadshows and Meetings with Investors*: IBBI participates in roadshows overseas and holds one-on-one meetings with global investors.

(f) *Monthly Meetings with IPAs & IU*: The IBBI meets MDs/CEOs of IPAs and of the IU on 7th of every month to discuss the issues arising from the insolvency profession, processes under the Code and governance of IPAs/IU. These meetings help the IBBI and IPAs to have a shared vision and jointly resolve issues.

(g) *Monthly Meetings with RVOs*: The IBBI meets MDs/CEOs of RVOs on 7th of every month to discuss the issues arising from the valuation profession, valuations under the Code and management of RVOs.

(h) *Trainings and Workshops*: IBBI organises workshops (advanced and basic) and training sessions for IPs and FCs.

(c) Accessible, proactive and inclusive engagement

To ensure that engagement forum remain accessible to all stakeholders throughout the year, the IBBI engages with them electronically. Electronic engagement allows receipt of feedback or suggestions on real-time basis as the market dynamics change and ensures that each stakeholder gets the opportunity to contribute his bit to the regulation making process, thereby promoting inclusivity. The following electronic means are utilised for achieving this:

(a) *Comments on Proposed Regulations:* The IBBI obtains comments of the public, through an electronic platform on its website, on proposed regulations or proposals in discussion papers, regulation and sub-regulation-wise. It has received a total of 1470 comments in 2020-21 from stakeholders.

(b) *Suggestions on the Extant Regulations:* The IBBI has a standing arrangement (electronic platform on its website) to receive suggestions from public, including the stakeholders and the regulated, on the extant regulations on a continuous basis. These comments/suggestions are processed together and following the due process, regulations are further modified to the extent considered necessary. The IBBI received a total of 734 comments under this route in 2020-21.

(c) *General Feedback:* The IBBI receives general feedback on various provisions of the Code, rules and regulations through a dedicated email (feedback@ibbi.gov.in). It has received 457 feedback emails in 2020-21. The comments, suggestions and feedback received through routes A, B and C above are presented in Table 72.

Table 72: Public Comments received in 2020-21

Stakeholder	Number			
	A (Comments)	B(Suggestions)	C (Feedback)	Total
Academician	0	0		0
Academics	21	86		107
Corporate Debtor	17	23		40
Creditor to a Corporate Debtor	35	62		97
Industry Association	0	0		0
Information Utility	0	0		0
Insolvency Professional	1072	223		1295
Insolvency Professional Agency	34	8		42
Insolvency Professional Entity	62	37		99
Investor	5	38		43
Investors	0	5		5
Lawyer/Law firms	0	0		0
Others	208	224		432
Personal Guarantor to a Corporate Debtor	3	5		8
Proprietorship firms	10	10		20
Partnership firms	3	13		16
Service User group e.g. Financial Institution, Government Authority etc.	0	0		0
Valuer	0	0		0
Valuer Association	0	0		0
Total	1470	734	457	2661

(d) Provide information to stakeholders to build understanding of issues and keep them informed

The IBBI provides a host of information to its stakeholders at regular intervals of time to keep them abreast with emerging issues and challenges in the insolvency and bankruptcy space. The IBBI has employed the following means to keep its stakeholders informed and updated:

(a) *Website:* The IBBI website is a treasure of information. Details of service providers and processes are available.

Further, all important legal and policy developments are updated on the website on a daily basis. The orders of NCLT, NCLAT, HCs, SC and other authorities are available. At the end of March, 2021, the website had 42,648 subscribers, who are receiving daily updates on their emails.

(b) *Publications:* The IBBI has been publishing a quarterly newsletter since its inception. A soft copy of the same is hosted on the website of IBBI for larger dissemination. The newsletters encapsulate the legal and regulatory developments; status of all the processes and service providers under the Code;

capacity building initiatives and advocacy and awareness generation activities undertaken by IBBI. IBBI also publishes an annual publication, other occasional publications, annual reports and study material for three asset classes of valuation.

(c) *Media Interaction:* The Chairperson, IBBI interacts with print and electronic media to inform the public about important policy, regulatory and judicial developments in the area of insolvency and bankruptcy. He also contributes articles in print media on topics of relevance to this field.

(d) *Engagements with Academia:* The IBBI engages with students and academic community in accordance with (a) the IBBI Essay Competition Guidelines, 2017, (b) The IBBI Internship Guidelines 2017, and (c) the IBBI Research Initiative, 2019. It also organises moots in association with law schools. Details of these are presented in Section C.3 of this Report.

(e) *Engagement with Employees:* To keep its employees updated on developments in the area of insolvency and bankruptcy and enhance their skills, the IBBI nominates its officers to various training programmes. To gain international perspective, a few officers are also sent on study tours abroad. Besides, officers were nominated to participate in several seminars/conferences organised by stakeholders. The IBBI has been inviting distinguished thought leaders to share their thoughts in emerging areas.

The Board firmly views engagement with stakeholders as a two-way process, including exchange of information, research, analysis and opinions between the Board and stakeholder. The Board recognises that stakeholder engagement is a necessary but not the only sufficient condition for success of the Code. Therefore, all legislative, executive, and judicial functions of the Board have been effectively integrated with stakeholder engagement policy and, thus engagement with stakeholders acts both as input and output of the democratically functioning system of the Board.

D. Regulatory and Institutional Performance: A self-assessment

Every new organisation takes incremental steps to build itself and be recognised by its stakeholders. The IBBI has also gone through this process of maturing, starting with no staff, no premises, and no resources / facilities in October, 2016, to six officers in two rooms in the premises of the Institute of Cost Accountants of India in early 2017, to more than 35 employees, more than a dozen research associates and two office premises today. The IBBI office is a modern workplace with fully Information Technology (IT) enabled e-office system. The two professions that the IBBI was instrumental in building, viz., the IPs and the RVs are now a strong army of about 7400 professionals, offering services across the country. The insolvency ecosystem also comprises of 3 IPAs, 83 IPEs, one IU, and 16 RVOs.

The IBBI has made significant strides since its inception in 2016, guided by the vision to be a dynamic and proactive regulator that provides a responsive and conducive regulatory framework to facilitate improved and equitable outcomes for

persons in financial distress. Four years ago, when it began its work to set up a fundamentally different and a completely new regulatory regime, its strategy of being a forward looking, responsive and engaging regulator, aided it immensely in delivering its mandate. The IBBI established the ecosystem and regulatory framework in two months of establishment to enable commencement of corporate insolvency proceedings on December 1, 2016.

Being a unique regulator that regulates the insolvency profession as well as insolvency processes, the IBBI has promptly and effectively addressed issues that have arisen due to the dynamic nature of the market economy and has been proactively engaging with its stakeholders in building various elements of the ecosystem. For example, CIRP of Jaypee Infra Limited commenced on August 9, 2017. Public announcement was made on August 10, 2017, inviting claims by August 24, 2017. It was then realised that there was ambiguity in the status of home buyers in CIRP. As an immediate measure, IBBI provided a special CIRP Form by amending the CIRP Regulations on August 16, 2017, which enabled home buyers to submit their claims. In course of time, the home buyers were explicitly recognised as FCs by an amendment to the Code on June 6, 2018. Similarly, the very first resolution plan (in CIRP of Synergy Dooray) approved on August 2, 2017, threw up some concerns as the related parties retained the control, while creditors took huge haircut. As an immediate measure to address the concern, IBBI amended the CIRP Regulations on November 7, 2017 to require disclosure of various details about the RAs and their connected persons to enable the CoC to assess the credibility of such applicants while approving a resolution plan. Soon thereafter, the Code was amended on November 23, 2017 to insert section 29A, which prohibited undesirable persons to submit resolution plans in a CIRP.

A good starting point to objectively track where IBBI is as an organisation, would be going back to the recommendations of the WG constituted on building the IBBI to take stock of where it is in terms of these recommendations. The Report noted that '*obtaining a high-performance organisation requires sound design decisions on organisation design, processes, and governance arrangements.*' Accordingly, it recommended an '*internally consistent strategy that views these three pillars as an interlocking whole, which would then induce high performance.*' Based on the recommendations of the Report, IBBI's progress as an institution can be viewed against three pillars – Organisation, Processes and Governance Framework. **Box 5** presents IBBI's self-assessment in terms of its role as a regulator and in terms of IBBI as an institution.

Box 5: IBBI: A self-assessment

An assessment of where IBBI is, five years after it was established under the Code, can be viewed from two points - IBBI in terms of its regulatory role and IBBI as an institution.

IBBI's regulatory role

In terms of its regulatory role, the IBBI has been performing various duties and functions as laid down under section 196 of the Code, broadly categorised under three heads:

- **Quasi-legislative** – The IBBI has made seventeen regulations till March 31, 2021 and more than 50 amendment regulations.
- **Executive** – The IBBI is performing executive functions of: (a) Registration and regulation of service providers for the insolvency processes and measures for professional development and expertise through education, examination, training, and continuous professional education; (b) conduct of examinations online for registration of IPs and RVs. IBBI has also facilitated development of study material for these examinations, which are available for free download; (c) organising capacity building, advocacy and awareness programmes for stakeholders; (d) monitoring of ongoing processes and conduct of service providers under the Code; (e) complaint and grievance redressal; and (f) undertaking research in the area of insolvency, coming out with research publications and disseminating data pertaining to insolvency processes and service providers.
- **Quasi-judicial** – (a) The DC of IBBI has been disposing of SCNs issued to service providers and taking appropriate disciplinary actions such as imposition of monetary penalty, or suspension or cancellation of registration, as may be warranted; (b) The IBBI is appearing as respondent and petitioner/applicant/complainant in several matters before various courts and tribunals.

IBBI as an institution

Based on the recommendations of the Report of the WG constituted on building the IBBI, the IBBI's progress as an institution can be viewed against three pillars – Organisation, Processes and Governance Framework.

First pillar: The Organisation: The report laid down certain design principles on which the IBBI should be organised. These are listed below along with the way these principles have been adopted by IBBI.

Principle	Strengthen internal and external review mechanisms
	<ul style="list-style-type: none"> • IBBI sets yearly targets through its Strategic Action Plans (SAPs). SAPs for 2017-18, 2018-19, 2019-20 and 2020-21 were prepared. Status of targets set are reviewed monthly by all divisions in their monthly MIS. • Internal audits are undertaken by external auditors. These audits are reviewed by the Audit Committee periodically. Observations of the Audit Committee are duly reported to the GB. • The accounts of IBBI are audited by C&AG. • IBBI prepares and lays its Annual Report and Annual Accounts in the Parliament and thereafter in the public domain on its website. • The GB of IBBI undertakes a self-evaluation annually, the results of which, including recommendations to improve performance, are published in the Annual Report.
Principle	Transparency in the functioning of the organisation
	<ul style="list-style-type: none"> • Robust standard of documentation is maintained as regards internal functioning of the Board and the internal decisions taken. The office has shifted to e-office system almost completely. • The agenda notes considered by the GB in its meetings and decisions taken therein are published on the IBBI website. • Reports of various WGs, orders of DC, orders of the FAA under RTI Act, 2005 etc., are published on the website. • SOPs have been laid down by divisions for internal work and the same are easily accessible to all employees in e-office.
Principle	Transparency in interfaces
	<ul style="list-style-type: none"> • IBBI is engaging extensively and proactively with the stakeholders in various formats, namely, conferences, seminars, roundtables, workshops, and webinars. • IBBI organises workshops to build capacity of the IPs, and other stakeholders. • The Board has notified regulations to deal with grievances and complaints of stakeholders. These are being dealt with in an objective, transparent and timely manner. • IBBI has a well-established process for processing the applications for registration of service providers. • The Board conveys its view along with the reason(s) for rejecting an application for registration. The applicant is given an opportunity to explain as to how he is eligible to be registered. An application is rejected only with a reasoned order. • The Board issues SCN to a service provider found to have violated the provisions of the Code/Regulations detailing the specific conduct of the accused and the contravention of the specific provision of law based on the inspection report or otherwise material available on record. After following the principles of natural justice, a DC disposes of the SCN through reasoned order. • IBBI shares the outcomes of processes under the Code through its website and quarterly newsletter. Other publications of the

Board are also placed on the website for use by stakeholders.

- IBBI meets MDs / CEOs of IPAs, RVOs and IU on 7th of every month to discuss the issues arising from their governance and operations.

Principle	Responsiveness
	<ul style="list-style-type: none"> • IBBI has a standing arrangement to enable any stakeholder to seek any new regulation or any change in any of the existing regulations, throughout the year. • Discussion papers along with draft of the proposed regulation are put in public domain seeking comments thereon. • All comments and suggestions received from stakeholders along with the views of the operating division of the IBBI are placed before the GB of IBBI for a decision. • The agenda notes of the GB are also placed on the website for stakeholders to see the details of consultation process carried out by IBBI and the basis for the final decision. • IBBI itself or in collaboration with the industry/ institutes/organisations, organises roundtables in various cities before finalizing the regulations. • Wherever any clarifications on the extant legal position is required, the Board has been providing the same through circulars.

Principle	Modern office
	<ul style="list-style-type: none"> • The IBBI has a modern office space located in two premises in New Delhi – Mayur Bhawan and Jeevan Vihar building. • IBBI has laid emphasis on using IT for delivery of its services since its inception. The key initiatives taken by the IBBI in this regard are as under: <ul style="list-style-type: none"> • e-Office • e-Meetings • Website • Online Examinations for service providers • Online registration of service providers • Online filing of CIRP forms • Online filing of annual fee • Online processing of AFAs • Public consultation on online electronic platform • Live database of IPs made available to the AA • Applications and appeals under the RTI Act, 2005 processed online. • Complaints received in CPGRAMS online. • Use of Government e-Marketplace for transparent and accountable procurement. • Recruitment notifications and their results are hosted on the website of IBBI. • All the tenders floated by IBBI (including any amendments) are hosted on website of IBBI and Central Public Procurement Portal. • Details of workshops/seminars/conferences as hosted by IBBI for its stakeholders is hosted on the website of IBBI.

Second Pillar: The Processes: The report suggested certain design principles on which the processes should be laid down in the organisation. It recommended laying down “formal processes” so that it behaves in a predictable manner in the eyes of external stakeholders, undeterred by change of hands or changes in the officers at the helm of affairs in the organisation.

Principle	A workflow system where everything happens in a computerised system. No paper files must be used, or physical signatures.
	<ul style="list-style-type: none"> • Work is being carried pre-dominantly through emails and e-Office. • Paper files being used for limited purposes. • Dynamic web portal using open-source software having CMS. • Digital Signatures Certificates and e-Sign integration. • Payment Gateways integration. • SMS and Email Integration. • Online Examinations for service providers • Online registration of service providers • Online processing of AFAs • Online filing of annual fee

- Online CIRP forms
- Integration of existing IP registration module and database with website.
- Integration of existing Valuers Registration Module and database with the website.
- Public consultation on online electronic platform
- RTI handling, CPGRAMS complaints, e-Marketplace online
- Disciplinary status of IPs.
- Monitoring of IP by IPAs through the portal

Principle

All disclosures must be made through a website, which must be as much of a real-time data feed about what is going on inside the agency as is possible.

The IBBI website provides a host of information on real time basis. Details of the following are provided:

- About IBBI – GB, ACs, Technical Committees, officers of IBBI
- Service providers
- Legal Framework – Act, regulations, guidelines, circulars, facilitations, other authorities
- Examinations
- Orders passed courts and tribunals
- Orders passed by IBBI and DC of IBBI
- Publications – newsletter, annual report, annual accounts, information brochures, annual publications, etc.
- Public comments portal
- IP Portal
- Complaints and Grievances portal
- RTI
- FAQs on processes and service providers
- Media – press releases, media coverage
- Resources – articles, interviews, reports
- Events
- Recruitment notifications
- Submission of various forms by service providers

Principle

Every process of the agency should be enabled through a seamless web experience.

Apart from the processes being conducted online, as detailed above, implementation of a comprehensive IT system is currently work-in-progress. Major work to be done under this is as follows:

- (a) Intimation of application for individual insolvency.
- (b) Comprehensive display of processes for stakeholders.
- (c) Online recognition of IPEs.
- (d) Change of IPA.
- (e) Renewal fee by IPs.
- (f) Change of profile (Email, address, phone number etc. by IPs).
- (g) RVE registration.
- (h) Inspection and Investigation module.
- (i) Updation of details, temporary surrender and disciplinary action/monitoring and CPE credit related modules for RV Process.
- (j) Monitoring forms and module for Liquidation & Voluntary liquidation, Generation of MIS etc.
- (k) Generation of MIS based on IP/CD/Time taken/NCLT, stage of process.
- (l) Data dissemination about processes and formulation of MIS. Customised MIS will be displayed live on the website.
- (m) Compliance of GIGW guidelines (Bi-lingual website etc.).

Principle

The legislative function must internally use high quality software systems.

Various ways of engaging with stakeholders before implementing any legislative change in the regulations, are in place, such as seeking inputs online or through email etc. IBBI has an adequate consultative process of ACs, WG and expert committees before regulations are finalised by the GB.

Principle

The statistical system functions of a regulator should be created using concepts of transparency and authenticity. There should be clearly written regulations that force private persons to do e-filing of all required data, which goes into the core IT system of the regulator.

Currently following e-filings are being done by stakeholders:

- CPE Module wherein IP has an option to submit his CPE credit.
- IP Fee module (Form E).
- IPE Fee module (Form G).
- Expression of Interest Module for IRP, RP, Liquidator and Bankruptcy trustee.
- Role based login facility for AA
- Issue and renewal and surrender of AFA.
- Intimation of application forms for CIRP.
- Assignment module.
- Reporting through IP1 and CIRP forms.
- Claims register Module.
- Public announcements and Invitation of Resolution Plans.

Principle

There should be a single point source of all communication with stakeholders. As much as it possible, this should be enabled through the website of the regulatory agency.

Website is being used extensively to communicate with stakeholders.

Principle

All data release should be comprehensively done through an API to the public. This can be done using the example of data.gov open government principles.

- Data releases are being done through IBBI publications, namely quarterly newsletter, and annual report.
- A new IT portal is envisaged for data dissemination about processes and formulation of MIS.

Third pillar: Governance framework: The report draws on the recommendations of the FSLRC on design of the structure of the board of any financial sector regulator. The design principle suggested are as follows.

Principle**Separation of powers**

The quasi-legislative, executive and quasi-judicial functions of IBBI have been separated into three Wings, enumerated as under, to ensure separation of powers and induce superior performance:

- i. Research and Regulation Wing (RRW) to perform quasi-legislative functions,
- ii. Registration and Monitoring Wing (RMW) to perform executive functions, and
- iii. Administrative Law Wing (ALW) to perform quasi-judicial functions.

These three wings are headed by a WTM each to ensure broad separation of powers.

Principle**Delegation of powers**

The following have aided the Board in delegating powers:

Delegation of Powers: The Code enables the Board to delegate to any member or officer of the Board, its powers, and functions, except the power to make regulations. The Delegation Order, issued on January 24, 2017 and further amended on April 25, 2018 and July 2, 2020, specifies the level of officer who has delegated authority to dispose of a matter. The Delegation Order is being followed across all divisions in IBBI enabling quick decision making and faster disposal of matters.

Functional specialisation: Within each Wing of the organisation, viz., RRW, RMW and ALW, there are functional units or divisions that specialise in the tasks assigned to them, guided by the Delegation of Powers Order. This functional specialisation has also facilitated development of human capital over time.

Advisory Committees: The Board is assisted by following three ACs that serve as a sounding board for emerging ideas and to lend professional wisdom and market knowledge:

- i. AC on Service Providers,
- ii. AC on Corporate Insolvency Resolution and Liquidation, and
- iii. AC on Individual Insolvency and Bankruptcy.

Executive Committees: The following committees aid the Board in delivering some of its executive functions:

- i. *Disciplinary Committee:* The DC is tasked with consideration of inspection or investigation reports and disposal of SCNs.
- ii. *Audit Committee:* The Audit Committee assists the GB in areas of financial reporting, internal control systems, risk management systems and the audit functions.

The IBBI has come a long way, both as a regulator and as an institution, in a short span of four years. It has put in place majority of the organisational elements that were envisaged by the WG. Though an attempt has been made to undertake the self-assessment as objectively as possible by listing out actuals delivered as against what was envisaged by the WG, yet this has limitations of being a subjective, self-analysis. Nevertheless, as a budding regulator, it is fully recognised that there is ample scope for improvement and more milestones to cross in the years to come.

Conclusion

The Board envisions itself as a dynamic and proactive regulator aiming to facilitate improved and equitable financial outcomes for businesses and individuals in distress by providing a responsive regulatory framework within the provisions laid down in the Code. In pursuing this goal, the IBBI pursues the objectives of the Code objectively and transparently; takes timely decisions based on emerging market needs proactively and communicates with the stakeholders in a systematic manner.

With ever changing regulatory environment and emerging technologies, it is imperative that the Board recalibrates its position from time-to-time to keep itself relevant, dynamic, and responsive as a regulator. Being conscious of this imperative, IBBI is constantly facilitating processes under the Code with required flexibility; strengthening the service providers in the insolvency ecosystem, including through IT initiatives; fostering confidence amongst its stakeholders through constant engagement; building knowledge in the area of insolvency and disseminating information about the outcomes of the Code. Further, given the rising inter-dependencies between regulators due to overlapping regulatory spaces to a certain extent, especially in the financial sector, going forward, coordinated regulatory efforts amongst all the regulators will bode well for magnifying efficient and effective regulatory outcomes and performance of regulators in their respective spaces. The Code is already being facilitated by regulators such as RBI, SEBI and CCI who have tweaked their regulations from time to time to facilitate the objectives of the Code as presented in Section B of this report. To harness the synergies of regulatory coordination further, **Box 6** discusses the ways and means to foster inter-regulatory coordination.

Box 6: Ways and Means to foster regulatory coordination

Need for regulatory coordination

The sprinkling of a number of regulators for markets, utilities and professionals is bound to create some regulatory overlaps. Breaking the silos and fostering convergence of regulatory oversights not only minimises the transaction costs but more importantly it promotes the systemic efficacy in the regulatory space. Embracing convergence aided with technology has potential to reap rich dividends through seamless flow of ideas without any strong disruption.

Regulators should have “role clarity” to avoid jurisdiction overlaps or manage them through coordinated efforts. Role clarity, in terms of its objectives, functions and scope, is an imperative for effectiveness of a regulator. Added to this is the need for the regulators to have a legal mandate, well defined policy role and explicit power to cooperate transparently with other regulators as may be required. The OECD, in its Principles for Governance of Regulators, 2012, identifies “role clarity” as first of the seven principles laid out by it, noting that “An effective regulator must have clear objectives, with clear and linked functions and the mechanisms to coordinate with other relevant bodies to achieve the desired regulatory outcome”.

There is need to anticipate such overlaps and avoid them at the legislative drafting stage itself to ensure effectiveness and efficiency of a regulatory system. It is often the same entity, which is being regulated by different regulators, but each may do so to achieve different policy objectives and with duplication of regulations at times. To reduce regulatory burden and improve compliance, coordination of activities amongst the regulators becomes necessary. Such coordination efforts need to be backed by clear legal authority for coordination to remove uncertainty about the legality of any arrangements. For some regulators, such need for coordination, within a jurisdiction may arise at the different layers of Governments. Some may also require coordination across international jurisdictions.

Manner of coordination

Formal coordination mechanisms in the interest of clarifying roles and responsibilities of various regulatory bodies may take many forms, such as mutual cooperation agreements detailing respective roles and cooperation with regulators within the country or other jurisdictions; electronic access to information held by other regulators; joint committees to discuss and sort out inter-regulatory matters and legislations themselves allowing for regulators to have joint regulation or co-regulation etc. Greater the capacity of regulators to identify and deal with such matters through forging effective working relationship, the greater the effectiveness of such arrangements.

Indian context

In the Indian context, though coordination mechanism exists, however, whether or not such mechanism fosters intended outcome is a matter of examination. In the year 2000, a Forum of Indian Regulators (FOIR) was established, to serve as a common platform to discuss emerging issues in regulatory procedures and practices, to evolve common strategies to meet the challenges before regulators in India and to share information and experiences. Membership of FOIR is open to any person who is or has been a member or a chairman of a Regulatory Commission or Authority established by law or any other organisation connected with public utilities as well as an association of consumers. Presently, 30 Electricity Regulatory Commissions, Airports Economic Regulatory Authority of India, Competition Commission of India, IBBI, Petroleum & Natural Gas Regulatory Board, Tariff Authority for Major Ports, Telecom Regulatory Authority of India and Warehousing Development & Regulatory Authority are members of FOIR.

Within the financial sector, a Financial Stability and Development Council (FSDC) was set up as a non-statutory apex council under the Ministry of Finance in December, 2010, with a view to strengthening and institutionalising the mechanism for maintaining financial stability, enhancing inter-regulatory coordination and promoting financial sector development. It is headed by the Hon'ble Finance Minister and its members include the heads of financial sector regulators (RBI, SEBI, PFRDA, IRDA, IBBI, IFSCA & FMC), Finance Secretary and/or Secretary, Department of Economic Affairs, Secretary, Department of Financial Services, and Chief Economic Adviser. Without prejudice to the autonomy of regulators, the Council monitors macro prudential supervision of the economy, including functioning of large financial conglomerates, and addresses inter-regulatory coordination and financial sector development issues. It also focuses on financial literacy and financial inclusion. It has a Sub-Committee under the chairmanship of Governor, RBI. It meets more often than the full Council. All the members of the FSDC are also the members of the Sub-committee. Additionally, all four Deputy Governors of the RBI and Additional Secretary, DEA, in charge of FSDC, are also members of the Sub-Committee.

The mechanisms in place have already demonstrated its virtues, nevertheless, design principles require to break the perceived compartments being created by regulators individually in terms of their size, area of influence and specialisation. While creating multiple regulators to foster good governance in the specific niche areas, the Government has also facilitated robust mechanisms to address the issue of better coordination. Although, FSDC is a non-statutory body, yet given the apex level representation, and rigorous follow-up mechanism put in place for effective monitoring on the decisions taken, potentially it is in position to extend effective coordination.

Nevertheless, for issues exclusively requiring strategic level coordination between two regulators on continuous basis, instead of overarching horizontal mechanism or top-down approach, bilateral arrangements also have its own merits. The efficiency of such bilateral arrangements hinges upon the commitment to promote pareto optimal solutions irrespective of bargaining strength of the actors involved.



PERFORMANCE OF THE GOVERNING BOARD

The IBBI is a body corporate having perpetual succession. It holds and disposes of property, enters into contracts and sues and is sued in its own name. The GB of the IBBI provides it with strategic direction and controls and monitors the management. The Code read with the IBBI (Procedure for Governing Board Meetings) Regulations, 2017 (Board Regulations) specifies the business of the GB and the manner of transacting the said business. The business of the GB includes considering and approving regulations, annual accounts, annual budget, annual report, delegation of powers, etc.

The IBBI has quasi-legislative, executive, and quasi-judicial responsibilities. Quasi-legislative functions are the exclusive domain of the GB. Quasi-judicial functions are the exclusive domain of the DC comprising WTM(s). The executive functions are delivered by various functionaries of the Board in accordance with the IBBI (Delegation of Powers and Functions) Order, 2017. The Board Regulations specify a Charter of Conduct for members of the Board. The Charter aims to ensure that the GB conducts in a manner that does not compromise its ability to accomplish its mandate or undermine public confidence in the ability of member(s) to discharge his/her responsibilities.

Governing Board meetings

The GB had five meetings during 2020-21. The details of attendance of the Board members at these meetings are presented in Table 73.

Table 73: Attendance in Governing Board Meetings

Name	Position	No. of Board Meetings in 2020-21	
		Held when in office	Attended
Dr. M. S. Sahoo	Chairperson	5	5
Dr. Navrang Saini	WTM	5	5
Dr. (Ms.) Mukulita Vijayawargiya	WTM	5	5
Mr. Sudhaker Shukla	WTM	5	5
Dr. Shashank Saxena	Ex-officio Member	5	5
Mr. Gyaneshwar Kumar Singh	Ex-officio Member	5	5
Dr. Rajiv Mani	Ex-officio Member	5	5

Mr. Unnikrishnan A.	Ex-officio Member	5	5
Mr. B. Sriram	Part-time Member	5	5
Dr. Krishnamurthy Subramanian	Part-time Member	5	3

The GB approved amendments to 15 Regulations during the year. It reviewed activities and performance of the Board in the areas of service providers (IPs, IPAs, IPEs, IU, RVs, and RVOs), Examination, Valuation Examinations, CIRP, liquidation process, and voluntary liquidation. It approved the inspection manual for IPAs and RVs. It approved financial statements of the Board for 2019-20 as recommended by the audit committee and budget proposals for the year 2021-22.

During the year, the non-Whole Time Members of the GB had a first of its kind interaction with senior officers of the IBBI, on June 19, 2020, to understand the challenges of the organisation and market, and share their perspectives on addressing them.

Further, they also held an interaction on August 20, 2020 with select service providers (including MDs of IPAs, MD of IU, CEOs of RVOs, IPs and RVs) to discuss issues, difficulties and constraints being faced by them.

The GB held discussions on inputs to be provided to the government for inclusion in the Union Budget for 2021-22. The GB also accorded approval to National Law Institute University, Bhopal to conduct the GIP from the next academic session. The GB also deliberated on the future course of actions for IBBI as the insolvency space matures, its relevance as a regulator going forward and the need for a third-party assessment of IBBI as a regulator and as an institution.

To facilitate quick decision making, especially during the time when it was not possible to hold the meetings physically during the COVID-19 pandemic, the GB held all its meetings online in 2020-21.

Assessment of Performance

GB self-evaluations have been recognised as critical structural tools for assessing Board effectiveness and efficiency, both domestically and internationally. The primary motivation for a GB to evaluate itself lies in assessing if the GB is meeting the expectations of external scrutiny and improving both organisational and board performance. Moreover, board evaluations help identify the strengths, weaknesses, and

opportunities for the GB to improve its performance. The performance of a GB can be evaluated broadly on three dimensions, namely:

(a) **Board Composition and Quality**, which cover aspects such as expertise and experience of Board Members, strategy to achieve laid down objectives, quality of debate and discussion in its meetings and its engagement with stakeholders.

(b) **Board Meetings and Procedures**, which cover aspects such as regularity and frequency of Board meetings, accuracy of minutes, amount of time spent on strategic and important matters and follow up on actions arising from Board meetings.

(c) **Board Functions and Development**, which include aspects such as integrity of accounting and financial reporting, promoting transparency and good governance and open channels of communication with the top management.

The importance of instituting review mechanisms for superior organisational performance was recognised by the WG on 'Building the Insolvency and Bankruptcy Board of India'. The WG noted in its report that '*obtaining a high-performance*

organisation requires sound design decisions on organisation design, processes, and governance arrangements'. Accordingly, it recommended an '*internally consistent strategy that views these three pillars as an interlocking whole, which would then induce high performance*'. Some of the important design principles for the first pillar, viz. organisation design, as recommended by the WG, were to '*Strengthen internal and external review mechanisms*', '*Transparency in the functioning of the organisation*' and '*Responsiveness*'. These principles hold relevance towards the effective, responsive and transparent functioning of the GB.

As a step towards strengthening review mechanisms, the GB of IBBI devised a Self-Evaluation Questionnaire comprising dimensions and parameters as identified above. The GB has been undertaking its self-evaluation yearly since 2018-19 and has been reporting the same in the annual report. For the year 2020-21, the Members of the GB responded to the Self-Evaluation Questionnaire on a scale of 1 to 5. The responses were tabulated and an overall rating with respect to each dimension was arrived at. Table 74 summarises the performance of the GB based on responses of the Members to the questionnaire.

Table 74: Performance of Governing Board in 2020-21

Dimension	Parameter	Score out of 50	Rating
Board Composition and Quality	The Board has the appropriate mix of expertise and experience to meet the best interests of the organisation.	45	Excellent
	The organisation operates with a strategic plan or a set of measurable goals and priorities.	48	Excellent
	All Board members have a clear understanding of the organisation's vision, mission, its strategic direction, and the financial and human resources necessary to meet its objectives.	46	Excellent
	The Board has identified and reviewed the organisation's relationship with each of its key stakeholders and has appropriate level of communication with them.	46	Excellent
	The Board has adequate number of committees as may be required, with well-defined terms of reference, including reporting requirements.	44	Excellent
	Board meetings encourage a high quality of debate with healthy and probing discussions.	49	Excellent
	The Board sets itself objectives and measures its performance against them on an annual basis.	45	Excellent
	The Board gives direction to officers on how to achieve the goals by setting, referring to, or revising policies.	42	Satisfactory
Total Sectional Score		365/400 (91%)	Excellent
Dimension	Parameter	Score out of 50	Rating
Board Meetings and Procedures	The Board meets with sufficient regularity and the frequency of meetings is enough for the Board to undertake its duties properly.	50	Excellent
	Board meeting agenda and related background papers are concise and provide information of appropriate quality and detail to take decision on the matter.	50	Excellent
	All the information regarding the meeting is disseminated to the members in a timely manner.	50	Excellent
	The actions arising from board meetings are properly followed up and reviewed in subsequent board meetings.	48	Excellent
	The minutes of Board meetings are clear, accurate, consistent, and complete and approved in timely manner.	49	Excellent
	Adequacy of attendance and participation by the Board members at the board meetings.	47	Excellent

	The amount of time spent on discussions on strategic and general issues is sufficient.	48	Excellent
	The processes are in place for ensuring that the Board is kept fully informed on all material matters between meetings (including appropriate external information, e.g., material regulatory changes).	46	Excellent
Total Sectional Score		388/400 (97%)	Excellent
Dimension	Parameter	Score out of 50	Rating
Board Functions and Development	The Board ensures the integrity of the organisation's accounting and financial reporting systems.	48	Excellent
	The integrity of process of independent audit of the organisation is maintained.	49	Excellent
	The Board has open channels of communication with the top management and others and is properly briefed.	44	Excellent
	The Board responds positively and constructively to events in order to enable effective decisions and their implementation, while promoting transparency and best practices in its governance.	47	Excellent
	Board members make decisions objectively and collaboratively in the best interests of the stakeholders and feel collectively responsible for such decisions.	48	Excellent
	Board members take decisions keeping in view an important function of the IBBI, viz. regulation, promotion and development of service providers in furtherance of the objectives of the Code.	49	Excellent
Total Sectional Score		285/300 (95%)	Excellent
Grand Total		1038/1100 (94%) (Excellent)	

The GB evaluated itself to be performing extremely well in all the three dimensions in 2020-21 with performance improving in all three dimensions compared to previous year. The GB's performance specifically improved from 'Satisfactory' to 'Excellent' vis-à-vis the previous year in aspects of reviewing the organisation's relationship with each of its key stakeholders, having appropriate level of communication with stakeholders and setting objectives and measuring GB's performance against those objectives on an annual basis. It performed particularly well in terms of high quality of debate with healthy and probing discussions during GB meetings. It met with sufficient regularity during the year with 90 per cent of Board Members recording 100 per cent attendance in meetings. The Board meeting agenda notes, and related background papers were appreciated by the GB to be of good quality and detailed to facilitate decision making on various matters. The amount of time spent on discussions on strategic and general issues was assessed to be sufficient by the GB. An assessment of the performance of the GB has at the same time helped identify a few parameters where its performance can be improved further. Overall, the GB seemed to be fulfilling its mandate well, demonstrating a strong commitment to the vision and principles guiding its activities.

WAY FORWARD

Towards the last two quarters of 2020-21 indicators such as all-time high stock market, green shoots of recovery around the world, huge inflow of foreign capital to the economy and return of some sectors of the economy to pre-pandemic levels suggested improvement in availability of RAs in the insolvency and bankruptcy space for resolution of insolvent

companies. However, as countries grappled with second and third waves of the COVID-19 pandemic, factors such as the world economy in negative zone, drying up of liquidity support and stimulation packages, uncertainty surrounding COVID-19 and the depleting stamina of business to withstand stress suggested higher incidence of corporate insolvencies going forward. In this backdrop, there is likelihood of prolonged corporate stress on account of the pandemic translating into corporate insolvencies globally.

In the Indian context, as the suspension of section 7, 9 and 10 of the Code lifts from March 25, 2021 onwards, the number of applications for initiating insolvency is likely to increase, but the increase may not be significant. It is because the stakeholders are continuing to resolve stress through: (a) CIRP in respect of stress other than COVID-19 stress, (b) scheme of compromise or arrangement under the Companies Act, 2013, and (c) the RBI's prudential framework. Many businesses are exploring innovative options for resolution of stress while taking several cost cutting measures to avoid stress. Further, (a) the viable companies would have normal business operations after the pandemic subsides; (b) higher threshold of default for initiation of insolvency proceedings keeps most MSMEs out of insolvency proceedings; and (c) COVID-19 period defaults remain outside insolvency proceedings forever. As these factors come into play, it is likely that corporate insolvencies may be lesser in magnitude than expected. Nevertheless, there is the need to strengthen bench capacity of the NCLTs to deal with the possible increase in insolvency filings and strengthening of e-court systems. To effectively manage a possible surge in insolvency filings, the number and capacity of professionals in the IBC ecosystem is also increasing.

In the wake of the COVID-19 pandemic and otherwise, the IBBI has taken several steps to complement the efforts of the Government in the implementation of the Code. To service the evolving needs of the economy, it would continue to have new products and add new features to existing products, while staying focused on time bound rescue of businesses.

Pre-packaged insolvency resolution process

The market generally prefers flexibility to work out a tailor-made resolution best suited to the unique circumstances. It however, does not like complete flexibility, rather appreciates a guided path and wishes to avail itself of benefits and sanctity of formal process. In other words, the market prefers a semi-formal process that side-steps the difficulties of a formal process but retains its benefits and sanctity. The most popular semi-formal option is a pre-pack. To propose a detailed scheme and regulatory framework for implementing pre-packaged insolvency resolution process in India, the Government constituted a sub-committee of the ILC vide order dated June 24, 2020, under the Chairmanship of Dr. M. S. Sahoo, Chairperson, IBBI. The Committee submitted its report to the MCA on October 31, 2020. Thereafter, the Government had invited comments from the public on the recommendations of sub-committee of ILC by January 22, 2021.

Within the basic structure of the IBC, the sub-committee has designed a pre-pack process where the FCs have extensive control, the company enjoys moratorium during the process and the outcome is binding on all. The proposed pre-pack process has features that make a CIRP sacrosanct and has the rigour and discipline of a CIRP. It is informal up to a point and informal thereafter. It blends debtor-in-possession with creditor-in-control. It is neither a fully private nor fully public process. It allows the company if eligible under section 29A, to submit the base resolution plan which is exposed to Swiss Challenge for value maximisation. It safeguards rights of stakeholders as much as in the CIRP and has adequate checks and balances to prevent potential misuse (**Box 7**).

Special framework for MSMEs

MSMEs are unique in many ways and the typical CIRP style resolution is not conducive for resolution of their insolvencies. Most MSMEs are entrepreneurial ventures, where value often lies in informal arrangements, which a third party may not be able to harness through a resolution plan. The market for resolution plans for them is local, while the entire globe is the market for bigger firms. In most cases the business of an MSME attracts interest primarily from its promoter and may not be of interest to other RAs. Almost every MSME debtor is also an OC. Usually MSMEs trade with one another that share the same characteristics and heavily rely on payments from the other, with the consequence that one link in the chain going bankrupt may result in a domino effect causing more insolvencies down the supply chain. MSMEs face issues such as scarcity of working capital, higher interest rates and larger collateral requirements, which make raising finance, especially in situations of financial distress, difficult. Consequently, many of them end up having loans from informal sources. The

frameworks for recovery or resolution, as available for banks, are often not available to lenders of MSMEs. MSMEs have little capacity to absorb shocks. They are relatively more prone to failure, as compared to larger companies. They need to exit in case of failure of business or when business is no more viable. MSMEs may lack sufficient assets to fund a complete CIRP style insolvency procedure. The record keeping in the case of MSMEs is often not robust, resulting in information asymmetry. If the normal insolvency process (as applicable to CDs) is applied to them, a RP is likely to struggle to take effective control of such CD and to keep it as a going concern.

In recognition of their uniqueness, most countries have a special dispensation for their resolution within the insolvency framework. Based on recommendation of the ILC, the Code was amended in 2018 to enable the Central Government, in public interest, to provide a modified framework for resolution of insolvency of MSMEs. Further, in anticipation of suffering of MSMEs, in the wake of COVID-19, the Government enhanced, in the eve of the first lockdown, the threshold amount of default from Rs. 1 lakh to Rs. 1 crore for initiating insolvency proceedings to prevent MSMEs from being pushed into insolvency proceedings. As part of the '*Atma Nirbhar Bharat*, Part V: Government Reforms and Enablers' announced on May 17, 2020, the Government proposed to notify a special insolvency resolution framework for MSMEs. The framework could be a blend of CIRP and individual insolvency as some MSMEs are corporates while others are individuals. The framework could also be a blend of CIRP and pre-pack for MSMEs.

Resolvability

The Code has shifted the focus of creditors from the possibility of recovery to the possibility of resolution, in case of default. The market now prefers to deal with a company which is resolvable. A resolvable company obtains a competitive advantage vis-à-vis non-resolvable companies through reduced cost of debt. Where the value of a company lies in informal, off-the record arrangements or personal relationships among promoters or their family members, prospective RAs may find it hard to trace and harness the value, making resolution of the company remote. A company would focus on creating and maintaining value, which is visible and readily transferable to RAs. Similarly, a company would keep an updated IM ready to enable expeditious conclusion of the resolution process, if initiated. It would be the endeavour of every company to keep itself resolvable all the time, should a need arise, along with a restoration plan. In a sense, it would be having a sort of 'living will' for the benefit of the firm as well as the society at large (**Box 8**).

Individual Insolvency

After having passed several milestones in corporate insolvency, it is time now to focus on the next big thing, viz. individual insolvency. The Code classifies individuals into three classes, namely, PGs to CDs, partnership firms and proprietorship firms and other individuals, to enable implementation of individual insolvency in a phased manner considering the wider impact

Box 7: Pre-packed insolvency resolution process

The Code envisaged a standard, plain vanilla processes to start with, but anticipated sophisticated options with the maturity of the ecosystem. It envisages CIRP for resolution of stress of companies. The success of CIRP, however, critically depends on the availability of RAs. When most companies, industries and economies continue to experience stress on account of the pandemic, the likelihood of finding an RA to rescue a failing company is less. This may remain a concern for some time, as there is no clarity as to when COVID-19 will subside fully and even after that the business and economy may take some time to return to normal. Further, CIRP is not available in respect of defaults below Rs. 1 crore and defaults that arose during the last one year. This has two consequences - either the company remains under stress for too long or the creditors use available means to recover their dues. In either case, the company may not survive long. This necessitates exploring novel options that attempt to resolve stress but do not yield liquidation for want of an RA.

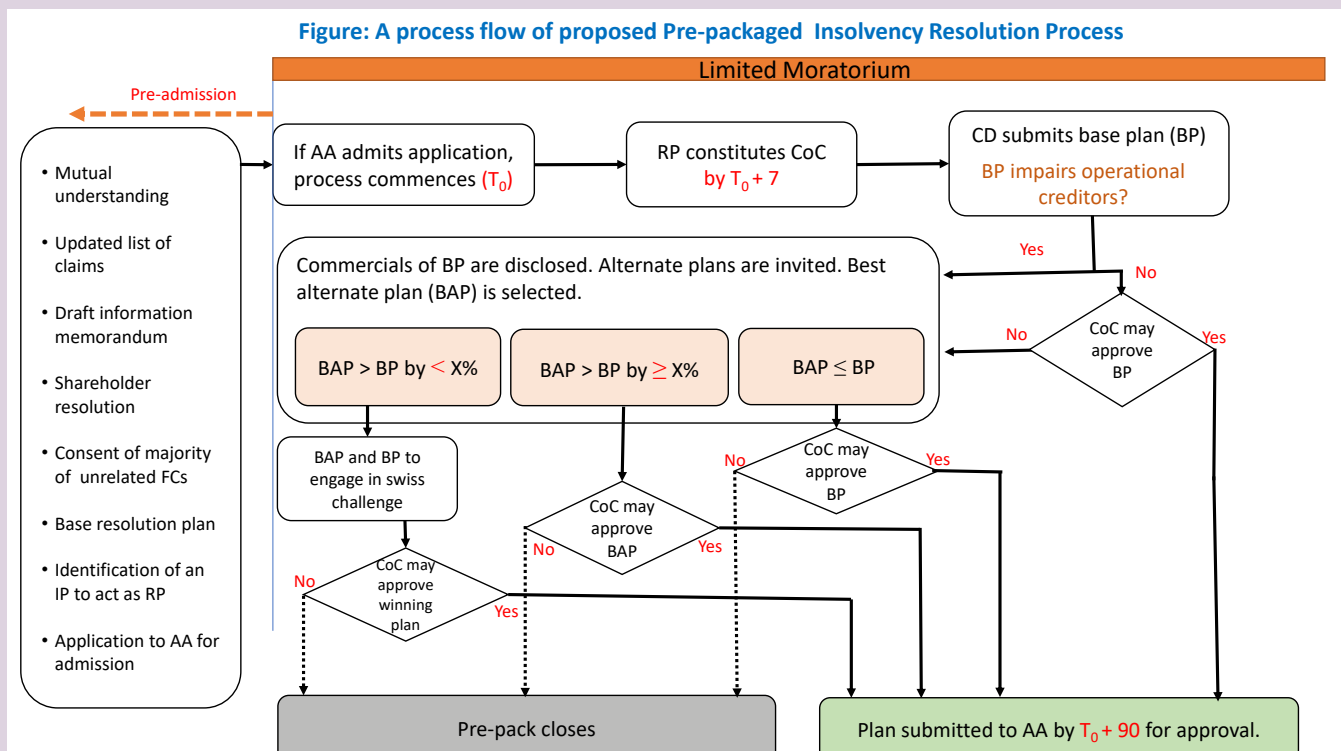
CIRP has a set process and, therefore, some amount of inflexibility, which may limit its use in certain circumstances. It shifts control of the company to an IRP and then to a RP and finally to the successful RA, which may cause business disruptions. The displacement of the current management disincentivises the companies to initiate CIRP voluntarily in case of stress. This partly explains non-cooperation by the current promoters and management, leading to intense litigation in some cases. Determination of several issues, including avoidance transactions, has been a challenge to the limited capacity of the AA leading to overstepping of timelines in some CIRPs.

Market prefers flexibility to work out a tailor-made resolution best suited to the unique circumstances. It, however, does not like complete flexibility; it appreciates a guided path and wishes to avail benefits and sanctity of a formal process. In other words, the market prefers a semi-formal process which side-steps the difficulties of a formal process but retains its benefits and sanctity. In a sense, the formal process and informal process are two ends of a spectrum and a variety of semi-formal processes, that blend elements from both, can exist to suit the convenience of the stakeholders. The most popular semi-formal option is pre-pack, which starts with an informal understanding among stakeholders, engages with them formally in between, and ends with a judicial blessing of the outcome. The insolvency laws around the world provide a variant of pre-pack, though the nuances differ across jurisdictions. The formal processes in India (withdrawal under CIRP, compromise or arrangement under the Companies Act, 2013 and the RBI's prudential framework) have some elements of pre-pack.

As compared to CIRP, prepack is typically more flexible, cost effective, time effective, less disruptive to business and devoid of stigma, and more conducive for group insolvency. It increases possibility of reorganisation and entails a limited role of the courts and IPs. It has, however, its share of concerns such as 'serial prepacking' (controlling parties acquire the company successively to avoid debt rather than rescue the company). Private negotiation and understanding among a set of stakeholders prior to commencement of formal process, which contribute to its advantages, is often a source of concern. Though emanated from market practice, prepack is getting formal and regulated to address the concerns.

The market has been advocating and anticipating prepack resolution process for some time. In recognition of the need, the Government had set up a sub-committee of the ILC to recommend an India centric pre-pack. Within the basic structure of the Code, the sub-committee has designed a pre-pack process where the FCs have extensive control, company enjoys moratorium during the process, and the outcome is binding on all.

A process flow of proposed prepack insolvency resolution is presented in the Figure.



Introduction of pre-packs is a natural step in the evolution of insolvency regimes, within the Code. It will enrich the menu of options for resolution of stress and take the Indian insolvency journey to the next level.

Box 8: Resolvability: A Living Will for Companies

The life of a company is as precious as that of a human being. By laying down norms that seek to minimise risks to life of a company and to rescue it when it experiences serious threat to its life, the Code has taken corporate governance to new heights.

A company faces several risks to its life. The promoters and managers of a company need to anticipate risks, provide for risk prevention and plan for risk mitigation. They need to plan, for example, for rescue of the company as well as its business in case it gets into stress. The Code provides for CIRP to rescue a company in stress. CIRP assembles a team of rescuers - creditors and RAs to work out a plan to rescue the company, and the AA, IU, and IPs to ensure fairness and transparency of the rescue process. The team is a stranger to the company. It appears on the scene when the company experiences stress and it is invited to rescue the company. Its success, however, depends on how rescuable the company is. Since CIRP rescues a company through a resolution plan, one often uses the term 'resolvable' in place of 'rescuable'. The term 'resolvability' gained momentum amidst global financial crisis of 2008 in the context of the resolution of large financial firms, who are, in many countries, required to have institutional ability to resolve stress.

Creditors have experimented different remedies, in case of default, against the person and or his property. As these remedies, including collateral and personal guarantees, proved inadequate, they shifted focus to ability of the company, represented by business potential and management capability, to repay the loan. Several laws in recent decades strengthened their rights to recover loans and provided specialised fora to enforce such rights. Though focused on recovery and not on resolution, the recovery under these laws is limited at best to the liquidation value of the assets available with the company. With the availability of CIRP, creditors have shifted focus again, in case of default, from the possibility of recovery to the possibility of resolution, whereby the company survives while they realise their dues from third parties. As the data indicates, the creditors are realising on average nearly 200 per cent of liquidation value through resolution plans under CIRP, as the company continues with business, most probably, with higher efficiency.

The key purpose of keeping a company resolvable is to increase the likelihood of resolution in case of need. The likelihood is more if it has value, and such value is free from encumbrances, is visible to a discerning eye, and easily realisable by any RA. It is less if value resides in informal, off-the record arrangements; personal relationships of promoters; disputed titles, complicated structures, and contingent contracts; or avoidance transactions. Similarly, an early commencement of CIRP and its quick closure improves the possibility of resolution. If initiation is resisted and / or the process is protracted, the value diminishes making resolution remote.

To reduce the possibility of stress and to improve the likelihood of resolution, a company may consider having a sort of living will, updated at regular intervals, that provides a guided path for resolution and carries:

- (a) an updated corporate structure with nature of relations and dealings with related parties;
- (b) updated and reliable books with complete information about the assets and liabilities of the company, that avoids disputes relating to default and claims;
- (c) an updated and authentic information memorandum on the shelf, which the RP can pull out and share with stakeholders to enable them to work out a resolution plan when CIRP commences;
- (d) a statement of material contracts, assets and liabilities, with brief details of disputes, encumbrances and litigations;
- (e) a statement of ongoing proceedings, if any, of alleged contraventions of provisions of law by the company and its management;
- (f) a user-friendly guide to ensure smooth and frictionless shifts of management and control from the board of directors to the IRP and then to the RP and finally to the successful RA, without any disruption to business;
- (g) a manual for cooperation with the RP in taking over the company and to keep it as a going concern for maximisation of value;
- (h) a back-up strategy for critical dependencies to keep the company as a going concern;
- (i) a plan to ensure timely and appropriate communication with the stakeholders;
- (j) a declaration that it has / has not been subject to any avoidance transaction during the relevant period;
- (k) an estimate of potential loss to the creditors from the date CIRP should have commenced;
- (l) a confirmation that it has provided and authenticated financial information with an IU;
- (m) a description of the circumstances when the company on its volition would like to initiate a resolution process and suitability of different resolution options for the company;
- (n) a statement whether the caretakers are eligible under section 29A of the Code; and
- (o) a few possible resolution plans to serve as a model for potential RAs.

The company stands to benefit the most if it is resolvable. If it is not resolvable, it is more likely to have a natural death in case of stress, and creditors would recover precious little through its liquidation. If it is resolvable, CIRP would rescue it, while ensuring decent realisation for creditors. A resolvable company enjoys competitive advantage as compared to other companies through better access to capital at lower cost, which may even avoid the need for resolution. The caretakers of the company stand to gain as they would not have threat of replacement, and in the unlikely need for resolution, they are most likely to be the successful RA. Thus, keeping a company resolvable is a win-win for the caretakers, the company and creditors.

Resolvability, reflecting the readiness of a company to implement rescue strategies in a swift manner, is imperative as the intensity of competition and innovation increases in the economy. An index should soon develop to measure the extent of resolvability of a company. Every company should vie for a higher resolvability index, as that would command respect of the society and a premium from stakeholders. The market should prefer to deal with a company which has higher index of resolvability, as it addresses 'what if' situations. This would strengthen resilience of companies and improve credit availability, and thereby promote growth.

of these provisions. The learning from the implementation of the earlier phases would help facilitate a smoother roll out of the later phases. Individual insolvency in respect of PGs to CDs is in operation. Insolvency and bankruptcy in respect of other individuals should commence as the ecosystem for the same is put in place.

In the context of individual insolvency, apart from the economic aspects of the same, there are larger and sensitive connotations in terms of its social impact on the debtors and associated family members, the cultural setting in which the insolvency resolution framework operates and the social perspective attached to the individual insolvency. **Box 9** elaborates the broad social ramifications of an insolvency law.

Mediation

Mediation is a form of Alternate Dispute Resolution (ADR) in which a third neutral party attempts to assist the disputing parties in reaching an amicable settlement and a mutually acceptable agreement. It is a simplified method of dispute resolution where the third-party acts as a mediator to resolve the dispute between the parties by using the means of communication and negotiation. Mediation can be utilised effectively for resolution of insolvency disputes. This will not only reduce the caseload of the AA but in larger insolvency cases where procedures can become more complicated, mediation can speed up the process and make it more economical, leaving more value in the estate to satisfy the creditors. In general, mediation has witnessed a major shift in insolvency disputes over the past few decades. It has become a counterweight to adjudication and has gained recognition as a suitable mechanism for addressing the difficulties of insolvency disputes by allowing the parties to negotiate debt repayment instead of filing a lawsuit. e-Mediation has emerged to be a successful alternative for dispute resolution especially in times of the COVID-19 pandemic. **Box 10** discusses mediation as a mechanism for resolution under the Code.

Cross Border Insolvency

With considerable progress in implementation of the provisions relating to corporate insolvency, it is time to think about a more comprehensive, internationally acceptable, cross-border insolvency regime. The UNCITRAL Model Law on Cross-Border Insolvency (Model Law), which is globally recognised and accepted, is available for guidance. It has been adopted by 46 jurisdictions. It ensures full recognition of a country's domestic insolvency law by giving precedence to domestic proceedings and allowing denial of relief under the Model Law if such relief is against the public policy of the country. It addresses the issues relating to recognition of foreign proceedings; coordination of proceedings concerning the same debtor; the rights of foreign creditors; rights and duties of foreign insolvency representatives; and cooperation between authorities in different jurisdictions. It could be considered for adoption with appropriate modifications to suit India's specific requirements.

The ILC in its report submitted on October 16, 2018, had proposed to add a chapter in the Code to introduce a globally accepted and well recognised cross border insolvency framework, considering the fact that some corporates transact businesses in more than one jurisdiction and have assets across many jurisdictions. Implementation of the framework will create an internationally aligned and comprehensive insolvency framework for CDs, which is essential in a globalised environment. The key advantages of adopting the Model Law with carve outs, as recommended by the ILC, are as under: (a) increasing foreign investment (b) flexibility to maintain consistency with domestic insolvency law while adopting a globally accepted framework; (c) protection of domestic interest by enabling refusal of recognition of foreign proceedings or provision of any other assistance if such action contradicts domestic public policy; (d) priority to domestic proceedings by giving precedence to domestic insolvency proceedings *vis-a-vis* foreign proceedings; and (e) mechanism for cooperation between courts and IPs, in foreign jurisdictions and domestically to facilitate faster and effective conduct of concurrent proceedings.

To initiate work on introducing cross-border insolvency in India, the Government constituted a Cross-Border Insolvency Rules/Regulations Committee under the chairmanship of Dr. K. P. Krishnan to draft the rules and regulations for implementation of cross border insolvency. The committee submitted its report to the Government on June 15, 2020.

Box 9: Social ramifications of insolvency law

The idea of announcing one's failure or inability to pay off the debts owed to creditor(s) before the public can be an embarrassing and stigmatising one, leading to severe hurt, feelings of guilt, shame, and stigma. This itself discourages the debtor in seeking insolvency relief. There is need to study the role of social faiths and beliefs in evolution of personal bankruptcy law, the social stigma attached with ancient bankruptcy norms and the evolution of the law from a law aiming for recovery from body of the debtor to recovery from the property of the debtor. There are various ancient forms of insolvency of a person of debtor and practices that were followed by the people under Hindu law, Egyptian and Greek laws, the Code of Hammurabi etc.

The concept of bankruptcy is strongly associated with societal and economic aspects of an individual. The vilification of bankruptcy is easy to understand with respect to societal bondages. Incurring a debt creates a contractual and moral obligation to repay. The failure to do so usually exposes the debtor to severe legal sanctions as well as moral obligations, whether self-imposed or enforced by society. The transition of bankruptcy law from person to property is vividly explained. In other words, bankruptcy law seeks to protect the creditors, first, from one another and, secondly, from their debtor. The change from the one form of execution (i.e. person to property) to the other, slow and gradual as it was, is an instance of the general evolution of legal process from the stage where retaliation is the end in view to the stage where compensation is the chief desideratum. Many would not accept the simple assessment that '*bankruptcy is merely a legal consequence of economic facts*,' and would respond that the consequences (and anticipation) of social stigma, of a stain on one's reputation and one's 'good name', are factors that cannot be overlooked in attempting to come to an understanding of the decision to declare bankruptcy.

In order to understand the present individual insolvency regimes, there is a need to look into the pre-independence laws that were prevalent in India. The law of insolvency in India, like most other laws, owes its origin to English Law. Before the British came to India there was no indigenous law of insolvency in the country. Earlier statute, dating back to the 16th century and subsequent years contained only rudimentary provisions as to bankruptcy. The important statutes on the subject are the Bankruptcy Acts passed by British Parliament in 1849, 1869, 1883 and 1914. The need for insolvency law was first felt in the three Presidency towns of Bombay, Calcutta and Madras where Britishers were carrying on their trade and commercial activities. The Government of India Act, 1800 had section 23 and section 24 conferring insolvency jurisdiction on Supreme Court at Fort Williams, Madras and the Recorder's Court at Bombay. In 1828, the beginning of insolvency law in India was made with the passing of Statute 9. By this, first insolvency Courts to grant relief to the insolvent debtors were established in Presidency-Towns. The Courts were called 'Courts for the Relief of Insolvent Debtors'. It was in 1848 that Indian Insolvency Act was passed which differentiated between traders and non-traders in certain aspects (like the Bankruptcy Law in England, but it had lacunas and hence failed). Later on, Provincial Insolvency Act, 1920 was passed for the provinces (mofussil). Since then, personal bankruptcy was adjudicated by these two archaic laws i.e. The Presidency Towns Insolvency Act, 1909 and The Provisional Insolvency Act, 1920. The Acts failed to evolve with the changing needs of the society and the strict provisions of imprisonment continued to stigmatise honest failures. By 19th century, the practice of confinement of debtors in state prisons for non-payment of debts, became a practice in Bombay.

Thus, there was a felt need for single bankruptcy law for India where 65% of the population is situated in rural areas. Rural development focuses on increasing economic activities in rural areas. Credit plays an important role in rural development as it is needed by farmers to meet the initial investment on seeds, fertilisers, implements, etc till the crop is ready. The farmers borrow funds predominantly from village-level moneylenders and other informal agents who charge hefty interest rates. To ameliorate the problem of farmer distress, the Government of India has made strides in expanding the formal banking network into rural areas following bank nationalisation. In many other similar societies, declaring oneself bankrupt is looked down upon and condemned by society. The tag of bankruptcy brings with itself the tag of fraud and cheat.

Considering the sheer size, diversity, unique social fabric, and the vulnerable sections of the society in dealing with situations where an individual is in the state of insolvency, the insolvency law needs to be particularly sensitive to the cultural context of shame and stigma in the context of admission of financial failure, as these notions can prevent the effective participation of debtors. Providing relief to 'honest but unfortunate' debtors has long been a primary purpose of insolvency regimes for individuals. The IBC is an innovation in individual insolvency regime in India and influences a large section of the society. It also provides an insight into the individual insolvency provisions of the Code, highlighting the unique features of the new personal bankruptcy regime. The IBC consolidates the existing framework by creating a single law for insolvency and bankruptcy. In this spirit, Part III of the Code provides for three processes for individuals: the fresh start process, insolvency resolution process and bankruptcy process.

It is undisputed that the Code is recognised as an economic legislation, but the social perspective attached to individual insolvency cannot be ignored. The Code aims to overcome the mental bondages of stigma associated with the bankruptcy norms and emerge as a legislation for the people. Bankruptcy law is generally considered to be a purely economic legislation. In the context of personal bankruptcy, however, it is also, if not primarily, a social legislation.

The Code envisages a new beginning for over-indebted individuals by allowing them to avail a discharge from their debts. In doing so, it relieves the debtor of the burden of debt and isolates minimum assets for his subsistence, while improving the prospects of realisation for creditors, thereby ensuring fairness and equity. In the Indian context, personal insolvency plays a significant role – not just for the debtors and creditors involved- but also for the economy.

The Code establishes a milestone in the evolution of insolvency law equivalent to the transition from debtor's person to debtor's property in the history of insolvency law. The provisions for the arrest of the debtor in the instance of default are omitted; instead, the property of the debtor is vested in the BT, who manages the property of the debtor. The approaches adopted for the procedures under Part III is based on the rationale that addressing the concerns of individual insolvency is a sensitive affair as it attracts social, political, and cultural attributes of the society and is mostly based on the rationale of humanitarian empathy.

It is pertinent to mention here that the Code has addressed the cultural context of shame and stigma in the context of admission of financial failure, as these notions can prevent the effective participation of debtors. The provisions of the Code have been drafted considering all

the related aspects of social stigma associated with the state of being bankrupt. Now, debtors are no longer shying away from coming forward on their own and opting for insolvency resolution.

The provisions of the Code have been notified in a staggered manner and on a need-based basis. Though unnotified, the Code in its current form has given a ray of hope to all such individuals who have been victim of honest failure and past draconian laws. The need for financial literacy among the people is the need of the hour. The citizens need to be sensitised and educated about the rescue mechanism provided for them in the Code. The Code in its current form not only removes the stigma associated with the status of bankrupt but also provides a dignified exit to the debtor with possibilities of dignified survival.

Box 10: Mediation as a mechanism for resolution under the Code

Mediation is a dispute resolution process in which the parties try to resolve their dispute by entering into an agreement with the help of a neutral third-party facilitator, the mediator. The process of mediation in cases of insolvency and bankruptcy will not only facilitate the resolution of dispute between the parties but also assist in fulfilment of the objective of the Code.

By incorporating the mechanism of mediation in the Code, the CD and the creditors will have an opportunity to settle their differences or claims in less time, without incurring huge expenses and achieve the greater objective of maintaining the CD as a going concern.

The process of mediation can be provided at various stages of insolvency and bankruptcy of a CD, treating and resolving disputes which otherwise may not be resolved through the regular process of insolvency resolution. Under the Code, the first stage of mediation can be at the pre-litigation stage i.e. when the creditor is yet to file an application under section 9 of the Code. After a claim of an OC has arisen, a demand notice is required to be sent by the creditor to the debtor. A debtor is required to reply to the same informing the existence of a dispute. At this point, the process of mediation can be provided and the creditor or the debtor may be allowed to initiate mediation in such situation. The process can be made time-bound so that delay is not caused in the insolvency process.

Mediation can also be provided for when the application has been made before the AA and admission is being opposed by the CD. The creditor can be asked if they want to explore the possibility of mediation and refer the dispute for settlement. This process of mediation will be time-bound and the parties and the mediator will have to strictly comply with the timeline.

After the CIRP has been started, mediation process can again be provided for. Mediation can be done with the CoC on the one side and the debtor on the other, in the presence of a mediator. Employee claims and other smaller claims can be resolved/ settled through mediation. There may be well defined time schedule within which mediation is to be completed and within this time, CIRP may not proceed further. Time taken for mediation may be excluded for the purpose of total time calculated for CIRP.

This process of mediation can be utilised in cases where there are a number of claimants such as in cases of employee claims or home buyers or in cases where the resolution plan is good but the CoC does not approve the resolution plan. There may be many such situations which arise during a CIRP and can be resolved with the help of mediation. Timelines may be provided so that the process of mediation does not in any way interfere or be used as a mechanism to delay the insolvency resolution process. Time-bound mediation is important and therefore, timelines may be defined and followed by the parties and the mediator strictly.

International learning

Mediation or ADR was introduced for insolvency cases in USA in 1986¹⁰⁶. In 1986, the Bankruptcy Court for the Southern District of California established the Mediation Program. Few years later, mediation was used when Greyhound Lines Inc. went bankrupt and a pre-organisation mediation plan was designed for thousands of claimants who had brought claims against the company in connection with traffic accidents involving Greyhound vehicles.

In 1998¹⁰⁷, Congress enacted the Alternative Dispute Resolution Act (ADR Act). The ADR Act required that each United States District Court 'authorize, by local rule adopted under section 2071(a), the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy'. The statute expressly applies to bankruptcy.

The¹⁰⁸ mingling of ADR, particularly mediation, with bankruptcy procedures in the USA is being increasingly used for large cases as well as smaller personal bankruptcy proceedings. One such example is the Lehman Brothers which is the largest ever bankruptcy filed. Lehman Brothers requested for ADR as a means of resolution given that it is time and cost saving.

The French Insolvency law¹⁰⁹ provides for two special procedures: the ad hoc mandate and conciliation. In Germany¹¹⁰, the insolvency plan procedure enables the debtor and the creditors to conclude an insolvency plan by negotiation.

Conclusion

The process of mediation allows the parties to make informed decisions. The whole process of mediation is in control of the parties and the settlement is arrived only if all the parties accept the settlement willingly and voluntarily. The mediation process brings back confidence between the parties. There is likelihood that a CD is able to maintain its going concern status, if the mediation process succeeds. Mediation is beneficial, cost effective, time saving and an informal process which the parties agree to willingly and voluntarily and a settlement is entered into only if the solution is acceptable to the parties.

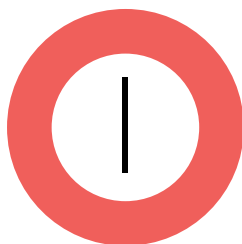
¹⁰⁶ <https://www3.mruni.eu/ojs/societal-studies/article/view/4774/4378>

¹⁰⁷ <https://core.ac.uk/download/pdf/232680688.pdf> - Swinson Sidney K., "Alternative Dispute Resolution in Bankruptcy", Tulsa Law Review, Vol. 36 [2000], Iss. 4, Art. 4

¹⁰⁸ https://www.insol.org/emailer/sep_2010_downloads/Highlight%20Article-Sep2010

¹⁰⁹ Art. L611-1 L611-16 of the French Insolvency Law, <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000005634379>.

¹¹⁰ Art. 217-234 of Insolvenzordnung, <https://www.gesetze-im-internet.de/insol/>.



FINANCIAL PERFORMANCE OF THE BOARD

The Code requires the IBBI to maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India (C&AG). It further requires that the accounts of IBBI shall be audited by the C&AG.

Accordingly, the Central Government has notified the IBBI (Form of Annual Statement of Accounts) Rules, 2018. The

IBBI prepared its annual statement of accounts and balance sheet for F.Y.2020-21 in accordance with these Rules and forwarded them, after approval by the Audit Committee and its GB, to C&AG for audit. The C&AG audited these accounts and forwarded its audit report on January 03, 2022. Tables 75 and 76 present a summary of financial performance of the Board.

Table 75: Income and Expenditure Statement for FY 2020-21

(Rs. lakh)

Income	2019-20	2020-21	Expenditure* (out of)	2019-20	2020-21
Grants-in-Aid-Salaries	1200.00	1458.00	Grants-in-Aid-Salaries	1200.00	1458.00
Grants-in-Aid-Capital	-	-	Grants-in-Aid-Capital	123.54	-
Grants-in- Aid- General	950.00	1200.00	Grants-in- Aid- General	950.00	1190.15
Internal Revenue	599.22	690.43	Internal Revenue	392.38	164.12
Total	2749.22	3348.43	Total	2665.92	2812.27

(*Including fixed assets addition and net advances given during the year.)

Table 76: Fund of Insolvency and Bankruptcy Board as on March 31, 2021

(Rs. lakh)

Head	2019-20				2020-21		
	Brought Forward	Inflow	Outflow	Balance	Inflow	Outflow	Balance
1	2	3	4	5=2+3-4	6	7	8=5+6-7
Grants-in-Aid-Salaries	-	1200.00	1200.00	-	1458.00	1458.00	-
Grants-in-Aid-Capital	123.54	-	123.54	-	-	-	-
Grants-in-Aid-General	-	950.00	950.00	-	1200.00	1190.15	9.85
Internal Revenue	339.54	599.22	392.38	546.38	690.43	164.12	1072.69
Total	463.08	2749.22	2665.92	546.38	3348.43	2812.27	1082.54

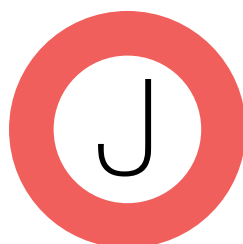
IBBI received a total grant of Rs. 2658.00 lakh in 2020-21 from Government. The internal revenue recognised during the year is Rs. 690.43 lakh which includes fee by service providers such as IPAs/IPs/IU. It spent a total of Rs. 2812.27 lakh in 2020-21.

The BLRC that conceptualised the Code in 2015 believed that, as a good practice, the Board should fund itself from the fees collected from its regulated entities. The Working Group on 'Building the Insolvency and Bankruptcy Board of India'

recognised that in the initial phase of the building up of the IBBI, budgetary grants from the Government would be the main source of funding. However, it envisaged that in a few years, the contours of the bankruptcy intermediation industry will become visible. Then the IBBI should be able to enforce a fee upon all IPs, IPAs and IUs that will pay for its expenses.

The IBBI, in order to ensure financial sufficiency, has initiated the process of projecting the expenditure requirement for future years. The expenditure in the future is expected to increase

due to increase in regulatory responsibilities and to enhance the strength of organization capabilities. The spectrum of the regulatory responsibilities of the Board is increasing due to proactive role of the IBBI and implementation of various activities in the areas of Pre-packaged insolvency resolution, Cross-border insolvency, Group insolvency, use of mediation in insolvency and Fresh Start Process etc. After assessing the requirement of the expenditure consistent with the regulatory requirement and identifying the various resources of the fund, the roadmap for gradual reduction of budgetary support and to ensure financial sufficiency of the IBBI would be evolved.



COMPLIANCES WITH STATUTORY OBLIGATIONS

The Board is a creation of a statute. It needs to comply with the provisions in the statute as well as other applicable laws. Table 77 presents the details of compliances by the Board.

Table 77: Statement of Compliance with Statutory Obligations

Statute	Compliances Required	Status of Compliance
The Insolvency and Bankruptcy Code, 2016	Section 16(2): An IP shall be appointed as IRP if no disciplinary proceeding is pending.	The Board has provided an online facility to the AA to check the disciplinary status of the IP, thereby eliminating the delay. No reference in this regard has been received by the Board.
	Section 16(4): The Board shall recommend, within 10 days of receipt of reference from the AA, the name of an IP where the application for insolvency resolution process has been made by an OC and no proposal for an IRP is made.	The Board has prepared and shared three panels of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2020' and under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) (Second) Guidelines, 2020' for appointments as IRPs during July 1- November 25, 2020, November 26 –December 31, 2020 and January 01– June 30, 2021 respectively by the AA directly, without referring to the Board. No reference in this regard was received by the Board from AA in 2020-21.
	Section 22(4): The Board shall confirm the name of the RP proposed by the CoC.	The Board has provided an online facility to the AA to check the disciplinary status of the IP, thereby eliminating the delay. However, the Board received 35 references from AA in 2020-21 in this regard and responded to all of them within the stipulated time.
	Section 34(6): The Board shall propose, within ten days of direction by the AA, the name of an IP to be appointed as a liquidator.	The Board has prepared and shared three panels of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2020' and under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) (Second) Guidelines, 2020' for appointments as Liquidators during July 1- November 25, 2020, November 26 – December 31, 2020 and January 01– June 30, 2021 respectively by the AA directly, without referring to the Board. However, the Board received 6 directions from AA in 2020-21 in this regard and responded to all of them within the stipulated time.
	Section 97(2): The Board shall confirm, within seven days of receipt of direction by the AA, whether any disciplinary proceedings are pending against proposed resolution professional.	The Board has provided an online facility to the AA to check the disciplinary status of the IP, thereby eliminating the delay. However, the Board received 6 directions from AA in 2020-21 in this regard and responded to it within the stipulated time.
	Section 97(4): The Board shall nominate, within ten days of receiving direction, a RP for an insolvency resolution process of an individual, where an application under section 94 or 95 is filed by the debtor or the creditor, as the case may be, and not through a RP.	The Board has prepared and shared three panels of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2020' and under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) (Second) Guidelines, 2020' for appointments as RPs during July 1-November 25, 2020, November 26 – December 31, 2020 and January 1 – June 30, 2021 respectively by the AA directly, without referring to the Board. However, the Board received 2 directions from AA in 2020-21 in this regard and responded to it within the stipulated time.

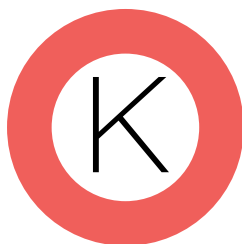
<p>Section 98(3): The Board shall recommend the name of an RP, against whom no disciplinary proceedings are pending, within ten days of the receipt of the reference from the AA under section 98(2) for replacement of a RP.</p>	<p>The Board has prepared and shared three panels of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2020' and under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) (Second) Guidelines, 2020' for appointments as RPs during July 1-November 25, 2020, November 26 – December 31, 2020 and January 1 – June 30, 2021 respectively by the AA directly, without referring to the Board. No reference in this regard has been received by the Board.</p>
<p>Section 125(2): The Board shall confirm, within ten days of receipt of direction by the AA, whether any disciplinary proceedings are pending against proposed BT.</p>	<p>The Board has provided an online facility to the AA to check the disciplinary status of the IP, thereby eliminating the delay. No direction in this regard has been received by the Board from AA in 2020-21.</p>
<p>Section 125(4): The Board shall nominate a BT within ten days of receiving the direction of the AA under Section 125(3) in cases where BT is not proposed by the debtor or creditor.</p>	<p>The Board has prepared and shared three panels of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2020' and under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) (Second) Guidelines, 2020' for appointments as BTs during July 1-November 25, 2020, November 26 – December 31, 2020 and January 1 – June 30, 2021 respectively by the AA directly, without referring to the Board. No direction in this regard has been received by the Board from AA in 2020-21.</p>
<p>Section 146(3): The Board shall recommend another BT as a replacement, within ten days of the direction of the AA under Section 146(2) upon resignation of BT.</p>	<p>The Board has prepared and shared three panels of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2020' and under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) (Second) Guidelines, 2020' for appointments as BTs during July 1-November 25, 2020, November 26 – December 31, 2020 and January 1 – June 30, 2021 respectively by the AA directly, without referring to the Board. No direction in this regard has been received by the Board from AA in 2020-21.</p>
<p>Section 147(3): The Board shall recommend a BT as a replacement, within ten days of the direction of the AA under section 147(2) upon vacancy for any reason other than resignation.</p>	<p>The Board has prepared and shared three panels of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2020' and under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) (Second) Guidelines, 2020' for appointments as BTs during July 1-November 25, 2020, November 26 – December 31, 2020 and January 1 – June 30, 2021 respectively by the AA directly, without referring to the Board. No direction in this regard has been received by the Board from AA in 2020-21.</p>
<p>Rule 8(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019: The Board may share a panel of IPs, who may be appointed as RPs, with the AA for the purposes of section 97(4) and section 98(3).</p>	<p>The Board has prepared and shared three panels of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2020' and under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) (Second) Guidelines, 2020' for appointments as RPs during July 1-November 25, 2020, November 26 – December 31, 2020 and January 1 – June 30, 2021 respectively by the AA directly, without referring to the Board.</p>
<p>Rule 8(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019: The Board may share a panel of insolvency professionals, who may be appointed as BT, with the AA for the purposes of section 125(4) and section 146(3) and section 147(3) of the Code.</p>	<p>The Board has prepared and shared three panels of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2020' and under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) (Second) Guidelines, 2020' for appointments as BTs during July 1 - November 25, 2020, November 26 – December 31, 2020 and January 1 – June 30, 2021 respectively by the AA directly, without referring to the Board.</p>
<p>Section 207 read with the IP Regulations: An application for registration as an IP may be rejected after providing an opportunity to explain why the application should be accepted.</p>	<p>The Board has not rejected any application for registration as IP in 2020-21.</p>

Section 217 read with the IBBI (Inspection and Investigation) Regulations, 2017: The Board shall receive and dispose of complaints in accordance with the regulations.	The Board received 1616 complaints during 2020-21 and disposed of 2002 complaints during the year.
Section 218 read with the IBBI (Inspection and Investigation) Regulations, 2017: The Board may conduct inspection of IPs, IPAs or IU in case of alleged contravention of any of the provisions of the Code or the rules or regulations made or directions issued by the Board.	The Board initiated 62 inspections during 2020-21 and concluded 53 inspections during the year.
Section 220 read with the IP Regulations: The DC shall dispose of a Show Cause Notice (SCN) by a reasoned order in adherence with the principles of natural justice.	Being complied with.
Section 223 read with the IBBI (Form of Annual Statement of Accounts) Rules, 2018: The Board shall make proper accounts and such accounts shall be audited by the C&AG.	<p>The Board prepared its annual accounts for the F.Y. 2019-20, in accordance with the IBBI (Form of Annual Statement of Accounts) Rules, 2018. The C&AG audited the same and forwarded the audit report thereon, vide its letter dated October 28, 2020.</p> <p>The Board, similarly, prepared its annual accounts for F.Y. 2020-21. The C&AG audited the same and forwarded the audit report thereon, vide its letter dated January 03, 2022.</p>
Section 229 read with the IBBI (Annual Report) Rules, 2018: The Board shall prepare, in such form and at such time in each financial year as may be prescribed, its annual report, giving a full account of the activities during the previous financial year and submit a copy thereof to the Central Government.	The Board submitted Annual Reports for 2016-17 and 2017-18 during 2019-20. The annual report for 2018-19 was submitted on June 30, 2020. The annual report for 2019-20 was submitted on June 16, 2021.
Section 230: The Board may delegate, by an order, such of its powers and functions as it may deem necessary.	The Board issued the IBBI (Delegation of Powers) Order, 2017 on January 24, 2017. It amended the said order on April 25, 2018 and again on July 02, 2020.
Section 236: The Board may file complaints.	The Board filed 15 complaints during 2020-21 with the Special Court.
Section 240: The Board needs to make Regulations on matters specified in the section.	<p>The Board made 15 amendment Regulations during 2020-21, with the approval of the Governing Board.</p> <p>As of March 31, 2021, the Board has framed:</p> <ul style="list-style-type: none"> (a) six Regulations to regulate the service providers (IPs, IPEs, IPAs and IUs); (b) seven Regulations to regulate processes (CIRP, Fast Track Insolvency Resolution Process, Liquidation Process, Voluntary Liquidation Process, Insolvency Resolution Process for PGs to CDs and Bankruptcy Process for PG to CDs) (c) four Regulations to regulate internal functioning of the Board.
Section 241: Regulations shall be laid before each House of Parliament.	The Board sent all 15 Regulations notified in 2020-21 to the MCA for laying before Parliament, during 2020-21.

The Central Goods and Services Tax Act, 2017 (GST)	<p>Section 37(1): It requires every registered person paying tax to electronically furnish the details of outward supplies of goods or services before the tenth day of the succeeding month.</p> <p>However, the last dates for filing returns were notified as under:</p> <table><tr><th>For the month of</th><th>Last date</th></tr><tr><td>April, 2020</td><td>July 24, 2020</td></tr><tr><td>May, 2020</td><td>July 28, 2020</td></tr><tr><td>June, 2020</td><td>August 5, 2020</td></tr><tr><td>July, 2020 - March, 2021</td><td>11th day of the succeeding month.</td></tr></table>	For the month of	Last date	April, 2020	July 24, 2020	May, 2020	July 28, 2020	June, 2020	August 5, 2020	July, 2020 - March, 2021	11 th day of the succeeding month.	<p>The Board filed the details as under:</p> <table><tr><th>For the month of</th><th>Date of Filing</th></tr><tr><td>April, 2020</td><td>May 21, 2020</td></tr><tr><td>May, 2020</td><td>June 20, 2020</td></tr><tr><td>June, 2020</td><td>July 22, 2020</td></tr><tr><td>July, 2020</td><td>August 11, 2020</td></tr><tr><td>August, 2020</td><td>September 11, 2020</td></tr><tr><td>September, 2020</td><td>October 11, 2020</td></tr><tr><td>October, 2020</td><td>November 11, 2020</td></tr><tr><td>November, 2020</td><td>December 11, 2020</td></tr><tr><td>December, 2020</td><td>January 11, 2021</td></tr><tr><td>January, 2021</td><td>February11, 2021</td></tr><tr><td>February, 2021</td><td>March 11, 2021</td></tr><tr><td>March, 2021</td><td>April 11, 2021</td></tr></table>	For the month of	Date of Filing	April, 2020	May 21, 2020	May, 2020	June 20, 2020	June, 2020	July 22, 2020	July, 2020	August 11, 2020	August, 2020	September 11, 2020	September, 2020	October 11, 2020	October, 2020	November 11, 2020	November, 2020	December 11, 2020	December, 2020	January 11, 2021	January, 2021	February11, 2021	February, 2021	March 11, 2021	March, 2021	April 11, 2021
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April, 2020	May 21, 2020																																					
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June, 2020	July 22, 2020																																					
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January, 2021	February11, 2021																																					
February, 2021	March 11, 2021																																					
March, 2021	April 11, 2021																																					
	<p>Section 38(2): It requires every registered person paying tax to electronically furnish the details of inward supplies of goods or services after the tenth day but on or before the fifteenth day of the succeeding month.</p> <p>However, the last dates for filing returns were notified as under:</p> <table><tr><th>For the month of</th><th>Last date</th></tr><tr><td>April, 2020</td><td>June 24, 2020</td></tr><tr><td>May, 2020 - March, 2021</td><td>20th day of the succeeding month</td></tr></table>	For the month of	Last date	April, 2020	June 24, 2020	May, 2020 - March, 2021	20th day of the succeeding month	<p>The Board filed the details as under:</p> <table><tr><th>For the month of</th><th>Date of Filing</th></tr><tr><td>April, 2020</td><td>May 21, 2020</td></tr><tr><td>May, 2020</td><td>June 20, 2020</td></tr><tr><td>June, 2020</td><td>July 20, 2020</td></tr><tr><td>July, 2020</td><td>August 19, 2020</td></tr><tr><td>August, 2020</td><td>September 20, 2020</td></tr><tr><td>September, 2020</td><td>October 20, 2020</td></tr><tr><td>October, 2020</td><td>November 20, 2020</td></tr><tr><td>November, 2020</td><td>December 18, 2020</td></tr><tr><td>December, 2020</td><td>January 18, 2021</td></tr><tr><td>January, 2021</td><td>February 19, 2021</td></tr><tr><td>February, 2021</td><td>March 18, 2021</td></tr><tr><td>March, 2021</td><td>April 20, 2021</td></tr></table>	For the month of	Date of Filing	April, 2020	May 21, 2020	May, 2020	June 20, 2020	June, 2020	July 20, 2020	July, 2020	August 19, 2020	August, 2020	September 20, 2020	September, 2020	October 20, 2020	October, 2020	November 20, 2020	November, 2020	December 18, 2020	December, 2020	January 18, 2021	January, 2021	February 19, 2021	February, 2021	March 18, 2021	March, 2021	April 20, 2021				
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March, 2021	April 20, 2021																																					
	<p>Section 44(1): It requires every registered person paying tax to electronically furnish an annual return for every financial year on or before the thirty-first day of December following the end of such financial year. The last date for 2019-20 was extended till March 31, 2021.</p> <p>Section 44(2): It requires every registered person to electronically furnish the annual return along with a copy of the audited annual accounts and a reconciliation statement. The last date for 2019-20 was extended till March 31, 2021.</p>	<p>The Board filed the return for the F.Y. 2019-20 on February 16, 2021 and for the F.Y. 2020-21 on December 24, 2021.</p>																																				

	<p>Section 51(1): It requires specified persons to deduct tax at source from the specified payments made to suppliers of taxable goods or services.</p> <p>Section 39(3): It requires every registered person who is required to deduct tax at source to electronically furnish a return for the month in which deductions have been made within ten days after the end of such month.</p> <p>Note: The last date for the months April to May, 2020 was June 30, 2020.</p>	<p>The Board filed the details as under:</p> <table><tr><th>For the month of</th><th>Date of filing the return</th></tr><tr><td>April, 2020</td><td>June 15, 2020</td></tr><tr><td>May, 2020</td><td>June 15, 2020</td></tr><tr><td>June, 2020</td><td>July 07, 2020</td></tr><tr><td>July, 2020</td><td>August 08, 2020</td></tr><tr><td>August, 2020</td><td>September 09, 2020</td></tr><tr><td>September, 2020</td><td>October 08, 2020</td></tr><tr><td>October, 2020</td><td>November 09, 2020</td></tr><tr><td>November, 2020</td><td>December 09, 2020</td></tr><tr><td>December, 2020</td><td>January 08, 2021</td></tr><tr><td>January, 2021</td><td>February 04, 2021</td></tr><tr><td>February, 2021</td><td>March 08, 2021</td></tr><tr><td>March, 2021</td><td>April 10, 2021</td></tr></table>	For the month of	Date of filing the return	April, 2020	June 15, 2020	May, 2020	June 15, 2020	June, 2020	July 07, 2020	July, 2020	August 08, 2020	August, 2020	September 09, 2020	September, 2020	October 08, 2020	October, 2020	November 09, 2020	November, 2020	December 09, 2020	December, 2020	January 08, 2021	January, 2021	February 04, 2021	February, 2021	March 08, 2021	March, 2021	April 10, 2021						
For the month of	Date of filing the return																																	
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February, 2021	March 08, 2021																																	
March, 2021	April 10, 2021																																	
The Income-tax Act, 1961	<p>Section 139: The Board shall file the income tax return for every financial year.</p>	<p>The Board filed its income-tax return for the F.Y. 2020-21 on October 13, 2021.</p>																																
	<p>Section 200: The Board shall deduct and deposit tax at source (TDS) in respect of salaries, contracts, and professional services as under:</p> <table><tr><th>For the month of</th><th>Last Date</th></tr><tr><td>April, 2020 - February, 2021</td><td>Within seven days from the end of the month</td></tr><tr><td>March, 2021</td><td>April 30, 2021</td></tr></table>	For the month of	Last Date	April, 2020 - February, 2021	Within seven days from the end of the month	March, 2021	April 30, 2021	<p>The Board deducted TDS and deposited the same every month as under:</p> <table><tr><th>For the month of</th><th>Date of payment</th></tr><tr><td>April, 2020</td><td>May 06, 2020</td></tr><tr><td>May, 2020</td><td>June 05, 2020</td></tr><tr><td>June, 2020</td><td>July 06, 2020</td></tr><tr><td>July, 2020</td><td>August 05, 2020</td></tr><tr><td>August, 2020</td><td>September 04, 2020</td></tr><tr><td>September, 2020</td><td>October 06, 2020</td></tr><tr><td>October, 2020</td><td>November 03, 2020</td></tr><tr><td>November, 2020</td><td>December 04, 2020</td></tr><tr><td>December, 2020</td><td>January 05, 2021</td></tr><tr><td>January, 2021</td><td>February 02, 2021</td></tr><tr><td>February, 2021</td><td>March 02, 2021</td></tr><tr><td>March, 2021</td><td>April 29, 2021</td></tr></table>	For the month of	Date of payment	April, 2020	May 06, 2020	May, 2020	June 05, 2020	June, 2020	July 06, 2020	July, 2020	August 05, 2020	August, 2020	September 04, 2020	September, 2020	October 06, 2020	October, 2020	November 03, 2020	November, 2020	December 04, 2020	December, 2020	January 05, 2021	January, 2021	February 02, 2021	February, 2021	March 02, 2021	March, 2021	April 29, 2021
	For the month of	Last Date																																
April, 2020 - February, 2021	Within seven days from the end of the month																																	
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January, 2021	February 02, 2021																																	
February, 2021	March 02, 2021																																	
March, 2021	April 29, 2021																																	
	<p>Rule 31A of the Income-tax Rules, 1962: The Board shall furnish a quarterly statement of deduction of tax as under:</p> <table><tr><th>For quarter ending</th><th>Last Date</th></tr><tr><td>June 30, 2020</td><td>July 31, 2020</td></tr><tr><td>September 30, 2020</td><td>October 31, 2020</td></tr><tr><td>December 31, 2020</td><td>January 31, 2021</td></tr><tr><td>March 31, 2021</td><td>June 30, 2021</td></tr></table>	For quarter ending	Last Date	June 30, 2020	July 31, 2020	September 30, 2020	October 31, 2020	December 31, 2020	January 31, 2021	March 31, 2021	June 30, 2021	<p>The Board filed the statements of tax deducted at source as under:</p> <table><tr><th>For the quarter ending</th><th>Date of Filing</th></tr><tr><td>June 30, 2020</td><td>July 30, 2020</td></tr><tr><td>September 30, 2020</td><td>October 19, 2020</td></tr><tr><td>December 31, 2020</td><td>January 25, 2021</td></tr><tr><td>March 31, 2021</td><td>June 22, 2021</td></tr></table>	For the quarter ending	Date of Filing	June 30, 2020	July 30, 2020	September 30, 2020	October 19, 2020	December 31, 2020	January 25, 2021	March 31, 2021	June 22, 2021												
For quarter ending	Last Date																																	
June 30, 2020	July 31, 2020																																	
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September 30, 2020	October 19, 2020																																	
December 31, 2020	January 25, 2021																																	
March 31, 2021	June 22, 2021																																	
The Right to Information Act, 2005	<p>Section 4(1)(b): The Board shall make <i>suo moto</i> disclosures on the specified matters on its web site.</p>	<p>The Board updated the disclosures made in accordance with section 4(1) (b) of the RTI Act, 2005.</p>																																
	<p>Section 7(1): The CPIO shall provide information to applicants within 30 days of receipt of application.</p>	<p>The CPIO provided information to 305 applicants. It provided the information in all cases within the timelines laid down by the RTI Act, 2005.</p>																																
	<p>Section 19(6): The FAA shall dispose of appeals within 45 days.</p>	<p>The FAA disposed of 39 appeals received during the year within the stipulated time.</p>																																

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013	The Board shall constitute the Internal Complaints Committee.	The Board re-constituted the Committee on November 11, 2020.
General Financial Rules, 2017	Rule 229 (xi): The Board shall enter into a Memorandum of Understanding (MoU) with the administrative ministry.	The Board entered into an MOU for 2020-21 with MCA on May 21, 2020.
	Rule 230(8): It requires the Board to remit all interests or other earnings against Grants-in-aid to the Consolidated Fund of India (CFI) immediately after finalisation of the accounts.	The interest earned on Grants-in-aid during the F.Y. 2020-21 has been remitted to CFI on August 12, 2021.
	Rule 234: As a grantee institution, the Board is required to maintain a Register of Grants and submit utilisation certificate every financial year.	The Board maintains a Register of Grants and has submitted the utilisation certificate for the F.Y. 2020-21 to MCA on August 24, 2021.
	Rule 238: It requires the Board to furnish a utilization certificate in respect of the actual utilisation of the grants received within twelve months of the closure of the financial year.	
Employee Related Rules	Reservation in recruitment	There was no direct recruitment during the year.
	Provident Fund / Pension for employees: The Board shall deduct and deposit provident fund and pension contributions of employees.	The Board deducted subscription of: (a) employees towards provident fund and remitted the same to their respective employers, along with employer's contribution, in respect of the employees on deputation. (b) regular employees towards National Pension System (NPS) and deposited the same in their respective NPS accounts. (c) Chairperson and WTMs towards Contributory Provident Fund and deposited the same, along with employer's contribution, in recurring and fixed deposits.
The Minimum Wages Act, 1948	As a principal employer, the Board is required to ensure that the provisions of the Act are followed with respect to the manpower engaged on contract basis.	The Board has ensured compliance by the manpower service providers.
The Contract Labour (Regulation and Abolition) Act, 1970	Section 7: As the principal employer, the Board is required to get a certificate of registration for engaging manpower through a contractor.	The Board obtained the certificate of registration dated September 03, 2020. However, this Act has now been abolished.



ORGANISATIONAL MATTERS

RESPONSIBILITY CENTRES

Governing Board

The GB of IBBI functioned at its full strength of 10 members during 2020-21. Table 78 presents the details of the members of the GB as on March 31, 2021.

Table 78: Governing Board of IBBI as on March 31, 2021

Name	Position held before or at the time of Appointment	Appointed as	Representing	Date of Appointment
Dr. M. S. Sahoo	Member, CCI	Chairperson	NA	01.10.16
Mr. Unnikrishnan A.	Legal Adviser, RBI	<i>Ex-officio</i> Member	RBI	01.10.16
Dr. Navrang Saini	Director General, MCA	WTM	NA	31.03.17
Dr. (Ms.) Mukulita Vijayawargiya	Additional Secretary, MoL&J	WTM	NA	13.04.17
Dr. Shashank Saksena	Senior Economic Adviser, MoF	<i>Ex-officio</i> Member	MoF	24.05.17
Mr. Gyaneshwar Kumar Singh	Joint Secretary, MCA	<i>Ex-officio</i> Member	MCA	22.02.18
Dr. Rajiv Mani	Joint Secretary, MoL&J	<i>Ex-officio</i> Member	MoL&J	26.02.19
Mr. B. Sriram	Managing Director & CEO, IDBI Bank Limited	Part-time Member	NA	04.07.19
Dr. Krishnamurthy Subramanian	Chief Economic Adviser, GOI	Part-time Member	NA	08.07.19
Mr. Sudhaker Shukla	Chief Economic Adviser, Ministry of Rural Development	WTM	NA	14.11.19

Interaction with Employees

Part-time Members of the Governing Board of IBBI had a first of its kind interaction with senior officers of the IBBI, on June 19, 2020, to understand the challenges of the organisation and market, and share their perspectives on addressing them.

Audit Committee

The Audit Committee assists the GB in areas of financial reporting, internal control systems, risk management systems and the audit functions. The GB reconstituted the Audit Committee with effect from June 26, 2020 as under:

- Dr. Shashank Saksena as Chairperson;
- Mr. B. Sriram., Member, and
- WTM in-charge of Finance and Accounts of the Board.

The Audit Committee met twice in 2020-21. It reviewed the Report of the Internal Auditors of the Board for half year ended on March 31, 2020 and half year ended on September 30, 2020 and separate audit report of the C&AG on the annual accounts of the Board for the year 2019-20. It approved the financial statements of the year 2019-20 and half-yearly financial statements for half-years ended on March 31, 2020 and September 30, 2020.

Disciplinary Committee

The Code envisages DCs comprising WTM(s) to consider and dispose of SCNs under section 220(1) of the Code. The DC was constituted on February 1, 2017 and has been reconstituted as is indicated in Table 79.

Table 79: Composition of Disciplinary Committee

Date of Constitution	Composition
01.02.17	Dr. M. S. Sahoo, Chairperson
23.08.17	Dr. (Ms.) Mukulita Vijayawargiya, WTM
09.04.18	Dr. M. S. Sahoo, Chairperson/ Mrs. Suman Saxena, WTM, and Dr. (Ms.) Mukulita Vijayawargiya, WTM
17.10.18	Dr. Navrang Saini, WTM
15.06.20	Dr. (Ms.) Mukulita Vijayawargiya, WTM

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. Section 197 of the Code enables the Board to constitute ACs for discharge of its functions and make regulations to provide for the same. The Board notified the Advisory Committee Regulations on January 30, 2017. In accordance with the said Regulations, the IBBI has the following ACs at the end of March, 2021:

- AC on Service Providers with Mr. Mohandas Pai (Chairman, Manipal Global Education) as Chairperson;
- AC on Corporate Insolvency and Liquidation with Mr. Uday Kotak (Executive Vice Chairman and MD, Kotak Mahindra Bank) as Chairperson; and
- AC on Individual Insolvency and Bankruptcy with Mr. Justice (Retd.) B. N. Srikrishna as Chairperson [term of this AC ended on September 15, 2020].

Internal Complaints Committee

In accordance with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Board constituted an Internal Complaints Committee (ICC) on September 1, 2017 to inquire into the complaints of sexual harassment of women employees. The Committee comprises as under as on March 31, 2021:

- Dr. (Ms.) Mukulita Vijayawargiya, WTM, IBBI as Presiding Officer;
- Ms. Bina Jain, External Expert;
- Dr. Anuradha Guru, ED, IBBI as Member; and
- Mr. Ritesh Kavdia, ED, IBBI as Member Secretary.

A meeting of the ICC was held on December 22, 2020.

HUMAN RESOURCES

The IBBI is responsible for developing and regulating sophisticated insolvency processes and service providers under the Code. It is also responsible for grooming two high-end professions, namely, insolvency profession under the Code and valuation profession, as authority on behalf of the Central Government, under the Companies Act, 2013. These responsibilities require the IBBI to have matching professional competence, particularly in the discipline of insolvency and

bankruptcy. Accordingly, it is the endeavour of the IBBI to attract professionals with the right talent and attitude to nurture a fledgling insolvency regime and the related institutions. It looks for out-of-box thinking in its employees. It regularly trains its employees for refining their skills and motivates them to seek excellence.

Research Associates

In accordance with the IBBI (Engagement of Research Associates and Consultants) Regulations, 2017, the IBBI engages research associates / consultants on contract basis for short durations to assist the Board in discharge of its functions. There were 17 research associates and one consultant from disciplines of Economics/Public Policy, Law and Business Management, on contractual basis as on March 31, 2021.

Employees

In accordance with the IBBI (Employees' Service) Regulations, 2017, the officers in IBBI are drawn from disciplines such as Law, Economics, Commerce, Management, Company Secretary, Chartered Accountancy and Cost Accountancy. There are 17 Grade 'A' direct recruit officers in IBBI, who were selected through an open competitive examination in 2018. During 2020-21, the IBBI continued to take officers on deputation at senior levels. Table 80 presents the actual strength of employees vis-à-vis the approved strength as on March 31, 2021.

Table 80: Employees of IBBI

Position	Actual Strength as on March 31, 2020	As on March 31, 2021		
		Sanctioned Strength	Actual Strength	Mode of Recruitment
Executive Director	4	4	3	Deputation
CGM	3	4	3	Deputation
GM	1	8	Nil	NA
DGM	5	12	7	Deputation
AGM	3		4	Deputation
Manager	Nil	24	4	Deputation
AM	20		19	17 Direct Recruit officers and 2 on Deputation
GA/PA-III	Nil	2	Nil	NA
GA/PA-II	Nil	3	Nil	NA
GA/PA-I	Nil	5	Nil	NA
Total	36	62	40	

Interns

The IBBI provides an opportunity of internship to students who wish to pursue a professional career in insolvency, liquidation, bankruptcy or any other related field. A student who is pursuing a five-year or three-year degree course in law or

post-graduation course in Economics, Commerce, Finance, Management, or Law, and has completed the penultimate year or stage of such degree course or post-graduation course; or a student pursuing M. Phil. / Ph. D. course in Economics, Commerce, Finance, Management, or Law, is eligible to join as an intern with IBBI. During 2020-21, five students interned at IBBI.

DELIVERY DESIGN

Official Language

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

The Board celebrated Hindi *Pakhwada* from September 14, 2020 to September 30, 2020. The employees participated in various activities such as quiz and poem recitation in Hindi with great enthusiasm and won prizes. An essay competition on the subject *Atma Nirbhar Bharat* was also organised and prizes were given to best entries.

150 Years of Mahatma Gandhi

IBBI organised several activities to mark the conclusion of year-long celebrations associated with 150th Birth Anniversary of Mahatma Gandhi. The employees recalled the teachings of Mahatma Gandhi, especially in relation to governance and inclusive growth, in an event on September 29, 2020. An Essay Competition on '*Antyodaya and Fresh Start*' was also organised to spread awareness on resolution of rural indebtedness, a cause which Mahatma Gandhi envisioned to free the poor from debt burden and give them a fair opportunity to participate in the development story of the Nation. Further, employees made a voluntary contribution of Rs. 70,000 towards charity to mark the occasion.

Samvidhan Diwas

IBBI observed *Samvidhan Diwas* (Constitution Day) on November 26, 2020 to commemorate the adoption of the Constitution of India. The officers joined Dr. M. S. Sahoo, Chairperson, IBBI in reading the Preamble to the Constitution and reaffirmed their commitment to uphold its ideology. They followed the Hon'ble President's reading of the Preamble of the Constitution telecast live.

Vigilance Awareness Week, 2020

IBBI observed Vigilance Awareness Week from October 27, 2020 to November 2, 2020 on the theme "सतर्क भारत, समृद्ध भारत" (Vigilant India, Prosperous India). Dr. M. S. Sahoo, Chairperson, IBBI administered oath to officers through e-mode. IBBI received an integrity pledge certificate from the Central Vigilance Commission.

Working of Office during COVID-19 outbreak

In the view of health hazard posed by the COVID-19 pandemic, both offices of the IBBI (Mayur Bhawan and Jeevan Vihar), were closed for a period of 21 days with effect from March 25, 2020,

in pursuance of the Government directive, and all officers of the IBBI worked from home during this period. Thereafter, the offices have been functional in accordance with Government directives, which permitted certain officers to work from home as per roster. Standard Operating Procedures have been laid down for working in office to ensure safety of all officers, following the guidelines in this regard issued by the Ministry of Health and Family Welfare.

IT initiatives taken long before announcement of lockdown and during the lockdown ensured smooth work from home and meetings and interactions with stakeholders continued as usual. All officers were provided with Virtual Private Network linkage that ensured unhindered access to e-office and disposal of e-files online. Further, the 'Microsoft Teams' platform facilitated video meetings, including meetings of the GB and ACs, and roundtables and webinars for stakeholders.

Throughout 2020-21, the functioning of the offices of IBBI were regulated in keeping with various instructions from the Government in terms of ensuring hygiene at workplace and strength of staff present in office in the wake of the pandemic. IBBI took several measures to fight against the spread of COVID-19 while ensuring that the office work does not suffer in any manner. The officers/staff attending office continued to follow protocols such as wearing of masks, ensuring social distancing and maintaining hand hygiene. It operated roster for employees to work from home on alternate days, and allowed flexi timing for all employees. It arranged COVID-19 tests for all its officers and staff three times during 2020-21. With e-office and internet connectivity, the office continued to perform at its optimum.

Contribution to PM-CARES Fund

The employees of IBBI had contributed Rs. 5 lakh in the month of March, 2020 towards Prime Minister's Citizen Assistance and Relief in Emergency Situations (CARES) Fund set up for providing relief to those affected by the outbreak of COVID-19 pandemic. An additional contribution of Rs. 2,83,683 was made by the employees to this Fund in April, 2020.

Organisational Structure

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

Delegation of Powers

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

hierarchy.

Strategy Meet

It is important for any organisation to put in place a strategic plan which helps delineate the purpose and measurable goals for the organisation. It provides a sense of direction and shared vision to an organisation. For a regulator, like IBBI, which has varied functions and duties, it is important for the senior management to have a strategic focus over the short, medium, and long term. In this spirit, the IBBI has been organising its annual strategy meets to chart its path for the coming year to set its priorities, focus energy and resources on priority areas, and outline specific actions and sub-actions to achieve desired outcomes. The strategy meet for 2020-21 could not take place due to the COVID-19 outbreak. However, a Strategic Action Plan for the short to medium term was drawn up outlining the key priority areas for the IBBI, with specific actionable tasks.

Capacity Building

The IBBI constantly attempts to enhance the capacities of its officials in the ever-evolving area of insolvency resolution and bankruptcy in the country and worldwide. It recognises the importance of interacting with academia, other regulators, and key Government officials to get varied perspectives in this evolving area. Accordingly, the IBBI has had various domestic and international interactions towards capacity building during the year under review.

Distinguished Lecture Series

The IBBI invites eminent persons to share their thoughts and interact with the officers of IBBI. Given the restrictions due to the pandemic, such interactions were held mostly in online mode. Table 81 presents details of lectures delivered by them during 2020-21.

Table 81: Distinguished Lectures in 2020-21

Sl. No.	Date	Name of the Speaker	Position / Organisation	Subject
1	08.02.21	Dr. (Ms.) Udichibarna Bose	Assistant Professor in Finance, Essex Business School, University of Essex	Does Bankruptcy Law Improve the Fate of Distressed Firms ? The Role of Credit Channels
2	09.02.21	Dr. (Ms.) Aparna Ravi	Partner, Samvad Partners	Insolvency Law and its impact on Society.

Training Programmes

Table 82 presents the details of training programmes where IBBI officers participated during the period under review to enhance their knowledge and skills in the evolving area of insolvency and bankruptcy. In order to gain international perspective, a few officers were sent on study tours abroad. Besides, officers were nominated to participate in a number of seminars/conferences organised by stakeholders.

Table 82: Training Programmes attended by Officers of IBBI during 2020-21

Sl. No.	Dates(s)	Programme	Training Provider	Scope/Topic of Training	No. of Officers
1	06.07.20, 15.07.20, 08.07.20, 10.07.20, 13.07.20, 15.07.20	Leadership, Team Building & Communication Skills	IICA	Awareness about self, personality types, building consensus, collaboration and leadership of the organisation. Ethics in Public Service.	2
2	04.08.20 - 05.08.20	Induction Programme	ICLS Academy	IBC	7
3	01.09.20 to 04.09.20 & 08.09.20 to 11.09.20	Data Management and Analytics	IICA	Big data, data retrieval, data representation and organisation.	5
4	16.11.20 to 22.12.20	Commercial Mediation & Negotiation	IICA	Alternate Dispute Resolution Mechanisms covering mediation and negotiation.	1
5	08.12.20, 10.12.20, 11.12.20, 15.12.20, 17.12.20	Global Economics, Digital Money and Corporate Governance Transformation	IICA	World economic scenario, digital markets, latest developments in the fintech world, corporate governance in digital India.	1
6	07.12.20 to 18.12.20	Regulatory Performance Evaluation	FOIR	Performance assessment of regulators	2

7	16.12.20	e-Procurement of Goods and Services, and related GOI Financial Rules	National Productive Council, New Delhi	Fundamental principles in procurement, Principles laid down by Supreme Court, key objectives of public procurement, Steps in the Procurement Process, Role of Procurement, Team in Procurement of Goods and Services, GOI Financial Rules. Prevention of Corruption Act and Whistle Blowers Protection Act.	1
8	29.12.20	Preventive Vigilance, e-Procurement and Key to Good Governance	National Productive Council, New Delhi	Preventive Vigilance, Tools of Preventive Vigilance, Cases considered in Vigilance, Role and Functions of Chief Vigilance Officer, E – Procurement.	1
9	06.01.21 to 10.02.21	Commercial Mediation & Negotiation	IICA	Alternate Dispute Resolution Mechanisms covering mediation and negotiation.	1
10	04.01.21 to 22.01.20	Capacity Building Program for Group 3 Regulatory Officials, “Emerging Regulatory Issues in Digital Era”	FOIR	Regulatory challenges in the digital era and various tools and techniques to tackle the same.	2
11	11.01.21	Good Governance & Transparency through RTI	National Productive Council, New Delhi	Right to Information Act and its role in good governance & transparency.	1
12	Three months from 06.02.21	Certificate Course on Regulatory Governance	FOIR	Efficient and effective means to designing, implementing and evaluating regulations.	2
13	08.02.1 to 10.02.21	Capacity Building Programme for serving Chairperson and WTM	FOIR	Stakeholder engagement in regulatory decision making	2

IBBI also organised some training sessions for all its officers during the year, as detailed in Table 83.

Table 83: Training Programmes organised by IBBI for its officers

Sl. No.	Date	Nature of Programme/Subject	Faculty
1	14.07.20, 16.07.20, 21.07.20, 23.07.20, 28.07.20	<ul style="list-style-type: none"> Insolvency law in the times of COVID-19 Insolvency of MSMEs Insolvency of Individuals The IBC and best international practices Measuring outcomes of insolvency laws 	Mr. Jose Garrido, and Ms. Anjum Roshia, Senior Counsels, International Monetary Fund
2	04.09.20, 09.09.20, 10.09.20, 11.09.20, 14.09.20	Regulatory Impact Assessment	Dr. Kristin van Zweiten, Associate Professor of Law and Finance, University of Oxford, and Ms. Antonia Preciosa Menezes, Senior Financial Sector Specialist, World Bank Group.
3	13.10.20	Unlocking the COVID-19 impact on Economy, Corporates and Credit Outlook	Resource persons from CRISIL Ltd.
4	22.10.20	Prepack Insolvency Framework	Foreign Commonwealth and Development Office, UK Team
5	23.01.21	The Right to Information Act, 2005	Mr. Vadali Rambabu, Deputy Secretary, ISTM

MoU with Invest India

IBBI signed a Memorandum of Understanding (MoU) with Invest India, on June 25, 2020, for cooperation in promotion of investment opportunities in stressed assets in India. Under the same, IBBI will provide information about CDs under CIRP under the Code for dissemination through Invest India's Stressed Assets Portal (SAP). Invest India shall, under the MoU, promote investment opportunities in stressed assets through the SAP on India Investment Grid and through other investor outreach activities.

MOU with IIBF

IBBI signed an MoU with the Indian Institute of Banking and Finance (IIBF) on August 12, 2020, to join as a knowledge partner for delivery of a certificate course 'Resolution of Stressed Assets with special emphasis on Insolvency and Bankruptcy Code, 2016 for Bankers' to be offered by IIBF. The certificate course aims to develop among banking professionals and employees an understanding of the role and expectations from FCs and the CoC in CIRP under the Code. This will enable them to discharge their statutory duties and responsibilities, including the commercial decisions with

utmost care and diligence, in the best interests of the CD and its stakeholders.

MoU with ICAI Law School

IBBI signed an MoU with the ICAI Law School, Hyderabad on September 16, 2020 as a knowledge partner for delivery of six-month long Certificate Courses on the Insolvency and Bankruptcy Code, 2016, namely, 'Insolvency and Bankruptcy Law in India', 'Insolvency and Bankruptcy Processes and Procedures', and 'Insolvency Professionals and Resolution', offered by the Law School. The aim of these courses is to enhance the skill sets and knowledge relating to insolvency resolution among entrepreneurs and qualified professionals who may be evincing interest in this evolving field.

Parliamentary Committees

The Parliamentary Standing Committee on Finance took oral evidence of the representatives of the MCA on the subject 'Implementation of Insolvency and Bankruptcy Code' on August 25, 2020. Secretary and other officers of the MCA and Chairperson, IBBI appeared before the Committee and gave evidence.

The Committee took another oral evidence of the representatives of the MCA on the subject 'Implementation of Insolvency and Bankruptcy Code-Pitfalls and Solutions' on January 12, 2021. Secretary and other officers of the MCA and Chairperson, IBBI appeared before the Committee.

Presentation to EAC-PM

The Economic Advisory Council of the Prime Minister (EAC-PM) sought a presentation on IBC, its related issues, and suggestions, etc. Accordingly, Dr. M. S. Sahoo, Chairperson, IBBI and Mr. Sudhaker Shukla, WTM, IBBI made a presentation to EAC-PM on November 24, 2020.

Information Technology

The IBBI recognises the utmost importance of ensuring efficiency and transparency in its processes and hence has laid emphasis on using IT for delivery of its services since its inception. The key initiatives taken by the IBBI in this regard are as under:

e-Office: With the objective of enhancing transparency, increasing accountability; assuring data security and data integrity; better knowledge management; shifting to paperless style of working and saving staff time and energy in processing of official files and receipts, the IBBI shifted to e-Office application provided by the National Informatics Centre in November, 2018. The e-Office application has enabled a faster and efficient e-File management system. Receipts are processed quickly in a paperless fashion thereby saving time and effort of the staff. e-Office has enabled officers of the Board to track the status and location of files on real time basis leading to timely action and faster disposal of matters. It has improved security of documents, management of records and put in place efficient retrieval systems. This transition to digital files has paid rich dividends to the Board

during lockdown. In times of COVID-19 it helped the officials of the Board to dispose the office work from the safety of their respective homes. e-Office is also being utilised for paperless tour approvals. The package also includes a Knowledge Management System, which acts as a centralised repository of various documents such as policies and guidelines. The Board uploads internal and external learning documents on the portal for internal use.

e-Meetings: Even before the outbreak of COVID-19 pandemic, the IBBI started using a e-meetings or online meetings software called Microsoft Teams for conducting meetings to tap the efficiencies attached to it. The shift paid handsomely to the Board, as even during the period of lockdown, the Board could hold GB meetings, internal meetings within IBBI and meetings with external organisations, experts and service providers. The e-Meeting platform has proven to be cost effective, time saving, and enabled participation of stakeholders spread across the country and the globe. The Board has been able to schedule meetings during lockdown and employees has been able to contribute without any loss in productivity.

Website: The IBBI registered the domain name www.ibbi.gov.in and started a website for dissemination of its activities in November, 2016. The website was scaled up to disseminate details about the service providers, regulatory framework, examinations, orders by the courts and tribunals under the Code, orders passed by the Board and the DC, etc. It also hosts details of various processes and forms pertaining to them under the Code to facilitate stakeholders to take decisions in time.

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

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

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

platform for crowdsourcing of comments and suggestions on the existing regulatory framework.

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

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

Recruitment: All recruitment notifications and their results are hosted under the 'Careers' section on the website of IBBI.

Tenders: All the tenders floated by IBBI (including any amendments) are hosted under the 'Tenders' section on the website of IBBI.

Advocacy: The details of the workshops/seminars/conferences as organised by IBBI for its stakeholders is hosted on the website of IBBI.

Premises

The IBBI operates from two office premises, namely, 7th Floor, Mayur Bhawan, Shankar Market, Connaught Circus, New Delhi and 2nd Floor of Jeevan Vihar, Parliament Street, New Delhi.

ANNUAL DAY CELEBRATIONS

IBBI celebrated its Fourth Annual Day on October 1, 2020. The celebration witnessed presence of a limited number of dignitaries in person in view of the COVID-19. However, thousands of stakeholders witnessed the event live through YouTube live streaming.

Hon'ble Minister of State for Finance and Corporate Affairs, Mr. Anurag Singh Thakur graced the occasion as the Chief Guest. In his address, he elaborated several measures taken by the Government to ameliorate the pains of citizens in the aftermath of the COVID-19 pandemic. He pointed out that amendment to the Code to suspend the filling of corporate insolvencies in respect of COVID-19 defaults was one such step required to save businesses from being closed prematurely. He expressed hope that the economy would revive soon on the back of picking up of demand and increased domestic and foreign investments.



Hon'ble Minister of State for Finance and Corporate Affairs, Mr. Anurag Singh Thakur, October 1, 2020

To commemorate its establishment, IBBI has instituted an Annual Day Lecture Series. Mr. Girish Chandra Murmu, Comptroller and Auditor General of India (C&AG) delivered the Fourth Annual Day Lecture on '*IBC: Adaptability is the Key to Sustaining Reforms in Times of a Pandemic*'. He observed that the insolvency law has led to a significant behavioural shift among borrowers as non-repayment of loan is no more an option and ownership of a firm is no more a divine right and equity is no more the only route to own a firm. He observed that this behavioural shift had resulted in substantial recoveries for creditors outside the IBC and improved the performance of firms. Adaptability, he said, was most required for a law, like the IBC, to remain relevant to the times.



Comptroller and Auditor General of India, Mr. Girish Chandra Murmu, October 1, 2020

National Quiz

IBBI, in collaboration with MyGov.in, had conducted a '*National Online Quiz on Insolvency and Bankruptcy Code, 2016*' from July 1-31, 2020 to promote awareness and understanding of the Code among various stakeholders across the country. The Quiz received overwhelming response with 1.26 lakh participants. There were participants from every State and every Union Territory of India. The C&AG gave away the medals and cash awards to the top three performers of the quiz.



Awards to IBC National Quiz winners, October 1, 2020

Distressed Assets Platform

Insolvency resolution has opened markets for distressed assets in terms of resolution plans, interim finance, and liquidation assets. Price discovery in any market is efficient if it has many participants and there is complete transparency. In the interest of efficient price discovery, IBBI has empanelled National e-Governance Services Limited to provide an electronic platform for market for distressed assets. Hon'ble Minister inaugurated the platform on the occasion.



Inauguration of Distressed Assets Platform, October 1, 2020

International Women's Day

To mark the occasion of International Women's Day, the IBBI organised a seminar on March 8, 2021, on the lines of this year's United Nations' theme 'Women in Leadership: Achieving an equal; future in a COVID-19 world'. Ms. Sumitra Mahajan, former Speaker, Lok Sabha was the Chief Guest at the occasion. She highlighted that women are making a mark in every field, including the budding profession of IPs. Their role during the pandemic has been extra-ordinary.

The other dignitaries who spoke on the occasion were Ms. Sudha R. Relangi, Director (Prosecution), Central Bureau of Investigation; Ms. Madhavi Divan, Additional Solicitor General; and Ms. Tripti Singhal Somani, Founder, Womenovator & Co-chairperson, MSME Committee, PHDCCI. The technical session on 'Insolvency Professionals and Women: Multi Taskers' was moderated by Ms. Jyoti Vij, Dy. Secretary General,

FICCI. The seminar also had an experience sharing session on 'Successful Resolutions under the Code', moderated by Ms. Jyoti Jindgar, Advisor, Competition Commission of India. The seminar was live streamed.

IAIR Executive Committee

Dr. (Ms.) Mukulita Vijayawargiya, WTM, IBBI was elected as a member of the Executive Committee of the International Association of Insolvency Regulators (IAIR) at its Annual General Meeting held on November 4, 2020, for a period of one year. The Executive Committee is the decision-making authority of IAIR, which takes all decisions and actions necessary to achieve the objectives of IAIR.

RIGHT TO INFORMATION AND TRANSPARENCY

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

The IBBI designated Mr. Umesh Kumar Sharma, CGM, as a Central Public Information Officer (CPIO) under section 2(h) of the RTI Act on August 19, 2019 for providing information to any citizen on an application made under the Act. On the completion of deputation of the officer in IBBI, Dr. Sunil Kumar, DGM, was designated as CPIO with effect from July 1, 2020.

The IBBI designated Mr. K. R. Saji Kumar, ED as the First Appellate Authority (FAA) on August 19, 2019 for the disposal of appeals against the orders of the CPIO under section 19(1) of the RTI Act. On his repatriation to his parent cadre, Dr. Anuradha Guru, ED was designated as the FAA with effect from January 11, 2021.

Table 84 presents the details of receipt and disposal of applications and first appeals under the RTI Act, during 2020-21.

Table 84: Receipt and Disposal of RTI Applications and First Appeals

No.	Description	Number		
		2018-19	2019-20	2020-21
1	Application brought forward from previous year	9	9	7
2	Applications received by CPIO seeking information under the RTI Act, 2005	236	230	310
3	Applications for which information has been provided by the CPIO	236	232	305
4	Applications pending with CPIO.	9	7	12

5	Appeals brought forward from previous year	-	0	3
6	Appeals filed before the FAA against the order of CPIO	29	22	39
7	Appeals which have been disposed of by the FAA	29	19	39
8	Appeals pending with the FAA	0	3	3
9	Applications/Appeals not disposed of in the stipulated time frame	0	0	0