




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

ANNUAL REPORT 2019-20



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



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ANNUAL REPORT 2019-20

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

www.ibbi.gov.in



सत्यमेव जयते

Dr. M. S. Sahoo
Chairperson

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बोर्ड-18011/1/2020-आई. बी. आई.


दिनांक : 31 दिसंबर, 2020

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

प्रिय महोदय,

दिवाला और शोधन अक्षमता संहिता, 2016 की धारा 229 के प्रावधानों के अनुसरण में, मैं भारत के राजपत्र में 1 मई, 2018 को अधिसूचित दिवाला और शोधन अक्षमता बोर्ड (वार्षिक रिपोर्ट) नियम, 2018 में निर्धारित प्रारूप में 1 अप्रैल, 2019 से 31 मार्च, 2020 तक की अवधि के लिए भारतीय दिवाला और शोधन अक्षमता बोर्ड की वार्षिक रिपोर्ट की एक प्रति अग्रेषित कर रहा हूँ।

भवदीय,


(डॉ. एम. एस. साहू)

संलग्न : उपरोक्तानुसार


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

Board -18011/1/2020-IBBI
31st December, 2020

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, 2019 to 31st March, 2020, 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,


(Dr. M. S. Sahoo)

Encl.: As above.

THE GOVERNING BOARD

(As on 31st March, 2020)

CHAIRPERSON



Dr. M. S. Sahoo

WHOLE-TIME MEMBERS



Dr. Navrang Saini



Dr. Mukulita Vijayawargiya



Mr. Sudhaker Shukla

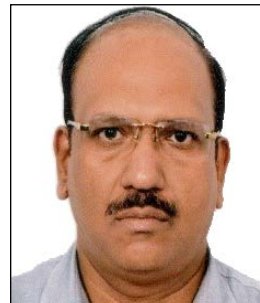
EX-OFFICIO MEMBERS



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 31st March, 2020)



Mr. Ritesh Kavdia
ED



Mr. K. R. Saji Kumar
ED



Dr. Anuradha Guru
ED



Mr. Pawan K. Kumar
ED



Mr. I. Sreekara Rao
CGM



Mr. Umesh Kumar Sharma
CGM



Mr. Debajyoti Ray Chaudhuri
CGM



Mr. Methil Unnikrishnan
GM



Mr. Amit Sahu
DGM



Mr. Dilip Arjun Khandale
DGM



Dr. Kokila Jayaram
DGM



Mr. Sunil Kumar
DGM



Mr. Sushanta Kumar Das
DGM



Mr. Nitish Saini
AGM



Mr. Mayank Mehta
AGM



Mr. Pankaj Kumar
AGM



Mr. Abhishek Mittapally
AM



Mr. Aniket Sharma
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 31st March, 2020)

Name	Divisions
Mr. Ritesh Kavdia	Corporate Insolvency, Corporate Liquidation, Establishment, Valuation Examination, Limited Insolvency Examination, Information Technology
Mr. K. R. Saji Kumar	Continuing Professional Education, Knowledge Management and Partnership, Advocacy, Legal Affairs, Adjudication, Court Proceeding, Communication and RTI
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
Mr. Pawan K. Kumar	Registered Valuers, Organisations (IU, IPA, IPE, RVO), Insolvency Professionals, Surveillance, Investigation, Grievances, Finance and Accounts

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List of Abbreviations

AA	Adjudicating Authority
AC	Advisory Committee
Advisory Committee Regulations	IBBI (Advisory Committee) Regulations, 2017
AFA	Authorisation for Assignment
AGM	Assistant General Manager
ALW	Administrative Law Wing
AM	Assistant Manager
Amendment Act, 2018	Insolvency and Bankruptcy Code (Amendment) Act, 2018
Amendment Act, 2019	Insolvency and Bankruptcy Code (Amendment) Act, 2019
AMFI	Association of Mutual Funds in India
AO	Adjudicating Officer
AR	Authorised Representative
ASSOCHAM	Associated Chambers of Commerce and Industry of India
BIFR	Board for Industrial and Financial Reconstruction
BLRC	Bankruptcy Law Reforms Committee
Board/IBBI	Insolvency and Bankruptcy Board of India
Board Regulations	IBBI (Procedure for Governing Board Meetings) Regulations, 2017
BSE	Bombay Stock Exchange
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
CA 1956	Companies Act, 1956
CA 2013	Companies Act, 2013
CAPA	Centre for Asia Pacific Aviation
CARO, 2020	Companies (Auditor's Report) Order, 2020
CCI	Competition Commission of India
CD	Corporate Debtor
CEO	Chief Executive Officer
CERC	Central Electricity Commission
CERSAI	Central Registry of Securitisation Asset Reconstruction and Security Interest of India
CEV	Council for Engineers and Valuers
CFA	Chartered Financial Analyst
CFI	Consolidated Fund of India
CGI	Consulate General 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
CLCR	Central Loan Contract Registry/Repository
CMIE	Centre for Monitoring Indian Economy Pvt. Ltd.
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
CSS	Central Secretariat Service
CVSRTA	Centre for Valuation Studies, Research and Training Association
DBR	World Bank's Doing Business Report
DC	Disciplinary Committee
DFI	Development Finance Institution
DGM	Deputy General Manager
DHFL	Dewan Housing Finance Corporation Limited
DoPT	Department of Personnel and Training
DRT	Debt Recovery Tribunal
DRAT	Debt Recovery Appellate Tribunal
ECBs	External Commercial Borrowings
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
FAA	First Appellate Authority
Fast Track Regulations	IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017
FC/FCs	Financial Creditor/ Financial Creditors
FCO	Foreign, Commonwealth and Development Office
FDI	Foreign Direct Investment
FICCI	Federation of Indian Chambers of Commerce & Industry
FOIR	Forum of Indian Regulators
FPI	Foreign Portfolio Investment
FSLRC	Financial Sector Legislative Reforms Commission
FSP	Fresh Start Process
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
GIP	Graduate Insolvency Programme
GII	Global Innovation Index
GM	General Manager
GNLU	Gujarat National Law University
GNPA	Gross Non-Performing Asset
Gol	Government of India
GRR	Global Restructuring Review
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
ICSI	Institute of Company Secretaries of India
ICSI IIP	ICSI Institute of Insolvency Professionals
ICSI-NIRC	ICSI-Northern India Regional Council
IDBI	Industrial Development Bank of India
IIBF	Indian Institute of Banking and Finance
IICA	Indian Institute of Corporate Affairs
IHS	Indian Institute for Human Settlements
IIPI	Indian Institute of Insolvency Professionals of ICAI
IIM	Indian Institute of Management
IIP	Index of Industrial Production
ILC	Insolvency Law Committee
ILO	International Labour Organisation
IM	Information Memorandum
IMF	International Monetary Fund
IMT	Institute of Management Technology, Ghaziabad
IND-AS	Indian Accounting Standard
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
IU/IUs	Information Utility/Utilities
IU Regulations	IBBI (Information Utilities) Regulations, 2017
IT	Information Technology
JAL	Jaiprakash Associates Limited
JIL	Jaypee Infratech Limited
JNIBF	Jawaharlal Nehru Institute of Banking and Finance
Liquidation Regulations	IBBI (Liquidation Process) Regulations, 2016
LLP	Limited Liability Partnership

MCA	Ministry of Corporate Affairs
MD	Managing Director
MGNREGA	Mahatma Gandhi National Rural Employment Guarantee Scheme
MNLU	National Law University, Mumbai
MoF	Ministry of Finance
MoL&J	Ministry of Law and Justice
MoU	Memorandum of Understanding
MSME	Micro, Small and Medium Enterprises
NABARD	National Bank for Agriculture and Rural Development
NBFC	Non-Banking Financial Company
NBFC-D	Deposit taking Non-Banking Financial Companies
NBFC-ND-SI	Systemically Important Non-Deposit taking Non-Banking Financial Companies
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NCW	National Commission for Women
NeSL	National e-Governance Services Limited
NFC	Non-Food Credit
NFRA	National Financial Reporting Authority
NGO	Non-Governmental Organisation
NHB	National Housing Bank
NIC	National Industrial Classification
NIV	National Institute of Valuers
NLIU, Bhopal	National Law Institute University, Bhopal
NLSIU	National Law School of India University, Bangalore
NLU	National Law University
NLUD	National Law University Delhi
NPA	Non-Performing Asset
NPS	National Pension System
OC/OCs	Operational Creditor/ Creditors
OECD	Organisation for Economic Co-operation and Development
PFRDA	Pension Fund Regulatory and Development Authority
PG/PGs	Personal Guarantor/Guarantors
PHDCCI	PHD Chamber of Commerce and Industry
PNB	Punjab National Bank
PNGRB	Petroleum and Natural Gas Regulatory Board
PMO	Prime Minister's Office
PMLA	Prevention of Money Laundering Act, 2002
PSB/PSBs	Public Sector Bank/Banks
PUFE	Preferential, Undervalued, Extortionate, Fraudulent transactions
PVAI	Practising Valuers Association of India
RA	Resolution Applicant
RBI	Reserve Bank of India
RERA	Real Estate (Regulation and Development) Act, 2016
RFRP	Request for Resolution Plan
RIA	Regulatory Impact Assessment
RIPA	Royal Institute of Public Administration
RMLNLU	Dr. Ram Manohar Lohiya National Law University
RP	Resolution Professional

RMW	Registration and Monitoring Wing
RRW	Research and Regulation Wing
RTI	Right to Information
RV/RVs	Registered Valuer/ Valuers
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
SCBs	Scheduled Commercial Banks
SCF	Standing Committee on Finance
SCN	Show Cause Notice
SEBI	Securities and Exchange Board of India
SICA	Sick Industrial Companies (Special Provisions) Act, 1985
SIDBI	Small Industries Development Bank of India
SIPI	Society of Insolvency Practitioners of India
SoA	Scheme of Compromise or Arrangement
SRO	Self-Regulatory Organisations
TDS	Tax Deducted at Source
UNCITRAL	United Nations Commission on International Trade Law
UNCITRAL RCAP	UNCITRAL Regional Centre for Asia and the Pacific
Valuation Rules	Companies (Registered Valuers and Valuation) Rules, 2017
Vidhi	Vidhi Centre for Legal Policy and Research
Voluntary Liquidation Regulations	IBBI (Voluntary Liquidation Process) Regulations, 2017
WG	Working Group
WHO	World Health Organisation
WIPO	World Intellectual Property Organization
WTM	Whole Time Member



CHAIRPERSON'S STATEMENT

The Journey

Though in operation for about three years, the Insolvency and Bankruptcy Code, 2016 (Code/IBC) has established the supremacy of markets and the rule of law in resolution of insolvency. From providing freedom of exit to rescuing companies in financial distress to helping creditors realise their dues and most importantly, bringing about a behavioural change amongst the debtors and creditors alike, the list of achievements of the Code is a long one.

Starting from the first resolution, that of Synergy Dooray to complicated and protracted resolutions of some of the large companies such as Bhushan Steel and Essar Steel, the Code has successfully passed the initial test of any economic legislation. On the journey, it took several challenges in its stride and made prompt course corrections to accommodate the emerging needs. Four amendments to the Code in as many years and dozens of subordinate legislations are testimony to the dynamism of the Code and the strong will of the Government to promote and facilitate resolution. These actions also saw critics talking about too frequent amendments being a source of concern. However, this was inevitable as the insolvency regime put in place by the Code was new, requiring the ecosystem and the authorities to keep learning and evolving, witnessing some hits and some misses, but staying on its course.

Almost every provision of the law as well as the amendments went through intense judicial scrutiny. While conceding the freedom to experiment to the legislature, the Apex Court proactively settled the jurisprudence, explained several conceptual issues, settled contentious issues, and resolved grey areas, at an unprecedented pace. The Code passed the constitutional muster, while the insolvency law boasts of probably the largest body of case laws.

The Code is changing the way the society perceives business failures. By rescuing viable businesses through the insolvency process, closing unviable ones through liquidation, and facilitating voluntary liquidations, it is releasing the entrepreneurs from honest business failures. This is especially important for India, which has one of the largest start-up ecosystems in the world, with recognised start-ups scaling up from 5,420 in 2017 to 11,683 in 2019. Further, as India aspires to be a \$5 trillion economy, promotion of competition and innovation to push up the economic growth holds the key. Firms, which may fail to withstand market pressures, would need to use the Code for either a re-organisation of business or a clean and dignified exit. "Failing in succeeding" will soon be the new *mantra* for budding entrepreneurs in the country.

Unused or under-used productive resources is anathema for growth of a country and people. By rescuing viable businesses

through the insolvency process and closing non-viable ones through liquidation, it is releasing resources, including entrepreneurs. The reallocation of resources to more efficient uses is essential to keep the economic cycle going. In the three years, distress of 236 corporate debtors (CDs) were resolved through resolution plans, while 932 CDs were liquidated. At the end of the year, 1964 CDs were undergoing resolution process and 823 CDs were undergoing liquidation process. Another 682 corporate persons availed voluntary liquidation.

The creditors now have an effective option, in addition to existing options for recovery and restructuring, in case of default. It has triggered a systemic response to the underlying attitudinal problems in the creditor-debtor relationship and is acting as a prophylactic for an acute condition. Initiation of insolvency proceedings at the early stage of default increases chances of resolution thereby enabling bankers to keep an earning asset on its books during the term of a loan. The difficulty in explaining undue delay in using the Code may discourage any unholy ties between lender and borrower, consequently reducing the chances of high value defaults and frauds. A deeper, healthy, and desirable change for banks is the obligation they now feel towards more responsible and clean lending to begin with. For the business debtor, the threat of a resolution process shifting control of the firm away from the promoters is real and is serving as an effective deterrent. They have every incentive to not default or operate at below optimal levels leading to distress conditions. The debtors are encouraged to settle default with the creditor(s) at the earliest, preferably before an IBC process is initiated.

India made one of the most impressive improvements in the 'resolving insolvency' parameter of the World Bank's Ease of Doing Business Report (DBR) for the year 2019, improving 56 places to 52 from 108 last year among 190 countries. The improvement in this parameter was one of the single largest contribution to the increase in score that pushed up India's overall ranking to 63. This is an important recognition for the IBC, having put in place effective tools for creditors to successfully negotiate and effectuated greater chances for creditors to realise their dues (71 cents to a dollar) in a significantly reduced timeframe (1.6 years) compared to earlier insolvency regime. The DBR recognises that the law is designed and works in a way that an entity stands to be sold 'as going concern' rather than be 'sold in piece-meal' showing that the IBC is a resolution mechanism and not merely a recovery tool.

In a short span of time, the law has established and strengthened an entire ecosystem, an achievement that seems to have gone un-noticed and is least recognised. The Code has been instrumental in building a cadre of 3009 insolvency professionals (IPs), 3 insolvency professional agencies (IPAs), 69 insolvency professional entities (IPEs), 3030 registered

valuers (RVs), 12 registered valuers' organisations (RVOs) and one information utility (IU). It has expanded the scope of services of Advocates, Accountants, and other professionals. It has also created markets for education and capacity building of these professionals. More importantly, markets for resolution plans, interim finance and liquidation assets have emerged.

Life of a Company

Companies are modern engines of growth. They produce goods and services and generate income and employment. They are a hope of prosperity for the posterity. They often have an organisational capital over and above their liquidation values. It takes years of efforts to bring up a company to replace an existing one. Therefore, its life is precious. It is necessary to have an effective regime to rescue a company from premature death, and nurse it back to normal life as early as possible.

Broadly, the life of a company has three enemies. First is the enemy within. Immediate stakeholders of a company may work at cross-purposes, or even against the interest of the company. While enjoying limited liability, they may expose the company and other stakeholders to unlimited liabilities. Corporate governance norms synchronise and balance the interests of stakeholders with those of the company and the society to address this danger. The second enemy is unfair battles at the marketplace. A company that dutifully pays corporate tax on its profits cannot survive if another company in the same business dodges taxes. The State protects companies against unfair battles by establishing rule of law and ensuring level playing field for all firms.

The third and the most fatal enemy is competition and innovation. This is a fair battle because it is the state policy to stimulate competition and innovation for higher growth. A company loses life when it fails to compete with its peers in the industry for reasons such as poor organisation, inefficient management and malfeasance. It also loses life when its business becomes unviable for reasons such as innovation. 'Creative destruction' may destroy more companies than it creates. Resilience and adaptation, visionary leadership, preparedness for unknowns, etc. minimise this danger.

The law provides for layers of security to protect the life of a company. A Board of Directors appoints and supervises the executive management and replaces it in accordance with contractual arrangements, in case of failure. Shareholders elect Directors to the Board, monitor their performance and replace them in accordance with the provisions of the Companies Act, 2013, if they fail to perform. A promising set of shareholders may even replace the existing set through the market for corporate control. The creditors step in to rescue the company, when shareholders fail to protect its life, in accordance with the provisions of the Code.

The IBC empowers creditors, represented by a committee of creditors (CoC), to rescue a company, when it experiences a serious threat to its survival. For this, the CoC has a *trishul*: (a) it takes or causes a haircut of any amount to any or all stakeholders required 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. The IBC mandates consideration of only feasible and viable resolution plans, from capable and credible persons, to ensure sustained life of a company. The CoC endeavours to rescue a viable company and close an unviable one through insolvency proceedings under the Code.

The success of rescue operation depends on how resolvable the company is. The likelihood is more if the company has value, and such value is free from encumbrances, is visible to a discerning eye, and easily realisable by any resolution applicant (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. To improve the likelihood of resolution, a company may consider having a sort of living will that provides a guided path for resolution. 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.

Two Ways of Resolution

The Code was enacted to resolve the stress of companies. Some distractors, however, argue that because the corporate insolvency resolution process (CIRP) under the Code rescues only about 25 per cent of companies and leads to liquidation for the rest, the Code is not delivering on its mandate. These numbers do tell a story, but not the entire story. First, the CIRP enables the market to attempt to resolve stress through a resolution plan whereby the company survives. When it concludes that there is no feasible resolution plan to rescue the company, the company proceeds for liquidation. The market usually rescues a viable company and liquidates an unviable one. Take the examples of Ghotaringa Minerals Limited and Orchid Healthcare Private Limited which caught media attention. They together owed over Rs. 8,000 crore to creditors, while they had absolutely no assets and workers when they entered CIRP. There are quite a few companies which have negligible assets and/or are defunct when they enter CIRP. Many of these are beyond rescue for a variety of reasons, including creative destruction, and their continuation is a cost to the economy. In such cases, the Code enables liquidation to release available resources to alternate uses. There is no reason to fret over liquidation in such cases. It is welcome, as it releases the assets as well as the entrepreneur stuck up in an unviable company, which is a key objective of the Code.

Second, on the face of it, 25 per cent of companies were rescued and 75 per cent proceeded for liquidation. In value terms, however, 75 per cent of the assets were rescued and 25 per cent of assets proceeded for liquidation. Importantly, of the companies sent for liquidation, 72 per cent were either sick or defunct, and of the companies rescued, 33 per cent were either sick or defunct. The companies rescued had assets, on average, valued at 25 per cent of the amount of claims against them, while the companies ordered for liquidation had assets valued at 75 per cent of the amount of claims against them. In terms of these facts, the extent of liquidation under the Code does not appear worrisome.

Third, the stress that a company suffers is like an illness which can be treated by a variety of options. Allopathy is one of the options for a patient, just as the Code is one of the options for resolving stress of a company, others being, the Scheme of Arrangement under the Companies Act, 2013, the Reserve Bank of India (RBI) Prudential Framework, etc. Some patients treat their illness with over-the-counter medicines, some visit a doctor. Most patients get relief at the out-patient department (OPD) of a primary health centre. Patients with complicated illness move to a secondary care hospital, the more complicated ones to tertiary care and the most complicated ones to quaternary care. Normally, recovery is better if diagnosis and treatment start early. When the illness is at an advanced stage, some patients may survive, while some may not, despite the best efforts of doctors. The percentage of survival at this stage may not be significant. However, the number of patients who recover in OPDs, and at primary care, secondary care, and tertiary care hospitals as a percentage of those who visit a doctor gives a fair idea about the efficacy of allopathy as an option for treatment of illness.

The credible threat of CIRP that a company may change hands has redefined the debtor-creditor relationship. In the words of the Supreme Court (SC), the Code has ensured that 'defaulters' paradise is lost'. Faced with the possibility of the CIRP, a debtor makes all-out efforts to prevent the stress, or resolve it much before it translates into a default or settles the default to prevent filing of application for initiation of CIRP. Even after an application is filed, a debtor continues efforts to resolve the financial stress midway through settlement, review, mediation, or withdrawal to avoid the consequences of CIRP. There are also examples of settlement with the approval of the Apex Court. In fact, of the applications filed for initiation of CIRP before the Adjudicating Authority (AA), about 13,927 applications were resolved before admission by end of March, 2020 and the stress underlying only 3847 applications entered CIRP for resolution. Of these, 1,964 are ongoing, while 715 got resolved, through settlement, review, mediation, or withdrawal. The remaining 1168 have completed the process. Many applications are being withdrawn even before admission.

Liquidation or rescue is an outcome of the market forces; the law is only an enabler giving choices and nudging a company 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. They will not use the Code if they find that the outcome under it is not consistent with market realities. When they use the Code, they have a choice between rescue and liquidation. The 'invisible hands' of the market works towards the best outcome, which we should respect and accept.

The COVID-19 pandemic

The security provided by the law may fail to protect a company, which was doing well earlier, but is reeling under stress for *force majeure* circumstances such as the COVID-19 pandemic. As the year 2019-20 was ending, COVID-19 incited the deadliest confluence of tragedies in health sector, economy, and financial markets, having no precedent and no quick resolution in sight. The unparalleled misery required

a matching response to save 'lives', that required saving 'livelihood', which in turn required saving lives of firms. Governments around the world adopted an accommodative stance and acted swiftly to prevent corporates and individuals from being forced into insolvency and bankruptcy. Many bought time to prepare a comprehensive plan to rescue the economy by suspending some provisions of their insolvency legislations.

The pandemic challenged the still nascent insolvency law in the country. In normal times, the Code enables market forces to pursue twin complementary remedies in respect of failing firms: (a) rescue a viable firm, and (b) liquidate an unviable one. It searches for a saviour to rescue a failing firm. When every firm, every industry and every economy is reeling under stress, the likelihood of finding a rescuer for 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 will face premature death, while its assets would be subject to distress sale, realising abysmally little. This neither resolves the stress nor maximises the value of assets and, hence is not consistent with the objectives of the Code. Rescuing lives of firms being the prime objective of the Code, it should not be used to take away their lives prematurely at these unusual times.

The unprecedented situation called for yet 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 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, in furtherance of the objectives of the Code. In the last week of the year, Government enhanced the threshold default for initiating insolvency proceedings to insulate the micro, small and medium enterprises (MSMEs). It also considered suspending filing of applications for initiating insolvency if the situation did not improve by April, 2020.

The suspension 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 pandemic or became unviable on account of it. It would also not allow rescue of a failing firm even if it were viable before the pandemic 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, should be 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. The Central Bank of the country, the SC, National Company Law Appellate Tribunal (NCLAT) and National Company Law Tribunal (NCLT), and the Insolvency and Bankruptcy Board of India (IBBI/Board) took several measures to ameliorate the pains of the health crisis to a large extent.

The availability of RAs will continue to be a concern for quite some time, particularly when there is no clarity as to when COVID-19 will subside and even after that the business and economy would take considerable time to recover. It is necessary to provide an effective dispensation, which enables the stakeholders to find a resolution during COVID-19 period and even on the other side of the pandemic. Pre-pack is being suggested as a useful dispensation in these difficult times.

Going Forward

Given that life is ever revolving, the Code, since its inception has shown extraordinary dynamism in addressing many of the pressing concerns on resolving corporate insolvency. With many accolades won and hurdles traversed, the journey still seems to have only begun for this legislation. With considerable learning and maturity of the ecosystem, and a reasonably fair debtor-creditor relationship in place, the ground seems ready to experiment with sophisticated options for resolution of stress and enrich existing options with value adding features.

The path ahead would perhaps be guided by a different set of imperatives as the health emergency unfolds further and economic and financial impact of the ongoing crisis become clearer. The COVID-19 may not be the last crisis to have a bearing on the insolvency journey. We must, however, remain vigilant and prepared to change and adapt, to rise to the

challenges of the emerging scenarios. As is said, 'One cannot spell challenge without change'.

Despite challenges on the way, the insolvency reforms must not lose focus of the destination. We must intensify our efforts till India starts celebrating failure. The reforms must realise the dream of the Hon'ble Prime Minister of India, who in his address at the Centenary Celebrations of Kirloskar Group on 6th January, 2020, underscored:

“साथियों आजकल Insolvency Bankruptcy Code (IBC) की इतनी चर्चा होती है, लेकिन यह सिर्फ इतना पैसा वापस आया उतना पैसा वापस आया वहां तक ही सीमित रहती है। लेकिन वह उससे भी आगे है, आप सभी यह बेहतर जानते हैं कि कुछ स्थितियों में धंधे से बाहर निकलना ही कई बार समझदारी माना जाता है। ये जरूरी नहीं कि जो कंपनी सफल ना हो रही हो उसके पीछे कोई साजिश ही हो, कोई गलत इरादा हो, कोई लालच हो, यह जरूरी नहीं है। देश में ऐसे उद्यमियों के लिए एक रास्ता तैयार करना आवश्यक था और IBC ने इसका आधार तैयार किया। आज नहीं तो कल इस बात पर अध्ययन जरूरी होगा कि IBC ने कितने भारतीय उद्यमियों का भविष्य बचाया, उन्हें हमेशा हमेशा के लिए बर्बाद होने से रोका।”

The success of the Code, as enumerated above, is attributable to a large extent to the unflinching guidance and support of the Ministry of Corporate Affairs (MCA), Government of India. I thank the Ministry for having stirred the insolvency reforms and guided the Board at every step and in every challenging situation. I thank my member colleagues on the Governing Board of the IBBI for lending their expertise and firm support for successful implementation of the Code.

(Dr. M. S. Sahoo)



THE YEAR IN REVIEW

MACROECONOMIC CONTEXT

Macroeconomic trends¹

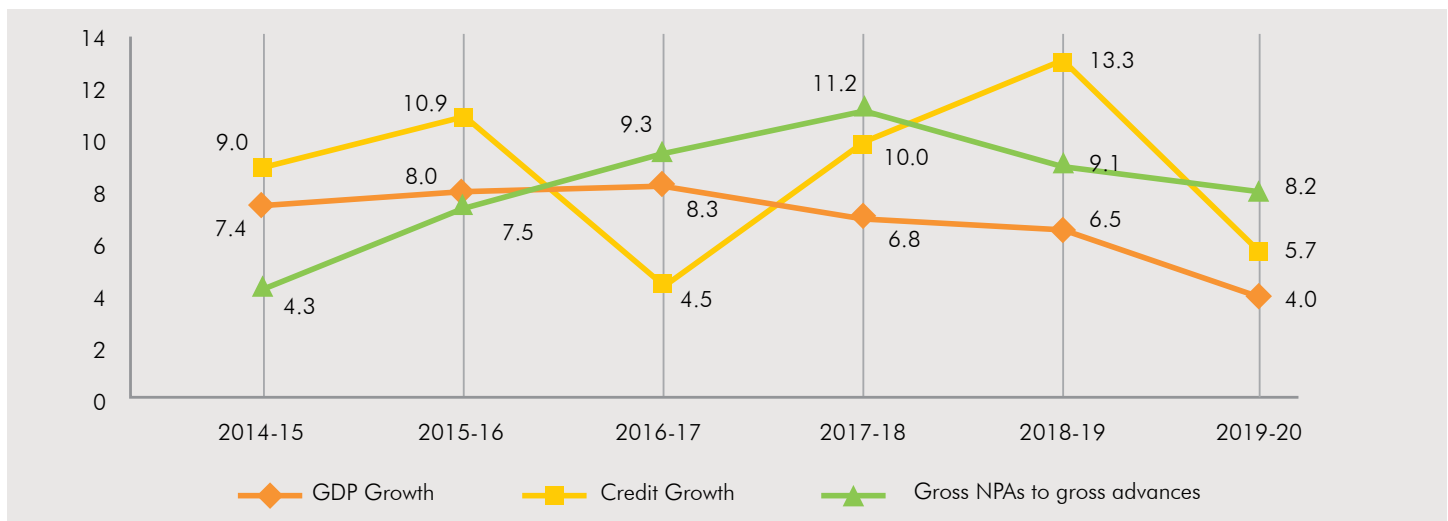
The growth of bank credit of scheduled commercial banks (SCBs) considerably weakened to 6.1 per cent in 2019-20. Factors such as weak demand and risk aversion among banks contributed to the fall in credit growth which fell to half its rate compared to a year ago. Towards the end of the year, as a result of the COVID-19 pandemic, economic activity weakened further with accentuated deleveraging of corporate balance sheets and risk aversion by banks, thereby leading to a reduction in the incremental credit-deposit ratio. During 2019, the credit-to-gross domestic product (GDP) gap continued to remain wide due to tepid credit demand. Data on sectoral deployment of bank credit for March, 2020 reflects a broad-based slowdown. Credit growth to agriculture and allied activities, and industry decelerated in 2019-20. Overall, as of end of March, 2020, non-food credit growth decelerated sharply to 6.7 per cent from 12.3 per cent in the previous year.

The gross non-performing asset (GNPA) ratio of all SCBs, which was 9.1 per cent in March, 2019 came down to 8.2 per cent in March, 2020. Non-performing asset (NPA) provisions have been decelerating for public sector banks and foreign banks since March, 2019. For the third consecutive year, the provision coverage ratio of SCBs improved to reach 66.2 per cent in end-March 2020. A reduction in the overhang of stressed assets continued up to the early part of 2019-20, and fresh slippages were arrested, despite a prolonged

slowdown in global and domestic growth impinging on credit demand. Towards the close of the financial year, these slow-moving improvements came to a halt due to the outbreak of COVID-19. The regulatory dispensations that the pandemic has necessitated in terms of the moratorium on loan instalments and deferment of interest payments may have implications for the financial health of SCBs, going forward.

The slowdown in credit growth was in line with the comparative deceleration in growth of India's real GDP, which fell to 4.0 per cent in 2019-20 (6.1 per cent a year ago), the lowest since 2009-10. Except for government final consumption expenditure (GFCE) that provided sustained support to aggregate demand, all other components of domestic demand slumped during the year. On the supply side, sector specific bottlenecks pulled down activity in manufacturing, construction and transportation sectors. On the flip side, agriculture and allied activities remained robust, on the back of record food grains and horticulture production, coupled with resilient allied activities. Industrial gross value added (GVA) contracted sharply in 2019-20 to 0.8 per cent from 4.5 per cent last year. The deceleration was broad-based accentuated by subdued demand – both domestic and international. The demand for non-essential items fell as a result of diminished market confidence and imposition of lockdown in the country. The index of industrial production (IIP) contracted by 0.8 per cent during 2019-20 from 3.8 per cent growth in the previous year. Mirroring the slowdown in the industrial sector, services sector growth fell to 5 per cent in 2019-20, the lowest in the last three decades.

Figure 1: GDP, Credit and NPA Growth



Source: Economic Survey, RBI database, NSSO database

¹ Sourced from Reserve Bank of India Annual Report 2019-20.

Corporate Finance

Every firm wishes to build an optimum capital structure, considering a host of factors, including macroeconomic and legal environment, state of financial markets; fiscal regime, industry specific factors; firm specific factors and options available to resolve stress in business. Similarly, every supplier of capital wishes to build a balanced portfolio considering its risk, return, liquidity and maturity preference, available options for investment and their characteristics, in sync with its objective functions. A market economy makes it possible, by avoiding double coincidence of wants, where the capital structures and the portfolios have a balanced combination of debt and equity as well as of different variants of debt and equity.

The State intervention generally strengthens the rights of suppliers of funds and thereby reduces risks for them, leading to higher supply of capital at lower cost. Countries that provide better legal protection to suppliers of external funds tend to develop broader and deeper capital markets that facilitate raising of debt and issuance of corporate bonds. Such countries also facilitate higher valuation of securities, allowing entrepreneurs to raise funds via equity issue. If, however, the intervention strengthens the rights of suppliers too much, as compared to those of firms, this may increase costs for firms, reducing demand for capital. On the other hand, if it strengthens rights of one set of suppliers of funds vis-à-vis those of others, the supply of funds from one source increases, while supply from other sources as well as overall supply may reduce. The State policy typically balances rights and interests of participants in the market to promote healthy capital formation.

A non-financial firm has two broad sources of funding, namely, debt and equity. Depending on nature of business, and its appetite, a firm decides a mix of these. A firm avoids too much of either: too much of debt carries default risk, while too much of equity dilutes control and earnings. Within the debt source, a firm has two broad options, namely, loan from intermediaries or borrowing through market. Each of these has a variety of further sub-options which have relative merits and demerits. The legal framework generally confers an unfettered right on the equity suppliers to control and manage the affairs of the firm. The suppliers of credit usually have contractual rights, which are often not very effective, particularly if the firm is mischievous or is not performing well. Where creditors have relatively weaker rights as compared to equity suppliers, market hesitates to supply credit. This limits supply of credit and consequently firms and the economy may forego the benefits of capital gearing. To ensure flow of credit to business, it has been the endeavour of Governments to strengthen the rights of creditors in case of default, mostly through an insolvency framework. A sound insolvency law and its protection of creditor rights greatly affect a firm's willingness to borrow and lenders' willingness to lend, which, in turn, promote debt finance and debt markets.

In the Indian context, the industrial financing strategy in the 1950s centred around the Government as the primary

entrepreneur in the economy. It rested on four pillars:² (i) short-term working capital needs of corporates are serviced by banks; (ii) long term financing needs of corporates is serviced by Development Finance Institutions (DFIs); (iii) DFIs are cushioned by Government guarantees on bonds issued by them and with access to concessional funds from the RBI; and (iv) corporates mobilise resources from the capital market subject to approvals from the Government.

In the early 1990s, reforms to liberalise the financial markets were introduced. Administered interest rate regime was dismantled to give way to market-based interest rates leading to efficient price-discovery. Balance sheet size restrictions were withdrawn enabling banks and financial institutions to offer instruments across the board, of varying risk and maturity. Various concessions such as Government guarantees and funding from RBI were phased out. Requirement of Government approval to raise resources was dispensed with. By the end of 1990s, the market was thriving with savers/investors on the demand side, willing to invest in a myriad of instruments and borrowers on the supply side, offering capital instruments for raising funds.

The decade of 2000 saw further deepening of financial markets in terms of size of the markets as compared to economic output. **Figure 2** presents the development of financial markets in the country in terms of size of the equity markets, corporate bond markets and domestic credit to private sector by banks as percentage of GDP over the period 2014 to 2019. Equity markets are seen to be the largest segment of various modes of resource mobilisation by corporates followed by the banking sector. The market for corporate debt has not kept pace with development of equity markets, which may change with insolvency reforms.

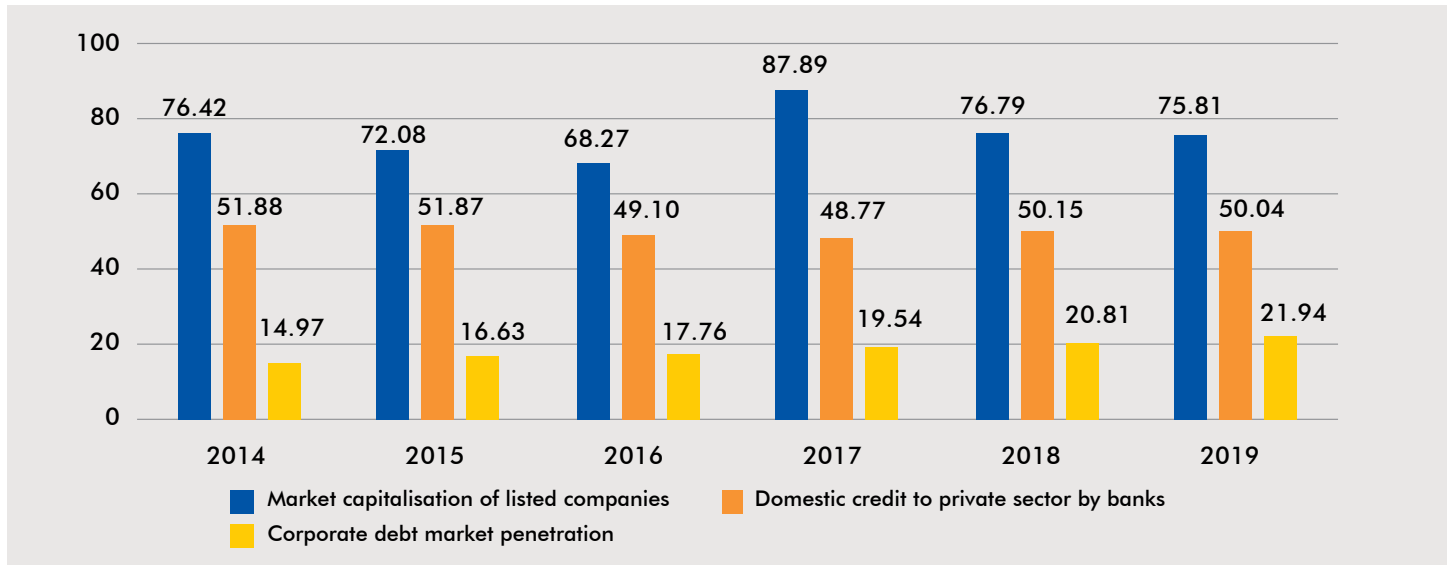
Table 1 presents the pattern of financing of the Indian corporate sector in respect of 3952 non-financial and non-government listed companies from the CMIE (Centre for Monitoring Indian Economy) database over the period 2011 to 2020. Use of internal sources has been around 43 per cent and that of external sources has been 57 per cent of the total sources of funds. Within the external sources of finance, borrowings from banks and financial institutions remains the favoured option. The use of corporate bonds and debentures remains subdued pointing to limited penetration of these markets in the country.

To summarise, the patterns of firm financing over the last two decades shows that: (a) Indian firms use equity financing (retained earnings and fresh issue of equity) more than debt financing; (b) credit from banks is the largest source of external finance; and (c) borrowings from corporate bond markets has been at low levels throughout the period. These are some of the features of a rather under-developed credit market which were sought to be corrected by enactment of an insolvency and bankruptcy law. The long-term impact of the insolvency law in changing the capital structure of corporates towards greater use of bond markets and unsecured credit is yet to be seen in the country.

² Mohan Rakesh, (2004), "Finance for Industrial Growth", Reserve Bank of India Bulletin, March and Mohan, Rakesh and Ray, Partha (2017), "Indian Financial Sector: Structure, Trends and Turns", IMF Working Paper, WP/17/7.

Figure 2: Development of financial markets in India

(figures as % of GDP)



Source: World Bank Database and SEBI

Table 1: Sources of Funds for non-financial and non-government listed companies

(percentage of total sources of funds)

Year →	2011-2014	2014-2017	2017-2020
SOURCES OF FUNDS			
INTERNAL SOURCES	43.00	43.76	43.02
EXTERNAL SOURCES	57.00	56.24	56.98
(a) Equity capital	9.07	8.86	9.43
(b) Borrowings	26.65	26.06	24.70
Debtures/Bonds	3.11	3.81	4.26
From banks and financial institutions	13.66	13.23	10.81
(c) Trade dues and other current liabilities	21.27	21.32	22.85
TOTAL	100.00	100.00	100.00

Source: CMIE Database

COVID-19 pandemic

The last quarter of the financial year 2019-20 saw economies across the world experience a significant contraction in economic activity in the wake of the outbreak COVID-19 pandemic. As COVID-19 was spreading its wings at a rapid pace, the World Health Organisation declared it as a global pandemic on 12th March, 2020. With uncertainty shrouding the pandemic, global economic forecast turned gloomy. According to the Organisation for Economic Co-operation and Development's (OECD) interim economic assessment released on 2nd March, 2020, on the assumption that the epidemic peaks in China in the first quarter of 2020 and outbreaks in other countries prove mild and contained, annual global GDP growth is projected to drop to 2.4 per cent in 2020, from an already weak 2.9 per cent in 2019, with growth possibly even being negative in the first quarter of 2020. The OECD further notes that a longer lasting and more intensive coronavirus outbreak, spreading widely throughout

the Asia Pacific region, Europe, and North America, would weaken prospects considerably. In this event, global growth could drop to 1.5 per cent in 2020, half the rate projected prior to the virus outbreak.

The hurtling spread of coronavirus has started hurting the vulnerable companies, who were at the edge of financial distress leading to stage of bankruptcy. The difficulties in running businesses stem from financial market turmoil, operational issues, falling demand and disruption in supply chains. The markets around the globe are signalling the onset of a possible economic recession. Even if the situation does not become as bad, it is quite inevitable that businesses will continue to be under increasing pressure following breakdown of international supply chains, disruptions to manufacturing and labour shortages. This is particularly an alarming situation for small businesses who are seen to be stressed as supply chains are drying up, leaving them without the essential materials for running their businesses. Insolvency risk for companies is expected to increase under these circumstances.

As the green shoots were emerging in the third quarter of 2019-20, the Indian economy was struck with COVID-19. Since the first case of the COVID-19 pandemic in India was reported on 30th January, 2020, numbers continued to increase. This required extraordinary measures such as nationwide lockdown and enhancement of health facilities to minimise loss of lives, which, if lost, cannot be brought back. This, however, entailed significant cost to livelihoods, which could be revived as the pandemic subsides. Consequently, India's real GDP is estimated to grow at 4.2 per cent during 2019-20 as against 6.1 per cent in 2018-19.

Growth in agriculture and allied sectors for 2019-20 is estimated at 4.0 per cent and prediction of a good monsoon brightens the scenario for growth of agriculture in 2020-21. Value added in manufacturing declined sharply to 0.03 per cent (5.7 per cent in 2018-19). Industrial output contracted by 0.7 per cent during the year and output in March contracted by 16.7 per cent (compared to March, 2019) due to lockdown

Box 1: COVID-19 and IBC

In the wake of COVID-19 pandemic, the Government of India took several measures to help contain the spread of the disease. It announced a nationwide lockdown for 21 days with effect from 25th March, 2020. The pandemic as well as the measures to contain its spread impacted the insolvency ecosystem, the stakeholders, and the ongoing insolvency proceedings. This has disrupted business operations, particularly of MSMEs, which may push some of them to default in servicing debt obligations. Several measures were taken in the insolvency space to ameliorate their hardships.

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 24th March, 2020, increased the threshold amount of default required to initiate an insolvency proceeding from Rs.1 lakh to Rs.1 crore.

Vide a press release dated 24th March, 2020, the Government expressed intention to suspend sections 7, 9 and 10 of the Code, which enable filing applications to initiate insolvency, for six months, to stop companies from being forced into insolvency proceedings due to such *force majeure* causes of default if the current situation continues beyond 30th April, 2020.

Vide notice dated 19th March, 2020, NCLT closed filing counters till 27th March, 2020. Vide further notice dated 22nd March, 2020, it closed filings till 31st March, 2020 except for unavoidable urgent matters. It clarified that extension of time, approval of resolution plan and liquidation under the Code would not be construed as urgent matters.

Vide its order dated 23rd March, 2020, the Supreme Court took *suo motu* cognisance of the challenge faced by the country on account of COVID-19 disease and resultant difficulties litigants are facing in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation. In exercise of its powers under Article 142 read with Article 141 of the Constitution, it ordered that the period of limitation in all such proceedings shall stand extended with effect from 15th March, 2020 till further orders and declared that the order shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

The NCLAT took *suo motu* cognisance of the unprecedented situation arising out of spread of COVID-19 pandemic and the hardships being faced by various stakeholders to adhere to the prescribed timelines for taking the resolution process to its logical conclusion. In exercise of its powers under rule 11 of the National Company Law Appellate Tribunal Rules, 2016, the NCLAT, vide order dated 30th March, 2020 decided that the period of lockdown ordered by the Central Government and the State Governments, including the period as may be extended either in whole or part of the country, where the registered office of the CD may be located, shall be excluded for the purpose of counting of the period for resolution process under section 12 of the Code, in all cases where CIRP has been initiated and pending before any bench of the NCLT or in appeal before the NCLAT. It further ordered that any interim order/ stay order passed by the NCLAT in any one or the other appeal under the Code shall continue till next date of hearing.

The IBBI took notice 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 IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations). To address the difficulty, the IBBI amended the CIRP Regulations, vide notification dated 29th March, 2020, 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 the time-line 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. The amendment extended the date for filing of Forms by an IP after due date of submission, whether by correction, updation or otherwise, till 30th September, 2020.

Having regard to the difficulties the IPAs may encounter to deliver pre-registration educational courses through classroom sessions, the IBBI issued advisory encouraging IPAs to deliver such courses online for their professional members. To minimise difficulties for the prospective IPs, it was advised that pre-registration educational courses completed online would be accepted for registration. The IBBI suspended enrolment for the Limited Insolvency Examination from 21st March, 2020.

The RBI permitted lending institutions to allow a moratorium of three months on payment of instalments in respect of all term loans outstanding as on 1st March, 2020. It also permitted them to allow a deferment of three months on payment of interest in respect of working capital facilities outstanding as on 1st March, 2020.

While the pandemic is still in the process of being controlled, and one hopes to be out of it soon, what it will undoubtedly leave behind for businesses is balance sheets to be repaired and debts to be restructured. Recoveries from past crises have often been slowed by impaired balance sheets and debt overhangs. Encouraging out-of-court restructuring mechanisms may be imperative for distressed assets to see timely resolution so that their value is not eroded.

and supply disruptions. Service sector activity saw sizable contractions, due to a sharp downturn in overseas business, contraction in new domestic orders and employment, in March, 2020. Export dependent sectors, including textiles, leather, chemicals, information technology, etc., faced sluggish demand from slowdown in major markets and logistic disruptions. Construction sector growth is estimated at 1.3 per cent for 2019-20 (6.1 per cent in 2018-19), with real estate challenged with regulatory changes, constrained finances, labour issues, and rising cost of inputs. Aviation, tourism, and hospitality lost business and more concerning was the loss of confidence and uncertainty over change in consumer

behaviour. Financial sector estimated to grow at 4.6 per cent in 2019-20 faced operational challenges, liquidity stress, crisis of confidence and depletion of capital buffers. Concern of job losses remained high across all sectors and skill levels, with significant loss in employment expected in coming year as impact of COVID-19 gradually unfolds.

India is making all possible efforts to contain the spread of the COVID-19. Even if we are successful in these attempts and can escape the worst of the outbreak, we would still need to deal with the adverse financial effects and trade disruptions across the globe. While the insolvency and bankruptcy process

enshrined in the IBC aims at resolution of distress arising from competition and innovation, the possibility of firms failing to repay their debts in the ensuing economic downturn and being pushed in the insolvency process is very real. **Box 1** informs the adjustments made in the legal framework for insolvency and bankruptcy to minimise the pains from the economic and financial impact of the pandemic.

MAJOR POLICY DEVELOPMENTS

The year under review witnessed further consolidation of the new insolvency and bankruptcy regime ushered in through the enactment of the Code. Some of these important developments, during the year 2019-20 are outlined here.

Facilitations by Government

Extension of the Code to the whole of India

The Code, as enacted, extended to whole of India except the state of Jammu and Kashmir. The Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020 dated 18th March, 2020 amended the Code, extending it to the whole of India.

The Insolvency and Bankruptcy Code (Amendment) Act, 2019

The Insolvency and Bankruptcy Code (Amendment) Act, 2019 (Amendment Act, 2019) came into force on 16th August, 2019. The Amendment Act, 2019 provides for the following:

(a) *Scope of resolution plan*: A resolution plan may provide for restructuring of the CD, including by way of merger, amalgamation, and demerger.

(b) *Delay in admission*: The AA shall record its reasons in writing, where an application by a financial creditor (FC) for admission is not disposed of within the stipulated time.

(c) *Mandatory timeline*: A CIRP shall mandatorily be completed within 330 days, including any extension of time as well as any exclusion of time on account of legal proceedings. An ongoing CIRP, which has not been closed yet within 330 days, shall be completed within next 90 days.

(d) *Decisions by creditors in a class*: An Authorised Representative (AR) shall vote for the FCs he represents in accordance with the decision taken by the class with more than 50 per cent voting share of the FCs, who have cast their votes. This principle, however, shall not apply to voting on withdrawal of applications.

(e) *Minimum entitlement*: The operational creditors (OCs) shall be paid not less than the amount payable to them in the event of liquidation of the CD or the amount payable to them if realisations under the resolution plan were distributed in accordance with the priority in the liquidation waterfall, whichever is higher. The FCs who did not vote in favour of the resolution plan shall be paid not less than the amount payable to them under liquidation waterfall.

(f) *Binding nature of resolution plan*: A resolution plan approved by the AA shall be binding on Central Government, any State

Government, and any local authority to whom the CD owes debt under any law.

(g) *Liquidation of CD*: The CoC may decide to liquidate a CD at any time during CIRP, even before preparation of the Information Memorandum (IM).

The Insolvency and Bankruptcy Code (Amendment) Act, 2020

The Insolvency and Bankruptcy Code (Amendment) Bill, 2019 was introduced in the Lok Sabha on 12th December, 2019. It was referred to the Standing Committee on Finance (SCF) on 23rd December, 2019 for examination and report thereon. Pending examination by the SCF, the Government promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 on 28th December, 2019. The SCF submitted its report on 4th March, 2020. After considering the report, the Parliament, enacted the Insolvency and Bankruptcy Code (Amendment) Act, 2020, which replaced the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019. The amendment, which came into force on 13th March, 2020, removes certain ambiguities and ensures smooth implementation of the Code, by providing for the following:

(a) *Interim finance*: The Code enables the resolution professional (RP) to raise interim finance to keep the CD as a going concern and such interim finance is included in the insolvency resolution process cost (IRPC). Interim finance means any debt raised by the RP during CIRP. The amendment includes such other debt as may be notified within the ambit of interim finance.

(b) *Initiation of CIRP*: The Code provides that an FC, either by itself or jointly with other FCs, may file an application for initiation of CIRP of a CD. The amendment provides that where creditors belong to a class, the application shall be filed jointly by not less than 100 such creditors or 10 per cent of the number of creditors in such class, whichever is less. Further, the Code prohibits certain persons from initiating a CIRP. The amendment clarifies that the said prohibition does not prevent a CD from initiating CIRP against another CD.

(c) *Moratorium*: To facilitate continuation of a CD as a going concern during CIRP, the amendment prohibits certain actions against the CD. It clarifies that a license, permit, registration, quota, concession, clearance, or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising from the use or continuation of such grants during the moratorium period. Further, the Code mandates continuation of essential goods and services to the CD during moratorium. The amendment provides for continuation of supply of goods and services which the IP considers 'critical' to protect and preserve the value of the CD and manage the operations of such CD as a going concern, except where such CD has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified. This would enable continuation of the CD as a going concern.

(d) *Liability for prior offences:* The amendment has inserted section 32A to provide that the liability of a CD for an offence committed prior to the commencement of the CIRP shall cease, and the CD shall not be prosecuted for such an offence from the date the resolution plan has been approved by the AA, if the resolution plan results in the change in the management or control of the CD. However, every person who was a designated partner or an 'officer who is in default' or was in-charge of the conduct of the business of the CD in any manner and who was directly or indirectly involved in the commission of such offence shall continue to be liable to be prosecuted and punished for such offence committed by the CD. Similarly, no action shall be taken against the property of the CD in relation to an offence committed prior to the commencement of the CIRP of the CD, where such property is covered under a resolution plan approved by the AA, which results in change in control of the CD. These provisions are subject to the CD or any person, who may be required to provide assistance, extends assistance and cooperation to any authority investigating the offence committed prior to the commencement of the CIRP. This would encourage prospective RAs to submit resolution plans undeterred by uncertainties surrounding the offence committed by the CD prior to CIRP.

(e) *Resolution of Financial Services Providers (FiSPs):* The Code enables the Central Government to notify FiSPs or categories of FiSPs for the purpose of their insolvency and liquidation proceedings to be conducted under the Code in such manner as may be prescribed. The amendment clarifies that such proceedings may be conducted with such modifications and in such manner as may be prescribed. This would enable using the process under the Code with appropriate modifications for insolvency proceedings of FiSPs.

Vide notification dated 18th March, 2020, the MCA notified that a debt raised from the 'Special Window for Affordable and Middle-Income Housing Investment Fund I' shall be considered interim finance in terms of the amended provisions.

Standing Committee on Finance

While endorsing the Insolvency and Bankruptcy Code (Amendment) Bill, 2019, the SCF recommended deletion of the provision that mandated supply of critical services to a CD under CIRP. It recommended that market forces should resolve whether a supplier decides to supply to a CD, as there are limited resources available and each supplier has a limited capacity, which needs to be channelised and allocated in the best interest of the economy and not directed solely towards keeping the CD alive. It believed that over-legislation through the Bill must be avoided and the process of delegated legislation through formulation of rules by IBBI be followed to strike a harmonious balance between the needs and concerns of stakeholders in question, namely, the CD, interim resolution professional (IRP) trying to revive the CD and the supplier of critical/essential goods and services. In this context, the SCF emphasised that payments due to MSMEs, who are OCs and not part of the CoC, should be ensured on priority in the course of the resolution process itself, before the liquidation stage commences.

The SCF observed: *"Nonetheless, a much more strategic approach to strengthening the insolvency framework is*

required. Developing such a strategic approach requires detailed analysis along three dimensions. First, empirical evidence should be collected on the performance of the insolvency framework to date. This should include inter alia cases admitted across various benches, cases by industry/sector, experiences of various stakeholders, time for resolution, type of resolution, eventual recovery by resolution type, and impact on employment and other output indicators. This empirical evidence should be updated every quarter and published in the public domain. Second, the Indian insolvency framework should now be carefully benchmarked against other jurisdictions to evaluate outcomes and assess resolution efficiency against competitor nations. Empirical evidence and benchmarking analysis should identify which major gaps still need to be addressed and the extent to which Indian case law needs to be further refined. Finally, the interdependent roles of legislation, rule-making, adjudication, and informal norms need to be evaluated to close these identified gaps. The Committee notes that there is considerable ambiguity on which policy lever is most appropriate to address which issue. Further legislation needs to be informed by such comprehensive analysis. Accordingly, the Committee intends to conduct further hearings on this matter so that a more strategic approach can be evolved to strengthen the insolvency framework for India."

Insolvency Resolution of Financial Service Providers

Government, vide order dated 16th August, 2019, constituted a sub-committee of the Insolvency Law Committee (ILC) for the purpose of notifying FiSPs under section 227 of the Code, under the Chairmanship of Dr. M. S. Sahoo, Chairperson, IBBI. The sub-committee deliberated that from the perspective of insolvency resolution, the FiSPs can be classified into three categories, namely, (a) that can be resolved under the Code, as it is, (b) that can be resolved under the Code, with certain modifications; and (c) that need to be resolved outside the Code. The sub-committee recommended a generic framework for resolution of category (b) FiSPs, as an interim arrangement, pending provision of a specialised framework for resolution of FiSPs. It, however, left to the wisdom of the regulator concerned to decide whether and when to use the Code as it is, use the Code with modifications, or not to use the Code at all for an FiSP.

Based on the recommendations of the sub-committee, the Central Government notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (FiSP Rules) on 15th November, 2019 to provide a generic framework for insolvency and liquidation proceedings of systemically important FiSPs other than banks. The Rules apply to such FiSPs or categories of FiSPs, as will be notified by the Central Government under section 227 from time to time in consultation with appropriate regulators, for the purpose of their insolvency and liquidation proceedings. This would not apply to banks. This is an interim mechanism to deal with any exigency, pending introduction of a full-fledged enactment to deal with financial resolution of Banks and other systemically important FiSPs.

The Rules provide that the provisions of the Code relating to the CIRP, liquidation process and voluntary liquidation process

for a CD shall, *mutatis mutandis*, apply to a process for an FiSP, subject to the following modifications:

- (a) The CIRP of a FiSP shall be initiated only on an application by the appropriate regulator.
- (b) On admission of the application, the AA shall appoint the individual, who has been proposed by the appropriate regulator in the application for initiation of CIRP, as the Administrator.
- (c) While conducting a proceeding of a FiSP, the Administrator shall have the same duties, functions, obligations, responsibilities, rights, and powers of an IP, IRP, RP, or liquidator, as the case may be. He shall be appointed or replaced by the AA on an application made by the appropriate regulator.
- (d) The appropriate regulator may constitute an Advisory Committee (AC) of three or more experts to advise the Administrator in the operations of the FiSP during the CIRP.
- (e) An interim moratorium shall commence on and from the date of filing of the application for initiation of CIRP by the appropriate regulator till its admission or rejection by the AA.
- (f) The provisions of interim-moratorium or moratorium shall not apply to any third-party assets or properties in custody or possession of the FiSP, including any funds, securities and other assets required to be held in trust for the benefit of third parties.
- (g) The Administrator shall take control and custody of third-party assets or properties in custody or possession of the FiSP and deal with them in the manner, to be notified by the Central Government under section 227.
- (h) The license or registration which authorises the FiSP to engage in the business of providing financial services shall not be suspended or cancelled during the interim-moratorium and the CIRP.
- (i) The FiSP shall obtain prior permission of the appropriate regulator for initiating voluntary liquidation proceedings.
- (j) The AA shall provide the appropriate regulator an opportunity of being heard before passing an order for liquidation or dissolution of the FiSP.

The Central Government in consultation with the RBI, on 18th November, 2019, notified that the insolvency resolution and liquidation proceedings of non-banking finance companies (which include housing finance companies) with asset size of Rs.500 crore or more, as per last audited balance sheet, shall be undertaken in accordance with the above framework.

The Central Government, in consultation with the RBI, notified on 30th January, 2020 the manner of dealing with the third-party assets in custody or possession of FiSPs undergoing CIRP. It specified that where an FiSP is contractually obliged, as on the insolvency commencement date (ICD), to act as a servicing or collection agent on behalf of third parties in respect of a transaction such as securitisation or lending arrangement, the Administrator shall ensure that the receivables are collected and transferred in accordance with the terms and conditions of such contract. Further, where the FiSP has, as on the ICD,

in its custody or possession assets owned by its customers or counterparties under a contract and is under an obligation to return or transfer such assets, the Administrator shall return or transfer such assets to the person entitled to receive it in accordance with the terms and conditions of such contract.

Insolvency Resolution of Personal Guarantors to Corporate Debtors

Section 128 of the Indian Contract Act, 1872 enables a creditor to pursue remedy against both the principal borrower and the guarantor, as liability of a guarantor is co-extensive with that of the principal borrower, unless the contract provides otherwise. Thus, if the principal borrower defaults in repayment of debt to a creditor, the creditor may choose to pursue remedy against the guarantor. For comprehensive corporate insolvency resolution and liquidation, the Code enables consideration of insolvencies of the principal borrower as well as its guarantors together to the extent possible.

Guarantors could be individuals (personal guarantors (PGs) to CDs) or corporates (corporate guarantors to CDs). The mechanism for insolvency resolution of corporate guarantor, being corporate persons, has been in force since December, 2016. In the absence of insolvency resolution of PGs, corporate insolvency regime is not comprehensive. Further, absence of a regime for resolution of insolvency of PGs distorts the choice of borrowers and lenders. If the liability of a PG is less relative to that of a corporate guarantor, the creditor may not accept personal guarantee, which impacts credit market.

Recognising the link between insolvency proceedings of a CD and its PG, the Code provides a common forum for these proceedings. It provides that where an application for insolvency resolution or liquidation proceeding of a CD is pending before a NCLT, an application relating to insolvency resolution or liquidation or bankruptcy of a corporate guarantor or PG thereof shall be filed before the NCLT. It further provides that insolvency resolution, liquidation or bankruptcy proceeding of a corporate guarantor or PG to the CD pending in any Court or Tribunal shall stand transferred to the NCLT dealing with insolvency resolution or liquidation proceeding of such CD. The liability of a surety is not an excluded debt and is included in qualifying debt of PG.

The Insolvency and Bankruptcy Code (Amendment) Act, 2018 (Amendment Act, 2018) classified 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 on account of the wider impact of these provisions. The Statement of Objects and Reasons appended to the Bill expressed the intention that the provisions relating to PGs to CDs shall be implemented in the first phase to further strengthen the CIRP.

Section 14 of the Code provides for a moratorium or a stay on institution or continuation of proceedings, suits, etc. against the CD and its assets. There were conflicting views on the scope of moratorium regarding its application to third parties affected by the debt of the CD, like guarantors or sureties. The Amendment Act, 2018 clarified that the moratorium shall not apply to a guarantor to a CD. This explicitly kept aside the assets of guarantors outside moratorium, enabling insolvency

proceeding against the PGs.

In sync with legislative mandate and to complement the insolvency resolution of the CDs, the Central Government decided to start with insolvency resolution and bankruptcy proceedings of PGs to CDs with effect from 1st December, 2019. It 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. The IBBI notified corresponding Regulations. 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.

The Code provides for exclusion of certain assets from the purview of insolvency proceeding. These include unencumbered tools necessary for the debtor for his employment or vocation, and unencumbered furniture necessary for the debtor for basic domestic needs. The Rules provide for exclusion of unencumbered personal ornaments of value not exceeding Rs.1 lakh and unencumbered single dwelling unit owned by the debtor of value not exceeding Rs. 20 lakh in urban area and Rs. 10 lakh in rural area. The Regulations require that the repayment plan shall provide for a minimum budget for the duration of the plan, to cover the reasonable expenses of the debtor and members of his immediate family to the extent they are dependent on him, provided that at least ten percent of the realisable income of the guarantor shall be utilised for repayment of debts.

Resolution of both corporate insolvency and individual

Table 2: Comparison between Corporate and Individual Resolution Processes

Parameter	Corporate Insolvency	Individual Insolvency
Human touch	The honest and genuine failures are accepted and an opportunity for revival or exit is provided.	The endeavour is to rehabilitate the debtor. Certain assets are kept outside the insolvency proceedings and minimum subsistence is allowed under repayment plan to allow the debtor a decent life.
Control of affairs	Creditor-in-control	Debtor-in-control
Automatic debt relief	There is no provision for automatic debt relief for the corporate entities.	The Fresh Start Process (FSP) grants automatic debt relief for certain debtors where chances of recovery are very low as compared to the efforts involved.
Admission of application	AA (NCLT) admits / rejects the application on its own.	AA [Debt Recovery Tribunal (DRT)] either admits or rejects the application based on the report of the RP.
Appointment of RP	The IRP is appointed on the date of admission of the application.	The RP is appointed before the admission of the application.
CoC and its meeting	It is mandatory to constitute the CoC, which comprises FCs. It is also mandatory for the CoC to decide matters in a meeting.	There is no mandatory provision to constitute CoC and only a general list of the creditors is prepared. The meeting of the creditors is conducted only if deemed necessary.
Moratorium	The moratorium starts from the date of the order admitting the application for initiation of CIRP.	The interim moratorium starts from the date of filing application and ceases to have effect on the date of its admission. After the application is admitted, the moratorium starts and remains in force for a maximum of 180 days.
Enforcement of security interest	The law does not provide for differential treatment of the secured and unsecured creditors under a resolution plan.	Secured creditors may opt for enforcing their security interest and opt out from the repayment plan.
Consent of creditors for approval of plan	Approval of resolution plan requires consent of not less than 66 per cent voting share of the FCs.	A minimum consent of 75 per cent of creditors present and voting is required for approval of the repayment plan.
Implementation of plan	After the approval of the resolution plan, the role of the RP ceases. The plan has provisions for its implementation and supervision.	After the approval of the repayment plan, the RP supervises its implementation.
Initiation of liquidation / bankruptcy	Failure of any resolution process automatically leads to liquidation of the CD.	Upon failure of repayment plan, a separate application needs to be filed for initiation of bankruptcy process.
Interim moratorium	There is no interim moratorium in liquidation process.	The interim moratorium commences on the date of filing of the bankruptcy application and ends on passing of the bankruptcy order.
Recall of order of initiation of liquidation or bankruptcy process	After the AA passes the order for liquidation, there is no specific provision for recall of that order.	The order for initiation of bankruptcy process can be recalled by the AA on an application or <i>suo motu</i> in specified circumstances.
Final stage	After the completion of the liquidation process, the corporate is dissolved.	After the completion of the bankruptcy process, the bankrupt is discharged from all the bankruptcy debts. The bankruptcy process is not affected by the existence of the debtor. The process is not closed even on the death of the bankrupt.

insolvency under the Code have certain common objectives, such as increasing the supply of credit by increasing lenders' expected returns and discouraging creditors from racing to be first to collect when debtor is in financial distress. Table 2. compares the individual insolvency and bankruptcy process with the corporate insolvency and liquidation process.

Report of Insolvency Law Committee

The ILC submitted its 3rd Report on 20th February, 2020. Some of the key recommendations of the ILC are as under:

(a) CIRP

(i) The threshold amount of default for initiating CIRP should be enhanced from Rs. 1 lakh to Rs. 50 lakh. However, the OCs should be allowed to have recourse to CIRP on a minimum default of Rs. 5 lakh.

(ii) For a class of creditors under section 21(6A), the CIRP should be initiated by at least 100 creditors or 10 per cent of total number of creditors in the class.

(iii) The provision relating to moratorium should explicitly prohibit termination or suspension of grants, licenses, permits and quotas, concessions, registrations, or other rights, during the moratorium period, subject to the condition that the CD continues to be liable for dues arising out of continued use of such grants, etc. However, termination or suspension of such grants on account of non-insolvency reasons would not be barred by the moratorium.

(iv) Supplies that are critical to running the CD as a going concern, and contribute to the preservation of the CD's value and success of the resolution plan should not be terminated, suspended or interrupted, except in certain specific circumstances. The supplies that would be considered critical should be identified by the RP, who is entrusted with the responsibility of running the CD as a going concern. The suppliers of such supplies should be paid during the moratorium period on an on-going basis, on the same terms as those that existed pre-insolvency or on a reasonable commercial basis.

(v) Where the CD is successfully resolved, it should not be held liable for any offence committed prior to commencement of the CIRP. However, the persons, who were responsible to the CD for conduct of its business at the time of commission of such offence, should continue to be liable for such an offence.

(vi) The property of a CD, when taken over by a successful RA, or when sold to a *bona fide* bidder in liquidation under the Code, should be protected from enforcement action. However, this protection of the CD's assets should in no way prevent the relevant investigating authorities from initiating action against the property of persons in the erstwhile management of the CD, that may have been involved in the commission of any criminal offence.

(b) Liquidation Process

(i) The leave of the AA should be required for continuing any suit or legal proceeding by or against a CD undergoing liquidation.

(ii) The Code should enable appointment of the Official

Liquidator for the liquidation of a CD, which has a minimum value, as prescribed by the Central Government, and whose liquidation involves public interest, to carry out the functions of the liquidator. The office of the Official Liquidator should be subject to regulation and supervision of the IBBI.

(iii) The recourse to section 230 of the Companies Act, 2013 for effecting schemes of arrangement or compromise should not be available during liquidation of the CD. An appropriate process to allow the liquidator to affect a compromise or settlement with specific creditors should be devised under the Code.

(c) Avoidance Transactions

(i) The Code should explicitly provide that the RP will be responsible for investigating the affairs of the CD for transactions falling within sections 43, 45, 49, 50 or 66.

(ii) The Code should enable creditors (individual or in groups) and the CoC to file applications in case the IP fails to do so.

(iii) The AA should decide whether the recoveries that vest with the CD should be applied for the benefit of the creditors of the CD, the successful RA or other stakeholders.

(d) Fresh Start Process

(i) It may be appropriate to designate the IBBI as the supervising authority for FSP. Dedicated officers should be appointed to discharge the functions in relation to supervision of the FSP.

(ii) A cadre of insolvency advisers should be created with presence upto district level across the country.

(iii) An insolvency advisor should file an application for the FSP on behalf of a debtor. He would inform the debtor about the implications and effects of undertaking the FSP. He should verify if the debtor meets the eligibility criteria for the FSP and has adequate documentation to establish so.

(iv) The debtors should be able to access the FSP effortlessly. This should be conducted on a digital platform.

(v) Government may consider installing booths in various districts where debtors can receive aid and assistance for electronically filing a fresh start application.

(e) Personal Insolvency

(i) Filing of avoidance actions should be permitted during both the individual insolvency and bankruptcy processes.

(ii) Regulatory authorities under the Code may undertake steps to develop infrastructure that aid debtors in effectively utilising mechanisms such as debt settlement, mediation, and debt counselling. Further, efforts should be made at making debtors aware of various options available to them to resolve their over-indebtedness through both formal and informal mechanisms, by undertaking awareness campaigns and advocacy measures.

Committee on Cross Border Insolvency

The MCA, vide an order dated 23rd January, 2020, constituted a committee under chairpersonship of Dr. K. P. Krishnan, former Secretary to the Government of India, to study and analyse the

recommendations of the ILC on cross border insolvency and the proposed draft Bill and recommend rules and regulatory framework for smooth implementation of proposed cross border insolvency provisions in the Code. Vide another order dated 21st February, 2020, the remit of the Committee was expanded to study and analyse the UNCITRAL Model Law for enterprise group insolvency and make its recommendations in the context of the Code.

Filings on MCA-21

MCA, vide circular dated 6th March, 2020, clarified that IRP/RP/liquidator shall be responsible for filing all e-forms in the MCA portal and sign the form in the capacity of Chief Executive Officer (CEO). It further clarified that the concerned IRP/RP/liquidator of every company which was under CIRP prior to the issue of this circular, shall also file the e-forms. It amended the Companies (Registration Offices and Fees) Rules, 2014 on 12th March, 2020 to enable filings under the Code.

Companies (Audit Report) Order

In supersession of the Companies (Auditor's Report) Order, 2016, the Central Government notified the Companies (Auditor's Report) Order, 2020 (CARO, 2020) on 25th February, 2020 in pursuance of its objective of strengthening the corporate governance framework under the Companies Act, 2013. The CARO, 2020 is applicable for audit of financial statements of eligible companies for the financial years commencing on or after 1st April, 2019. It requires that the report of the auditor shall state whether the company has defaulted in repayment of loans or other borrowings or in the payment of interest thereon to any lender, and if so, provide the details of such default.

Payment of CGST

Vide notification dated 21st March, 2020, the Central Government provided that an IRP/IP shall, with effect from the date of appointment of IRP/RP, be treated as a distinct person of the CD, and shall be liable to take a new registration under the Central Goods and Services Tax Act, 2017 in each of the States or Union territories where the CD was registered earlier, within 30 days of the appointment. He can thereafter pay current levies of GST without the mandatory payment of past dues.

NCLAT and NCLT

MCA constituted a Bench of the NCLAT at Chennai, vide notification dated 18th March, 2020 to hear appeals against the orders of the benches of the NCLT having jurisdiction of Karnataka, Tamil Nadu, Kerala, Andhra Pradesh, Telangana, Lakshadweep, and Puducherry.

Vide order dated 19th June, 2019, Government appointed 12 judicial members and 18 technical members to different benches of NCLT. The President, NCLT, vide order dated 25th July, 2019 constituted the Principal Bench at New Delhi; 25 Division Benches at New Delhi, Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Cuttack, Guwahati, Hyderabad, Kolkata, Jaipur, Kochi, and Mumbai, and one Single Bench at Amaravati, for the purpose of exercising and discharging the Tribunal's powers and functions.

Committee of Experts on Valuation Profession

The Government, vide its order dated 30th August, 2019, constituted a Committee of Experts (CoE) on valuation profession under the Chairmanship of Dr. M. S. Sahoo, Chairperson, IBBI. The other members of the CoE are: CA Prafulla Chhajed, President, Institute of Chartered Accountants of India (ICAI); CMA Balwinder Singh, President, Institute of Cost Accountants of India [ICAI (Cost)]; CS Ranjeet Pandey, President, Institute of Company Secretaries of India (ICSI); Mr. B. Sriram, Former MD, IDBI Bank; Prof. R. Narayanaswamy, Indian Institute of Management (IIM), Bangalore; Mr. Ajay Bahl, Founding Partner, AZB & Partners; and Mr. Manoj Pandey, Joint Secretary, MCA. The terms of reference of the CoE included to recommend: (a) Institutional framework for regulation and development of valuation profession and its scope; (b) Regulatory architecture, including the extent of self-regulation and statutory regulation; (c) Governance of regulatory institutions; (d) Monitoring of the conduct and performance of valuers and disciplinary mechanism; and (e) Transitional arrangement for RVs and RVOs.

Facilitations by Regulators

Prudential Framework for Resolution of Stressed Assets

In the wake of the judgement dated 2nd April, 2019 of the SC which held RBI circular dated 12th February, 2018 on Resolution of Stressed Assets as ultra vires, the RBI issued the RBI (Prudential Framework for Resolution of Stressed Assets) Directions, 2019 on 7th June, 2019 with a view to provide a framework for early recognition, reporting and time bound resolution of stressed assets. The framework clarifies that RBI may, wherever necessary, issue directions to banks for initiation of insolvency proceedings against borrowers for specific defaults so that the momentum towards effective resolution remains uncompromised. The framework applies to: (a) SCBs (excluding Regional Rural Banks); (b) All India Term Financial Institutions (NABARD, NHB, EXIM Bank, and SIDBI); (c) Small Finance Banks; and (d) Systemically Important Non-Deposit taking Non-Banking Financial Companies (NBFC-ND-SI) and Deposit taking Non-Banking Financial Companies (NBFC-D).

The framework requires the lenders to put in place policies for resolution of stressed assets including the timelines for resolution, with due approvals of its Board. In case of default by any of the borrowers, the lenders are required to undertake a review of the borrower account and decide on the resolution strategy, including nature of resolution plan within the review period, which is thirty days from such default. The lenders may also choose to initiate legal proceedings for insolvency or recovery. In cases where the resolution plan is to be implemented, the framework requires the lenders to enter into an inter-creditor agreement during the review period. In respect of large accounts, the resolution plan is to be implemented within 180 days from the end of the review period.

Where a viable resolution plan in respect of a borrower is not implemented within the specified timelines, the lenders are required to make additional provisions as a percentage of total outstanding. However, the framework introduces certain incentives once resolution is pursued under the Code.

It provides that half of the additional provisions would be reversed on filing of insolvency application and the remaining upon admission into CIRP. It also incentivises the lenders to provide interim finance to CDs undergoing CIRP by allowing them to treat such finance as 'standard asset' during CIRP.

Secondary Market for Corporate Loans

The Task Force on Development of Secondary Market for Corporate Loans, constituted by the RBI on 29th May, 2019, submitted its report on 3rd September, 2019. It, *inter alia*, recommended setting up of a Central Loan Contract Registry/Repository (CLCR) to serve as a 'one stop shop' for all the information about the loans which are proposed to be sold, such as loan structure, loan servicing history, asset classification status, financial information about the borrower, key details about the project documents, status of the project, information about the borrower's group, etc. Additionally, information related to typical bid offer spreads on traded loans, which will help anchor price discovery for market participants, may also be published. The platform can maintain the entire data in a digitised form including indicative pricing, past trade data, etc. It suggested that instead of adopting any new mechanism for independent verification of the loan information, the database of IUs may be used for secondary loan market transactions. Keeping these in view, it observed that an IU may be better placed to establish the CLCR. It noted that the Digital Document Execution integrated with digital stamp duty payment and receipt (from Stock Holding Corporation of India Limited) is being launched by the IU, National E-Governance Services Limited (NeSL), towards dematerialization of financial contracts.

Divergence in the Asset Classification

The RBI vide notification dated 1st April, 2019, mandated banks to disclose certain cases of divergence in the asset classification and provisioning in the Notes to Accounts in the ensuing Annual Financial Statements. These disclosures in respect of divergence and provisioning are in the nature of material events / information and hence, necessitate immediate disclosure. Further, this information is also price sensitive, requiring prompt disclosure. Accordingly, the Securities and Exchange Board of India (SEBI) issued a circular on 31st October, 2019 requiring the listed banks to make disclosures of divergences and provisioning beyond specified threshold, as mentioned in aforesaid RBI notification, as soon as reasonably possible and not later than 24 hours upon receipt of the RBI's Final Risk Assessment Report. The disclosures are required to be made in either or both of the following cases:

- (a) the additional provisioning for NPAs assessed by RBI exceeds 10 per cent of the reported profit before provisions and contingencies for the reference period, and
- (b) the additional GNPA's identified by RBI exceed 15 per cent of the published incremental GNPA's for the reference period.

Green Channel in Combination Regulations

The Competition Commission of India (CCI) amended regulations on 13th August, 2019 to provide a 'green channel' for automatic approval of a notifiable transaction. The

parties to the combination may avail of the green channel where their respective group entities and/or entities in which they directly/indirectly hold shares or which they control (a) do not produce/provide similar or identical or substitutable product(s) or services(s); (b) are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in product(s) or provision of service(s) which are at a different stage or level of the production chain; or (c) are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in product(s) or provision of service(s) which are complementary to each other. This would facilitate quicker approval by prospective resolution applicants.

Firsts under the Code

Table 3 presents the milestones in implementation of the Code during 2019-20.

Table 3: Firsts under the Code

Date	New Initiative
02.12.19	The first FiSP, namely, Dewan Housing Finance Limited (DHFL), was admitted into CIRP under the Code.
02.12.19	The first application filed for insolvency resolution of a PG to CD

Table 4 chronicles the important developments in the policy and regulatory realm during 2019-20 .

Table 4: Chronology of Policy and Regulatory Developments, 2019-20

Date	Development
02.04.19	The SC struck down the RBI circular dated 12 th February, 2018 as <i>ultra vires</i> section 35AA of the Banking Regulations Act, 1949. Consequently, all actions taken under the said circular, including CIRPs triggered because of the operation of the impugned circular became <i>non-est</i> .
02.04.19	The SEBI issued a circular to provide for empanelment of IPs to be appointed as Administrators.
14.05.19	The IBBI issued the Interim Resolution Professionals and Liquidators (Recommendation) Guidelines, 2019 to govern preparation of panel for appointments during July - December, 2019.
07.06.19	The RBI issued the RBI (Prudential Framework for Resolution of Stressed Assets) Directions, 2019 to provide for a framework for early recognition, reporting and time bound resolution of stressed assets.
23.07.19	The IBBI amended the IBBI (Insolvency Professionals) Regulations, 2016 to provide for Authorisation for Assignment (AFA) to an IP and address conflict of interests.
23.07.19	The IBBI amended the IBBI (Insolvency Professional Agencies) Regulations, 2016 (to streamline the fee payable by an IPA to IBBI.
23.07.19	The IBBI amended the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 to enable IPAs to issue/renew AFAs to IPs.
25.07.19	The IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to specify the process for withdrawal of applications under section 12A and facilitate liquidations.
25.07.19	The IBBI amended the IBBI (Liquidation Process) Regulations, 2016 to specify the process for sale of CD as a going concern and sale of business of CD as a going concern during liquidation.
25.07.19	The IBBI amended the IBBI (Information Utilities) Regulations, 2017 to specify the process for verification of information.
06.08.19	The IBBI issued the IBBI (Continuing Professional Education for Insolvency Professionals) Guidelines, 2019 to provide for continuing professional education (CPE) for IPs.
13.08.19	The IBBI issued a circular reiterating appointment of RVs to conduct any valuation required under the Code.
13.08.19	The CCI notified the CCI (Procedure in regard to the transaction of business relating to combinations) (Amendment) Regulations, 2019 to provide for a green channel for automatic approval of combinations.
14.08.19	The IBBI made available an online platform for filings Forms relating to CIRPs.
16.08.19	The Insolvency and Bankruptcy Code (Amendment Act), 2019 enacted providing, <i>inter-alia</i> , for completion of CIRP within 330 days and minimum entitlement of OCs and dissenting FCs under a resolution plan.
16.08.19	The Government constituted a sub-committee of ILC for notifying FiSPs under section 227 of the Code.
30.08.19	The Government constituted a Committee of Experts to examine the need for an institutional framework for regulation and development of the valuation profession.
03.09.19	The RBI Task Force on Development of Secondary Market for Corporate Loans submitted its report recommending setting up of a Central Loan Contract Registry/Repository to provide for independent verification of loan information.
12.09.19	The IBBI 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 to facilitate appointment of IPs as Administrators during October, 2019 - March, 2020.
23.09.19	The Working Group (WG) on Group Insolvency submitted its report on a comprehensive framework for Group Insolvency, to be implemented in a phased manner, with procedural coordination to start with in the first phase.
25.10.19	The IBBI amended the IBBI (Insolvency Professionals) Regulations, 2016 to strengthen monitoring of IPEs.
15.11.19	The Government notified the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to specify the details of the insolvency resolution process for PGs to CDs.
15.11.19	The Government notified the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to specify details of the bankruptcy process for PGs to CDs.
15.11.19	The Government notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 to provide a generic framework for insolvency and liquidation proceedings of FiSPs.
18.11.19	The Government notified that the insolvency resolution and liquidation proceedings of NBFCs (including housing finance companies) with asset size of Rs.500 crore or more shall be undertaken as per provisions of the Code read with the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.
20.11.19	The IBBI notified the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.
20.11.19	The IBBI notified the IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.
28.11.19	The IBBI issued IPs to act as IRPs, Liquidators, RPs, and Bankruptcy Trustees (Recommendation) Guidelines, 2019 to govern preparation of zone-wise panels for appointments during January - June, 2020.
28.11.19	The IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 requiring IPs to file various Forms on an electronic platform in the interest of transparency and accountability in conduct of CIRPs and conduct of IPs.

01.12.19	Provisions relating to PGs to CDs came into force.
28.12.19	The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 was promulgated to facilitate resolution of stress through resolution plans.
06.01.20	The IBBI amended the IBBI (Liquidation Process) Regulations, 2016 to explicitly specify that a person ineligible to be a RA shall not be a party to compromise or arrangement under the Companies Act, 2013 and to provide for the corporate liquidation account.
15.01.20	The IBBI amended the IBBI (Voluntary Liquidation Process) Regulations, 2017 to provide for the corporate voluntary liquidation account.
22.01.20	The IBBI modified the Guidelines for Technical Standards for the Performance of Core Services and Other Services under the IBBI (Information Utilities) Regulations, 2017 to give the submitter an option of providing officially valid documents as identity proofs.
23.01.20	The Government constituted a committee to recommend rules and regulatory framework for smooth implementation of the proposed cross border insolvency provision in the Code.
28.01.20	The IBBI issued a circular outlining the process of transfer of membership from one RVO to another.
30.01.20	The Government notified the manner of dealing with the third-party assets in custody or possession of FiSPs undergoing CIRP.
12.02.20	The IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to extend the date for levy of fee on filing of a Form online after the due date of submission.
20.02.20	The ILC submitted its 3 rd Report recommending amendments to the Code to remove bottlenecks and further streamline the processes under the Code.
25.02.20	The Government notified the Companies (Auditor's Report) Order, 2020 to state defaults in repayment of loans.
27.02.20	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 for preparation of panel of IPs for appointments during April - September, 2020.
04.03.20	The Standing Committee on Finance submitted its 6 th report, endorsing the Insolvency and Bankruptcy (Amendment) Bill, 2019.
06.03.20	The Government specified the procedure for IRPs/RPs/liquidators conducting CIRP and liquidations under the Code to file documents, disclosures and returns for the purposes of compliance under the Companies Act, 2013 on the MCA-21 portal.
12.03.20	The Government amended the Companies (Registration Offices and Fees) Rules, 2014 to enable filings under the Code.
13.03.20	The Insolvency and Bankruptcy Code (Amendment) Act, 2020 enacted, replacing the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019.
18.03.20	The Government notified that debt raised from the Special Window for Affordable and Middle-Income Housing Investment Fund I shall be considered as interim finance.
18.03.20	The Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020 extended the Code to the whole of India.
19.03.20	In the wake of COVID-19 pandemic, the NCLT closed filing counters till end of March, 2020 except for unavoidable urgent matters.
20.03.20	The IBBI issued advisory encouraging IPAs and RVOs to deliver educational courses and CPE, online, to their members.
20.03.20	The IBBI suspended all enrolments for the Limited Insolvency Examination and the Valuation Examinations from 21 st March, 2020 to 14 th April, 2020 in wake of the COVID-19 pandemic.
21.03.20	The Government provided that an IRP/IP shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the CD, and shall be liable to take a new registration under the CGST Act, 2017.
23.03.20	The SC ordered the period of limitation in all proceedings to be extended with effect from 15 th March, 2020 till further orders in light of difficulties faced by litigants due to the COVID-19 pandemic.
24.03.20	The Government increased the threshold amount of default required to initiate an insolvency proceeding from Rs.1 lakh to Rs.1 crore to prevent MSMEs from being pushed into insolvency due to their inability to service debts in wake of business disruptions caused by COVID-19 pandemic.
24.03.20	The Government expressed intention to suspend sections 7, 9 and 10 of the Code, which enable filing of applications to initiate insolvency, for six months in the wake of COVID-19.
25.03.20	The IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to extend the date for filing of Forms by IPs online till 30 th September, 2020 in wake of the COVID-19.
27.03.20	The RBI permitted lending institutions to allow a moratorium of three months on all terms loans and working capital facilities in the wake of COVID-19.
28.03.20	The IBBI amended the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 to relax timelines with respect to processing of AFA applications received by IPAs.
28.03.20	The IBBI amended the IBBI (Insolvency Professionals) Regulations, 2016 to extend certain timelines to address the difficulty faced by IPs and IPEs in meeting timelines in the wake of COVID-19.
29.03.20	The IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to exclude the period of lockdown for the purposes of the timeline for any activity in relation to a CIRP, subject to the overall time-limit provided in the Code.
30.03.20	The NCLAT issued an order excluding the period of lockdown due to COVID-19 for the purpose of counting of the period for resolution process under section 12 of the Code.



POLICIES, PROGRAMMES AND ACTIVITIES

The Code provides an empowered ecosystem, including service providers, to assist the market to resolve stress of corporate persons through various well-defined processes. The stakeholders have a guided path to work out resolutions, with respect for mutual rights and obligations, in pursuit of the objectives of the Code. The policymakers learn from the experience and modify legal framework to address the emerging challenges and facilitate the processes to drive effective and efficient outcomes. The year 2019-20 witnessed further evolution and refinement of the resolution framework and strengthening of the insolvency resolution ecosystem.

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 have 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. He is the master of ceremonies of the CIRP, wielding a great amount of power and influence on the manner and outcomes of the process. On commencement of CIRP, all the powers of the Board of Directors vest in him and all the personnel of the CD including promoter, directors or any other person associated with the CD are required to assist or cooperate with him. There are provisions in the law to ensure that the IP discharges his duties and responsibilities with utmost diligence, integrity, independence, objectivity, and impartiality. Keeping in view its role, the AA has held that an IP is acting as an officer of the Court and any hindrance in the working of the CIRP amounts to contempt of court.³

³ *Asset reconstruction Company (India) Private Limited Vs. Shivam water Treaters Private Limited* [CP (IB)-1882/MB/2018].

⁴ *M/s Alchemist Asset Reconstruction Co. Ltd Vs. M/s Hotel Gaudavan Pvt. Ltd.* [Civil Appeal No.16929-2017].

⁵ *Insolvency and Bankruptcy Board of India (IBBI) Vs. Shri Rishi Prakash Vats & Ors.* [Company Appeal (AT) (Insolvency) No. 324 of 2019].

In the interest of professional integrity and independence, the AA has clarified that only IBBI is competent to investigate the conduct of an IP, and depending on findings of its investigation, it should take appropriate disciplinary action and/or file a complaint before the special court. There is a complete bar of trial of offences in the absence of filing of a complaint by IBBI.⁴ The NCLAT has affirmed that once a disciplinary proceeding is initiated, the IBBI must close it in accordance with law. The AA cannot quash the proceeding, even if proceeding is initiated at its instance and recommendation.⁵

Carruthers and Halliday⁶ summarise the importance of IPs in reorganisation or resolution of an entity: *"It is conceivable for an insolvency system to function with minimal interventions by courts or government agencies. It is not conceivable for such a system to function effectively without specialists, especially for reorganization. The probability of effective reorganization increases when agents of reorganization have the capacity to (a) decide whether rescuing business is feasible and to advise on alternative courses of action (liquidation, reorganization, creative combinations of these); and (b) to reorganize the company itself . . ."* They further opine that to build capacities within such professionals, public policy must find means to *"...bring the best and brightest into the debt restructuring area, regulate competition to constrain costs and reduce conflicts of interest, remove financial and reputational barriers to insolvency professions, and develop a regulatory system that delivers competency and integrity."* These have been guiding philosophy behind the efforts of the IBBI to groom and regulate 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 practise a profession. A regulator (state, statutory regulator, or self-regulator) of the profession confers this right on a person to practise the profession, after following the due process and on being satisfied of the eligibility and credentials of that person. Such person practises 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.⁷ It is, therefore,

⁶ Carruthers, B. and T. Halliday (2006), "Institutional Lessons from Insolvency Reforms in East Asia", *Credit Risk and Credit Access in Asia*, OECD Publishing, Paris.

⁷ 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.

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 practise 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.⁸ 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.⁹ Regulator sets the standards of professional and ethical conduct for members of the profession.

The IBBI (Insolvency Professional) Regulations, 2016 (IP Regulations), notified on 23rd November, 2016, *inter alia* provide for registration, regulation, and oversight of IPs. As an immediate measure to enable enforcement of the Code on 1st December, 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 31st December, 2016 and such registrations were valid for a limited period of six months, i.e., till 30th June, 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. It amended the IP Regulations on 23rd July, 2019 to ensure that an IP does not have any conflict of interests while undertaking an assignment and only an IP, who meets the continuing regulatory requirements, undertakes an assignment. The amendment provides for the following:

(a) With effect from 1st January, 2020, an IP shall not accept or undertake any assignment as IRP, RP, liquidator, BT, AR or any other role under the Code unless he holds an 'Authorisation for Assignment' (AFA) issued by his IPA.

(b) An IP shall not engage in any employment when he holds an AFA or when he is undertaking an assignment. This would enable an individual to seek registration as an IP even when he is in employment. He must, however, discontinue employment when he wishes to have an AFA. He may surrender AFA when he wishes to take up employment.

(c) Where an IP has conducted a CIRP, he and his relatives shall not accept any employment, other than an employment

secured through open competitive recruitment, with, or render professional services, other than services under the Code to a creditor having more than 10 per cent voting power, the successful RA, the CD, or any of their related parties, until a period of one year has elapsed from the date of his cessation from such process.

(d) An IP shall not engage or appoint any of his relatives or related parties, for or in connection with any work relating to any of his assignment. He shall not provide any service for or in connection with the assignment which is being undertaken by any of his relatives or related parties.

(e) An IP must disclose the details of any conflict of interests to the stakeholders, whenever he comes across such conflict of interest during an assignment.

The IBBI amended the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (Bye-laws Regulations) on 23rd July, 2019 to make complementary provisions for issue/renewal of an AFA (**Box 2**). The amendment introduced the highest form of regulatory discipline for the IPA that if the AFA is not issued, renewed, or rejected by the IPA within fifteen days of the date of receipt of application, the AFA shall be deemed to have been issued or renewed. Deemed approval affixes unequivocal responsibility with the decision makers and relevant agencies to allocate their resources appropriately and fulfil their roles within the expected time frames.

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 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 Interim Resolution Professionals and Liquidators (Recommendation) Guidelines, 2019 (the 'Guidelines') on 14th May, 2019 to govern preparation of panel for appointments during July - December, 2019, replacing the Interim Resolution Professionals and Liquidators (Recommendation) (Second) Guidelines, 2018.

In the meantime, the provisions relating to resolution of PGs to CDs came into force on 15th November, 2019. This required provision for appointment as RPs in an individual insolvency resolution processes and BTs in bankruptcy processes. The IBBI issued the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2019 on 28th November, 2019 to govern preparation of zone-wise panels for appointments during January - June, 2020. These panels have the limited purpose of facilitating appointment under sections 16(4), 34(6), 97(4), 98(3), 125(4), 146(3) and 147(3) of the Code, where the IBBI is required to recommend a name of an IP to the AA.

⁸ Supreme Court, *Chairman, M.P. Electric Board and On Vs. Shiv Narayan and Anr.*, Appeal (Civil No. 1065 of 2000).

⁹ Supreme Court, *L.M. Chitala Vs. Commissioner of Labour* (AIR 1964 Madras 131, 133).

Box 2: Authorisation for Assignment

The Code provides for a two-tier regulatory structure comprising IPAs, being the front-line regulator and the Board, as the principal regulator of IPs. It envisages a two-stage process for becoming an IP - first enrolment with an IPA as its professional member and then registration with the Board. It obliges the Board and the IPAs to monitor IPs on ongoing basis and to take disciplinary actions against errant IPs, wherever required.

The registration as an IP is a one-time event, requiring due diligence on the part of both IPAs and the Board. Both have a right to take away the enrolment or registration, as the case may be, under justified circumstances. If the Board cancels registration of an IP, the individual loses professional membership of the IPA. If an IPA cancels registration of a professional member, he loses registration as an IP. Thus, an IP, at all times, is required to possess the enrolment with the IPA as well as the registration with the Board to perform his functions under the Code. Further, he is not eligible to undertake a process if a disciplinary proceeding is pending against him.

An IP is required to satisfy certain conditions for continuation of registration. He is required to remain 'fit-and -proper', pay fee to the Board and the IPA, undertake CPE, file certain returns, and make certain disclosures, etc. If he fails to satisfy any of these, the Board, or the IPA, as the case may be, may initiate a proceeding to expel him from the profession. A disciplinary proceeding entails significant costs, both on the Board or the IPA and the IP concerned. Such costs may not be justified, particularly when the non-compliance is technical and unintentional. Further, disposal of a disciplinary proceeding entails considerable time. During the pendency of disciplinary proceeding with IPA, an IP may take up an assignment even if he has become unfit in the meantime. It is necessary to ensure that an IP, who is 'fit-and-proper' and compliant with regulatory norms, undertakes an assignment under the Code.

Normally, a professional is not allowed to be in practice and employment simultaneously. However, an individual first acquires a professional membership or qualifies to be a professional. For example, an individual becomes a member of ICSI. Thereafter, he decides whether to practise as a practicing Company Secretary or take up an employment. Similarly, an individual may wish to register himself as an IP and then decide whether to practise as an IP or engage in employment. When he wishes to practise, he should quit employment and obtain an AFA, and when he wishes to take up employment, he should surrender the AFA. This implies that he can be registered as an IP even when he is in employment. Further, an IP may wish to assist another IP or work with an IPE, rather than taking up assignments in his own name. It is necessary to enable an IP to take up employment when he is not interested to undertake assignments and vice versa.

The IP Regulations require an IP to have an AFA when he commences any assignment under the Code. An IP is eligible to seek AFA if he remains a 'fit-and-proper' person; is not in employment; is not debarred by any direction or order of the IPA or the Board; has not attained the age of seventy years; and has no disciplinary proceeding pending against him. He needs to comply with requirements with respect to payment of fee to the IPA and the Board; filings and disclosures to the IPA and the Board; CPE; and other requirements, as stipulated under the Code, regulations, circulars, directions, or guidelines issued by the IPA and the Board. He needs to renew the AFA every year. An AFA shall stand suspended upon initiation of disciplinary proceedings by the IPA or by the Board. An IP may surrender his AFA to the IPA at least thirty days before he becomes a person resident outside India; takes up an employment; or starts any business, except as specifically permitted under the Code of Conduct.

Unlike most other professions, an IP has demanding management responsibilities of a stressed business, including balancing conflicting interests of several stakeholders. He often works in a hostile environment. In case of a CIRP, for example, he discharges the responsibilities of the Board of Directors and those of the Managing Director (MD) to manage the affairs and operations of the CD as a going concern, in addition to conducting the process. An IP must be a fit and proper person in addition to being a person of character and integrity to discharge these onerous responsibilities. The responsibilities of an IP in CIRP are much more than those of a MD appointed under the provisions of Companies Act, 2013. An individual above the age of 70 years is not ordinarily eligible to be a MD, Whole-time director, or Manager under the said Act. The IP Regulations, therefore, allow issue of AFA only to an IP, who has not attained the age of 70 years.

Most other professions have a practice of issue of Certificate of Practice (CoP). The ICAI, ICSI and ICAI (Cost) issue CoP to their members to enable them to practise as a Chartered Accountant, Company Secretary or Cost Accountant. A Chartered Accountant, who does not wish to practise, does not take CoP. The practice of CoP is also found in the field of Accountancy / Insolvency in developed jurisdictions. The AFA broadly serves the same purpose as CoP does for other professions.

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 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 12th September, 2019 for preparation of panel of IPs for appointments during October, 2019 - March, 2020. Similarly, it issued Guidelines on 27th February, 2020 for preparation of panel of IPs for appointments during April - September, 2020.

Pre-registration Educational Course

The IP Regulations provide that an individual is eligible for registration as an IP, if he has, among other requirements, completed a pre-registration educational course, as may be required by the Board, from an IPA after his enrolment as a professional member. In pursuance of this, the Board has specified the details of the pre-registration educational course that requires the participants to do the tasks themselves in a near-real environment with practical examples. The advisories issued by various authorities in the wake of COVID-19 made it difficult for the IPAs to deliver pre-registration educational courses through classroom sessions. To minimise difficulties for the prospective IPs, the IBBI accepted pre-registration educational courses completed online for registration. It encouraged IPAs to deliver pre-registration educational courses online for their professional members.

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 amended the IP Regulations on 25th October, 2019 to refine the Form for recognition as an IPE to facilitate faster processing of the applications and introduce an annual compliance certificate to strengthen monitoring of IPEs.

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 Governing Board (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 Insolvency Professional Agency of Institute of Cost Accountants of India (IPA ICAI).

The IBBI amended the IPA Regulations on 23rd July, 2019 to clarify that an IPA shall pay an annual fee of Rs.5 lakh to the Board, within 15 days from the date of commencement of the financial year. However, no annual fee shall be payable in the financial year in which an IPA is granted registration or renewal and delay in payment of such fees shall attract simple interest at the rate of 12 per cent per annum till paid. The IBBI amended the Bye-laws Regulations on 23rd July, 2019 to empower an IPA to issue/renew an AFA to an IP in accordance with its bye-laws and enabled a professional member to surrender his AFA to the IPA. It also enabled an individual to serve as an independent director on the GB of an IPA up to the age of seventy-five years.

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 the information may impede resolution and compromise the objective of value maximisation, while asymmetry of information may contribute to uneven sharing of the 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 IBBI amended the IBBI (Information Utilities) Regulations, 2017 (IU Regulations) on 25th July, 2019 to provide as under:

(a) An individual may serve as an independent director of an IU till he attains the age of seventy-five years;

(b) For verification of default, an IU shall deliver the information of default to the debtor seeking confirmation of the same and remind it at least three times for confirmation. Thereafter, it shall record the status of authentication of information of default as under:

Response of Debtor	Status of Authentication	Colour of Status
Debtor confirms the information of default	Authenticated	Green
Debtor disputes the information of default	Disputed	Red
Debtor does not respond even after three reminders	Deemed to be authenticated	Yellow

(c) An IU shall deliver information of default and issue reminders at the address of the debtor registered with it, recorded with any statutory repository as approved by the Board, or submitted in Form C. The IBBI has approved MCA 21 database of the MCA and the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) as the statutory repositories for this purpose.

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 4th May, 2017. Based on its recommendations, the Board laid down technical standards on 13th December, 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 31st March, 2020 is as under:

- (a) Dr. R. B. Barman, Chairman, National Statistical Commission, as Chairperson
 (b) Dr. Nand Lal Sardar, 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).

The IBBI modified the Guidelines for Technical Standards for the Performance of Core Services and Other Services under the IU Regulations on 22nd January, 2020, based on recommendations of the Technical Committee, giving the submitter 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 25th September, 2017. Table 5 presents the details of information held by NeSL as on 31st March, 2020.

Table 5: 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 (Rs. crore)		User registrations (debtors)	Loan records authenticated by debtors	
	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	Financial	Operational		Financial debt	Operational debt
2018 - 19	173	NA	114	169	1266445	230	1955230	316	4114988	16224	15148	13762	37
Jun, 2019	209	NA	160	231	2531930	570	3911146	52766	4910552	20455	23565	22323	40
Sep, 2019	226	NA	218	297	2737049	1764	4421280	86766	5625318	28016	32177	35560	61
Dec, 2019	246	NA	321	408	2926030	2121	4803931	125526	6919463	32038	48551	68646	120
Mar, 2020	267	NA	381	543	6551739	6191	9417317	167719	7873689	31910	73332	109505	221

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 1st February, 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 31st March, 2018. It has specified the details of educational course for the three asset classes, which a member of an RVO is required to complete before taking the valuation examination. 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 14th May, 2019 for free download by users.

On 13th August, 2019, the IBBI reiterated that (a) appointment of any person, other than a RV on or after 1st February, 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 16th September, 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.

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

1st April, 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 7th February, 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. It encouraged RVOs to deliver educational courses and continuing education online for their professional members.

Registered Valuers Organisations

RVOs act as frontline regulators for RVs. 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 28th January, 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.

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 6.

Table 6: Circulars issued by the Board in 2019-20

Date	Content
12.04.19	Fee payable by IPs: The IP Regulations specify the requirement and manner of payment of fee by an IP and an IPE. The IBBI enabled electronic submission of Forms and payment of fee by IPs and IPEs.
02.05.19	Surrender of Membership: The IP Regulations read with the Bye-Laws Regulations provide for temporary surrender and revival of professional membership by an IP. With a view to avoid inconvenience to the processes, the IBBI advised that an IPA shall not ordinarily accept temporary surrender of professional membership, where the IP is conducting a process under the Code. To streamline the process of surrender of membership, the IBBI stipulated various Forms for the purpose.
13.08.19	Valuation by RVs: The IBBI reiterated as under: (a) appointment of any person, other than a RV on or after 1 st February, 2019 to conduct any valuation required under the Code or any regulations made thereunder is illegal and amounts to violation of the aforesaid circular ; 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.
14.08.19	Filing of Forms: The Code casts obligations on an IP to (a) forward all records relating to the conduct of the CIRP and the resolution plan; and (b) submit a copy of the records of every proceeding before the AA, to the Board. To facilitate submission of records and information by IPs as well as for monitoring of the processes and performance of IPs, IBBI, in consultation with stakeholders and the IPAs, devised a set of seven Forms. It has also developed, in consultation with the IPAs, an electronic platform for filing of the Forms. It issued a circular on 14 th August, 2019 directing the IPs to file the Forms, which have become due on or before 15 th September, 2019, in respect of all CIRPs, both closed and ongoing, conducted by IP, by 30 th September, 2019 and those, which become due on or after 16 th September, 2019, by the timelines specified for respective Forms.
07.09.19	Statutory Repositories for IU Regulations: An IU shall deliver information of default and issue reminders at the address of the debtor registered with it, recorded with any statutory repository as approved by the Board, or submitted in Form C. The IBBI approved MCA 21 database of the MCA and the CERSAI as the statutory repositories for this purpose.
16.09.19	Valuations to be conducted by RVs: The IBBI 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.
09.01.20 and 20.01.20	Deposit of unclaimed dividends and / or undistributed proceeds of liquidation: The IBBI opened two separate bank accounts (one for Liquidation Process and the other for Voluntary Liquidation Process) and informed the details to stakeholders.
28.01.20	Transfer of Membership: The IBBI outlined the process of transfer of membership from one RVO to another.
17.03.20	Modification of CIRP Forms: The IBBI provided a feature on the electronic platform to enable modification of an already submitted CIRP Form.
20.03.20	Educational Course and Continuing Education for RVs: The IBBI took cognisance of the difficulties being faced by RVOs to deliver pre-registration educational courses through classroom sessions, in the wake of COVID-19 pandemic. It encouraged them to deliver pre-registration educational courses online for their professional members. It advised that educational courses completed online, and continuing education undertaken online shall be considered valid. This dispensation was made available till 30 th September, 2020.
20.03.20	Pre-registration Educational Course for IPs: The IBBI took cognisance of the difficulties being faced by IPAs to deliver pre-registration educational courses through classroom sessions, in the wake of COVID-19 pandemic, and issued an advisory, encouraging them to deliver pre-registration educational courses online for their professional members. It advised that pre-registration educational courses completed online will be accepted for registration. This dispensation was made available till 30 th September, 2020 for a professional member, provided the application for registration was submitted to the Board by 31 st October, 2020.

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. By way of an interim arrangement, a generic framework for insolvency and liquidation proceedings of systemically important financial institutions (other than banks) were provided in 2019-20. The provisions relating to insolvency and bankruptcy of PGs to CDs, which are contained in Part III of the Code, were notified with effect from 1st December, 2019. This sub-section lists the regulatory developments in each of these processes during the year under review.

Corporate Insolvency Resolution Process

CIRP enables 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.

Table 7 : Amendments to CIRP Regulations

Date of Notification	Amendment
25.07.19	<p>Withdrawal of applications: The amendments specify the process for withdrawal of applications under section 12A: (i) before constitution of CoC, (ii) after constitution of CoC but before issuance of invitation for expression of interest (EoI), and (iii) after issuance of invitation for expression of interest. This provides flexibility to stakeholders to resolve stress at any time during CIRP.</p> <p>Facilitating liquidation: The amendments enable the CoC to plan for liquidation, while approving a resolution plan or deciding to liquidate the CD, in the event CIRP yields an order for liquidation. The CoC may:</p> <p>(i) make a best estimate of the amount required to meet liquidation costs, in consultation with the RP, and the value of the liquid assets available to meet the liquidation costs. Considering these estimates, the CoC shall approve a plan providing for contribution for meeting the liquidation costs;</p> <p>(ii) recommend that the liquidator may first explore sale of the CD as a going concern or sale of the business of the CD as a going concern;</p> <p>(iii) fix the fee payable to the liquidator, in consultation with the RP, for (a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013; (b) the period, if any, used for sale of the CD or its business as a going concern; and (c) the balance period of liquidation.</p>
28.11.19	<p>Consequential provisions: The amendments make provisions consequential to the Insolvency and Bankruptcy Code, (Amendment) Act, 2019. It provides for the manner of voting by an AR in respect of FCs he represents. It further provides that the amount payable under a resolution plan - (a) to the OCs shall be paid in priority over FCs; and (b) to the FC, who did not vote in favour of the resolution plan, shall be paid in priority over FCs who voted in favour of the plan.</p> <p>Transparency: In the interest of transparency and accountability in conduct of CIRPs and conduct of the IPs, and to facilitate the IBBI, the IPAs and the IPs to discharge respective statutory obligations, the amendment requires the IPs to file a set of Forms, covering the life cycle of a CIRP, online on an electronic platform hosted on the website of IBBI. An IP shall be liable to action permissible under the Code, including refusal to issue or renew AFA, for failure to file a Form or for inaccurate or delayed filing.</p>
12.02.20/ 25.03.20	<p>Late filing Fee: The CIRP Regulations provided that filing of a Form after due date of submission, whether by correction, updation or otherwise, shall be accompanied by a fee of Rs. 500 per Form for each calendar month of delay after 1st January, 2020. The amendment made on 12th February, 2020 extended the date to 1st April, 2020 for levy of fee. The amendment made on 25th March, 2020, extended the date till 30th September, 2020, in the wake of outbreak of COVID-19 pandemic. Filings up to 30th September, 2020 will not attract late fee.</p>
29.03.20	<p>Exclusion of lock down period: 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 Regulations. To address the difficulty, the amendment provided 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 the 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>

The CIRP Regulations, which are in operation since 1st December, 2016, govern the insolvency resolution process. The same have been amended from time to time to meet the emerging needs of the markets, in consultation with the stakeholders. Table 7 presents various amendments in the CIRP Regulations in 2019-20 and the rationale for the same.

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:

- the AA rejects resolution plan, which has been submitted by RP for approval, for non-compliance with the specified requirements;
- the AA does not receive a resolution plan approved by the CoC within time permissible for completion of the CIRP;
- 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
- 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 8 presents various amendments in the Liquidation Regulations in 2019-20 and the rationale for the same.

Table 8: Amendments to Liquidation Process Regulations

Date of Notification	Amendment
25.07.19	<p>Specifying the process: The amendments specify the process for (a) sale of CD as going concern, and (b) sale of business of CD as going concern, under liquidation. Where a CD is sold as a going concern, the liquidation process shall be closed without its dissolution.</p> <p>Time period: The amendments require completion of liquidation process within one year of its commencement, notwithstanding pendency of applications for avoidance transactions. The amendment provides a model timeline for each task in the liquidation process.</p> <p>Liquidation cost: The FCs, who are financial institutions, shall contribute towards the liquidation cost, where the CD does not have adequate liquid resources to complete liquidation, in proportion to the financial debts owed to them by the CD, in case the CoC did not approve a plan for such contribution during CIRP. However, such contribution along with interest at bank rate thereon shall form part of liquidation cost, which is paid in priority.</p> <p>Stakeholders' consultation committee: A Stakeholders' Consultation Committee shall be constituted having representation from secured FCs, unsecured FCs, workmen and employees, government, other OCs, and shareholder/partners to advise the liquidator on matters relating to sale. However, the advice of this committee is not binding on the liquidator.</p> <p>Relinquishing the security interest: The amendments require that a stakeholder may submit its claim or update its claim submitted during the CIRP, as on the liquidation commencement date. Along with submission of claim, a secured creditor shall inform the liquidator of its decision to relinquish its security interest to liquidation estate or to realise its security interest. Further, it provides that where a secured creditor does not intimate its decision to relinquish its security interest within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.</p> <p>Compliance Certificate: The amendments have introduced a comprehensive compliance certificate to be submitted along with the final report to the AA.</p> <p>These amendments are applicable prospectively to liquidation processes, which commenced on or after 25th July, 2019.</p>
06.01.20	<p>Section 29A: The amendment clarifies that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the CD, shall not be a party in any manner to a compromise or arrangement of the CD under section 230 of the Companies Act, 2013. It also clarifies that a secured creditor cannot sell or transfer an asset, which is subject to security interest, to any person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the CD.</p> <p>Security Interest: A secured creditor, who proceeds to realise its security interest, shall contribute its share of the IRPC, liquidation process cost and workmen's dues, within 90 days of the liquidation commencement date. It shall also pay excess of realised value of the asset, which is subject to security interest, over the amount of its claims admitted, within 180 days of the liquidation commencement date. Where the secured creditor fails to pay such amounts to the liquidator within 90 days or 180 days, as the case may be, the asset shall become part of liquidation estate.</p> <p>Unclaimed Dividends: A liquidator shall 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 CD. It also provides a process for a stakeholder to seek withdrawal from the Corporate Liquidation Account.</p>

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 9th January, 2020 and 20th January, 2020.

The liquidator of M/s. Tirupati Ceramics Ltd., Mr. Amit Sharma, handed over a cheque of Rs. 4,54,84,145 to Dr. M. S. Sahoo, Chairperson, IBBI towards unclaimed dividends/undistributed proceeds on 10th January, 2020 for deposit in the Corporate Liquidation Account. The Corporate Liquidation Account has a balance of Rs. 4,79,50,105 at the end of March, 2020.



Mr. Amit Sharma handing over a cheque for Rs. 4.55 crore for deposit in the Corporate Liquidation Account, 10th January, 2020.

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 IBBI amended the Voluntary Liquidation Regulations on 15th January, 2020 to provide that the liquidator shall 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 Voluntary Liquidation Account before he applies for dissolution of the corporate person. It also provides a process for a stakeholder to seek withdrawal from the Corporate Voluntary Liquidation Account. The Corporate Voluntary Liquidation Account has a balance of Rs.1,09,85,958 at the end of March, 2020.

Financial Service Providers

The provisions of the Code relating to the 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.

Individual Insolvency Resolution And Bankruptcy

The IBBI notified the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 on 20th November, 2019 to specify the details of the insolvency resolution process for PGs to CDs, *inter-alia*, including:

- eligibility to act as RP for an insolvency resolution process;
- manner of receipt and verification of claims of creditors;
- manner of preparation of list of creditors, holding the meetings of the creditors and voting in the meeting;
- contents of the repayment plan; and
- procedure of filing of application for issuance of discharge order, etc.

The IBBI also notified IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 to provide the details of the bankruptcy process for PGs to CDs, *inter-alia*, including:

- eligibility to act as a BT for the bankruptcy process;
- manner of preparation of reports and timeline for submission by the BT;
- manner of collating claims and formation of CoC, holding meetings of the committee and voting in the meeting; and
- 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 9 presents a snapshot of advocacy and awareness programmes conducted by the Board and programmes in which members and officers of the Board participated.

Table 9 : Advocacy and awareness activities of the Board

Programmes	2016-17	2017-18	2018-19	2019-20
Roundtables with Stakeholders	8	45	25	24
Advocacy and Awareness Programmes	-	-	10	105
Programmes organised by other organisations where Members and Officers Participated	36	78	82	66
Total	44	123	117	195

Chairperson, Whole-time Members (WTMs) and officers of IBBI participated in different capacities (faculty, panellist, speaker, guest of honour, chief guest, etc.) in 197 events (seminar, conference, roundtable, study circles, workshop, etc.) on insolvency and bankruptcy, organised by IBBI itself and a host of institutions across the country, as presented in Table 10. The details of these events are presented in Table 11.

Table 10: Participation in Programmes by Officers of IBBI

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

Table 11: Details of Participation in Programmes in 2019-20

Sl.No.	Date	Venue	Organiser	Event	Subject	Participation by
1	01.04.19	Singapore	GRR	Conference	Insolvency Reforms in India - GRR Live	Chairperson
2	12.04.19	Jaipur	IBBI	Workshop	IBC - Two Day Workshops for IPs - Basic	Dr. Vijayawargiya, WTM
3	18.04.19	Nagpur	IBBI & Vidharbha Industries Association	Awareness	IBC	Dr. Vijayawargiya, WTM
4	22.04.19	Kolkata	IBBI & SBI	Workshop	CoC: An Institution of Public Trust	Chairperson
5	24.04.19	Hong Kong	IBBI, FICCI, & CGI in Hong Kong	Roadshow	IBC - A New Paradigm for Stressed Assets	Chairperson
6	27.04.19	Mumbai	APN TV & NI News	Conclave	Opportunities and Challenges in IBC and its impact on business houses and real estate sector	Dr. Vijayawargiya, WTM
7	11.05.19	Ranchi	IBBI & Judicial Academy, Jharkhand	Conference	Law & Economics of Insolvency & Bankruptcy	Chairperson
8	18.05.19	New Delhi	IBBI & ICSI	Seminar	IBC - the Road Ahead	Chairperson
9	18.05.19	Mumbai	NeSL	Seminar	IBC	Dr. Vijayawargiya, WTM
10	25.05.19	Jaipur	IBBI & IPA ICAI	Awareness	IBC in Tier II Cities	Mr. Rao, CGM
11	08.06.19	Delhi	IBBI & RVOs	Seminar	Valuation	Chairperson
12	09.06.19	New Delhi	IBBI	Roundtable	Legal developments and challenges under IBC	Chairperson
13	14.06.19	Ahmedabad	IBBI	Workshop	IBC for IPs	Mr. Dhariwal, CGM
14	29.06.19	Chennai	IBBI & Indian Bank	Workshop	CoC: An Institution of Public Trust	Chairperson
15	02.07.19	New Delhi	ICSI IIP	Webinar	Fraudulent Transactions	Chairperson
16	03.07.19	New Delhi	IPA ICAI	Workshop	Forensic Audit	Dr. Saini, WTM
17	05.07.19	Dehradun	IBBI & IPA ICAI	Awareness	IBC in Tier II Cities	Mr. Khandale, DGM
18	08.07.19	Manesar	IICA	Launch	GIP	Chairperson
19	12.07.19	New Delhi	Hopkins University	Panel	Regulations in India	Chairperson
20	13.07.19	Chandigarh	IBBI & IPA ICAI	Awareness	IBC in Tier II Cities	Mr. Sahu, DGM
21	19.07.19	Manesar	IICA	Session	Economics of Insolvency	Chairperson
22	22.07.19	New Delhi	NLUD	Panel	RP and Oversight Institutions	Chairperson
23	24.07.19	New Delhi	ICSI IIP	Webinar	Using Information Utilities	Mr. Chaudhuri, CGM
24	25.07.19	New Delhi	NLUD	Colloquium	NCLT & Ease of Doing Business	Chairperson
25	26.07.19	Chennai	IBBI	Workshop	IBC for IPs - Basic	Mr. Saji Kumar, ED
26	27.07.19	Jodhpur	IBBI & IPA ICAI	Awareness	IBC in Tier II Cities	Mr. Chaudhuri, CGM
27	27.07.19	New Delhi	ICSI IIP	Webinar	Section 66 applications	Chairperson
28	31.07.19	Mumbai	CVSRTA RVA	Session	Valuation	Chairperson
29	05.08.19	Hyderabad	IBBI	Roundtable	CIRP and Liquidation	Dr. Suri, ED
30	06.08.19	Chennai	IBBI	Roundtable	Amendments to IBC	Mr. Saji Kumar, ED
31	08.08.19	Ahmedabad	IBBI	Roundtable	Individual Insolvency	Dr. Vijayawargiya, WTM
32	09.08.19	New Delhi	IBBI	Roundtable	CIRP and Liquidation	Dr. Suri, ED
33	09.08.19	Ahmedabad	IIMA	Conference	Financial Distress, Bankruptcy and Corporate Finance	Chairperson
34	13.08.19	Nagpur	IBBI	Roundtable	IP, IPA, and IU	Mr. Kavdia, ED
35	14.08.19	Mumbai	IBBI	Roundtable	Amendments to IBC	Dr. Guru, ED
36	17.08.19	Bhopal	IBBI & NLIU, Bhopal	Seminar	IBC	Chairperson
37	20.08.19	New Delhi	IBBI & World Bank	Roundtable	Investments in Distressed Asset	Chairperson
38	21.08.19	Kolkata	IBBI	Roundtable	CIRP and Liquidation	Dr. Saini, WTM

39	23.08.19	Guwahati	IBBI	Roundtable	Individual Insolvency	Dr. Saini, WTM
40	24.08.19	Gurugram	IBBI & SBI	Workshop	CoC: An Institution of Public Trust	Chairperson
41	24.08.19	Manesar	IICA	Session	IBC Amendments	Chairperson
42	30.08.19	New Delhi	IBBI	Workshop	IBC for IPs	Chairperson
43	31.08.19	Bengaluru	IBBI & ASSOCHAM	Conference	IBC	Mr. Chaudhuri, CGM
44	31.08.19	Bhopal	NLIU, Bhopal	Summit	Corporate and Commercial Laws	Mr. Kumar, DGM
45	06.09.19	New Delhi	IBBI & IIBF	Workshop	IBC	Chairperson
46	07.09.19	Mumbai	IBBI & MNLU, Mumbai	Workshop	IBC	Mr. Saji Kumar, ED
47	07.09.19	Hyderabad	IBBI & JNIBF, Hyderabad	Seminar	IBC	Mr. Rao, CGM
48	09.09.19	Singapore	High Commission of India in Singapore	Summit	India-Singapore: The Next Phase	Chairperson
49	10.09.19	Singapore		Summit	Cracking IBC	Chairperson
50	14.09.19	Lucknow	IBBI & RMNLU, Lucknow	Workshop	IBC	Mr. Das, DGM
51	16.09.19	Kochi	IBBI	Awareness	IBC	Mr. Saji Kumar, ED
52	18.09.19	Gurugram	IICA	GIP	Bridge between the Corporation and Regulator	Dr. Vijayawargiya, WTM
53	18.09.19	Belfast	IAIR	Conference	Competitive Markets for Insolvency Practice	Chairperson
54	20.09.19	Kolkata	IBBI	Workshop	IBC for IPs	Mr. Dhariwal, CGM
55	24.09.19	Chandigarh	PHDCCI	Seminar	Role of IBC in reduction of NPAs of Banks	Dr. Vijayawargiya, WTM
56	26.09.19	Ahmedabad	IBBI & ICAI	Roundtable	Valuation Profession under Regulated Regime	Mr. Sahu, DGM
57	27.09.19	Kolkata	IBBI & ICAI	Roundtable	Valuation Profession under Regulated Regime	Dr. Saini, WTM
58	28.09.19	Bengaluru	IBBI & ICSI	Conclave	IBC	Mr. Saji Kumar, ED
59	28.09.19	Manesar	IICA	Session	Resolution of FSPs	Chairperson
60	28.09.19	Raipur	IBBI & ICAI	Roundtable	Valuation Profession under Regulated Regime	Dr. Saini, WTM
61	28.09.19	Chennai	IBBI & ICAI	Roundtable	Valuation Profession under Regulated Regime	Mr. Sahu, DGM
62	03.10.19	Bangalore	IBBI & ICAI	Roundtable	Valuation Profession under Regulated Regime	Dr. Saini, WTM
63-66	04.10.19	Mumbai, Kolkata, Bengaluru, Chennai	IBBI	Awareness	IBC for Income Tax Officers	AMs
67	05.10.19	Gandhinagar	IBBI & GNLU, Gujarat	Awareness	IBC	Dr. Vijayawargiya, WTM
68	05.10.19	Chandigarh	IBBI & ICAI	Roundtable	Valuation Profession under Regulated Regime	Mr. Sahu, DGM
69	07.10.19	Delhi	IBBI	Roundtable	Valuation Profession under Regulated Regime	Chairperson
70	07.10.19	Mumbai	IBBI & ICAI	Roundtable	Valuation Profession under Regulated Regime	Mr. Sahu, DGM
71	09.10.19	Hyderabad	IBBI & ICAI	Roundtable	Valuation Profession under Regulated Regime	Mr. P. Kumar, ED
72	10.10.19	Delhi	IBBI	Awareness	IBC for Income Tax Officers	Dr. Guru, ED
73-75	10.10.19	Amritsar, Bhopal, Guwahati	IBBI	Awareness	IBC for Income Tax Officers	AMs
76	10.10.19	New Delhi	IBBI & FICCI	Roundtable	Valuation Profession under Regulated Regime	Chairperson
77	10.10.19	New Delhi	IBBI	Roundtable	Issues faced by resolution applicants	Chairperson
78	11.10.19	New Delhi	IBBI & IOV RVF	Summit	Global Valuation Summit	Chairperson

79	11.10.19	Mumbai	IBBI & ICAI	Roundtable	Valuation Profession under Regulated Regime	Mr. Sahu, DGM
80	22.10.19	Kochi	Federal Bank	Conference	Insolvency and Bankruptcy Law	Mr. Saji Kumar, ED
81 - 85	24.10.19	Delhi, Bareilly, Patna, Indore, Madurai	IBBI	Awareness	IBC for Income Tax Officers	AMs
86	25.10.19	New Delhi	CCI	Lecture	Building Capacity for Economic Freedom	Chairperson
87	26.10.19	Manesar	IICA	Session	Making Policy and Regulations	Chairperson
88 - 92	31.10.19	Delhi, Hyderabad, Chandigarh, Allahabad, Bhubaneshwar	IBBI	Awareness	IBC for Income Tax Officers	AMs
93	02.11.19	Ludhiana	IBBI & IPA ICAI	Awareness	IBC in Tier II Cities	Mr. Dhariwal, CGM
94	07.11.19	Dehradun	IBBI	Awareness	IBC for Income Tax Officers	AMs
95		Kochi				
96		Ranchi				
97	10.11.19	New Delhi	IBBI & NLU, Delhi	Symposium	3 Years of IBC: Tracing its journey, challenges for building the road ahead	Chairperson
98	11.11.19	New Delhi	CII	Conference	Resolving Insolvency in India	Chairperson
99	12.11.19	New Delhi	IBBI & NLU, Delhi	Moot	IBC	Chairperson
100 - 103	14.11.19	Ahmedabad, Coimbatore, Nagpur, Shillong	IBBI	Awareness	IBC for Income Tax Officers	AMs
104	15.11.19	Mumbai	IBBI	Workshop	IBC for IPs	Mr. Saji Kumar, ED
105	18.11.19	New Delhi	NCLT & AT Bar Association	Seminar	IBC	Chairperson
106	18.11.19	Kochi	ICAI	Conference	IBC	Dr. Vijayawargiya, WTM
107 - 108	21.11.19	Nashik, Panaji	IBBI	Awareness	IBC for Income Tax Officers	AMs
109	21.11.19	Pune	IBBI	Awareness	IBC for Income Tax Officers	Dr. Guru, ED
110	24.11.19	Cuttack	IBBI & IPA ICAI	Awareness	IBC in Tier II Cities	Mr. Das, DGM
111	26.11.19	New Delhi	ICAI	Conference	Effective Board Dynamics	Dr. Saini, WTM
112	28.11.19	Raipur	IBBI	Awareness	IBC for Income Tax Officers	AMs
113	28.11.19	Vijayawada				
114	29.11.19	Indore	CFA Institute	Financial Literacy	Financial Literacy	Dr. Vijayawargiya, WTM
115	30.11.19	New Delhi	IBBI	Workshop	Insolvency and Bankruptcy of PGs to CDs	Chairperson
116	30.11.19	Mumbai	CCI	Roadshow	Insolvency and Competition Law	Chairperson
117	30.11.19	New Delhi	Lex Locum Consultants LLP	Workshop	IBC	Mr. P. Kumar, ED
118	01.12.19	Manesar	IICA	Session	Valuation Framework	Chairperson
119 - 122	05.12.19	Trichy, Ghaziabad, Kanpur, Rajkot	IBBI	Awareness	IBC for Income Tax Officers	AMs
123	06.12.19	Mumbai	ICSI	Seminar	IBC: Challenges, Opportunities, Learning & Way Forward	Chairperson
124	06.12.19	Mumbai	ICAI	Conference	Insolvency: Lessons and Way Ahead	Chairperson
125	06.12.19	Mumbai	CFA Institute	Roundtable	Insolvency Reforms in India	Chairperson
126 - 132	07.12.19	Allahabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Mumbai	IBBI	Awareness	IBC for Income Tax Officers	AMs

133	07.12.19	Mumbai	IBBI & IBA	Conference	Regulatory Response to resolving Stress	Chairperson
134	08.12.19	New Delhi	ICSI	Convocation	Professionals of Tomorrow	Chairperson
135 - 138	12.12.19	Jaipur, Lucknow, Surat, Thiruvananthapuram	IBBI	Awareness	IBC for Income Tax Officers	AMs
139	12.12.19	New Delhi	M/o. Law and Justice	Awareness	IBC	Mr. Saji Kumar, ED
140	12.12.19	Gandhinagar	GNLU, UNCITRAL RCAP and Gujarat Maritime University	Conference	Role of UNCITRAL in harmonization of commercial laws	Dr. Vijayawargiya, WTM
141	13.12.19	Bengaluru	IBBI	Workshop	IBC for IPs	Mr. Saji Kumar, ED
142	14.12.19	Bhubaneswar	IBBI & ICSI	Seminar	National Seminar on IBC	Mr. Dhariwal, CGM
143	16.12.19	New Delhi	IBBI, Vidhi Centre, & University of Oxford	Conference	IBC: Impact on Markets and the Economy	Chairperson
144 - 147	19.12.19	Jodhpur, Panchkula, Thane, Visakhapatnam	IBBI	Awareness	IBC for Income Tax Officers	AMs
148	19.12.19	New Delhi	PFRDA	Lecture	IBC and Pension Sector	Chairperson
149	20.12.19	Kolkata	ICAI	Conference	CA-The Profession with a WOW	Chairperson
150	20.12.19	New Delhi	PHDCCI	Seminar	Forensic Audit & Fraud Detection	Dr. Saini, WTM
151-155	21.12.19	Ahmedabad, Chandigarh, Ernakulam, Jaipur, Cuttack	IBBI	Awareness	IBC for Income Tax Officers	AMs
156	21.12.19	Chandigarh	ICSI IIP	Session	IBC: NextGen Financial Discipline	Chairperson
157 - 158	24.12.19	Udaipur, Vadodara	IBBI	Awareness	IBC for Income Tax Officers	AMs
159	28.12.19	Manesar	IICA	Session	Resolution Plan of an FSP	Chairperson
160	05.01.20	Mumbai	IBBI & ICAI	Workshop	Insolvency and Bankruptcy of PG to CD	Mr. Das, DGM
161	09.01.20	Ludhiana	IBBI	Awareness	IBC for Income Tax Officers	AMs
162	10.01.20	Mumbai	Mumbai University	Roundtable	IBC	Chairperson
163	10.01.20	Jaipur	NeSL	Seminar	IBC	Mr. Shukla, WTM
164	12.01.20	Jaipur	IBBI & ICAI	Workshop	Insolvency and Bankruptcy of PGs to CDs	AMs
165	16.01.20	New Delhi	ICSI IIP	Webinar	IBC Amendment (Ordinance), 2019	Mr. Saji Kumar, ED
166	18.01.20	Kolkata	IBBI & ICAI	Workshop	Insolvency and Bankruptcy of PGs to CDs	Mr. Das, DGM
167	24.01.20	Chennai	IBBI	Workshop	IBC for IPs	Mr. Saji Kumar, ED
168	25.01.20	Hyderabad	IBBI & ICAI	Workshop	Insolvency and Bankruptcy of PGs to CDs	Mr. Santosh, AM
169	25.01.20	Manesar	IICA	Session	Measuring IBC Impact	Chairperson
170	27.01.20	New Delhi	IIPI	Webinar	Online filing of CIRP Forms, etc.	Dr. Saini, WTM
171	29.01.20	Chennai (Via VC)	RBI Staff College	Session	IBC	Mr. Saji Kumar, ED
172	31.01.20	Pune	IBBI & IPA ICAI	Awareness	IBC in Tier II Cities	Dr. Vijayawargiya, WTM
173	31.01.20	Pune	IPA ICAI	Workshop	Personal guarantors to CDs	Dr. Vijayawargiya, WTM
174	01.02.20	Guwahati	IBBI	Awareness	IBC for officers of DRT and DRAT	AMs
175	01.02.20	New Delhi	IMT, Ghaziabad	Conclave	Contemporary themes in banking and finance	Chairperson
176	07.02.20	Hyderabad	IBBI	Workshop	IBC for IPs	Mr. Saji Kumar, ED
177	08.02.20	Hyderabad	IBBI & JNIBF, Hyderabad	Workshop	IBC: Current Perspective	Mr. Saji Kumar, ED

178	10.02.20	London	High Commission of India	Conference	Distressed Investment Markets in India	Chairperson
179	10.02.20	London	High Commission of India	Panel	Conversation with Government & Regulators	Chairperson
180	10.02.20	Gandhinagar (Via VC)	GNLU	Colloquium	Insolvency and Credit Risk	Dr. Vijayawargiya, WTM
181	12.02.20	Mumbai	Indian Chamber of Commerce	Seminar	IBC: Way Forward	Mr. Kavdia, ED
182	21.02.20	Udaipur	FOIR	Conference	Transparency & Accountability in Regulatory Framework	Chairperson
183	21.02.20	Udaipur	IICA	Colloquium	Inter Sector Co-ordination among Infrastructure Regulators	Chairperson
184	22.02.20	Patna	IBBI	Awareness	IBC for officers of DRT and DRAT	AMs
185	22.02.20	Udaipur	IOV RVO	Seminar	Valuation Profession under Regulated Regime	Chairperson
186	22.02.20	Indore	ICAI	Conference	IBC: A Game Changer	Dr. Vijayawargiya, WTM
187	28.02.20	Kolkata	CII	Conference	IBC: Measuring the Success	Dr. Saini, WTM
188	29.02.20	New Delhi	IBBI & IPA ICAI	Colloquium	Liquidation under IBC -Learnings and way forward	Dr. Vijayawargiya, WTM
189	29.02.20	Kolkata	IBBI & ICAI	Conclave	IBC and Impact of IBC on Ease of Doing Business	Dr. Saini, WTM
190	06.03.20	New Delhi	IBBI & FICCI	Seminar	MSMEs and IBC, 2016	Chairperson
191	06.03.20	New Delhi	NCLAT	Colloquium	Rescuing Lives: IBC Way	Chairperson
192	07.03.20	New Delhi	NCLAT	Colloquium	IBC Ecosystem	Chairperson
193	07.03.20	New Delhi	ICAI (Cost)	Conclave	International women's day	Dr. Vijayawargiya, WTM
194	08.03.20	New Delhi	IBBI	Seminar	Seminar on International Women's Day	Chairperson
195	13.03.20	New Delhi	RIPA	Workshop	IBC Process	Mr. Shukla, WTM
196	14.03.20	New Delhi	RIPA	Workshop	Inspection of IPs	Mr. Chaudhuri, CGM
197	20.03.20	New Delhi	IBBI	Webinar	Case study of Ruchi Soya Industries Ltd.	Chairperson

PROGRAMMES

In addition to various events where IBBI 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

GRR Live Singapore

Dr. M. S. Sahoo, Chairperson, IBBI delivered the keynote address at the 2nd Annual Global Restructuring Review (GRR) Live Singapore Conference held on 1st April, 2019 in Singapore. In his keynote address, he dwelt on the journey of insolvency reforms in India and how this has changed the narrative from 'Hopeless End' to 'Endless Hope'. He also highlighted the key objectives and features of Code. This was in the context that India had won the prestigious GRR Award for the "Most Improved Jurisdiction" for the year 2018.

Roadshow

IBBI, in association with FICCI and the Consulate General of India in Hong Kong, organised a roadshow on 'Insolvency and Bankruptcy Code - A New Paradigm for Stressed Assets'

in Hong Kong on 24th-26th April, 2019. The Roadshow included a half-day Conference, which shared progress in implementation of the Code and emerging investment opportunities in stressed assets in India. It included meetings with focused groups of potential investors and professional firms. These meetings provided an opportunity to understand the working of the Code from their perspective and to provide clarifications on their concerns.

Business and Innovation Summit

Dr. M. S. Sahoo, Chairperson, IBBI attended a two-day Business and Innovation Summit, 'India-Singapore: The Next Phase', organised by High Commission of India in Singapore on 9th-10th September 2019 in Singapore. He participated in a panel discussion on 'Cracking the Insolvency and Bankruptcy Code'. He had one-on-one meetings with potential investors in distressed assets. These meetings provided an opportunity to the investors to understand the details of the insolvency reforms, all around endeavour shown by India in addressing the issues expeditiously by either judicial, legislative, or executive intervention and investment options and opportunities in stressed assets in India.

IAIR Annual Conference

Dr. M. S. Sahoo, Chairperson, IBBI attended the International Association of Insolvency Regulators (IAIR) Annual Conference and Meeting, 2019 on 18th-19th September 2019 in Belfast, Northern Ireland. He made a presentation in a plenary session on 'Competitive Markets for Insolvency Practice' sharing, *inter alia*, the progress in implementation of insolvency reforms and the state of markets for professional services and resolution plans. The IAIR provides a platform for high level dialogue and peer to peer learning for insolvency regulators, public policy makers, international experts, and private practitioners on insolvency reforms all around the globe.

Conference on bankruptcy and distressed investment market in India

Dr. M. S. Sahoo, Chairperson, IBBI attended the conference on 'Bankruptcy and distressed investment market in India – Opportunities, perspectives and the road ahead', organised by the Indian High Commission to UK in association with Indian Professionals Forum, in London on 10th February, 2020. He participated as a panellist in the panel discussion on 'Conversations with the Government and Regulators' and delivered the keynote address on 'Where next for IBC'. The conference was an avenue for raising awareness and reassuring international investors that the Indian market welcomes foreign investment in the distressed assets.

Insolvency Knowledge Exchange Programme

Dr. M. S. Sahoo, Chairperson, IBBI attended the Insolvency Knowledge Exchange Programme, organised by Foreign, Commonwealth and Development Office (FCO), UK Government in association with International Finance Corporation (IFC), London on 11th -12th February, 2020. The UK insolvency regime was studied during the programme and parallels were drawn with the Indian insolvency regime. Some features of the UK insolvency regime such as debt relief orders and pre-packs were noted to be of importance and possible implementation in India. The programme served as an opportunity to present the architecture of the Code in India and the outcomes so far, with investors, business leaders and top professionals. This enabled investors and professionals to understand the distressed assets opportunities in India and the commitment of the Government to insolvency reforms.

Awareness Programmes

Conference on 'Laws and Economics of Insolvency & Bankruptcy'

IBBI, in association with the three IPAs, SIPI, Federation of Jharkhand Chamber of Commerce & Industries, National University of Study and Research in Law (Ranchi), IIM (Ranchi), Judicial Academy (Jharkhand), Chotanagpur Law College and ICFAI University (Jharkhand), organised a Conference on 'Laws and Economics of Insolvency and Bankruptcy' on 11th May, 2019 at the Judicial Academy in Ranchi. Hon'ble Mr. Justice S. J. Mukhopadhaya, Chairperson, NCLAT, Hon'ble Mr. Justice Aniruddha Bose, Chief Justice, High Court (HC) of Jharkhand, Dr. M. S. Sahoo, Chairperson, IBBI and other distinguished speakers addressed the delegates. The delegates included members of higher judiciary, and judicial officers, academics,

professionals, businessmen, and students of higher education from leading institutes of Ranchi.

Programme for Income Tax Department

With a view to increase the awareness and understanding of the provisions of the Code among income-tax officers, the IBBI organised 46 awareness programmes at various locations across the country during the year.

Programme for DRT and DRAT

With a view to increase the awareness on the newly notified rules and regulations for PGs to CDs with effect from 1st December, 2019, the IBBI, in association with the Department of Financial Services, organised workshops at 14 locations across the country for officials of the DRT and Debt Recovery Appellate Tribunals (DRAT).

National Seminar on Valuation

The IBBI, in association with all the 11 RVOs, organised a National Seminar on Valuation on 8th June, 2019 at New Delhi. A large number of RVs and other delegates from across the country participated in the seminar. Mr. Injeti Srinivas, Secretary, MCA in his address as the Chief Guest, stressed on the importance of developing professional competence, conduct and ethics amongst valuers. He observed: "We now feel that we have enough critical mass (of valuers) to once again make an attempt to have a national institute for the valuers' profession along the lines of ICAI." The seminar featured discussion on four themes, namely, (i) Valuation Profession in 2030: Challenges, Development and Regulation; (ii) Technology in Valuation; (iii) Professional Conduct: Code of Conduct and Ethics, Best Practices, and Valuation Standards; and (iv) Valuation Frontiers: Plant & Machinery, Land & Building, and Securities or Financial Assets.

IBBI-Vidhi Conference

IBBI and Vidhi Centre for Legal Policy, in partnership with the Faculty of Law and Commercial Law Centre, Harris Manchester College at the University of Oxford, organised a Conference titled 'Insolvency and Bankruptcy Code, 2016: Impact on Markets and the Economy' in New Delhi on 16th December, 2019. The Conference featured inaugural address by Dr. Bibek Debroy (Chairman, Economic Advisory Council to the Prime Minister), keynote address by Dr. Kristin van Zwieten (Clifford Chance Associate Professor of Law and Finance at the University of Oxford and Director, Commercial Law Centre at the Harris Manchester College), special address by Dr. M. S. Sahoo (Chairperson, IBBI) and valedictory address by Mr. Ajay Tyagi (Chairman, SEBI) and four panel discussions.

Academic Engagements

Graduate Insolvency Programme

The Indian Institute of Corporate Affairs (IICA) commenced the first batch of GIP on 1st July, 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.



1st Batch of GIP at IICA, 8th July, 2019

Insolvency Moot

National Law University, Delhi (NLUD) jointly with IBBI, INSOL India, SiPI and UNCITRAL RCAP organised the third moot in the series on insolvency and bankruptcy on the theme 'Corporate Insolvency Resolution'. Forty teams from prestigious law schools from all over the country participated in the moot. After a memorandum qualification round, 8 teams qualified to oral rounds. The final round was held on 12th November, 2019. It was adjudicated by a panel comprising Dr. M. S. Sahoo, Chairperson, IBBI; Mr. Bahram Vakil, Founding Partner, AZB & Partners and Mr. Amarjit Singh Chandhiok, Senior Advocate and President, INSOL India. The teams from National University for Study and Research in Law, Ranchi and O. P. Jindal Global University Law School jointly emerged victorious in the competition.

National Law Institute University (NLIU), Bhopal jointly with IBBI, organised the 8th IBBI-NLIU 'National Corporate Law Moot 2019'. The final round and valedictory ceremony were held on 8th December, 2019. It was adjudicated by a panel comprising Ms. Suchitra Kanuparthi, Member Judicial, NCLT; Mr. P. K. Malhotra, former Law Secretary, Dr. (Ms.) Mukulita Vijaywargiya WTM, IBBI and Dr. (Ms.) Mamta Suri, CGM, IRDA. The team from Ram Manohar Lohia National Law University (RMLNLU) emerged victorious and that from Nirma University finished as runners-up in the competition.

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 the IBBI during the quarter.

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, has announced the IBBI Research Initiative, 2019 on 1st July, 2019. 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 the referee, the researcher needs to submit the research paper within six months. The research paper is reviewed similarly by an external referee.

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 on insolvency landscape, the IBBI introduced the Annual Publication as a collection of articles with wisdom on insolvency and bankruptcy framework. The IBBI published its first publication with title 'Insolvency and Bankruptcy Code - A Miscellany of Perspective', which was released on 1st October, 2019. The publication consists of 38 insightful articles written by experts in the field, with topics on various issues in insolvency, bankruptcy, finance, and economic sphere.

Hindi Version of the Code

To cater to a larger number of stakeholders across the country and as an initiative to encourage the use of *Rajbhasha*, IBBI prepared the Hindi version of the Code which was released on 1st October, 2019. The IBBI has been issuing Regulations bilingually and hence all Regulations are available in Hindi.



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.¹⁰ 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 2019-20 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 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 has issued the IBBI (Mechanism for Issuing Regulations) Regulations, 2018 on 22nd October, 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

¹⁰ OECD (2014), The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, <http://dx.doi.org/10.1787/9789264209015-en>

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. It amended some of the existing Regulations from time to time, as detailed in Table 12. The details of each of these Regulations and amendments have been provided under the relevant sub-sections of Section C of the Report.

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 11 of section C. Table 13 is a summary of the number of roundtables for various subjects.

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 18th October, 2016. With the issue of Advisory Committee Regulations, the Committee was reconstituted on 30th August, 2017. Its composition as on 31st March, 2020 is given in Table 14.

(b) Advisory Committee on Corporate Insolvency and Liquidation

It was constituted on 18th October, 2016. With issue of Advisory Committee Regulations, the Committee was reconstituted on 25th August, 2017. Its composition as on 31st March, 2020 is

given in Table 15.

(c) Advisory Committee on Individual Insolvency and Bankruptcy

It was constituted on 15th September, 2017. Its composition as on 31st March, 2020 is given in Table 16.

Table 12: Regulations notified in 2019-20

Sl. No.	Notification Date	Regulations
1	23.07.19	IBBI (Insolvency Professionals) (Amendment) Regulations, 2019
2	23.07.19	IBBI (Insolvency Professional Agencies) (Amendment) Regulations, 2019
3	23.07.19	IBBI (Procedure for Governing Board Meetings) (Amendment) Regulations, 2019
4	23.07.19	IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2019
5	23.07.19	IBBI (Engagement of Research Associates and Consultants) (Amendment) Regulations, 2019
6	25.07.19	IBBI (Liquidation Process) (Amendment) Regulations, 2019
7	25.07.19	IBBI (Information Utilities) (Amendment) Regulations, 2019
8	25.07.19	IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2019
9	25.10.19	IBBI (Insolvency Professionals) (Second Amendment) Regulations, 2019
10	20.11.19	IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019
11	20.11.19	IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019
12	28.11.19	IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2019
13	06.01.20	IBBI (Liquidation Process) (Amendment) Regulations, 2020
14	15.01.20	IBBI (Voluntary Liquidation Process) (Amendment) Regulations, 2020
15	12.02.20	IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2020
16	25.03.20*	IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2020
17	28.03.20*	IBBI (Insolvency Professionals) (Amendment) Regulations, 2020
18	28.03.20*	IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2020
19	29.03.20*	IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020

* Published on the website on the date mentioned but notified in the Official Gazette on 24th April, 2020 in view of lockdown.

Table 13 : Subject wise Roundtable Events

Subject	2016-17	2017-18	2018-19	2019-20	Total
Service Providers under the Code	04	02	--	01	07
Corporate Insolvency Processes - Insolvency Resolution, Fast Track Resolution, Liquidation and Voluntary Liquidation	04	11	07	03	25
Individual Insolvency Processes	--	10	01	02	13
Valuation	--	18	--	11	29
Cross Border Insolvency	--	--	03	--	03
Going Concern Sale & Group Insolvency	--	--	04	--	04
Others	--	04	10	07	21
Total	08	45	25	24	102

Table 14: Composition of Advisory Committee on Service Providers

Sl. No.	Name and Position	Position in the Committee
1	Mr. Mohandas Pai, Chairman, Manipal Global Education	Chairperson
2	Mr. K.V. R. Murty, Joint Secretary, MCA	Member
3	Dr. Bimal N. Patel, Director, GNLU	Member
4	Mr. J. Ranganayakulu, Former ED, SEBI	Member
5	Mr. P. R. Ramesh, Chairman, Deloitte India	Member
6	CEO, ICSI IIP	Member

Table 15: 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 & MD, Kotak Mahindra Bank	Chairperson
2	Mr. Gyaneshwar Kumar Singh, Joint Secretary, MCA	Member
3	Mr. Ashish Kumar Chauhan, MD and CEO, BSE Limited	Member
4	Mr. M. V. Nair, Chairman, Credit Information Bureau (India) Limited	Member
5	Dr. Omkar Goswami, Chairperson, CERG Advisory Private Limited	Member
6	Mr. Somasekhar Sundaresan, Legal Counsel	Member
7	Mr. Ajay Piramal, Chairman of Piramal Group and Shriram Group	Member
8	Prof. (Dr.) Ranbir Singh, Vice Chancellor, NLU, Delhi	Member
9	Mr. R. K. Nair, Ex-Member, IRDAI	Member
10	President, NCLT and NCLAT Bar Association	Member
11	Chairman, Indian Banks' Association	Member
12	CEO, IPA ICAI	Member

Table 16: Composition of Advisory Committee on Individual Insolvency and Bankruptcy

Sl. No.	Name and Position	Position in the Committee
1	Justice B. N. Srikrishna, Former Justice, Supreme Court of India	Chairperson
2	Mr. C. B. Bhavé, Chairperson, IHS and Former Chairman, SEBI	Member
3	Prof. (Dr.) Dipankar Gupta, Sociologist and Author	Member
4	Mr. Prithvi Haldea, Founder Chairman, Prime Database	Member
5	Dr. (Mrs.) Poornima Advani, Former Chairperson, NCW and Advocate	Member
6	Mr. R. V. Verma, Former CMD, National Housing Bank	Member
7	Mr. Sanjeev Sanyal, Principal Economic Advisor, MoF	Member
8	Representative, MCA	Member
9	President, SIPI	Member
10	CEO, IIIPI	Member

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 31st December, 2016, 977 individuals were granted registration as IPs under regulation 9 of the IP Regulations for a limited period of six months. Since 31st December, 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 1st April, 2018), are registered as IPs. In this category, 3014 individuals were registered as IPs as on 31st March, 2020 out of which registrations of 5 individuals have been cancelled through due disciplinary proceedings. An individual needs to be enrolled first with an IPA for getting registered as an IP with IBBI. There were three IPAs registered on 31st March, 2020. Details of the registrations of IPs, IPA wise, is presented in Table 17. Region wise distribution of IPs registered as on 31st March, 2020 is presented in Table 18.

An IP needs an AFA to take up an assignment under the Code with effect from 1st January, 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 31st March, 2020, 2026 IPs were issued AFAs.

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 19 presents distribution of IPs as per their eligibility (an IP may be

a member of more than one Institute) as on 31st March, 2020. Of the 3009 IPs, 274 IPs, accounting for about nine per cent of the registered IPs, are female. Table 20 presents the age profile of the IPs registered as on 31st March, 2020.

Table 17: Registration and Cancellation of Registrations of IPs

Quarter	During the Quarter/Year		Registered at the End of the Quarter/Year			
	Registered	Cancelled	IIIP	ICSI IIP	IPA ICAI	Total
Oct-Dec, 2016*	977	0	713	221	43	977
2016-17	96	0	33	51	12	96
2017-18	1716	0	1066	512	138	1812
2018-19	648	4	417	173	54	2456
Apr - Jun, 2019	203	0	137	57	9	2659
Jul - Sep, 2019	128	0	83	32	13	2787
Oct - Dec, 2019	124	0	73	36	15	2911
Jan - Mar, 2020	99	1	48	40	10	3009
Total	3014	5	1857	901	251	3009

* These registrations expired by 30th June, 2017.

Table 18: Distribution of IPs as on 31st March, 2020
(Number)

City / Region	IIIP	ICSI IIP	IPA ICAI	Total
New Delhi	367	231	65	663
Rest of Northern Region	301	167	45	513
Mumbai	343	120	32	495
Rest of Western Region	216	93	30	339
Chennai	116	78	11	205
Rest of Southern Region	295	163	46	504
Kolkata	171	34	17	222
Rest of Eastern Region	50	18	5	73
Total Registered	1859	904	251	3014
Cancellations	2	3	0	5
Total	1857	901	251	3009

The geographical distribution of IPs as on 31st March, 2020 is presented in **Figure 3**.

Insolvency Professional Entities

An IPE provides support services to IPs who are its partners or directors. As on 31st March, 2020, there were 69 IPEs. The quarterly details of recognition of IPEs are given in Table 21.

Table 19: Distribution of IPs as per their Eligibility as on 31st March, 2020

Eligibility	No. of IPs		
	Male	Female	Total
Member of ICAI	1507	135	1642
Member of ICSI	460	88	548
Member of ICAI (Cost)	150	12	162
Member of Bar Council	178	21	199
Managerial Experience	440	18	458
Total	2735	274	3009

Table 20: Age Profile of IPs as on 31st March, 2020

Age Group (in Years)	IIIP	ICSI IIP	IPA ICAI	Total
≤ 40	220	72	4	296
> 40 ≤ 50	660	317	46	1023
> 50 ≤ 60	596	244	60	900
> 60 ≤ 70	355	241	134	730
> 70 ≤ 80	22	24	7	53
> 80 ≤ 90	3	3	0	6
> 90	1	0	0	1
Total	1857	901	251	3009

Table 21: Recognised IPEs as on 31st March, 2020

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
Apr - Jun, 2019	6	0	54
Jul - Sep, 2019	7	0	61
Oct - Dec, 2019	6	0	67
Jan - Mar, 2020	4	2	69
Total	112	43	69

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 31st March, 2020, a total of 3172 IRPs has been appointed as RPs, as shown in Table 22.

Figure 3: Geographical Distribution of IPs as on 31st March, 2020

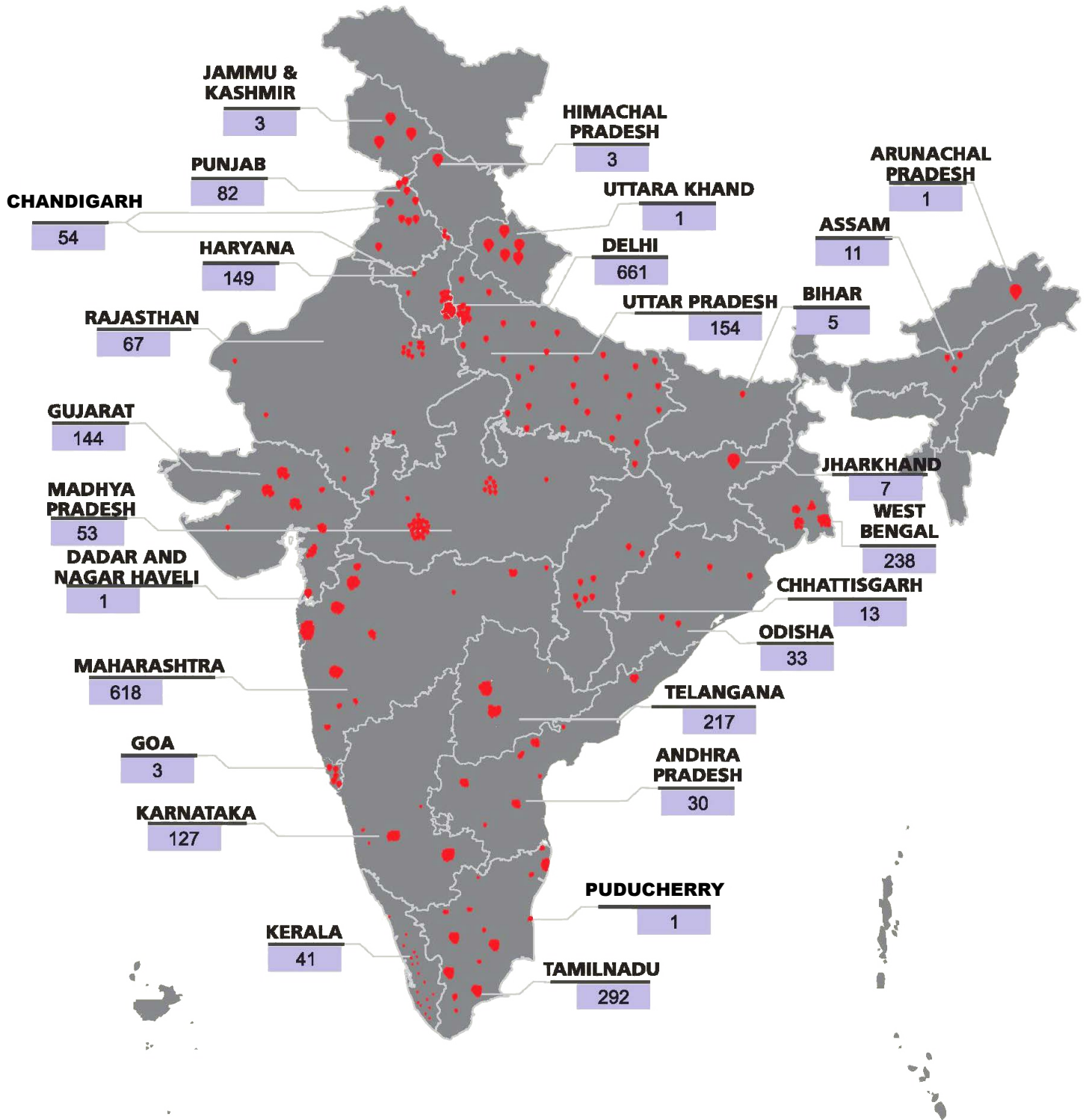


Table 22: Replacement of IRP with RP till 31st March, 2020

CIRP initiated by	No. of CIRPs	
	Where RPs have been appointed	Where RP is different from the IRP
Corporate Applicant	241	108
Operational Creditor	1451	495
Financial Creditor	1480	276
Total	3172	879

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 and Liquidators (Recommendation) Guidelines, 2019, the IBBI prepared bench-wise panel for appointments during July - December, 2019 as IRPs and liquidators;

(ii) In accordance with the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2019, the IBBI prepared zone-wise panel for appointments during January - June, 2020 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, 2019 - March, 2020 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, 2020 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 23.

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 and FCs, the details of which are provided in Table 24 and Table 25 respectively.

IPAs are also undertaking various measures to build capacity of their members. Table 26 presents details of programmes organised by them in 2019-20. The details of different publications by IPAs for the benefit of their members are presented in Table 27.

Table 23: Panels of IPs prepared during 2019-20

Sl. No.	Date of Panel	Panel under the	No. of Zones in the Panel	No. of IPs in Panel
1	14.05.19	Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) Guidelines, 2019	13	1035
2	12.09.19	Guidelines for Appointment of Insolvency Professionals as Administrators under the Securities and Exchange Board of India (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018	13	588
3	28.11.19	Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2019	14	896
4	27.02.20	Guidelines for Appointment of Insolvency Professionals as Administrators under the Securities and Exchange Board of India (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018	13	659

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 6th August, 2019. These Guidelines are effective from 1st January, 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 28. Box 3 informs about the activities undertaken under in the context of CPE of IPs.

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 6th August,

Table 24: IP workshops and webinars organised in 2019-20

Sl. No.	Event	Theme	Date	Place	Organiser
1	15 th Basic IP Workshop	IBC	12.04.19 - 13.04.19	Jaipur	IBBI
2	16 th Basic IP Workshop	IBC	14.06.19 - 15.06.19	Ahmedabad	IBBI
3	Webinar	Fraudulent transactions	02.07.19	New Delhi	ICSI IIP
4	Workshop	Forensic Audit	03.07.19	New Delhi	IPA ICAI
5	Webinar	Using IUs	24.07.19	New Delhi	ICSI IIP
6	17 th Basic IP Workshop	IBC	26.07.19 - 27.07.19	Chennai	IBBI
7	Webinar	Section 66 applications	27.07.19	New Delhi	ICSI IIP
8	1 st Advanced IP Workshop	Forensic Audit and Valuation	30.08.19 - 31.08.19	New Delhi	IBBI
9	18 th Basic IP Workshop	IBC	20.09.19 - 21.09.19	Kolkata	IBBI
10	2 nd Advanced IP Workshop	Forensic Audit and Valuation	01.11.19 - 02.11.19	Chandigarh	IBBI
11	3 rd Advanced IP Workshop	Forensic Audit and Valuation	15.11.19 - 16.11.19	Mumbai	IBBI
12	One-Day IP Workshop	Insolvency and Bankruptcy of PGs to CDs	30.11.19	New Delhi	IBBI
13	4 th Advanced IP Workshop	Forensic Audit and Valuation	13.12.19 - 14.12.19	Bengaluru	IBBI
14	One-Day IP Workshop	Insolvency and Bankruptcy of PGs to CDs	05.01.20	Mumbai	IBBI & ICAI
15	One-Day IP Workshop	Insolvency and Bankruptcy of PGs to CDs	12.01.20	Jaipur	IBBI & ICAI
16	One-Day IP Workshop	Insolvency and Bankruptcy of PGs to CDs	18.01.20	Kolkata	IBBI & ICAI
17	5 th Advanced IP Workshop	Forensic Audit and Valuation	24.01.20 - 25.01.20	Chennai	IBBI
18	One-Day IP Workshop	Insolvency and Bankruptcy of PGs to CDs	25.01.20	Hyderabad	IBBI & ICAI
19	Webinar	Online filing of CIRP forms	27.01.20	New Delhi	IIPI
20	6 th Advanced IP Workshop	Forensic Audit and Valuation	07.02.20 - 08.02.20	Hyderabad	IBBI
21	Webinar	Case study of Ruchi Soya Industries Ltd.	23.03.20	New Delhi	IBBI

Table 25: CoC workshops organised in 2019-20

Sl. No.	Date	Place	Theme	Partnership with
1	22.04.19	Kolkata	CoC: An Institution of Public Trust	SBI
2	29.06.19	Chennai	CoC: An Institution of Public Trust	SBI
3	24.08.19	Gurugram	CoC: An Institution of Public Trust	SBI

Table 26: Programmes conducted by IPAs in 2019-20

Programme	No. of Programmes organised by				No. of Beneficiaries
	IPA ICAI	ICSI IIP	IIPI	Total	
Preparatory Course	13	6	Nil	19	194
Pre-registration Course	3	4	4	11	464
Webinars	35	8	7	50	31270
Workshops	43	2	6	49	1818
Roundtables	54	Nil	3	57	1782
Seminars/Conferences	38	11	7	56	4518
Total	186	31	27	242	40046

2019. These Guidelines are effective from 1st January, 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 28. **Box 3** informs about the activities undertaken under in the context of CPE of IPs.

Table 27: Details of Publications by IPAs in 2019-20

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	October, 2019 - March, 2020	6
2	Daily update	IBC Au-Courant	Daily	April, 2019 - March, 2020	250
3	Casebook	Casebook	Weekly	January, 2020 - March, 2020	11
4	Case laws	IBC Dossier	Weekly	April, 2019 - March, 2020	1
ICSI IIP					
1	Ready Reckoners	Interim Resolution Professional	Editions	November, 2019	01
2		Practical Aspects of Insolvency Law	Editions	November, 2019	01
3		Insolvency and Bankruptcy Code, 2016	Versions	August, 2019	01
4		Insolvency and Bankruptcy Code, 2016 (Rules and Regulations)	Versions	August, 2019	01
5		Judicial / Regulatory Rulings for Stakeholders	Editions	November, 2019	01
6		Voluntary Liquidation	Edition	May, 2019	01
7		100 NCLAT Judgments	Edition	November, 2019	01
8	Knowledge Initiative	Learning Curves	Daily	April, 2019 - March, 2020	280
9		Knowledge Reponere	Fortnightly/ monthly	April, 2019 - March, 2020	28
10		IBC Knowledge Capsule	Fortnightly	October, 2019 - March, 2020	11
11		MCQ series (Limited Insolvency Examination)	Editions	July, 2019	01
12	Journal	ICSI IIP Insolvency and Bankruptcy Journal	Monthly	April, 2019 - March, 2020	12
13	Research	Legal framework of group insolvency	One time	May, 2019	01
IIPI					
1	Newsletters	Round up of news related to IBC	Weekly	April, 2019 - March, 2020	52
2	Update on Judicial Pronouncements	E-juris	Quarterly	April, 2019 - March, 2020	04
3	Books	Insolvency and Bankruptcy Code, 2016 & Rules	One time	January, 2020	01

Table 28: CPE hours undertaken by IPs as on 31st March, 2020

Year / Quarter	Number of Hours earned by members of		
	IIPI	IPA ICAI	ICSI IIP
Jan-Mar, 2020	957	255	3153

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 31st March, 2020, 12 entities were recognised as RVOs. There are 10 RVOs each in asset classes Land and Building, and Plant and Machinery and 11 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 31st March, 2020, is given in Table 29. The registration of RVs, quarter-wise, till 31st March, 2020 is given in Table 30.

RVs are permitted to form an entity (Partnership / Company) for rendering valuation services. There are 20 such entities

registered as RVs as on 31st March, 2020, as presented in Table 31. Nine entities are registered for all three asset classes, one entity in two asset classes and ten entities in one asset class.

Of the RVs registered as on 31st March, 2020, 880 RVs (constituting 29 per cent of the total RVs registered) are from metros while 2150 RVs are from non-metro locations (Table 32). A geographical distribution of RVs as on 31st March, 2020 is presented in **Figure 4**.

The average age of RVs as on 31st March, 2020 stood at 48 years across asset classes. It was 50 years for Land and Building, 53 years for Plant and Machinery and 43 years for Securities or Financial assets (Table 33). Of the 3030 RVs, 267 RVs (constituting about nine per cent of the total RVs) are females.

Box 3: Continuing Professional Education for Insolvency Professionals

"The illiterate of the 21st century will not be those who cannot read and write, but those who cannot learn, unlearn, and relearn." This quote from Alvin Toffler aptly captures the dynamic and rapidly evolving landscape of insolvency resolution ecosystem in India and the need for CPE for IPs. An IP needs to continuously upgrade himself through CPE to remain relevant and provide value added services. He needs to attend today's work with today's technology. It is the endeavor of the Board to promote continuous learning as a habit that helps IPs to explore and grasp the knowledge about all the evolving aspects of the insolvency ecosystem.

Section 196(1)(aa) of the Code mandates the IBBI to promote the development of, and regulate, the working and practices of IPs. It has been the endeavour of the Board to make available a cadre of competent and accountable IPs matching the dynamic market realities. Accordingly, regulation 7(2)(ba) of the IP Regulations mandates that the registration of an IP is subject to the condition that he shall undergo CPE as may be required by the Board. Clause 10 under the First Schedule to the IP Regulations provides that an IP must maintain and upgrade his professional knowledge and skills to render competent professional service. In pursuance of these, the Board notified the IBBI (Continuing Professional Education for Insolvency Professionals) Guidelines, 2019 on 6th August, 2019. The Guidelines are a planned and systematic attempt to introduce, review, or alter the competencies and thereby improve the performance of IPs. It meets post-registration professional development needs of an IP.

The Guidelines allow not only the Board, but also an IPA, a RVO, a statutory professional institute, a university, or any other entity, as may be approved by the Board from time to time, to conduct learning activities. An IP may earn credit hours by participating in the learning activities or by publishing articles / delivering lectures in the areas relevant for IPs. The Guidelines provide for wide range of learning activities in a wide range of areas offered by wide range of entities, as presented in Table below. This provides IPs a greater degree of choice in undertaking learning activities and promotes competition among organising entities, thus making the learning process more efficient and effective.

Table: Learning activities under the CPE Guidelines

Sl. No.	Learning Activity in the areas relevant for IPs	Credit hours
1	Workshops, Conferences, Seminars, Training Programmes, Refresher Programmes, Certificate Courses, Conventions Symposiums, etc.	Half day: Two hours Full day: Four hours
2	Acting as faculty in any of the activities in Sl. No. 1	Equivalent to the duration of the activity
3	Publication of article in any national newspaper	Four hours
4	Publication of article in a journal of the Board, an IPA, an RVO, a professional institute, or a referred national or international journal	Eight hours
5	Publication of a Book	Thirty hours in the year of publication
6	Completing a two-year Post-Graduation Course	Twenty hours in the year of completion
7	Completing Ph. D.	Forty hours in the year of conferment of Ph.D.
8	Pass in Limited Insolvency Examination	Forty hours in the year of passing
9	Pass in Valuation Examination of an asset Class	Twenty hours in the year of passing

Basic and Advanced Workshops

While market and stakeholders are meeting post-registration learning needs of IPs, the IBBI has been supplementing the market initiatives. It has been organising two-day basic workshops for newly registered IPs with a view to build their capacity. With a view to enhance the expertise of IPs in niche areas, it is also organising two-day Advanced Workshops for IPs, who have already undergone the basic workshop. It is also encouraging and assisting IPAs to organise similar workshops and webinars. The details of such workshops are presented in Table below.

Table: Programmes for IPs organised by Board till 31st March, 2020

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
Total	18	06	10	42

Apart from the basic and advanced workshops, the Board also organises workshops for IPs on various new developments. It organised five workshops on the provisions relating to insolvency and bankruptcy of PGs to CDs, notified with effect from 1st December, 2019, at New Delhi, Mumbai, Jaipur, Kolkata, and Hyderabad during December, 2019 - January, 2020. It also regularly organises various webinars and roundtables as a part of its CPE initiatives.

Training the Trainers

The Board, in association with World Bank, organised two Train-the-Trainers workshops to groom trainers, who can impart in-depth, practical training in corporate insolvency resolution to IPs. The first workshop with 24 would-be trainers was conducted in New Delhi from 6th to 8th April, 2019. The second workshop with 11 would-be trainers was conducted in Mumbai on 12th to 14th April, 2019. A one-day orientation programme on individual insolvency was also organised by Board on 13th June, 2019 in New Delhi to groom trainers who can train other IPs and officers working with DRTs on implementation of the provisions relating to individual insolvency under the Code. A total of 12 would-be trainers participated in the programme. These help IPAs and market to offer quality training programmes.

Table 29: RVs as on 31st March, 2020

(Number)

Registered Valuer Organisation	Asset Class			Total
	Land & Building	Plant & Machinery	Securities or Financial Assets	
RVO Estate Managers and Appraisers Foundation	45	8	5	58
IOV Registered Valuers Foundation	1012	160	115	1287
ICSI Registered Valuers Organisation	0	0	116	116
ICAI Registered Valuers Organisation	NA	NA	568	568
IIV India registered Valuers Foundation	105	33	32	170
ICMAI Registered Valuers Organisation	13	12	187	212
PVAI Valuation Professional Organisation	244	45	33	322
CVSRTA Registered Valuers Association	169	51	NA	220
Association of Certified Valuers and Analysts	NA	NA	1	1
CEV Integral Appraisers Foundation	38	13	0	51
Divya Jyoti Foundation	3	3	19	25
Nandadeep Valuers Foundation#	0	0	0	0
Total	1629	325	1076	3030

Recognition granted in March, 2020

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

Table 30: Registration of RVs as on 31st March, 2020

(Number)

Quarter	Land & Building	Plant & Machinery	Securities or Financial Assets	Total
2018-19	781	121	284	1186
Apr - Jun, 2019	346	81	300	727
Jul - Sep, 2019	212	58	191	461
Oct - Dec, 2019	161	34	146	341
Jan - Mar, 2020	129	31	155	315
Total	1629	325	1076	3030

Table 31 : Registered Valuers Entities as on 31st March, 2020

(Number)

Registered Valuer Organisation	Number of Entities	Asset Class		
		Land & Building	Plant & Machinery	Securities or Financial Assets
RVO Estate Managers and Appraisers Foundation	1	1	1	1
IOV Registered Valuers Foundation	9	7	6	7
IIV India registered Valuers Foundation	1	1	1	1
ICMAI Registered Valuers Organisation	3	1	1	3
ICAI Registered Valuers Organisation	5	0	0	5
PVAI Valuation Professional Organisation	1	1	1	1
Total	20	11	10	18

Table 32: Region-wise RVs as on 31st March, 2020

(Number)

City / Region	Land & Building	Plant & Machinery	Securities or Financial Assets	Total
New Delhi	61	27	137	225
Rest of Northern Region	217	40	170	427
Mumbai	96	46	178	320
Rest of Western Region	455	85	160	700
Chennai	102	30	104	236
Rest of Southern Region	654	81	247	982
Kolkata	18	13	68	99
Rest of Eastern Region	26	3	12	41
Total	1629	325	1076	3030

Figure 4: Geographical Distribution of RVs as on 31st March, 2020

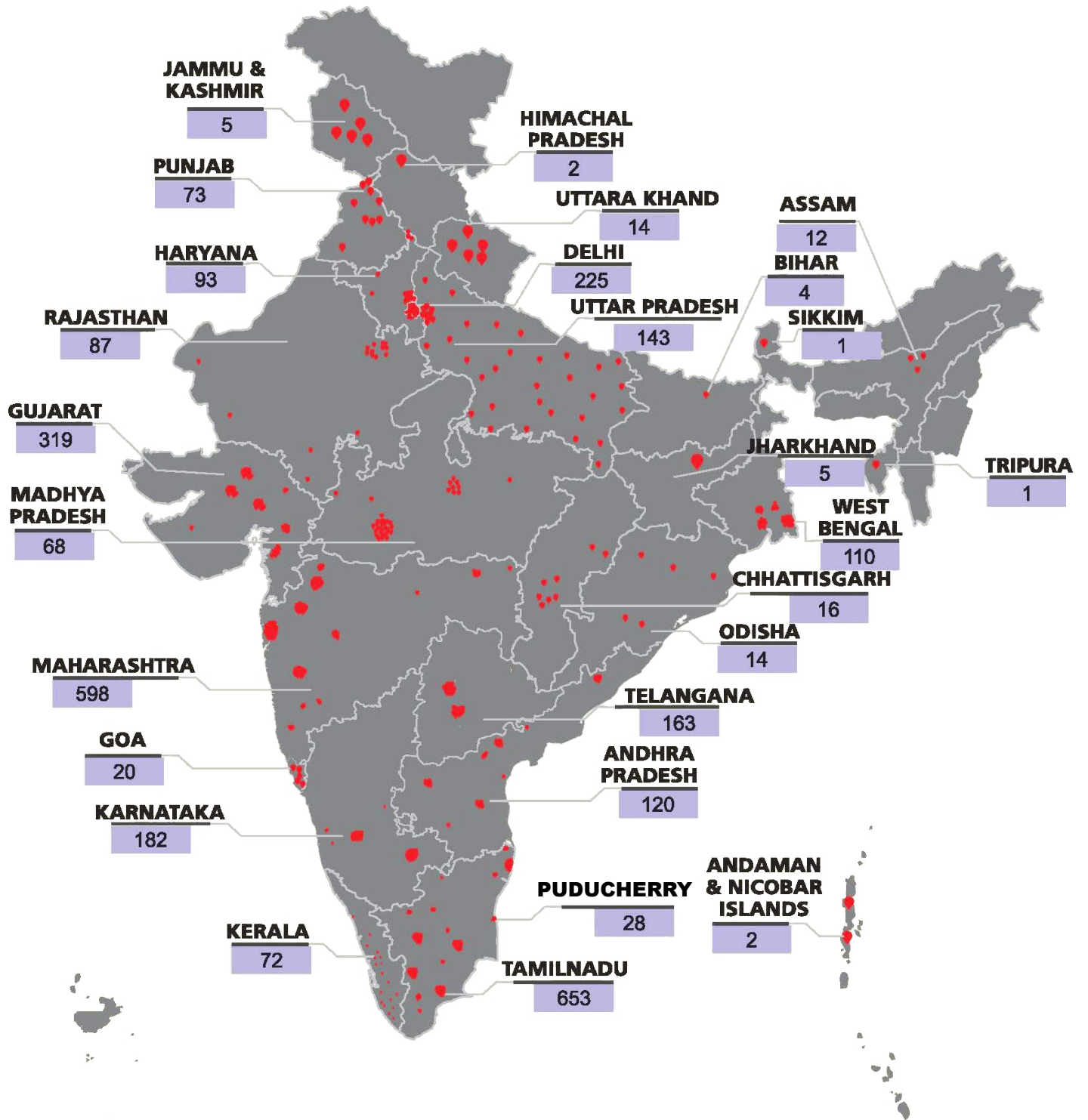


Table 33: Age profile of RVs as on 31st March, 2020

(Number)

Age Group (in years)	Land & Building	Plant & Machinery	Securities or Financial Assets	Total
≤ 30	63	3	69	135
> 30 ≤ 40	203	48	417	668
> 40 ≤ 50	453	75	322	850
> 50 ≤ 60	714	98	186	998
> 60 ≤ 70	168	69	80	317
> 70 ≤ 80	27	31	2	60
> 80	1	1	0	2
Total	1629	325	1076	3030

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 31st December, 2016. The second, third, fourth and fifth phase of Examination, each with a revised syllabus and question bank, commenced on 1st July, 2017, 1st January, 2018, 1st November, 2018, and 1st July, 2019 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.

Table 34: Region-wise Limited Insolvency Examination till 31st March 2020

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 - Mar, 2020)	234	1046	695	631	2606	29	166	114	69	378
Total	2329	8741	6551	5920	23541	406	1608	1234	961	4209

Table 35: Region-wise Valuation Examination in the asset class Land and Building

Quarter	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-Jun, 19)	56	239	124	209	628	3	27	7	12	49
Phase 2 (Jul-Sep, 19)	110	304	206	372	992	8	32	22	34	96
Phase 2 (Oct-Dec, 19)	104	356	253	429	1142	8	46	33	*36	123
Phase 2 (Jan-Mar, 20)	44	244	319	411	1018	4	33	34	41	112
Total	585	2305	3384	6975	13249	69	369	664	1026	2128

*One candidate passed the examination twice.

Till 31st March 2020, a total of 11,450 candidates made 30,858 enrolments. Out of these 11,450 candidates, 9658 candidates appeared for the Examination and made a total of 23,541 attempts, out of which 4209 attempts (17.88 per cent of attempts or 43.58 per cent of candidates) were successful. Out of them, 406 are from East Zone, 1608 are from North Zone, 961 are from West Zone and 1234 are from South Zone. The performance of candidates in the Examination, zone-wise is summarised in Table 34.

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 31st March, 2018. It revised the syllabus for Valuation Examinations from 1st April, 2019. These examinations are conducted online and are available from several locations across the country.

Land and Building

Till 31st March, 2020, a total of 3698 candidates made 15,634 enrolments. Out of the 3698 candidates, 3596 candidates appeared for the Valuation Examination and 102 candidates did not appear for the Valuation Examination. 3596 candidates made a total of 13,249 attempts, out of which 2128 attempts were successful. The performance of candidates in the Valuation Examination is summarised in Table 35.

Plant and Machinery

Till 31st March 2020, a total of 764 candidates made 2799 enrolments. Out of the 764 candidates, 743 candidates appeared for the Valuation Examination and 21 candidates did not appear for the Valuation Examination. These 743 candidates made a total of 2422 attempts, out of which 419 attempts were successful. The performance of candidates in the Valuation Examination is summarised in Table 36.

Securities or Financial Assets

Till 31st March 2020, a total of 3368 candidates made 11,046 enrolments. Out of the 3368 candidates, 3142 candidates appeared for the Valuation Examination and 226 candidates did not appear for the Valuation Examination. These 3142 candidates made a total of 9291 attempts, out of which 1363 attempts were successful. The performance of candidates in the Valuation Examination is summarised in Table 37.

Refusal to grant Registration

The IBBI refused to grant registrations to 3 applicants for IP and 3 applicants for RV in 2019-20 (Table 38). It also withdrew registration of one IP and recognition of two IPEs on their failing to meet eligibility norms.

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

Table 36: Region-wise Valuation Examination in the asset class Plant and Machinery

Quarter	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-Jun, 19)	24	41	46	48	159	2	7	3	4	16
Phase 2 (Jul-Sep, 19)	26	41	50	65	182	4	3	6	10	23
Phase 2 (Oct-Dec, 19)	28	85	25	92	230	2	13	2	10	27
Phase 2 (Jan-Mar, 20)	20	37	63	66	186	2	5	13	9	29
Total	193	471	748	1010	2422	26	89	160	144	419

Table 37: Region-wise Valuation Examination in the asset class Securities or Financial Assets

Quarter	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-Jun,19)	88	460	301	349	1198	8	44	*54	37	143
Phase 2 (Jul-Sep, 19)	129	585	246	423	1383	15	78	42	60	195
Phase 2 (Oct-Dec, 19)	139	334	246	269	988	13	50	49	32	144
Phase 2 (Jan-Mar, 20)	105	469	333	319	1226	10	69	56	39	174
Total	911	2900	2324	3156	9291	104	400	426	433	1363

*One candidate passed the exam twice.

Table 38: 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	2	NIL	NIL	NIL
2017-18	6	NIL	NIL	1
2018-19	3	1	NIL	38*
2019-20	3	3	1	2

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

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 Centralized 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 31st March, 2020 is given in Table 39

It is observed that no complaint has been received in respect of 91 per cent of processes. There are complaints in respect of 9 per cent of processes. Top 10 processes in terms of complaints account for 70 per cent of total complaints, while the rest account for 30 per cent of complaints.

It is observed that no complaint has been received in respect of 77 per cent of IPs, who have conducted any process. There are complaints in respect of 23 per cent of IPs only. Top 10 IPs in terms of complaints account for 71 per cent of total complaints, while the rest account for 29 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 Insolvency and Bankruptcy Board of India (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 an 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 show cause notice 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 40.

Table 39: Receipt and Disposal of Grievances and Complaints till 31st March, 2020

(Number)

Period	Complaints and Grievances Received						Total		
	Under the Regulations		Through CPGRAM/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
Total	282	228	578	517	2003	1371	2863	2116	747

Table 40: 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	NA	NA	NA
2017-18	0	2	0	2	NIL	NIL	Nil
2018-19	2	10	3	9	NIL	NIL	Nil
2019-20	9	55	27	37	8	5	5
Total	NA	67	30	NA	8	5	5

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 IPAs during 2019-20 are presented in Table 41.

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 seven disciplinary proceedings and issued orders during 2019-20. The details of these proceedings are presented in Table 42.

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

(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	IIPI
2016-17	NA	NA	NA	NA	0	0	NA
2017-18	0	4	0	4	0	0	Nil
2018-19	4	9	11	2	2	1	Nil
2019-20	2	14	7	9	0	3	5
Total	NA	27	18	9	2	4	5

Table 42: Closure of Disciplinary Proceedings in 2019-20

Sl. No.	Date of Order	Name of IP	Penalty Imposed
1	17.04.19	Mr. Sanjay Kumar Ruia	(a) Suspension of the registration as an IP for two years; and (b) Direction to undergo the pre-registration educational course and work for at least six months as an intern with a senior IP.
2	21.08.19	Mr. X	Direction to work for at least six months as an intern with a senior IP.
3	14.11.19	Mr. Mahender Kumar Khandelwal	(a) Monetary penalty of Rs. 29,24,167 (which is 10 per cent of the fee forming part of IRPC), and (b) Direction not to accept any new assignment till he deposits the monetary penalty and produces evidence to the Board of deposit of Rs. 12,09,90,185 in CD's Account by the CoC.
4	26.02.20	Ms. Kavitha Surana	Warning to be extremely careful, diligent, strictly act as per law and similar action should not be repeated.
5	27.02.20	Mr. Dushyant C. Dave	
6	13.03.20	Mr. Arun Kumar Gupta	
7	20.03.20	Mr. Tarun Jaggi	Monetary penalty of Rs. 1,00,000.



ANALYSIS OF OUTCOMES

This Section presents the outcomes during 2019-20 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 Government, the Regulator and the stakeholders helped to expeditiously surmount several difficulties that came on the way of implementation of the Code. An example may help to illustrate the point. The NCLAT, vide its judgement dated 4th July, 2019¹¹, held that FCs and OCs deserve equal treatment under a resolution plan. Stakeholders expressed a concern that if the creditors were treated on an equal footing, when they have different pre-insolvency entitlements, it would adversely impact the cost and availability of credit. An Act amending the Code to address this concern (empowering the CoC to decide distribution of proceeds under a resolution plan among the creditors) and to avoid litigation and consequential delays was enacted on 5th August, 2019. Many of the provisions in the Act were challenged. The SC vide its order dated 15th November, 2019¹², upheld the Act with certain modifications and settled several contentious issues. In about four months, the issues got settled after travelling through the sovereign legislature and the highest court of the country. This and many other initiatives reinforced supremacy of market in resolution of stress, making the insolvency regime the preferred mechanism of stress

resolution in the economy. As the year was approaching to an end, COVID-19 pandemic played havoc, requiring some adjustment in insolvency trajectory. The Government came up with immediate response and proposed long term insolvency response on 24th March, 2020 on the eve of the first nationwide lockdown, as detailed in Section B.

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 1st December, 2016, 3847 CIRPs have commenced by the end of March, 2020, as presented in Table 43. Of these, 456 have been closed on appeal or review or settled; 259 have been withdrawn; 932 have ended in liquidation and 236 have ended in approval of resolution plans. The month-wise admission during the year of CDs into CIRP is presented in Figure 5.

The distribution of CIRPs admitted, as on 31st March, 2020, as per the jurisdiction of benches of the AA, is indicated in Table 44. A maximum of 930 CIRPs have been admitted by the New Delhi Bench followed by 903 by Mumbai Bench and 459 by the Kolkata Bench.

Table 43: Corporate Insolvency Resolution Process till 31st March, 2020

(Number)

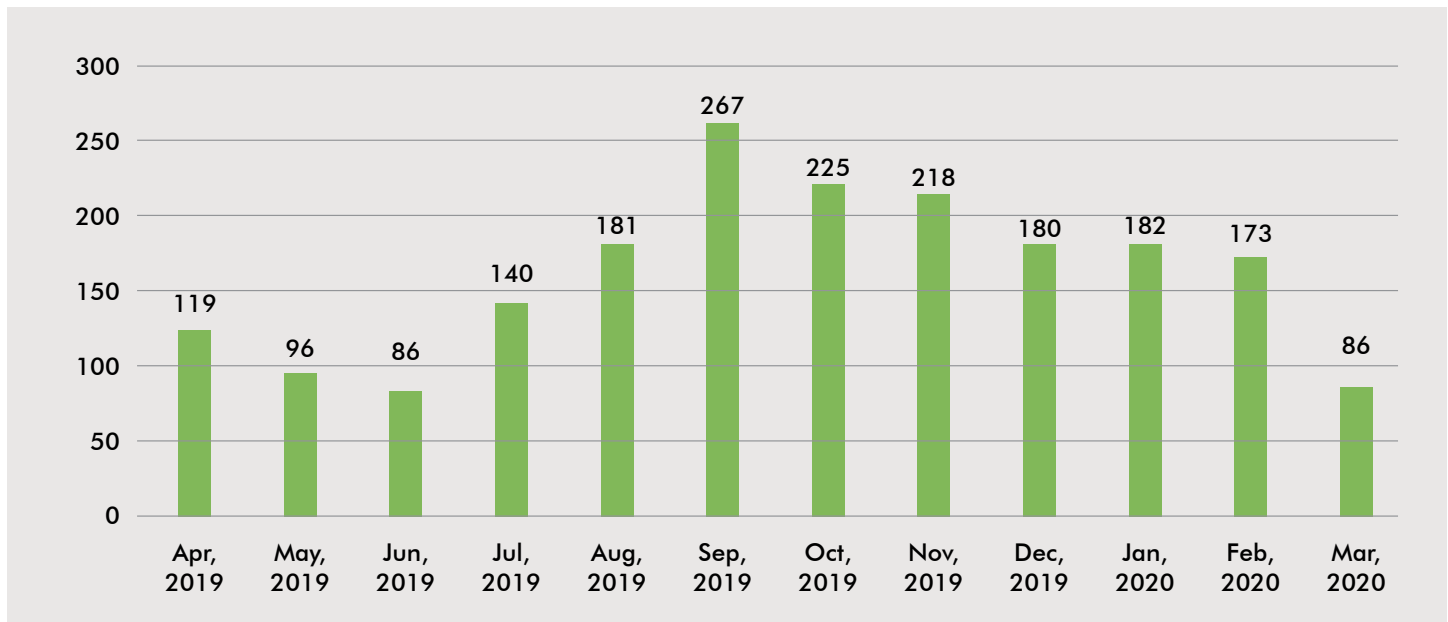
Quarter	CIRPs at the beginning of the Quarter	Admitted	Closure by				CIRPs at the end of the Quarter
			Appeal/ Review/ Settled	Withdrawal under Section 12A	Approval of Resolution Plan	Commencement of Liquidation	
2016-17	0	37	1	0	0	0	36
2017-18	36	705	90	0	20	90	541
2018-19	541	1152	141	95	80	306	1071
Apr-Jun 2019	1071	301	45	31	26	96	1174
Jul-Sept, 2019	1174	588	46	43	33	155	1485
Oct-Dec, 2019	1485	623	71	44	41	150	1802
Jan-Mar, 2020	1802	441	62	46	36	135	1964
Total	NA	3847	456	259	236	932	1964

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

¹¹ Standard Chartered Bank Vs. Satish Kumar Gupta, R. P. of Essar Steel Ltd. & Ors, CA (AT) (Ins) No. 242/2019 and Ors.

¹² Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta & Ors., Civil Appeal Nos. 8766-67/2019 and other petitions

Figure 5: Month-wise Admission of CDs into CIRPs

Table 44: Bench-wise Admission and Closure of CIRPs till 31st March, 2020

Sl. No.	Benches of NCLT at	No. of CIRPs		
		Admitted	Closed #	Ongoing
1	Ahmedabad	296	133	163
2	Allahabad	89	41	48
3	Amaravati	15	2	13
4	Bengaluru	139	77	62
5	Chandigarh	179	94	85
6	Chennai	438	293	145
7	Cuttack	28	11	17
8	Guwahati	25	11	14
9	Hyderabad	262	135	127
10	Indore	4	0	4
11	Jaipur	54	19	35
12	Kochi	26	3	23
13	Kolkata	459	243	216
14	Mumbai	903	379	524
15	New Delhi	930	442	488
Total		3847	1883	1964

Closed on Appeal/Review/Settled, Withdrawal under Section 12A, Approval of Resolution Plan, and Commencement of Liquidation, by 31st March, 2020.

The distribution of stakeholders, who triggered resolution process, is presented in Table 45. OCs triggered 49.81 per cent of the CIRPs, followed by about 43.59 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	110	705
2018-19	567	514	71	1152
Apr-Jun, 2019	157	130	14	301
Jul-Sept, 2019	297	282	9	588
Oct-Dec, 2019	333	272	18	623
Jan-Mar, 2020	245	186	10	441
Total	1916	1677	254	3847

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 construction sector, followed by the wholesale & retail trade sector. The status of CIRPs is presented in Table 47.

Table 46: Sectoral Distribution of CDs under CIRP as on 31st March, 2020

Sector	No. of CIRPs		
	Closed	Ongoing	Total
Manufacturing	787	777	1564
Food, Beverages & Tobacco Products	91	107	198
Chemicals & Chemical Products	82	73	155
Electrical Machinery & Apparatus	67	46	113
Fabricated Metal Products	47	39	86
Machinery & Equipment	88	85	173
Textiles, Leather & Apparel Products	141	127	268
Wood, Rubber, Plastic & Paper Products	85	101	186
Basic Metals	129	148	277
Others	57	51	108
Real Estate, Renting & Business Activities	369	401	770
Real Estate Activities	71	115	186
Computer and Related Activities	49	62	111
Research and development	3	2	5
Other business activities	246	222	468
Construction	186	227	413
Wholesale & Retail Trade	190	194	384
Hotels & Restaurants	51	37	88
Electricity & Others	39	80	119
Transport, Storage & Communications	65	49	114
Others	196	199	395
Total	1883	1964	3847

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 31st March, 2020

Status of CIRPs	No. of CIRPs
Admitted	3847
Closed on Appeal / Review / Settled	456
Closed by Withdrawal under Section 12A	259
Closed by Resolution	236
Closed by Liquidation	932
Ongoing CIRP	1964
> 270 days	610
> 180 days ≤ 270 days	433
> 90 days ≤ 180 days	520
≤ 90 days	401

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

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

Till March, 2020, a total of 259 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 31st March, 2020

Amount of Claims Admitted (Amount in Rs. crore)	No. of CIRPs
≤ 01	124
> 01 ≤ 10	61
> 10 ≤ 50	46
> 50 ≤ 100	12
> 100 ≤ 1000	12
> 1000	4
Reasons for Withdrawal	
Full settlement with the applicant	86
Full settlement with other creditors	18
Agreement to settle in future	16
Other settlements with creditors	65
Corporate debtors not traceable	3
Corporate debtor struck off the Register	1
Applicant not pursuing CIRP due to high cost	4
Others	66
Total	259

About 49.50 per cent of the CIRPs, which were closed, yielded orders for liquidation, as compared to 12.53 per cent ending up with a resolution plan. However, 72.30 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 5 per cent of the outstanding debt amount.

Till March, 2019, 101 CIRPs had yielded resolution plans, as reported in the last annual report. During 2019-20, 136 CIRPs yielded resolution plans with different degrees of realisation as compared to the liquidation value as presented in Table 49. During 2019-20, value realisable by FCs under resolution plans in comparison to liquidation value is 145.60 per cent. Till March, 2020, value realisable by FCs under resolution plans in comparison to liquidation value is 186.45 per cent, while the realisation by them in comparison to their claims is 46.08 per cent.

The outcome of CIRPs, initiated stakeholder-wise, as on 31st March, 2020 is presented in Table 50. About 26.51 per cent of OC initiated CIRPs were closed on appeal, review, or withdrawal. Such closures accounted for about 71.04 per cent of all closures by appeal, review, or withdrawal. Relatively, a higher percentage of CIRPs initiated by FCs is yielding resolution plans. Almost 55 per cent of CIRPs that yielded resolution were initiated by FCs, while almost 43 per cent of CIRPs that yielded liquidation were initiated by OCs.

CORPORATE LIQUIDATION

Although the Code has rescued 236 CDs, it has sent 932 CDs to liquidation till 31st March, 2020. However, it is important to note that about 72 per cent CDs of the CIRPs ending in liquidation (674 out of 932) were earlier with BIFR and / or defunct (Table 51). The economic value in most of these CDs had already eroded before they were admitted into CIRP. The status of liquidation process as on 31st March, 2020 is presented in Table 52.

Table 49: CIRPs yielding Resolution Plans as on 31st March, 2020

(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	0	0
2017-18	20	8263.89	2076.35	4199.23	50.81	202.24
2018-19	80	194930.08	48161.18	107457.64	55.13	223.12
Apr-Jun 2019	26	29996.53	5497.74	5168.68	17.23	94.01
Jul-Sept, 2019	33	73845.46	14062.07	26952.92	36.50	191.67
Oct-Dec, 2019	41	27312.98	2933.61	3636.93	13.32	123.97
Jan-Mar, 2020	36	47112.91	21548.46	28363.23	60.20	131.63
Total	236	381461.85	94279.41	175778.63	46.08	186.44

Note: Based on data as furnished by IPs.

Table 50: Outcome of CIRPs, initiated stakeholder-wise, as on 31st March, 2020

Outcome	Description	Unit	CIRPs initiated by			
			Financial Creditor	Operational Creditor	Corporate Debtor	Total
Status of CIRPs	Closure by Appeal/Review/Settled	No.	119	331	6	456
	Closure by withdrawal under section 12A	No.	77	177	5	259
	Closure by approval of resolution plans	No.	130	71	35	236
	Closure by commencement of liquidation	No.	394	405	133	932
	Ongoing	No.	957	932	75	1964
	Total	No.	1677	1916	254	3847
CIRPs yielding Resolution Plans	Liquidation value	Rs. crore	85823	4509	3947	94279
	Amount of admitted claims	Rs. crore	363380	27803	19703	410886
	Liquidation value as % of claims	%	23.62	16.21	20.03	22.94
	Realisation by creditors as % of claims	%	47.91	21.02	16.62	44.59
	Realisation by creditors as % of liquidation value	%	202.86	129.60	82.95	194.33
	Realisation by FCs as % of liquidation value	%	195.58	113.23	71.48	186.44
	Realisation by FCs as % of their Claims	%	49.37	21.34	16.08	46.08
	Average time taken for closure of CIRP	No. of days	428	390	407	413
CIRPs yielding Liquidations	Liquidation value	Rs. crore	24209	9783	5076	39068
	Amount of admitted claims	Rs. crore	386920	93635	45226	525781
	Liquidation value as % of claims	%	6.26	10.45	11.22	7.43
	Average time taken for closure of CIRP	No. of days	323	299	299	309

Table 51: 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	265	309	100	674
Resolution Value ≤ Liquidation Value	332	373	106	811
Resolution Value > Liquidation Value*	62	33	26	121

Note: 1. There were 54 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 52: Status of Liquidation Processes as on 31st March, 2020

Status of Liquidation	Number
Initiated	932*
Final Report submitted#	109
Closed by Dissolution	64
Closed by Going Concern Sale	1
Closed by Compromise / Arrangement	0
Ongoing	823
> Two years	61
> One year ≤ Two years	256
> 270 days ≤ One year	94
> 180 days ≤ 270 days	140
> 90 days ≤ 180 days	140
≤ 90 days	132

*This excludes 8 cases where liquidation order has been set aside by NCLT / NCLAT / Supreme Court.

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

Till March, 2020, 65 liquidation processes were closed by dissolution/going concern whose details are presented in Table 53.

Table 53: Details of Liquidations closed by Dissolution till 31st March, 2020

(Amount in Rs. crore)

Year/Quarter	No. of CDs	Amount of Admitted Claims	Liquidation Value	Amount Realized	Amount Distributed to Stakeholders	Realisation by FCs as % of	
						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	6	4670.06	0.68	0.00	0.00	NA	NA
Apr-Jun, 2019	11	355.17	14.25	15.08	13.76	3.55	83.52
Jul-Sept, 2019	18	3747.11	10.14	10.11	9.36	0.25	92.32
Oct-Dec, 2019	16	444.51	50.89	52.77	49.95	8.62	71.55
Jan-Mar, 2020	13	705.73	1.45	1.55	1.28	0.23	84.02
Total	65	9933.73	78.26	80.36	75.06	0.61	76.03

Till 31st March, 2020, one CD, namely, Emmanuel Engineering Private Limited was closed by sale as a going concern under liquidation process. The CD had claims amounting to Rs. 7.80 crore, as against the liquidation value of Rs. 4.62 crore. The liquidator realised Rs. 5.93 crore, while the CD was 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 54.

Table 54: Claims in 109 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	7	66.24	6.76	7.03	6.88
53 (1) (a)	NA	NA	191.36	205.91#	17.13
53 (1) (b)	839	15638.08			158.12
53 (1) (c)	142	2.25			0.98
53 (1) (d)	103	328.35			6.14
53 (1) (e)	69	562.57			6.49
53 (1) (f)	302	288.10			11.13
53 (1) (g)	0	0			0
53 (1) (h)	79	10.52			1.51
Total (A)	1541	16896.11			198.12

Inclusive of unclaimed proceeds of Rs. 4.56 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 eight CDs have been approved and orders for liquidation have been passed in respect of two CDs. CIRP in the matter of Amtek Auto Limited was ordered to be re-commenced. Therefore, CIRP in the respect of two CDs were ongoing at the end of the year. The status of the 12 large accounts is presented in Table 55.

Table 55: 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	113.96	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	203.39	JSW Limited
Jaypee Infratech Ltd.	23640	23243	98.32	130.82	NBCC (India) Limited
Amtek Auto Ltd.	CIRP recommenced				
Era Infra Engineering Ltd.	Under CIRP				
Lanco Infratech Ltd.	Under Liquidation				
ABG Shipyard Ltd.	Under Liquidation				

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 7th April, 2017. 682 corporates had initiated voluntary liquidation proceedings by 31st March, 2020, the details of which are given in Table 56.

Table 56: Commencement of Voluntary Liquidations till 31st March , 2020

(Number)

Quarter	Liquidations at the beginning	Liquidations Commenced	Liquidation closed by		Liquidations at the end
			Withdrawal	Final Reports Submitted	
2016-17	0	0	0	0	0
2017-18	0	184	0	11	173
2018-19	173	229	7	97	298
Apr-Jun, 2019	298	53	0	24	327
Jul-Sept, 2019	327	61	0	37	351
Oct-Dec, 2019	351	66	0	23	394
Jan-Mar, 2020	394	89	1	37	445
Total	NA	682	8	229	445

Most of these corporate persons are small entities. 424 of them have paid-up equity capital of less than Rs. 1 crore. Only 86 of them have paid-up capital exceeding Rs. 5 crore. The details of 674 corporate persons (excluding 8 withdrawals), have an aggregate paid-up capital of Rs. 4703 crore (Table 57).

Table 57: Details of 674 Liquidations ^

(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	229	763#	3064	18	18	2833
Ongoing liquidations	445	3940	1726	*	*	*
Total	674	4703	4790			

#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.

^ excluding 8 withdrawals

The distribution of liabilities and assets of 674 of these corporate persons (excluding 8 withdrawals) is presented in Table 58. The liabilities of 614 and assets of 404 of them are not more than Rs.1 crore.

Table 58: Distribution of Liabilities and Assets of Corporate Persons under Voluntary Liquidations

Sl. No.	Amount in Rs. crore	No. of Companies	
		Having liabilities	Having Assets
1	≤ 1	614	404
2	> 1 - ≤ 2	24	83
3	> 2 - ≤ 3	11	53
4	> 3 - ≤ 5	11	47
5	> 5	14	87
Total		674	674

Table 59: Sector-wise distribution of Voluntary Liquidations

Sector	Number
Manufacturing	153
Food, Beverages & Tobacco Products	7
Chemicals & Chemical Products	21
Electrical Machinery & Apparatus	8
Fabricated Metal Products	7
Machinery & Equipment	38
Textiles, Leather & Apparel Products	17
Wood, Rubber, Plastic & Paper Products	10
Basic Metals	11
Others	34
Real Estate, Renting & Business Activities	284
Real Estate Activities	21
Computer and related activities	85
Research and development	8
Renting of machinery and equipment without operator and of personal and household goods	2
Other business activities	168
Construction	26
Wholesale & Retail Trade	47
Hotels & Restaurants	5
Electricity & Others	8
Transport, Storage & Communications	36
Others	123
Total	682

Of the 682 corporate persons who have initiated voluntary liquidation proceedings, 153 belong to the manufacturing sector, 284 belong to the real estate, renting and business activities and 47 to the wholesale and retail trade sector (Table 59). The reasons for initiations of these voluntary liquidations are presented in Table 60.

Table 60: Reasons for Voluntary Liquidation

Sl. No.	Reason for Voluntary Liquidation	No. of Corporate Persons
1	Not carrying business operations	455
2	Commercially unviable	82
3	Running into losses	15
4	No revenue	23
5	Promoters unable to manage affairs	15
6	Purpose for which it was formed accomplished	13
7	Contract termination	5
8	Miscellaneous	74
Total		682

Final reports in respect of 229 voluntary liquidations have been submitted by 31st March, 2020. 131 liquidations have closed. Of the 445 ongoing voluntary liquidation processes, 89 are less than 90 days old, 60 have crossed two years (Table 61).

Table 61: Phasing of Voluntary Liquidations

Status of Liquidation	No. of Liquidations
Initiated	682
Closed by withdrawal/suspension	08
Final Report Submitted	229
Closed by Dissolution	131
Ongoing	445
> Two years	60
> One year ≤ Two years	142
> 270 days ≤ One year	40
> 180 days ≤ 270 days	52
> 90 days ≤ 180 days	62
≤ 90 days	89

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, 2020, are presented in Table 62.

Table 62: Corporate Liquidation Accounts as on 31st March, 2020

(Amount in Rs. lakh)

Name of Account	Opening Balance	Deposit during the period	Withdrawn during the period	Balance at the end of the period
Corporate Liquidation Account	0.00	476.26	0.21	476.05
Corporate Voluntary Liquidation Account	0.00	109.70	0.00	109.70

SUMMARY OF OUTCOMES

(a) The primary objective of the Code is rescuing lives of CDs in distress. The Code has rescued 236 CDs till March, 2020 through resolution plans, one third of which were in deep distress. However, it has referred 932 CDs for liquidation. The CDs rescued had assets valued at Rs. 0.94 lakh crore, while the CDs referred for liquidation had assets valued at Rs. 0.39 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 236 CDs rescued, when they entered the CIRP, was only Rs. 0.94 lakh crore, though they owed Rs. 4.11 lakh crore to creditors. The resolution plans recovered Rs. 1.83 lakh crore, which is about 194 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. 194 under the Code. The excess recovery of Rs. 94 is a bonus from the Code. Though recovery is incidental under the Code, the FCs recovered 46 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 932 CDs ending up with orders for liquidation had an aggregate claim of Rs. 5.25 lakh crore. Unfortunately, they had assets, on the ground, valued only at Rs. 0.39 lakh crore. Till 31st March, 2020, 109 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. 8,163 crore, while they had absolutely no assets

and employment. These 109 CDs together had outstanding claims of Rs. 16,896 crore, but the assets were valued at Rs. 198 crore. Rs. 213 crore was 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, 2020, 13,927 applications for initiation of CIRPs of CDs having underlying default of Rs. 5.10 lakh crore were resolved before their admission¹³. Only 3847 applications then proceeded for CIRP under the Code, of which 715 processes were closed midway by way of appeal/review/settlement and withdrawal under section 12A of the Code and 1168 CIRPs closed by way of resolution or liquidation. Thus, only a few companies, who fail to address the distress in any of the 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 236 CIRPs, which have yielded resolution plans by the end of March, 2020, took on average 375 days (after excluding the time excluded by the AA) for conclusion of process. Similarly, the 932 CIRPs, which ended up in orders for liquidation, took on average 309 days for conclusion. Further, 109 liquidation processes, which have closed by submission of final reports took on average 318 days for closure. Similarly, 229 voluntary liquidation processes, which have closed by submission of final reports, took on average 324 days for closure.

(f) Till March, 2020, a total of 236 CIRPs have yielded resolution plans. The cost details are available in respect of 225 CIRPs. The cost works out on average 0.74 per cent of liquidation value and 0.38 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 3rd December, 2019. Mr. R. Subramaniakumar was appointed as the Administrator, who has the same duties, functions, obligations, responsibilities, rights, and powers of an IP undertaking a process under the Code. This is the first FiSP admitted for resolution under the Code. The CIRP is ongoing at the end of the year.

¹³ Data sourced from NCLT

INDIVIDUAL PROCESSES

The provisions relating to insolvency resolution and bankruptcy relating to PGs to CDs came into force on 1st December, 2019. As per the information received from IPs, 12 applications have been filed for initiation of individual insolvency proceeding as of end of March, 2020.

EMERGING JURISPRUDENCE

A firm typically borrows from several creditors and for this purpose enters into bilateral contracts with them. Despite the best of efforts and abilities of the parties, such contracts do not anticipate or provide for all possible contingencies. In normal times, the parties discharge their respective obligations. However, when a firm is stressed, it does not have enough in the pot to discharge obligations of every creditor fully. It can honour claims of one or a few creditors fully, but not all creditors simultaneously. It is a situation where claim of an individual creditor is consistent with its assets but claims of all creditors together is inconsistent with the assets of the firm. If every creditor sticks to its pre-insolvency rights, neither resolution of stress is possible, nor a creditor can realise its dues. The insolvency framework endeavours to resolve stress while discharging obligations towards creditors to the extent realistically possible under the circumstances. Insolvency law thus completes all incomplete bilateral contracts, makes claims of all creditors consistent, and prevents a value reducing run on the assets of the firm. It does so by conferring certain rights and casting certain obligations to ensure equitable treatment of stakeholders. It specifies the rules of the resolution to ensure due process, transparency, and fair play. It usually provides for an adjudicatory mechanism and oversight arrangements to ensure that due process is followed, and no stakeholder is short charged. Where the stakeholders work out resolutions and determine their entitlements of dues from resolution proceeds, they may, whether inadvertently or otherwise, trample upon others' rights, fail to discharge their own obligations, and may encounter difficulties in understanding or applying the provisions of law. The AA, the NCLAT and the judiciary have addressed the concerns and difficulties 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.

Constitutional Validity

Every amendment to the Code has been subject to intense constitutional scrutiny. The provisions considering allottees (under a real estate project) explicitly as FCs under the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 were challenged in *Pioneer Urban Land and Infrastructure Limited and Anr. Vs. Union of India & Ors.*¹⁴ While upholding the constitutional validity of the provision, the SC ruled as under:

(a) In real estate projects, money is raised from the allottees, against consideration for the time value of money. The amounts raised from allottees is subsumed within section 5(8)(f) even without adverting to the explanation introduced by the Amendment Act. The deeming fiction that is used by the explanation is to put beyond doubt the fact that allottees are regarded as FCs. The allottees/home buyers were included in the main provision, i.e., section 5(8)(f) with effect from the inception of the Code. The explanation was added in by way of Amendment Act in 2018 merely to clarify doubts that had arisen.

(b) The provisions of Real Estate (Regulation and Development) Act, 2016 (RERA) are in addition to and not in derogation of the provisions of any other law for time being in force. Further, Parliament was aware of RERA when it added explanation to section 5(8)(f) of the Code which came into force on 6th June, 2018. Therefore, the Code as amended, must be given precedence over RERA. Even by a process of harmonious construction, RERA and the Code must be held to co-exist, and, in the event of a clash, RERA must give way to the Code. The Code and RERA operate in completely different spheres. The Code deals with a proceeding *in rem* in which the focus is the rehabilitation of the CD by means of a resolution plan, so that the CD may be pulled out of the woods and may continue as a going concern, thus benefitting all stakeholders involved. On the other hand, RERA protects the interests of the individual investor in real estate projects by requiring the promoter to strictly adhere to its provisions.

(c) The remedies under RERA to allottees are additional and not exclusive remedies. The allottees have concurrent remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

The SC observed that legislature must be given free play in the joints when it comes to economic legislation. Apart from the presumption of constitutionality which arises in such cases, the legislative judgment in economic choices must be given a certain degree of deference by the courts. It is impossible to say that classifying real estate developers is not founded upon an intelligible differentia which distinguishes them from other OCs, nor is it possible to say that such classification is palpably arbitrary having no rational relation to the objects of the Code. The legislature has understood and correctly appreciated the need of its people and that the amendment to the Code directed to problems manifested by experience, as pointed out by the ILC, demonstrates the presumption of constitutionality. The objects of the Code are sub-served by treating allottees as FCs. The Amendment Act, therefore, does not infringe Articles 14, 19(1)(g) read with Article 19(6), or 300-A of the Constitution of India.

The provision empowering the CoC to decide sharing of resolution proceeds considering the liquidation waterfall and other provisions of the Insolvency and Bankruptcy Code (Amendment) Act, 2019 were challenged in *Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta & Ors.*¹⁵ The SC settled several issues as under:

¹⁴ WP(C) No.43/2019 and other petitions

¹⁵ Civil Appeal Nos. 8766-67/2019 and other petitions

(a) *Supremacy of CoC*: The CoC is supreme in commercial matters relating to a CIRP. It must decide whether to rehabilitate the CD by accepting a resolution plan, and the manner of resolution. What is left to the majority decision of the CoC is the feasibility and viability of a resolution plan, which obviously considers all aspects of the plan, including the manner of distribution of realisations under a resolution plan among the various classes and sub-classes of creditors. Its decisions, however, must reflect that it has taken into account maximising the value of assets of the CD and that it has adequately balanced the interests of all the stakeholders. It cannot delegate its responsibility. It does not act in any fiduciary capacity to any group of creditors. On the contrary, it is to take a business decision based upon ground realities by a majority, which then binds all stakeholders, including dissenting creditors.

(b) *Jurisdiction of AA*: The limited judicial review available to AA can in no circumstance trespass upon a business decision of the majority of the CoC. The residual jurisdiction of the AA under section 60(5)(c) cannot, in any manner, whittle down section 31(1) of the Code, by the investment of some discretionary or equity jurisdiction in the AA outside section 30(2) of the Code, while adjudicating a resolution plan. The AA is to decide on whether a resolution plan passes muster under the Code and there is no residual jurisdiction not to approve a resolution plan on the ground that it is unfair or unjust to a class of creditors, so long as the interest of each class has been looked into and taken care of.

(c) *Fair and equitable*: Protecting creditors in general is, no doubt, an important objective. Protecting creditors from each other is also important. If an “equality for all” approach recognising the rights of different classes of creditors as part of a CIRP is adopted, secured FCs will, in many cases, be incentivised to vote for liquidation rather than resolution, as they would have better rights if the CD is liquidated. This would defeat the objective of the Code which is resolution of distressed assets. Fair and equitable dealing of OCs rights under regulation 38 of the CIRP Regulations involves the resolution plan stating as to how it has dealt with the interests of OCs, which is not the same thing as saying that they must be paid the same amount of their debt proportionately. Equitable treatment is to be accorded to each creditor depending upon the class to which it belongs: secured or unsecured, financial or operational.

(d) *Subrogation*: Section 31(1) makes it clear that once a resolution plan is approved by the CoC, it shall be binding on all stakeholders, including guarantors. This provision ensures that the successful RA starts running the business of the CD on a fresh slate as it were. It is difficult to accept the argument that, the part of the resolution plan which states that the claims of the guarantor on account of subrogation shall be extinguished, cannot be applied to the guarantees furnished by the erstwhile directors of the CD.

(e) *Claims*: All claims must be submitted to and decided by the RP so that a prospective RA knows exactly what must be paid in

order that it may then take over and run the business of the CD. A successful RA cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by it.

(f) *Timeline*: It upholds the sanctity of overall timeline of 330 days for a CIRP, except in exceptional cases. While taking note of the judicial adage that time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant’s case within the requisite period for no fault of the litigant, it held that the CIRP must “ordinarily” be completed within the outer limit of 330 days from the ICD unless extended by the court on sufficient cause. Hence, the term ‘mandatorily’ inserted in section 12 of the Code by way of Amendment Act, 2019 was struck down as being manifestly arbitrary under Article 14 of the Constitution and as being an unreasonable restriction on the right of the litigant to carry on business under Article 19(1)(g) of the Constitution.

(g) *Priority of Payment*: Section 30(2)(b) is a beneficial provision in favour of OCs and dissenting FCs as they are now to be paid a certain minimum amount, the minimum in the case of OCs being the higher of the two figures calculated under sub-clauses (i) and (ii) of clause (b), and the minimum in the case of dissenting FC being a minimum amount that was not earlier payable. Prior to the amendment, secured FCs could cramdown unsecured FCs who were dissenting. But after the amendment, such FCs are now to be paid the minimum amount mentioned. The order of priority of payment of creditors mentioned in section 53 is not engrafted in sub-section (2)(b) of the said section, as amended. Section 53 is only referred to in order that a certain minimum amount be paid to different classes of OCs and FCs.

The Insolvency and Bankruptcy Code (Amendment) Act, 2020, among others, inserted three provisos to section 7(1), an additional explanation to section 11, and section 32A in the Insolvency and Bankruptcy Code, 2016 (Code). Constitutional validity of these provisions have been challenged in *Manish Kumar Vs. Union of India and Another*¹⁶.

Avoidance Transactions

Avoidance of preferences is a common provision in insolvency legislations across jurisdictions. This provision makes sure that the transactions, which have no commercial purpose otherwise, and have been undertaken only to benefit some creditors or to hamper the process of insolvency or liquidation, are set aside. The Code mandates the 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 *Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank Limited Etc.*¹⁷, the SC clarified several issues surrounding avoidance transactions.

The CD, Jaypee Infratech Limited (JIL) had mortgaged its properties as collateral securities for loans and advances made

¹⁶ Writ Petition (C) No.26 of 2020 with other writ petitions

¹⁷ Civil Appeal Nos. 8512-8527/2019 & other appeals

by banks and financial institutions to its holding company, Jaiprakash Associates Limited (JAL). The AA held these as avoidance transactions, which were set aside by NCLAT. In appeal, the SC held as under:

(a) *Preferential Transactions*: A CD shall be deemed to have given a preference at a relevant time if: (i) there is a transfer of property or the interest thereof of the CD for the benefit of a creditor or surety or guarantor for or on account of an antecedent financial debt or operational debt or other liability; (ii) such transfer has the effect of putting such creditor or surety or guarantor in a beneficial position than it would have been in the event of distribution of assets in accordance with section 53; and (iii) preference is given, either during the period of two years/one year preceding the ICD when the beneficiary is a related/an unrelated party. However, such deemed preference may not be an offending preference, if it falls into any or both exclusions provided by section 43(3). Applying this ratio to the impugned transactions, the SC held that there had been transfers for the benefit of JAL, who is a related party of the CD; and the transactions have the effect of putting JAL in a beneficial position than it would have been in the event of distribution of assets being made in accordance with section 53. Thus, the CD has given a preference in the manner laid down in the Code.

(b) *Look back period*: It was submitted that the provisions of section 43, by their very nature, would come into operation at least one year after the enactment of the Code and else, it would be giving retrospective effect to these provisions which is not permissible. The SC observed that looking at the scheme of the Code and the principles applicable for the conduct of the affairs of a corporate person, it cannot be said that anything of a new liability has been imposed or a new right has been created. It cannot be said that the operation of the provision itself would remain in hibernation until such look-back period from the date of commencement of the provision comes to an end.

(c) *Ordinary course of business*: Section 43(3)(a) exempts transfers made in ordinary course of business of 'the corporate debtor or the transferee'. This calls for purposive interpretation. The expression 'or', appearing as disjunctive between the expressions 'corporate debtor' and 'transferee', ought to be read as 'and'. Therefore, a preference shall not include the transfer made in the ordinary course of the business of the CD and the transferee. Further, the SC observed that the transactions in question could be in the ordinary course of business of bankers but on the given set of facts, these do not fall within the ordinary course of business of the CD. The ordinary course of business of the CD is not providing mortgages to secure the loans obtained by its holding company and that too at the cost of its own financial health.

(d) *Duties and responsibilities of RP*: The RP shall-

(i) sift through all transactions relating to the property/interest of the CD backwards from the ICD and up to the preceding two years;

(ii) identify persons involved in the transactions and put them in two categories: (1) related party under section 5(24), and (2) remaining persons;

(iii) identify which of the said transactions of preceding two years, the beneficiary is a related party of the CD and in which the beneficiary is not a related party. The sub-set relating to unrelated parties shall be trimmed to include only the transactions preceding one year from the ICD;

(iv) examine every transaction in each of these sub-sets to find out whether (1) the transaction is of transfer of property of the CD or its interest in it; and (2) beneficiary involved in the transaction stands in the capacity of creditor/surety/guarantor;

(v) scrutinise the shortlisted transactions to find, if the transfer is for or on account of antecedent financial debt/operational debt/other liability of the CD;

(vi) examine the scanned and scrutinised transactions to find, if the transfer has the effect of putting such creditor/surety/guarantor in beneficial position, than it would have been in the event of distribution of assets under section 53. If answer is in the affirmative, the transaction shall be deemed to be of preferential, provided it does not fall within the exclusion under section 43(3); and then

(vii) apply to the AA for necessary orders, after carrying out the aforesaid volumetric and gravimetric analysis of the transactions.

(e) *Undervalued and fraudulent transactions*: As the transactions are held as preferential, it is not necessary to examine whether these are undervalued and/or fraudulent. In preferential transaction, the question of intent is not involved and by virtue of legal fiction, upon existence of the given ingredients, a transaction is deemed to be of giving preference at a relevant time, while undervalued transaction requires different enquiry under sections 45 and 46 where the AA is required to examine the intent, if such transactions were to defraud the creditors. The AA needs to examine the aspect of preferential, undervalued and fraudulent separately and distinctively.

Role of Government

The Government and its Agencies are key stakeholders of the Code as they contribute to economic growth, promote entrepreneurship and availability of credit, rehabilitate a company in distress through resolution process, and release under-utilised resources for more efficient uses through liquidation process. The Central Government has been driving the implementation of the Code. It has, however, certain entitlements as an OC and duties and obligations in respect of insolvency proceedings.

Tax Dues: Several judgments have reaffirmed that 'Government dues' are operational debts and the Government is an OC:

(i) In *Pr. Director General of Income Tax (Admn. & TPS) Vs. M/s. Synergies Dooray Automotive Ltd. & Ors.*¹⁸, the NCLAT clarified that the statutory dues such as income-tax, sales

¹⁸ Company Appeal (AT) (Insolvency) No. 205 of 2017 and connected matters

tax, value added tax and various other taxes fall within the definition of 'operational debt' under section 5(21) of the Code and the statutory authorities claiming the aforesaid dues are OCs under the Code.

(ii) In *Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central) Income Tax Department, Hyderabad and Ors.*¹⁹, while deciding upon the nature of security interest of Government dues, the High Court (HC) of Telangana and Andhra Pradesh made it clear that Government dues like income-tax dues are unsecured creditors and do not enjoy the status of a secured creditor. The tax dues, being an input to the Consolidated Fund of India (CFI) and of the States, clearly come within the ambit of section 53(1)(e) of the Code.

(iii) In *Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. & Ors.*²⁰, the NCLAT considered the claim made by the Sales Tax Officer in terms of section 48 of the Gujarat Value Added Tax, 2003, which creates first charge over the property of the CD having a security interest, in view of the Statement of Objects and Reasons of the Code read with section 53, the Government cannot claim first charge over the property of the CD. The said section 48 cannot prevail over section 53 of the Code. Therefore, the Appellant-State Tax Officer does not come within the meaning of secured creditor under section 3(30) read with section 3(31) of the Code.

Submission of Claims: The Code envisages submission of claims by creditors to the RP in time for consideration in resolution plan. The AA, in *T. R. Ravichandran, RP Vs. The Asst. Commissioner (ST and 12 Ors)*²¹, held that being an OC, the tax authorities are at liberty to make their claims before the RP instead of insisting upon him to pay the pre-admission dues before accepting the tax liabilities arising during the CIRP. In *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.*²², the SC observed that a successful RA cannot suddenly be faced with 'undecided' claims after the resolution plan submitted by him has been accepted, as this would throw into uncertainty the amounts payable by him. For fear of fresh claims coming up, RAs may not be willing to submit resolution plans.

In liquidation process, the liquidator invites claims from creditors to ensure that they can be paid as per waterfall from the realisation from sale of liquidation estate. In *Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central) Income Tax Department, Hyderabad and others*²³ the HC of Telangana and Andhra Pradesh held that the Income-tax Department must necessarily submit its claim to the liquidator for consideration as and when the distribution of the assets, in terms of section 53(1) of the Code, is taken up.

The priority in waterfall cannot be disturbed. In *Leo Edibles & Fats Ltd.*²⁴, the HC held that the Income-tax Department cannot claim any priority merely because the order of the attachment was long prior to the initiation of liquidation proceedings under the Code. Even if the order of attachment constitutes an

encumbrance on the property, it still does not have the effect of taking it out of the purview of section 36(3)(b) of the Code. The said order of attachment, therefore, cannot be taken to be a bar for completion of the sale under a liquidation proceeding under the Code.

Moratorium: The CIRP envisages a calm period to enable the stakeholders to work out a resolution peacefully and the CD continues as a going concern. It provides for a moratorium that prohibits institution or continuation of suits or proceedings against the CD and any alienation of property. In *Kitply Industries Ltd. Vs. Assistant Commissioner of Income Tax (TDS) and Anr.*²⁵ the AA held that the proceeding before the Income-tax Department which has resulted in freezing of the bank accounts is a proceeding of quasi-judicial nature and continuation of such a proceeding during moratorium period is illegal in view of the prohibitions under section 14(1)(a) of the Code.

The Code prohibits recovery of any 'property' by an owner or lessor where such property is occupied by or in possession of the CD. In *Rajendra K. Bhutta Vs. Maharashtra Housing and Area Development Authority and Anr.*²⁶, the CD had entered into a Joint Development Agreement (JDA) with Maharashtra Housing and Area Development Authority (MHADA). On the CD getting into CIRP, MHADA issued notice to the CD for termination of JDA and to handover possession of the land and all structures. An application to restrain MHADA from taking possession was dismissed by the AA stating that section 14(1)(d) does not cover licences to enter upon land covered under JDA. On appeal, the NCLAT held that the land belongs to MHADA and cannot be treated as an asset of the CD under section 14(1)(d). While setting aside the order of NCLAT, the SC held that section 14(1)(d) speaks about recovery of property "occupied". It does not refer to rights or interests created in property but only actual physical occupation of the property. The JDA has granted a licence to the CD to enter upon the property, with a view to do all the things that are mentioned in it and hence the property is in possession of the CD. Therefore, the land is covered under section 14(1)(d). It reiterated that if there is any clash between the MHADA Act and the Code, the latter shall prevail.

The Code mandates that the Central Government or the State Government or any local authority, or any sectoral regulator shall not suspend or terminate any license, permit, registration, quota, concession, clearances or a similar grant or right given by it, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising from their use or continuation during the moratorium period. In *Aircel Limited*²⁷ and *Dishnet Wireless Limited*²⁸, the AA observed that license is essential for the business of the CD. A RA will show interest in the business of the CD if it holds license. Since no other valuable asset is available to the CD, no RA would show interest in its business revival. License / spectrum is thus *sine qua non* for getting a good resolution plan. The AA directed:

¹⁹ WP No. 8560 of 2018

²⁰ CA(AT)(Ins) No. 354 of 2019 and other appeals

²¹ MA 1298/2019 in IBA/130/2019

²² Civil Appeal No. 8766-67/2019 and other petitions

²³ WP No. 8560 of 2018

²⁴ WP No. 8560 of 2018

²⁵ IA No. 54/2018 in CP(IB)/02/GB/2018

²⁶ Civil Appeal No. 12248 of 2018

²⁷ MA-337/2018 in CP(IB)-298/(MB)/2018

²⁸ MA-336/2018 in CP(IB)- 302/MB/2018

“... within the scope and ambit of Insolvency and Bankruptcy Code, 2016 hereby instruct the concerned DoT authority not to make any attempt to cancel the impugned license issued in favour of the debtor company.”

Offences: The Code insulates the successful RAs against the liability of the CD for any offence committed prior to commencement of insolvency proceeding. It mandates that the liability of the CD for an offence committed prior to the commencement of the CIRP shall cease, and the CD shall not be prosecuted for such an offence from the date the resolution plan has been approved by the AA, if the resolution plan results in the change in the management or control of the CD to an unrelated person. However, the persons, who were responsible to the CD for conduct of its business at the time of commission of such offence shall continue to be liable for such an offence. Similarly, no action - attachment, seizure, retention or confiscation - shall be taken against the property of the CD in relation to an offence committed prior to the commencement of the CIRP of the CD, where such property is covered under a resolution plan approved by the AA, which results in the change in control of the CD or sale of liquidation assets to an unrelated person. This protects the *bona fide* RA and buyer of liquidation assets from enforcement action. However, the CD shall extend all assistance and cooperation to any authority investigating an offence committed prior to the commencement of the CIRP.

In *Tata Steel BSL Limited & Anr. Vs. Union of India & Anr.*²⁹, the trial Court took cognisance of the offences punishable under the Companies Act, 2013 and the Indian Penal Code, 1860, based on a complaint filed by the Serious Fraud Investigation

Office. The petitioner submitted that it took over the CD through a resolution plan and section 32A of the Code discharges it from the proceeding before the trial Court. The HC held that the CD would not be liable for any offence committed prior to commencement of the CIRP. It also clarified that such an order will not affect the prosecution of the erstwhile promoters or any officers who may be responsible for committing the offences. In *JSW Steel Ltd. Vs. Mahender Kumar Khandelwal & Ors.*³⁰, the NCLAT observed that section 32A suggests that the ED / other investigating agencies do not have the powers to attach assets of the CD, once a resolution plan stands approved and the criminal investigations against the CD stand abated. It further observed that the intent and purpose of section 32A is to provide certainty to the RA that the assets of the CD, as represented to him, and for which he proposes to pay value / consideration in terms of the resolution plan, would be available to him in the same manner as at the time of submission of the resolution plan.

In *Anil Goel, Liquidator Vs. Dy. Director, Directorate of Enforcement* in the matter of REI Agro Limited³¹, the liquidator sought orders against the Enforcement Directorate to release the attachment of assets of the CD. The AA observed: “In any case, the Court established under PMLA Act being a criminal Court can only decide whether the properties attached during investigation from possession of the Corporate Debtor could be said to be the properties acquired by them using proceeds of the crime. It is for this Tribunal to decide as to how the properties and assets of the Corporate Debtor under liquidation can be appropriated. The Liquidator must get possession of those properties attached by the Enforcement Director, New Delhi.”

²⁹ WP(CRL) 3037/2019

³⁰ CA(AT)(Ins)No. 957/2019 & Ors

³¹ CA (IB) No. 453/KB/2018 in CP (IB) No.73/KB/ 2017



IMPACT OF THE CODE

Efficient and predictable insolvency and debt resolution framework improves financial inclusion and increases access to credit, thereby leading to the reduction of the cost of capital. Increased access to capital, coupled with freedom to exit, enhances enterprise growth, which inevitably leads to growth of income and employment. With these overall objectives of an insolvency framework, India enacted the Code in May, 2016.

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 economic gains and its far-reaching influence (**Box 4**) These are its broader, primary and secondary long-term effects, direct and indirect, whether intended or unintended.

Insolvency law also has social implications, shaped by and shaping certain societal relationships. The laws do not make the society, but the society makes the law. The culture of a particular state forms the basis of laws.³² Debtor - creditor relationship is not based purely on economic considerations, but also on social and psychological ones. When a creditor lends money to debtor, he does it on trust and on the credibility of the debtor thus, creating a trust relationship with each other. Similarly, economic incentives alone do not determine if one resorts to bankruptcy.³³ This also depends on moral convictions - importance of keeping a promise. Most individuals would declare bankruptcy only as a last resort. Social stigma associated with bankruptcy which varies across cultures and across times, is also a factor influencing the decision to file for bankruptcy. Further, the effects of insolvency are not limited to the private interests of the insolvent and his/her creditors, but other groups in the society are vitally affected by the insolvency and its outcome, and thus, it is necessary to ensure that these public interests are recognised and safeguarded.³⁴

Generally, law and economics scholars view the insolvency and bankruptcy law as a facilitator of the allocation of resources in an economy to the highest and best use.³⁵ By shifting viable businesses to more efficient managers and providing an exit mechanism to unviable businesses, this law ensures efficient allocation of economic resources all the time. This is akin to managing “creative destruction” in the economy, where jobs and resources move from sunset businesses to sunrise businesses. The legal framework governing corporate

insolvency determines how efficiently scarce resources locked in inefficient firms are redeployed to more productive uses in the economy, when a corporate firm encounters economic stress. It also determines the ease and speed at which such reallocation is executed. Studies indicate that effective insolvency reforms are associated with a lower cost and lesser resolution time, improved creditor recovery and promotion of entrepreneurship for businesses, especially small enterprises. These can be said to the **efficiency** aspects of an insolvency regime.

A robust framework for insolvency resolution encourages deeper financial markets and enhanced availability of credit. It contributes to reducing the adverse effects of high private debt on economic activity by freeing up resources caught in unproductive activities. It also mitigates deadweight costs linked to bankruptcies by providing a transparent and speedy process of resolving non-viable debt. *Ex-ante*, insolvency frameworks shape the incentives that govern decisions to provide credit as well as to borrow to invest. *Ex post*, after a debtor has become insolvent, the framework determines how much value can be rescued for the creditor and how quickly debtors are released from their obligations. Research has also shown that bankruptcy reform can aid in the quick recovery of an economy during a recession.³⁶ These are akin to the measures of **efficacy** of the law. The following discussion sheds light on the way the Code is meeting these objectives and comprehends the impact this law is having while working towards the stated objectives.

A. MANAGING CREATIVE DESTRUCTION EFFICIENTLY

The process of creative destruction in an economy needs to be managed to ensure that it is smooth and least disruptive. A policy framework that does not unduly inhibit the creative destruction process is vital to sustaining economic growth in a country. The insolvency law allows financially non-viable firms to close so that the larger economic ecosystem can reallocate resources from non-viable entities to viable initiatives. This is, in a sense, a *sine qua non* of an efficient, effective, efficacious economic system. The important role of exit mechanisms for businesses was recognised by Joseph Schumpeter, who argued that innovation by entrepreneurs leads to “creative destruction”. He suggested: “*Capitalist reality is first and last a process of*

³² Audain, Linz (1995) “Critical Cultural Law and Economics, the Culture of Deindividualization, the Paradox of Blackness,” *Indiana Law Journal*: Vol. 70 : Iss. 3 , Article 1.

³³ Sullivan, Teresa & Warren, Elizabeth & Westbrook, Jay. (1989), *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America*, *Social Forces*. 69. 10.2307/2579631.

³⁴ Report of the Review Committee on Insolvency Law and Practice (1982) Cmnd 8558 (Also called the Cork Committee Report)

³⁵ Paterson, Sarah (2015), “Rethinking corporate bankruptcy theory in the twenty-first century”, *Oxford Journal of Legal Studies*, Volume 36, Issue 4, Winter 2016, pp. 697–723.

³⁶ Jean-Charles Bricongne, et al, (2016), “Macroeconomic Relevance of Insolvency Frameworks in a High-debt Context: An EU Perspective”, Discussion Paper 032, European Economy Discussion Papers, Directorate-General for Economic and Financial Affairs, June.

Box 4: Measuring Outcomes of IBC

The DBR studies the time, cost and outcomes of insolvency proceedings involving domestic entities as well as the strength of the legal framework applicable to judicial liquidation and reorganisation proceedings, to arrive at the score for respective country. In the DBR for the year 2020 released in October, 2019, India improved her overall ranking by 14 places to 63rd position among 190 countries as against preceding year's 77th position. In the 'resolving insolvency' parameter, her ranking improved 56 places to 52nd in 2019 from 108th in the previous year. Owing to the establishment of a modern insolvency regime, the DBR noted that India made resolving insolvency easier by promoting reorganisation proceedings in practice. The new law has introduced the option of insolvency resolution for commercial entities as an alternative to liquidation or other mechanisms of debt enforcement, reshaping the way insolvent companies can restore their financial well-being or close.

There is presently no standard framework, other than the World Bank framework, to track outcomes of insolvency and bankruptcy regimes in various jurisdictions. This framework 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 legal framework and insolvency outcomes. It does not capture the systemic gains in terms of changes in the debtor-creditor relationship, rescue of businessmen from deeper perils, large number of resolutions induced outside the process, and even social ramifications.

The foundational objectives of the Code are six, namely, resolution of stress, maximisation of value of assets, promoting entrepreneurship, enhancing availability of credit, balancing of interests of all stakeholders, and establishing an ecosystem. These 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 IPs, IPAs, RVs, RVOs, IUs, AA, Appellate Tribunal, IBBI, Government, Courts, etc.;
- (b) The strength, efficiency, and efficacy of **processes**, namely, corporate insolvency resolution, corporate liquidation, voluntary liquidation, fresh start process, individual insolvency resolution, and bankruptcy. These may track incidence of use of IBC process vis-à-vis other avenues for resolution, value maximisation, time efficiency, cost efficiency, realisation for stakeholders, revival of the persons, information symmetry, etc.;
- (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 of **the ecosystem and processes** on the cost of capital, capital structure of firms, 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, and proactive/preventive impact of the Code; and
- (f) The **overall impact** on employment and economic growth of the nation.

Table below lists these layers of outcomes and possible options for tracking them.

Layers of Outcome	Objectives	Indicators
Strength of insolvency ecosystem	To aid the processes in pursuit of objectives of the Code	<ul style="list-style-type: none"> • Strength of each of the elements of the ecosystem • Performance of each of these elements
Strength of insolvency processes	To aid stakeholders to pursue the objectives of the Code	<ul style="list-style-type: none"> • Use of the IBC processes by creditors and debtors as compared to other available options • Efficiency of the processes in terms of cost-time-recovery framework
Strength of insolvency markets	To aid the insolvency processes to arrive at competitive market outcomes	<ul style="list-style-type: none"> • Availability of interim finance • Availability of competitive resolution plans • Cost and information efficiency of the markets
Impact of ecosystem and processes	Enhance availability of credit, promote entrepreneurship, drive competition and innovation	<ul style="list-style-type: none"> • Impact on cost of capital • Change in capital structure of firms • Impact on availability of credit • Entrepreneurship culture in the economy
Behavioural changes	Desired behaviour through incentives and disincentives	<ul style="list-style-type: none"> • Proactive / preventive resolutions • Resolutions in the shadow of or on account of IBC • Settlements during resolution process • Recoveries by creditors
Overall impact	Improvement in corporate governance, resource allocation, and economic growth	<ul style="list-style-type: none"> • Employment saved because of resolution of distressed companies • Amount of recoveries by FCs being ploughed back into the credit cycle • Capacity utilisation and resource allocation Impact on economic growth of the country

Usually, the data necessary to assess the outcomes of an insolvency regime, and its hits and misses, and to initiate remedial measures / course

corrections in a dynamic mode are scanty and scattered. Given that India's insolvency regime is still nascent and unique, data systems in respect of insolvency are yet to emerge. The IBBI is tracking and disseminating some details of processes and outcomes, on a regular basis. 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. Thus, 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 an institutional arrangement that would steer generation and dissemination of relevant data and at the same time encourage useful research in matters of policy design and implementation, including measuring outcomes against the objectives/ benchmarks. It will also 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.

change. For this change to be facilitated, entrepreneurs need to be provided easy entry and exit opportunities from the markets".³⁷

The willingness of providers of capital – debt or equity - to support new businesses is, to an extent, a function of the rules that govern the procedures when they fail. Thus, comes in the need for an insolvency regime, in the larger milieu of economic laws in a country, to facilitate the process of exit for a failing business. An effective insolvency regime, while coming into play at the end of the business life cycle, has 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. Effective systems for insolvency quickly triage firms that can be saved and those that must exit. It provides comfort in the form of a safety net for business activity by offering orderly mechanisms for rescue (resolution) or value maximising exit (liquidation) from business.

The Code has ushered in a far-reaching reform in the country by providing such a freedom to exit. 3847 firms have taken recourse to the CIRP till 31st March, 2020. Of them, 236 have been resolved and 932 have proceeded for liquidation. Many defunct and BIFR firms have been either resolved or liquidated, bringing a long pending finality to their future. 682 companies have also resorted to voluntary liquidation. The IBC is proving to be an efficient legal framework for rescue of businesses wherever possible and exit of failing businesses wherever required.

Rescue of distressed assets

The Code provides a legal structure, well-defined processes, responsibilities, and timelines for stressed asset resolutions. In due course, a vibrant market for stressed assets should be a reality, which will improve credit market further. Data as on 31st March, 2020 indicate that 32 per cent of the companies rescued were defunct. 72 per cent of companies ordered for liquidation were defunct. Till March 2020, Rs.1.76 lakh crore, Rs. 213 crore and Rs. 18 crore have been realised by FCs through resolutions, liquidations and voluntary liquidations respectively under the Code. These realisations by creditors are exclusive of realisations yet to be made from disposal of applications for avoidance transactions and insolvency resolution of PGs. This is also exclusive of realisation through withdrawal of applications before admission.

Table 63: Rescue of distressed assets through the Code

Realisations through	Amount (Rs. crore)
Withdrawal of Applications before admission	5,10,483
Resolution Plans	175779
Liquidations	213
Voluntary Liquidations	18
Total	6,86,493

Accounts becoming Standard (2018-20)	
Improvement in NPAs (2018-20)	11.2% in 2017-18 to 8.2% in 2019-20

Recovery Rates

The IBC safeguards and maximises the value of the company and consequently, value for all its stakeholders. First and foremost, it enables initiation of resolution process at the earliest to preserve the value, when the stakeholders have the motivation to rescue the company rather than liquidate it. It mandates resolution in a time-bound manner to prevent decline in the value with time during resolution process, reducing motivation of the stakeholders to opt for liquidation. Liquidation process commences only on failure of resolution process to revive the company. The Code facilitates resolution as a going concern to capture going concern surplus. It makes an IP run the company as a going concern, prohibits suspension or termination of supply of essential services, stays execution of individual claims, enables raising interim finances for running the company, etc.

The primary focus of the Code is resolution. Recovery is only incidental. As detailed in Section E, till 31st March, 2020, realisation by FCs under resolution plans in comparison to liquidation value was 186.45 per cent, while the realisation by them in comparison to their claims was 46.08 per cent.

RBI's report on Trends and Progress of Banking in India, 2019-20, presents a comparison of recoveries under CIRP and other mechanisms. NPAs recovered by SCBs through the Code channel increased to about 61 per cent of the total amount recovered through various channels in 2019-20 against 56 per cent in 2018-19. RBI data indicates that as a percentage of claims, SCBs have been able to recover 45.5 per cent of the

³⁷ Joseph Schumpeter (2003), *Capitalism, Socialism, and Democracy*, Taylor & Francis e-Library.

amount involved through IBC for the financial year 2019-20, which is the highest as compared to recovery under other modes and legislations (Table 64 and Figure 6).

Table 64 : NPAs of SCBs Recovered through Various Channels

(Amount in Rs. crore)

Recovery Channel	2018-19				2019-20(P)			
	No. of cases referred	Amount involved	Amount recovered*	Col. (4) as % of Col. (3)	No. of cases referred	Amount involved	Amount recovered*	Col. (8) as % of Col. (7)
1	2	3	4	5	6	7	8	9
Lok Adalats	40,87,555	53,484	2,750	5.10	59,86,790	67,801	4,211	6.20
DRTs	51,679	2,68,413	10,552	3.90	40,818	2,45,570	10,018	4.10
SARFAESI Act	2,35,437	2,58,642	38,905	15.00	1,05,523	1,96,582	52,563	26.70
IBC	1,152@	1,45,457	66,440	45.70	1,953@	2,32,478	1,05,773	45.50
Total	43,75,823	7,25,996	1,18,647	16.30	61,35,084	7,42,431	1,72,565	23.20

Notes: 1. Data are provisional.

2. DRTs: Debt Recovery Tribunals

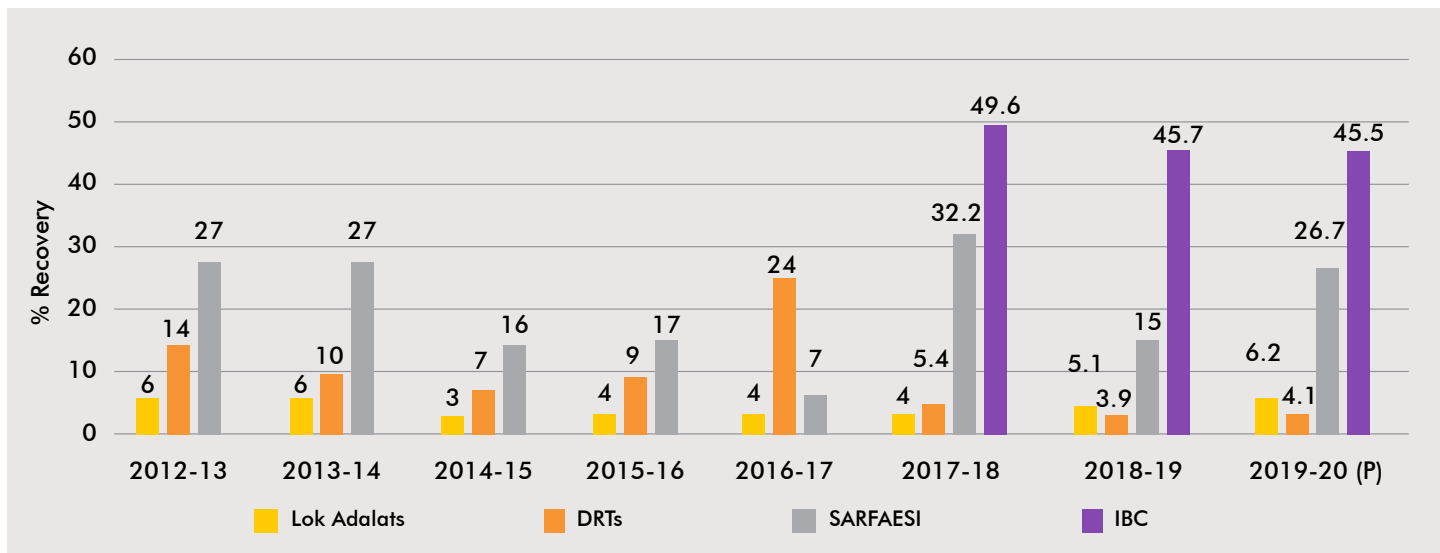
3. *: Refers to the amount recovered during the given year, which could be with reference to the cases referred during the given year as well as during the earlier years. In the case of IBC, the realisation does not include amount realisable for OCs, from guarantors of CDs and disposal of avoidance transactions.

4. @: Cases admitted by NCLTs under IBC. However, figures appearing for amount involved and amount recovered are for cases whose resolution plan was approved during the given financial year i.e. 81 cases for 2018-19 and 135 cases in 2019-20. Also, the amount recovered refers to realisables by all FCs, not just SCBs.

5. The resolution plan of Essar Steel India Ltd. was approved in 2018-19. However, as apportionment among creditors was settled in 2019-20, the recovery is reflected in the latter year data.

Source: Off-site returns, RBI and IBBI.

Figure 6 : NPAs of SCBs Recovered through Various Channels



Note: P: Provisional

Source: Off-site returns, RBI and IBBI

Resolution Time

Time is of essence in an insolvency resolution proceeding to preserve the value of the assets of the CD. The Code mandates that a CIRP should be completed in 330 days including any extension of time as well as any exclusion of time on account of legal proceedings. The average time taken for completion of 236 CIRPs yielding resolution is 415 days, including the time excluded by the AA. However, if the time excluded by the AA is excluded, the average time for completion of CIRPs

is 375 days. The average time taken for completion of 932 CIRPs, which have yielded orders for liquidations, is 309 days.

Resolution Cost

Economies with good insolvency procedures are those that maximise the total value of recovered debt - to be divided among the debtor, the creditors and possibly the shareholders - and make it possible to do so at a low cost.³⁸ The legal and administrative efficiency of an insolvency law enables speed

³⁸ Djankov, Simeon (2009), "Bankruptcy Regimes during Financial Distress", World Bank, Washington, DC.

and lower cost of insolvency resolution. The efficient resolution of insolvency depends on the ability to resolve viable firms and to liquidate the unviable ones at low 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 DBR. Data available from 178 resolved CDs indicates that the cost incurred towards engaging various service providers for the insolvency process and holding of meetings for the process, is at an average of less than 1 per cent of the liquidation value of these CDs.

Lower insolvency proceedings costs stimulate inefficient firms to exit and encourage greater entrepreneurial activity and new firm creation. In a scenario of high costs, inefficient firms would be reluctant to file for insolvency and would continue to operate at a financial loss.³⁹ The Code has in fact encouraged as many as 254 CDs to initiate CIRP voluntarily as at end of March, 2020. The lower costs have encouraged all creditors, from big institutional FCs to even small OCs, to initiate CIRP against a defaulting CD. As at end of March, 2020 almost 50 per cent of the CIRPs admitted were initiated by OCs, most of whom are MSMEs who do not have the institutional strength as that of FCs like banks.

Promoting innovation and entrepreneurship

A successful sustenance of a business requires innovation in response to the new challenges in the business environment. As a cog in the wheel, innovation is the central driver in the promotion of economic growth and development. As a young nation, India having the demographic advantage, has the zeal to innovate and create. This requires encouraging entrepreneurship and promoting business-innovation.

While innovation requires freedom to enter a business and freedom to run the same, it is equally important that innovators have the freedom to exit in case the business does not run the way it was envisaged. A firm may fail to deliver as planned, mostly because of competition and innovation and consequently, default in payment obligations. Irrespective of the reason, failure dampens entrepreneurship. Businesses may face barriers to exit in the form of impediments that prevent them from exiting a market or industry. Characteristic barriers to exit include high fixed exit costs: such as compensations payable to employees, cost of writing off assets and closure of business by cancellation of contracts with suppliers, etc.; existence of highly specialised assets, which may be difficult to sell or relocate, such as in the case of airline industry. The Government itself could be one of the barriers to exit if the business is operating in a highly regulated environment or is engaged in offering a public good.

Such exit barriers do not allow distressed firms to exit impeding efficient allocation of limited resources of an economy.

This also hinders technological progress precluding new technologies to replace the old. Easy exit procedures are imperative to encourage entrepreneurship. Laws which trap businesses in lengthy court proceedings or impose penal provisions on bankrupts, muzzle risk taking entrepreneurship. One of the considerations for an exit by a corporate is also the availability of an efficient insolvency regime in the larger milieu of economic laws in a country.

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 COVID-19 pandemic has increased the intensity and speed of this churning at marketplace, creating new sunrise and new sunset businesses. The businesses need to adapt to the new business realities, rather than trying to preserve the *status quo*. Some firms would need to close and new ones to open, and jobs and resources need to move between firms and sectors. The *sunset* businesses need to exit, releasing resources and entrepreneurs.

The Global Innovation Index (GII)⁴⁰ is an annual ranking of countries by their capacity for, and success in, innovation. It ranks world economies according to their innovation capabilities. Consisting of roughly 80 indicators, grouped into innovation inputs and outputs, the GIi aims to capture the multi-dimensional facets of innovation. The index evaluates innovation performance ranks annually for around 131 world economies constituting 93.5 per cent of the world’s population and 97.4 per cent of the world’s GDP measures by their capacity for, and success in, innovation.

It has two sub-indices, viz. (a) Innovation Input Sub-Index, which comprises of five input pillars which capture elements of the national economy that enable innovative activities and (b) Innovation Output Sub-Index, which capture the result of innovative activities within the economy in terms of two output pillars.

‘Ease of resolving insolvency’ is one of the sub-pillars of the Innovation Input Sub-Index, which uses the World Bank’s index on the ease of resolving insolvency. India’s ranking in this sub-index has improved from 111th in 2017 to 47th in 2020.

Table 65 : Resolving insolvency scores of India in GIi

Particular	2017	2018	2019	2020
Score	32.8	40.8	40.8	62.0
Rank	111	91	95	47

Research has shown that entrepreneur-friendly bankruptcy laws encourage start-up activity across countries.⁴¹ Entrepreneur-friendly bankruptcy laws also encourage venture capital activity across countries⁴² and induce greater innovation.⁴³ As

³⁹ Cirmizi, Elena, Leora Klapper and Mahesh Uttamchandani (2010), “The Challenges of Bankruptcy Reform”, Policy Research Working Paper 5448, World Bank, Washington, DC.
⁴⁰ Released jointly by WIPO, Cornell University, INSEAD and the 2020 GIi Knowledge Partners: The Confederation of Indian Industry; Dassault Systèmes - the 3DEXPERIENCE Company; and The National Confederation of Industry (CNI) – Brazil. The index is being published annually since 2007.

⁴¹ John Armour and Douglas Cumming (2008), “Bankruptcy Law and Entrepreneurship”, *American Law and Economics Review*, Vol. 10, No.2 , pp. 303-350.
⁴² Armour, J. and D.J. Cumming (2006), “The Legislative Road to Silicon Valley.” *Oxford Economic Papers*, 58, pp. 596-635.
⁴³ Acharya, V. and K. Subramanian, (2009), “Bankruptcy Codes and Innovation.” *Review of Financial Studies*, 22(12), pp. 4949-4988.

on 31st December, 2019, 26,804 start-ups across 555 districts in India have been recognised as start-ups under the Start-up India Action Plan of the Government. A total of 3,06,848 jobs have been reported by 24,848 start-ups with an average of 12 employees per start-up.⁴⁴ Given that start-ups have a high failure rate, they would benefit most from the Code.

B. ENSURING EFFICACIOUS OUTCOMES

Resolution of NPAs

The FCs have benefitted through higher realisations on account of the Code and lowering of NPAs in their balance sheets. The GNPA of SCBs which reached a peak of 11.2 per cent in 2017-18 has been steadily falling since to reach 8.2 per cent in 2019-20. The insolvency ecosystem has benefitted with more responsible lending behaviour displayed by FCs on account of behavioural change onset by the Code. The OCs have benefitted by way of enhanced realisation before admission and after serving of demand notice on account of behavioural change on part of the CDs. With enhanced realisations fructifying through CIRP, the OCs are resorting to the Code with almost 50 per cent of applications initiated by them.

Impact on credit culture and behavioural change

The insolvency resolution framework, by its very design, seeks to address certain behavioural instincts of debtors and creditors alike. The distinct design features of this framework discourage strategic behaviour by creditors and debtors.⁴⁵ For example, in the absence of well-designed voting rights for creditors within the insolvency resolution framework, an individual creditor can threaten to force an inefficient result in the negotiations.⁴⁶ Similarly, in the absence of credible threats of losing control over their business, debtors can strategically default to obtain relief. Fraudulent entrepreneurs can strategically transfer assets prior to insolvency, thus necessitating adequate safeguards to be incorporated in the insolvency law to enable differentiation between honest and fraudulent entrepreneurs. These features of a CIRP that is backed by a robust and strong legal framework seeks to deter wrongful behaviour on the part of debtors and creditors by preventing strategic moves that can erode the value of the CD or stall the resolution process.

The Code has brought about significant behavioural changes among the creditors and debtors. The inevitable consequence of a resolution process (the control and management of the firm move away from existing promoters and managers, most probably, forever) deters the management and promoter of the firm from operating below the optimum level of efficiency and motivates them to make the best efforts to avoid default.

Further, it encourages the debtors to settle default expeditiously with the creditor at the earliest, preferably outside the Code. There have been many instances where debtors have been settling their debts on their own or settling immediately on filing of an application with the NCLT before it is admitted. Since the enactment of the Code in 2016, as many as 13,927 cases involving defaults of Rs 5.10 lakh crore were withdrawn by March, 2020 from various benches of the NCLT, before these applications were admitted by the AA, and 715 processes were closed mid-way. These figures indicate that several CDs are getting resolved on the way, before official commencement of CIRP under the Code on account of behavioural change among the defaulting debtors.

Development of corporate bond markets

To build and maintain a well-functioning bond market, particularly a corporate bond market, it is necessary to have a comprehensive and robust insolvency and bankruptcy framework in place. It can help boost investor confidence and encourage fund inflows into the corporate bonds market, especially in low-rated instruments. Having insolvency procedures that are effective in protecting bondholders is a major consideration for investors. The corporate bond markets, which should have been one of the natural sources of finance for large companies, are not widely used in India since corporate bond holders have had bad recovery rates under the extant arrangements⁴⁷. With the Code in place since 2016, the potential investors - foreign or domestic - may find it attractive to invest in corporate bonds in India in view of considerable strengthening of rights of creditors, and availability of distressed assets at competitive prices on account of the Code.

Credit growth

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.

The literature substantiates the impact of efficient insolvency and bankruptcy regimes on credit channel - increased availability of financing and a reduction in the cost of credit for financially distressed firms. A study of bankruptcy reforms in 11 economies over the period 2001-09 revealed that the reforms contributed to greater issuance of long-term debt while strengthening creditor rights.⁴⁸ In the Indian context,⁴⁹ an analysis of 33,845 firms over the period 2008-2019 finds

⁴⁴ Annual Report 2019-20 of the Department for Promotion of Industrial Policy and Internal Trade, Ministry of Commerce and Industry, Government of India.

⁴⁵ Müge Adalet McGowan and Dan Andrews (2016), "Insolvency Regimes and Productivity Growth: A Framework for Analysis", OECD, ECO/WKP 33.

⁴⁶ Quinn, J. (1985), "Corporate Reorganization and Strategic Behaviour: An Economic Analysis of Canadian Insolvency Law and Recent Proposals for Reform", Osgoode Hall Law Journal, Vol. 23.

⁴⁷ The Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design, November, 2015.

⁴⁸ Hasan, I, Kose, J. and Kadiyala, P., (2020), "Debt Structure When Bankruptcy Law Offers Incentives to Restructure", Working Paper, Fordham University, USA.

⁴⁹ 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, Published online on 13th December 2020.

Box 5: IBC and employment

A firm has many stakeholders like investors, creditors, employees, supply chain partners, distributors, and consumers. Investors have primacy in the company in terms of management / control of the venture which is built on their risk appetite. Creditors share risk with the equity suppliers when they lend to the company, such risk is to the extent of the lending and is internalised in the contracted returns they get. Among creditors, some like banks or other secured creditors have more than one legal recovery measure, which places them in a better position over creditors like suppliers/service providers, where the ensuing payments arise from business arrangements and are largely unsecured. All these stakeholders have commercial engagement with the company, with rights and obligations provided for in contracts, formal or otherwise, and their objectives may not always converge, and may even contradict at times. When a company becomes insolvent, these stakeholders strive to protect their contractual rights in respect of the company.

The position of labour - employees (workmen included) - is different. The relationship between a company, as an employer, and the employees is much more than what can be captured in a contract even when one exists. On the one hand, it is about 'contribution to business' and on the other, 'livelihoods' of employees being supported by the business. Employees are intangible assets which, for the most part are invaluable, but they are not seen as 'risk-sharing' stakeholders though they stand to be affected adversely by business failure. The relationship between company and employees is best described as 'mutualism' or 'reciprocal altruism' - they stay in the relationship for as long as it is beneficial to both parties.

Employees are the earliest amongst stakeholders to recognise signals of distress in the business and the impact is felt by them earlier than any other stakeholder, in terms of delayed payments of salaries, reduction in perquisites, wage cuts and in the extreme, downsizing. When they detect distress, the process of attrition is hastened. Initiation of insolvency proceedings, in most cases leads to an exodus which is but a rational decision on the part of employees. However, employees weigh in the costs of finding a better or equally remunerative job, time required to find such employment and the risks of not finding one at all, while making the decision to leave a company. Rational argument suggests that employees of a company in distress would prefer to continue in their jobs than losing it if it were possible. If this fails, they want to be sure that they are paid all that is due to them before the company is lost. If faced between choice of retaining their jobs at the cost of losing part of their claims, in most likelihood, they would prefer to keep their jobs.

In a labour surplus economy like India, supply of labour far exceeds demand at most skill levels. Increasing globalisation and rapid technological advancement in industry have pushed the share of labour income in national income downward⁵⁰. The protection of employment and rights of employees has become a social objective and is in public interest which has warranted progressive policy support, including an insolvency framework. An insolvency regime expects continuation of employment during resolution process by requiring resolution as a going concern, where employees continue to work with the company and costs incurred are paid in priority. Successful resolution provides a fresh start to the company, with the healthier balance sheet and a new management in place and there is continuity for employees. The process helps continuity of employment for as long as economically feasible and letting go only when liquidation becomes inevitable. In the event of liquidation, the dues of workmen and employees have high priority in the waterfall.

Prioritisation in asset distribution manifests principles of equity and fairness in balancing stakeholder interests. The Code places equal emphasis on 'balancing the interests of all the stakeholders' alongside 'credit availability' and 'promotion of entrepreneurship' as its stated objectives. It empowers employees to initiate insolvency proceedings against a company. Dues owed to employees are categorised as 'operational debt' along with claims in respect of the provision of goods or services and statutory dues. The Code was amended in August, 2019 to provide a certain minimum pay-out to OCs, which shall not be less than (a) what they would receive in the event of a liquidation, or (ii) what they would receive if the amount to be distributed under resolution plan is distributed in accordance with liquidation waterfall. This has strengthened the position of employees and workmen in a CIRP.

In the distribution of assets, the waterfall treats 'an assured legal right' on par with those who rely on 'good will and implied rights'. Claims of workmen are second only to the process costs and are at par with secured creditors. Claims of employees, other than workmen follow those of the workmen. It not only prioritises the claims of workmen over those of the employees it provides such priority for the former for dues regarding a longer period of twenty-four months and for the latter for a period of twelve months.

The Code has enabled rescue of 236 CDs till March, 2020 through resolution plans and the incidental recovery was Rs. 1.76 lakh crore, in terms of value it was 186.45 per cent of the realisable value of these companies. Information available from 195 of these companies shows that 83,746 of 98,952 people continued to be gainfully employed, which is 84.60 per cent of the employment. The sector-wise distribution of these companies and proportion of employment continued is shown in Table below. It is expected that as the successful RAs settle down and ramp up the capacity, they would add more to employment than that is lost through resolution process. In the absence of the Code, the fate of these companies would have been uncertain, and employees would have chosen to leave sooner or later, adding to distress, and reducing chances of revival.

Table: Sector wise distribution of employees in resolved CDs

Sector	No. of companies rescued	No. of employees at the beginning of CIRP	No. of employees at the completion of CIRP	% of employment preserved
Primary sectors	9	18783	18468	98.32
Industry, incl. manufacturing	109	61838	50957	82.40
Construction/ Real estate	40	13288	11806	88.85
Services sectors	25	4071	1581	38.84
Others	12	972	934	96.09
Total	195	98952	83746	84.63

⁵⁰ IMF, World Economic Outlook, April, 2017

Manufacturing companies form the largest set of companies successfully resolved. The largest number of companies are iron and steel manufacturers where about 98 per cent of employment was retained. Retention of employment has been minimum in the service sector.

As of March, 2020, the Code saw 932 CDs enter the liquidation process and information available from 615 companies, shows that 21,806 employees were on their rolls on the date of the liquidation order. Liquidation order is the outcome of a market-driven process to assess the opportunity that these companies may present. The companies were not seen as an opportunity by the market and the liquidation process provided orderly exit and discharge for the employees.

that the IBC has been instrumental in enhancing the increased availability of credit at lower costs for financially distressed firms as compared to their non-distressed counterparts, thereby leading to their improved performance. It further finds that the IBC has enhanced the performance of larger, younger, and more collateralised financially distressed firms through credit flow channels as compared to their counterparts.

IBC and employment

The Code provides a process that prioritises 'rescue' over 'recovery' and has enabled continuity for more than 80 per cent of employees in the resolved companies. Where the market has not supported continuation, the Code ensures equitable treatment of claims of employees and prioritises their claims accordingly. The impact of liquidations under IBC on employment is presented in **Box 5**.

CONCLUSION

The Economic Survey 2018-19 had, in the context of the outcomes of IBC noted, *"It is often difficult to tangibly measure the contribution of an efficient insolvency system in national prosperity. Direct measures of the impact tend to underestimate its importance as they may fail to account for the 'enabling' and 'preventive' role played by the insolvency system. While the sustainable impact of the IBC will be known in due course, green shoots have already emerged and some significant benefits of the IBC are visible."* Some of these green shoots that the Survey mentioned can now be substantiated by data as noted in this Section and Section E. The new insolvency regime is now maturing, and these visible outcomes are likely to only see an upward trend as more data is captured.



PERFORMANCE OF THE BOARD

Governance through regulators constitutes the most significant governance reforms in the recent decades. Regulators provide public goods, in public interest, just as Governments do. They have responsibilities - consumer protection, development, and regulation - like those performed by Governments. They exercise certain powers - quasi-legislative, executive, and quasi-judicial - like those of the Government. They resemble Government in many respects, yet they are not the 'Government'. They are, in a sense, Governments within a Government, and carry out governance on behalf of the Government in a pre-defined framework.

There are significant advantages of governance through a regulator; there are significant concerns too. The statute creating a regulator generally minimises the concerns while harnessing the advantages. It enumerates the responsibilities of the regulator, and empowers and facilitates it to discharge the responsibilities. It generally provides for independence of the regulator to ensure that it delivers on its mandate and holds it accountable to ensure that it does not drift away from the mandate. The annual report provides an opportunity to reflect on the performance of a regulator *vis-à-vis* its mandate, resources, and its operating environment. It creates awareness of the impact of the regulator's own actions and helps to communicate and demonstrate to stakeholders the value addition it makes. It also helps to mend its behaviour and improve its effectiveness.

The starting point is to understand the mandate of the Board. The long title to the Code states its objectives. 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. Probably, it has no parallel either in India or elsewhere. It regulates the insolvency profession as well as insolvency processes. It has regulatory oversight over IPs, IPAs, IPEs, and IUs. It writes 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 the area of insolvency and bankruptcy. It is also the 'Authority' under the Valuation Rules for regulation and development of the profession of valuers in the country.

Section D of this report presents the operational performance of IBBI in its executive, quasi-legislative and quasi-judicial functions, while Section H attempts an assessment of the

performance of its Governing Board. Sections I, J and K respectively capture financial performance, compliances with legal and statutory obligations, and organisational performance of the Board. This Section is an endeavour to encapsulate its working that shapes the quality of regulations and consequently the outcomes. This has been attempted in terms of certain desirable elements of good regulatory governance, namely, responsive regulation; building ecosystem; engagement with stakeholders, and internal institutional capacity.

A. RESPONSIVE REGULATION

Generally, regulations try to resolve 'polycentric' problems. Such problems involve many interested parties interacting with one another in a fluid state of affairs. A small trigger in one variable creates tensions all around, with an incalculable series of interdependent changes. It is not possible either to identify the stakeholders likely to be impacted by a change, and factor in the series of interdependent changes, nor to organise them to participate in the decision making. Yet, the regulators must have 'second sight' to see the entire play in an evolving environment before any regulatory intervention to ensure that it addresses the identified market failure and does no more. This makes regulation making more of an art: it is difficult to derive regulations from mathematical formulations or rely on a standard 'one-size-fits-all' formulation.

Different strategies and approaches are required to design an appropriate regulation that addresses different market failures with no or negligible unintended consequences. The operating environment and market failures change over time, and regulators need to have a flexible and ongoing 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 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.

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. A list of such roundtables, organised over the period under review, is at Table 11 of Section C. Table 66 presents the Regulations the IBBI is servicing as on 31st March, 2020.

Table 66: Regulations as on 31st March, 2020

Sl.	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 2019-20, amendments were made to the CIRP Regulations thrice; and Liquidation Regulations and IP Regulations were each 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. To streamline and simplify the filing of various forms by IPs under the CIRP Regulations, the IBBI has made available an electronic platform for such filings, in consultation with the IPAs.

B. BUILDING ECOSYSTEM

The Code envisages an ecosystem to facilitate conduct of various processes. The ecosystem comprises the AA, IBBI, IPAs, IPs, IPEs, IUs, RVs and RVOs. The Board has the responsibility to promote the development of, and regulate, the working and practices of IPAs, IPs, IUs and other institutions in furtherance of the purposes of the Code. Given their critical role in the implementation of the Code, it 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.

Insolvency professionals

An IP is a key pillar of insolvency proceedings. He plays many different roles, namely, IRP, or RP in a CIRP, liquidator in liquidation processes, RP in individual insolvency processes and BT in bankruptcy proceedings. He is the key driver of CIRP, as IRP in the initial days of CIRP, and then as RP, till its completion. As an IRP/RP in a CIRP, he is vested with an array of statutory and legal duties and powers. He exercises the powers of the board of directors of the CD and manages its affairs. He runs the operations of the CD as going concern, protects and preserves the value of assets of the CD and ensures compliances with all the laws applicable to the CD and the CIRP. He conducts the entire resolution process and assists the stakeholders to find out the best resolution plan. He is the driving force and the nerve-centre in the resolution process. He has similar onerous responsibilities in other processes. There are provisions in the law to ensure that that the IP discharges his duties and responsibilities with utmost diligence, integrity, independence, objectivity, and impartiality.

The regulations specify norms of eligibility for registration as an IP, keeping in view his responsibilities. An individual, with ten years of experience as a member of the ICAI, ICSI, ICAI(Cost) or a Bar Council or with 15 years of experience in management, is eligible for registration as an IP on passing the Examination and completing the pre-registration educational course as a professional member of an IPA. The IBBI conducts the Examination and upgrades the same periodically in sync with market requirements. An IP undergoes certain minimum hours of CPE every year to remain relevant with evolving market dynamics. While an individual is screened for being 'fit and proper' at the entry point, he is required to remain fit and proper to keep the registration valid. An IP having complied with the requirements and not having any disciplinary proceeding against him is issued AFA, which entitles him to undertake an assignment under the Code. To take the insolvency profession to the next level, the IBBI has launched a GIP for young and bright minds having a professional qualification or a degree in relevant discipline without any experience. On completion of GIP, an individual is eligible for registration as IP, subject to meeting other requirements, except experience.

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.

Registered Valuers

Transparent and credible value of the assets of a CD is an important parameter for commercial decisions in a CIRP. It also determines the entitlement of some stakeholders under the resolution plan. The Code read with regulations assign the task of such valuation to RVs. To this effect, a framework has been created under the Companies Act, 2013 to make available a cadre of accountable valuers. The IBBI is shepherding the valuation profession. It conducts the Valuation Examinations for three asset classes, namely, land & building, plant & machinery and securities or financial assets. It is IBBI's endeavour to allow entry of individuals having the right capabilities to join valuation profession and to build their capacity on an ongoing basis. The Valuation Rules lay down eligibility norms for registration as a valuer. An individual having the required qualification and experience and having undergone the specified educational course from an RVO and having demonstrated his competence by passing the Valuation Examination conducted by the IBBI is registered as a valuer. He is mandated to undergo CPE to keep himself updated and relevant to the changing times.

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 (Box 6) 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 31st March, 2020:

Sl. No.	Service Provider	Number as on 31 st March	
		2019	2020
1	Insolvency Professionals	2456	3009
2	Insolvency Professional Entities	48	69
3	Insolvency Professional Agencies	03	03
4	Information Utilities	01	01
5	Registered Valuer Organisations	11	12
6	Registered Valuers	1186	3030
7	Registered Valuers Entities	0	20

The IBBI conducts the following Examinations online as on 31st March, 2020:

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 two-day 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 67 presents details of capacity building programmes organised by IBBI.

Table 67: 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
Total	18	06	10	42

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 2019-20 given in Table 68.

Box 6: Building Institution of IPAs

The regulatory architecture for a profession may comprise a sole regulatory agency or multiple regulatory agencies. The professions such as Chartered Accountant, Company Secretary and Cost Accountant have only one regulator. The statute, however, enables the regulator to serve the regulated through its extensions. The regulator has an elected central council, few regional councils, and many chapter management committees to serve and interact with the professionals. Where there are multiple regulators, they may constitute a hierarchy, where one regulator is subject to oversight of another regulator or the regulators in a tier may have parallel jurisdictions and compete with one another. The insolvency profession has a two-tier architecture with IBBI as the principal regulator, and several IPAs as frontline regulators. The IPAs are market entities registered with the IBBI, rendering regulatory or monitoring services, subject to oversight of IBBI. They may be de-registered if they are found lacking in their mandated role. An IP is subject to regulation of both IBBI and the IPA concerned.

There is probably no organisation like an IPA in the Indian context. It has some similarity with stock exchanges, which act as frontline regulators for the stockbrokers and regulate markets under regulatory oversight of the SEBI. The delegation to independent regulatory agencies is relatively a new concept in the Indian context, beginning in 1992, with the establishment of SEBI. The bodies like SEBI, IRDAI, ICAI, and ICSI act as regulatory state, being the fifth layer in the governance hierarchy.⁵¹ Further delegation to IPAs constitutes the sixth layer. As IBBI is bound by a principal-agent contractual framework to deliver on its mandate to the Government, so also is an IPA. In the hierarchy of principals and agents, IPAs are closest to the market. Because of this proximity, they have a better understanding of the market than the Government or IBBI. As agents of IBBI, and indirectly of the Government, IPAs regulate the conduct of their constituents. It is possible that there is some transmission loss in terms of objectives or focus from one layer to the other in the hierarchy. Appropriate design of contracts minimises the loss by holding an IPA accountable while incentivising it to promote the interests of the principal.

An IPA pursues broadly two sets of interests. One is public interest, as enumerated in section 204 of the Code, encompassing the interests of the debtors, creditors, other stakeholders, the market, and the society. It also pursues private interest, encompassing the top and bottom lines of the business, the interests of professional members, shareholders, and employees. A measure - commercial or regulatory - undertaken by an IPA may not always further both the interests simultaneously. Or, an IPA may adopt measures that give precedence to one interest over the other. It is also important to minimise the perceived conflict of interests between the commercial aspirations and regulatory tasks of an IPA. The Code seeks to balance public interests and private interests through governance norms. Section 203 of the Code read with the IPA Regulations limit presence of IPs in the GB of an IPA, which has 50 per cent independent directors.

Given the interests of an IPA, it is simultaneously a 'State' and a market participant. It regulates and develops the insolvency profession and has several responsibilities under section 200 read with section 204 of the Code. As envisaged in the report of the BLRC, an IPA is a mini-State. It discharges three sets of functions, namely, quasi-legislative, executive, and quasi-judicial. The quasi-legislative functions cover making bye-laws to lay down standards and code of conduct, which are binding on all its members. The executive functions include monitoring, inspection, and investigation of professional members on a regular basis, addressing grievances of aggrieved parties, gathering information about their performance, etc. with the overarching objective of preventing malicious behaviour and malfeasance conduct by IPs. The quasi-judicial functions include dealing with complaints against members and taking suitable disciplinary actions.

Generally, there is a broad separation of powers among the agencies associated with law - the legislature makes the law, the executive and the judiciary respectively administer and enforce it. This provides a system of checks and balances for one another to prevent misuse of power. The SC made an interesting observation in the context of SEBI's powers: *"Integration of power by vesting legislative, executive and judicial powers in the same body (SEBI), in future, may raise several public law concerns as the principle of control of one body over the other was the central theme underlying the doctrine of separation of powers"*. Though the Constitution of India does not envisage strict separation of powers, it does indeed make horizontal division of powers among the legislature, the executive, and the judiciary. In keeping with the spirit of the constitutional provisions, an IPA must ensure that its three wings exercise quasi-legislative, executive, and quasi-judicial powers with independence and without intra-institutional bargaining and, thereby, avoid potential public law concerns prognosticated by the SC.

Though an IPA is an agency of State, it is not a monopolist. Like stock exchanges, IPAs compete among themselves focusing their unique selling propositions. As a market player, an IPA is selling two products. One is its membership. It is important that such membership enjoys a brand equity and brand loyalty and commands a premium in the market. The second is professional development services provided by IPAs to their members. The BLRC envisaged that IPAs would be competing among themselves. They need to fight fiercely among themselves at marketplace. Traditional entry barriers like economies of scale, the amount of investment, switching cost, etc. do not exist in the IPA space except that an IPA must be a section 8 (not for profit) company and this has limited the entry to some extent. While competing among themselves, they should ensure that their members set high standards which in turn would earn the confidence and trust of stakeholders. They must build and safeguard the reputation of the insolvency profession to ensure that it becomes the most enviable profession in the country.

C. ENGAGEMENT WITH STAKEHOLDERS

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.

Table 68: Various orders issued by IBBI during 2019-20

Sl. No.	Type of Order	Authority	No. of Orders Issued in	
			2018-19	2019-20
1	Rejecting applications for registration as IP	Board	03	04
2	Rejecting applications for registration as RV	Board	01	03
3	Disposing of SCNs	Disciplinary Committee	11	07
4	Disposing of appeals against the orders of CPIO	First Appellate Authority	29	19

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 material 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.

The IBBI undertakes regular and purposeful engagement with the regulated and other stakeholders focused to improve the operation and outcomes of the regulatory framework (Box 7). 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 empowers 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 in order 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 wide range of stakeholders, the Code was expected to have some teething troubles and rightly so. However, the

engagement with stakeholders ensured that the Board receives timely feedback from stakeholders, enabling it to make the 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 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.

The IBBI undertakes engagement in person in the following manner:

(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) *Roadshows and Meetings with Investors*: IBBI participates in roadshows overseas and holds one-on-one meetings with global investors.

(e) *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 find resolution of issues.

(f) *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.

Table 69: Public Comments received in 2019-20

Stakeholder	Number			
	A (Comments)	B (Suggestions)	C (Feedback)	Total
Academician	0	0	-	0
Academics	28	11	-	39
Corporate Debtor	15	10	-	25
Creditor to a Corporate Debtor	88	49	-	137
Industry Association	0	0	-	0
Information Utility	11	0	-	11
Insolvency Professional	499	205	-	704
Insolvency Professional Agency	1	4	-	5
Insolvency Professional Entity	15	3	-	18
Investor	222	4	-	226
Investors	0	10	-	10
Lawyer/Law firms	0	0	-	0
Others	403	77	-	480
Personal Guarantor to a Corporate Debtor	7	0	-	7
Proprietorship firms	21	1	-	22
Service User group e.g. Financial Institution, Government Authority etc.	0	0	-	0
Valuer	0	0	-	0
Valuer Association	0	0	-	0
Total	1310	374	752	2436

(g) *Trainings and Workshops*: It is the endeavour of IBBI to build capacity of the service providers and other elements of the ecosystem in the area of insolvency and bankruptcy given that the law is a new one and needs to be understood and interpreted correctly to be able to deliver the envisaged outcomes. It organises workshops (advanced and basic) and training sessions for IPs and FCs.

The IBBI engages with its stakeholders electronically through the following means:

(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 1310 comments in 2019-20 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 374 comments under this route in 2019-20.

(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 752 feedback emails in 2019-20. The comments, suggestions and feedback received through routes A, B and C above are presented in Table 69.

The IBBI also engages with stakeholders by the following indirect means:

(a) *Advisory Committees, Technical Committees and Working Groups*: There are three standing Advisory Committees constituted in accordance with the Advisory Committee 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.

(b) *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, 2020, the website had 14,773 subscribers, who are receiving daily updates on their emails.

(c) *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. It has an annual publication, other occasional publications, annual reports and study material for three asset classes of valuation.

(d) *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.

(e) *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.

(f) *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. FOSTERING INTERNAL INSTITUTIONAL CAPACITY

The IBBI is also conscious that it needs to strengthen its own institutional capacity to be able to deliver the outcomes expected of it. An organisation's capacity hinges upon certain elements as listed below along with the action IBBI is taking towards achieving the same.

Capacity assessment and planning: The Board has been strengthening and maintaining its capabilities to set and achieve its own development objectives over time. The Board in a way undertakes capacity assessments by developing a Strategic Action Plan (SAP). It holds a Strategy Meet annually to draw the SAP for the organisation, outlining the objectives, strategies, specific actions and sub-actions for the coming year and a broad vision for the near term. Such a plan helps in determining which capacities are to be prioritised and how to incorporate them in the overall organisational strategies, programmes and budget. The SAP of the organisation helps in streamlining procedures and practices for management of human, physical and financial resources which are key determinants of organisational effectiveness, and ultimately of development effectiveness. The Board designs its SAP factoring in the internal resources and constraints as well as the external environment which is ever evolving.

Knowledge: Knowledge building is essential for the Board to continue to deliver its mandate. To this effect, IBBI endeavours to enhance the capability of its employees. It has instituted a Distinguished Lecture Series wherein it invites eminent persons to share their thoughts and interact with the officers of IBBI. It also nominates its officers to various training programmes, domestic and international, to enhance their knowledge and skills in the area of insolvency and bankruptcy. Details of capacity building of employees in 2019-20 is presented in Section K of this report.

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 academic institutions. It (a) collates and analyses data relating to processes and outcomes, (b) publishes quarterly newsletters and brochures, (c) publishes annual publications and annual report, and (d) coordinates with external researchers for case studies, research workshops, etc. It has also launched a Research Initiative 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.

Leadership: Leadership is a catalyst for achieving, improving, and sustaining objectives whether exercised by a group or an individual, assigned or emergent. The GB of IBBI has steered the organisation with a clear vision and a set of measurable goals and priorities. It has through its leadership strengthened the ability of the organisation to welcome, anticipate and respond to changes, whether driven from the inside or the outside. To identify its areas of strength and lacunae, if any, the GB also evaluates its own performance every year based on a self-evaluation questionnaire. Detailed performance of the GB is presented in Section H of this Report.

Institution Structure: The governance structure of IBBI is based on separation of powers and balance of powers. The IBBI has structured itself into three wings, namely, Research and Regulation Wing (RRW), Registration and Monitoring Wing (RMW) and Administrative Law Wing (ALW) to avoid intra-institutional bargaining. Each of these wings is headed by a separate WTM. There are several instruments, namely, IBBI (Procedure for Governing Boards Meetings) Regulations, 2017 (Board Regulations), Advisory Committee Regulations, Delegation Order, etc. to ensure good governance within IBBI.

CONCLUSION

The stakeholders in the insolvency and bankruptcy ecosystem are diverse. They include all existing and potential creditors and debtors; professionals and institutions that are an integral part 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 the Government and the Parliament through which the law is implemented. Each of these stakeholders have

⁵¹ Fabrizio Gilardi and Dietmar Braun (2006), "Delegation in Contemporary Democracies", Volume 43, Routledge/ECPR Studies in European Political Science, Routledge.

Box 7: Engagement with Stakeholders in Making Regulations

The regulator, being an unelected body, is often accused of lacking democratic legitimacy, though the law usually provides for a bridge between the society and the regulator, and a parliamentary oversight over the subordinate legislation. Nevertheless, it helps if there is a structured arrangement that engages stakeholders in the process of making regulations. The SC exhorts⁵²: “.. we would exhort Parliament to take up this issue and frame a legislation along the lines of the U.S. Administrative Procedure Act (with certain well defined exceptions) by which all subordinate legislation is subject to a transparent process by which due consultations with all stakeholders are held, and the rule or regulation making power is exercised after due consideration of all stakeholders’ submissions, together with an explanatory memorandum which broadly takes into account what they have said and the reasons for agreeing or disagreeing with them.”

Several regulators in India have evolved best practices in regulation making. The Airport Economic Regulatory Authority of India Act, 2008 requires the authority to ensure transparency while exercising its powers and discharging its functions by (a) holding consultation with all the stakeholders, (b) allowing all stakeholders to make their submissions and (c) making all decisions of the authority fully documented and explained. The Electricity Act, 2003 requires previous publication of draft regulations and the regulation issuing authority is required to consider suggestions received on the same. The Company Secretaries Act, 1980 provides that all regulations made under the Act shall be subject to previous publication. The Ministry of Law & Justice issued a pre-legislative consultation policy which requires Central and State Government departments to publish laws and subordinate legislation for public consultation. The legislation delegating the power to make regulations should provide for a formal framework incorporating transparency and accountability in the issuance of regulations, including publication of draft regulations for public consultations and review of such regulations every few years.⁵³

The regulator should facilitate an effective stakeholder consultation before issuing a regulation to allow the broader society to participate in policy changes. This increases information available to the regulator, while improving compliance and acceptability of the proposed regulation among the regulated sector and the stakeholders. However, there is an apprehension that the extensive consultation process may create an opportunity for the organised and vocal interest groups to have excessive influence over the outcomes of regulatory processes⁵⁴. The diverse stakeholders, who may be large in number but do not participate in the consultation due to several issues such as they suffer minimal impact or problems of collective action, may not be properly heard.⁵⁵ The inputs received through consultation need to be independently examined, keeping in mind the interests of those stakeholders too, who would not have participated in the consultation process. This is essential to secure the rights and interests of all stakeholders as well as to secure independence of regulator from majority biases. The GB must approve regulations only after considering public comments and it should place reasons for rejecting a comment in the public domain.

One of the objectives of delegation of power to make subordinate legislation is that it requires intricate knowledge, and it needs to respond, rapidly and often proactively, to the evolution of fast-paced marketplace. Therefore, most draft regulations may not be easily understood by every stakeholder. All of them may not comprehend the full import of the proposed regulations, including the cost and benefit that may accrue to them and the market, and the adjustments they need to make to be in sync with the new regulations. It is incumbent on the regulator to explain the costs and benefits in the form of RIA or cost benefit analysis to make participation of the stakeholders effective. It should also discuss in person with a set of stakeholders to explain the full impact of the proposed regulations.

It is also necessary that every regulation is accompanied by objects and purpose clause, something like ‘Statement of Object and Reasons’ appended to Bills placed before Parliament, to ease understanding and interpretation of the same. The Supreme Court (2010a) advises:⁵⁶ “In this case, it was quite apparent that the 1997 Takeover Code and the later amendments introduced in it were intended to give effect to the recommendations of the two Committees headed by Justice Bhagwati. We were, thus, in a position to refer to the relevant portions of the two reports that provided us with the *raison d’être* for the amendment(s) or the introduction of a new provision and thus helped us in understanding the correct import of certain provisions. But this is not the case with many other regulations framed under different Acts. Regulations are brought in and later subjected to amendments without being preceded by any reports of any expert committees. Now that we have more and more of the regulatory regime where highly important and complex and specialised spheres of human activity are governed by regulatory mechanisms framed under delegated legislation it is high time to change the old practice and to add at the beginning the “object and purpose” clause to the delegated legislations as in the case of the primary legislations”. The regulations must contain specific notes on each provision setting out the legislative intent for which that provision has been formulated. These notes should be an integral and operative part of the regulations and aim at telling the society what role the regulatory system expects the provision of the regulation to perform and help in their interpretation.

specific requirements and it is IBBI’s endeavour to live up to their expectations within the four corners of the law.

Towards this end, it is constantly facilitating processes under the Code, strengthening the service providers in the insolvency

ecosystem, fostering confidence amongst its stakeholders, building knowledge in the area of insolvency and disseminating information about the outcomes of the Code. These efforts are being continuously ramped up and attuned to the emerging requirements of all stakeholders.

⁵² Cellular Operators Association of India Vs. Telecom Regulatory Authority of India (2016) 7 SCC 703).

⁵³ Ministry of Corporate Affairs (2019), Report of the Competition Law Review Committee.

⁵⁴ Soma, L. & F. Naru (2017), Regulatory Policy in India: Moving towards Regulatory Governance, OECD Regulatory Policy Working Papers, No. 8, OECD, Paris (2017) 24.

⁵⁵ Somanathan, TV, (2016), The Administrative and Regulatory State, in S. Choudhary, M. Khosla and P.B. Mehta (eds), The Oxford Handbook of the Indian Constitution (Oxford University Press, 2016).

⁵⁶ Appeal (Civil) 7148 of 2009 in the matter of Daiichi Sankyo Company Limited v. Jayaram Chigurupati & Ors.



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. GB of the IBBI provides it with strategic direction and controls and monitors the management. The Code read with the 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 responsibilities.

GOVERNING BOARD MEETINGS

The GB had four meetings during 2019-20. The details of attendance of the Board members at these meetings are presented in Table 70.

Table 70: Attendance in Board Meetings

Name	Position	No. of Board Meetings in 2019-20	
		Held when in office	Attended
Dr. M. S. Sahoo	Chairperson	4	4
Dr. Navrang Saini	WTM	4	4
Dr. (Ms.) Mukulita Vijayawargiya	WTM	4	4
Mr. Sudhaker Shukla	WTM	2	2
Mr. Gyaneshwar Kumar Singh	Ex-officio Member	4	4
Mr. Unnikrishnan A.	Ex-officio Member	4	4
Dr. Shashank Saksena	Ex-officio Member	4	3
Dr. Rajiv Mani	Ex-officio Member	4	3
Mr. B. Sriram	Part-Time Member	3	3
Dr. Krishnamurthy Subramanian	Part-Time Member	3	1

The GB approved two new regulations during 2019-20. It also approved amendments to 18 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 Annual Accounts and Annual Report of the Board for the year 2018-19. It also approved Inspection Policy and Manual for IPs, Manual for Examinations and budget proposals for F.Y. 2020-21.

The COVID-19 pandemic hit the country in early February, 2020 and Government imposed nationwide lockdown on 24th March, 2020 to combat and contain the spread of COVID-19. The GB realised that it would be difficult for the IPs to continue to conduct the processes, for members of CoC to attend the meetings, and for prospective RAs to prepare and submit resolution plans and, therefore, it may be difficult to complete various activities during a CIRP within the timelines specified in the CIRP Regulations. Accordingly, the GB approved relaxation of timelines under the CIRP Regulations subject to meeting of overall time-limit under the Code. It also approved amendments to regulations pertaining to service providers relaxing fulfilment of certain obligations, the details of which are provided in Section C.1 of this report.

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 its first virtual meeting online on 27th March, 2020.

ASSESSMENT OF PERFORMANCE

Government is accountable to its citizens. It is obliged to ensure objective, fair, and transparent governance practices. The regulators carry out governance on behalf of the Government under a statutory framework. They are expected to have similar governance arrangements, as Government has, in delivery of their services. The GB of a regulatory organisation ensures that the regulator discharges its responsibilities in sync with its mandate, and in adherence to the highest governance standards.

The GB builds a bridge between the authority and the stakeholders and the society at large. It articulates the strategic intent for the organisation. It induces the top management to avoid parochial vision and take sustainable decisions that are in sync with the needs of the stakeholders and objectives of the organisation. It helps identify challenges and gaps proactively to make course corrections, to realise its full potential and remain relevant in the ever-evolving market environment. The effectiveness and efficiency of the GB translates into effectiveness and efficiency of the organisation. This calls upon the members of the GB to be committed, alert, inquisitive and pro-active to the cause of the organisation.

The composition of GB to a large extent determines its effectiveness. Section 189 of the IBC provides for its composition, which factors in two important governance principles, namely, the internal members are in a minority and the society has adequate representation. It has four *ex-officio* members representing the Government and the RBI, and two part-time members, as against three WTM and Chairperson. The GB conducts itself in accordance with the Board Regulations and carries out a yearly self-evaluation of its performance.

The GB evaluated its performance for the year 2019-20 broadly on three dimensions, namely:

- (a) **Board Composition and Quality**, which cover aspects such as expertise and experience of Board Members, strategy to achieve the 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; and
- (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.

To evaluate its own performance, the GB devised a Self-Evaluation Questionnaire comprising dimensions and parameters as identified above. All ten Members responded to the questionnaire on a scale of 1 (strongly disagree) to 5 (strongly agree). The responses were tabulated and an overall rating with respect to each dimension was arrived at. Table 71 summarises the performance of the GB based on responses of the members to the questionnaire.

The GB evaluated itself to be performing extremely well in all the three dimensions in 2019-20, though its overall score reduced from 94 per cent in the preceding year to 93 per cent. It performed particularly well in terms of operating with a strategic plan and set of measurable goals and priorities to fulfil its mandate. It met with sufficient regularity during the year with majority of Board Members recording attendance and participating actively in discussions. 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. Further, the GB engaged in quality discussions on strategic and general issues. 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

It has been the endeavour of the Government to make India a great place to do business. It established a modern corporate insolvency regime swiftly to rescue businesses in stress and thereby promote competition and innovation at

marketplace, and entrepreneurship and credit availability in the economy. The law has matured along with development of the institutional capacity in the ecosystem, with conclusion of several large and complex corporate insolvency proceedings. The Government has accelerated its drive to improve 'resolving insolvency' and ease of doing business further by enriching the insolvency regime with innovative options and features, with primary focus on time bound resolution of stress.

The IBBI has taken several steps to complement the efforts of the Government in the implementation of the Code. As the distance travelled in the last three years appears extremely long, the distance to be covered is now longer than ever. While further consolidating the progress made so far, it is time to push the envelope a little further, so as to resolve the stress of corporates and individuals more efficiently.

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, an increase in corporate and individual delinquencies is likely. There is a broad consensus that the measures in the insolvency space need to be taken in three phases to wade through the COVID-19 pandemic. The first phase envisages interim measures to prevent viable firms from prematurely being pushed into insolvency. The second phase envisages special out-of-court or hybrid workouts to deal with the likely wave of insolvencies. The third phase envisages implementing modern consumer bankruptcy frameworks. The insolvency reforms would deal with the after effects of the adverse effects of COVID-19 with the measures envisaged in all three phases. It would continue unabated till India celebrates failure in pursuit of the objectives enshrined in the Code. While this report peeks into the future at appropriate places, the following are likely to form part of the agenda in the next year.

Special Framework for MSMEs

Government of India, as many others across the world, has taken several such measures in the first phase. In anticipation of suffering of MSMEs, in the wake of COVID-19, it 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.

MSMEs are unique in many ways. A very formal, rigid framework for resolution is not always conducive for MSMEs. In recognition of their uniqueness, most countries have a special dispensation for their resolution within the insolvency framework (**Box 8**). Section 240A of the Code allows the Central Government, in the public interest, by notification, to provide a special insolvency resolution framework for MSMEs.

The Code makes provisions for insolvency resolution of corporate persons (companies and LLPs) and individuals (personal guarantors, proprietorship and partnership firms and other individuals). The processes for resolution of corporates and individuals are quite distinct. For example, the Code envisages a 'debtor-in-possession' model for

Table 71: Performance of Governing Board in 2019-20

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.	44	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.	43	Satisfactory
	The Board has adequate number of committees as may be required, with well-defined terms of reference, including reporting requirements.	46	Excellent
	Board meetings encourage a high quality of debate with healthy and probing discussions.	44	Excellent
	The Board sets itself objectives and measures its performance against them on an annual basis.	41	Satisfactory
	The Board gives direction to officers on how to achieve the goals by setting, referring to, or revising policies.	42	Satisfactory
Total Sectional Score		353/400 (88%)	Excellent
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.	49	Excellent
	Board meeting agenda and related background papers are concise and provide information of appropriate quality and detail to take decision on the matter.	49	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.	49	Excellent
	The minutes of Board meetings are clear, accurate, consistent, and complete and approved in timely manner.	48	Excellent
	Adequacy of attendance and participation by the Board members at the board meetings.	48	Excellent
	The amount of time spent on discussions on strategic and general issues is sufficient.	46	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		385/400 (96%)	Excellent
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.	48	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.	48	Excellent
	Board members make decisions objectively and collaboratively in the best interests of the stakeholders and feel collectively responsible for such decisions.	45	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.	48	Excellent
Total Sectional Score		281/300 (94%)	Excellent
Grand Total		1019/1100 (93%) (Excellent)	

individual insolvency, whereas a 'creditor-in-control model' for corporate insolvency. It does not envisage separate frameworks for resolution of MSMEs and other enterprises. While many MSMEs are proprietorship and partnership firms, some of them are corporate entities. This may imply that the framework for resolution of corporates applies to corporate MSMEs and the framework for resolution of proprietorship and

partnership firms applies to other MSMEs. Alternatively, the special framework under section 240A may borrow relevant features from both the regimes. For example, it may borrow the 'debtor-in-possession' model, for running the business of the CD, from individual insolvency resolution process, and retain the authority of the CoC to determine fate of the CD

Box 8: Special Insolvency Resolution Framework for MSMEs

There is an increasing recognition that addressing the distress of MSMEs is critical for economic growth. Formal MSMEs employ more than one-third of the world's total labour force, and generate economic value, representing around 52 per cent of private sector value added on a global scale.⁵⁷ They contribute nearly a third of India's GDP and provide employment to over 110 million workers⁵⁸. Recognising their uniqueness and their overall importance in the economy, many countries have a special dispensation for resolution of insolvencies of this category of firms. The Insolvency and Creditor/Debtor Regimes Task Force of the World Bank⁵⁹, however, believes that as a starting point, consideration should be given to addressing the particular issues that arise in the cases of MSME insolvency through specific MSME provisions in the existing insolvency frameworks.

The MSMEs are different from other firms in many ways. Among others, the distinguished features are:

(a) 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. Thus, an MSME is more prone to face liquidity crunch when one of its business partners goes bankrupt or delays payment, particularly when many of them do not have a portfolio of business partners.

(b) 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. Wherever loans are taken based on collateral, secured creditors typically focus on enforcement of security at the first sign of financial distress, often leading to loss of efficiencies in the system.

(c) 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 being cradles for entrepreneurs, who are catalysts for growth, timely insolvency resolution can help in rescuing both the firm and the entrepreneur.

(d) 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. Further, value of an MSME often lies in informal arrangements, centered around the existing management. The assets of the CD are often co-mingled with that of the promoters. 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.

(e) Market for resolution plans for MSMEs is limited and, at best 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.

For resolution of insolvencies of MSMEs, the World Bank's Insolvency and Creditor/Debtor Regimes Task Force recommends as under:

(a) As a preliminary position (final view to be taken after further investigation), the existing insolvency framework may be modified rather than having a separate regime for MSMEs. For many countries, simple modifications to existing insolvency frameworks could be the most practical and efficient method of considering the distinctiveness of MSMEs at this stage.

(b) The procedures for MSMEs, which are rapid, simple to follow (e.g., with easy-to-use forms), and have minimal court involvement, may improve participation, increase debt recovery, and enable entrepreneurs to get back to their activities faster.

(c) Financing, particularly fresh funds, are vital to survival of MSMEs, especially when they face financial distress.

(d) A regime that focuses on the period of imminent insolvency is particularly important for encouraging action at an early stage and for facilitating rescue of viable businesses, aspects that are critical to the procedural framework contemplated for MSME insolvencies. Therefore, a regime for pre-insolvency obligations can complement the procedural framework for resolution and enhance it.

(e) A regime that addresses the obligations of debtors, at times, approaching insolvency can respond to concerns such as debtor's moral hazard. It can deter irresponsible behaviour at times of financial distress and provide guidance to debtors about the appropriate actions they should take.

(f) An effective MSME insolvency system will work substantially better if the debtor provides the necessary information and is willing and available to collaborate throughout the entire procedure. In some cases, and in some jurisdictions, however, particularly in the less developed economies, the very existence of the information cannot be taken for granted.

(g) The majority of MSMEs facing insolvency are more likely to liquidate. Only a small fraction is likely to be able to take advantage of a restructuring regime. Therefore, the frameworks should not only focus on restructuring but should also consider that the majority of cases will end in liquidation.

(h) Since MSMEs often lack financial and legal sophistication and insolvency procedures frequently require production of financial and legal documents as well as navigation through complex legal processes, jurisdictions may consider furnishing the MSME debtor with non-judicial assistance. Such assistance could take the form of mediation, debt counselling, financial education, or the appointment of a trustee.

⁵⁷ World Bank Group Policy Research Paper 5538, 2016.

⁵⁸ Rathore, Udayan and Khanna, Shantanu (2020), "From Slowdown to Lockdown: Effects of the COVID-19 Crisis on Small Firms in India" (May 31). Available at SSRN:

<https://ssrn.com/abstract=3615339> or <http://dx.doi.org/10.2139/ssrn.3615339>

⁵⁹ Report on the Treatment of MSME Insolvency (2017), World Bank.

Box 9: Pre-pack Resolution

It appears that 'pre-pack' has no statutory definition. It is probably because it has evolved over the time, differently in different jurisdictions and every jurisdiction has a unique variant(s) of pre-pack, which allows the stakeholders to modify it further to an extent to suit their needs. It has different nomenclature such as pre-packaged insolvency resolution, pre-arranged insolvency resolution and pre-plan sale in the USA, pre-pack sale in the UK, SoA in Singapore, etc. As nomenclature suggests, it is a restructuring plan which is agreed upon by the debtor and its creditors prior to the insolvency filing, and then sanctioned by the court on an expedited basis.

Pre-pack has emerged as an innovative corporate rescue method that incorporates the virtues of both informal (out-of-court) and formal (judicial) insolvency proceedings. It seems to be the preferred hybrid framework, as it empowers stakeholders to resolve the stress of a company as going concern, with the minimum assistance of the State. It is considered fast, cost efficient, and effective in resolution of stress, with the least business disruptions and stigma attached with the formal insolvency process. It starts with an informal understanding, engages the stakeholders in between, and ends with a judicial blessing of the outcome, though the nuances differ across jurisdictions.

The following are key features of pre-pack, which make it advantageous as compared to regular insolvency process and which can be a source of concern:

- (a) Pre-pack usually requires services of an insolvency practitioner to assist the stakeholders in the conduct of the process. The extent of authority of the practitioner varies across jurisdictions;
- (b) Pre-pack envisages a consensual process - prior understanding among or approval by stakeholders about the course of action to address stress of a company, before invoking the formal part of the process. This ensures confidentiality of the process up to a point and minimises disputes and litigation;
- (c) The course of action could be a sale of business of the company or a reorganisation plan to resolve its stress. This requires varying levels of marketing depending on the context and purpose;
- (d) The understanding or approval could be limited to secured creditors, impaired creditors, or all creditors. This is arrived at after disclosures of relevant details to the stakeholders;
- (e) During the process, the company usually remains under the control and possession of the debtor (current promoters and management). This minimises disruption to business;
- (f) The formal part of the process usually enjoys moratorium;
- (g) The current promoters and management usually have the first right or the exclusive right to buy the business of the company or submit a reorganisation plan;
- (h) In case of sale to a connected party in the UK, the sale is usually validated by a set of experienced persons;
- (i) It does not always require approval of a court. Wherever it requires approval, the courts often get guided by commercial wisdom of the parties. In the USA, the courts rely on commercial wisdom of the management in case of pre-plan sales and on the commercial wisdom of the creditors in case of pre-packed or pre-arranged bankruptcies. In some jurisdictions, they carry out the same level of scrutiny as applicable to normal reorganisation plans; and
- (j) Outcome of pre-pack process, where approved by the court, is binding on all stakeholders.

Pre-pack combines 'the best of both worlds' so that insolvency proceedings cause minimal disruption to debtors' business activities by combining the efficiency, speed, cost, and flexibility of workouts with the binding effect and structure of formal insolvency proceedings. It offers several advantages as compared to the regular resolution process. Most of these emanate from two elements, namely, (a) the informal process, and (b) shorter time for closure. Since the process prior to commencement of formal proceeding is informal, pre-pack provides the stakeholders flexibility in working out a consensual, but efficient, strategy for effective resolution and value maximisation that may be difficult under the formal insolvency procedure. It takes less time because a substantial part of the proceedings is undertaken before the commencement of the formal proceeding by the court.

Pre-pack has its share of concerns such as 'serial pre-packing' (controlling parties buy the company successively to avoid debt rather than rescue the company), and lack of transparency. Private negotiation and understanding among a set of stakeholders prior to commencement of formal process, which contribute to advantages of pre-pack, is often a source of concern. Though emanated from market practice, it is getting formal and acquiring regulations to address the concerns.

Each of the variants of pre-pack in different jurisdictions has tailor-made features. It is neither possible to adopt all such features from all jurisdictions nor all the features fit into the scheme of the Code. Hence, none of these variants can be replicated in the Indian context, without dovetailing it from the Code and general legal framework. For example, a deal with the existing promoters irrespective of their track record may not be acceptable in view of section 29A. Indian version of pre-pack will be unique that learns lessons from other jurisdictions and builds an India-centric variant within the basic structure of the Code. With matured ecosystem and a fair debtor-creditor relationship in place, it is time for exploring pre-packs as an additional option for resolution of stress.

as is provided under the CIRP. Similarly, the special framework may neither provide for a public invitation of resolution plans from the market at large, as is the case in CIRP, nor limit the submission of resolution plans to only the debtor as is the case in individual insolvency resolution process. Rather, it may adopt the middle path, such that the debtor has some preference in submission of resolution plan.

Pre-pack Resolution

Stress is an outcome of market. Therefore, market should resolve stress on its own. The stakeholders may sit across a table, informally, to work out a resolution that meets their unique requirements. However, such informal approach is not popular as the stakeholders find it difficult to travel on an

Box 10: Fresh Start Process

Following the Great Recession of 2008, many countries undertook reforms to make their personal insolvency laws more efficient to minimise ill effects of such crises in the future.⁶⁰ In the US, UK and France, international financial institutions paid greater attention to the significance of household debt in contributing to financial instability and the role of individual insolvency law in providing a new beginning to debtors.⁶¹ Many jurisdictions built in social insurance within individual insolvency. For example, the UK allows an underprivileged debtor to apply for a debt relief order to avail a discharge from their debts.

The Code provides for FSP. Only an eligible debtor can file an application for FSP for discharge of her debt. A RP examines the application and submits a report to the AA, recommending acceptance or rejection of the application. On consideration of the report of the RP, the AA passes an order, admitting or rejecting the application. If an application is admitted, the RP examines objections that any creditor may have in discharge of the debtor's debts. Based on this examination, the RP may submit final list of debts to be discharged to the AA. On conclusion of the process, the AA passes an order for the discharge of the debtor or revokes the admission of the application. The discharge order writes off the qualified debts, allowing the debtor to start afresh, subject to an entry in the credit history.

The ILC in its February, 2020 report observed that FSP with its current provisions cannot be implemented smoothly. Considering the outreach of the legislation, it suggested amendment to the Code to incorporate new digital mechanism for the same, noting that *"The aim of the fresh start process is to provide a low-cost, objective and quick solution for discharging debts of low-income debtors who are unable to repay their debts. Therefore, it is essential that - (i) the design of the process ensures that it is accessible to debtors across the country; (ii) the process is not overly burdensome on the debtor and the costs of the process are low; and (iii) the process provides timely remedy to debtors from being unable to repay their debts. It was brought to the notice of the Committee that the current design of the fresh start process may not achieve these objectives."* Considering the above, the Committee considered certain aspects of the design of the FSP that may require review.

To ensure that the objectives of FSP are met, the ILC has recommended the following modifications to FSP:

(a) It may be appropriate to provide an administrative body as the supervising authority in the FSP, instead of DRTs, subject to the requirements of constitutional law. It may be appropriate to designate the IBBI as the supervising authority for the FSP. Dedicated officers should be appointed to discharge the functions in relation to supervision of the FSP. The Code should be amended to allow appointment of Adjudicating Officers (AOs) in the IBBI. Such AOs should supervise the FSP instead of DRTs. The AO will oversee the FSP, including deciding if applications should be admitted, and deciding the final list of qualifying debts to be discharged. Further, orders of the AO may be appealed to the DRAT.

(b) To implement an effective and accessible FSP regime, there is a need to develop a broad cadre of insolvency advisors that can ably assist and guide low-income debtors. Such a cadre of insolvency advisors will require presence up to the district-level across the country. The insolvency advisors will not require the same level of qualification as an IP. They will, however, need to fulfil certain minimum, standard qualifications and requirements that render them capable enough to provide aid and advice to debtors on the FSP. The following persons may be eligible to be insolvency advisors: (i) persons who are presently registered with the IBBI as IPs; (ii) registered cost accountants; chartered accountants; company secretaries; and (iii) such other persons as notified by the Central Government. The Code may be amended to allow insolvency advisors to be appointed under the FSP and to enable the IBBI to regulate them.

(c) The insolvency advisors should be paid a part of the application fee, as their remuneration, for the FSP. The Central Government may prescribe details through a fixed fee chart (that may be regularly revised). The fee should be kept low enough to ensure that it does not discourage utilisation of the FSP.

(d) In line with the objective of the Government to promote e-filing and to increase accessibility to the FSP, it should be conducted through an online platform. Such a platform will allow conduct of the whole FSP digitally, including finding an insolvency advisor digitally; filing online application for the FSP; submitting objections and responses digitally; communication of orders and other directions by the AO digitally; and allowing for electronic communication and hearings, including through video-conferencing, between debtors, creditors and the AO.

(e) The Government may consider installing booths in various districts where debtors can receive aid and assistance for electronically filing a fresh start application.

unguided path and the outcomes do not enjoy sanctity and benefits of a formal framework. It is, therefore, the endeavour of the State to provide market with multiple competing options for resolution of stress. There are two court supervised statutory options, namely, (a) CIRP under the Code, and (b) scheme of compromise or arrangement (SoA) under the Companies Act, 2013, and one out-of-court option, namely, the RBI's prudential framework for resolution of stressed assets. These frameworks provide a guided path for resolution, define the role of stakeholders therein, and confer certain benefits.

Of the formal frameworks, CIRP is more comprehensive in terms of parties involved and scope and strategies for resolution of stress. It offers certain advantages and privileges

such as moratorium during resolution period, binding nature of resolution plan, clean slate post resolution, regulatory benefits, etc., which are not available in case of other options. It has, however, certain difficulties - it is not available in respect of all defaults and the availability of RAs is a concern in the wake of COVID-19. This has two consequences - either the company remains under stress for too long without any resolution or the creditors use every means to recover their dues. In either case, the company may not be able to survive.

A formal framework has a set process and, therefore, some amount of rigidities, while market prefers flexibility to work out a tailor-made resolution best suited to the circumstances. This calls for a semi-formal or hybrid option which has an

⁶⁰ Iain Ramsay (2017), 'Personal Insolvency in the 21st Century A Comparative Analysis of the US and Europe'.

⁶¹ *Ibid.*

element of informality, but sanctity and advantages of a formal process. In a sense, the formal and informal frameworks are two ends of a spectrum and a variety of hybrid structures, that blends elements from both types of resolutions, are available internationally between the two ends to meet the convenience of stakeholders. The most popular form of such a semi-formal option is pre-pack (**Box 9**). The insolvency laws around the world provide a variant of pre-pack, in addition to regular resolution process. While prepack is a natural step in the evolution of insolvency regimes, it is considered an essential measure in the second phase to address COVID-19 pains. With the likelihood of increase in insolvencies as suspension on initiation of CIRP expires, coupled with the limited capacity of the AA, it is the right time to introduce pre-packs in India.

Fresh Start Process

The stress among the corporates as well as lockdowns have caused unprecedented miseries to individuals, particularly those with limited means. FSP, as a measure in the third phase, has potential to ameliorate COVID-19 pains of such individuals to a large extent.

Usually, the insolvency processes enable creditors to realise at least a part of their dues. However, the FSP discharges debtors (who have an annual income \leq Rs.60,000, assets \leq Rs.20,000 and debts \leq Rs.35,000 and do not have a dwelling unit) from qualifying debts and thereby protects them from coercive actions of creditors. The chances of recovery in such cases are so low that the cost of resolving the insolvency becomes an additional burden to either the debtor or the creditor or the State. FSP like process exists for marginalised debtors in many other jurisdictions (**Box 10**). It tries to pull honest, but unfortunate debtors, out of a trap for their rehabilitation in the society. Further, by providing a stay on legal action and making the process institutionalised, it tries to safeguard debtors from coercive practices that creditors may engage in to recover their debts.

FSP, at times, is misconstrued as a loan waiver scheme. Unlike most large-scale loan waivers, the FSP allows discharge of debts from non-institutional creditors, such as moneylenders, pawnbrokers, friends and even relatives. FSP provides relief to only those who need, unlike loan waiver which provides relief even to those who do not need. It neither hurts the public exchequer nor impacts the credit culture.

The Code provides for a Court supervised and IP assisted FSP. On conclusion of the process, the AA passes a discharge order, which writes off the qualified debts, allowing the debtor to start afresh, subject to an entry in the credit history. The ILC has suggested a redesign of FSP framework to make it accessible, simpler, quick, and cost effective. It recommended three major changes: (a) Shift from quasi-judicial process to an administrative process, whereby dedicated Debt Relief Officers will oversee the FSP and issue debt relief orders; (b) Shift from sophisticated IPs to less costly insolvency advisers, who will assist and guide eligible debtors; and (c) Implementation of the entire process on an online platform accessible from anywhere.

Valuation Profession

A market economy requires valuations of assets to facilitate a variety of transactions. For example, the CIRP under the Code envisages estimation of fair value and liquidation value of the assets of the CD. These values serve as reference for evaluation of choices, including liquidation, and selection of the choice that decides the fate of the CD, and consequently of the stakeholders. A wrong valuation may liquidate an otherwise viable company, which may be unfortunate for an economy. A banker determines the amount of loan that can be sanctioned against security of an asset. It may not have adequate protection, where it gives loan against the security of an asset whose value is overestimated. The decisions arising from use of inappropriate values, in addition to causing unfair gain or loss to parties, has the potential to distort market and misallocate resources which may impinge upon economic growth.

The valuation profession has a long history in India. It has been primarily driven by users of valuations services. Different statutes - banking, securities, tax, company, insolvency - require valuation for a variety of purposes. Each statute, acting as a separate island, focusses on what needs to be valued, who can render valuation services and the manner of such valuation. Several self-regulating organisations have generally tried to build expertise to meet the needs of users. Each of these, acting as a separate island, promotes the interests of their respective members. Such islands on both sides of demand and supply, most of which are too small and lack capacity and motivation, have not engendered holistic development of the profession. Since anyone and everyone could join an island, the academic interest in the profession is limited. Despite these limitations, the profession has developed as an independent multi-disciplinary profession. The Valuation Rules provides 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.

The Government constituted a CoE to examine the need for an institutional framework for regulation and development of valuation professionals. It took note of attempts made in the past to provide an institutional framework for the valuation profession, particularly the draft Valuation Professionals Bill, 2008. It studied the progress in implementation and experience with the implementation of the Valuation Rules. It perused the institutional framework for other professions in the country and of the valuation profession in other jurisdictions. It also considered the contemporary thought on regulatory architecture and design and had extensive consultation with stakeholders. It has, *inter alia*, recommended an institutional framework for valuation profession that envisages an exclusive statute to provide for the establishment of the National Institute of Valuers 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, with a view to ensure that valuers enjoy an enviable reputation of the stakeholders, while being accountable for their services.

An institutional framework for oversight of a profession has invariably two elements, namely, regulation of profession and

Box 11: Regulating Professions

Right to regulate practice comes from right of the people to protect themselves.⁶² The regulation of a profession arises from the need to balance the rights of professionals to practice a profession in a free and fair market with the rights of users to receive responsible professional services. If the rights of users are unreasonably stronger as compared to those of the professionals or vice versa, the profession is unlikely to have a healthy growth.

The purpose of regulation is not to displace competitive pressures, but to correct for market imperfections which produce sub-optimal outcomes and distort consumer choice. The rationale behind regulation, therefore, is to increase the efficiency of markets and is based on three principal strands of analysis⁶³: (a) The correction of identified market imperfections and failures that reduce consumer welfare and distort competitive and market mechanisms; (b) There are potentially substantial economies of scale to be derived from collective regulation and supervision of the regulated; and (c) Signaling minimum standards of quality enhances confidence in markets.

Economists believe that the only reason for state intervention is market failure, which occurs where the market has presence of any of the three ingredients, namely, information asymmetry, externalities and excess market power. Market for services rendered by most professions have all the three ingredients of market failure, though of different intensity. Information asymmetry arises because the professional has all the information but no clear incentive to provide the same to the user. The user needs the information, but his access to the same is limited. Even where he has access, he may not have the competence to assess the quality of service offered and evaluate pricing, given that the services are highly specialised. Further, professional services are 'experience goods' / 'trust goods', the quality of which cannot be observed until the service is used. The user often cannot inspect the service prior to the purchase. Externalities, not of the typical kind, arise when the impact of services provided by a professional goes much beyond the professional and the user. Businesses make finance/investment and other strategic decisions based on valuations. Viability of businesses and their very existence are assessed based on values determined by professionals. Financial crises are often attributed to faulty valuations. There were instances of abuse of market power, particularly in case of self-regulated professions, where there was a quantitative restriction on the number of practitioners. Fellow professionals, formally organised or not, tend to act in the interest of one another giving them control over quality and prices. Organised professional firms, particularly networked ones, could have market power. When juxtaposed with the position of the professionals, the user is almost powerless. Regulations need to address market failures arising from all three ingredients.

An additional consideration weighs in favour of regulation of professions. The consensus understanding is that users of professional services could be inadequately informed and unwise, and hence susceptible to manipulation by professionals. The users are unaware of the options available to them; they often do not know how to assess the quality of and price for a service; they are misled by advertisements and promotions; they are not an organised group; they lack bargaining power; etc. Specialisation and advances in knowledge make it increasingly difficult for them to judge the quality of professional services. The regulator, as an agent of all existing and prospective users of professional services, is expected to protect their interests. A recent example is the National Financial Reporting Authority (NFRA) which has only one mandate, that is, to protect the public interest and the interests of investors, creditors and others associated with the companies or bodies corporate by establishing high quality standards of accounting and auditing and exercising effective oversight of accounting functions performed by the companies and bodies corporate and auditing functions performed by auditors. This probably explains why the right to practice a profession carries a duty to protect the society and it is not a privilege for the benefit of holder.

There are a host of standard measures to address market failures. Information asymmetry is addressed by provision of information such as disclosures, including disclosure of conflict of interests, minimum standards of services by professionals and measures to protect users even where they do not have competence to process information. Externality is addressed by provision of capable, public spirited and fit and proper persons joining the profession and holding them accountable for their services. Market power is addressed by provision of free entry to the profession whereby an individual meeting the eligibility norms joins the profession, and no one has market power. A host of proactive and remedial measures are taken to protect the interests of users, including disgorgement of unlawful gains from the erring professional and compensating the losing users. An increase in the liability risk, including criminal liability, over and above the reputational risk often deters a professional from being negligent. An all-encompassing measure having potential to address all kinds of market failure is the prescription of qualifications for entry into and disqualifications for exit from the profession along with continuous monitoring of conduct of professionals.

development of profession. Unless a profession develops, it cannot be regulated. In the absence of regulation, a profession does not develop. Regulation is necessary to develop a profession and once the profession develops, it needs to be regulated. Thus, development and regulation feed on each other in a virtuous circle for an orderly growth of a

profession. That probably explains why the general framework for governance of professions has been establishment of an authority with twin responsibilities of developing and regulating a profession. However, the thrust on regulation relative to development has been increasing with shift from protection of interests of professionals to protection of consumers (**Box 11**).

⁶² 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", California and western medicine, 43(2).

⁶³ Liewellyn, David T (1995), "Regulation of Retail Investment Services", Economic Affairs, Vol. 15, Spring 1995.



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. 2019-20 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 28th October, 2020. Tables 72 and 73 present a summary of financial performance of the Board.

IBBI received a total grant of Rs. 2150.00 lakh in 2019-20 from Government. It earned a fee of Rs. 599.22 lakh from

service providers. It spent a total of Rs. 2665.92 lakh in 2019-20.

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. However, the industry of regulated professionals and entities focused on bankruptcy and insolvency will develop only over time, while the Board requires to perform its supervisory functions from the start. As a result, there would be a period in which the Board would need to be funded by the Government.

The WG on 'Building the Insolvency and Bankruptcy Board of India' recognised that in the initial phase of the building up of 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.

Table 72: Income and Expenditure Statement for F.Y. 2019-20

(Rs. lakh)

Income	2018-19	2019-20	Expenditure (out of)	2018-19	2019-20
Grants-in-Aid-Salaries	963.18	1200.00	Grants-in-Aid-Salaries	963.18	1200.00
Grants-in-Aid-Capital	--	--	Grants-in-Aid-Capital	--	123.54
Grants-in- Aid- General	1107.00	950.00	Grants-in- Aid- General	1107.00	950.00
Internal Revenue	551.83	599.22	Internal Revenue	212.29	392.38
Total	2622.01	2749.22	Total	2282.47	2665.92

Table 73: Fund of Insolvency and Bankruptcy Board as on 31st March, 2020

(Rs. lakh)

Head	2018-19				2019-20		
	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	-	963.18	963.18	-	1200.00	1200.00	-
Grants-in-Aid-Capital	123.54	-	-	123.54	-	123.54	-
Grants-in-Aid-General	-	1107.00	1107.00	-	950.00	950.00	-
Internal Revenue	-	551.83	212.29	339.54	599.22	392.38	546.38
Total	123.54	2622.01	2282.47	463.08	2749.22	2665.92	546.38



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 74 presents the details of compliances by the Board.

Table 74: Statement of Compliance with Statutory Obligations

Statute	Compliances Required	Status of Compliances
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. However, the Board received three references from AA in 2019-20 in this regard and responded to all of them promptly.
	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 prepared and shared two panels of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) Guidelines, 2019' and under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2019' for appointments during July-December, 2019 and January-June, 2020 respectively by the AA directly, without referring to the Board. However, the Board received one reference from AA in 2019-20 in this regard and responded to it within the stipulated time.
	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 56 references from AA in 2019-20 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 prepared and shared two panels of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) Guidelines, 2019' and under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2019' for appointments during July-December, 2019 and January-June, 2020 respectively by the AA directly, without referring to the Board. However, the Board received nine references from AA in 2019-20 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 one direction from AA in 2019-20 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 prepared and shared a panel of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2019' for appointments during January-June, 2020 by the AA directly, without referring to the Board. However, the Board received one direction from AA in 2019-20 in this regard and responded to it within the stipulated time.
	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.	The Board prepared and shared a panel of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2019' for appointments during January-June, 2020 by the AA directly, without any reference to the Board.
	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.	The Board has provided an online facility to the AA to check the disciplinary status of the IP, thereby eliminating the delay.
	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.	The Board prepared and shared a panel of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2019' for appointments during January-June, 2020 by the AA directly, without referring to the Board.

Statute	Compliances Required	Status of Compliances
	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.	The Board prepared and shared a panel of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2019' for appointments during January-June, 2020 by the AA directly, without referring to the Board.
	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.	The Board prepared and shared a panel of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2019' for appointments during January - June, 2020 by the AA directly, without referring to the Board.
	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).	The Board prepared and shared a panel of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2019' for appointments during January-June, 2020 by the AA directly, without referring to the Board.
	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.	The Board prepared and shared a panel of IPs under the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2019' for appointments during January - June, 2020 by the AA directly, without referring to the Board.
	Section 207 read with the IP Regulations: An application for registration as an IP may be rejected after providing an opportunity to explain why the application should be accepted.	The Board rejected three applications for registration as IP in 2019-20. It rejected all these applications, after considering written and oral submissions of the applicants, through a speaking order.
	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 1660 complaints during 2019-20 and disposed of 1393 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 55 inspections during 2019-20 and concluded 27 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.	The DC disposed of seven SCNs during 2019-20. It disposed of all these SCNs, after providing an opportunity of being heard, through a reasoned order.
	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.	The Board prepared annual accounts for 2018-19 in accordance with the IBBI (Form of Annual Statement of Accounts) Rules, 2018. The C&AG audited the same and forwarded the audit report vide its letter dated 8 th November, 2019. The Board similarly prepared annual accounts for 2019-20. The C&AG audited the same and forwarded the audit report vide its letter dated 28 th October, 2020.
	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 30 th June, 2020.
	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 24 th January, 2017. It amended the said order on 25 th April, 2018.
	Section 236: The Board may file complaints.	The Board filed 15 complaints during 2019-20 with the Special Court.

Statute	Compliances Required	Status of Compliances																																
	<p>Section 240: The Board needs to make Regulations on matters specified in the section.</p>	<p>The Board made two new Regulations and 13 amendment Regulations during 2019-20, with the approval of the Governing Board.</p> <p>As of 31st March 2020, the Board has framed:</p> <p>(a) six Regulations to regulate the service providers (IPs, IPEs, IPAs and IUs);</p> <p>(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)</p> <p>(c) four Regulations to regulate internal functioning of the Board.</p>																																
<p>The Central Goods and Services Tax Act, 2017 (GST)</p>	<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 border="1" data-bbox="391 870 786 1013"> <thead> <tr> <th>For the month of</th> <th>Last date</th> </tr> </thead> <tbody> <tr> <td>April, 2019 -February, 2020</td> <td>11th day of the succeeding month</td> </tr> <tr> <td>March, 2020</td> <td>30th June, 2020</td> </tr> </tbody> </table>	For the month of	Last date	April, 2019 -February, 2020	11 th day of the succeeding month	March, 2020	30 th June, 2020	<p>The Board filed the details as under:</p> <table border="1" data-bbox="889 680 1425 1183"> <thead> <tr> <th>For the month of</th> <th>Date of Filing</th> </tr> </thead> <tbody> <tr><td>April, 2019</td><td>11th May, 2019</td></tr> <tr><td>May, 2019</td><td>11th June, 2019</td></tr> <tr><td>June, 2019</td><td>11th July, 2019</td></tr> <tr><td>July, 2019</td><td>9th August, 2019</td></tr> <tr><td>August, 2019</td><td>11th September, 2019</td></tr> <tr><td>September, 2019</td><td>11th October, 2019</td></tr> <tr><td>October, 2019</td><td>11th November, 2019</td></tr> <tr><td>November, 2019</td><td>10th December, 2019</td></tr> <tr><td>December, 2019</td><td>10th January, 2020</td></tr> <tr><td>January, 2020</td><td>11th February, 2020</td></tr> <tr><td>February, 2020</td><td>11th March, 2020</td></tr> <tr><td>March, 2020</td><td>4th May, 2020</td></tr> </tbody> </table>	For the month of	Date of Filing	April, 2019	11 th May, 2019	May, 2019	11 th June, 2019	June, 2019	11 th July, 2019	July, 2019	9 th August, 2019	August, 2019	11 th September, 2019	September, 2019	11 th October, 2019	October, 2019	11 th November, 2019	November, 2019	10 th December, 2019	December, 2019	10 th January, 2020	January, 2020	11 th February, 2020	February, 2020	11 th March, 2020	March, 2020	4 th May, 2020
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	<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 border="1" data-bbox="391 1442 786 1585"> <thead> <tr> <th>For the month of</th> <th>Last date</th> </tr> </thead> <tbody> <tr> <td>April, 2019 - February, 2020</td> <td>20th day of the succeeding month</td> </tr> <tr> <td>March, 2020</td> <td>5th May, 2020.</td> </tr> </tbody> </table>	For the month of	Last date	April, 2019 - February, 2020	20 th day of the succeeding month	March, 2020	5 th May, 2020.	<p>The Board filed the details as under:</p> <table border="1" data-bbox="889 1256 1425 1759"> <thead> <tr> <th>For the month of</th> <th>Date of Filing</th> </tr> </thead> <tbody> <tr><td>April, 2019</td><td>21st May, 2019</td></tr> <tr><td>May, 2019</td><td>20th June, 2019</td></tr> <tr><td>June, 2019</td><td>18th July, 2019</td></tr> <tr><td>July, 2019</td><td>20th August, 2019</td></tr> <tr><td>August, 2019</td><td>13th September, 2019</td></tr> <tr><td>September, 2019</td><td>14th October, 2019</td></tr> <tr><td>October, 2019</td><td>20th November, 2019</td></tr> <tr><td>November, 2019</td><td>16th December, 2019</td></tr> <tr><td>December, 2019</td><td>20th January, 2020</td></tr> <tr><td>January, 2020</td><td>19th February, 2020</td></tr> <tr><td>February, 2020</td><td>20th March, 2020</td></tr> <tr><td>March, 2020</td><td>4th May, 2020</td></tr> </tbody> </table>	For the month of	Date of Filing	April, 2019	21 st May, 2019	May, 2019	20 th June, 2019	June, 2019	18 th July, 2019	July, 2019	20 th August, 2019	August, 2019	13 th September, 2019	September, 2019	14 th October, 2019	October, 2019	20 th November, 2019	November, 2019	16 th December, 2019	December, 2019	20 th January, 2020	January, 2020	19 th February, 2020	February, 2020	20 th March, 2020	March, 2020	4 th May, 2020
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	<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 2018-19 was extended till 31st December, 2020.</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 2018-19 was extended till 31st December, 2020.</p> <p>The last date for 2019-20 was extended till 28th February, 2021</p>	<p>The Board filed the return for 2018-19 on 14th October, 2020 and for 2019-20 on 16th February 2021.</p>																																

Statute	Compliances Required	Status of Compliances																																																				
	<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 July, 2019 was 31st August, 2019 and for the March, 2020 was 30th June, 2020.</p>	<p>The Board filed the details as under:</p> <table border="1" data-bbox="885 274 1419 780"> <thead> <tr> <th>For the month of</th> <th>Date of filing the return</th> </tr> </thead> <tbody> <tr><td>April, 2019</td><td>10th June, 2019</td></tr> <tr><td>May, 2019</td><td>10th June, 2019</td></tr> <tr><td>June, 2019</td><td>9th July, 2019</td></tr> <tr><td>July, 2019</td><td>7th August, 2019</td></tr> <tr><td>August, 2019</td><td>6th September, 2019</td></tr> <tr><td>September, 2019</td><td>4th October, 2019</td></tr> <tr><td>October, 2019</td><td>8th November, 2019</td></tr> <tr><td>November, 2019</td><td>9th December, 2019</td></tr> <tr><td>December, 2019</td><td>8th January, 2020</td></tr> <tr><td>January, 2020</td><td>10th February, 2020</td></tr> <tr><td>February, 2020</td><td>9th March, 2020</td></tr> <tr><td>March, 2020</td><td>15th June, 2020</td></tr> </tbody> </table>	For the month of	Date of filing the return	April, 2019	10 th June, 2019	May, 2019	10 th June, 2019	June, 2019	9 th July, 2019	July, 2019	7 th August, 2019	August, 2019	6 th September, 2019	September, 2019	4 th October, 2019	October, 2019	8 th November, 2019	November, 2019	9 th December, 2019	December, 2019	8 th January, 2020	January, 2020	10 th February, 2020	February, 2020	9 th March, 2020	March, 2020	15 th June, 2020																										
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<p>The Income-tax Act, 1961</p>	<p>Section 139: The Board shall file the income tax return for every financial year.</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 border="1" data-bbox="391 1038 786 1208"> <thead> <tr> <th>For the month of</th> <th>Last Date</th> </tr> </thead> <tbody> <tr> <td>April, 2019 - February, 2020</td> <td>Within seven days from the end of the month</td> </tr> <tr> <td>March, 2020</td> <td>30th April, 2020</td> </tr> </tbody> </table> <p>Rule 31A of the Income-tax Rules, 1962: The Board shall furnish a quarterly statement of deduction of tax as under:</p> <table border="1" data-bbox="370 1567 807 1759"> <thead> <tr> <th>For quarter ending</th> <th>Last Date</th> </tr> </thead> <tbody> <tr> <td>30th June, 2019</td> <td>31st July, 2019</td> </tr> <tr> <td>30th September, 2019</td> <td>31st October, 2019</td> </tr> <tr> <td>31st December, 2019</td> <td>31st January, 2020</td> </tr> <tr> <td>31st March, 2020</td> <td>31st July, 2020</td> </tr> </tbody> </table>	For the month of	Last Date	April, 2019 - February, 2020	Within seven days from the end of the month	March, 2020	30 th April, 2020	For quarter ending	Last Date	30 th June, 2019	31 st July, 2019	30 th September, 2019	31 st October, 2019	31 st December, 2019	31 st January, 2020	31 st March, 2020	31 st July, 2020	<p>The Board filed the income-tax return for the financial year 2019-20 on 12th November, 2020.</p> <p>The Board deducted TDS and deposited the same every month as under:</p> <table border="1" data-bbox="885 943 1419 1449"> <thead> <tr> <th>For the month of</th> <th>Date of payment</th> </tr> </thead> <tbody> <tr><td>April, 2019</td><td>3rd May, 2019</td></tr> <tr><td>May, 2019</td><td>6th June, 2019</td></tr> <tr><td>June, 2019</td><td>4th July, 2019</td></tr> <tr><td>July, 2019</td><td>5th August, 2019</td></tr> <tr><td>August, 2019</td><td>5th September, 2019</td></tr> <tr><td>September, 2019</td><td>4th October, 2019</td></tr> <tr><td>October, 2019</td><td>5th November, 2019</td></tr> <tr><td>November, 2019</td><td>5th December, 2019</td></tr> <tr><td>December, 2019</td><td>6th January, 2020</td></tr> <tr><td>January, 2020</td><td>6th February, 2020</td></tr> <tr><td>February, 2020</td><td>6th March, 2020</td></tr> <tr><td>March, 2020</td><td>30th April, 2020</td></tr> </tbody> </table> <p>The Board filed the statements of tax deducted at source as under:</p> <table border="1" data-bbox="885 1521 1365 1714"> <thead> <tr> <th>For the quarter ending</th> <th>Date of Filing</th> </tr> </thead> <tbody> <tr><td>30th June, 2019</td><td>26th July, 2019</td></tr> <tr><td>30th September, 2019</td><td>30th October, 2019</td></tr> <tr><td>31st December, 2019</td><td>25th January, 2020</td></tr> <tr><td>31st March, 2020</td><td>16th July, 2020.</td></tr> </tbody> </table>	For the month of	Date of payment	April, 2019	3 rd May, 2019	May, 2019	6 th June, 2019	June, 2019	4 th July, 2019	July, 2019	5 th August, 2019	August, 2019	5 th September, 2019	September, 2019	4 th October, 2019	October, 2019	5 th November, 2019	November, 2019	5 th December, 2019	December, 2019	6 th January, 2020	January, 2020	6 th February, 2020	February, 2020	6 th March, 2020	March, 2020	30 th April, 2020	For the quarter ending	Date of Filing	30 th June, 2019	26 th July, 2019	30 th September, 2019	30 th October, 2019	31 st December, 2019	25 th January, 2020	31 st March, 2020	16 th July, 2020.
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<p>The Right to Information Act, 2005</p>	<p>Section 4(1)(b): The Board shall make <i>suo moto</i> disclosures on the specified matters on its web site.</p> <p>Section 7(1): The CPIO shall provide information to applicants within 30 days of receipt of application.</p> <p>Section 19(6): The FAA shall dispose of appeals within 45 days.</p>	<p>The Board updated the disclosures made in accordance with section 4(1)(b) of the RTI Act, 2005.</p> <p>The CPIO provided information to 232 applicants. It provided the information in all cases within the timelines laid down by the RTI Act, 2005.</p> <p>The FAA disposed of 19 appeals received during the year within the stipulated time.</p>																																																				
<p>The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013</p>	<p>The Board shall constitute the Internal Complaints Committee.</p>	<p>The Board re-constituted the Committee on 27th February, 2019.</p>																																																				

Statute	Compliances Required	Status of Compliances
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 2019-20 with MCA on 5 th September, 2019.
	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 Board remitted the interest of Rs. 19,14,977 earned on Grants-in-aid to the CFI on 3 rd July, 2020.
	Rule 234: As a grantee institution, the Board is required to maintain a Register of Grants and submit utilisation certificate every financial year. 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.	The Board maintains a Register of Grants and submitted the utilisation certificate for 2019-20 on 3 rd July, 2020.
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 3 rd September, 2020. However, this Act has now been abolished.



ORGANISATIONAL MATTERS

RESPONSIBILITY CENTRES

Governing Board

The Central Government vide notification dated 19th September, 2019, appointed Mr. B. Sriram, Former Managing Director & CEO, IDBI Bank Limited and Dr. Krishnamurthy Subramanian, Chief Economic Adviser, Government of India as Part-time Members of the IBBI with effect from 4th July, 2019 and 8th July, 2019 respectively.

The Central Government vide notification dated 13th December, 2019, appointed Mr. Sudhaker Shukla as WTM of the IBBI with effect from 14th November, 2019. He has served as a member of the Indian Economic Service for over 34 years in various capacities across Ministries and Departments of the Government of India. His last assignment was as Chief Economic Adviser in the Ministry of Rural Development.

Table 75 presents the details of the members of the GB as on 31st March, 2020.

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 on 26th June, 2018 as under:

- Mr. Gyaneshwar Kumar Singh as Chairperson;
- Mr. Unnikrishnan A., Member, and
- WTM in-charge of Finance and Accounts of the Board.

The Audit Committee met twice in 2019-20. It reviewed the Report of the Internal Auditors of the Board for half year ended on 31st March, 2019 and half year ended on 30th September,

2019 and separate audit report of the C&AG on the annual accounts of the Board for the year 2018-19. It approved the financial statements of the year 2018-19 and half-yearly financial statements for half-years ended on 31st March, 2019 and 30th September, 2019.

Disciplinary Committee

The Code envisages a DC comprising WTM to consider and dispose of SCNs under section 220(1) of the Code. The DC was constituted on 1st February, 2017 and has been reconstituted as is indicated in Table 76.

Table 76: 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

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 30th January, 2017. In accordance with the said Regulations, the IBBI has the following ACs at the end of March, 2020:

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

Table 75: Governing Board of IBBI as on 31st March, 2020

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	Ex-officio 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 Saxena	Adviser, MoF	Ex-officio Member	MoF	24.05.17
Mr. Gyaneshwar Kumar Singh	Joint Secretary, MCA	Ex-officio Member	MCA	22.02.18
Dr. Rajiv Mani	Joint Secretary, MoL&J	Ex-officio 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

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

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

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 1st September, 2017 to inquire into the complaints of sexual harassment of women employees. The Committee comprises as under as on 31st March, 2020:

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

(b) Ms. Bina Jain, External Expert;

(c) Dr. Anuradha Guru, ED, IBBI as Member; and

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

The IBBI organised a workshop for its officers on 20th November, 2019 to acquaint them with the important provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It was delivered by Ms. Kuljit Kaur, an NGO worker in this area and Ms. Bina Jain, external expert on the ICC.

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 the 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 3 consultants from disciplines of Economics/Public Policy, Law and Business Management, on contractual basis, as on 31st March, 2020.

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 2019-20, the IBBI continued to take officers on deputation at senior levels. Table 77 presents the actual strength of employees vis-à-vis the approved strength as on 31st March, 2020.

Table 77: Employees of IBBI

Position	Actual Strength as on 31 st March, 2019	As on 31 st March, 2020		
		Sanctioned Strength	Actual Strength	Mode of Recruitment
Executive Director	03	04	04	Deputation
GM / CGM	06	12	04	Deputation
AGM / DGM	05	12	08	Deputation
Manager / AMs	18	24	20	17 Direct Recruit officers and 3 on Deputation
Assistants	00	10	00	NA
Total	34	62	36	

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 2019-20, 18 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 14th September, 2019 to 30th September, 2019. The employees participated in various activities such as crossword puzzle, poem, stories and songs in Hindi with great enthusiasm and won prizes.

On its Annual Day on 1st October, 2020, the Board released the Hindi translation of the Code for the benefit of a larger number of stakeholders in the country.

Rashtriya Ekta Diwas

The officers took the *Rashtriya Ekta Diwas* pledge on 31st October, 2019, serving to reinforce the commitment to strengthen the security, unity, and integrity of nation.

Samvidhan Diwas

The IBBI observed *Samvidhan Diwas* (Constitution Day) on 26th November, 2019 to commemorate the adoption of the Constitution of India. The officers read the Preamble of the Constitution on this occasion.

Vigilance Awareness Week, 2019

The IBBI observed Vigilance week from 28th October, 2019 to 2nd November, 2019 on the theme 'Integrity – A way of life'. The officers took the 'Integrity Pledge' on 28th October, 2019. The IBBI received an integrity pledge certificate from the Central Vigilance Commission.

Office Closure for Lockdown

In pursuance of an Order dated 24th March, 2020 of the MCA ordering closure of all offices of MCA and autonomous bodies under MCA in the view of health hazard posed by the COVID-19 pandemic, the offices of IBBI were closed for a period of 21 days with effect from 25th March, 2020. However, all officers and employees of IBBI continued to work from home as it was fully equipped with e-Office.

Organisational Structure

The GB, in its meeting held on 16th January, 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

The importance of strategic planning for any organisation is well recognised. It helps delineate the purpose and measurable goals and hence provides a sense of direction to an organisation. For a regulator, like IBBI, which is working on various fronts, it is important for the senior management to have a strategic focus over the short, medium, and long term, and have a shared vision for the organisation. 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 fourth such strategy meet scheduled for 27th - 28th March, 2020 could not take place due to the COVID-19 outbreak.

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. Table 78 presents details of lectures delivered by them during 2019-20.

Training Programmes

Table 79 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.

Parliamentary Committees

The Committee on Subordinate Legislation of the Lok Sabha took a briefing by the representatives of the MCA at their sitting on 27th November, 2019 to examine the Rules/Regulations framed under the Companies Act, 2013. Secretary and other officers of MCA and Chairperson, IBBI appeared before the Committee.

In connection with examination of the rules and regulations relating to PGs to CDs notified by the MCA on 15th November, 2019 and IBBI on 20th November, 2019 respectively, Dr. M. S. Sahoo, Chairperson, IBBI along with senior officers of IBBI and of the Ministry appeared before the Lok Sabha Committee on Subordinate Legislation on 9th January, 2020.

In connection with examination of the RBI Prudential framework for stressed assets, Dr. M. S. Sahoo, Chairperson, IBBI along with senior officers of the Ministry appeared before the Rajya Sabha Committee on Subordinate Legislation on 17th January, 2020.

In connection with the examination of the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019 and Demand for Grants of the MCA, Dr. M. S. Sahoo, Chairperson, IBBI, along with senior officers of the IBBI and of the Ministry appeared before the Standing Committee on Finance on 24th February, 2020

Information Technology

The IBBI recognises the utmost importance of ensuring efficiency and transparency in its processes and hence has laid emphasis on using information technology (IT) for delivery of its services since its inception. The key initiatives taken by the IBBI in this regard are as under:

Table 78: Distinguished Lectures in 2019-20

Sl.	Date	Name of the Speaker	Position / Organisation	Subject
1	09.04.19	Mr. Neil Taylor	Senior Consultant at the World Bank	Drafting of Case Studies for Individual Insolvency
2	12.04.19	Mr. G. N. Bajpai	Former Chairman, SEBI	Regulation and Enforcement - Intentions vs. Outcome
3	06.05.19	Mr. C. Scott Pryor	Professor, Norman Adrian Wiggins School of Law	Exercise of voting rights in case there are large number of creditors in an insolvency process and balancing the interest in case of Resolution
4	14.06.19	Mr. Balesh Kumar	Director General of GST Intelligence	GST Reforms: Why and Distance Travelled
5	25.06.19	Mr. Dinesh Kumar Sarraf	Chairperson, PNGRB	Petroleum Reforms in India
6	30.07.19	Dr. Navroz Dubash	Professor, Centre for Policy Research	Regulatory Challenges and an Indian Perspective
7	08.08.19	Mr. Dan Edgar	Director, Inventory Appraisals, European Valuations	Valuation
8	28.08.19	Dr. Krishnamurthy Subramanian	Chief Economic Advisor, MoF	Strategic Blueprint for US \$5 Trillion Economy
9	29.08.19	Dr. C. K. G. Nair	Member, Securities Appellate Tribunal	From Organisation to Institution
10	02.09.19	Dr. Maguni Charan Behera	Director of Arunachal Institute of Tribal Studies, Rajiv Gandhi University	Tribal Indebtedness
11	19.09.19	Mr. A. C. C. Unni	Former Additional Secretary, Legislative Department	Legislative Drafting
12	20.09.19	Mr. Ajay Tyagi	Chairman, Securities and Exchange Board of India	An Interface of Securities and Insolvency Regime
13	11.10.19	Mr. Johnnie White	CEO, American Society of Appraisers	Building Reputation of / Trust in Valuation Profession
14	05.11.19	Mr. David Barnes	Global Managing Director, Deloitte	Brexit, Data Privacy and other global developments
15	22.11.19	Dr. Rattan Lal Koul	Professor, Amity Law School, Noida	Co-existence of Liability of Guarantor
16	25.11.19	Dr. Ajith Mishra	Director, Institute of Economic Growth	Role of Non-State Actors in the Economy
17	09.01.20	Ms. Kanika Kitchlu-Connolly and Mr. Prashan Patel	Partner, TLT LLP, UK, and Associate Director, Grant Thornton, UK	Cross Border Insolvency
18	20.01.20	Ms. Kay V. Morley and Mr. Barnaby Stueck	Partner, Jones Day Law Firm, UK	Cross Border Insolvency
19	31.01.20	Hon'ble Mr. V. P. Singh	Member (Technical), NCLAT	My Brush with IBC
20	05.02.20	Hon'ble Mr. B. S. V. Prakash Kumar	Member (Judicial) & Acting President of NCLT	Adjudication Orders
21	06.02.20	Hon'ble Dr. Ashok Kumar Mishra	Member (Technical), NCLAT	Insolvency and Bankruptcy Code, 2016
22	20.02.20	Dr. Arghya Sengupta	Research Director, Vidhi Centre for Legal Policy	Lions on the Throne: The Supreme Court of India and Judicial Independence

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 over 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 Governing Board 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 have 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

Table 79: Training Programmes attended by Officers of IBBI

Sl.	Dates(s)	Programme	Venue	Training Provider	Scope/Topic of Training	No. of Officers
1	02.04.19 - 04.04.19	Colloquium	Singapore	INSOL	Legislative and Regulatory Colloquium	1
2	04.04.19	Workshop	New Delhi	CFA Institute	Ethics	33
3	24.04.19 & 25.04.19	Conference	Kuala Lumpur	Bank Negara Malaysia and World Bank Group	Asia Regional Conference on Non-Performing Loans	2
4	15.05.19	Training	New Delhi	Institute of Secretariat Training and Management	Right to Information Act, 2005	50
5	25.05.19	Training	New Delhi	External Expert	Noting, Drafting, Office Procedures and File Management	21
6	28.05.19 - 31.05.19	Session	New York	United Nations	55 th Session of UNCITRAL WG-V	1
7	18.06.19 - 22.06.19	Colloquium	London	World Bank Group	Insolvency Regime of England & Wales	2
8	17.07.19	Workshop	New Delhi	AMFI	Investor Awareness	36
9	20.07.19	Workshop	New Delhi	External Expert	Irregular Transaction Review	25
10	10.08.19	Workshop	New Delhi	FCO-UK, & Others	Cost Benefit Analysis of Regulations	29
11	24.08.19	Workshop	Gurgaon	State Bank Institute of Credit and Risk Management	Committee of Creditors: An Institution of Public Trust	2
12	27.08.19 - 01.09.19	Workshop	New Delhi	IICA	Commercial Mediation and Negotiation	1
13	30.08.19 - 31.08.19	Workshop	New Delhi	External Experts	Forensic Audit and Valuation for IPs	4
14	06.09.19	Conference	New Delhi	IIBF	Insolvency and Bankruptcy Code, 2016	2
15	06.09.19	Workshop	New Delhi	IBBI Officers	Drafting of Subordinate Legislations	40
16	15.10.19 - 19.10.19	Refresher Course	Manesar	IICA	Current insolvency policy developments in India and around the world.	35
17	20.11.19	Workshop	New Delhi	External Expert	Prevention, Prohibition and Redressal of Sexual Harassment at Workplace	30
18	11.10.19	Training	New Delhi	GeM	GeM Master Trainer Programme	2
19	11.10.19 & 12.10.19	Training	New Delhi	Institution of Valuers	Global Valuation Summit	2
20	30.10.19 - 01.11.19	Training	Kolkata	IIM, Calcutta	Corporate Intelligence	2
21	08.11.19	Colloquium	New Delhi	IPA ICAI	Liquidation under IBC, 2016	2
22	11.11.19	Conference	New Delhi	CII	Resolving Insolvency in India	3
23	11.11.19 - 15.11.19	Interactions	New York	World Bank	Insolvency and bankruptcy best practices	1
24	14.11.19 - 15.11.19	Training	Bangalore	NLSIU	Conflict Resolution Technique	1
25	16.12.19	Conference	New Delhi	Vidhi Centre for Legal Policy	Insolvency and Bankruptcy Code, 2016 – Impact on Markets and the Economy	20
26	19.12.19	Summit	New Delhi	CII	Banking and Finance Summit	1
27	08.01.20 - 10.01.20	Training	Goa	IICA	Regulatory Impact Assessment	02
28	23.01.20 - 24.01.20	Workshop	New Delhi	External Experts	Handling of Complaints, Inspections, Show Cause Notice and Adjudication	74
29	12.02.20 - 14.02.20	Training	Kolkata	IIM, Calcutta	Fintech for Leadership in the Digital World	02
30	13.02.20 - 14.02.20	Workshop	London	FCO-UK	Insolvency Knowledge Exchange	01
31	14.02.20 -	Training	New Delhi	Legislative Department	Appreciation Course in Legislative Drafting	01
32	24.02.20 - 26.02.20	Training	Pune	IBIS	INS-AS (Indian Accounting Standard)	01
33	04.03.20	Workshop	New Delhi	External Experts	Cross Border and Recovery of Assets Dissipated Abroad.	50

34	04.03.20 - 06.03.20	Training	Goa	MCA	Governance, Regulatory and Compliance Management with respect to Goals and Functions of MCA	01
35	06.03.20	Seminar	New Delhi	FICCI	MSMEs and Insolvency and Bankruptcy Code, 2016	16

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 the stakeholders to take decisions in time.

Online Examinations: Subject to meeting other requirements, an individual is eligible to be registered as an IP if he has passed the Examination. The IBBI made available an IT enabled Examination with effect from 31st December, 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 31st March, 2018. The entire process, including registration, payment, enrolment, generation of question paper and evaluation is automated.

Online Registration: The entire process of registration, including submission of application, and payment of registration fee 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 hosted 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, Connaught Place, New Delhi and 2nd Floor of Jeevan Vihar, Parliament Street, New Delhi.

Annual Day Celebrations

IBBI celebrated its Third Annual Day on 1st October, 2019. Hon'ble Minister of Finance and Corporate Affairs, Mrs. Nirmala Sitharaman graced the occasion as the Chief Guest. Hon'ble Minister of State for Finance and Corporate Affairs, Mr. Anurag Singh Thakur; the Learned Solicitor General of India, Mr. Tushar Mehta; and Secretary, MCA, Mr. Injeti Srinivas were the Guests of Honour.

In her address, Hon'ble Minister of Finance and Corporate Affairs stated that the Code has created a set of professionals who help, advise and also show the path to exit when one finds it difficult to carry on a business. It has improved business climate in the country by making it easier for enterprises to exit in case of difficulties, she said. It is no more getting into a business not knowing how to get out of it, when required.

The Learned Solicitor General of India delivered the IBBI Annual Day Lecture on "IBC: Road Travelled and Road Ahead". Recognising the role of an efficient and predictable insolvency and debt resolution framework in allocation of resources, financial inclusion and availability of credit, he stated that the Code strengthens the investment climate and advances economic growth.

International Women's Day

The IBBI celebrated the International Women's Day at New Delhi on 8th March, 2020. Ms. Meenakshi Lekhi, Hon'ble Member of Parliament and Chairperson, Committee on Public Undertakings, Lok Sabha joined as Chief Guest. She emphasised the convergence of virtues in a woman to restructure and manage social and personal relationships. Citing examples of permanent commission in the armed forces, she pointed out that genderisation of the society has proved to be a failure. Further, she emphasised that the objective of the IBC was to resolve stressed assets rather than liquidating the same.

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



Third Annual Day of IBBI, 1st October, 2019

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 19th August, 2019 for providing information to any citizen on an application made under the Act. The IBBI designated Mr. K. R. Saji Kumar, ED as the First Appellate Authority (FAA) on 19th August, 2019 for the disposal of appeals against the orders of the CPIO under section 19(1) of the RTI Act.

Table 80 presents the details of receipt and disposal of applications and first appeals under the RTI Act, during 2019-20.

Table 80: Receipt and Disposal of RTI Applications and First Appeals

No.	Description	Number	
		2018-19	2019-20
1	Application brought forward from previous year	9	9
2	Applications received by CPIO seeking information under the RTI Act, 2005	236	230
3	Applications for which information has been provided by the CPIO	236	232
4	Applications pending with CPIO.	9	7
5	Appeals filed before the FAA against the order of CPIO	29	22
6	Appeals which have been disposed of by the FAA	29	19
7	Appeals pending with the FAA	0	3
8	Applications/Appeals not disposed of in the stipulated time frame	0	0

