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

ANNUAL REPORT
2018-19

www.ibbi.gov.in

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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सत्यमेव जयते

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

Dr. M. S. Sahoo
Chairperson

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New Delhi-110001 Tel: +91 11 23462801
E-mail: chairperson@ibbi.gov.in Web.: www.ibbi.gov.in

बोर्ड-18011/1/2019-आई. बी. बी. आई.
दिनांक : 20 अप्रैल, 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, 2018 से 31 मार्च, 2019 तक की अवधि के लिए भारतीय दिवाला और शोधन अक्षमता बोर्ड की वार्षिक रिपोर्ट की एक प्रति अग्रेषित कर रहा हूँ।

भवदीय,
एम. एस. साहू
(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 -18011/1/2019-IBBI
20th April, 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, 2018 to 31st March, 2019, in the form prescribed in the Insolvency and Bankruptcy Board of India (Annual Report) Rules, 2018 notified on 1st May, 2018 in the Gazette of India.

Yours faithfully,

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

Encl.: As above.

THE GOVERNING BOARD

(As on 31st March, 2019)

CHAIRPERSON

Dr. M. S. Sahoo

WHOLE-TIME MEMBERS

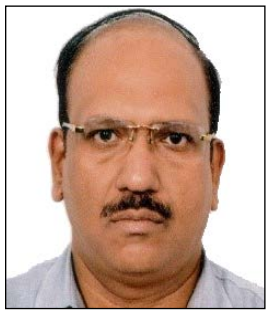
Dr. Navrang Saini

Dr. (Ms.) Mukulita Vijayawargiya

EX-OFFICIO MEMBERS

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

Mr. Gyaneshwar Kumar Singh
Joint Secretary
Ministry of Corporate Affairs



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

CHAIRPERSON, WTMs AND OFFICERS

(As on 31st March, 2019)

(Left to Right)

Sitting: Mr. Umesh Kumar Sharma, CGM; Dr. Anuradha Guru, CGM; Mr. Ritesh Kavdia, ED; Dr. Mukulita Vijayawargiya, WTM; Dr. M. S. Sahoo, Chairperson; Dr. Navrang Saini, WTM; Mr. K. R. Saji Kumar, ED; Dr. Mamta Suri, ED; Mr. I. Sreekara Rao, CGM

Standing First Row: Mr. Dilip Arjun Khandale, DGM; Mr. Sourav Sardar, AM; Mr. Sunil Kumar, DGM; Ms. Medha Shekar, AM; Ms. Archana Sharma, AM; Ms. Tuhina Mardi, AM; Ms. Pooja Singla, AM; Ms. Namisha Singh, AM; Mr. Abhishek Sharma, AM; Mr. Methil Unnikrishnan, GM; Mr. Deeptanshu Singh, AM; Mr. Saram Santosh, AM; Mr. Sushanta Kumar Das, AGM; Mr. Rammilan Singh, AM; Mr. Vijay Kumar, AGM

Standing Second Row: Mr. Asit Behera, AM; Mr. Debajyoti Ray Chaudhuri, CGM; Mr. Om Prakash Verma, AM; Mr. Rameshwar Dhariwal, CGM; Mr. Raghav Maheshwari, AM; Mr. Vinay Pandey, AM; Mr. Abhishek Mittapally, AM; Mr. Anshul Agrawal, AM; Ms. Manpreet Kaur, AM; Mr. Amit Sahu, DGM; Mr. Yadwinder Singh, AM

EXECUTIVE DIRECTORS

(As on 31st March, 2019)

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

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List of Abbreviations

AA	Adjudicating Authority
AC	Advisory Committee
Advisory Committee Regulations	IBBI (Advisory Committee Regulations), 2017
AGM	Assistant General Manager
AIIPA	All India Insolvency Professional Association
AM	Assistant Manager
AR	Authorised Representative
ASSOCHAM	Associated Chambers of Commerce and Industry of India
BFSI SSC	BFSI Skill Sector Council
BIFR	Board for Industrial and Financial Reconstruction
BLRC	Bankruptcy Law Reforms Committee
BMA	Baroda Management Association
Board/IBBI	Insolvency and Bankruptcy Board of India
Board Regulations	IBBI (Procedure for Governing Board Meetings) Regulations, 2017
BSE	Bombay Stock Exchange
Bye-Laws Regulations	IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016
C&AG	Comptroller and Auditor-General of India
CBS	Centre for Excellence in Basic Sciences
CCC	Calcutta Chambers of Commerce
CCI	Competition Commission of India
CD	Corporate Debtor
CEO	Chief Executive Officer
CEV	Council for Engineers and Valuers
CG/CGs	Corporate Guarantor/Guarantors
CGI	Consulate General of India
CGM	Chief General Manager
CII	Confederation of Indian Industry
CIRP	Corporate Insolvency Resolution Process/Processes
CoC	Committee of Creditors
Code/ IBC	Insolvency and Bankruptcy Code, 2016
CoP	Certificate of Practice
CPIO	Central Public Information Officer
CPGRAMS	Centralized Public Grievance Redress and Monitoring System
CVSRTA	Centre for Valuation Studies, Research and Training Association
DBR	World Bank's Doing Business Report
DC	Disciplinary Committee
DGM	Deputy General Manager
DRT	Debt Recovery Tribunal
ECB	External Commercial Borrowings
ED	Executive Director
EoI	Expression of Interest

Examination	Limited Insolvency Examination
FAA	First Appellate Authority
Fast Track Regulations	IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017
FC/FCs	Financial Creditor/ Financial Creditors
FICCI	Federation of Indian Chambers of Commerce & Industry
FRDI Bill	Financial Resolution and Deposit Insurance Bill, 2017
FSLRC	Financial Sector Legislative Reforms Committee
FSP/FSPs	Financial Service Provider/Providers
FSR	Financial Stability Report
GB	Governing Board
GDP	Gross Domestic Product
GIP	Graduate Insolvency Programme
GM	General Manager
GNLU	Gujarat National Law University
GNPA	Gross Non Performing Asset
GRR	Global Restructuring Review
Grievance Regulations	IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017
GST	Goods and Services Tax
HC	High Court
IAIR	International Association of Insolvency Regulators
IBA	Indian Banks' Association
ICAI	Institute of Chartered Accountants of India
ICC	Indian Chambers of Commerce
ICD	Insolvency Commencement Date
ICFAI	Institute of Chartered Financial Analysts of India
ICMAI	Institute of Cost Accountants of India
ICSI	Institute of Company Secretaries of India
ICSI IIP	ICSI Institute of Insolvency Professionals
IEG	Institute of Economic Growth
IFC	International Finance Corporation
IGIDR	Indira Gandhi Institute of Development Research
IIBF	Indian Institute of Banking and Finance
IICA	Indian Institute of Corporate Affairs
IIIP of ICAI	Indian Institute of Insolvency Professionals of ICAI
IIM	Indian Institute of Management
IIV	Indian Institution of Valuers
ILC	Insolvency Law Committee
IMA India	International Market Assessment - India
IM	Information Memorandum
IMC	Indian Merchants Chamber
IMF	International Monetary Fund
INSOL	International Association of Restructuring, Insolvency & Bankruptcy Professionals
IVS	International Valuation Standards
IOV	Institution of Valuers

IP/IPs	Insolvency Professional/ Professionals
IP Regulations	IBBI (Insolvency Professional) Regulations, 2016
IPA/IPAs	Insolvency Professional Agency/ Agencies
IPA of ICMAI	Insolvency Professional Agency of ICMAI
IPE/IPEs	Insolvency Professional Entity/Entities
IRDAI	Insurance Regulatory and Development Authority of India
IRP	Interim Resolution Professional
IU/IUs	Information Utility/Utilities
KMP	Key Managerial Personnel
Liquidation Regulations	IBBI (Liquidation Process) Regulations, 2016
LLP	Limited Liability Partnership
MCA	Ministry of Corporate Affairs
MCCI	Merchants' Chamber of Commerce & Industry
MD	Managing Director
MoF	Ministry of Finance
MoL&J	Ministry of Law and Justice
MoU	Memorandum of Understanding
MSDE	Ministry of Skill Development and Entrepreneurship
MSME	Micro, Small and Medium Enterprises
NBFC	Non-Banking Finance Company
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NeSL	National e-Governance Services Limited
NIFM	National Institute of Financial Management
NIPFP	National Institute of Public Finance and Policy
NISM	National Institute of Securities Markets
NJA	National Judicial Academy
NLU	National Law University
NLUD	National Law University Delhi
NPA	Non-Performing Asset
NPS	National Pension System
NSDA	National Skill Development Agency
NSDC	National Skill Development Corporation
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
PHDCII	PHD Chamber of Commerce and Industry
PMKVY	Pradhan Mantri Kaushal Vikas Yojana
PUFE	Preferential, Undervalued, Extortionate, Fraudulent transactions
PVAI	Practising Valuers Association of India
RA	Resolution Applicant
RBI	Reserve Bank of India
RFRP	Request for Resolution Plan

RIA	Regulatory Impact Assessment
RICS	Royal Institution of Chartered Surveyors
RP	Resolution Professional
RTI	Right to Information
RV/RVs	Registered Valuer/ Valuers
RVO/RVOs	Registered Valuer Organisation/ Organisations
SARFAESI	The Securitisation 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
SCN	Show Cause Notice
SEBI	Securities and Exchange Board of India
SEPC	Services Export Promotion Council
SICA	Sick Industrial Companies (Special Provisions) Act, 1985
SIPI	Society of Insolvency Practitioners of India
TDS	Tax Deducted at Source
TLSS	The Law Society of Singapore
UNIC	United Nations Investments Committee
UNCITRAL	United Nations Commission on International Trade Law
Vidhi	Vidhi Centre for Legal Policy and Research
Voluntary Liquidation Regulations	IBBI (Voluntary Liquidation Process) Regulations, 2017
WG	Working Group
WTM	Whole Time Member

A | CHAIRPERSON'S STATEMENT

The life of a company is as precious as that of a human. The IBC provides a new lifeline to rescue a company when it experiences a serious threat to life.

The Journey So Far

Insolvency reforms in India took a concrete shape with the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC/Code) on 28th May, 2016. In no time, it became a reform by the stakeholders, of the stakeholders and for the stakeholders. Two years into the reforms, the outcomes speak for themselves. I have often been asked to rate the performance of the insolvency regime in India so far. I rate it 10 on 10 by considering the following:

(a) India did not have any prior experience of an insolvency law that is proactive, incentive-compliant, market-led and time-bound. The Code and the underlying reform, in many ways, was a journey into an unchartered territory - a leap into the unknown and a leap of faith. Many institutions required for implementation of a modern and robust insolvency regime did not exist. The law had to be laid down; infrastructure had to be created; capacity had to be built; the markets and practices had to develop; and stakeholders had to be aware of the Code, accept the change and learn how to use it. Yet, the entire regulatory framework in respect of service providers and corporate insolvency, and the entire ecosystem for corporate insolvency could be put in place to enable commencement of corporate insolvency proceedings on 1st December, 2016, within six months of the enactment and two months of establishment of the Insolvency and Bankruptcy Board of India (IBBI/Board).

(b) Implementation of a law of such significance usually throws up several challenges. All concerned took the challenges head on and resolved them expeditiously. The Code has witnessed two major legislative interventions and dozens of subordinate legislations to address deficiencies arising from its implementation to further its objectives, in sync with the emerging market realities. The Adjudicating Authority (AA), the Appellate Authority and the Supreme Court (SC) have delivered numerous landmark orders to explain several conceptual issues and settle contentious issues and resolve grey areas, with alacrity. The Code has passed the constitutional muster. A standing committee, the Insolvency Law Committee (ILC) continuously reviews the implementation of the Code to identify issues and make recommendations to address them.

(c) By the end of March, 2019, the AA has presence in a dozen cities. The Appellate Authority, the IBBI, 2456 insolvency professionals (IPs), 3 insolvency professional agencies (IPAs), 48 insolvency professional entities (IPEs), one Information Utility (IU), 1186 registered valuers (RVs) and 11 registered valuer organisations (RVOs) are in place. Debtors and creditors alike are undertaking corporate insolvency processes. About 1900 firms, some of them having very large non-performing assets (NPAs), have been admitted into corporate insolvency resolution process (CIRP). 40 per cent of them have exited the process with resolution plans, withdrawals or orders for liquidation, while the balance are ongoing as on 31st March, 2019. Another 400 firms have commenced voluntary liquidation and one fourth of them have concluded the process.

(d) The primary objective of the Code is rescuing lives of firms in distress. Till March, 2019, the Code has rescued about 100 such firms through resolution plans, 34 of which were in deep distress. The realisable value of the assets available with them, when they entered the IBC process, was only Rs.0.54 lakh crore. In addition to rescuing these firms, the resolution plans realised Rs.1.20 lakh crore for creditors, which is about 222 per cent of the realisable value of assets of these firms. Any other option of recovery or liquidation would have recovered at best Rs.100 minus the cost of recovery/liquidation. The excess recovery of Rs.122 is a bonus from IBC. Despite recovery of 222 per cent of the realisable value, the financial creditors (FCs) had to take a haircut of 46 per cent, as compared to their claims. This only reflects the extent of value erosion by the time the firms entered the IBC process. Nevertheless, as compared to other options, banks are recovering much better through IBC, as per Reserve Bank of India (RBI) data.

(e) Beyond revival of firms and realisations for creditors, the Code has ushered in significant behavioural changes resulting in substantial recoveries for creditors outside the Code and improving performance of firms. The credible threat of the Code, that a firm may change hands, has changed the behaviour of debtors. Thousands of debtors are settling defaults at early stages of the life cycle of a distressed asset. They are settling at various stages, namely, when default is imminent; on committing a default; 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, thus making best efforts to avoid consequences of the process under the Code. It seems that defaulters' paradise is lost and non-repayment of loan is no more an option. Most firms are now rescued at these early stages of distress, with handsome recoveries for creditors.

(f) The Code has established the supremacy of markets, while balancing the powers of suppliers of capital - debt and equity. Insolvency is an outcome of the market. The Code provides a market process to find a market solution to a market problem. Where the equity suppliers have failed to address the distress of a firm, the Code gives an opportunity to creditors to do so. It enables the stakeholders themselves to decide the matters for them instead of accepting a solution worked out by the State. Market, being the greatest leveller, metes out similar treatment to every defaulting firm, irrespective of its size or the market power wielded by it. The right of the promoters to cling on to the firm, irrespective of its conduct, is no more divine. We have witnessed several firms changing hands, despite valiant battles by some of them up to the SC.

The Journey Ahead

If I observe the ongoing efforts correctly, and such efforts ultimately pass the muster of the concerned stakeholders, I see three sets of developments in the IBC space in the near future.

A. Building institutions

First is strengthening of institutions of insolvency and bankruptcy, given their role in insolvency processes.

(a) ***Insolvency profession:*** Insolvency proceedings require high-end, sophisticated professional services. The Code casts, unlike many advanced jurisdictions, strenuous responsibilities on an IP to run the affairs of the firm in distress as a going concern, protect and preserve the value of its property, comply with all applicable laws on its behalf, conduct the entire resolution process with fairness and equity, retrieve value lost through fraudulent and preferential transactions, etc. The promising professionals from disciplines of law, management, accountancy, etc., with ten years of experience have joined the insolvency profession after undergoing certain training and passing the Limited Insolvency Examination (Examination). They have performed admirably well. To take the insolvency profession to the next level, the IBBI has conceived a two-year Graduate Insolvency Programme (GIP) for young and bright minds having a professional qualification or a degree in a relevant discipline but with no experience. GIP aims to groom tailor-made IPs and inculcate all that an IP needs, including the soft skills such as people management, entrepreneurship, emotional quotient, and deep-rooted ethics and integrity. On completion of GIP, one would be eligible for registration as an IP. GIP is the first of its kind in the world and is an endeavour to create insolvency as a discipline of knowledge.

(b) ***Valuation profession:*** A key objective of the Code is maximisation of the value of assets of the persons in distress. One needs transparent and credible determination of value of the assets to facilitate comparison and informed decision making. The valuations serve as reference for evaluation of choices, including liquidation, and selection of the choices that decides the fate of a firm undergoing CIRP. If valuation is not right, a viable firm could be liquidated and an unviable one could be rehabilitated, which could be unfortunate for an economy. 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 in a market economy. An interim framework has been put in place under the Companies Act, 2013. Work has begun to put in place an institutional framework that develops and regulates tailor-made valuation professionals. Here also, the endeavour is novel and aims to create the subject of valuation as an independent discipline of knowledge.

(c) ***Information Utility:*** The resolution process is information intensive. Value depends on availability of quality of information with the stakeholders. The Code provides for a competitive industry of interoperable IUs to store financial information that helps to establish defaults, verify claims, and constitute committee of creditors (CoC) expeditiously and thereby facilitates completion of insolvency processes in a time bound manner. To ensure that IUs capture the information necessary for the resolution of insolvency and bankruptcy, the Code makes data submission mandatory for FCs and imposes an obligation on IUs to accept such data. To ensure accuracy and preclude disputes, the Code mandates that such records be co-verified with all concerned parties. An IU has come up and is gathering a critical mass of information for use by the concerned stakeholders. This is also first of its kind in the world to address information asymmetry in the insolvency space.

(d) ***Committee of creditors:*** The CoC, which comprises FCs, has the responsibility to decide the fate of the firm in distress, whether to rescue or liquidate it. The decisions of the CoC are not generally open to any analysis, evaluation or judicial review by the AA. The stakeholders, including Government, are bound by the resolution plan, which is a commercial decision of the CoC. A wrong decision can destroy an otherwise viable firm or place the firm in the hands of wrong people. The CoC deciphers whether the firm is in economic distress and if so, it may release the resources of the firm to other competing uses and the entrepreneur to pursue emerging opportunities. If the firm is in financial distress, the CoC rescues the firm from the clutches of current management and puts it in the hands of a credible and capable management to avoid liquidation. It creates the visibility of the underlying value of the firm and a market for competing, feasible and viable resolution plans from capable and credible people. It assesses feasibility and viability of resolution plans and capability and credibility of resolution applicants (RAs). All round efforts are being made to strengthen the institution of the CoC matching its responsibilities.

B. Process improvements

The second set of developments relates to process improvements for certainty, efficiency, and efficacy.

(a) ***Responsive regulation:*** As a regulator, IBBI has no parallel elsewhere in the world. It makes, among others, regulations

for corporate and individual insolvency, liquidation and bankruptcy processes. Regulation, however, is not an unmixed blessing. Nor is there a regulation for every market failure. A responsive regulator designs and modifies regulations, proactively with changing needs of the market, without unduly restricting freedom of the participants and with the least unintended consequences. IBBI has standardised the regulation making process to ensure that the regulations are effective as well as responsive, and not excessive. The IBBI (Mechanism for Issuing Regulations) Regulations, 2018 govern the process of making regulations, which includes cost benefit analysis and consulting the public.

(b) ***Resolvability:*** The Code has shifted the focus of creditors, in case of default, from the possibility of recovery to the possibility of resolution. The market now prefers to deal with a firm which is resolvable. A resolvable firm obtains a competitive advantage *vis-á-vis* non-resolvable firms through reduced cost of debt. Where the value of a firm lies in informal, off-the record arrangements or personal relationships among promoters or their family members, prospective RAs may find it hard to trace and harness the value, making resolution of the firm remote. A firm would focus on creating and maintaining value, which is visible and readily transferable to RAs. Similarly, a firm would keep an updated information memorandum (IM) ready to enable expeditious conclusion of the resolution process, if initiated. It would be the endeavour of a firm to keep itself resolvable all the time, should a need arise. In a sense, they would be having a sort of 'living will' for the benefit of the firm as well as the society at large.

(c) ***Market for distressed assets:*** India is the fastest-growing, trillion-dollar economy and the fifth largest in the world. The average growth rate over the last three decades has been about seven per cent. Its ranking in the World Bank's ease of doing business index improved from 142nd to 63rd position in the last five years. All vital statistics such as index for competitiveness and index for innovation have been improving over the years. In the face of competition and innovation, it is natural that some firms will have distress. Given the size of the economy and its growth potential, there will be a continuous flow of distressed assets into market. They would need to be resolved, not necessarily through an IBC process. They could be bought even in very early days of distress. Regulations could facilitate the development of a secondary market for corporate loans. Several platforms provide the details of such distressed assets. As the participation increases, the market should be liquid in the days ahead.

(d) ***Automation of contracts:*** It often takes time and effort for an IU to receive the information from one of the parties to a loan agreement and then seek verification from the other party before the information is usable. Automation of loan contracts (standardisation of loan agreements, dematerialisation of loan agreements and their online execution) will make the process of contracting efficient and obviate the need for explicit authentication. This will facilitate seamless insolvency proceedings, similar to the manner in which such automation has revolutionised the securities markets. An IU or some other repository could facilitate automation of loan contracts and serve as a 'one stop shop' for all the information about the loans and required for insolvency proceedings.

(e) ***Best practices:*** The law does not and cannot provide solutions to every problem. The best practices evolve to provide solutions to many problems. Such best practices acquire full force of law over time and become customs. For example, regulations require an IM in respect of a distressed firm to provide details of assets and liabilities with such description, as on the insolvency commencement date (ICD), as are generally necessary for ascertaining their values. 'Description' includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details. The market would figure out the relevant details in respect of different kinds of assets, which would serve as the best practice for description of an asset.

C. Remaining elements

The third set is implementation of the remaining elements of the Code.

(a) ***Individual insolvency:*** After having passed several milestones in corporate insolvency, it is time now to focus on the next big thing, viz. individual insolvency. The Code classifies individuals into three classes, namely, personal guarantors (PGs) to corporate debtors (CDs), partnership firms and proprietorship firms and other individuals, to enable implementation of individual insolvency in a phased manner considering the wider impact of these provisions. Work has begun for operationalising individual insolvency. Individual insolvency may commence with insolvency resolution of PGs to complement CIRP, which enables insolvency resolution of a CD and its corporate guarantor (CG). The learning from the implementation of the earlier phases would help facilitate a smoother roll out of the later phases.

(b) ***Fresh Start Process:*** Part III of the Code provides for a fresh start process that allows debtors, who have an annual income ≤ Rs.60,000, assets ≤ Rs.20,000, debts ≤ Rs.35,000 and do not have a dwelling unit, to seek discharge of debt. Implementation of these provisions, which use tribunals and IPs, may pose difficulty for such debtors. It may be advisable to consider a low-cost, simplified and easy-to-access, preferably technology-based process, for them to seek relief. A dedicated adjudication mechanism and a cadre of insolvency advisers coupled with a technology enabled platform may serve such debtors better.

(c) ***Financial Service Providers (FSP):*** The Code enables the Central Government to notify, in consultation with the financial sector regulators, FSPs or categories of FSPs for the purpose of insolvency and liquidation proceedings, in such manner as may be prescribed. Since the country is yet to have a specialised framework for resolution of FSPs, the provisions of the Code could be used to lay down a modified insolvency process under the Code, as an interim arrangement, to deal with insolvencies of FSPs, which do not carry significant systemic risks.

(d) ***Cross border insolvency:*** The Code enables the Government to enter into bilateral agreements with foreign

countries for applying the provisions of the Code. There are obvious limitations of such a bilateral approach. The ILC has proposed to add a chapter to the Code to introduce a globally accepted and well recognised cross border insolvency framework, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency, considering the fact that some corporates transact businesses in more than one jurisdiction and have assets across many jurisdictions. It has also recommended a few carve outs to ensure that there is no inconsistency between the domestic insolvency framework and the proposed cross border insolvency framework.

(e) ***Group insolvency:*** There is an increasing preference to organise business in a group of companies to harness synergies among them. It may be useful to deal with the insolvency of a group of companies together, in certain circumstances, to preserve synergies among the group companies for value maximisation. It may be advisable to provide for an optional framework to enable some degree of synchronisation of insolvency proceedings of group companies where it promotes the objective of value maximisation. It may start with procedural coordination, while cross-border group insolvency and substantive consolidation could be considered at a later stage, depending on the experience of implementing the earlier phases of the framework, and the felt need at the relevant time.

The year 2018-19 has seen significant consolidation of the insolvency regime in the country. The law has matured and the outcome has become visible. Every one - stakeholders and the authorities - are on the same page with perfect unison of purpose. We are on a road which is under construction and will remain so for a few years at least. In the coming years, the processes should get further streamlined with certainty in terms of processes and outcomes.

I thank the Ministry of Corporate Affairs (MCA) 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 (GB) of the IBBI for lending their expertise and firm support for successful implementation of the IBC.

(Dr. M. S. Sahoo)

B THE YEAR IN REVIEW

MACROECONOMIC CONTEXT

It has been the endeavour of the Government since 1990s to have a conducive business environment that makes it easier for firms to do business. India has been enacting a new genre of economic laws to expand 'who, what and how to do' list and repealing 'control' enactments such as the Capital Issues (Control) Act, 1947 and the Import and Export (Control) Act, 1947, that restricted the said list. The decade of 1990s focussed on freedom to start business. It dismantled the *license-permit-quota Raj* when discretionary license gave way to an entitlement of registration. It allowed firms meeting the eligibility requirements to raise resources, without requiring any specific approval from the State, to facilitate freedom of entry. The reforms in the 2000s focused on freedom to continue business - creating a free and fair market. It moved away from control of monopoly of firms to promote competition among firms in the marketplace. It repealed the Monopolies and Restrictive Trade Practices Act, 1969 to promote competition and scaling up of businesses. The reforms provided a level playing field and competitive neutrality and prohibited firms from restricting the freedom of other firms to do business.

Organised economic activity

The reforms expanded the contours of economic freedom and nudged increasing organisation of economic activity in the form of firms / companies. These firms enjoyed the confidence of markets, which attracted external funding through equity, debt, and loans. The reforms in financial markets expanded the markets to meet the financing needs of organised economic activity. Taken together - freedom to start business, abolition of restrictions on size, ability of firms to raise resources, and availability of funding, the number of firms as well as their scale of operations is increasing at a rapid pace. They play an important role in keeping the wheels of the economy in continuous motion, fuelling it with investment, production and generating employment. Prof. Colin Mayer describes the importance of businesses/ companies in an economy in the words: *'the corporation is one of the most important organisations in the modern economy-one that houses, feeds, clothes and employs us'*.[1] As on 31st October, 2019, there were 11,56,114 active companies registered in the country under the Companies Act, 2013. 94.35 per cent of them were in the private sector (10,90,762), with authorised capital of Rs 25.47 lakh crore.[2] Data from the Annual Survey of Industries, indicate that the average fixed capital in the organised manufacturing sector increased from Rs.1.2 crore in 1990-91 to Rs.14 crore in 2017-18. During the same period, the average value of output increased from Rs.2.5 crore to Rs.34 crore, reflecting an increase in the size of firms and operations.

The measures promoting liberalisation, privatisation and globalisation nudged intensity of competition and innovation further. In the middle of this decade, Government intensified reforms, which included insolvency reforms, to provide freedom to exit, the ultimate economic freedom, to address the side effects of competition and innovation. The insolvency reforms provide a market mechanism for (a) rescuing a failing, but viable firm; and (b) liquidating an unviable one and releasing its resources, including entrepreneur(s), for competing uses. The outcome of the reforms has been astounding. The average growth rate in the post reforms period since 1992 has been more than double of that in the pre-reforms period. The decade beginning 2010 has witnessed sustained growth in Gross Domestic Product (GDP) coupled with and macroeconomic stability. GDP moderated from 7.2 per cent in 2017-18 to 6.8 per cent in 2018-19, attributed to lower growth in agriculture and allied activities, contraction in food prices, decline in growth of government final consumption and depreciation of rupees.[3] The economy, however, continued to be buoyant in 2018-19 owing to moderate inflation, a manageable current account deficit of 2.1 per cent of GDP and growth in the manufacturing sector of the economy. India's growth rate in 2018-19 was certainly an aberration against the backdrop of the world output growth falling from 3.8 per cent in 2017 to 3.6 per cent in 2018, with a projection for a further fall to 3.3 per cent in 2019.[4]

The engines of economic growth, particularly investment and industrial output bolstered India's economic performance. Investment being a major driver of economic growth, accounted for nearly 32 per cent of the GDP, within which fixed investment (Gross fixed capital formation) accounted for about 29 per cent of GDP in 2018-19. After continuous slow down since 2011-12, investment started to recover from 2017-18 onwards. Growth in fixed investment picked up from 8.3 per cent in 2016-17 to 9.3 per cent in 2017-18 and to a further 10.0 per cent in 2018-19. Further, industrial growth accelerated during 2018-19 to 6.9 per cent, compared to 5.9 per cent in 2017-18. The Indian economy continues to be resilient, emerging as a key global player and the fastest

[1] Colin Mayer (2013), 'Firm Commitment', Oxford University Press
[2] Annual Report 2019-20, Ministry of Corporate Affairs, GoI
[3] Economic Survey, 2018-19
[4] World Economic Outlook of the IMF database, April 2019

growing trillion-dollar economy in the world in 2018-19. It is further projected that the GDP growth rate will pick-up in 2019-20, reinforced by accelerated consumption and private investment.

Financial markets

Since the economic reforms of the 1990s, there has been significant development of financial markets in India, expanding the options for raising capital for businesses and providing financial resources for sustainable development of the economy. Today, India's capital markets are comparable with counterparts in many of the advanced economies in terms of efficiency (price discovery), tradability (low impact cost), resilience (co-movement of rates across product classes and yield curves), and stability. Equity market remains the largest segment (outstanding stock at USD 2,202 billion, end March, 2019), even as G-Sec, State Development Loans and corporate bond markets have grown steadily.[5] The corporate bond market has grown over the years to a size of USD 447 billion of outstanding stock at the end of March 2019, with an annualised growth rate of 13.5 per cent since 2014-15. Secondary market trading volumes in corporate bonds have increased to USD 267 billion in 2018-19 during the period. Traditionally banks have been a major source of credit for businesses across the world. Banks in India have been crucial to socio-economic progress and bank credit, through policies like priority sector lending, has been used to serve more than just economic objectives. As of end March 2019, banks in India held assets of Rs.1,28,87,262 crore and gross credit of Rs.95,19,554 crore. 60 per cent (Rs.57,82,457 crore) of the gross credit has flown into businesses in the industry and services activities.[6] Banks continue to be a major source of business debt even as the corporate bond markets are developing as an alternative.

Table 1: Development of financial markets in various countries

(Data for 2018 as % of GDP)

Country	Market capitalisation of listed companies	Corporate debt market penetration	Domestic credit to private sector by banks
Brazil	49.06	99.05	61.78
China	46.48	18.86	161.13
India	76.63	17.16	50.05
South Korea	87.30	74.30	150.34
Malaysia	111.00	44.5	120.36
United States	148.15	123.47	52.06

Source: World Bank Database and RBI

Compared to financial markets internationally, there is scope for growth (Table 1) and balanced growth of across segments of the market. In terms of market capitalisation/ equity market, the size in relation to GDP, India compares well with other jurisdictions. In each of the jurisdictions, except India, listed in the Table, debt finance (corporate debt and domestic credit) far exceeds the equity finance enabling the corporates benefit from leverage. Since the advanced jurisdictions such as the US, usually have developed debt and equity markets, their dependence on credit from banks is less. Where debt market is not developed, as in India, dependence on credit from banks is high. There are several problems if too much of corporate finance comes from bank credit, the most critical being that since banks intermediate between the savers and investors, they generally extend secured debt, which limits credit supply in the economy.

Corporate finance

After decades of economic theorising and empirical research, the debate on the most optimum capital structure for an enterprise is still open. Enterprises use a judicious mix of both equity and debt to raise capital and capital structure of a business is unique to it. The preference for one source over the other changes with time and in response to several other factors but the unambiguous fact remains that both equity and debt are essential for an economy to thrive and the role of either cannot be undermined. Table 1 indicates use of various forms of financing across countries. Equity markets are one of the favoured options of raising finance in many countries, including the US, Malaysia, and India, as evident from the market capitalisation of listed companies to GDP ratio. Bank credit seems to be the preferred route in China and Korea. Corporate bonds as a source of external finance is predominant in Brazil and to a fair extent in the US as well. This route pales in comparison to other options in China, India, and Malaysia. The corporates in India seem to prefer equity to debt. It is probably because, an equity contract does not promise returns to investors. On the other hand, under a debt contract the debtor undertakes to repay the borrowed amount along with a reasonable return. Thus, what is inherent in such contracts is the possibility of debtor defaulting in repayments. When corporates choose to use the debt route for financing, they seem to be relying more on bank loans rather than corporate bonds. The reason could be the limited penetration of the corporate bonds markets in India and access and availability of credit from banks at competitive rates.

A 2006 World Bank's study on 'Developing India's Corporate Bond Market' noted the following in the context of lack of development of corporate bond markets in India: *"A key legal weakness of the corporate bond market is the payoffs obtained by bondholders in the event of default. In industrial countries, an extensive bankruptcy code exists, with well-functioning institutions. When a company fails to pay out cash flows on time, the management team of the company is displaced, the company is sold off, and the residual value is given to the bondholders. Such processes do not exist in India. Bondholders have to plan for near-zero recovery in the event of default."* By strengthening rights of creditors, the insolvency law holds promise to promote a balanced financial market.

Bank credit

With the growth in bank credit, there has also been an increase in NPAs, both in absolute and relative terms, which has been

[5] Viral V. Acharya (2019), Development of Viable Capital Markets – The Indian Experience, RBI speeches, 29th June
[6] RBI's Report on Trend and Progress of Banking in India 2018-19

a cause of concern for the Indian banking system. The Gross NPAs of Scheduled Commercial banks (SCBs) stood at 9.2 per cent (Rs.9.36 lakh crore) in March, 2019, lower than 11.2 per cent (Rs.10.39 lakh crore) in March, 2018, in view of comprehensive measures taken by the Government to address the menace of growing NPAs, such as the 4R's strategy of recognition, resolution, recapitalisation and reforms. The decline was more pronounced for PSBs from 14.6 per cent to 11.6 per cent during the same period. The growth rate of gross bank credit by SCBs improved from 8.18 per cent in 2017-18 to 12.22 per cent in 2018-19. The non-food credit by SCBs stood at Rs. 94.71 lakh crore as of March, 2019 as compared to Rs. 83.61 lakh crore at the end of March, 2018. Within the non-food credit, the rate of growth in credit to industrial sector was 5.6 per cent in 2018-19 as compared to 6.2 per cent in 2017-18 and that in the services sector was 4 per cent in 2018-19 as opposed to 10.6 per cent in 2017-18.[7] **Figure 1** depicts the rate of growth of GDP and credit and gross NPAs as per centage of gross advances since 2014-15. In recent years, the IBC is helping in resolution of NPAs and contributing to decline thereof. The RBI's Report on Trends and Progress of Banking in India recognises that while a part of the write-offs of loans by SCBs was due to ageing of the loans, recovery efforts of NPAs received a boost from the IBC. Now that the banks have option of using IBC, they are likely to defocus security-based lending, which will enhance credit availability further.

Ease of doing business

Businesses provide goods and services as well as livelihood to people and consequently contribute to economic wellbeing. Better business regulations generally yield more business, which usually translates to higher economic wellbeing. It is, therefore, the endeavour of every economy to have better business regulations with a view to make it easier for its firms to do business. The World Bank measures and ranks nearly 200 economies in terms of their respective 'Ease of Doing Business', which refers to the conduciveness of regulations to promote growth. This is assessed based on ten indicators, including 'resolving insolvency'. A couple of years ago, the Government set an ambitious target of being one among the top 50 economies in terms of doing business and towards this end, initiated deep institutional reforms, including an overhaul of insolvency framework.

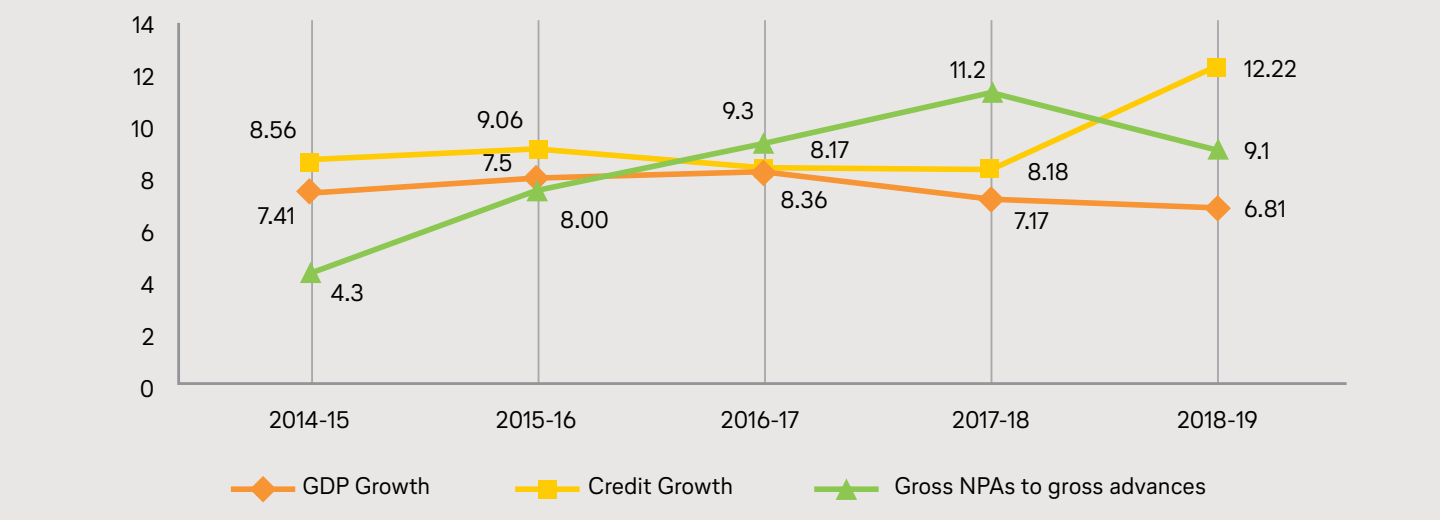
India's efforts at making resolving insolvency easier by adopting a new Code that introduced a reorganization procedure for CDs and facilitated continuation of the debtor's business during insolvency proceedings have been well recognised by the World Bank's Doing Business Report (DBR). In the latest DBR 2020 released in October, 2019, which takes into accounts the progress in insolvency legal system till April, 2019, India made a giant leap in its ranking in resolving insolvency parameter to 52nd position. India's efforts in the 'resolving insolvency' parameter of the Ease of Doing Business was especially lauded by the DBR noting: *"The case of India provides an example of successful implementation of reorganization procedures. India established an insolvency regime in 2016….. With the reorganization procedure available, companies have effective tools to restore financial viability, and creditors have access to better tools to successfully negotiate and have greater chances to revert the money loaned at the end of insolvency proceedings."*

Table 2: Resolving Insolvency Scores in DBR

Year of Report →	2017	2018	2019	2020
↓ Overall rank for Resolving insolvency	136	103	108	52
Score for resolving insolvency (0-100) *(called Distance from Frontier Score till 2018 Report)* [8]	32.75	40.75	40.84	62
Time (years)	4.3	4.3	4.3	1.6
Cost (% of estate)	9.0	9.0	9.0	9.0
Recovery rate (cents on the dollar)	26.0	26.4	26.5	71.6
Strength of insolvency framework index (0-16)	6.0	8.5	8.5	7.5
Outcome (0 as piecemeal sale and 1 as going concern)	0	0	0	1

Source: World Bank's Doing Business Reports for 2017 to 2020

Figure 1: GDP, Credit and NPA Growth



[7] RBI's Report on Trends and Progress of Banking in India, December, 2019

[8] In 2019 Report, the name of the *Doing Business* distance to frontier score has been changed to "ease of doing business score" to better reflect the main idea of the measure—a score indicating an economy's position to the best regulatory practice. Nevertheless, the process for calculating the score remains the same. The score captures the gap between an economy's current performance and a measure of best regulatory practice set in *Doing Business 2015* across the entire sample of the same 41 indicators for 10 *Doing Business* indicator sets used in previous years. Higher scores show absolute better ease of doing business (the best score is set at 100), while lower scores show absolute poorer ease of doing business (the worst performance is set at 0).

The DBR noted that 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. The Code has put in place effective tools for creditors to successfully negotiate and effectuated greater chances for creditors to realise their dues. As a result, the overall recovery rate for creditors jumped from 26.5 to 71.6 cents on the dollar and the time taken for resolving insolvency also came down significantly from 4.3 years to 1.6 years, the Report noted. India is now, by far, the best performer in South Asia on the resolving insolvency component and does better than the average for Organisation for Economic Co-operation and Development (OECD) high-income economies in terms of recovery rate, time taken and cost of a CIRP, as presented in Table 3.

Table 3: India's Performance in Resolving Insolvency

Parameter	India	South Asia	OECD High Income
Resolving Insolvency Rank	52	104	28
Resolving Insolvency Score (0-100)	62	40.8	74.9
Recovery Rate (Cents on the Dollar)	71.6	38.1	70.2
Time (Years)	1.6	2.2	1.7
Cost (% of Estate)	9	9.9	9.3
Strength of Insolvency Framework Index (0-16)	7.5	6.5	11.9

Source: World Bank's Doing Business Report 2020

MAJOR POLICY DEVELOPMENTS

The Code was enacted on 28th May, 2016. The regulations relating to service providers and corporate processes were put in place, the National Company Law Tribunal (NCLT) and the IBBI were established, a cadre of IPs was made available, and transactions commenced within six months of the enactment. The year 2017-18 saw consolidation of the regulatory framework, refinement of the Code, and several proactive measures by authorities such as MCA, Ministry of Finance (MoF), Securities and Exchange Board of India (SEBI), RBI, Competition Commission of India (CCI), etc., to facilitate the implementation of the Code. The AA and Courts expeditiously settled several contentious issues and streamlined the processes. Insolvency services were professionalised. The market participants, namely, CDs, operational creditors (OCs), FCs, RAs moved very fast on a steep learning curve. By the end of the year, several CIRPs concluded. The Code started delivering outcomes. The year under review saw further developments to strengthen the regulatory regime and several policy initiatives in furtherance of the objectives of the Code. Some of these important developments, during the year 2018-19 are outlined here.

Facilitation by Government

Some of the important facilitations by Government during the year are listed here.

Insolvency and Bankruptcy Code (Second Amendment) Act, 2018

The ILC had submitted its first report on 26th March, 2018 with several recommendations. Many of those found place in the Insolvency and Bankruptcy Code (Amendment) Ordinance 2018 promulgated on 6th June, 2018. The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, enacted on 17th August, 2018, repealed the said Ordinance. It, *inter alia*, provided for the following:

(a) It treated the home buyers as FCs owing to the unique nature of financing in real estate projects and the treatment of home buyers by the SC in some of the ongoing cases. This enabled them to invoke section 7 of the Code against defaulting developers and to have representation in the CoC and participate effectively in the insolvency resolution process.

(b) In explicit recognition of the importance of micro , small and medium enterprises (MSMEs) in terms of employment generation and economic growth, it relaxed some of the ineligibilities under section 29A in respect of RAs in CIRP of MSMEs. It also empowered the Central Government to make further exemptions from application of certain provisions of the Code or modifications thereof with respect of the MSMEs, if required, in public interest.

(c) It streamlined section 29A to avoid unintended exclusions. It exempted a financial entity from being disqualified on account of NPA if it is not a related party to the CD. It also exempted a financial entity if it is a FC of the CD and is a related party of the CD solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the ICD. It provided a three-year cooling-off for a RA, who holds NPA by virtue of acquiring a CD in the past under the Code, from the date of such acquisition. The disability was limited to convictions for an offence punishable with imprisonment for two years or more under any of the Acts specified in the schedule (business related laws) or seven years under any law. Considering the wide range of disqualifications contained in section 29A, it required an RA to submit an affidavit certifying its eligibility to take part in the process, placing the primary onus of eligibility on it.

(d) It allowed withdrawal of applications, after admission, on an application made by the applicant, with the approval of 90 per cent of voting share of the CoC.

(e) With a view to encourage resolution as against liquidation, it reduced the voting threshold from 75 per cent to 66 per cent for all major decisions such as approval of resolution plan, extension of CIRP period, etc. It also reduced the voting threshold for routine decisions to 51 per cent to facilitate the CD to continue as a going concern during the CIRP.

(f) It provided for a mechanism to allow participation of security holders, deposit holders and all other classes of FCs that exceed a certain number, in the meetings of the CoC, through authorised representative(s) (ARs).

(g) It allowed one-year for the successful RA to obtain necessary approvals under any law from the date of approval

of resolution plan or within such period as provided for in such law, whichever is later.

(h) It excluded assets of guarantors - personal or corporate - from the purview of moratorium under the Code.

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

(j) It explicitly made the Interim Resolution Professional (IRP)/ Resolution Professional (RP) responsible for the statutory compliances on behalf of the CD, while managing its affairs during CIRP.

(k) It made the Limitation Act, 1963 applicable to proceedings or appeals under the Code.

(l) It widened the scope of functions of the Board to promote the development of, and regulate, the working and practices of, certain professionals and other institutions in furtherance of the purposes of the Code.

Insolvency Law Committee

The Central Government, *vide* an order dated 16th November, 2017, had constituted the ILC under the Chairmanship of Secretary, MCA to take stock of the functioning and implementation of the Code, identify the issues that may impact the efficiency of corporate insolvency resolution and liquidation framework prescribed under the Code, make suitable recommendations to address such issues, and enhance the efficiency of the processes prescribed for the effective implementation of the Code. The Committee submitted its first report on 26th March, 2018 and second report on 16th October, 2018.

The Government reconstituted the ILC as a Standing Committee on 6th March, 2019, with Secretary, MCA as its Chairperson to analyse the functioning and implementation of the Code, identify issues impacting the efficiency and effectiveness of corporate insolvency resolution and liquidation framework and make suitable recommendations to address them. It was also tasked to study the insolvency resolution and bankruptcy framework for individuals and partnership firms and make recommendations for implementation. The composition of the reconstituted ILC is presented in Table 4.

Table 4: Composition of the Insolvency Law Committee as on 31st March, 2019

Sl. No.	Name and Position	Position in ILC
1	Secretary, MCA	Chairperson
2	Chairperson, IBBI	Member
3	Additional Secretary (Banking), Department of Financial Services	Member
4	Dr. T. K. Viswanathan, Former Secretary General, Lok Sabha and Chairman, BLRC	Member
5	Mr. U. K. Sinha, Ex SEBI Chairman	Member
6	Nominee of RBI not below the rank of Executive Director	Member
7	Mr. Sunil Mehta, MD & CEO, Punjab National Bank	Member
8	Mr. Uday Kotak, President Designate, CII and MD&CEO, Kotak Mahindra Bank	Member
9	Mr. Shardul Shroff, Executive Chairman, Shardul Amarchand Mangaldas & Co.	Member
10	Mr. Bahram Vakil, Partner, AZB & Partners	Member
11	President, Institute of Chartered Accountants of India	Member
12	President, Institute of Cost Accountants of India	Member
13	President, Institute of Company Secretaries of India	Member
14	Joint Secretary (Policy / Insolvency), MCA	Member Secretary

Cross Border Insolvency

Sections 234 and 235 of the Code enable the Central Government to enter into reciprocal agreements with the Government of any country for enforcing the provisions of the Code. The Central Government proposed to add a chapter in the Code to introduce a globally accepted and well recognized cross border insolvency framework, considering the fact that corporates transact businesses in more than one jurisdiction and have assets across many jurisdictions. It put out the draft chapter in public domain on 20th June, 2018 seeking comments of the stakeholders. It proposed as under:

(a) ***Access:*** It allows foreign insolvency officials and foreign creditors direct access to domestic courts and confers on them the ability to participate in and commence domestic insolvency proceedings against a debtor.

(b) ***Recognition:*** It allows recognition of foreign proceedings and remedies by the domestic court based on such recognition. If domestic courts determine that the debtor has its centre of main interests in the foreign country, they will consider insolvency proceedings in such foreign country to be the main proceedings, if not, they will be considered non-main proceedings.

(c) ***Cooperation:*** It lays down the basic framework for cooperation between the domestic and foreign courts, and domestic and foreign IPs. It provides for direct cooperation between: (i) domestic courts and foreign insolvency representatives; (ii) domestic courts and foreign courts; (iii) foreign courts and domestic IPs; and (iv) foreign insolvency representatives and domestic IPs.

(d) ***Coordination:*** It provides a framework for commencement of domestic insolvency proceedings, when a foreign insolvency proceeding has already commenced or *vice versa*.

The ILC submitted its 2nd Report on 16th October, 2018 recommending adoption of the UNCITRAL Model Law on Cross Border Insolvency, 1997, which provides for a comprehensive framework to deal with cross border insolvency issues. It also recommended a few carve outs to ensure that there is no inconsistency between the domestic insolvency framework and the proposed cross border insolvency framework. The UNCITRAL Model Law has been adopted by as many as 44 countries and, therefore, forms part of international best practices in dealing with cross border insolvency.

NCLT Benches

The Government constituted a bench of NCLT at Jaipur for Rajasthan on 28th June, 2018 and another one at Kochi for

Kerala and Lakshadweep, on 1st August, 2018. Further, two more benches of NCLT were constituted at Indore for Madhya Pradesh and another one at Amravati for Andhra Pradesh, on 8th March 2019.

Applicants for CIRP

Section 7 of the Code allows an FC, or any other person on behalf of the FC, as may be notified by the Government, to file an application for initiation of CIRP. The Government on 27th February, 2019, notified the persons who may file an application, on behalf of the FC, as under:

(i) a guardian;
(ii) an executor or administrator of an estate of an FC;
(iii) a trustee (including a debenture trustee); and
(iv) a person duly authorised by the Board of Directors of a Company.

Adjudicating Authority Rules

The Government amended the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on 14th March, 2019 to modify the forms to enable application for initiation of fast track CIRP and to require submission of details of the CD relevant for determination if fast track process is available for its resolution.

Amendments to Securities Contracts (Regulation) Rules, 1957

The Central Government amended the Securities Contracts (Regulation) Rules, 1957 on 24th July, 2018. This amendment provides that where the public shareholding in a listed company falls below 25 per cent as a result of implementation of the resolution plan approved under section 31 of the Code, such company shall bring up the public shareholding to 25 per cent within a maximum period of three years from the date of such fall, in the manner specified by SEBI. However, if the public shareholding falls below 10 per cent, the same shall be increased to at least 10 per cent within a maximum period of eighteen months from the date of such fall, in the manner specified by the SEBI.

Amendment of the Companies (Registered Valuers and Valuation) Rules, 2017

The Government amended the Valuation Rules on 13th June, 2018 to include the Presidents of three Professional Institutes as *ex-officio* members in the Committee to advise on valuation matters. It further amended the Valuation Rules on 25th September, 2018 to allow any person, who was rendering valuation services under the Companies Act, 2013 on the date of commencement of these Rules, to continue to render valuation services without a certificate of registration under the Rules up to 31st January, 2019. It further amended the Valuation Rules on 13th November, 2018 to clarify that these Rules apply for valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provisions of the Companies Act, 2013. It also streamlined the requirements of qualification and experience for registration as valuers.

Committee to advise on valuation matters

The Central Government constituted the "Committee to advise on valuation matters" on 23rd April, 2018 under rule 19 of the Companies (Registered Valuers and Valuation) Rules, 2017. It nominated four more members on the Committee on 6th July, 2018. The Committee submitted its first report to the Government on 27th February, 2019. The composition of the Committee as on 31st March, 2019 is as presented in Table 5.

Table 5: Composition of the Committee to advise on valuation matters as on 31st March, 2019

Sl. No.	Name and Position	Position in the Committee
1	Dr. R. Narayanaswamy, Professor of Finance and Accounting, IIM, Bangalore	Chairperson
2	Dr. Navrang Saini, Whole Time Member, IBBI	Member/ Convener
3	Mr. K. Biswal, Additional Secretary, Legislative Department	Member
4	Mr. K. V. R. Murty, Joint Secretary, MCA	Member
5	Mr. Rajesh Kumar Kedia, Director, CBDT	Member
6	Mr. Saurav Sinha, Chief General Manager-in-Charge, RBI	Member
7	Mr. Jayanta Jash, Chief General Manager, SEBI	Member
8	Mr. A. Ramana Rao, General Manager, IRDAI	Member
9	Mr. Pichaiya Subramaniam, Representative of IOV Registered Valuers Foundation	Member
10	Mr. Chander Sawhney, Representative of ICSI Registered Valuers Organisation	Member
11	Mr. Varun Gupta, Representative of Confederation of Indian Industry	Member
12	Mr. R. K. Bansal, Representative of FICCI	Member
13	Mr. Dhinal Shah, Representative of ICAI Registered Valuers Organisation	Member
14	President, The Institute of Chartered Accountants of India *(ex-officio)*	Member
15	President, The Institute of Company Secretaries of India *(ex-officio)*	Member
16	President, The Institute of Cost Accountants of India *(ex-officio)*	Member

Facilitations by RBI

In relaxation of the end-use restrictions under External Commercial Borrowings (ECBs) framework, RBI, vide circular dated 7th February, 2019, allowed RAs under a CIRP to raise ECBs from recognised lenders, except the branches/ overseas subsidiaries of Indian banks, for repayment of rupee term loans of the target company under the approval route. Accordingly, the RAs, who are otherwise eligible borrowers, can forward such proposals to raise ECBs, through their authorised dealer bank, to the RBI for approval.

Facilitations by SEBI

The SEBI amended several Regulations to facilitate resolutions under the Code.

Chapter VII of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 govern aspects such as pricing, shareholder approval, disclosure, tenure, etc. relating to preferential issue of securities. The SEBI amended the said Regulations on 31st May, 2018 to provide that provisions of

Chapter VII, except the lock-in provisions, shall not apply where preferential issue of specified securities is made in terms of the resolution plan approved under section 31 of the Code.

Proviso to regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 provides that an acquirer is not entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding. The SEBI amended the said Regulations on 31st May, 2018 to exempt acquisition pursuant to a resolution plan approved under section 31 of the Code from the rigour of the proviso.

The SEBI (Delisting of Equity Shares) Regulations, 2009 govern listing and delisting of equity shares. The SEBI amended the said Regulations on 31st May, 2018 to provide that the provisions of the Regulations shall not apply to delisting of equity shares of a listed entity made pursuant to a resolution plan approved under section 31 of the Code, if such plan, (a) lays down any specific procedure to complete the delisting of such share; or (b) provides an exit option to the existing public shareholders at a price specified in the resolution plan. The shareholders shall be provided an exit at a price which shall not be less than the liquidation value as determined under regulation 35 of the CIRP Regulations. Further, the public shareholders shall be provided an exit at a price which shall not be less than the price at which promoters or other shareholders, directly or indirectly, are provided exit. Further, the said Regulations require expiry of a specified period before delisted equity shares can be re-listed. The SEBI amended the Regulations to exempt this requirement for listing of equity shares of a company which has undergone CIRP under the Code.

The SEBI amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 on 31st May, 2018 to provide that the provisions of regulation 17 (Board of Directors), regulation 18 (Audit Committee), regulation 19 (Nomination and Remuneration Committee) and regulation 20 (Stakeholders Relationship Committee) shall not be applicable during the insolvency resolution process in respect of a listed entity which is undergoing CIRP under the Code, provided that the role and responsibilities of the Board of Directors or the Committees, as the case may be, specified in the respective regulations shall be fulfilled by the IRP or the RP. Further, the said Regulations require that all material related party transactions shall be approved by the shareholders and no related party shall be eligible to vote to approve such resolution. The SEBI amended the Regulations to provide that these provisions shall not apply in respect of a resolution plan approved under section 31 of the Code, subject to the event being disclosed to the recognised stock exchanges within one day of the resolution plan being approved. The amendments further provide that the provisions of regulation 24(5) (disposal of shares in a material subsidiary), 24(6) (disposal of assets), 31A(5), (6) and (7)(b) (reclassification of promoter or promoter group), and 37 (scheme of arrangement) shall not apply to these activities as part of a resolution plan approved under section 31 of the Code.

The amendments require disclosure of the following in relation to the CIRP of a listed CD under the Code:

(a) Filing of application by the corporate applicant for initiation of CIRP, also specifying the amount of default;
(b) Filing of application by FCs for initiation of CIRP against the CD, also specifying the amount of default;
(c) Admission of application by the AA, along with amount of default or rejection or withdrawal, as applicable;
(d) Public announcement made pursuant to order passed by the AA under section 13 of the Code;
(e) List of creditors as required to be displayed by the CD under regulation 13 (2) (c) of the CIRP Regulations, 2016;
(f) Appointment/ replacement of the RP;
(g) Prior or post-facto intimation of the meetings of the CoC;
(h) Brief particulars of the invitation of resolution plans under section 25 (2) (h) of the Code;
(i) Number of resolution plans received by RP;
(j) Filing of resolution plan with the AA;
(k) Approval of resolution plan by the AA or rejection, if applicable;
(l) Salient features, not involving commercial secrets, of the resolution plan approved by the AA; and
(m) Any other material information not involving commercial secrets.

Table 6 chronicles the important developments in the regulatory framework over the period April, 2018 to March, 2019.

Table 6: Chronology of Policy and Regulatory Developments, 2018-19

Date	Development
23.04.18	The Government constituted Committee to advise on valuation matters under rule 19 of the Companies (Registered Valuers and Valuation) Rules, 2017.
23.04.18	The IBBI specified the details of preregistration educational course for registration as IP.
01.05.18	The Government appointed 1st May, 2018 as the date for bringing the provisions of section 227 to section 229 of the Code relating to insolvency and liquidation proceedings of FSPs into force.
01.05.18	The Government notified the IBBI (Form of Annual Statement of Accounts) Rules, 2018 to provide the form for annual statement of accounts and balance sheet of IBBI.
01.05.18	The Government notified the IBBI (Annual Report) Rules, 2018 to provide the form for annual report of IBBI.
04.05.18	The IBBI reconstituted the Working Group (WG) under chairmanship of Mr. P. K. Malhotra, former Law Secretary for recommending the strategy and approach for implementation of the provisions of the Code relating to individual insolvency.
15.05.18	The IBBI constituted a WG to recommend the structure, content and delivery mechanism for GIP.
31.05.18	The IBBI issued the Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2018.

31.05.18	The SEBI amended the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 to exempt norms of preferential issue of securities for preferential issue of specified securities under resolution plans approved under the Code.
31.05.18	The SEBI amended the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 to allow acquisition above the maximum permissible non-public holding, pursuant to a resolution plan approved under the Code.
31.05.18	The SEBI amended the SEBI (Delisting of Equity Shares) Regulations, 2009 to exempt norms of delisting for delisting of equity shares pursuant to a resolution plan approved under the Code.
31.05.18	The SEBI amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 to exempt a listed company undergoing CIRP from corporate governance norms subject to certain disclosures.
06.06.18	The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 promulgated to protect the interests of stakeholders, especially interests of home buyers and MSMEs, promote resolution over liquidation of CDs and streamline provisions relating to eligibility of RAs.
13.06.18	The Government amended the Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018 to include the Presidents of three Professional Institutes as ex-officio members in the Committee to advise on valuation matters.
20.06.18	The Government proposed to add a chapter in the Code to introduce a globally accepted and well recognized cross border insolvency framework.
04.07.18	The IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2018 to provide for manner of voting and streamline the process further.
19.07.18	The IBBI granted registration to the first lot of 16 RVs.
24.07.18	The Government amended the Securities Contracts (Regulation) Rules, 1957 to allow time to bring up public shareholding if it has fallen below the threshold level as a result of implementation of the resolution plan approved under the Code.
17.08.18	The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 enacted replacing the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.
25.09.18	The Government amended the Companies (Registered Valuers and Valuation) Rules, 2018 to allow persons, who were rendering valuation services to continue to render services till 31st January, 2019 without registration.
05.10.18	The IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to streamline the voting process.
11.10.18	The IBBI amended the (Insolvency Professionals) Regulations, 2016 to levy fee on IPs and IPEs.
11.10.18	The IBBI amended the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 to specify higher governance norms for IPAs.
11.10.18	The IBBI amended the IBBI (Insolvency Professional Agencies) Regulations, 2016 to rationalise shareholding norms for IPAs.
11.10.18	The IBBI amended the (Information Utilities) Regulations, 2017 to specify higher governance norms for IUs.
16.10.18	The ILC submitted its 2nd report recommending adoption of the UNCITRAL Model Law of Cross Border Insolvency, 1997.
22.10.18	The IBBI amended the IBBI (Liquidation Process) Regulations, 2018 to enable a liquidator to sell the business of the CD as a going concern.
22.10.18	The IBBI notified the IBBI (Mechanism for Issuing Regulations) Regulations, 2018 to govern its regulation making process.
13.11.18	The Government amended the Companies (Registered Valuers and Valuation) Rules, 2017 to streamline the requirements of qualification and experience for registration as RVs.
30.11.18	The IBBI issued the Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) (Second) Guidelines, 2018.
18.12.18	The IBBI made available the study material for Asset Class 'Plant & Machinery', prepared by CVSRTA.
28.12.18	The WG on GIP submitted its report.
15.01.19	The IBBI amended the IBBI (Voluntary Liquidation Process) Regulations, 2017 to address conflict of interest of a liquidator.
17.01.19	The IBBI constituted a WG under the chairmanship of Mr. U. K. Sinha, former Chairman, SEBI with a mandate to recommend a complete regulatory framework to facilitate insolvency and liquidation of CDs in a group.
24.01.19	The IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to discourage persons, other than genuine, capable and credible RAs, to submit resolution plans.
01.02.19	All valuations under the Companies Act, 2013 and Insolvency and Bankruptcy Code, 2016 to be mandatorily undertaken by an RV from this date.
07.02.19	The RBI relaxed end-use restrictions for External Commercial Borrowings (ECB) to allow RAs to raise ECBs from recognised lenders for repayment of rupee term loans of the target company under the approval route.
26.02.19	The IBBI made available the study material for Asset Class 'Land & Building', prepared by CVSRTA.
27.02.19	The Committee to advise on valuation matters under Rule 19 of the Companies (Registered Valuers and Valuation) Rules, 2017 submitted its first report to the Government.
01.03.19	The Government notified a list of persons who can file an application for initiating CIRP against a CD before the AA, on behalf of the FC.
01.03.19	The IBBI WG on Individual Insolvency submitted its report on Bankruptcy Process for PGs to CDs along with draft rules and regulations.
06.03.19	The ILC reconstituted as a standing Committee to analyse the functioning and implementation of the Code and make suitable recommendations to address them.
14.03.19	The Government amended the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to modify the forms to enable application for initiation of fast track CIRP.

C | POLICIES, PROGRAMMES AND ACTIVITIES

C.1 SERVICE PROVIDERS

The CIRP is an orchestra, where two sets of actors play their respective roles in coordination. The first set represents market comprising debtors, creditors and RAs, who initiate a CIRP and conclude it and take commercial decisions on a variety of issues during CIRP. The other set represents watchdogs comprising the Government, AA, IBBI, IPs, IPEs, IPAs, IUs, RVs, and RVOs who facilitate the market players to take decisions and ensure fairness and transparency in the process. Their only mandate is to make market process efficient to further the objectives of the Code enabling market players to pursue their interests. They guide and facilitate the market to take the best decision under the circumstances. IBBI is responsible for professionalising insolvency services (Box 1) through regulation and development of IPs, IPEs, IPAs, IUs, RVs, and RVOs, who are fit-and-proper and technically competent, and have motivation and drive to uphold the highest standards of ethics and professionalism.

INSOLVENCY PROFESSIONALS

An IP is a key institution of the insolvency regime. He is the care giver, who de-stresses himself when he addresses stress of distressed persons. He is the beacon of hope for the person in financial distress and its stakeholders. He plays a key role in insolvency proceedings (resolution, liquidation and bankruptcy processes) of financially distressed persons (companies, Limited Liability Partnerships (LLPs), partnership and proprietorship firms and individuals) under the Code. When conducting a process, a whole array of statutory and legal duties / powers is vested with IPs. He is required to take important business and financial decisions that may have critical ramifications for the CD and all its stakeholders. He is an officer of the Court.

The NCLT appoints an IP as IRP, RP or liquidator for conducting insolvency proceedings of CDs. It replaces or approves replacement of an IP in an insolvency proceeding, wherever required. In a sense, an IP exercises oversight over insolvency proceedings on behalf of the NCLT. The IP exercises the powers of the board of directors of the CD undergoing resolution. He manages operations of the CD as a going concern, protects the value of its property and complies with applicable laws on its behalf. In fact, he conducts the entire CIRP. The law facilitates and empowers the IP to discharge his responsibilities effectively. It obliges every officer of the CD to report to him. It also obliges the promoter of the CD to extend all assistance and cooperation to him. There is an assurance of supply of essential goods and services to, and a moratorium on proceedings against, the CD. The Code empowers the IP to appoint professionals to assist him. He may take support services from the IPE of which he is a partner / director. He has protection for actions taken in good faith. There is bar on trial of offences against an IP except on a complaint filed by the IBBI.

IP Regulations

Every profession regulates entry into a profession through a mandatory registration procedure. This is not an entry barrier, but allowing only deserving people to enter a profession, which is a noble occupation. The Bankruptcy Law Reforms Committee (BLRC), which envisaged IPs, observed: *"Licensing ensures that it is unlawful to perform certain activities without meeting the specified criteria. Occupational licensing may raise the average skill levels in the profession, thereby improving the quality of services."* A formal registration process ensures that the regulator satisfies itself as to the suitability of a person for the profession and also ensures that only eligible, qualified and deserving individuals join the profession. It helps the regulator to maintain a register of the professionals entitled to render valuation services and to make available the register to enable the users to pick up a professional when they need one. As part of freedom of entry, the Indian economy largely moved away from discretionary license to an entitlement of registration. This meant that there would not be any limit on the number of members a profession may have. Membership would be available on tap and it would not be necessary for a member to move out to enable a new member to come in. Any individual, who meets the pre-specified eligibility norms, shall be entitled to registration. If for any reason, he is to be denied registration, it must be done only through a reasoned order, after hearing him.

The IBBI notified the IBBI (Insolvency Professional) Regulations, 2016 (IP Regulations) on 23rd November, 2016 which, *inter alia* provide for registration, regulation and oversight of IPs. In order to be able to start the profession quickly on the commencement of the Code in December, 2016, regulation 9 of the IP Regulations allowed Chartered Accountants, Company Secretaries, Cost Accountants, and Advocates who had been in practice for 15 years to act as IPs on applying for registration with the Board till 31st December, 2016. Such registrations were valid for a limited period of six months i.e. till 30th June, 2017. Under regulation 5 of the IP Regulations, Advocates, Chartered Accountants, Company Secretaries and Cost Accountants with 10 years of post-

Box 1: Professionalisation of Insolvency Services

Prior to the enactment of the Code, India did not have any experience of a market-led, incentive-compliant, and time-bound insolvency resolution process. Neither was there an effective mechanism for resolution of failing, but viable enterprises nor were there a cadre of professionals or a market for professional services required for various processes (insolvency resolution, liquidation and bankruptcy) of corporate persons and individuals. Many elements of the ecosystem required for these processes, such as IUs, AA or IBBI also did not exist.

The Code provides for CIRP for revival and rehabilitation of a failing CD. It envisages that on commencement of CIRP of a CD, an IP takes over the management of the affairs of the CD, takes important business and financial decisions, protects and preserves the value of its property, manages its operations as a going concern and complies with all applicable laws on its behalf. He receives and collates claims, addresses conflicts of interest, provides complete, correct and timely information about the CD to RAs, examines resolution plans, assists the CoC to arrive at the best resolution plan, helps in retrieval of value lost through fraudulent and preferential transactions, and conducts the entire CIRP. Prior to the enactment of the Code, the CD remained in the possession of its assets when it was undergoing any form of rehabilitation and there was no need for a professional to take charge of the CD.

Since the scope of resolution was limited mostly to rescheduling of debt through a negotiation with the existing debtor, the parties did not require much professional help. The Code brought in 'creditor in control' regime necessitating an IP with multifarious abilities. This opened unlimited possibilities of resolution, including merger, amalgamation and restructuring of any kind, which often requires professional help.

Soon emerged IPs to provide professional help. An individual is eligible for registration as an IP if he has ten years of post-membership experience as a Chartered Accountant, Company Secretary, Cost Accountant, or Advocate, or has 15 years of experience in management after a bachelor's degree and passed the Limited Insolvency Examination (Examination) and undergone pre-registration training. The IBBI conducts the Examination and upgrades the same frequently to keep it relevant with market dynamics. An IP undergoes certain minimum hours of continuing professional education every year. To take the insolvency profession to the next level, the IBBI has launched a two-year GIP for young and bright minds having a professional qualification or a degree in relevant discipline but no experience. On completion of GIP, one will be eligible for registration as IP after qualifying the Examination.

An IP has huge responsibilities. It may not be humanly possible for him to conduct CIRP of a large and complex CD all by himself. The law enables him to take support services from an IPE of which he is a partner or director. Further, an IP may not have all expertise required to conduct the CIRP or continue operations of the CD as a going concern. He may not be equipped professionally to provide various services that a failing CD needs. The law enables him to engage the services of professionals to assist him. This has created a profession for professionals like Advocates and Accountants, who are learning fast to fill up the vacuum.

A key objective of the Code is maximisation of the value of assets of the persons in distress and consequently value for its stakeholders. A critical element towards achieving this objective is transparent and credible determination of value of the assets to facilitate comparison and informed decision making. The valuations serve as reference for evaluation of choices, including liquidation, and selection of the choices that decides the fate of the CD and consequently the stakeholders. If valuation is not right, a viable CD could be liquidated and an unviable CD could be rehabilitated, which are disastrous for the economy. The Code read with regulations assign valuation to RVs, which did not exist as such. A framework was created under the Companies Act, 2013 to make available a cadre of accountable valuers. Subject to meeting other requirements, an individual is eligible to be a RV, if he (i) has the necessary qualification and experience, (ii) has completed a recognised educational course, and (iii) has passed the valuation examination conducted by the IBBI. A partnership entity or a company is also eligible for registration subject to meeting the requirements. The IBBI conducts the valuation examinations for three asset classes, namely, land & building, plant & machinery and securities or financial assets. A valuer undergoes certain minimum hours of continuing professional education.

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 completion of transactions under the Code in a time bound manner. The law also envisages a competitive industry of IPAs and RVOs to groom their members for the emerging tasks under the Code. 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 and IPs.

The Code has professionalised insolvency services and created markets for services of IPs, IPAs, RVs, RVOs, IPEs, and IUs, and expanded the scope of services of Advocates, Accountants and other professionals. It has also created huge markets for education and capacity building of these professionals.

membership experience (practice or employment) or graduates with 15 years of post-qualification managerial experience, were made eligible for registration as IPs on passing the Examination.

The IBBI amended the IP Regulations on 28th March, 2018, effective from 1st April, 2018, to provide for the following:

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

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

(c) An individual with the required experience of 10/15 years is

Box 2: Regulatory fees on Insolvency Professionals

Regulation is a resource intensive function. As markets evolve rapidly, a regulator needs the capability and resource to keep pace to provide effective regulation. It should have the financial independence needed to hire and retain the right talent[9]. Funding should be commensurate to the needs of the regulator to effectively fulfil its legal objectives[10]. The law should enable a regulator to levy fees to meet its needs. While upholding the powers of SEBI to levy turnover based fee, the SC[11] settled the legal position on the issue of fee levied by regulators. It reasoned: *"The Board (i.e. SEBI) is an autonomous body created by an Act of Parliament to control the activities of the securities market in which thousands of members of gullible public will be investing huge sums of money. Therefore, there is every need for a vigilant supervision of the activities of the market and for that purpose if the Statute intends that the necessary funds should be met by collection of fees from the securities market itself then the said levy cannot be questioned on the ground that the monies required for the capital expenditure of the Board should be met by the Government of India."* It, however, laid down the following broad principles: (a) The statute should empower the regulator to levy a fee to carry out its functions; (b) The fee levied by a regulator should not be excessive and should be in the public interest; (c) The fees should only be used for performing the regulator's functions as prescribed by the statute; and (d) The regulator can choose the measure of levy, provided that it withstands the test of reasonableness. The regulator must have independence on financial matters.

The Financial Sector Legislative Reforms Commission[12], which comprehensively reviewed legislations governing India's financial system, argued that a regulator should be funded primarily through fees as it ensures that financial stakeholders (who are the main beneficiaries of regulated markets) bear the cost of regulation instead of the cost being spread across the entire budget of the Government. It recommended that the regulators, in order to be self-sufficient be empowered to charge three different types of fees viz. (a) flat fees for registration, (b) fees dependant on the nature of the transaction and (c) fees dependent on the number or value of transactions. The BLRC, that conceptualised the Code, also believed that as a good practice the Board should fund itself from the fees collected from its regulated entities. It recommended that the Board be funded through a mix of Government support and fees collected from regulated entities. The WG[13] on 'Building the Insolvency and Bankruptcy Board of India' observed: *"In the initial phase of the building up of the IBBI and its credibility, budgetary grants from the Government of India will be the main source of funding. In a few years, the contours of the bankruptcy intermediation industry will become visible. The revenues of regulated entities will become visible. At that point, IBBI will enforce a fee upon all IPs, IPAs and IUs that will pay for its expenses. The fee will be analogous to the charges that SEBI enforces upon securities firms which are implemented at the level of the exchanges."*

Levy of fee by regulator – in India and other jurisdictions - is very common. The Financial Conduct Authority, United Kingdom, levies three types of fee, namely, authorisation fee, change in authorisation fee and periodic fee from the firms they authorise based on the type of regulated activity of the firm, the amount of business undertaken by the firm, and the cost it incurs to regulate the activity. The Securities Exchange Commission, United States of America, requires each national securities exchange to pay a fee @ $15 per $ 1 million of aggregate amount of sales of securities transacted on such exchange and each national securities association to pay a fee @ $15 per $ 1 million of aggregate amount of sales transacted by or through a member of such association. SEBI also levies a regulatory fee annually from every recognised stock exchange based on its annual turnover. Further, every stockbroker/ clearing member/ self-clearing member is required to pay a fee in respect of the securities transactions, including off-market transactions, undertaken by them at the specified rates.

There is a regulator for each profession. The Institute of Company Secretaries of India (ICSI) regulates the professions of Company Secretaries, the Institute of Chartered Accountants of India (ICAI) regulates the profession of Chartered Accountants, etc. Every Company Secretary pays an admission fee for becoming a member of the Institute. He pays an annual membership fee to continue his membership. He pays an additional annual fee for having a certificate of practice. Most other professionals pay a similar fee to their regulators. Most such regulators are self-sufficient in regard to their fee-based income from their members. The Code till recently allowed the Board to levy fee or other charges for registration of IPs, IPAs and IUs. The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 allowed the Board to levy fee or other charges for carrying out the purposes of this Code, including fee for registration and renewal of IPs, IPAs and IUs, similar to the provisions in the SEBI Act, 1992, the IRDAI Act, 1999 or the PFRDA Act, 2013. In line with the aforesaid and considering that the oversight of the Board over the IPs and IPEs have a direct substantial bearing on the regulatory expenses of the Board, the IBBI amended the IP Regulations to levy a fee that is calculated on the basis of fee earned by the IPs and turnover achieved by the IPEs to defray its own costs.

eligible for registration as an IP. In addition, an individual with little or no experience shall also be eligible for registration as an IP on successful completion of the GIP, as may be approved by IBBI.

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

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

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

The IBBI amended the IP Regulations on 11th October, 2018 to provide for the following:

(a) An IP shall pay IBBI a fee calculated at the rate of 0.25 per cent of the professional fee earned for the services rendered by him in the preceding financial year, on or before 30th April every year;

[9] Roy, S & others (2019), 'Building State capacity for regulation in India' in Regulation in India: Design, Capacity, Performance, eds. D Kapur and M Khosla, *Hart Publishing*.
[10] OECD (2014), The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy, OECD *Publishing, Paris*.
[11] Supreme Court (2001), BSE Brokers Forum Vs. SEBI (2001) 3 SCC 482.
[12] Report of the Financial Sector Legislative Reforms Commission (2013), Volume I: Analysis and Recommendations.
[13] Report of the Working Group on Building the Insolvency and Bankruptcy Board of India (2016).

(b) An eligible person seeking recognition as IPE shall pay an application fee of Rs.50,000 along with the application for recognition;

(c) An IPE shall pay IBBI a fee calculated at the rate of 0.25 per cent of the turnover from the services rendered by it in the preceding financial year, on or before 30th April every year;

(d) An IPE shall inform the IBBI, within seven days, when an individual ceases to be or joins as its director or partner, as the case may be, along with a fee of Rs.2000; and

(e) Delay in payment of fee by an IP or an IPE shall attract a simple interest at the rate of 12 per cent per annum on the amount of fee unpaid.

Box 2 lists the rationale and background of this regulatory action.

Facilitation

It is the endeavor of the IBBI to facilitate IPs in discharge of their duties. It promptly brings to the notice of the IPs, developments in law and jurisprudence for their guidance. It issued a detailed facilitation communication on 29th June, 2018 informing the IPs the circumstances when the AA has come to their rescue and the options available to them in case of difficulties. It reiterated that an IRP/RP is acting as an officer of the court and any non-compliance being an officer as such will attract contempt of court. Further, the Code read with the Regulations made thereunder has demarcated responsibilities of an IP and of the CoC in the CIRP and assigned certain responsibilities to them jointly. The emerging jurisprudence is bringing further clarity on their respective roles in a CIRP. To enable the IP and the CoC to have a complete and clear understanding of their roles and responsibilities in a CIRP, the IBBI, on 1st March, 2019, issued an indicative charter of their responsibilities, prepared in consultation with the three IPAs.

INSOLVENCY PROFESSIONAL ENTITIES

IPE is an institutional arrangement which enables a few IPs to build organisational capacity to render support services to them in case of any professional need 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 is neither enrolled as member of an IPA nor registered as IP and it cannot act as IP under the Code. An LLP, a registered partnership firm and a company is recognised as an IPE if a majority of the partners of the LLP or registered partnership firm or a majority of the whole-time directors of the company are registered as IPs under the Code. An IP may use the organisational resources of a recognised IPE.

The IP Regulations provide for recognition of IPEs. The IBBI amended the IP Regulations on 28th March, 2018, effective from 1st April, 2018, to provide that a company, a registered partnership firm or an LLP shall be eligible for recognition as an IPE, if:- (a) its sole objective is to provide support services to IPs, who are its partners or directors, as the case may be; (b) it has a net worth of not less than one crore rupees; (c) majority of its shares is held by IPs, who are its directors, in case it is a company; (d) majority of capital contribution is made by IPs, who are its partners, in case it is an LLP firm or a registered partnership firm; (e) majority of its partners or directors, as the case may be, are IPs; (f) majority of its whole-time directors are IPs, in case it is a company; and (g) none of its partners or directors is a partner or a director of another IPE. It amended the IP Regulations on 11th October, 2018 to levy fee on IPEs.

INSOLVENCY PROFESSIONAL AGENCIES

The insolvency profession has a two-tier regulatory 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 the oversight of IBBI. They may be de-registered if they are found lacking in their mandated role. They compete with one another to provide better insolvency services.

IPA Regulations

The IBBI (Insolvency Professional Agencies) Regulations, 2016 (IPA Regulations) *inter alia* provide for the eligibility norms to be registered with the IBBI as an IPA. A company registered under section 8 of the Companies Act, 2013 with a minimum net worth of Rs. 10 crore and paid up capital of Rs. 5 crore is eligible to be an IPA. At least 51 per cent of the share capital of the IPA must be held, directly or indirectly, by persons resident in India. The IPA, its promoters, its directors and capitalist shareholders must be 'fit-and-proper' persons. The IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (Bye-Laws Regulations) make it mandatory for an IPA to adopt bye-laws that are consistent with the Model Bye Laws made by IBBI. The number of independent directors shall not be less than the number of shareholder directors and not more than one-fourth of the directors should be IPs. IPAs are required to have Membership Committee(s), a Monitoring Committee, Grievance Redressal Committee(s), and Disciplinary Committee(s) (DC) for regulation and oversight of professional members. To facilitate monitoring of their performance, compliance of statutory requirements, and in the interest of transparency and accountability, IBBI, in consultation with them, has devised a format of Annual Compliance Certificate to be submitted to the IBBI and to be displayed on their website within 45 days of the closure of the financial year.

The IBBI amended Bye-Laws Regulations on 11th October, 2018, to provide for the following:

(a) The Governing Board of an IPA shall consist of a managing director, independent directors and shareholder directors. The managing director shall not be 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 years, whichever is earlier;

(b) An IPA shall, 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 managing director. The appointment, renewal of appointment and termination of service of the managing director shall be subject to prior approval of IBBI; and

(c) The managing director shall be an *ex-officio* member of Membership Committee, Monitoring Committee, Grievance Redressal Committee and DC.

The IBBI amended IPA Regulations on 11th October, 2018 to provide that 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, directors and shareholders need to be 'fit-and-proper' persons.

IBBI meets the Managing Directors (MDs)/Chief Executive Officers (CEOs) of IPAs on the 7th of every month, in addition to subject specific meetings, to share developments and address difficulties encountered by them. 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. They are also undertaking various measures to build capacity of their members. Table 7 presents details of programmes organised by them in 2017-18. The details of different publications by IPAs for the benefit of their members are presented in Table 8.

Table 7: Programmes conducted by IPAs in 2018-19

Programme	No. of Programmes organised by				No. of Beneficiaries
	IPA ICAI	ICSI IIP	IIIP ICAI	Total	
Preparatory Course	04	Nil	Nil	**04**	50
Pre-registration Course	16			**16**	786
Webinars	16	05	05	**26**	20620
Workshops	10	Nil	05	**15**	1350
Roundtables	20	06	04	**30**	2792
Seminars/Conferences	08	04	06	**18**	2234

Table 8: Details of Publications by IPAs in 2018-19

Sl. No.	Nature of Publication	Name of Publication	Periodicity	Month of Publication	No. of Issues
IPA ICAI					
1	e-journal	The Insolvency Professional: Your Insight Journal	Monthly	October, November and December, 2018	03
2	Daily update	IBC Au-Courant	Daily	September, 2018 onwards	150
ICSI IIP					
1	Ready Reckoners	Interim Resolution Professional	Editions	August, 2018	01
2		Practical Aspects of Insolvency Law	Editions	May, 2018, August, 2018	02
3		Insolvency and Bankruptcy Code, 2016 (With Rules & Regulations)	Editions	August, 2018, December, 2018, March, 2019	03
4		Judicial / Regulatory Rulings for Stakeholders	Editions	January, 2019	01
5		Voluntary Liquidation	Edition	August, 2018	01
6	Knowledge Initiative	Learning Curves	Daily	February, 2019 onwards	36
		Knowledge Reponere	Fortnightly/ monthly	April, 2018 onwards	19
		MCQ series (Limited Insolvency Examination)	Editions	February, 2018 January, 2019	02
7	Journal	ICSI IIP Insolvency and Bankruptcy Journal	Monthly	From April, 2018 onwards	12
8	Research	Legal framework of group insolvency	One time	March, 2019	01
IIIP ICAI					
1	Newsletters	Round up of news related to IBC	Weekly	January, 2019 onwards	11
2	Update on Judicial Pronouncements	E-juris	Half yearly	October, 2018	01
3	Books	Judicial Pronouncement Under IBC, 2016: Series-1	One time	July, 2018	01
4		Judicial Pronouncement Under IBC, 2016: Series-2	One time	January, 2019	01
5	E-learning: An Online Platform	Limited Insolvency Examination	Annual	January, 2019	01

INFORMATION UTILITIES

Determining default is key to trigger the processes under the Code. It could be time consuming and potentially delay the commencement of process. Proof of claims could slow down a process, after it is initiated. Having a system in place, where the financial information relating to the debtor is stored, would greatly reduce the time for initiation and closure of processes. The Code envisages IUs to store financial information that helps to establish defaults as well as verify claims expeditiously and thereby facilitates completion of processes under the Code in a time bound manner. The BLRC envisaged a private competitive market for interoperable IUs, rather than a centralised depository with the State, to avoid market failure. To ensure that IUs capture the information necessary for the resolution of insolvency and bankruptcy, the Code made data submission mandatory for FCs, and imposed an obligation on IUs to accept such data. To ensure accuracy and preclude disputes, the Code mandated that such records be co-verified with all concerned parties. The Code stipulates that the records of an IU may be accessed by an IP acting as an IRP, RP, Liquidator or Bankruptcy Trustee in furtherance of his functions under the Code. IUs are a novel creation and has no parallel in any other jurisdiction.

IU Regulations

The IBBI (Information Utilities) Regulations, 2017 (IU Regulations) provide a framework for registration and regulation of IUs. A public company with a minimum net worth of Rs.50 crore is eligible for registration as an IU. More than half of its directors shall be independent directors. The IU, its promoters, its directors, its key managerial personnel (KMP), and persons holding more than 5 per cent of its paid-up equity share capital or its total voting power, shall be fit and proper persons. Ordinarily, a person should not hold more than 10 per cent of paid up equity share capital, while certain specified persons may hold up to 25 per cent of paid up equity share capital. However, to start with, a person may hold up to 51 per cent or an Indian company meeting certain requirements may hold up to 100 per cent, of paid-up equity share capital of an IU, for up to three years from the date of registration, if the IU is registered before 30th September, 2018. However, no IU has so far been registered under this special dispensation.

The IBBI amended the IU Regulations on 11th October, 2018, to provide for matters, similar to those provided in the amendment to the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, in respect of an IU. IPAs and IUs registered with IBBI, as on the date of the commencement of the amendment regulations, are required to comply with the amended regulations, within one year.

GRIEVANCES AND COMPLAINTS

The IBBI notified the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 (Grievance Regulations) on 7th December, 2017. A stakeholder may file a grievance that shall state the details of the conduct of the service provider that has caused the suffering to the aggrieved; details of suffering, whether pecuniary or otherwise, the aggrieved has undergone; how the conduct of the service provider has caused the suffering of the aggrieved; details of his efforts to get the grievance redressed from the service provider; and how the grievance may be redressed. It may file a complaint in the specified form along with a fee of Rs. 2500. A complaint needs to state the details of the alleged contravention of any provision of the Code, or rules, or regulations, or guidelines made thereunder or circulars or directions issued by the IBBI to a service provider or its associated persons; details of alleged conduct or activity of the service provider or its associated persons, along with date and place of such conduct or activity, which contravenes the provision of the law; and details of evidence in support of alleged contravention. If the complaint is not frivolous, the fee is refunded. Where IBBI is of the opinion that *prima facie* there exists a case, it may order an inspection or investigation or issue show cause notice, as may be warranted. The details of receipt and disposal of complaints have been presented in Section D.

INSPECTION AND INVESTIGATION

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

These Regulations enable the Board to conduct inspection of a certain number of service providers every year, in addition to inspection emanating from a complaint, 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 Regulations provide the manner of conduct of inspection and consideration of inspection report, including disposal of show cause notice wherever issued. The details of inspections conducted by the Board is presented in Table 9.

REGISTERED VALUERS

The parties usually exchange goods or services at a price discovered by the market. They, however, need a value for exchange of goods or services for which either market does

Table 9: Inspections Conducted by the Board

Year	No. of Inspections			
	Ongoing at beginning	Inspections Ordered	Inspections Closed	Ongoing at the end
2016-17	NA	NA	NA	NA
2017-18	0	2	0	2
2018-19	2	10	3	9
Total	**NA**	**12**	**3**	**NA**

not exist, or market discovers a spurious price for a variety of reasons. They may also need a value for reference or comparison to enable them to take an informed decision such as submitting or accepting a resolution plan in an insolvency proceeding. The purpose is defeated if the value is not authentic and genuine. The stakeholders may unjustly liquidate a company if they use an inflated reference value for comparison with the value offered under resolution plans. Such 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 in a market economy. This calls for institutionalisation of valuation profession.

Valuation profession has a long history in India. 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 in isolation, separately promote the interests of their respective members. Such islands in 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 valuation profession has developed as an independent multi-disciplinary profession. The Companies (Registered Valuers and Valuation) Rules, 2017 (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 Central Government amended the Valuation Rules thrice during 2018-19, on 13th June, 2018, 25th September, 2018 and 13th November, 2018 to provide various clarifications, streamline qualification and experience requirements for registration as RV, and mandate valuations from 1st February, 2019 to be conducted by RVs only. The IBBI directed that with effect from 1st February, 2019, no IP shall appoint a person other than an RV to conduct any valuation under the Code or any of the regulations made thereunder. This framework under Valuation Rules, however, does not affect the conduct of valuations under any other law than the Companies Act, 2013 and the Code.

The Valuation Rules broadly follows the model of insolvency profession. An individual having specified qualification and experience needs to enrol 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 valuers. 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 has made available a very 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.

In accordance with these Rules, the Central Government constituted the Committee to advise on valuation matters on 23rd April, 2018 under the Chairpersonship of Dr. R. Narayanaswamy, Professor of Finance & Accounting, Indian Institute of Management (IIM), Bangalore. The Rules require the Central Government to notify and modify (from time to time) the valuation standards (Box 3) on the recommendations of the Committee. The IBBI, being the 'Authority' under the Rules, commenced registration of RVs. The then Hon'ble Minister of State for Law & Justice and Corporate Affairs, Mr. P. P. Chaudhary gave away registration certificates to the first set of 16 RVs on 19th July, 2018, marking the birth of a very important profession. Table 10 chronicles the development of valuation profession.

Distribution of Certificates to RVs by the then Hon'ble Minister of State for Law & Justice and Corporate Affairs, Mr. P. P. Chaudhary, 19th July, 2018

Table 10: Development of Valuation Profession

Date	Event
29.11.13	The Companies Act, 2013 enacted. Section 247 thereof provided for RVs.
28.05.16	The Insolvency and Bankruptcy Code, 2016 enacted. Section 59 required a valuation report prepared by an RV in case of voluntary liquidation.
30.11.16	The IBBI (Insolvency Resolution Process for Corporate Persons), 2016 provided for valuations by RVs.
26.05.17	Draft Companies (Registered Valuers and Valuation) Rules, 2017 issued for public comments .
18.10.17	Section 247 of the Companies Act, 2013 came into force. The Companies (Registered Valuers and Valuation) Rules, 2017 notified.
23.10.17	The Companies (Removal of Difficulties) Second Order, 2017 issued to provide for RVOs. Powers and functions under section 247 of the Companies Act, 2013 delegated to IBBI.
27.12.17	Two RVOs, namely, Institution of Estate Managers and Appraisers, and IoV Registered Valuers Foundation, recognized.
31.03.18	Valuation Examinations for all three asset classes, namely, Plant & Machinery, Land & Building, Securities or Financial assets, commenced.
23.04.18	Committee to Advise on Valuation Matters constituted.
19.07.18	First set of 16 RVs granted registration.
18.12.18	Study Material for Asset Class 'Plant & Machinery' prepared by CVSRTA made available.
01.02.19	Valuations under the Companies Act, 2013 and the IBC mandatorily to be conducted by RVs from this date.
26.02.19	Study Material for Asset Class 'Land & Building prepared by CVSRTA made available.

REGISTERED VALUERS ORGANISATIONS

RVOs act as frontline regulator for RVs. They provide an institutional arrangement for the oversight, development and regulation of RVs. They grant membership to valuers who comply with the eligibility requirements provided in the Valuation Rules, conduct an educational course in valuation and provide training for the individual members before a Certificate of Practice (CoP) is issued. They also lay down standards of professional conduct and monitor their members for adherence to standards. They may take appropriate action to ensure that compliance with the Valuation Rules are strictly adhered to by their members.

C.2: PROCESSES

The IBBI is a unique regulator which regulates service providers as well as processes. While it has regulatory oversight over service providers in the insolvency resolution space, it also writes and enforces rules for processes, namely, corporate insolvency resolution, corporate liquidation, individual insolvency resolution and individual bankruptcy under the Code.

CORPORATE INSOLVENCY RESOLUTION PROCESS

As regards the objectives of the Code, the National Company Law Appellate Tribunal (NCLAT) observed in *Binani Industries Limited Vs. Bank of Baroda & Ors.*[14]*: "The objective of the 'I&B Code' is Resolution. The Purpose of Resolution is for maximisation of value of assets of the 'Corporate Debtor' and thereby for all creditors. It is not maximisation of value for a 'stakeholder' or 'a set of stakeholders' such as Creditors and to promote entrepreneurship, availability of credit and balance the interests. The first order objective is "resolution". The second order objective is "maximisation of value of assets" of the 'Corporate Debtor' and the third order objective is "promoting entrepreneurship, availability of credit and balancing the interests". This order of objective is sacrosanct."* The primary objective is resolution to maximise the value of the assets of persons in distress. The Code recognises that a going concern has a higher value than the sum of its parts. It looks upon business failure as a normal and legitimate part of the functioning of a market economy. When businesses fail, the best outcome for society is to have a rapid re-negotiation between the financiers, to finance the going concern using a new arrangement of liabilities, may be with a new management team. If this cannot be done, the best outcome for the society is rapid liquidation. When such arrangements can be put into place, the market process drives creative destruction efficiently.

As the Code, and the CIRP Regulations were put to work and thousands of CIRPs commenced, certain deficiencies came to fore, which were addressed quickly, through legislative amendment, court rulings and subordinate legislations. Table 11 presents various amendments in the CIRP Regulations in 2018-19 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 process. 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

[14] CA (AT) (Insolvency) No. 82 of 2018

Box 3: Valuation Standards

A valuer uses technical tools and professional judgment to estimate the value of an asset (or a liability). While he has the freedom to use the best available tools and apply his wisdom, the value estimated by him must be understood by stakeholders uniformly and be comparable across assets, time and space so that prudent business decisions can be taken, based on such valuations. If every valuer gives a different value by using different approaches in the same circumstance, a customer may be worse off with a valuation and the valuer, who has arrived at the right valuation, may find it difficult to defend his position. The market may question the ability of the valuers and the integrity of the valuation process. Accountability and liability of the valuers may be severely restricted. Such a situation is not in the interest of the market where various crucial economic and commercial decisions are taken based on the valuation reports. This requires the valuers to use uniform assumptions, principles, methodologies and practices to carry out valuations of assets to reduce the scope of deviations between the valuation reports of different valuers and to endorse credibility, consistency, and comparability of valuations.

Emphasis on valuation standards assumed greater prominence in the last quarter of the 20th century as a result of the financial collapses which was traced to property related valuations /transactions. The concern to avoid such collapses led to the emergence of valuation standards, first on a national and then on an international level.[15] The Royal Institution of Chartered Surveyors (RICS) responded to the 1970s property crash in the UK by publishing the Red Book, setting out standards of valuation and professional conduct expected of valuers, while the Federal Government in the USA responded to the "savings and loan" crisis of the late-1980s by insisting on uniform appraisal standards and the licensing of valuers in each State.

Two sets of standards, namely, International Valuation Standards (IVS) issued by the International Valuation Standards Council, and the RICS Red Book are widely adopted by valuers. In addition, in some geographies, the Valuation Professional Organisations prescribe standards for their members. Several countries have also prescribed their own valuation standards, such as US (Uniform Standards of Professional Appraisal Practice), Malaysia (Malaysian Valuation Standards), Australia and New Zealand (Australia and New Zealand Valuation and Property Standards), etc. However, in recent years it has been seen that countries are either moving towards IVS or intending to do so.

IVS comprises five 'General Standards' and six 'Asset-specific Standards'. The General Standards contain standards applicable to valuation of all asset classes, covering scope of work, investigations and compliance, bases of value, valuation approaches and methods, and reporting. The Asset-specific Standards include requirements related to specific types of asset valuation, including background information on the characteristics of each asset type that influence value and additional asset-specific requirements regarding common valuation approaches and methods used. These cover businesses and business interests, intangible assets, plant and equipment, real property interests, development property and financial instruments. IVS allows flexibility to meet national requirements. Reportedly, some countries have adopted IVS as national standards, and some have adopted IVS with amendments to meet the requirements of national legislations. Professional organisations have adopted parts or all IVS for their members in many countries.

RICS Red Book adopts and applies IVS. The standards take three forms: (a) professional standards centred around ethics and conduct, (b) technical standards centred on common definitions and conventions, (c) performance or delivery standards centred on rigour in analysis and objectivity of judgement. RICS also allows departures to meet local statutory or regulatory requirements. Red Book with departures is called National Association Valuation Standards, which have been published in some countries. 'RICS Valuation Standards – Global and India', issued in May, 2011 provides four India-specific guidance notes: (a) valuation for financial statements, (b) valuation for secured lending, (c) development land in India, and (d) valuation for tax purposes in India. It is understood that RICS is working on a national supplement to Red Book for India for valuations undertaken subject to Indian jurisdiction.

The Valuation Rules mandate that an RV shall, while conducting a valuation, comply with the valuation standards as notified or modified by the Central Government. Until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per (a) internationally accepted valuation standards; (b) valuation standards adopted by any RVO. Rule 18 of the Valuation Rules enable the Central Government to notify and modify, from time to time, the valuation standards based on the recommendations of a Committee to advise on valuation matters.

Table 11: Amendments to CIRP Regulations in 2018-19

Date of Notification	Amendment
04.07.18	**Authorised Representatives:** The amendment requires that wherever the CD has classes of creditors having at least ten creditors in the class, the IRP shall offer a choice of three IPs in the public announcement to act as the AR of creditors in each class. An FC in a class may indicate its choice of an IP, from amongst the three choices provided by the IRP, to act as its AR. The IP, who is the choice of the highest number of creditors in the class, shall be appointed as the AR of the FCs of the respective class. This facilitates representation of FCs in class in the meetings of the CoC.
	Withdrawal of Application: The amendment provides manner of withdrawal (for closure of CIRP). An application for withdrawal may be submitted to the IRP or the RP, as the case may be, before issue of invitation for Expression of Interest (EoI), along with a bank guarantee towards estimated cost incurred for certain purposes under the process. The CoC shall consider the application within seven days of its constitution or seven days of receipt of the application, whichever is later. If the application is approved by the CoC with 90 per cent voting share, the RP shall submit the application to the AA on behalf of the applicant, within three days of such approval.
	Rate of Interest: Where rate of interest has not been agreed to between the parties in case of creditors in a class, the voting share of such a creditor shall be in proportion to the financial debt that includes an interest at the rate of eight per cent per annum. This facilitates determination of voting power of FCs in class.
	IRP to act as RP: Where the appointment of RP is delayed, the IRP shall perform the functions of the RP from the 40th day of the ICD till a RP is appointed. This ensures the uninterrupted process even if the appointment of RP is delayed.

[15] Gilbertson, Barry & Duncan Preston (2005), "A vision for valuation", Journal of Property Investment & Finance, Vol. 23 No. 2.

	Voting Window: A meeting of the CoC shall be called by giving not less than five days' notice in writing to every participant. The CoC may, however, reduce the notice period from five days to such other period of not less than 48 hours where there is any AR and to 24 hours in all other cases. The AR shall circulate the agenda to creditors in a class and announce the voting window at least 24 hours before the window opens for voting instructions and keep the voting window open for at least 12 hours.
	Preferential Transactions: The RP shall form an opinion whether the CD has been subjected to certain transactions (preferential, undervalued, extortionate or fraudulent transactions) by 75th day and make a determination of the same by 115th day of the ICD. Where the RP makes such a determination, he shall apply to the AA for appropriate relief before 135th day of the ICD. This helps in retrieval of lost value quickly (Box 4).
	Guidelines on EoI: The RP shall publish an invitation for EoI by the 75th day from the ICD. The invitation shall specify the criteria, ineligibility, the last date for submission of EoI and other details and shall not require payment of non-refundable deposit. Any EoI received after the specified time shall be rejected. The RP shall conduct due diligence based on material on record and issue a provisional list of prospective RAs within 10 days of the last date of submission of EoI. On considering objections to the provisional list, the RP shall issue the final list of prospective RAs, within 10 days of the last date for receipt of objections. This brings process certainty.
	Guidelines on Information Memorandum: The RP shall issue the IM, the evaluation matrix and the request for resolution plans (RFRP), within five days of issue of the provisional list to the prospective RAs and allow at least 30 days for submission of resolution plans. The RFRP shall detail each step in the process, and the manner and purposes of interaction between the RP and the prospective RA, along with corresponding timelines. The resolution plan needs to demonstrate that (a) it addresses the cause of default; (b) it is feasible and viable; (c) it has provisions for its effective implementation; (d) it has provisions for approvals required and the timeline for the same; and (e) the RA has the capability to implement the resolution plan. This brings process certainty and ensures effective insolvency resolution.
	Model Timeline: The amendments provide for a model timeline of the CIRP assuming that the IRP is appointed on the date of commencement of the process and the time available is 180 days. This provides the IP guidance to meet the timelines while conducting the CIRP.
05.10.18	**Voting Window:** The CIRP Regulations earlier required the RP to circulate minutes of the meeting by electronic means to all members of the CoC within 48 hours of the conclusion of the meeting and to seek a vote of the members who did not vote at the meeting. The amendment now requires the RP to circulate the minutes of the meeting by electronic means to ARs also. The AR shall circulate minutes of the meetings received from RP to FCs in a class. He shall announce the voting window at least 24 hours before the window opens for voting instructions and keep it open for at least 12 hours. He shall exercise votes either by electronic means or through electronic voting system as per the voting instructions received by him from FCs in the class, pursuant to circulation of minutes. This enables an FC in a class, who could not vote on a matter in the meeting, to vote after minutes of the meeting are circulated.
	Payment to OCs: The Regulations earlier provided payment of liquidation value to OCs and dissenting FCs in priority. While deleting reference to FCs, the amendment provides that the amount due to OCs under a resolution plan shall be paid in priority over FCs. Since FCs are decision makers, the amendment enables them to decide the amount and manner of payment to FCs.
	Preservation of Records: The RP shall preserve the physical and electronic copy of the records relating to CIRP as per the record retention schedule devised by the IBBI.
24.01.19	**Implementation of Resolution Plan:** This amendment discourages persons, other than genuine, capable and credible RAs, to submit resolution plans, to ensure that a resolution plan, once approved, must be implemented. It mandates the RFRP to require the RA in case its resolution plan is approved by the CoC, to submit a performance security. The resolution plan shall include a statement as to whether the RA or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved by the AA under the Code at any time in the past. The RP shall attach the evidence of receipt of performance security while submitting the resolution plan to the AA for the approval. The performance security shall be forfeited if the RA, after the approval of the plan by the AA, fails to implement or contributes to the failure of implementation of the plan. A creditor who is aggrieved by the non-implementation of a resolution plan approved by the AA, may apply to the AA for appropriate directions.

Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 (Fast Track Regulations) lay down the process from initiation of insolvency resolution of eligible CDs till its conclusion with approval of the resolution plan by the AA under a fast track process.

CORPORATE LIQUIDATION

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

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

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

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

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

The IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations), *inter alia*, provide for the details of activities from issue of liquidation order under section 33 of the Code to dissolution order under section 54. The Regulations specify the manner and content of public announcement, receipt and verification of claims of stakeholders, reports and registers to be maintained, preserved and submitted by the liquidator, the manner of realisation of assets and security interest, and distribution of proceeds to stakeholders. They further provide that a liquidator should ordinarily sell the assets through public auctions. He may sell the assets through private sale only when the asset is perishable; the asset is likely to deteriorate in value significantly if not sold immediately or the asset is sold at a price higher than the reserve price of a failed auction. He may sell an asset on standalone basis, or assets in a slump sale, assets in parcels or a set of assets collectively, or sell the CD as a going concern.

The IBBI amended Liquidation Regulations on 22nd October, 2018 to enable a liquidator to sell the business of the CD as a going concern subject to security interest on the assets of CD. These provide that where valuation has been conducted during CIRP, the liquidator shall consider such valuations. Otherwise, the liquidator shall within seven days of the liquidation commencement date, appoint two RVs to determine the realisable value of the assets or businesses of the CD.

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 IBBI (Voluntary Liquidation Process) Regulations, 2017 (Voluntary Liquidation Regulations) provide the process from initiation

Box 4: Vulnerable Transactions

Firms often alienate assets. They do it for a fair consideration, sometimes gratuitously or at times to favour someone at the cost of another. Insolvency law frowns on such alienations made prior to the filing of the insolvency application, if it vitiates the sanctity of equitable distribution (*pari passu* treatment of the creditors of the same class) and maximisation of the value of the assets of a CD for the benefit of all the stakeholders in an insolvency proceeding. Such alienations, which vitiate an insolvency proceeding, are called by different names: vulnerable, avoidance, irregular, or fraudulent transactions.

The BLRC noted that such alienation could be fraudulent transfers, or fraudulently preferring a certain creditor or class of creditors over others. It recommended that all transactions up to a certain period of time prior to the application for CIRP (look back period) should be scrutinised for any evidence of such transactions. It further recommended that there should be stricter scrutiny for transactions of fraudulent preference or transfer to related parties, for which the 'look back period' should be longer.

UNCITRAL Legislative Guide elaborates the rationale[16]. Insolvency proceedings (both liquidation and reorganisation) may commence long after a debtor first becomes aware that such an outcome cannot be avoided. In that intervening period, there may be significant opportunities for the debtor to attempt to hide assets from creditors, incur artificial liabilities, make donations or gifts to relatives and friends or pay certain creditors to the exclusion of others. There may also be opportunities for creditors to initiate strategic action to place themselves in an advantageous position. The result of such activities, in terms of the eventual insolvency proceedings, generally disadvantages ordinary unsecured creditors who were not party to such actions and do not have the protection of a security interest. The Guide envisages avoidance proceedings to target and reverse the effect of the vulnerable transactions. The US Bankruptcy Code provide that a bankruptcy trustee may apply to set aside 'any transfer of an interest of the debtor in property' which was (a) made to or for the benefit of a creditor (b) made on account of an antecedent debt (c) made while the debtor was insolvent (d) made within 90 days before the filing of a bankruptcy petition or within one year if made to an 'insider'; and enabled the creditor to receive more than it would have received in liquidation.[17]

The Code has identified four kinds of transactions, which vitiate an insolvency proceeding. These are: Preferential transactions, Undervalued transactions, Fraudulent transactions and Extortionate credit transactions. These four kinds are not water-tight compartments: a transaction could be simultaneously fraudulent as well as undervalued; it could be preferential, undervalued, fraudulent and extortionate all at once. The Code mandates the RP or Liquidator to apply to the AA if it appears that certain transactions have been preferred over others [undue favour to a creditor which unfavourably affects the collective interest of other creditor], or are undervalued, in the sense that the debtor makes a gratuitous transfer of one or more assets for an insignificant consideration or are extortionate credit transaction or are of a fraudulent nature, to set aside a transaction made within a relevant time/ period. The effect of the application is that the transactions are declared void, *status quo* established, and the effects are overturned. The relevant time for preferential transaction is two years preceding the ICD, if it is made in favour of a related party and one year if it is made to a person other than a related party. Section 5(24) of the Code provides a list of people who are construed as 'related party' for the purposes of the Code.

The provisions for avoidance of transactions make 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 provisions help to correct the financial situation when a certain transfer of property is made merely to keep the property away from the pool of assets to be divided among the creditors. However, the principles of avoidance are to be exercised diligently so that valid transactions undertaken in the ordinary course of business or which creates a security interest in the property acquired by the CD are not reversed.

of voluntary liquidation of a corporate person - companies, LLPs and any other persons incorporated with limited liability - till its dissolution. If the liquidator is of the opinion that the liquidation is being done to defraud a person or the corporate person will not be able to pay its debts in full from the proceeds of assets to be sold in the liquidation, he shall make an application to the AA to suspend the process of liquidation and pass any such orders as it deems fit.

The IBBI amended the Voluntary Liquidation Regulations on 15th January, 2019. Regulation 6 provides that an IP shall be eligible to be appointed as a Liquidator, if he, and every partner or director of the IPE of which he is a partner or director is independent of CD. The amendment clarifies that a person shall be considered independent of the CD if he has not been an employee or proprietor or partner of a firm of auditors or secretarial auditors. It also clarifies that the stakeholders are required to submit proof of claims on or before 30th day from the liquidation commencement date.

INDIVIDUAL INSOLVENCY RESOLUTION AND BANKRUPTCY

The provisions relating to insolvency resolution and bankruptcy for individuals and partnership firms, as contained in Part III of the Code have not yet been brought into force. In accordance with the Statement of Objects and Reasons appended to the IBC (Amendment) Act, 2018, in the first phase, these provisions will be made applicable to PGs of CDs who may be individuals. Later, these will be made applicable to other individuals and then to partnership firms in stages.

The matter of individual insolvency and bankruptcy is a complex and challenging issue all over the world. Implementation of the provisions of the Code dealing with insolvency and bankruptcy of partnership and proprietorship firms and other individuals will impact a large population of the country. A deeper understanding is required of the nature and composition of credit extended by financial institutions

[16] Clause 148 of Chapter F of Section II of Part two of the Legislative Guide on Insolvency Law.
[17] Section 547 (b) of the US Bankruptcy Code.

and other lenders to partnership and proprietorship firms, and the issues faced by such firms.

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 new in the Indian context.

Chairperson, Whole-Time Members (WTMs) and senior officers of IBBI participated in different capacities (faculty, panellist, speaker, guest of honour, chief guest, etc.) in 126 events (seminar, conference, roundtable, study circles, workshop, etc.) on insolvency and bankruptcy, organised by a host of institutions across the country, as presented in Table 12.

Table 12: Participation in Advocacy Events in 2018-19

Name and Position	No. of Events		
	2016-17	2017-18	2018-19
Dr. M. S. Sahoo, Chairperson	45	83	86
Mrs. Suman Saxena, WTM	0	9	0
Dr. Navrang Saini, WTM	0	13	14
Dr. Mukulita Vijayawargiya, WTM	NA	20	14
Other Officers	0	9	12
Total	**45**	**134**	**126**

The details of these events are presented in Table 13.

Table 13: Details of Advocacy Events in 2018-19

Sl.No.	Date	Venue	Organiser	Event	Subject	Participation by
1	10.04.18	New Delhi	AIIPA	Conference	IBC	Dr. Saini, WTM
2	15.04.18	Mumbai	NISM	Award Function	Financial Literacy	Chairperson
3	20.04.18	Chennai	IBBI	IP Workshop	CIRP	Chairperson
4	20.04.18	Chennai	AKM & Associates	Launch of Portal	Emerging Jurisprudence under IBC	Chairperson
5	21.04.18	Chennai	IIBF	Workshop	IBC	Chairperson
6	27.04.18	Mumbai (Video)	IGIDR	Workshop	Insolvency and Bankruptcy Reforms	Chairperson
7	04.05.18	Bhopal	NJA	Session	IBC-2016: An Overview	Chairperson
8	06.05.18	Bhubaneswar	NSDC	Skill Conclave	Skill for Insolvency and Bankruptcy	Chairperson
9	08.05.18	New Delhi	ASSOCHAM	Roundtable	IBC	Chairperson
10	17.05.18	Mumbai	SEPC & CII	Seminar	Indian Banking System: The Road Ahead	Dr. Vijayawargiya, WTM
11	18.05.18	Mumbai	ICSI	Conference	Emerging Practices-IBC, Valuation and RERA	Dr. Suri, ED
12	19.05.18	New Delhi	IoV RVF	Seminar	Valuation: Emerging Challenges	Chairperson
13	25.05.18	Mumbai	FICCI	Conference	Resolution of Stressed Assets	Chairperson
14	25.05.18	New Delhi	IMF & IICA	Workshop	IBC Jurisprudence	Dr. Vijayawargiya, WTM
15	26.05.18	Mumbai	IBBI	IP Conclave	Building the Institution of IPs	Chairperson
16	27.05.18	New Delhi	ICMAI RVO	Educational Course	Building Capacity of Valuers	Chairperson
17	28.05.18	Noida	IPAs	Educational Course	Building Capacity of IPs	Chairperson
18	08.06.18	Hyderabad	IBBI	Roundtable	IBC and CIRP and Ordinance	Chairperson
19	09.06.18	Kolkata	CII	Seminar	IBC	Chairperson
20	09.06.18	Kolkata	IIV-RVO	Educational Course	Valuation Profession: Challenges	Chairperson
21	09.06.18	Kolkata	ICC	Roundtable	IBC and CIRP and Ordinance	Chairperson
22	11.06.18	New Delhi	IPAs & IBBI	Roundtable	IBC and CIRP and Ordinance	Chairperson
23	14.06.18	Mumbai	IPAs & Ors.	Roundtable	IBC and CIRP and Ordinance	Chairperson
24	19.06.18	New Delhi	NSDA	Meeting	Insolvency and Bankruptcy Associate	Dr. Saini, WTM
25	26.06.18	New Delhi	GRR	Award Ceremony	The Most Improved Jurisdiction	Chairperson & Ors.
26	29.06.18	New Delhi	ICAI	Conference	Insolvency, Restructuring and Valuation	Dr. Vijayawargiya, WTM
27	29.06.18	Bengaluru	IBBI	IP Workshop	IBC	Mr. Kumar, ED
28	04.07.18	Mumbai	SBI	Conclave	IBC: Experience So Far & Way Forward	Chairperson
29	10.07.18	New Delhi	IEG	Session	Economic Reforms	Chairperson
30	10.07.18	New Delhi	MSDE	Launch Ceremony	Insolvency Associates	Chairperson
31	12.07.18	Mumbai	IIIP ICAI & Ors.	Roundtable	Cross Border Insolvency	Dr. Saini, WTM
32	17.07.18	New Delhi	SIPI	Roundtable	Cross Border Insolvency	Dr. Vijayawargiya, WTM
33	21.07.18	New Delhi	ICAI	Conclave	IBC	Chairperson
34	23.07.18	Singapore	TLSS	Conference	Role of Regulators in Cross Border Insolvency	Chairperson

35	27.07.18	Kolkata	ICSI IIP	Roundtable	Cross Border Insolvency	Dr. Saini, WTM
36	03.08.18	New Delhi	IGIDR & IBBI	Conference	Insolvency and Bankruptcy Reforms	Chairperson
37	11.08.18	Mumbai	ICAI	Conclave	IBC	Dr. Saini, WTM
38	12.08.18	Goa	PVAI RVO	Educational Course	Building Capacity of Valuers	Chairperson
39	18.08.18	Mumbai	CII	Conference	IBC: Learning, Challenges and Way Forward	Chairperson
40	21.08.18	New Delhi	ICSI IIP	Webinar	Disclosures on Costs and Relationships	Chairperson
41	24.08.18	New Delhi	BFSI SSC & Ors.	Refresher Programme	Refresher programme for IPs under PMKVY	Chairperson
42	25.08.18	Bangalore	CII	Conference	IBC	Chairperson
43	27.08.18	New Delhi	MoL&J	Session	IBC	Chairperson
44	05.09.18	New Delhi	IMA India	Forum	IBC for CFOs	Chairperson
45	07.09.18	Hyderabad	IBBI	IP Workshop	IBC	Mr. Kumar, ED
46	11.09.18	Mumbai	SBI	Seminar	IBC	Chairperson
47	11.09.18	Mumbai	FICCI	Conference	IBC	Chairperson
48	14.09.18	New Delhi	IPAs	Webinar	Disclosures on Costs and Relationships	Chairperson
49	15.09.18	Bhubaneswar	Govt. of Odisha	Conference	Insolvency and Bankruptcy: Code Demystified	Chairperson
50	17.09.18	Bangkok	World Bank	Forum	Forum for Asian Insolvency Reform	Dr. Saini, WTM
51	24.09.18	London	High Commission of India	Seminar	Distressed Assets Market in India	Chairperson
52	25.09.18	London		Session	Regulatory Framework for Insolvency	Chairperson
53	30.09.18	Dehradun	UPES	Insolvency Moot	Insolvency Law Moot Court Competition	Dr. Suri, ED
54	01.10.18	New Delhi	IBBI	Annual Day	Annual Day	Chairperson & Ors.
55	08.10.18	Manesar	IICA	Address	Induction Programme for Grade 'A' Officers of IBBI	Chairperson
56	15.10.18	Mauritius	IAIR	Conference	Insolvency Trends and Developments	Mr. Kumar, ED
57	18.10.18	New Delhi	IIIP ICAI	Webinar	Role of CoC	Chairperson
58	24.10.18	Mumbai	CRISIL	Panel	Expanding India's Corporate Bond Market	Dr. Saini, WTM
59	30.10.18	New Delhi	IBBI	Roundtable	CIRP and PFUE Transactions	Chairperson
60	02.11.18	Kolkata	IPA of ICAI	Roundtable	IBC and CIRP	Dr. Saini, WTM
61	03.11.18	Kolkata	IPA of ICAI	Conference	IBC	Dr. Saini, WTM
62	03.11.18	Kolkata	MCCI	Roundtable	IBC	Dr. Saini, WTM
63	03.11.18	Mumbai	IBBI & SBI	Roundtable	Liquidation and PFUE Transactions	Chairperson
64	03.11.18	Mumbai	IBBI & SBI	Roundtable	CIRP and PFUE Transactions	Chairperson
65	09.11.18	Kolkata	IIIP ICAI	Roundtable	CIRP and PFUE Transactions	Chairperson
66	09.11.18	Kolkata	IPA of ICAI	Roundtable	Individual Bankruptcy Regulations	Chairperson
67	10.11.18	Kolkata	IIIP ICAI	Seminar	Emerging Landscape of IBC	Chairperson
68	10.11.18	Kolkata	IIIP ICAI	Session	Implementation of Corporate Insolvency	Chairperson
69	12.11.18	New Delhi	IICA	Roundtable	Insolvency Academic Forum	Chairperson & Ors.
70	12.11.18	New Delhi	INSOL	Conference	IBC: Learning and Road Ahead	Chairperson
71	13.11.18	New Delhi	INSOL	Panel	Regulatory Architecture	Chairperson
72	14.11.18	New Delhi	NLUD	Practicum	Corporate Insolvency: Training of Trainers	Chairperson
73	17.11.18	New Delhi	NLUD & Ors.	Insolvency Moot	CIRP and Liquidation	Chairperson
74	24.11.18	New Delhi	FICCI	Conference	IBC	Chairperson
75	26.11.18	New Delhi	Penguin	Book Release	Economic Reforms	Chairperson
76	30.11.18	Chandigarh	IBBI	Workshop	IBC Workshop	Dr. Saini, WTM & Ors.
77	01.12.18	Hyderabad	IBBI	IP Conclave	Capacity Building for IPs	Chairperson
78	05.12.18	New York	CGI and FICCI	Conference	IBC: A New Paradigm for Stressed Assets	Chairperson
79	05.12.18	New York	CGI and FICCI	Panel	Decoding IBC	Chairperson
80	05.12.18	New York	CGI and FICCI	Roundtable	Investment Opportunities in Stressed Assets	Chairperson
81	05.12.18	New York	SBI	Talk	IBC and Economic Reforms	Chairperson
82	07.12.18	Toronto	CGI and FICCI	Roundtable	Stressed Assets Investment Opportunities in India	Chairperson
83	07.12.18	Mumbai	ASSOCHAM	Conference	Indian Valuation System: The way forward	Dr. Vijayawargiya, WTM
84	14.12.18	Guwahati	IBBI	Awareness	IBC Awareness	Mr. Kumar, ED
85	14.12.18	New Delhi	Private Sponsor	Book Release	Pioneer – A Journey of an IP	Dr. Vijayawargiya, WTM
86	15.12.18	Shillong	IBBI	Awareness	IBC Awareness	Mr. Kumar, ED
87	18.12.18	New Delhi	Vidhi	Conference	IBC: A Roadmap for the next Two Years	Chairperson

88	21.12.18	Pune	IBBI	IP Workshop	IBC	Dr. Vijayawargiya, WTM
89	08.01.19	Pune	IPAs & IBBI	National Conclave	Corporate Insolvency & Valuation	Dr. Saini, WTM
90	14.01.19	New Delhi	ICSI IIP	Webinar	Judicial/Regulatory Interpretations under IBC	Chairperson
91	17.01.19	Mumbai (Video)	CBS	Symposium	Insolvency and Bankruptcy Reforms	Chairperson
92	19.01.19	Hyderabad	SIPI	Roundtable	Going Concern Sale and Group Insolvency	Chairperson
93	19.01.19	Vadodara	IPAs & IBBI	Awareness	Insolvency & Bankruptcy Code, 2016	Mr. Dhariwal, CGM
94	23.01.19	New Delhi	ICSI	Education Course	Building Capacity of IPs	Mr. Kumar, ED
95	01.02.19	Mumbai	SIPI & Ors.	Roundtable	Going Concern Sale and Group Insolvency	Chairperson
96	01.02.19	Mumbai	NeSL	Knowledge Forum	IBC	Chairperson
97	01.02.19	Coimbatore	IBBI	IP Workshop	IBC	Mr. Kumar, ED
98	12.02.19	Bangalore	IPA ICAI	Session	Role of IUs and CIRP under IBC	Dr. Saini, WTM
99	15.02.19	Mumbai	SBI & IBBI	CoC Workshop	CoC: An Institution of Public Faith	Chairperson
100	15.02.19	Mumbai	IICA	Launch of GIP	GIP	Chairperson
101	15.02.19	Pune	RBI	Workshop	IBC Guarantees Freedom to Exit	Dr. Vijayawargiya, WTM
102	16.02.19	Mumbai	SBI & IBBI	Session	Rescuing Viable Firms	Chairperson
103	18.02.19	New Delhi	UNIC	Session	IBC and its Impact	Chairperson
104	22.02.19	Lucknow	Faculty of Law & IBBI	Awareness	Insolvency & Bankruptcy Code, 2016	Dr. Guru, CGM
105	23.02.19	Ahmedabad	CVSRTA RVA	Symposium	Valuation Profession	Chairperson
106	24.02.19	New Delhi	Cyril Amarchand Mangaldas	Seminar	Innovation in Dispute Resolution	Dr. Vijayawargiya, WTM
107	25.02.19	Mumbai	SBI	Strategy Meet	IBC: A Paradigm Shift – Issues & Challenges	Chairperson
108	27.02.19	New Delhi	SIPI & Ors.	Roundtable	Going Concern Sale	Chairperson
109	01.03.19	Hyderabad	ICFAI & IBBI	Conference	Insolvency and Bankruptcy Laws	Chairperson
110	02.03.19	Mumbai	IMC & Ors.	Seminar	IBC- Challenges, Opportunities, & Learnings	Dr. Vijayawargiya, WTM
111	05.03.19	New Delhi	ICSI & IIP	Roundtable	IBC - A Gamechanger for the Bankers	Dr. Vijayawargiya, WTM
112	08.03.19	Kolkata	IPA of ICAI	Interaction	Roles and Expectations from CoC	Chairperson
113	08.03.19	Vadodara	BMA	Roundtable	IBC - Changing Indian Corporate Horizon	Dr. Vijayawargiya, WTM
114	09.03.19	Kolkata	IBBI	IP Workshop	Insolvency Professionals	Chairperson
115	09.03.19	Kolkata	SIPI	Roundtable	Sale as Going Concern and Group Insolvency	Chairperson
116	09.03.19	Kolkata	CCC	Conference	Insolvency and Bankruptcy Code	Chairperson
117	09.03.19	Kolkata	ICC	Seminar	IBC: Challenges, Learning & Way Forward	Chairperson
118	12.03.19	Lucknow	IIM	Session	Insolvency Reforms	Chairperson
119	15.03.19	New Delhi	SIPI & IBBI	Roundtable	IBC: Global Learning, Local Application	Chairperson & Ors.
120	18.03.19	New Delhi	NIPFP	Session	Regulatory Practices and Economic Analysis	Dr. Vijayawargiya, WTM
121	25.03.19	New Delhi	CII & Ors.	Conference	Addressing the Key Challenges on IBC	Dr. Suri, ED
122	25.03.19	New Delhi	CII	Conference	Cross Border and Personal Insolvency	Chairperson
123	25.03.19	New Delhi	IIIP ICAI	Webinar	Charter of IP and CoC	Chairperson
124	25.03.19	New Delhi.	CII & Ors.	Conference	Addressing the Key Challenges on IBC	Dr. Vijayawargiya, WTM
125	27.03.19	New Delhi	IICA	Open House	Insolvency in the World of Education	Chairperson
126	31.03.19	Vadodara	ICSI	Seminar	IBC: Learning, Opportunities & Way Ahead	Dr. Saini, WTM

PROGRAMMES

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

International Roadshows

The IBBI, jointly with Consulate General of India and FICCI organised a conference on *'Insolvency and Bankruptcy Code – A New Paradigm for Stressed Assets'* on 5th December, 2018 at the Consulate General of India, New York, USA. The event was inaugurated by the then Hon'ble Union Minister of Finance and Corporate Affairs, Mr. Arun Jaitley through video link. The Conference was followed by a roundtable with prospective stakeholders, including large fund houses and law firms. This was followed by a roundtable on Indian insolvency regime in the Consulate General of India, Toronto, Canada on 7th December, 2018.

IBBI-IGIDR Conference

The then Hon'ble Minister of State for Law and Justice & Corporate Affairs, Mr. P. P. Chaudhary inaugurated the two-day *'Insolvency and Bankruptcy Reforms Conference'* on 3rd August, 2018 at New Delhi, jointly organised by the IBBI and the Indira Gandhi Institute of Development Research (IGIDR). The Conference took stock of the progress in the implementation of the Code and deliberated upon the emerging issues and challenges. It featured a number of panel discussions as well as presentations of research papers covering various dimensions of the Indian insolvency and bankruptcy reform.

IBBI-Vidhi Conference

The IBBI and Vidhi Centre for Legal Policy (Vidhi) jointly organised a conference titled *'Insolvency and Bankruptcy Code, 2016: A Roadmap for the Next Two Years'* on 18th December, 2018 in New Delhi. The Conference brought together key stakeholders to distil learning from the implementation of the Code over the past two years and draw a roadmap for further development of the insolvency eco-system over the next two years. Mr. Arun Jaitley, the then Hon'ble Union Minister of Finance and Corporate Affairs inaugurated the Conference and suggested the issues relating to CIRP for deliberation. It featured four panel discussions and a valedictory address by Dr. Rajiv Kumar, Vice-Chairman, NITI Aayog. The Conference witnessed the launch of the book *"Insolvency and Bankruptcy Code: The journey so far and the road ahead"*, a joint publication of Vidhi and Ernst & Young in the hands of Mr. Jaitley.

National Conclave

The IBBI, jointly with ICSI IIP, ICSI RVO, IPA of ICMAI, and ICMAI RVO, organised a *'National Conclave on Corporate Insolvency and Valuation'* in Pune, Maharashtra on 8th January, 2019.

International Conference

In association with the IBBI, and Delaware Law School (USA), the ICFAI Law School, Hyderabad organised a three-day International Conference on *'Insolvency and Bankruptcy Laws: Global Response'* from 1st to 3rd March, 2019 at ICFAI Campus, Hyderabad. In the Conference, 40 research papers covering the entire gamut of insolvency and bankruptcy legal framework and ecosystem were presented.

Interactive Meet with Bankers

The IBBI, jointly with ICSI IIP, organised *'IBC - An Interactive Meet with Bankers'* at New Delhi on 5th March, 2019. The role and responsibilities of FCs, RP and other stakeholders in a CIRP were discussed.

IBBI-BMA Conference

In association with IBBI, the Baroda Management Association (BMA) organised a Conference on IBC in Baroda on 8th March, 2019 on the theme *'Changing Indian Corporate Horizon'*.

Awareness Programmes

The following awareness programmes were organised by IBBI in association with other organisations:

(a) IBBI, in association with the three IPAs, organised an insolvency and bankruptcy awareness programme on 14th December, 2018 at Guwahati.

(b) Another awareness programme was organised at Shillong on 15th December, 2018.

(c) The IBBI organised an Awareness Programme at Vadodara in association with the three IPAs on 19th January, 2019.

(d) In association with the IBBI, the Faculty of Law, University of Lucknow organised an awareness programme on 22nd February, 2019.

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. It organises workshops and training sessions for IPs and FCs, the details of which are provided in Table 14:

Table 14: IP and CoC Workshops organised in 2018-19

Sl. No.	Event	Organiser	Date	Place
1	IP Workshop	IBBI	20.04.18 - 21.04.18	Chennai
2	IP Workshop	IBBI	29.06.18 - 30.06.18	Bengaluru
3	IP Refresher Programme	IBBI, BFSI SSC	24.08.18	Delhi
4	IP Workshop	IBBI	07.09.18 - 08.09.18	Hyderabad
5	IP Workshop	IBBI	30.11.18 - 1.12.18	Chandigarh
6	IP Workshop	IBBI	21.12.18 - 22.12.18	Pune
7	IP Workshop	IBBI	01.02.19 - 02.02.19	Coimbatore
8	CoC Workshop	IBBI, SBI, IICA	15.02.19 – 16.02.19	Mumbai
9	IP Workshop	IBBI	08.03.19 – 09.03.19	Kolkata

ACADEMIC ENGAGEMENTS

Essay Competition

The IBBI, in its endeavour to create awareness about the insolvency and bankruptcy regime amongst the students of higher education, promoted essay competitions through Institutes of Learning[18]. Students of graduation and post-graduation courses of any discipline at universities, deemed universities and professional institutes (viz. ICAI, ICMAI and ICSI) in India can participate in this competition. The IBBI, through the Institute of Learning, is issuing certificates of participation to all participants in the essay competition, a cash prize of Rs. 10,000 to the student who has written the best essay, and a cash prize of Rs. 5,000 to the student who has written the second-best essay. Three Essay Competitions have already been held under the aegis of (i) ICFAI Law School Hyderabad (ii) National Law University, Delhi (NLUD).

Insolvency Moot

The IBBI, jointly with NLUD, INSOL India, Society of Insolvency Practitioners of India (SIPI) and UNCITRAL Regional Centre for Asia and the Pacific organised the second moot in the series on insolvency and bankruptcy on the theme *'Process Memorandum and Resolution Plan'*. Prestigious institutions of law from all over the country participated in the moot. The final round was held on 17th November, 2018 between teams from Gujarat National Law University Gandhinagar (GNLU) and University of Petroleum and Energy Studies (UPES), Dehradun. The team from GNLU (Ms. Samidha Sanjay Mathur, Mr. Ravin Rajeev Abhyankar, Mr. Brijraj Singh Deora, and Mr. Anadi Singh Rathore) emerged

[18] 'Institutes of Learning', as defined in IBBI Essay Competition Guidelines, 2017, mean and include Universities, Deemed Universities and Professional Institutes (ICAI, ICMAI and ICSI) in India.

victorious and UPES, Dehradun (Mr. Tushar Behl, Mr. Shubh Agrawal, and Mr. Sahil Bhatia) finished as Runners-up in the competition.

Internship programme

The IBBI provides an opportunity of internship to students who wish to pursue a professional career in insolvency, liquidation, bankruptcy or any other related field. The IBBI Internship Guidelines, 2017 detail the requirements for students applying for such internship with the IBBI. A student pursuing a five year or three-year degree course in Law or post-graduation course in Economics, Commerce, Finance, Management or Law in any recognised School / College / Institute / University is eligible for the same. The duration of the internship is one month. On satisfactory completion of internship, including dissertation, an intern is issued an internship completion certificate 26 students completed internship during 2018-19.

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 encapsulated the legal and regulatory developments; status of all the processes and service providers under the Code; capacity building initiatives and advocacy and awareness generation activities undertaken by the IBBI 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.

D | FUNCTIONS OF THE BOARD

Section 196 of the Code enumerates the functions of the Board. It envisages the Board to be a 'mini-State' with broadly three sets of functions, namely, (a) *Quasi-legislative functions*: The Board makes regulations to regulate service providers and processes; (b) *Executive functions*: The Board registers and regulates service providers for the insolvency process and takes measures for professional development and expertise through education, examination, training and continuous professional education; and (c) *Quasi-judicial functions*: The Board adjudicates upon contraventions by service providers to ensure their orderly functioning. The actions taken by the Board during 2018-19 in furtherance of each of these functions are enumerated in this Section.

QUASI-LEGISLATIVE FUNCTIONS

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

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

The process usually starts with a working group (WG) making draft regulations. The practice of setting up of WGs to study issues in detail and make recommendations on important aspects of regulations was used by the Government in the early stages of implementing the provisions of the Code. In keeping with this practice, the IBBI constitutes WGs to delve deeper into regulatory issues and suggest draft regulations. It then discusses the draft regulations in several 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 Advisory Committee (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 (Box 5) on 22nd October, 2018 to govern the process of making regulations.

Regulatory Impact Assessment

The existence of market failure is a necessary, but not a sufficient condition to have regulation. Regulation is not a virtue by itself. Neither it is free of cost nor is it the panacea against all market failures. It often fails for the very same reason, such as information asymmetry, as the market fails, and regulatory failure may be of the same order as the market failure. Occasionally, there are situations when no regulation can correct an identified market failure. It may not address it effectively or may address it with a cost not worth it. The cost of regulation, in certain circumstances, could be higher than the costs of market failure sought to be avoided. The regulation could be non-implementable and dysfunctional or could even be subverted. If not designed and implemented properly, regulations could have unintended consequences. There is likelihood of having regulations even if there is no likelihood of market failure. The regulations tend to multiply and be excessive than warranted. This may slowdown the growth and shift business to less regulated jurisdictions. It is useful to carry out some kind of Regulatory Impact assessment (RIA) (Box 6) of the proposed regulation and to associate the stakeholders in development of the regulation to ensure that the regulation is well designed to address the identified market failure at the least possible cost. It may be noted that neither regulation nor market can effectively address every market failure in all circumstances. It is perhaps better to live with some market failures in some context and use a judicious mix of market and regulation, where regulations supplement the market, and not supplant it.

Box 5: Regulations for Making Regulations

Of late, the business environment has become very dynamic. The change that used to take centuries earlier in markets is coming about in months, or at best in years. The governance response to this has been establishment of regulators empowered by 'almost incomplete' form of law. This form believes that it is not possible to visualise all the possible circumstances and provide for the same in the legislation. Here, the legislations do not over-legislate which may restrict developments. They tend to be skeletal; but have the potential to deal with all the possible circumstances, including unforeseen exigencies , through subordinate legislation (regulations), which can evolve rapidly with the changing needs. However, the legislation does not over-delegate legislative functions. While avoiding over-legislation and over-delegation, the legislature ensures that the legislation supports every legitimate market development and the subordinate legislation remains within the confined space.

Given that regulations are law, it should have certain minimum legitimacy and should pass through certain procedural rigour. In *Cellular Operators Association of India Vs. Telecom Regulatory Authority of India*[19] , the SC (2016) observed: *"We find that, subject to certain well defined exceptions, it would be a healthy functioning of our democracy if all subordinate legislation were to be "transparent" ... we would exhort Parliament to take up this issue and frame a legislation along the lines of the U.S. Administrative Procedure Act (with certain well defined exceptions) by which all subordinate legislation is subject to a transparent process by which due consultations with all stakeholders are held, and the rule or regulation making power is exercised after due consideration of all stakeholders' submissions, together with an explanatory memorandum which broadly takes into account what they have said and the reasons for agreeing or disagreeing with them."*

The IBBI (Mechanism for Issuing Regulations) Regulations, 2018 (Regulations) provide that for the purpose of making or amending any regulations, the IBBI shall upload the following on its website seeking, with the approval of its GB, 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. These allow at least twenty-one days for public to submit their comments on the proposed regulations.

Public consultation enables the broader society to participate in making regulations. This increases information available to the regulator, while improving compliance and acceptability of the proposed regulations among the regulated 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 processes[20]. 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[21]. The inputs received through consultation need to be independently examined, keeping in mind the interests of those stakeholders too, who may 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 Regulations require that the GB must approve regulations only after considering public comments and upload the same on its website along with a general statement of its response on the comments, not later than the date of notification of regulations. If the GB decides to approve regulations in a form substantially different from the proposed regulations, it shall repeat the process again. Regulations shall come into force after thirty days of their notification unless a different date is specified. This provides an opportunity to the regulated to adjust to the changes made by the regulations. In case of emergency, regulations may be made without complying with the aforesaid process.

One of the objectives of subordinate legislation is that it needs to respond, rapidly and often proactively, to the evolution of fast-paced marketplace. Due to this volatile nature, there is always a possibility that a subordinate legislation becomes obsolete. Therefore, the subordinate legislation is required to be reviewed at regular intervals of time. The Regulations require the Board to review each regulation every three years unless a review is warranted earlier and amend or repeal any regulation.

Box 6: Regulatory Impact Assessment

The legislature has entrusted regulators with the authority to issue regulations that carry the force of law. Such authority needs to be exercised with full responsibility for its outcomes. The Financial Sector Legislative Reforms Committee (FSLRC) recommends publication of an analysis of costs and benefits of the proposed regulations because every regulatory intervention imposes certain costs on the regulated and the system, and regulations should minimise such costs. It is, however, acknowledged that often pure numerical value-based cost-benefit analysis is not possible. In such cases, the regulators usually carry out a systematic examination, estimation, and comparison of the economic costs and benefits resulting from the implementation of proposed regulations or any policy change to avoid sub-optimal outcomes and subjectivity of decisions before any regulatory intervention. They have integrated RIA into the early stages of the formulation of new regulatory proposals to clearly identify policy goals; evaluate if regulation is necessary; consider means other than regulation to achieve the goals; visualise effective and efficient regulatory options; recognise the trade-offs of the different approaches; and choose the best one. This ensures that the cost of regulation is less than the cost of market failure which the regulation intends to

[19] 7 SCC 703 of 2016
[20] Soma, L & F Naru (2017), 'Regulatory Policy in India: Moving towards Regulatory Governance', *OECD Regulatory Policy Working Papers, No. 8, OECD, Paris*.
[21] Somanathan, TV (2016), 'The Administrative and Regulatory State' in The Oxford Handbook of the Indian Constitution, eds. S Choudhary, M Khosla and PB Mehta, *Oxford University Press*.

address, and the proposed regulation imposes the least costs on the regulated and the ecosystem. This enables a regulator to demonstrate that its decisions are based on an informed estimation of likely consequences during the development, issuance, and implementation of regulations.

The OECD[22] observes that RIA helps to ensure that the regulations are as effective and as efficient as possible. Effective regulation achieves the policy objective(s) for which it is made. Efficient regulation achieves these objectives at the lowest total cost to all members of society. Inappropriate regulation can stifle growth by putting obstacles on the way of doing business and by creating perceptions of a negative environment. It is, therefore, necessary to identify as many different practical ways of addressing a problem or achieving an objective and assessing their impacts to identify the best of them. It may reveal that there is no case for a regulation. This is possible when the size of the problem is too small to justify regulations, or no feasible regulation is likely to address the problem effectively and at a cost that is reasonable in relation to the expected benefits of the regulation. Regulation should be introduced only if it is expected to improve society's economic and social welfare. It keeps the 'whole of society' view in mind, rather than paying undue attention to the impact on individual groups who may be lobbying for regulation. OECD[23] recommends RIA in the early stages of new regulatory proposals. It advises evaluation of alternatives such as 'regulation' and 'no regulation' and if 'regulation', then which kind of regulation.

The RIA is a manner of thinking of a regulator before taking any regulatory action and goes a long way in ensuring that the action is objective, and the process is well documented. The following are the 7 key elements or steps in conducting an RIA:

Step 1: Defining the problem and policy context: Important questions that a regulator should ask and answer in an RIA are: what is the problem to be addressed by a new regulation or change in a regulation?; why should it intervene?; is the market failing to address the identified problem and if so, how?; is the existing regulation not working, if so, why?; what further action is required?; what are the risks of action/inaction?

Step 2: Identification of Objectives: It is important to know the objective of the regulatory change. The regulator should identify the objectives of its regulatory action, specifically trying to link directly to addressing the problem at hand. With this objective in mind, the regulator should identify what needs to change and what should be the magnitude of change required.

Step 3: Identification of feasible options: Regulator should identify a range of options (typically 2 to 4 options), including the 'do-nothing' option to address the problem at hand. Regulation may not always be the best option. Hence, the regulator needs to have alternative policy options, such as free market, self-regulation, providing market incentives, etc.

Step 4: Assessment of impact costs, benefits of each option: At this stage, assessment of impact of various options is carried out, including identifying who is affected by the regulation/change in regulation. The level of detail is typically based on the importance of the issue. Here both the quantitative and qualitative impacts of a regulation are considered. Benefits may include such outcomes as deaths and injuries avoided, acres of rare habitat saved (for social regulations), or a decreased probability of financial crisis (for financial regulations). Costs may include outcomes such as increased production costs for companies, regulation compliance cost to companies, barrier to regulatory change, and increased prices for consumers. Externalities, that is, the effects experienced by parties that are not directly involved in the market transactions covered by the regulation, should be included in the analysis to the extent possible.

Step 5: Document consultation with stakeholders and their views: Consultation with stakeholders is an important element of RIA. Such a consultation should be well documented with reasons for accepting/rejecting suggestions.

Step 6: Conclusion and recommended options: Based on above steps, the regulator can arrive at a conclusion on what regulatory action to take to address the identified problem to achieve the identified objectives.

Step 7: Implementation and review- how, when, who: The RIA, at this stage, documents how the preferred option will be implemented, who will be responsible for administering the option and when will it be implemented?

Identification and quantification of possible impacts of a regulatory action is the key to conducting an RIA. If it were the case that regulators were expected to make decisions with complete information, all societal costs and benefits would need to be accurately and precisely estimated. RIA of any type of regulation faces challenges in making an accurate assessment of the regulation's effects. Over recent decades, academics and agency experts have developed sophisticated and useful techniques to do these types of analyses, but they generally contain a degree of uncertainty. Other challenges include behavioural changes of people as they adapt to a new regulation, which are difficult to predict; quantification that must overcome uncertainty over the causal relationship between the regulation and outcomes; and monetisation, which is difficult for outcomes that are not easily discernible.

Certain variations of RIAs address some of these difficulties. Such variations include: comparison of costs of alternative regulation when benefits cannot be accurately quantified or monetised; breakeven analysis to establish the likelihood or under what conditions a regulation would be beneficial; qualitative analysis with expert judgement where experienced professionals describe and explain likely effects that cannot be quantified and make a judgement as to how costs compare with benefits; and retrospective analysis, which estimates the realised costs and benefits following some period of time, often years, after implementation of regulations.

[22] OECD (2008), Introductory Handbook for Undertaking Regulatory Impact Analysis.
[23] OECD (2012), Recommendation of the Council of the OECD on Regulatory Policy and Governance.

Despite the best of efforts and intentions, a regulator may not always understand the ground realities, as much and as early as the stakeholders may do, particularly in a dynamic environment. The stakeholders could, therefore, play a more active role in making regulations. They may contemplate, at leisure, the important issues in the extant regulatory framework that hinder transactions and offer alternate solutions to address them. In addition to usual consultation seeking feedback on proposed regulations within specified time, the IBBI provides an opportunity to stakeholders to suggest regulations they need. This is akin to crowdsourcing of ideas. This enables every idea to reach the regulator. Consequently, the universe of ideas available with the regulator is much larger and the possibility of a more conducive regulatory framework much higher. The IBBI invited comments from stakeholders on the existing Regulations in April, 2018. It processed the comments received till December, 2018 and following the due process, modified the Regulations, to the extent necessary, by March, 2019.

The Board had notified ten Regulations in 2016-17. It notified four new Regulations in 2017-18. In 2018-19, the Board notified one new Regulation. It amended some of the existing Regulations from time to time, as detailed in Table 15. The details of each of these Regulations and amendments have been provided under the relevant sub-sections of Section C of the Report.

Table 15: Regulations notified in 2018-19

Sl. No.	Notification Date	Regulations
1	03.07.18	IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018
2	05.10.18	IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2018
3	11.10.18	IBBI (Insolvency Professionals) (Second Amendment) Regulations, 2018
4	11.10.18	IBBI (Information Utilities) (Second Amendment) Regulations, 2018
5	11.10.18	IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2018
6	11.10.18	IBBI (Insolvency Professional Agencies) (Amendment) Regulations, 2018
7	22.10.18	IBBI (Mechanism for Issuing Regulations) Regulations, 2018
8	22.10.18	IBBI (Liquidation Process) (Second Amendment) Regulations, 2018
9	15.01.19	IBBI (Voluntary Liquidation Process) (Amendment) Regulations, 2019
10	24.01.19	IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2019

In order 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 13 of section C. Table 16 is a summary of the number of roundtables for various subjects.

Table 16: Subject wise Roundtable Events

Subject	2016-17	2017-18	2018-19	Total
Service Providers under the Code	04	02	--	**06**
Corporate Insolvency Processes - Insolvency Resolution, Fast Track Resolution, Liquidation and Voluntary Liquidation	04	11	07	**22**
Individual Insolvency Processes	--	10	01	**11**
Valuation Rules	--	18	--	**18**
Cross Border Insolvency	--	--	03	**03**
Going Concern Sale & Group Insolvency	--	--	04	**04**
Others	--	03	07	**10**
Total	**08**	**44**	**22**	**74**

Advisory Committee

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, 2019 is given in Table 17.

Table 17: Composition of Advisory Committee on Service Providers

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

(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, 2019 is given in Table 18.

Table 18: 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. Somsekhar 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 Bank Association	Member
12	Chief Executive Officer, IPA of ICMAI	Member

(c) Advisory Committee on Individual Insolvency and Bankruptcy

It was constituted on 15th September, 2017. Its composition as on 31st March, 2019 is given in Table 19.

Table 19: Composition of Advisory Committee on Individual Insolvency and Bankruptcy

Sl. No.	Name and Position	Position in the Committee
1	Justice B. N. Srikrishna, Former Justice, Supreme Court of India	Chairperson
2	Mr. C. B. Bhave, Chairperson, IIHS and Former Chairman, SEBI	Member
3	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, Society of Insolvency Practitioners of India	Member
10	Chief Executive Officer, IIIP of ICAI	Member

EXECUTIVE FUNCTIONS

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 and have passed the Examination are registered as IPs under regulation 7 of the IP Regulations. In this category, 2460 individuals were registered as IPs as on 31st March, 2019 out of which registrations of 4 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, 2019. Details of the registrations of IPs, IPA wise, is presented in Table 20. Region wise distribution of IPs registered as on 31st March, 2019 is presented in Table 21.

Table 20: Registration and Cancellation of Registrations of IPs

Quarter	During the Quarter		Registered at the End of the Quarter			
	Registered	Cancelled	IIIP of ICAI	ICSI IIP	IPA of ICMAI	Total
Oct-Dec, 2016*	977	0	713	221	43	977
Jan - Mar, 2017	96	0	33	51	12	96
Apr - Jun, 2017	450	0	266	136	48	546
Jul - Sep, 2017	561	0	338	183	40	1107
Oct - Dec, 2017	217	0	125	72	20	1324
Jan - Mar, 2018	488	0	340	118	30	1812
Apr - Jun, 2018	71	1	43	21	6	1882
Jul - Sep, 2018	154	1	97	49	7	2035
Oct - Dec, 2018	253	1	182	51	19	2287
Jan - Mar, 2019	170	1	96	52	21	2456
Total	**2460**	**4**	**1520**	**733**	**203**	**2456**

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

Table 21: Distribution of IPs as on 31st March, 2019

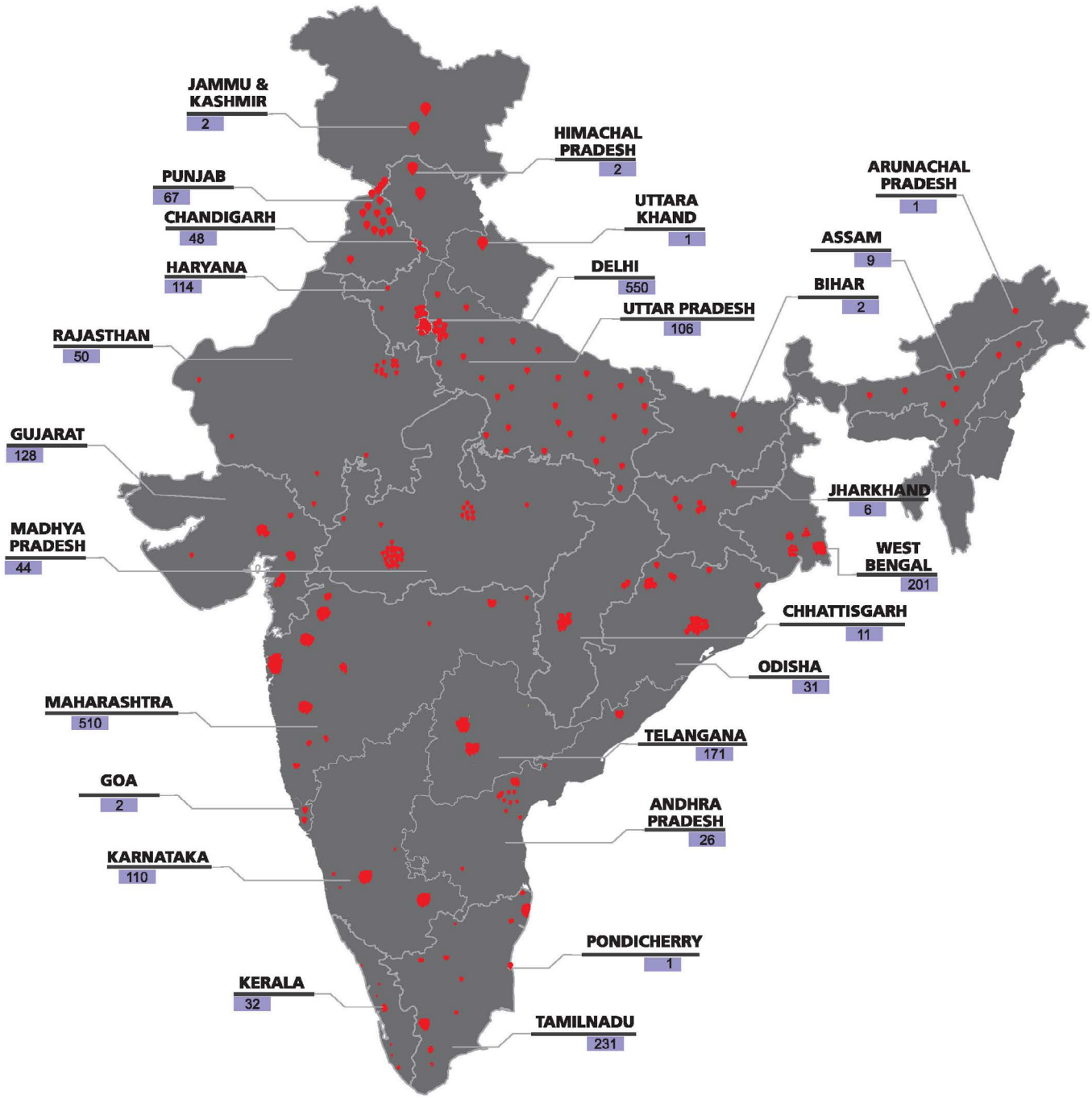
(Number)

City / Region	IIIP of ICAI	ICSI IIP	IPA of ICMAI	Total
New Delhi	305	196	51	552
Rest of Northern Region	221	131	38	390
Mumbai	276	88	24	388
Rest of Western Region	196	88	25	309
Chennai	92	57	10	159
Rest of Southern Region	246	131	35	412
Kolkata	141	31	15	187
Rest of Eastern Region	44	14	5	63
Total Registered	1521	736	203	2460
Cancellations	1	3	0	04
Total	**1520**	**733**	**203**	**2456**

The geographical distribution of IPs as on 31st March, 2019 is presented in Figure 2.

An individual with 10 years of experience as a member of the ICAI, ICSI, ICMAI 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 22 presents distribution of IPs as per their eligibility (an IP may be a member of more than one Institute) as on 31st March, 2019. Of the 2456 IPs, 220 IPs, accounting for about nine per cent of the registered IPs, are female. Table 23 presents the age profile of the IPs registered as on 31st March, 2019.

Figure 2: Geographical Distribution of IPs as on 31st March, 2019 [24]



[24] Map of India as on 31st March, 2019

Table 22: Distribution of IPs as per their Eligibility as on 31st March, 2019

Eligibility	No. of IPs		
	Male	Female	Total
Member of ICAI	1256	114	1370
Member of ICSI	396	66	462
Member of ICMAI	136	11	147
Member of Bar Council	147	17	164
Managerial Experience	301	12	313
Total	**2236**	**220**	**2456**

Table 23: Age Profile of IPs as on 31st March, 2019

Age Group (in Years)	IIIP ICAI	ICSI IIP	IPA of ICMAI	Total
≤ 40	212	72	4	288
> 40 ≤ 50	552	271	37	860
> 50 ≤ 60	482	198	56	736
> 60 ≤ 70	259	173	101	533
> 70 ≤ 80	14	16	5	35
> 80 ≤ 90	1	3	0	4
> 90	0	0	0	0
Total	**1520**	**733**	**203**	**2456**

Insolvency Professional Entities

IPEs provide support services to IPs. As on 31st March, 2019, there were 48 IPEs. The quarterly details of recognition of IPEs are given in Table 24.

Table 24: Recognised IPEs as on 31st March, 2019

Quarter	No. of IPEs		
	Recognised	Derecognised	At the End of the Quarter
Jan-Mar, 2017	3	0	3
Apr-Jun, 2017	14	0	17
Jul-Sep, 2017	22	1	38
Oct-Dec, 2017	18	0	56
Jan-Mar, 2018	19	0	75
Apr-Jun, 2018	1	3	73
Jul-Sep, 2018	4	4	73
Oct-Dec, 2018	3	20	56
Jan-Mar, 2019	5	13	48
Total	**89**	**41**	**48**

Capacity Building

It is the endeavour of the IBBI to build capacity of the IPs in the area of insolvency and bankruptcy given that the insolvency regime is new and the law needs to be understood and interpreted correctly to deliver the envisaged outcomes.

IP Workshops and Conclaves

The IBBI organised two day Workshops for IPs at various locations around the country, as presented in Table 25.

Table 25: IP Workshops during 2018-19

Date	Venue	No. of IPs
20 - 21 Apr, 2018	Chennai	50
29 - 30 Jun, 2018	Bengaluru	55
07- 08 Sept, 2018	Hyderabad	34
30 Nov - 1 Dec, 2018	Chandigarh	54
21 - 22 Dec, 2018	Pune	26
01 - 02 Feb, 2019	Coimbatore	23
08 - 09 Mar, 2019	Kolkata	27

IBBI, in association with the three IPAs, organised an IP Conclave on 26th May, 2018 in Mumbai, where 250 IPs participated. It organised another IP Conclave on 1st December, 2018 in Hyderabad, which saw participation of 400 IPs. These conclaves focused on importance of ethics, integrity and independence of IPs in insolvency processes, and expectations of RAs, business, creditors and the AA from them.

The IBBI, in partnership with the International Monetary Fund (IMF) and the Indian Institute of Corporate Affairs (IICA), organised a workshop on 25th and 26th May, 2018 at New Delhi for officers of IBBI and other regulators, IPs and other stakeholders. The workshop focussed on emerging practices in corporate insolvency resolution and learning from international best practices along with cross-country experience. It addressed the practical and operational challenges emerging in the insolvency processes under the Code.

The BFSI SSC under the guidance of Ministry of Skill Development and Entrepreneurship (MSDE) and the IBBI, in partnership with the three IPAs and with the SIPI as knowledge partner, conducted a one-day refresher programme for IPs on 24th August, 2018 in Delhi. The programme focussed on ethics and conduct for IPs and recent developments in the insolvency and bankruptcy regime in India.

With a view to provide clarity on the provisions of the regulations and circulars to IPs and other stakeholders, IBBI participated in five webinars on various subjects over the period under review. First of the webinar was organised by ICSI IIP on 21st August, 2018 on the circulars relating to disclosure of costs and relationships, which was viewed by about 2000 participants. The second webinar was organised by the three IPAs jointly on 14th September, 2018 on various circulars and role of IPs *vis-à-vis* CoC, which was viewed by about 12,000 participants. The third webinar was organised by IIIP of ICAI on 18th October, 2018 on certain amendments to regulations, which saw a viewership of about 12,000 professionals. The fourth of the webinars was organised by the three IPAs on 25th March, 2019 to respond on queries relating to Charter of Responsibilities of IPs and CoC, and GIP. The fifth webinar was organised by the ICSI IIP on 12th January, 2019 on 'Judicial/Regulatory Interpretations under the IBC'.

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 a reference, a database of all the IPs registered with IBBI has been shared with the AA, disclosing information pending disciplinary proceeding is pending against them, if any. 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, 2019, a total of 1850 IPs have been appointed as RPs, as shown in Table 26.

Table 26: Replacement of IRP with RP till 31st March, 2019

CIRP initiated by	No. of CIRPs	
	Where RPs have been appointed	Where RP is different from the IRP
Corporate Applicant	202	85
Operational Creditor	855	286
Financial Creditor	793	198
Total	**1850**	**569**

Guidelines for Recommending IRPs and Liquidators

Section 16(3)(a) of the Code requires the AA to make a reference to the Board for recommendation of an IP who may act as an IRP in case an OC has made an application for CIRP and has not proposed an IRP. The Board, within ten days of the receipt of the reference from the AA, is required under section 16(4) of the Code to recommend to the AA the name of an IP against whom no disciplinary proceedings are pending. Section 34(4) of the Code requires the AA to replace the RP, if (a) the resolution plan submitted by the RP under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or (b) the Board recommends the replacement of a RP to the AA for reasons to be recorded in writing. The AA may direct the Board to propose the name of another IP to be appointed as a Liquidator. The Board is required under section 34(6) to propose the name of another IP within ten days of the direction issued by the AA. The Board used to receive a reference from the AA for recommending the name of an IP to act as IRP or Liquidator, as the case may be. Identification and recommendation of a name on receipt of a reference from the AA took some time. In the interest of the time bound processes under the Code, while maintaining objectivity and transparency of the process, the Board decided to make available a panel of IPs to the AA for appointment as IRP or Liquidator, as the case may be.

Accordingly, the IBBI issued the 'Interim Resolution Professionals and Liquidators (Recommendation) Guidelines, 2017' on 15th December, 2017. The Guidelines provide that the Board will prepare a common Panel of IPs for appointment as IRPs and Liquidators and share the same with the AA. The Panel will have a bench-wise list of IPs based on the registered office of the IP. It will have a validity of six months and a new Panel will replace the earlier Panel every six months. The AA may pick up any name from the Panel for appointment of IRP or Liquidator, as the case may be, for a CIRP or liquidation process, as the case may be. The Guidelines lay down the process that the IBBI will follow for preparation of the Panel. In accordance with the aforesaid Guidelines, the IBBI prepared a Panel of 807 IPs for appointment as IRP or Liquidator during January-June, 2018 and shared the same with the AA. Similarly, it issued the 'Interim Resolution Professionals and Liquidators (Recommendation) Guidelines, 2018' on 31st May, 2018 and prepared a Panel of 986 IPs for appointment as IRP or Liquidator during July-December, 2018 and shared the same with the AA. Further, it issued the 'Interim Resolution Professionals and Liquidators (Recommendation) (Second) Guidelines, 2018' on 30th November, 2018 and prepared a Panel of 850 IPs for appointment as IRP or Liquidator during January-June, 2019 and shared the same with the AA.

Appointment as Administrators

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' on 26th March, 2019 to govern the preparation of a Panel of IPs for appointment as Administrators. The Panel is valid for six months and a new Panel will replace the earlier one every six months.

Information Utilities

The Code envisages IUs to store financial information that helps to establish defaults as well as verify claims expeditiously

Table 27: Details of Information with the NeSL

(Number, except as stated)

At the end of quarter	Creditors having agreement with NeSL		Creditors who have submitted information		Debtors whose information is submitted by creditors		Loan records on-boarded by		User registrations (Debtors)		Loan records authenticated by debtors		Amount of underlying debt (Rs. crore)	
	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs
Jun, 2018	66	NA	21	105	69184	52	191247	105	1024	10	1364	05	NA	NA
Sept, 2018	85	NA	40	144	836302	135	1222737	207	5111	10	6079	32	2016708	530
Dec, 2018	108	NA	68	140	980724	202	1438390	280	10247	44	10065	35	2732805	1094
Mar, 2019	173	NA	114	169	1266445	230	1955230	316	15085	63	13762	37	4114988	16224

and thereby facilitates completion of processes under the Code in a time bound manner. IBBI registered the National e-Governance Services Limited (NeSL) as an IU on 25th September, 2017. NeSL has been promoted by SBI, Canara Bank, Bank of Baroda and others. The details of the registered users and information with the NeSL as on 31st March, 2019 is given in Table 27.

Technical Committee

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. 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 standard relate to terms of service; registration of users; unique identifier for each record and each user; submission of information; identification and verification of persons; authentication of information; verification of information; data integrity; consent framework for providing access to information to third parties; security of the system; security of information; risk management framework; preservation of information; and purging of information. The composition of the Committee as on 31st March, 2019 is as under:

(a) Dr. R. B. Barman, Chairman, National Statistical Commission, as Chairperson
(b) Dr. Nand Lal Sarda, Emeritus Fellow, Indian Institute of Technology, Bombay
(c) Dr. Pulak Ghosh, Professor, IIM, Bangalore, and
(d) Sh. V. G. Kannan, Chief Executive, Indian Banks Association.

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, 2019, 11 entities were recognised as RVOs. There are 9 RVOs each in asset classes, Land and Building, Plant and Machinery and 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. Only RVs are authorised to undertake valuations required under the Companies Act, 2013 and the Code. The details of RVs, RVO-wise, as on 31st March, 2019, is given in Table 28. The registration of RVs, quarter-wise, till 31st March, 2019 is given in Table 29.

Table 28: RVs as on 31st March, 2019

(Number)

Registered Valuer Organisation	Asset Class			Total
	Land & Building	Plant & Machinery	Securities or Financial Assets	
Institution of Estate Managers and Appraisers	32	0	1	33
IOV Registered Valuers Foundation	499	66	15	580
ICSI Registered Valuers Organisation	0	0	28	28
ICAI Registered Valuers Organisation	NA	NA	178	178
The Indian Institution of Valuers	39	8	4	51
ICMAI Registered Valuers Organisation	5	6	58	69
PVAI Valuation Professional Organisation	108	17	0	125
CVSRTA Registered Valuers Association	98	24	NA	122
Association of Certified Valuators and Analysts*	NA	NA	0	0
CEV Integral Appraisers Foundation*	0	0	NA	0
Divya Jyoti Foundation*	0	0	0	0
Total	**781**	**121**	**284**	**1186**

**Recognition granted in December, 2018*

Table 29: Registration of RVs as on 31st March, 2019

(Number)

Quarter	Land & Building	Plant & Machinery	Securities or Financial Assets	Total
Apr - Jun, 2018	1	2	0	3
Jul - Sep, 2018	38	13	21	72
Oct - Dec, 2018	280	43	118	441
Jan - Mar, 2019	462	63	145	670
Total	**781**	**121**	**284**	**1186**

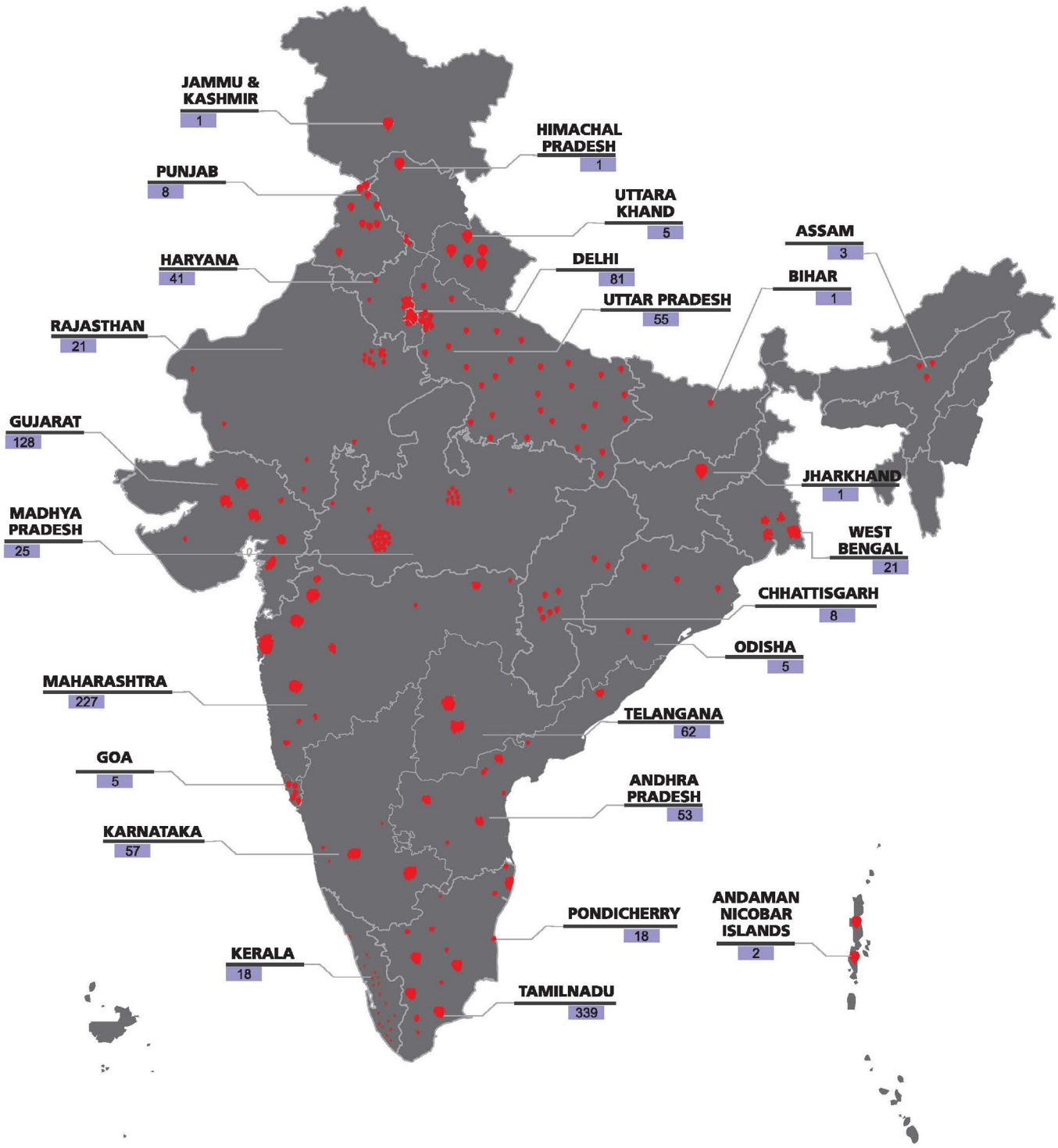
Of the RVs registered as on 31st March, 2019, 345 RVs (constituting 29 per cent of the total RVs registered) are from metros while 841 RVs (constituting 71 per cent of the total RVs registered) are from non-metro locations (Table 30). A geographical distribution of RVs as on 31st March, 2019 is presented in **Figure 3**.

Table 30: Region-wise RVs as on 31st March, 2019

(Number)

City / Region	Land & Building	Plant & Machinery	Securities or Financial Assets	Total
New Delhi	23	16	42	81
Rest of Northern Region	80	15	39	134
Mumbai	47	21	58	126
Rest of Western Region	211	28	28	267
Chennai	74	10	34	118
Rest of Southern Region	335	27	67	429
Kolkata	3	3	14	20
Rest of Eastern Region	8	1	2	11
Total	**781**	**121**	**284**	**1186**

Figure 3: Geographical Distribution of RVs as on 31st March, 2019 [25]



[25] Map of India as on 31st March, 2019

The average age of RVs as on 31st March, 2019 stood at 49 years across asset classes. It was 50 years for Land and Building, 55 years for Plant and machinery and 45 years for Securities or Financial assets (Table 31).

Table 31: Age profile of RVs an on 31st March, 2019

(Number)

Age Group (in years)	Land & Building	Plant & Machinery	Securities or Financial Assets	Total
≤ 30	23	1	12	36
> 30 ≤ 40	101	14	101	216
> 40 ≤ 50	234	31	89	354
> 50 ≤ 60	351	37	61	449
> 60 ≤ 70	64	28	21	113
> 70 ≤ 80	7	9	0	16
> 80	1	1	0	2
Total	**781**	**121**	**284**	**1186**

National Valuation Symposium

The IBBI and the CVSRTA jointly organised a 'National Valuation Symposium' on 23rd February, 2019 at Ahmedabad. The valuation professionals and experts discussed in depth the issues being encountered in conducting valuations required under the Companies Act, 2013 and the Code. Several matters related to the emerging regulatory framework for valuation professionals as well as the way forward for valuation education and profession and valuation standards were also discussed.

Complaints and Grievances

The Grievance Regulations enable a stakeholder to file a grievance or a complaint against a service provider. Besides this, grievances and complaints are received from the Centralised Public Grievance Redress and Monitoring System (CPGRAMS), Prime Minister's Office, MCA and other authorities. The regulations provide for an objective and transparent procedure for disposal of grievances and complaints by the IBBI, that does not spare a mischievous service provider, but does not harass an innocent service provider. The receipt and disposal of grievances and complaints till 31st March, 2019 is given in Table 32.

Table 32: Receipt and Disposal of Grievances and Complaints till 31st March, 2019

(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	693	380	1137	721	416
Total	**129**	**51**	**339**	**290**	**715**	**382**	**1183**	**723**	**460**

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 and fourth phase of Examination, each with a revised syllabus and question bank, commenced on 1st July, 2017, 1st January, 2018 and 1st November, 2018 respectively. The Examination is conducted online (computer-based in a proctored environment) with objective multiple-choice questions. It is available from several locations across the country. Till 31st March 2019, candidates have been successful in 3603 attempts. Out of them, 356 are from East Zone, 1331 are from North Zone, 1071 are from West Zone and 846 are from South Zone. The Zone-wise successful candidates is presented in Table 33.

Till 31st March, 2019, a total of 9762 candidates made 25667 enrolments. Out of these 9762 candidates, 8232 candidates appeared for the Examination and made a total of 19496 attempts, out of which 3603 attempts (19 per cent of attempts or 44 per cent of candidates) were successful. The performance of candidates in the Examination is summarised in Table 33.

Table 33: Region-wise Limited Insolvency Examination till 31st March, 2019

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	1202
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	1011
Fourth Phase (Nov, 2018 - Mar, 2019)	129	600	434	423	1586	24	107	78	69	278
Total	**1972**	**7094**	**5492**	**4938**	**19496**	**356**	**1331**	**1071**	**846**	**3603**

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 Examinations from 1st April, 2019. These examinations are conducted online and are available from several locations across the country.

Study material

An individual having specified qualification and experience needs to pass the examination conducted by IBBI. While a few universities offer specialised courses in valuation, the IBBI made available a very detailed, world class study material for two asset classes, namely, (a) Land and Building of 1420 pages and (b) Plant and Machinery of 1951 pages, prepared by the CVSRTA, as per syllabus of the valuation examinations. The CVSRTA prepared the voluminous material for two asset classes and made them available on the website of the IBBI for free download by users. The study material is used globally and available on the websites of a few valuer professional organisations globally.

Land and Building

Till 31st March 2019, a total of 2573 candidates made 11353 enrolments. Out of the 2573 candidates, 2522 candidates appeared for the Examination and 51 candidates did not appear for the Examination. 2522 candidates made a total of 9469 attempts, out of which 1748 attempts were successful. The performance of candidates in the Examination is summarised in Table 34.

Table 34: 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
Apr-Jun, 2018	9	37	6	12	64	3	6	1	0	10
Jul-Sept, 2018	95	380	790	1662	2927	9	66	176	*220	471
Oct-Dec, 2018	31	299	915	2491	3736	8	63	221	458	750
Jan-Mar, 2019	136	446	771	1389	2742	26	96	170	225	517
Total	**271**	**1162**	**2482**	**5554**	**9469**	**46**	**231**	**568**	**903**	**1748**

**One candidate passed the exam twice.*

Plant and Machinery

Till 31st March 2019, a total of 501 candidates made 1936 enrolments. Out of the 501 candidates, 492 candidates appeared for the Examination and 9 candidates did not appear for the Examination. These 492 candidates made a total of 1665 attempts, out of which 324 attempts were successful. The performance of candidates in the Examination is summarised in Table 35.

Table 35: 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
Apr-Jun, 2018	0	23	0	0	23	0	5	0	0	5
Jul-Sept, 2018	16	53	156	188	413	6	11	40	27	84
Oct-Dec, 2018	36	81	151	307	575	4	19	34	43	100
Jan-Mar, 2019	43	110	257	244	654	6	26	62	41	135
Total	**95**	**267**	**564**	**739**	**1665**	**16**	**61**	**136**	**111**	**324**

Securities or Financial Assets

Till 31st March 2019, a total of 1527 candidates made 5266 enrolments. Out of the 1527 candidates, 1456 candidates appeared for the Examination and 71 candidates did not appear for the Examination. These 1456 candidates made a total of 4496 attempts, out of which 707 attempts were successful. The performance of candidates in the Examination is summarised in Table 36.

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

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
Apr-Jun, 2018	7	60	12	15	94	0	8	1	1	10
Jul-Sept, 2018	66	409	320	231	1026	5	54	55	20	134
Oct-Dec, 2018	82	179	183	565	1009	9	26	34	67	136
Jan-Mar, 2019	295	404	683	985	2367	44	71	135	177	427
Total	**450**	**1052**	**1198**	**1796**	**4496**	**58**	**159**	**225**	**265**	**707**

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 37.

Table 37: Circulars issued by the Board in 2018-19

Date	Content
19.04.18	**Annual Compliance Certificate for IPAs** The Code read with the Regulations and Guidelines, Circulars, and Directions issued thereunder cast several duties, responsibilities and obligations on the IPAs. It also mandates the Board to monitor performance of the IPAs. Keeping in view the institutional role of the IPAs, and to facilitate monitoring of both their performance and compliance with statutory requirements, as also in the interest of transparency and accountability, the IBBI, in consultation with IPAs, devised and issued the format of Annual Compliance Certificate. This certificate is to be submitted by the IPAs to the Board and to be displayed on its website within 45 days of the closure of every financial year.
23.04.18	**Pre-registration educational course for IPs** In terms of the Regulations, an individual is eligible for registration as an IP, subject to meeting other requirements, if he has completed a pre-registration educational course, as required by the Board, from an IPA after his enrolment as a professional member. In consultation with the IPAs, the IBBI specified the details of pre-registration educational course. The course shall be conducted by the IPAs in not less than 50 hours either in class-room sessions or in MOOCs environment that provides participants an opportunity to do the tasks themselves in a near-real environment with practical examples.
23.04.18	**Commencement of Disciplinary Proceeding** The Code envisages that an IP may be appointed as IRP, RP, Liquidator, or a Bankruptcy Trustee if no disciplinary proceeding is pending against him. The Code, however, does not define 'disciplinary proceeding'. The IBBI clarified that (i) a disciplinary proceeding is considered as pending against an IP from the time he has been issued a show cause notice by IBBI till its disposal by the DC; and (ii) an IP who has been issued a show cause notice shall not accept any fresh assignment as IRP, RP, Liquidator, or a Bankruptcy Trustee under the Code.
12.06.18	**Fee and other Expenses incurred for CIRP** The IBBI directed that an IP shall ensure that the fee payable to him, fee payable to an IPE and fee payable to RVs and other professionals, as also other expenses incurred by him during CIRP are (a) reasonable; (b) directly related to and necessary for the CIRP; (c) determined by the IP on an arms' length basis; (d) duly approved by CoC, wherever required; and (e) paid through banking channel. It clarified that the IRPC shall not include: (a) any fee or other expense not directly related to CIRP; (b) any fee or other expense beyond the amount approved by CoC, where such approval is required; (c) any fee or other expense incurred before the commencement of CIRP or to be incurred after the completion of the CIRP; (d) any expense incurred by a creditor, claimant, RA, promoter or member of the Board of Directors of the CD in relation to the CIRP; (e) any penalty imposed on the CD for non-compliance with applicable laws during the CIRP; (f) any expense incurred by a member of CoC or a professional engaged by the CoC; (g) any expense incurred on travel and stay of a member of CoC; and (h) any expense incurred by the CoC directly. It further directed the IPs to disclose fee and other expenses incurred for CIRP to the IPA of which he / she is a member and the IPA in turn shall disseminate such disclosures on its website within three working days of the receipt of the disclosure and monitor the disclosures and submit a monthly summary of non-compliance by its IPs to IBBI by the seventh day of the succeeding month.
06.07.18	**Empanelment of IPEs** The IBBI observed that a few market participants were seeking empanelment of IPEs and a few IPEs were seeking empanelment with market participants. In view of this, the IBBI directed the IPEs to refrain from seeking empanelment with or joining any panel of any market participant, while clarifying that: (a) An IPE can provide only support services to the IPs who are its partners or directors; and (b) No person other than a person registered as an IP with the IBBI can render services as an IP. An IPE is neither enrolled as a member of an IPA nor registered as an IP with the IBBI. It cannot act as IP under the Code.
10.08.18	**Notice for Meetings of the CoC** As members of the CoC, the FCs discharge several critical responsibilities, including invitation, receipt, consideration and approval of resolution plans under the Code. Their conduct has serious implications for continued business of a CD and consequently on the economy. Keeping in view concerns of the AA in a few matters, the IBBI directed that the IRP / RP shall, in every notice of meeting of the CoC and any other communication addressed to the FCs, require that they must be represented in the CoC or in any meeting of the CoC by such persons who are competent and are authorised to take decisions on the spot and without deferring decisions for want of any internal approval from the FCs.
14.09.18	**Voting in the CoC** The IBBI clarified that: (a) The Code read with CIRP Regulations provide for the manner of collection and verification of claims; (b) The IRP constitutes the CoC comprising FCs, whose claims have been admitted, as members; (c) The voting power of a member in the CoC is based on the amount of admitted claim in respect of the financial debt; (d) An FC, whose claim has not been admitted, is included in the CoC as member, as and when its claim is admitted; (e) Inclusion of an FC in the CoC as a member after constitution of the CoC does not affect the validity of any decision taken by the CoC prior to such inclusion; and (f) The CoC decides the matters by the specified per centage of voting share of members. Therefore, a person, who is not a member of the CoC, cannot be regarded as one who has voted against a resolution plan or abstained from voting.
17.10.18	**Valuation under the Code** The IBBI clarified that every valuation required under the Code or any of the regulations made thereunder shall be conducted by a RV, that is, a valuer registered with the IBBI under the Valuers Rules. It directed that with effect from 1st February, 2019, no IP shall appoint a person other than an RV to conduct any valuation under the Code or any of the regulations made thereunder.

Orders of the Board

An individual enrolled with an IPA is required to make an application to the Board for grant of a certificate of registration to carry on the activities of an IP in accordance with IP Regulations. On consideration of an application, the Board may form a *prima facie* opinion that the registration ought not be granted to the applicant. The Board, having regard to the principles of natural justice, gives the applicant an opportunity to explain why the application should be accepted. If the Board is not satisfied even after the explanation submitted by the applicant, it rejects the application by a reasoned order. It rejected three applications for registration as IP in 2018-19 (Table 38). Out of a total of three applications, two were rejected on the grounds of the applicant not being a fit and proper person.

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

The Valuation Rules have similar provisions. The IBBI rejected one application for registration as RV in 2018-19 (Table 38).

Table 38: Rejection of Applications for Registration as IPs and RVs

Year	No. of Applications Rejected by IBBI	
	For Registration as IP	For Registration as RV
2016-17	2	NIL
2017-18	6	NIL
2018-19	3	1

In 2018-19, the Board de-recognised 40 IPEs, as they failed to meet the eligibility norms (Table 39).

Table 39: Derecognition of IPEs in 2018-19

Sl.No.	Date of Derecognition	Name of IPE Derecognised
1	20.06.18	Avasant Resolution Professionals Private Ltd.
2	27.06.18	Gyan Shree Insolvency Professionals LLP
3	29.06.18	HSG Turnaround Professionals Private Ltd.
4	25.09.18	BTG IP Services Private Ltd.
5	03.08.18	Dynamic Insolvency and Bankruptcy Services Private Ltd.
6	26.09.18	Triumphant Insolvency Advisors Private Ltd.
7	28.09.18	EY Restructuring LLP
8	16.10.18	Vaish Insolvency Professionals LLP
9	19.11.18	Turnaround Insolvency Professionals LLP
10	19.11.18	Kedia and Kedia Associates
11	19.11.18	BRS Insolvency Professionals LLP
12	19.11.18	SRI Resolution and Insolvency Advisory LLP
13	19.11.18	A. Mittal Management Consultants (OPC) Pvt. Ltd.
14	19.11.18	QBOID Advisors (Insolvency & Bankruptcy) LLP
15	19.11.18	SMARTNOMICS Insolvency Professionals LLP
16	19.11.18	Elite Insolvency Resolution Private Ltd.
17	20.11.18	A2Z Insolvency Services Private Ltd.
18	20.11.18	Key Insolvency and Bankruptcy Advisors LLP
19	20.11.18	Swift Insolvency Professionals LLP
20	20.11.18	KRV Insolvency Professionals LLP
21	20.11.18	Southern Insolvency Professionals LLP
22	20.11.18	Lexpro Insolvency Services Private Ltd.
23	20.11.18	ATCS Insolvency Professionals Private Ltd.
24	20.11.18	Apex Insolvency Professionals LLP
25	20.11.18	KPAD Insolvency Resolution Professionals LLP,
26	20.11.18	Lexlocus Insolvency Professionals Ltd.
27	20.11.18	Innovative Restructuring & Insolvency Professionals LLP
28	17.01.19	AV Insolvency Professionals Private Ltd.
29	17.01.19	Apprise Insolvency Professionals LLP
30	17.01.19	Leverage Turnaround & Resolution Private Ltd.
31	17.01.19	Integro Insolvency Professionals Services Private Ltd.
32	17.01.19	Ezylaws Insolvency Professionals Private Ltd.
33	17.01.19	Majestic Resolution Professionals LLP
34	17.01.19	Chartered Insolvency Resolution Professionals Private Ltd.
35	17.01.19	Kadmawala Insolvency Professional Private Ltd.
36	17.01.19	Bolster Juris IBP Private Ltd.
37	17.01.19	AAL Insolvency Professional Private Ltd.
38	17.01.19	Aries Corporate Consultants LLP
39	17.01.19	Manrom Consult LLP
40	17.01.19	Mint Insolvency Professionals LLP

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 show cause notice (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. The 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 11disciplinary proceedings and issued orders during 2018-19. The details of these proceedings are presented in Table 40.

Table 40: Closure of Disciplinary Proceedings in 2018-19

Sl.No.	Date of Order	Name of IP	Penalty Imposed
1	13.04.18	Mr. Dhaivat Anjaria	Penalty equal to one tenth of the total fee payable as IRP and RP in the CIRP of Electrosteel Steels Ltd.
2	21.05.18	Mr. X	Registration cancelled. However, access to order blocked under directions of the High Court
3	03.05.18	Ms. Bhavna Sanjay Ruia	Registration suspended for a period of one year.
4	23.08.18	Mr. Mukesh Mohan	Registration cancelled and debarred from seeking fresh registration as an IP or providing any services under the Code for a period of ten years.
5	23.08.18	Mr. Dinkar T. Venkata Subramanian	Penalty of one lakh rupees.
6	06.09.18	Mr. Kapil Goel	Registration suspended for a period of three months and debarred from taking up any new assignment till compliance of directions.
7	15.10.18	Mr. Sandeep Kumar Gupta	Penalty equal to one hundred per cent of the total fee payable to him as IRP and as RP in the CIRP of Stewarts & Lloyds of India Ltd. and directed to undergo pre-registration educational course.
8	12.11.18	Mr. Martin S. K. Golla	Registration cancelled and debarred from seeking fresh registration as an IP or providing any services under the Code for ten years.
9	07.01.19	Mr. Vasudeo Agarwal	Penalty equal to one hundred per cent of the total fee payable as IRP and as RP in the CIRP of Upadan Commodities Private Ltd.
10	28.01.19	Mr. Sandip Kumar Kejriwal	Penalty equal to one hundred per cent of the total fee payable as IRP and as RP in the CIRPs of Upadan Commodities Private Limited and MaaTaara Industrial Complex Pvt. Ltd. and directed to undergo pre-registration educational course.
11	21.02.19	Ms. Bhavna Sanjay Ruia	Registration cancelled and debarred from seeking fresh registration as an IP or providing any services under the Code for ten years.

E | ANALYSIS OF OUTCOMES

This Section presents the outcomes under the Code during 2018-19 based on concluded realisations from corporate insolvency proceedings. This section uses data, as provided by RPs. It does not consider other outcomes from insolvency proceedings which have been captured in other Chapters of this report. Further, a summary of the emerging jurisprudence is also presented.

CORPORATE PROCESSES

Two major developments in 2017-18 changed the trajectory of the insolvency regime. These are: (a) The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, effective from 23rd November, 2017, which prohibited certain persons from submitting a resolution plan who, on account of their antecedents may adversely impact the credibility of the process under the Code; (b) The RBI circular of 12th February, 2018, that substituted the existing guidelines with a harmonized and simplified generic framework for resolution of stressed assets.

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, effective from 6th June, 2018, promoted the objectives of the Code further. Several pronouncements from the apex court in 2018-19 cemented the processes under the Code further, wherein several provisions in the Code passed constitutional muster.

Insolvency Resolution

Since the coming into force of the provisions of CIRP with effect from 1st December, 2016, 1891 CIRPs have commenced by the end of March, 2019, as presented in Table 41. Of these, 211 have been closed on appeal or review or settled; 88 have been withdrawn; 396 have ended in liquidation and 101 have ended in approval of resolution plans. The month-wise admission of CDs into CIRP is presented in **Figure 4**.

Table 41 : Corporate Insolvency Resolution Process till 31st March, 2019

(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	
Jan- Mar, 2017	0	37	1	0	0	0	36
Apr-Jun, 2017	36	130	8	0	0	0	158
July-Sep, 2017	158	235	18	0	2	8	365
Oct-Dec, 2017	365	144	40	0	7	24	438
Jan-Mar, 2018	438	196	23	0	11	59	541
Apr-Jun 2018	541	249	22	1	14	51	702
Jul-Sept, 2018	702	242	33	27	29	86	769
Oct-Dec, 2018	769	276	13	38	18	82	894
Jan-Mar, 2019	894	382	53	22	20	86	1095
Total	**NA**	**1891**	**211**	**88**	**101**	**396**	**1095**

Note: These 1891 CIRPs relate to 1870 CDs.

Figure 4: Month-wise Admission of CDs into CIRPs

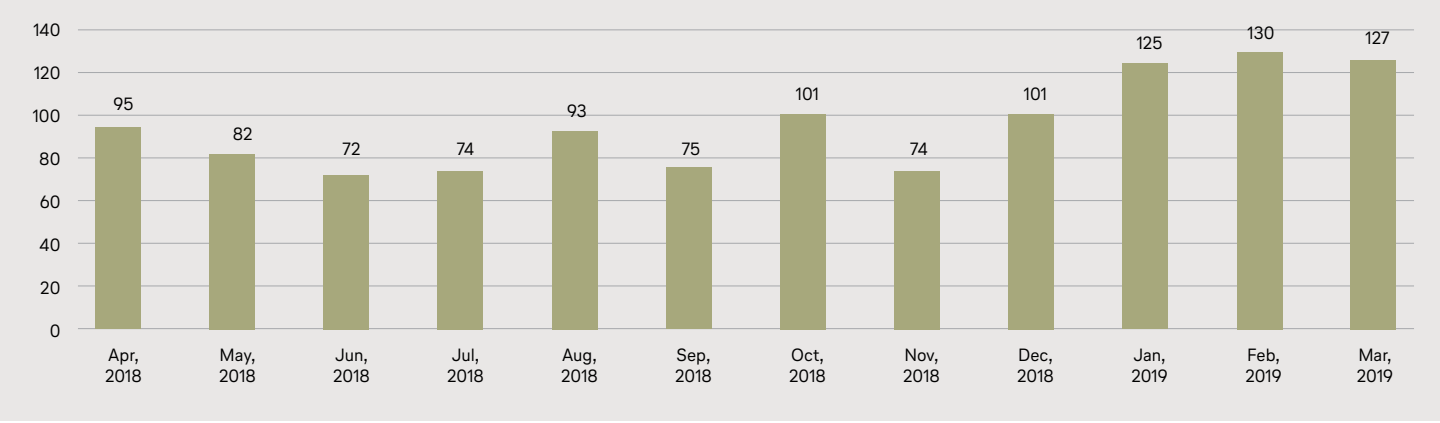


Table 42: Bench-wise Admission and Closure of CIRPs till 31st March, 2019

Sl. No.	Benches of NCLT at	No. of CIRPs		
		Admitted	Closed #	Ongoing
1	Ahmedabad	126	52	74
2	Allahabad	49	19	30
3	Bengaluru	62	27	35
4	Chandigarh	107	55	52
5	Chennai	281	152	129
6	Cuttack	01	00	01
7	Guwahati	08	03	05
8	Hyderabad	122	39	83
9	Jaipur	17	05	12
10	Kolkata	188	111	77
11	Mumbai	486	172	314
12	Principal and New Delhi Bench	444	161	283
Total		**1858**	**796**	**1095**

 # Closed on Appeal/Review/Settled, Withdrawal under Section 12A, Approval of Resolution Plan, and Commencement of Liquidation, by 31st March, 2019.

The distribution of CIRPs admitted, as on 31st March, 2019, as per the jurisdiction of benches of the AA is indicated in Table 42. A maximum of 486 CIRPs have been admitted by the Mumbai Benches followed by 444 by New Delhi Benches and 281 by the Chennai Bench.

The distribution of stakeholders, who triggered resolution process, is presented in Table 43. OCs triggered 46.64 per cent of the CIRPs, followed by about 42.67 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 CD from filing applications for CIRP. The number of applications by CDs reduced sharply post this amendment. The applications by FCs increased following the Banking Regulations (Amendment) Ordinance, 2017 which empowered the RBI in May, 2017 to direct banks to file applications for CIRP in case of a default by a CD. It got a further boost in February, 2018 when the RBI substituted all extant instructions on the resolution of stressed assets with a harmonized and simplified generic framework for resolution of stressed assets. The distribution of CIRPs based on stakeholders who triggered the CIRP is presented in **Figure 5**.

Figure 5: Initiation of CIRP by OCs, FCs and CDs

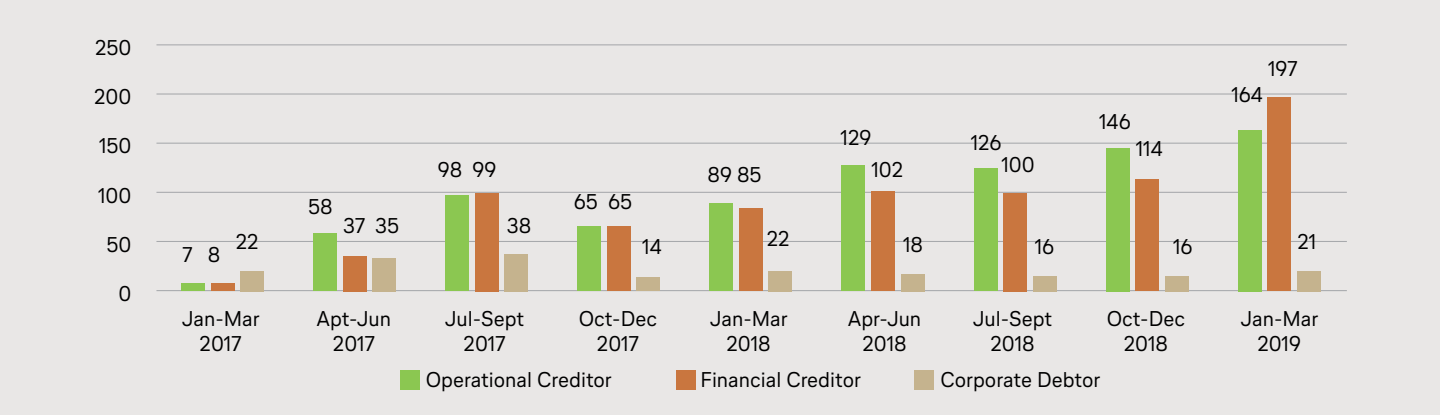


Table 43: Initiation of Corporate Insolvency Resolution Process

Quarter	No. of CIRPs Initiated by			
	Operational Creditor	Financial Creditor	Corporate Debtor	Total
Jan-Mar, 2017	7	8	22	37
Apr-Jun, 2017	58	37	35	130
Jul-Sept, 2017	98	99	38	235
Oct-Dec, 2017	65	65	14	144
Jan-Mar, 2018	89	85	22	196
Apr-Jun, 2018	129	102	18	249
Jul-Sept, 2018	126	100	16	242
Oct-Dec, 2018	146	114	16	276
Jan-Mar, 2019	164	197	21	382
Total	**882**	**807**	**202**	**1891**

Sector-wise distribution of CDs admitted into CIRP is presented in Table 44. 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 45.

Till March, 2019, a total of 88 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 46.

Till 31st March, 2019, 101 CDs have been rescued through resolution plans. They owed Rs.2,29,351 crore to creditors. However, the realisable value of the assets available with them,

Table 44: Sector wise distribution of CIRPs as on 31st March, 2019

Sector	No. of CIRPs		
	Closed	Ongoing	Total
Manufacturing	**357**	**429**	**786**
Food, Beverages & Tobacco Products	35	60	95
Chemicals & Chemical Products	32	44	76
Electrical Machinery & Apparatus	27	43	70
Fabricated Metal Products	24	26	50
Machinery & Equipment	42	44	86
Textiles, Leather & Apparel Products	59	69	128
Wood, Rubber, Plastic & Paper Products	35	47	82
Basic Metals	76	68	144
Others	27	28	55
Real Estate, Renting & Business Activities	**144**	**221**	**365**
Real Estate Activities	36	44	80
Computer and Related Activities	23	22	45
Research and development	3	0	3
Other business activities	83	154	237
Construction	**69**	**137**	**206**
Wholesale & Retail Trade	**87**	**97**	**184**
Hotels & Restaurants	**21**	**31**	**52**
Electricity & Others	**13**	**35**	**48**
Transport, Storage & Communications	**21**	**29**	**50**
Others	**84**	**116**	**200**
Total	**796**	**1095**	**1891**

Table 45: Status of CIRPs as on 31st March, 2019

Status of CIRPs	No. of CIRPs
Admitted	1891
Closed on Appeal / Review / Settled	211
Closed by Withdrawal under Section 12A	88
Closed by Resolution	101
Closed by Liquidation	396
Ongoing CIRP	1095
> 270 days	326
> 180 days ≤ 270 days	181
> 90 days ≤ 180 days	237
≤ 90 days	351

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.

when they entered IBC process, was only Rs.54,367 crore. The IBC maximises the value of the existing assets, not of the assets which do not exist. Under IBC, the creditors recovered Rs.1,20,730 crore, which is about 222.06 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.222 under IBC. The excess recovery of Rs.122 is a bonus from

Table 46: Claim Distribution and Reasons for Withdrawal in CIRPs

Amount of Claims Admitted* (Amount in Rs. crore)	**No. of CIRPs**
≤ 01	34
> 01 ≤ 10	21
> 10 ≤ 50	13
> 50 ≤ 100	6
> 100 ≤ 1000	4
> 1000	2
Reason for Withdrawal**	
Full settlement with the applicant	25
Full settlement with other creditors	5
Agreement to settle in future	5
Other settlements with creditors	31
Corporate debtors not traceable	2
Corporate debtor struck off the Register	1
Applicant not pursuing CIRP due to high cost	2
Others	14

**Data awaited in 8 CIRPs*
***Data awaited in 3 CIRPs*

IBC. Despite recovery of 222 per cent of the realisable value, the FCs had to take a haircut of 46.25 per cent, as compared to their claims. This only reflects the extent of value erosion by the time the CDs entered the IBC process. Nevertheless, as compared to other options, banks are recovering much better through IBC, as per RBI data. It is important to note that the 101 CDs rescued under IBC include 34 CDs which were defunct or in BIFR. Yet, the IBC could rescue them.

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

Corporate Liquidation

A CIRP may end either with a resolution plan or in an order for liquidation of the CD. Under the Code, the decision to approve a resolution plan or to go for liquidation rests with the CoC, which consists of the FCs as voting members. The commercial decisions of the CoC are not generally open to any analysis, evaluation or judicial review by the AA. Till March, 2019, a total of 396 CIRPs had yielded orders for liquidation. The distribution of stakeholders, who triggered these CIRPs, that ended in resolution plan and liquidation orders, is presented in Table 48.

Table 47: CIRPs yielding Resolution Plans, 2018-19

(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
Jan-Mar, 2017	0	0	0	0	0	0
Apr-Jun, 2017	0	0	0	0	0	0
Jul-Sept, 2017	2	1021.90	25.32	75.30	7.36	297.39
Oct-Dec, 2017	7	2985.92	701.85	1178.59	39.47	167.92
Jan-Mar, 2018	11	4256.07	1349.18	2945.34	69.20	218.31
Apr-Jun, 2018	14	77419.00	18155.95	43065.45	55.63	237.20
Jul-Sept, 2018	29	27094.50	7741.73	9105.32	33.52	117.60
Oct-Dec, 2018	18	10671.82	3487.07	8056.53	75.49	231.04
Jan-Mar, 2019	20	92349.76	22905.43	51564.34	55.84	225.12
Total	**101**	**215798.97**	**54366.52**	**115990.87**	**53.75**	**213.35**

Table 48: CIRPs Yielding Resolution Plans and Orders for Liquidations till 31st March, 2019

(Amount in Rs. crore)

CIRP initiated by	Yielding Resolution Plans				Yielding Orders for Liquidations			
	No. of CIRPs	Liquidation value	Amount of admitted claims	Liquidation value as % of admitted claims	No. of CIRPs	Liquidation value	Amount of admitted claims	Liquidation value as % of admitted claims
Operational Creditor	26	1459.26	5270.68	27.69	161	6210.34	62137.86	9.99
Financial Creditor	54	51670.70	219464.03	23.54	147	7647.60	182576.02	4.18
Corporate Debtor	21	1236.56	4616.76	26.78	88	4334.42	39565.22	10.95
Total	**101**	**54366.52**	**229351.47**	**23.70**	**396**	**18192.37**	**284279.10**	**6.39**

It is seen that about 49.75 per cent of the CIRPs, which were closed, ended in liquidation, as compared to 12.69 per cent ending with a resolution plan. However, it is important to note that 73.98 per cent of the CIRPs ending in liquidation (293 out of 396) were earlier with BIFR and or defunct (Table 49). The economic value in most of these CDs had already eroded before they were admitted into CIRP.

Table 49: Distribution of CIRPs Ending in Liquidation

State of Corporate Debtor at the Commencement of CIRP	No. of CIRPs initiated by			
	Financial Creditors	Operational Creditors	Corporate Debtors	Total
Either in BIFR or Non-functional or both	100	123	70	293
Resolution Value ≤ Liquidation Value	118	144	68	330
Resolution Value > Liquidation Value	29	17	20	66

Note: 1. There were 32 CIRPs, where CDs were in BIFR or non-functional but had resolution value higher than liquidation value.
2. Where liquidation value was not calculated, it has been taken as '0'.

The status of liquidation process as on 31st March, 2019 is presented in Table 50.

Till March, 2019, 7 liquidation processes were closed by dissolution. The details of the same are presented in Table 51.

Table 50: Status of Liquidation Process as on 31st March, 2019

Status of Liquidation	Number
Initiated	396*
Final Report submitted	18
Closed by Dissolution	7
Ongoing	378
> One year ≤ Two years	85
> 270 days ≤ One year	49
> 180 days ≤ 270 days	79
> 90 days ≤ 180 days	79
≤ 90 days	86

** This excludes 2 cases where liquidation order has been set aside by NCLAT.*

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 6 CDs have been approved and orders for liquidation have been passed in respect of two CDs. The status of the 12 large accounts is presented in Table 53.

Table 51: Details of Liquidations closed by Dissolution

(Amount in Rs. crore)

Name of CD	Date of Order of Liquidation	Amount of Admitted claims	Liquidation Value	Sale Proceeds	Amount Distributed to stakeholders	Date of order of dissolution
Abhayam Trading limited	17.11.17	11.14	0.85	0.85	0.71	23.03.18
DDS Steel Rolling Mills Private Limited*	18.07.18	119.24	0	NA	0	18.07.18
S D S Steels Private Limited*	30.07.18	237.28	0	NA	0	30.07.18
Zeel Global Projects Private Limited	07.05.18	1.28	0	NA	0	31.12.18
Dev Blessing Traders Private Limited	26.10.18	5.81	0	NA	0	08.02.19
Ghotaringa Minerals Limited	31.08.18	4662.89	0	NA	0	22.02.19
Maa Tara Industrial Complex Private Limited	16.03.18	0.03	0	NA	0	04.03.19

'0' means an amount below two decimals.
NA means Not realizable/Saleable or no asset left for liquidation.
**Direct Dissolution; Claims pertain to CIRP period.*

Table 52: Realisations in Closed Liquidations

(Amount in Rs. crore)

Stakeholders under Section	Number of Claimants	Amount of claims Admitted	Liquidation Value	Amount Realised	Amount Distributed
18 Liquidations where Final Report Submitted					
53 (1) (a)					0.89
53 (1) (b)	33	5233			10
53 (1) (c)	6	0.2			0.1
53 (1) (d)	8	17			0.7
53 (1) (e)	4	87	12.35	12.09	0.4
53 (1) (f)	11	11			0
53 (1) (g)	0	0			0
53 (1) (h)	0	0			0
Total (A)	**62**	**5348.2**			**12.09**

Table 53: 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 a per centage of Liquidation Value	Successful Resolution Applicant
	Amount Admitted	Amount Realised	Realisation as Per centage 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 Ltd., JM Financial Asset Reconstruction Company Ltd., JMFARC - March 2018 - Trust
Jyoti Structures Ltd.	7365	3691	50.12	387.44	Group of HNIs led by Mr. Sharad Sanghi
Bhushan Power & Steel Ltd.	Under CIRP				
Amtek Auto Ltd.	CIRP recommenced				
Era Infra Engineering Ltd.	Under CIRP				
Jaypee Infratech 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 from the proceeds of the assets to be sold under the proposed liquidation, (ii) the corporate person is not being liquidated to defraud any person. The first voluntary liquidation was initiated on 7th April, 2017. 413 corporates had initiated voluntary liquidation proceedings by 31st March, 2019, the details of which are given in Table 54.

Table 54: Commencement of Voluntary Liquidations till 31st March, 2019

Quarter	Liquidations at the beginning	Liquidations Commenced	Final Reports Submitted	Liquidations at the end
Apr-Jun, 2017	0	13	0	13
Jul-Sept, 2017	13	41	0	54
Oct-Dec, 2017	54	58	4	108
Jan-Mar, 2018	108	72	7	173
Apr-Jun, 2018	173	38	16	195
July-Sept, 2018	195	61	16	240
Oct-Dec, 2018	240	38	29	249
Jan-Mar, 2019	249	92	34	307
Total	**NA**	**413**	**106**	**307**

Most of these corporate persons are small entities. 276 of them have paid up equity capital of less than Rs.1 crore. Only 43 of them have paid-up capital exceeding Rs.5 crore. They together have an aggregate paid up capital of Rs. 2721 crore. The details are presented in Table 55.

Table 55: Details of 413 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	106	260	308	4	4	207
Ongoing liquidations	307	2461	3741	*	-	-
Total liquidations	**413**	**2721**	**4049**	*	-	-

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

The distribution of liabilities and assets of these 413 corporate persons are presented in Tables 56 and 57 respectively. The liabilities of 376 of them are less than Rs.1 crore. 276 of them have paid up equity capital less than Rs.1 crore. 43 of them have paid-up capital exceeding Rs.5 crore.

Table 56: Distribution of Liabilities of Companies under Voluntary Liquidations

Sl. No.	Liabilities (Amt in Rs. crore)	No. of Companies
1	≤ 1	376
2	> 1 ≤ 2	9
3	> 2 ≤ 3	8
4	> 3 ≤ 5	10
5	> 5	10
Total		**413**

Table 57: Distribution of Assets of Companies under Voluntary Liquidations

Sl. No.	Assets (Amount in Rs. crore)	No. of Companies
1	≤ 1	241
2	> 1 ≤ 2	47
3	> 2 ≤ 3	36
4	> 3 ≤ 5	35
5	> 5	54
Total		**413**

Of the 413 corporate persons who have initiated voluntary liquidation proceedings, 89 belong to the manufacturing sector, 173 belong to the real estate, renting and business activities and 27 to the transport sector (Table 58). The reasons for initiations of these voluntary liquidations are presented in Table 59.

Table 58: Sector-wise distribution of Voluntary Liquidations

Sector	Number
Manufacturing	**89**
Food, Beverages & Tobacco Products	5
Chemicals & Chemical Products	11
Electrical Machinery & Apparatus	5
Fabricated Metal Products	4
Machinery & Equipment	24
Textiles, Leather & Apparel Products	13
Wood, Rubber, Plastic & Paper Products	4
Basic Metals	4
Others	19
Real Estate, Renting & Business Activities	**173**
Real Estate Activities	11
Computer and related activities	51
Research and development	2
Renting of machinery and equipment without operator and of personal and household goods	2
Other business activities	107
Construction	**15**
Wholesale & Retail Trade	**21**
Hotels & Restaurants	**4**
Electricity & Others	**6**
Transport, Storage & Communications	**27**
Others	**78**
Total	**413**

Table 59: Reasons for Voluntary Liquidation

Sl. No.	Reason for Voluntary Liquidation	No. of Corporate Persons
1	Not carrying business operations	242
2	Commercially unviable	63
3	Running into losses	12
4	No revenue	18
5	Promoters unable to manage affairs	10
6	Purpose was formed accomplished	5
7	Contract termination	5
8	Miscellaneous	58
Total		**413**

Final reports in respect of 106 voluntary liquidations have been submitted by 31st March, 2019. 42 liquidations have closed. Of the 307 ongoing voluntary liquidation processes, 93 are less than 90 days old, 94 have crossed 360 days (Table 60).

Table 60: Phasing of Voluntary Liquidations

Status of Liquidation	No. of Liquidations
Initiated	413
Final Report Submitted	106
Closed by Dissolution	42
Ongoing	307
> One year ≤ Two years	94
> 270 days ≤ One year	36
> 180 days ≤ 270 days	49
> 90 days ≤ 180 days	35
≤ 90 days	93

EMERGING JURISPRUDENCE

An economic legislation is typically a skeleton structure. Judicial pronouncements provide flesh and blood to it and resolve grey areas. It takes several years, at times decades, for a major economic law to settle down and for there to be complete clarity, certainty and predictability for stakeholders. The AA, the Appellate Authority and judiciary have been at the forefront of the implementation of the Code. They have settled several conceptual and contentious issues expeditiously and delivered several landmark orders, bringing in clarity as to what is permissible and what is not, and streamlining the process for the future.

Constitutional Validity

The SC examined vires of several provisions of the Code comprehensively in *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors*.[26] It held that the judiciary should exercise restraint while examining the constitutional validity of economic legislation since *"in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call trial and error method and therefore, its validity cannot be tested on any rigid prior considerations or on the application of any straitjacket formula."* In this background, it upheld the constitutional validity of all the provisions of the Code challenged before it.

A large number of the challenges before the Court were against the provisions that treated FCs and OCs differently. First, the SC observed: *"a financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money. It may further be money that is borrowed or raised in any of the manners prescribed in Section 5(8) or otherwise, as Section 5(8) is an inclusive definition. On the other hand, an 'operational debt' would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority."* It relied on the Final Report of the BLRC, the Notes on Clause 8 of the Insolvency and Bankruptcy Bill, 2015 and the Report of the ILC, to broadly lay down the distinctions between FCs and OCs as *"most financial creditors, particularly banks and financial institutions, are secured creditors whereas most operational creditors are unsecured, payments for goods and services as well as payments to workers not being secured by mortgaged documents and the like."* It distinguished between the nature of agreements entered into with FCs and OCs, where the former generally lends for working capital or on a term loan and involves a larger quantum of money as compared to the latter where the agreement mostly relates to the supply of goods and services. Therefore, the distinction between the two is based on intelligible differentia with a rational nexus to the objectives that the Code seeks to achieve. Secondly, the SC highlighted that the most significant difference between FCs and OCs is that *"financial creditors are, from the very beginning, involved with assessing the viability of the corporate debtor. They can, and therefore do, engage in restructuring of the loan as well as reorganization of the corporate debtor's business when there is financial stress, which are things operational creditors do not and cannot do."* This was relied on, along with the legislative and case law developments that guarantee fair and equitable treatment to OCs, to hold that the provisions giving only FCs the right to vote as part of the CoC are valid. Thirdly, the Court analysed if the difference in the process for triggering the CIRP by OCs and FCs was arbitrary. It held that since FCs have to prove that there is "default" on the basis of solid documentation, or information in an IU that is easily verifiable, it was justifiable that they were not required to provide a demand notice to the CD. This is contrary to the requirement imposed on an OC to provide a demand notice to the CD, who only "claims a right to payment of a liability or obligation in respect of a debt which may be due". Finally, the validity of section 53 of the Code was challenged on the grounds that it was discriminatory towards OCs. The Court held that given the relative importance of the two types of debts, particularly the importance of repayment of financial debts for promoting capital availability in the economy, a legitimate interest was being protected by section 53. Thus, OCs are not discriminated against or Article 14 has not been infracted either on the ground of equals being treated unequally or on the ground of manifest arbitrariness.

[26] Civil Appeal No. 99 of 2018 and other petitions.

Various challenges were also raised against the validity of section 29A. The validity of this section was challenged on the grounds that first, it had retrospective application. The Court held that since a RA does not have a vested right in being considered as such in the resolution process, the section cannot be held to be retrospective. Secondly, it was argued that section 29A(c) holds unequals as equals by treating promoters who did not act with malfeasance on par with those who had. The Court held that section 29A was intended to apply to persons other than criminals or those who had been malfeasant, and this was justified by the legislative purpose of the section. Thirdly, it was argued that placing a bar on persons disqualified under section 29A from purchasing any assets of the CD in liquidation as well would be contrary to the purpose of maximizing the value of the assets of the CD. This contention was rejected on the ground that the legislative purpose would continue to apply even in liquidation. Fourthly, it was argued that the period of one year prescribed in section 29A for the disqualification to apply was arbitrary and without basis. The Court held that it was legislative policy that a person who is unable to service its own debt beyond the grace period of one year, is unfit to be eligible to become a RA, and *"this policy cannot be found fault with. Neither can the period of one year be found fault with, as this is a policy matter decided by the RBI and which emerges from its Master Circular, as during this period, an NPA is classified as a substandard asset."* Fifthly, it was argued that the disqualification of relatives of persons who are disqualified in section 29A was arbitrary. The Court held that *"The expression "related party", therefore, and "relative" contained in the definition Sections must be read noscitur a sociis with the categories of persons mentioned in Explanation I, and so read, would include only persons who are connected with the business activity of the resolution applicant."* Finally, it was argued that the exemption of MSMEs from section 29A was arbitrary. The Court held that it was not arbitrary since *"the rationale for excluding such industries from the eligibility criteria laid down in Section 29A(c) and 29A(h) is because qua such industries, other resolution applicants may not be forthcoming, which then will inevitably lead not to resolution, but to liquidation."*

The Court also examined the validity of section 12A that was challenged as being violative of Article 14, largely since the withdrawal of a petition under section 12A requires the approval of ninety per cent of the CoC. The Court emphasized that an insolvency proceeding is a proceeding *in rem* and not a *lis* between parties. Consequently, and as also explained in the report of the ILC *"all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into. This explains why ninety per cent, which is substantially all the financial creditors, have to grant their approval to an individual withdrawal or settlement."* Further, if the CoC arbitrarily rejects an application for withdrawal, their decision can be set aside by the AA or the Appellate Authority. Given this, the Court upheld the validity of this provision.

It was submitted that the information stored in private IUs should not be the conclusive evidence of default, and that these IUs are not governed by proper norms. The Court took note of the IBBI (Information Utilities) Regulations, 2017 and held that *"the aforesaid Regulations also make it clear that apart from the stringent requirements as to registration of such utility, the moment information of default is received, such information has to be communicated to all parties and sureties to the debt. Apart from this, the utility is to expeditiously undertake the process of authentication and verification of information, which will include authentication and verification from the debtor who has defaulted. This being the case, coupled with the fact that such evidence, as has been conceded by the learned Attorney General, is only prima facie evidence of default, which is rebuttable by the corporate debtor, makes it clear that the challenge based on this ground must also fail."*

It was also argued that by giving adjudicatory powers to a non-judicial authority, that is, the RP, the Code violates the basic aspects of dispensation of justice and access to justice. This contention was also rejected by the Court on the grounds that *"the resolution professional is really a facilitator of the resolution process, whose administrative functions are overseen by the committee of creditors and by the Adjudicating Authority."*

The SC held that the experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster. It observed that with the Code in place, the defaulter's paradise is lost.

Applicability of Section 29A

Section 29A was inserted in the Code since *"Concerns were raised that persons who, with their misconduct contributed to defaults of companies or are otherwise undesirable, may misuse this situation due to lack of prohibition or restrictions to participate in the resolution or liquidation process, and gain or regain control of the corporate debtor. This may undermine the processes laid down in the Code as the unscrupulous person would be seen to be rewarded at the expense of creditors. In addition, in order to check that the undesirable persons who may have submitted their resolution plans in the absence of such a provision, responsibility is also being entrusted on the committee of creditors to give a reasonable period to repay overdue amounts and become eligible."*[27] This has been the bone of contention in several matters.

Section 29A came up before the AA in *Numetal Ltd. Vs. Satish Kumar Gupta(RP) and Anr.,*[28] wherein it held that when a person is ineligible under section 29A, he shall be allowed by the CoC, such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso of section 29A. It also further stated that the RP ought to follow the provision of section 29A(c) read with section 30(4) of the Code for the purpose of affording opportunity to the RAs before declaring them ineligible.

[27] Statement of Objects and Reasons appended to the Insolvency and Bankruptcy Code (Amendment) Act, 2017.

[28] I.A Nos. 98, 110-112 & 121/NCLT/AHM/2018 in CP(IB) No. 40/7/NCLT/AHM/2017.

However, the AA, in *Wig Associates Private Limited*.[29], determined that since as a general principle of statutory interpretation, an amendment which affects the legal rights of a person should necessarily be prospective in nature, unless expressly or by necessary implication deemed retrospective by the legislation, the application of the Amendment which added section 29A was prospective in nature, from the date it came into force as an Ordinance, i.e., on 23rd November 2017. It held that it would not apply to initiated or pending insolvency proceedings, which by their very nature are continuous and cannot be halted or altered. It held: *"…once in this case or in like nature cases, CIRP had commenced and the Resolution Professional has invited Expression of Interest which resulted into submission of Resolution Plan by a Resolution Applicant the same is to be dealt with as per the provisions existed on the date on which the petition is Admitted…the admitted factual position is that the petition was admitted on 24th of August 2017 by an order of NCLT Mumbai, as against that the Ordinance was pronounced on 23rd of November 2017. It is hereby held that the impugned Resolution plan is eligible for due adjudication."*

The SC in *Chitra Sharma and Ors. Vs. Union of India and Ors.*[30], while dealing with the question of eligibility of a RA, held *inter alia* that the primary purpose behind section 29A was to ensure that the persons responsible for insolvency of the CD do not participate in the CIRP by means of a backdoor entry. It noted that clauses (c) and (g) of section 29A debar Jaiprakash Associates Limited (JAL), the holding company of JIL, from participating in resolution process as it would cause serious prejudice to the discipline of the Code and would set at naught the salutary provisions of the statute.

Further clarity was provided in *ArcelorMittal India Private Limited Vs. Satish Kumar Gupta & Ors.*,[31] in which SC held that section 29A is a *de facto* as opposed to a *de jure* position of persons mentioned therein. This is a 'typical see through provision' so that one can see persons who are actually in 'control', whether jointly or in concert. A purposeful and contextual interpretation of section 29A is imperative to find out the real individuals or entities who are acting jointly or in concert for submission of a resolution plan. The ineligibility attaches when the resolution plan is submitted by a RA.

The validity of section 29A was also challenged before SC in *Swiss Ribbons Pvt. Ltds. & Anr. Vs. Union of India & Ors.*,[32] the validity of section 29A was challenged. It was argued that the retrospective application of section 29A prejudices the vested rights of erstwhile promoters to participate in the resolution process, as well as in the liquidation process. The Court held that *"a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisites for its action is drawn from a time antecedent to its passing"*. With respect to challenge to proviso to section 35(1)(f), which is parallel provision of section 29A in liquidation, the Court held that *"the same rationale that has been provided earlier in this judgment will apply to this proviso as well – there is no vested right in an erstwhile promoter of a corporate debtor to bid for the immovable and movable property of the corporate debtor in liquidation. Further, given the categories of persons who are ineligible under Section 29A, which includes persons who are malfeasant, or persons who have fallen foul of the law in some way, and persons who are unable to pay their debts in the grace period allowed, are further, by this proviso, interdicted from purchasing assets of the corporate debtor whose debts they have either wilfully not paid or have been unable to pay. The legislative purpose which permeates Section 29A continues to permeate the Section when it applies not merely to resolution applicants, but to liquidation also."* The petitioners also argued that a person, who is otherwise qualified to be a RA, cannot be held to be ineligible to become a RA merely on the ground that he is a relative of an ineligible person. The Court held that *"we are of the view that persons who act jointly or in concert with others are connected with the business activity of the resolution applicant. Similarly, all the categories of persons mentioned in Section 5(24A) show that such persons must be "connected" with the resolution applicant within the meaning of Section 29A(j). This being the case, the said categories of persons who are collectively mentioned under the caption "relative" obviously need to have a connection with the business activity of the resolution applicant."* Thus, the applicability of section 29A to related parties was restricted.

Thus, it was held that section 29A is based on a justifiable legislative policy choice that a person who is unable to service its own debt is unfit to be a RA. In order to establish the eligibility of a RA for submitting a resolution plan, it must be determined at the very moment of the submission of a plan. Further, it is applicable to those related parties of persons ineligible under section 29A who are connected to the business activity of the ineligible person.

Overriding effect of Code

The SC considered the non-obstante clause in section 238 of the Code in *M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr.*,[33] and held that the Maharashtra Relief Undertakings (Special Provisions) Act, 1958 was repugnant to the Code since a consolidating and amending act like the Code *"forms a code complete in itself and is exhaustive of the matters dealt with therein"* and *"In the present case it is clear, therefore, that unless the Maharashtra Act is out of the way, the Parliamentary enactment will be hindered and obstructed in such a manner that it will not be possible to go ahead with the insolvency resolution process outlined in the Code." It further held: "It is clear that the later nonobstante clause of the Parliamentary enactment will also prevail over the limited non- obstante clause contained in Section 4 of the Maharashtra Act."*

A similar issue fell for consideration of the High Court (HC) in *Leo Edibles & Fats Limited Vs. The Tax Recovery Officer (Central) Income Tax Department, Hyderabad and others*[34], where it held that in the event an assessee company is in liquidation under the Code, the Income-tax Department can

[29] M.A. No. 435 of 2018 in C.P. No. 1214/I&BC/NCLT/MB/MAH/2017.
[30] Writ Petition(s) (Civil) No(s).744/2017 with other WPs and SLPs.
[31] Civil Appeal Nos. 9402-9405 of 2018 with other Civil Appeals.
[32] Writ Petition (Civil) No. 99 of 2018 with other writ petitions.
[33] Civil Appeal Nos. 8337-8338 of 2017.
[34] W.P. No. 8560 of 2019.

no longer claim priority in respect of clearance of tax dues of the said company. The HC further clarified that the Income-tax Department cannot claim priority merely because the order of attachment was prior to the initiation of liquidation proceedings under the Code. It held that sections 220 and 222 of the Income-tax Act would necessarily be subject to the overriding effect of the Code, by virtue of section 238 thereof.

The SC in *Pr. Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd.*,[35] made it clear that in view of section 238 of the Code, the provisions in the Code will override anything inconsistent contained in any other enactment, including Income-tax Act. Further, the SC in *K. Kishan Vs. M/s. Vijay Nirman Company Pvt. Ltd.*,[36] held that section 238 would apply in case there is an inconsistency between the Code and the Arbitration Act.

On the issue of inconsistency between section 434 of the Companies Act, 2013 and the provisions of the Code, the SC in *Jaipur Metals & Electricals Employees Organisation Vs. Jaipur Metals & electricals Ltd. & Ors.*,[37] held that the latter must prevail. It took the view that the NCLT was absolutely correct in applying section 238 of the Code to an independent proceeding instituted by a secured FC, and the company petition pending before the HC cannot be proceeded with further in view of section 238 of the Code.

Timelines for CIRP

The long title to the Code states that it is an Act for reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a timebound manner for maximisation of value of assets of such persons. The Code prescribes timelines for various activities of the CIRP. This came up for consideration of the Courts several times. In *Innoventive Industries Ltd. Vs. ICICI Bank & Anr.*[38], the SC explained the rationale: *"Speed is of essence for the working of the bankruptcy code, for two reasons. First, while the 'calm period' can help keep an organisation afloat, without the full clarity of ownership and control, significant decisions cannot be made. Without effective leadership, the firm will tend to atrophy and fail. The longer the delay, the more likely it is that liquidation will be the only answer. Second, the liquidation value tends to go down with time as many assets suffer from a high economic rate of depreciation. From the viewpoint of creditors, a good realisation can generally be obtained if the firm is sold as a going concern. Hence, when delays induce liquidation, there is value destruction. Further, even in liquidation, the realisation is lower when there are delays. Hence, delays cause value destruction. Thus, achieving a high recovery rate is primarily about identifying and combating the sources of delay."*

In *Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech PVt. Ltd. & Ors.*,[39] the Appellate Authority, however, observed that it is always open to the AA/Appellate Tribunal to 'exclude certain period' for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances. It listed out the following good grounds and unforeseen circumstances, for excluding the intervening period for counting of the total period of 270 days:- (a) If the CIRP is stayed by a court of law, the AA, the Tribunal or the SC; (b) If no RP is functioning for one or other reason during the CIRP, such as removal; (c) The period between the date of order of admission/moratorium is passed and the actual date on which the RP takes charge for completing the CIRP; (d) On hearing a case, if the AA, the Appellate Tribunal, or the SC reserved the order and finally passed order enabling the RP to complete the CIRP; (e) If the CIRP is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the SC and CIRP is restored; and (f) Any other circumstances which justifies exclusion of certain period.

In *ArcelorMittal India Private Limited Vs. Satish Kumar Gupta & Ors.*[40], the SC unequivocally held that the entire time period within which the CIRP ought to be completed is strictly mandatory in nature and cannot be extended. It relied on the primary objective of the Code, which is to ensure a timely resolution process for a CD, and principles of statutory interpretation to hold that the literal language of section 12 mandates strict adherence to the time frame it lays down. To enable this adherence to the outer time limit provided in the Code, the court also held that the model timeline provided in Regulation 40A of the CIRP Regulations should be followed "as closely as possible". In the same matter, the Court specifically dealt with the issue of whether the time taken in litigation could be excluded from the outer time limit provided in the Code and held that it could. It opined that *"A reasonable and balanced construction of this statute would therefore lead to the result that, where a resolution plan is upheld by the Appellate Authority, either by way of allowing or dismissing an appeal before it, the period of time taken in litigation ought to be excluded. This is not to say that the NCLT and NCLAT will be tardy in decision making. This is only to say that in the event of the NCLT, or the NCLAT, or this Court taking time to decide an application beyond the period of 270 days, the time taken in legal proceedings to decide the matter cannot possibly be excluded, as otherwise a good resolution plan may have to be shelved, resulting in corporate death, and the consequent displacement of employees and workers."* It noted that *Actus curiae neminem gravabit* - the act of the Court shall harm no man - is a maxim firmly rooted in jurisprudence. Therefore, the time taken by a Tribunal should not set at naught the time limits within which the CIRP must take place.

While the statutory outer time limit cannot be extended, this does not apply to the internal timelines for the processes set by the CoC, as long as those are within the statutory outer time limit. In *Tata Steel Limited Vs. Liberty House Group Pte. Ltd. & Ors.*[41], the Appellate Tribunal on going through the clauses of the 'Process Document', held that the CoC has the discretion to update, amend, modify, supplement, add, delay, cease or annul the resolution process at any time and *"the 'Resolution Professional' in consultation with the 'Committee of Creditors' can extend the timelines at its sole discretion*

[35] Petitions for SLP (c) No. 6483/ 2018 with other SLPs (C).
[36] Civil Appeal Nos. 21824 of 2017 with 21825 of 2017.
[37] Civil Appeal No. 12023 of 2018.
[38] Civil Appeal Nos. 8337-8338 of 2017.
[39] Company Appeal (AT) (Insolvency) No. 185 of 2018.
[40] Civil Appeal Nos.9402-9405 of 2018 with other Civil Appeals.
[41] Company Appeal (AT) (Insolvency) No. 198 of 2018.

if expedient for obtaining the best 'Resolution Plan' for the Company. Therefore, granting more opportunity to all the eligible 'Resolution Applicants' to revise its 'financial offers', even by giving more opportunity, is permissible in the Law. However, all such process should complete within the time frame."

Judicial interpretation has, thus, by and large, supported timelines and promoted this objective by mandating that various parts of the timeline be adhered to and that the outer time-limit provided in section 12 cannot be extended. However, certain time periods may be excluded from the calculation of the total time periods for the insolvency resolution process, including time taken in litigation.

Liability of Guarantors

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

In *Sanjeev Shriya Vs. State Bank of India & Ors.*[42], the Allahabad HC considered whether proceedings could be initiated under debt recovery laws against a guarantor, while CIRP is underway against the CD. In this case, the SBI instituted proceedings against the PGs of the CD and was participating in the CIRP of the CD. However, their liabilities had not crystallised. In this context, the Court held that *"the entire proceeding is still in fluid stage and for the same cause of action, two split proceedings cannot go simultaneously before the DRT as well as NCLT."*

Whereas, the Bombay HC took a divergent view in *M/s. Sicom Investments and Finance Ltd. Vs. Rajesh Kumar Drolia and Another*[43] and held: *"Section 14 is as clear as it can be. On reading Section 14, it is clear that the benefits as well as the liabilities mentioned therein are only that of the corporate debtor and corporate debtor alone. As far as prohibiting the institution of suits or continuation of pending suits or proceedings are concerned, the same applies only against the corporate debtor in insolvency and not a third party such as a guarantor, be it an individual or a corporate guarantor…What is absolutely clear from the Code is that for the guarantor (be it personal guarantor or corporate guarantor), there is no automatic protection. It is only once the insolvency resolution has been initiated either by or against the guarantor (be it personal guarantor or a corporate guarantor), only then the benefit of the moratorium would be available to the guarantor subject of-course to the other provisions of the IBC, 2016."*

Whereas, the NCLAT in *State Bank of India Vs. Ramakrishnan & Anr.*,[44] and in *State Bank of India Vs. D. S. Rajendra Kumar,*[45] dealt with questions on maintenance of such proceedings in different fora. They held that the moratorium on institution of proceedings on recovery or recovery of debts under section 14 of the Code would cover the guarantor as well as the CD.

The ILC noted the decisions of the NCLAT and the Allahabad HC and expressed its concern that these decisions put the surety's liabilities on hold when the CD undergoes a CIRP. It opined that this *"may lead to the contracts of guarantee being infructuous, and not serving the purpose for which they have been entered into"* and cautioned that promoters who are often guarantors may cause the CD to file *"frivolous applications to merely take advantage of the stay and guard their assets."* Given this, they advocated for the introduction of a clarificatory amendment to the Code, excluding guarantors from the scope of the moratorium under section 14 of the Code. Consequently section 14 of the Code was amended to disapply the moratorium to guarantors.

Another question that was considered by courts is whether it is possible to proceed against a CG under the Code without proceeding against the principal debtor. In *Ferro Alloys Corporation Ltd. Vs. Rural Electrification Corporation Ltd.*[46], the NCLAT observed that the Code does not prohibit the FC from initiating the CIRP against the guarantor, since a guarantor is included in the definition of CD as provided under section 3(8) of the Code. It observed that the provisions of the Indian Contract Act, 1872 will govern *inter-se* rights, obligations and liabilities of a guarantor *qua* FC, in absence of any express provision providing for the same in the Code. It held that it is not necessary to initiate CIRP against the principal borrower before initiating CIRP against the CGs. Without initiating CIRP against the principal borrower, it is always open to the FC to initiate CIRP under section 7 against the CGs, as the creditor is also the FC *qua* CG.

The NCLAT, in *Dr. Vishnu Kumar Agarwal Vs. Piramal Enterprise Ltd.*[47], considered if the CIRP can be initiated against the CG even if the principal borrower is not a corporate person or CD. It held that it is not necessary for the FC to initiate the CIRP against the principal borrower before initiating it against the CG, since the creditor is also the FC *qua* CG. Thus, even if the principal borrower is not a corporate person and no application can be filed against it under section 7, the FC has the freedom to file an application against the CG under section 7. In the same matter, the NCLAT also considered if the CIRP could be initiated against two CGs simultaneously,

[42] Writ -.C No. -30285 of 2017 connected with Writ -C No.-30033 of 2017.
[43] Summons for Judgment No. 221 of 2010 in Commercial Suit No. 44 of 2010.
[44] Company Appeal (AT) (Insolvency) No. 213 of 2017.
[45] Company Appeal (AT) (Insolvency) Nos. 87, 88, 89, 90 and 91 of 2018.
[46] Company Appeal (AT) (Insolvency) No. 92,93 & 148 of 2017.
[47] Company Appeal (AT) 346 & 347 of 2018.

for the same debt and default. The NCLAT held that there is no bar in the Code for filing simultaneously two applications under section 7 against the principal borrower as well as the CGs or against both the guarantors. However, once for same set of claim application under section 7 filed by the FC is admitted against one of the CDs (principal borrower or CG), second application by the same FC for same set of claim and default cannot be admitted against the other CD (the CG or the principal borrower).

A further issue that has arisen in respect of guarantors is their right of subrogation against the CD that has undergone the CIRP. Guarantors have contended that since they have a right of subrogation against the debtor, resolution plans that do not provide for payments of guaranteed debts to them would be discriminatory. However, this contention was rejected by the NCLAT in *Lalit Mishra & Ors. Vs. Sharon Bio Medicine Ltd. & Ors.*,[48] PGs were shareholders or promoters and a plan that did not provide for payments on account of guarantees to them would not be discriminatory and the Code seeks to protect creditors of the CD by preventing promoters from rewarding themselves at the expense of creditors and undermining the insolvency processes.

Statutory Dues as Operational Debt

As per section 5(21), 'operational debt' means a claim in respect of provision of goods and services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority. The Calcutta HC in *Akshay Jhunjhunwala Vs. Union of India through the Ministry of Corporate Affairs & Ors.*[49], held that the term operational debt "would also include a claim of a statutory authority on account of money receivable pursuant to an imposition by a statute."

This aspect in case of liquidation was considered by the Telangana and Andhra Pradesh HC in *Leo Edibles & Fats Limited. Vs. The Tax Recovery Officer (Central) Income Tax Department, Hyderabad and others.*[50] It held that passing an order of attachment does not create property rights in the attached property. Consequently, *"In the context of liquidation of an assessee company under the provisions of the Code, the Income-tax Department, not being a secured creditor, must necessarily take recourse to distribution of the liquidation assets as per Section 53 of the Code. Section 53(1) provides the order of priority for such distribution and any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State in respect of the whole or any part of the period of two years preceding the liquidation commencement date comes fifth in the order of priority under Clause (e) thereof… It is therefore clear that tax dues, being an input to the Consolidated Fund of India and of the States, clearly come within the ambit of Section 53(1)(e) of the Code. If the Legislature, in its wisdom, assigned the fifth position in the order of priority to such dues, it is not for this Court to delve into or belittle the rationale underlying the same."* Therefore, even where statutory authorities pass orders for the attachment of properties, the dues to them would not constitute secured debts, and would fall within the scope of section 53(1)(e). Thus, statutory dues are operational debts, and the statutory creditors are OCs.

The NCLAT considered the issue in *Pr. Director General of Income Tax (Admn. & TPS) Vs. M/s Synergies Dooray Automotive Ltd. & Ors.*,[51] In this matter, the Income-tax Department appealed against the order of the AA approving resolution of Dooray on the ground that the AA has granted huge income tax benefits to RA without impleading the appellant. The NCLAT considered whether the income tax, value added tax or other statutory dues, such as municipal tax, excise duty, etc., come within the meaning of operational debt and whether the Central Government, the State Government or the legal authority having statutory claim, come within the meaning of OCs. It held that operational debt in normal course means a debt arising during the operation of a CD. Only when the CD is operational and remains a going concern, the statutory liability, such as payment of income tax, value added tax etc., will arise. As the income tax, value added tax and other statutory dues arising out of the existing law, arises when the CD is operational, such statutory dues have direct nexus with operation of the CD. Therefore, all statutory dues, including income tax, value added tax, etc. come within the meaning of operational debt. Consequently, Income-tax Department of the Central Government and the Sales Tax Department(s) of the State Governments and local authority, who are entitled to dues arising out of the existing laws, are OCs.

Role of Resolution Professional

In *ArcelorMittal India Private Limited Vs. Satish Kumar Gupta & Ors.*[52], the SC considered the role of a RP. It observed that the RP is required to examine that the resolution plan submitted by various applicants is complete in all respects, before submitting it to the CoC. He is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the CoC, who may or may not approve it. The fact that the RP is also to confirm that a resolution plan does not contravene any of the provisions of law for the time-being in force, including section 29A of the Code, only means that his *prima facie* opinion is to be given to the CoC that a law has or has not been contravened. Section 30(2)(e) does not empower the RP to 'decide' whether the resolution plan does or does not contravene the provisions of law. Even though it is not necessary for the RP to give reasons while submitting a resolution plan to the CoC, it would be in the fitness of things if he appends the due diligence report carried out by him with respect to each of the resolution plans under consideration, and to state briefly as to why it does or does not conform to the law.

The role of RP got further clarified in *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.*,[53] The SC held that an RP has no adjudicatory powers. He has administrative powers

[48] Company Appeal (AT) (Insolvency) No. 164 of 2018.
[49] Writ Petition No. 672 of 2017.
[50] WP No. 8560 0f 2018.
[51] CA (AT) (Insolvency) No. 205/2017 and other appeals.
[52] Civil Appeal Nos. 9402 - 9405 of 2018 with other appeals.
[53] Civil Appeal No. 99 of 2018 and other petitions.

as opposed to quasi-judicial powers. He is really a facilitator of the resolution process, whose administrative functions are overseen by the CoC and by the AA.

Supremacy of CoC

The SC, in *ArcelorMittal India Private Limited Vs. Satish Kumar Gupta and Ors*.[54], held that it is the CoC which will approve or disapprove a resolution plan, given the statutory parameters of section 30.

In *K. Sashidhar Vs. Indian Overseas Bank & Ors*.[55], the SC held that the word "may" in section 30(4) is ascribable to discretion of CoC to approve or reject resolution plan. RP is not required to express opinion on matters within the domain of FCs, to approve or reject resolution plan. The IBBI cannot, under section 196, directly or indirectly regulate the manner of exercise of commercial wisdom by FCs during the voting on resolution plan. The AA has no jurisdiction to evaluate commercial decision of CoC much less to enquire into the justness of rejection of plan by dissenting FCs. If resolution plan is approved by CoC, it is obligatory for RP to submit it to AA. If plan is rejected by not less than 25 per cent of voting shares of FCs, RP is under no obligation to submit it under section 30(6) to AA. The legislative intent is to uphold the opinion of the minority dissenting FCs. On receipt of the plan, the AA is required to satisfy itself that the plan approved by CoC meets the requirements specified in section 30 (2). Upon receipt of a "rejected" resolution plan, the AA is not expected to do anything more; but is obligated to initiate liquidation process under section 33(1). It observed: *"The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors." It further observed: "Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. ……. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable."*

[54] Civil Appeal Nos. 9402 - 9405 of 2018 and other appeals.
[55] Civil Appeal No. 10673 of 2018 and other appeals.

F | IMPACT OF THE CODE

The impact of the Code is best seen in the context of its objectives. The long title to the Code states its objectives. The NCLAT delineated[56] the order of objectives of the Code: *"The objective of the 'I&B Code' is Resolution. The Purpose of Resolution is for maximisation of value of assets of the 'Corporate Debtor' and thereby for all creditors. It is not maximisation of value for a 'stakeholder' or 'a set of stakeholders' such as Creditors and to promote entrepreneurship, availability of credit and balance the interests. The first order objective is "resolution". The second order objective is "maximisation of value of assets" of the 'Corporate Debtor' and the third order objective is "promoting entrepreneurship, availability of credit and balancing the interests. This order of objective is sacrosanct."* The performance of the Code in terms of these objectives will ultimately show up in overall growth of the economy of the country. The BLRC accordingly anticipated: *"We hope that the implementation of this report will increase GDP growth in India by fostering the emergence of a modern credit market, and particularly the corporate bond market. GDP growth will accelerate when more credit is available to new firms including firms which lack tangible capital. While many other things need to be done in achieving a sound system of finance and firms, this is one critical building block of that edifice."*

The most notable analysis of English insolvency law, the Cork Report, recognised credit as *"the lifeblood of the modern industrialised economy"*. Insolvency's pivotal task is to afford the creditors an opportunity of redeeming their resources from insolvent enterprises to lend to more profitable avenues. A systematic approach to debt resolution and insolvency strengthens the investment climate and advances economic growth.

There are several ways to observe or analyse the impact of the Code. One way to do so is through the lens of the three E's, namely, effectiveness, efficiency and efficacy, guided by an IMF methodology[57]. This is detailed as follows.

EFFECTIVENESS OF THE CODE

Effectiveness of an insolvency regime is the measure of the extent to which it achieves its intended objectives. While it is too early to assess the effectiveness of the Code for the period under review in terms of the achievements of objectives, the manner the Code envisages to achieve these objectives may serve as early indication.

Maximisation of value of assets

The Code ensures optimum utilisation of resources at all times by preventing use of resources below the optimum potential, ensuring efficient use of resources within the firm through a resolution plan; or releasing unutilised or under-utilised resources through closure of an unviable firm and thereby maximising its value. It prevents depletion of value by enabling early initiation of process for revival and expeditious conclusion of process.

Promotion of entrepreneurship

Robust insolvency regimes encourage entrepreneurship, estimated as the likelihood of self-employment and rate of entry of new firms.[58] Entrepreneurs act as catalysts for change in the economy through their capacity for innovation and risk-taking. As economies have become increasingly 'knowledge-driven', policymakers around the world have embraced the idea of 'entrepreneurship policy' with enthusiasm. One mechanism by which governments have sought to implement such policies has been through bankruptcy law.[59] Under the flagship 'Start-up India' initiative of the Government of India, as on 31st March, 2019, 17,390 start-ups across 499 districts have been recognised under the programme in 29 States and 6 Union Territories. An employment data of 1,77,116 jobs has been reported by 15,478 start-ups with an average number of 11 employees per start-up. The Start-up India hub has witnessed a total of 3,16,936 registered users[60]. This is reflective of facilitation, including easier exit mechanism provided under the IBC.

In the previous regime, for entrepreneurs or start-ups, winding up a business required multiple approvals leading to a substantial delay in realising the dues of creditors. The Code provides a time-bound mechanism of resolution where a start-up firm that fails can be wound up on a fast-track basis within 90 days. Thus, creditor interests are protected, and capital is reallocated to efficient businesses. Also, the Code allows an honest entrepreneur to initiate insolvency proceedings voluntarily and make an orderly exit if his enterprise fails despite his best of intentions and efforts. Thus, the possibility of failure does not hold up an entrepreneur from commencing a business or implementing a new idea. By rescuing viable

[56] Binani Industries Limited Vs. Bank of Baroda & Anr. CA (AT) No. 82,123,188,216 & 234 -2018
[57] Jose Garrido et al (2019), The Use of Data in Assessing and Designing Insolvency Systems, IMF Working Paper No. 19/ 27, February.
[58] Seung-Hyun Leea, Yasuhiro Yamakawab, Mike W. Penga, Jay B. Barneyc. (2011), "How do bankruptcy laws affect entrepreneurship development around the world?", Journal of Business Venturing, Volume 26, Issue 5, September, Pages 505-520
[59] John Armour and Douglas Cumming (2008), "Bankruptcy Law and Entrepreneurship", American Law and Economics Review, Vol. 10, No. 2 (Fall 2008), pp. 303-350
[60] Annual Report 2018-19 of the Department for Promotion of Industrial Policy and Internal Trade, Ministry of Commerce and Industry, GoI.

businesses through CIRP and closing non-viable ones through liquidation, the Code releases the entrepreneurs from failure. It enables him to get in and get out of business with ease, undeterred by genuine business failures.

Availability of credit

Through provision for resolution and liquidation, the Code reduces incidence of default, and enables creditors to recover their dues through revival of the firm or sale of liquidation assets. It incentivises creditors - secured and unsecured, bank and non-bank, financial and operational, foreign and domestic - to extend credit at a lower cost for projects and thereby enhances availability of credit.

Table 61 shows that gross bank credit has grown at a rate of 12.2 per cent in 2018-19 as compared to 8.2 per cent in 2017-18 and most of this increase has been in non-food credit. There is a substantial increase in credit to industrial sector from Rs.27 lakh crore as at end March, 2018 to Rs.29 lakh crore as at end March, 2019.

Table 61: Deployment of Gross Bank Credit by Major Sectors

Sl.No.	Sector	Credit in Rs. billion as on			Variation in %	
		31st March, 2017	30th March , 2018	29th March, 2019	30th March, 2018 / 31st March, 2017	29th March, 2019 / 30th March, 2018
I	**Gross Bank Credit (II+III)**	**71455**	**77303**	**86749**	**8.2**	**12.2**
II	**Food Credit**	**511**	**419**	**415**	**-18.0**	**-0.9**
III	**Non-food Credit (1 to 4)**	**70945**	**76884**	**86334**	**8.4**	**12.3**
1	Agriculture & Allied Activities	9924	10302	11113	3.8	7.9
2	Industry (Micro & Small, Medium and Large)	26798	26993	28858	0.7	6.9
3	Services	18022	20505	24156	13.8	17.8
4	Personal Loans	16200	19085	22207	17.8	16.4
IV	**Priority Sector**	**24356**	**25532**	**27390**	**4.8**	**7.3**

Source: RBI database

EFFICIENCY OF THE CODE

Efficiency is the measure of the extent to which the insolvency system achieves its objectives with the minimum use of resources. It measures the relationship between inputs and outputs. In effect, an efficient system would translate into a quick resolution of financial distress with maximum recovery and minimum costs. An efficient insolvency framework fosters liquidation of non-viable businesses, reallocation of assets to more productive uses and rehabilitation of viable businesses. One of the measures to examine the efficiency of an insolvency regime is to look at the recovery rates it is generating for creditors and time and cost involved in such a process.

Resolution Time

Time is of essence in an insolvency resolution proceeding to preserve the value of the assets of the CD. The Code lays down 180 days for completion of CIRP. It permits one-time extension of up to 90 days to be granted by the AA in deserving cases. In order to reduce the time for resolution, the Code envisages a competitive industry of IUs who would always hold an array of information about all firms, thus addressing lack of complete and undisputed information as a source of delay. It envisages many benches of AA spread all over the country. The AA is being strengthened on an ongoing basis. The insolvency service is getting professionalised. Consequently, the timeframe for completion of the CIRP has reduced. 796 CIRPs concluded by 31st March, 2019. Of them 101 yielded resolution plans. They took on an average 332 days for completion and the balance 396 yielded the orders for liquidation, on an average in 284 days (without exclusion of time excluded by AA).

Resolution Cost

The insolvency resolution process cost, which includes fee of insolvency practitioner and other professionals, and expenses related to meetings of CoC, public announcements, filings and litigations, etc., have been reduced remarkably under the IBC regime as opposed to costs as high as 9 per cent of estate value of the company under the regulatory framework for insolvency, in the earlier regimes, as reported in the World Bank's Doing Business Report.

Recovery rate

Recovery rates from a corporate or individual resolution process in India were, as reported by the BLRC, among the lowest in the world, with lenders recovering only 20 per cent of the value of debt on net present value basis. With the time delays in insolvency resolution process being addressed under the Code, recovery rates are witnessing an upward trend. Table 47, in Section E, indicates that as on 31st March, 2019, a total of 101 CIRPs yielded resolution. In these CIRPs, the FCs realised Rs 1,15,990.87 crore, while the total liquidation value was Rs. 54,366.52 crore. Thus, they realised 213 per cent of the liquidation value, while the realisation by them in comparison to their claims was 53 per cent. If these CIRPs had ended in liquidation, the FCs would have got at best the liquidation value, that is, 25.19 per cent of their claims.

EFFICACY OF THE CODE

Efficacy is the measure of the extent to which there exists a connection or contribution of the insolvency system (sub-system) with the higher-level system like the legal, economic and financial systems. Efficacy would ensure securing the objective of protection and maximisation of the value of an insolvent for all the stakeholders and the economy in general. The efficacy of the Code can be evaluated based on the positive spill-over effects of the Code on the stakeholders and on the economy in general. Some of the key outcomes of the Code, a reflection of its efficacy, are as follows.

Impact on Credit Market

Studies show that effective reforms of creditors' rights are associated with lower costs of credit, increased access to credit, improved creditor recovery and strengthened job preservation.[61] If at the end of insolvency proceedings creditors can recover most of their investments, they can continue reinvesting in firms and improving companies' access to credit. Similarly, if a bankruptcy regime respects the absolute priority of claims, secured creditors can continue lending and confidence in the bankruptcy system is maintained.[62]

Deep capital markets, including corporate bond markets, enable investors to invest long-term, providing important sources of financing for projects such as infrastructure. According to RBI's Financial Stability Report for June, 2019, during 2018-19, Rs.366.8 billion was raised through 25 public issues in the bond market, which is highest in the last five years. A study by ASSOCHAM and CRISIL[63] has noted that India's corporate bond market, which contributes 17 per cent to the country's GDP and is highly concentrated in the AAA rated bonds, is expected to change as the Code brings about successful resolution of stressed assets in a time-bound manner.[64] With greater certainty of outcome and expectations of a faster resolution because of the Code, the interest of both domestic and foreign investors in lower-rated paper will increase over time, the report contends. The RBI has implemented norms for limiting individual/group exposures in banks, encouraging large corporate borrowers to access the bond markets for funding requirements. The study highlights that this, along with the Code, will provide a boost to the Indian bond market.

Resolution of NPAs

The primary focus of the Code is resolution. Recovery is only incidental. Nevertheless, the Code holds promise to address the NPAs of the banking system in two ways. First, the promoters, who do not want to lose the controlling interest in the company to the successful RA, would clear up the debt or settle it to the satisfaction of the creditor. Second, if the promoters do not pay up, the creditors would realise their due from the successful RA. Some of the large cases of NPAs, such as Bhushan Steel, Electrosteel Steels, Alok Industries, Jyoti Structures Ltd. and Monnepat Ispat & Energy Ltd. have been resolved with an amount of Rs. 93,544 crore having been recovered by the FCs. Till March, 2019, 101 cases of corporate insolvency were resolved under the IBC framework with a realisation amount for FCs of the order of Rs. Rs 1,15,990.87 crore.

RBI's Report on Trend and Progress of Banking in India 2018-19 informs that the Gross NPA (GNPA) ratio of all SCBs declined in 2018-19 after rising for seven consecutive years, as recognition of bad loans neared completion. GNPAs as per cent of gross advances for all SCBs declined from 11.2 per cent in 2017-18 to 9.1 per cent in 2018-19. The Report recognises that while a part of the write-offs was due to ageing of the loans, recovery efforts received a boost from the IBC.

The Report further informs that the recovery of stressed assets improved during 2018-19 propelled by resolutions under the IBC, which contributed more than half of the total amount recovered. However, recovery rates yielded by major resolution mechanisms (except Lok Adalats) declined in 2018-19, especially through the SARFAESI mechanism. Cases referred for recovery under various mechanisms grew over 27 per cent in volume and tripled in value during the year. Table 62 shows recovery under IBC *vis-à-vis* other legislations for the years 2017-18 and 2018-19.

Table 62: NPAs of SCBs Recovered through Various Channels

(Amount in Rs. crore)

Recovery Channel	2017-18				2018-19 (P)			
	No. of cases referred	Amount involved	Amount recovered*	Col. (4) as per cent of Col. (3)	No. of cases referred	Amount involved	Amount recovered*	Col. (8) as per cent of Col. (7)
1	2	3	4	5	6	7	8	9
Lok Adalats	33,17,897	45,728	1,811	4.0	40,80,947	53,506	2,816	5.3
DRTs	29,345	1,33,095	7,235	5.4	52,175	3,06,499	10,574	3.5
SARFAESI Act	91,330	81,879	26,380	32.2	2,48,312	2,89,073	41,876	14.5
IBC	704@	9,929	4,926	49.6	1,135@	1,66,600	70,819	42.5
Total	**34,39,276**	**2,70,631**	**40,352**	**14.9**	**43,82,569**	**8,15,678**	**1,26,085**	**15.5**

Notes: 1. P: Provisional.
*2. *: 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.*
3. @: Cases admitted by NCLTs
4. Figures relating to IBC for 2017-18 and 2018-19 are calculated by adding quarterly numbers from IBBI newsletters.

Source: Off-site returns, RBI and IBBI

[61] Neira, Julian (2017), "Bankruptcy and Cross-Country Differences in Productivity", Journal of Economic Behavior and Organization; Claessens, Stijn, and Leora Klapper. 2003, "Bankruptcy around the World: Explanations of Its Relative Use", Policy Research Working Paper 2865, World Bank, Washington, DC.

[62] Armour, John, Antonia Menezes, Mahesh Uttamchandani and Kristen Van Zweiten (2009), "How Creditor Rights Affect Debt Finance" in F. Dahan, ed. 2015. Research Handbook on Secured Financing in Commercial Transactions. Elgar Publishing.; Djankov, Simeon. 2009, "Bankruptcy Regimes during Financial Distress", World Bank, Washington, DC.

[63] CRISIL and ASSOCHAM Report (2019), "Strengthening the Code", May.

[64] According to a 2006 study for the International Monetary Fund by Burger & Warnock, countries with better enforced creditor rights have larger domestic bond markets.

Behavioural Change

The Code has brought about a cultural shift in the dynamics between lender(s) and borrower(s), and promoter(s) and creditor(s). The biggest gains for the economy have come from the extent to which the threat of the IBC has spawned modified behaviour on the part of managers and lenders. The Code has made an impact in the way repayment of debts are viewed and treated by promoters and management of the defaulting firms. Firms are now consciously encouraging their KMPs to engage with difficulties in a preventive manner, at the first signs of distress. With stringent regulation by the Board and with banks having to reserve more funds to cover losses or funds held up in NPAs, corporates and promoters are making all efforts to ensure debt payments.

The continuity in cash flows of companies is increasingly being recognised as the key determinant of corporate, and promoters/ directors are being obligated to infuse more capital, to ensure a stronger demonstration of their commitment to the business. While the balance has tilted towards the lenders for now, the promoters are increasingly working to lower their debt(s) to banks, and raise capital from diverse sources like the corporate bond market or through overseas borrowings.

Thus, with the evolving legislative and adjudicatory framework under the Code, a marked philosophical shift is being observed, away from *ex-post* responses to corporate distress and in the direction of the management of the perils of corporate insolvency by the KMPs *ex ante*.

The credible threat of initiation of a CIRP under the Code that the control and management of the CD may move away from existing promoters and managers, most probably, for ever, deters them from operating below the optimum level of efficiency and motivates them to make the best efforts to avoid default. Further, it encourages the debtor to settle default with the creditor(s) at the earliest, preferably outside the Code. There have been thousands of instances where debtors have settled their debts voluntarily or settled immediately on filing of an application for CIRP with the AA before the application is admitted. There are also settlements after an application is admitted. The Code has thus brought in significant behavioural changes (Box 7) and thereby redefined the debtor-creditor relationship. With the Code in place, the defaulter's paradise is lost[65]. Repayment of loan is no more an option; it is an obligation.

On the other hand, a creditor knows the consequences of default by a CD, if insolvency proceeding is not initiated or the insolvency is not resolved. It is motivated to resort to more responsible (meritocratic) lending to reduce incidence of default. Further, although a creditor has the right to initiate a proceeding under the Code as soon as there is a default of the threshold amount, it is not obliged to do so at the first available opportunity, if it has reasons for the same. It cannot, however, defer the initiation of proceeding indefinitely, allowing ballooning of default. It needs to explain to itself at least why it did not initiate insolvency proceeding, in case of a default, and suffer consequences of its actions of omission or commission. Consequently, the likelihood of a very high value default is minimum.

Box 7: Nudge Theory and the Code

The 'nudge theory'[66] suggests that human behaviour can be influenced without any coercion. It is possible and legitimate for private and public institutions to affect behaviour of individuals without encroaching upon their freedom of choice. Behavioural science guides as to the manner whereby a desirable change can be brought about by 'nudging' people through delicate policy shifts, which encourage them to take decisions in their own self-interest.

Chapter 2 of the Economic Survey 2018-19 informs about how behavioural changes have been brought about through key initiatives of the Government for the well-being of the targeted sections of the society, invoking the principles of behavioural science. These principles, in many ways, apply to economic laws as well, a prime example of which is the Code, which incentivises socially optimal behaviour of the economic agents involved. In the following table, each of the behavioural principles are related with the architecture of the Code to see how this law is using them, taking advantage of cognitive biases of individuals and 'nudging' the stakeholder(s) to achieve the objectives of the Code.

Behavioural principle	General application to the Code
Leverage default rules *Choose the right default; default choice should maximise welfare.*	The first order objective of the Code is revival and continuation of the distressed CD by protecting it from its own management and from death by liquidation. The default choice under the Code is resolution process, where the stakeholders automatically 'opt-in' for resolution plan in the very first instance. Liquidation follows, if there is no possibility of a resolution plan. The Code is 'leveraging default rules', given the 'anchoring bias' of individuals, by providing default choices to the economic agents, such that the default choice maximises their own welfare and that of the society as a whole.

[65] Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors., (2019) 4 SCC 17.
[66] Thaler, Richard & Sunstein, C. (2009), "NUDGE: Improving Decisions About Health, Wealth, and Happiness", Yale University Press

Make it easy to choose *Keep options few in number and easy to comprehend; Reduce logistical and administrative impediments to choosing.*	The Code establishes a linear, collective process of resolution, the outcome of which is binding on the debtor, creditor and all other stakeholders, thereby making it the 'go-to' option to resolve insolvency of a CD. It affords convenient choices in the form of providing a two-way solution to the stakeholders. Firstly, it provides them with the automatic choice of resolution and simultaneously, it serves them a choice to exit by providing a withdrawal mechanism. The Code also provides an option of voluntary liquidation in certain circumstances.
Emphasise social norm *Emphasise social norms to enhance good behaviour; Focus on influencers that people can relate to.*	The Code looks upon business failure as a normal and legitimate part of the functioning of the market economy. Moreover, in the case of individual insolvency, the Code seeks to provide a structured and swift mechanism to resolve it. It also prohibits certain persons from submitting a resolution plan who, on account of their antecedents may adversely impact the credibility of the processes under the Code. The Code, therefore, addresses failure bias by attempting to create and emphasise new and acceptable social norms with respect to insolvency and bankruptcy.
Disclose outcomes *Disclose the realized benefits of good behaviour.*	Measurable desired outcomes of the Code have come to the fore over the past two years with several CIRPs yielding resolution, wherein realisation by FCs in comparison to the liquidation value of the CD has been nearly 190 per cent. Dissemination of these outcomes has imparted greater credibility to the Code and encouraged more stakeholders to use it.
Reinforce repeatedly *Remind people of past good behaviour; Elicit a pre-commitment for desired behaviour, and if possible, enable immediate action as per the commitment.*	There is a need for 'reinforcing desirable outcomes' repeatedly. Government and IBBI have been regularly engaging with various stakeholders in the context of the new legal framework for insolvency and bankruptcy regime in the country, making them aware of the details of the processes. The positive outcomes of the same are being informed through various communication channels, hence reinforcing its merits.
Leverage loss aversion *Design incentives to reward good behaviour ex ante with threat to revoke reward later if behaviour fails to match expectations.*	The Code, through its process design, which divests the promoters of the rights in a CD as soon as a CIRP is initiated, has induced them towards avoiding defaults. Thus, the Code has proved to be preventive in the sense that real damages are avoided by simply signalling that the consequences of non-compliance may be heavy, and that good credit behaviour will be rewarded.
Make messages match mental models *Train people to shift to new rules of thumb.*	Heuristics or mental shortcuts are often used by people as simple rules of thumb to help them take decisions. Given the growth of Code's jurisprudence and the way in which the Code has evolved as a problem solver to debtors and creditors in the society, it is expected that taking recourse to the provisions of the Code for resolving insolvency will be the new thumb rule.

Taking recourse to the Code is voluntary. Where one exercises its voluntary options in favour of the Code, the fall out is compulsory for all other stakeholders. Therefore, it is one of the parties to the insolvency process and not the State who imposes an outcome on all other players. This can be viewed as one of the most powerful 'nudge' requiring all stakeholders to exhibit their best behaviour, firstly to prevent triggering of an insolvency and if triggered, to ensure that interests of all stakeholders are taken care of.

CORPORATE GOVERNANCE

Many jurisdictions have codes for corporate governance. India too has well-codified corporate governance norms and has been continuously raising the bar for them. The Companies Act, 2013 and SEBI regulations serve as important milestones in this direction. These norms typically apply to a company in normal times when it is managed by shareholders, represented by a Board of Directors, with assistance of a governance professional. The Code lays down norms for companies in distress. By laying down norms that seek to prevent failure of companies and rescue failing companies, the Insolvency and Bankruptcy Code, 2016 has taken corporate governance to new heights in the country (Box 8)

Box 8: IBC: A Code for Corporate Governance

The raison d'être of a company is that it must live, generate value and share the value equitably among stakeholders. The framework which enables a company to do so is corporate governance. In this sense, the IBC serves as a *'Code'* for corporate governance. Its first order objective is rescuing a company in distress. The second order objective is maximising value of assets of the company and the third order objective is balancing the interests of stakeholders. This order of objectives is sacrosanct.[67] It is not surprising that the OCED advocates an effective and efficient insolvency framework to complement corporate governance framework.

[67] Binani Industries Limited Vs. Bank of Baroda & Anr., [CA (AT) No. 82,123,188,216 & 234 -2018].

Saving Life

The Code has several provisions to save the life of a company in distress. It bifurcates and separates the interests of the company from that of its promoters / management with a primary focus to ensure revival and continuation of the company by protecting it from its own management and from a death by liquidation.[68] If there is a RA, who can continue to run the firm as a going concern, every effort must be made to try and see that this is made possible.[69] It is a beneficial legislation which puts the company back on its feet, not being a mere recovery legislation for creditors[70]. It provides a competitive, transparent market process, which identifies the person, who is best placed to rescue the company and selects the resolution plan, which is the most sustainable under the circumstances. It mandates consideration of only feasible and viable resolution plans, that too, from capable and credible persons, to ensure sustained life of the company.

The Code empowers creditors, represented by a CoC, to rescue a company, when it experiences a serious threat to its life. For this purpose, the CoC can take or cause a haircut of any amount to any or all stakeholders. It seeks the best resolution from the market, unlike the earlier mechanisms which allowed creditors to find a resolution only from the existing promoters. Further, the resolution plan can provide for any measure that rescues the company. It may entail a change of management, technology, or product portfolio; acquisition or disposal of assets, businesses or undertakings; restructuring of organisation, business model, ownership, or balance sheet; strategies of turn-around, buy-out, merger, amalgamation, acquisition, or takeover; and so on.

Maximising Value

The Code safeguards and maximises the value of the company and consequently, value for all its stakeholders. It enables initiation of resolution process at the earliest to preserve the value. It mandates resolution in a time-bound manner to prevent decline in the value. It does not envisage recovery, which maximises the value of the creditors on first-cum-first-serve basis. It does not allow liquidation, which maximises the value for stakeholders who rank higher in the waterfall, while destroying going concern value. 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 insolvency practitioner run the company as a going concern, prohibits suspension or termination of supply of essential services, mandates continuation of licenses, permits and grants; stays execution of individual claims, enables raising interim finances for running the company, insulates the RAs from the misdeeds of the company under the erstwhile management, etc. It provides for a market mechanism where the world at large competes to give the best value for the company through a resolution plan. It always ensures optimum utilisation of resources by preventing use of resources below their potential and ensuring efficient use of resources within the firm through a resolution plan. It endeavours to maximise value through sale of the company or its business as a going concern, rather than selling the company in bits and pieces, even after the liquidation process has commenced.

Where value has been lost on account of undesirable transactions (preferential transactions, undervalued transactions, extortionate credit transactions and fraudulent transactions) with related parties in the preceding two years and with others in the preceding one year, the Code enables claw back of such value. It even mandates retrieval of value lost due to the failure to exercise due diligence. There is a twilight zone which begins from the time when a director knew or ought to have known that there was no reasonable prospect of avoiding the commencement of resolution process till the company enters resolution process. During this period, a director has an additional responsibility to exercise due diligence to minimise the potential loss to the creditors and he is liable to make good such loss. There is thus strong deterrence to prevent directors and promoters from causing loss of value to the company in the run up to insolvency.

Balancing Interests

A company has two main sets of direct stakeholders – shareholders and creditors. If debt is serviced, shareholders have complete control of the company. When the company fails to service the debt, the Code shifts control of the company to the creditors for resolving insolvency. The Code moved from 'debtor-in-possession' model to 'creditor-in-control' model, balancing the rights and powers of shareholders and creditors over a company.

The CoC decides the fate of the company. There are, however, check and balances to ensure that the resolution process yields fair and equitable outcomes for the various stakeholders. The Code prescribes payment of a certain minimum amount to OCs and to dissenting FCs, payment to OCs in priority over FCs, a statement as to how a resolution plan has dealt with the interests of the stakeholders, etc. The ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the CoC, but its decision must reflect the fact that it has taken into account maximising the value of assets of the CD and the fact that it has balanced the interests of all the stakeholders. [71]

Proactive Governance

The Code contributes to governance of a company even before it gets into distress. There is a credible threat that if a company defaults, and consequently it gets into resolution process, in all probability, it would move away from the hands of current promoters / management for ever. Firstly, because the promoters may not be eligible to submit a resolution plan. Second, even if eligible, they may not submit the most competitive plan. This prevents use of resources below their potential before resolution, minimising the incidence of failure and default. In the long run, the best use of the Code would be not using it at all. That would be the ultimate corporate governance.

[68] Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors., (2019) 4 SCC 17.
[69] Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and Ors., (2019) 2 SCC 1.
[70] Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors., (2019) 4 SCC 17.
[71] Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. CA No. 8766-67 of 2019

Going Forward

A well governed company commands respect of the society and a premium from stakeholders. It is unlikely to have distress, and, in rare situation of distress, it can be resolved quickly without loss of much value. It important because the Code has shifted focus from possibility of recovery to possibility of resolution, in case of distress. A company prefers to keep itself resolvable all the time, should a need arise, and the market prefers to deal with a company which is resolvable. A resolvable company obtains a competitive advantage *vis-a-vis* non-resolvable companies through reduced cost of debt[72]. If value of a company lies in informal, off-the record arrangements or personal relationships among promoters or their family members, prospective RAs may find it hard to trace and harness the value, making resolution of the company remote. A company prefers to have value, which is visible and readily transferable to RAs. Similarly, a company keeps an updated IM ready to enable expeditious conclusion of resolution process, if initiated. By incentivising a company to remain resolvable all the time, the Code promotes preparation of a sort of *'living will'* for the benefit of the company as well as the society at large.

GLOBAL RESTRUCTURING REVIEW AWARD

India won the prestigious Global Restructuring Review (GRR) Award for the 'Most Improved Jurisdiction' for the year 2018. This award recognises the jurisdiction which improved its restructuring and insolvency regime the most over the last year. Other jurisdictions shortlisted for this award included the European Union and Switzerland. The winner is selected based on a rigorous global nomination process. Singapore won the award in the Most Improved Jurisdiction category in 2017. The awards were handed over by Mr. Benjamin Clarke, Senior Reporter, GRR to the three main constituents of the insolvency regime, namely, AA, MCA and IBBI at a function in New Delhi on 20th July, 2018.

Ms. Kyriaki Karadelis, Editor, GRR observed on the occasion: *"The award for most improved jurisdiction is extremely well-deserved. As you know, India narrowly missed out on the title to Singapore last year, but as the Insolvency and Bankruptcy Law of 2016 has begun to be tested in the new network of National Company Law Tribunals resulting in several key, precedent-setting judgements, we felt it was the right time to celebrate India's progress in this sector."*

GRR Award ceremony at New Delhi on 20th July, 2018

Conclusion

Summing up, an effective, efficient and efficacious insolvency regime has been ushered in by the Code. Green shoots are visible in the form of realisations from NPAs and behavioural changes amongst the creditors and debtors. Entrepreneurs can take greater risk given the availability of a time bound, streamlined exit mechanism. Going forward, as the legal framework is further streamlined, further positive outcomes are likely to emerge.

[72] Dr. Ajay Shah, The Next Level of Credit Analysis, Business Standard, 8th January, 2018.

G | PERFORMANCE OF THE BOARD

A key innovation of the Code is the four pillars[73] of institutional infrastructure, which includes a regulator, namely, IBBI. The IBBI is a unique regulator, which regulates insolvency profession as well as insolvency processes. It has regulatory oversight over IPs, IPAs, IPEs and IUs. It frames and administers rules for various processes under the Code, namely, corporate insolvency resolution, corporate liquidation, fresh start, individual insolvency resolution and individual bankruptcy under the Code. It has 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 the 'Authority' under the Companies (Registered Valuers and Valuation Rules), 2017 for regulation and development of the profession of valuers in the country.

UNIQUE REGULATOR

The traditional statecraft has certain limitations in governance of markets. To address effectively the issues that arise due to the dynamic nature of a market economy and to impart credibility to state interventions, designed with expertise and *sans* influence of interested groups, the Governments have been setting up regulators and equipping them with the necessary powers, expertise and resources commensurate with the requirements of the task. The emergence of regulators to share governance with the government is a reality. Governance through regulators constitutes one of the most significant institutional reforms in recent decades.

Since the economic reforms in the 1990s several regulators have been established in India. As regulators establish their credibility and acceptability in the space of governance, the stakeholders and other institutions are learning to live with the regulators around.

In sync with the priority and focus of the Government, the IBBI has, since its establishment on 1st October, 2016, been proactively engaging with the stakeholders in building the elements of the ecosystem and acting as the bridge across the elements of the ecosystem. The Board is a unique regulator with certain unique regulatory features and challenges (Box 9). With the helping hands of IPAs, RVOs, trade and industry bodies, academia and universities, and professionals, it has been building the much-needed institutional capacity to implement the reform at an unprecedented pace, while providing the regulatory framework to support insolvency reform. It envisions itself as a dynamic and proactive regulator that provides a responsive and conducive regulatory framework to facilitate improved and equitable outcomes for persons in financial distress. It is important that the Board understands its own DNA, and the stakeholders recognise its uniqueness.

FOUR OBJECTIVES

Credibility distinguishes an 'Organisation' from an 'Institution'. Great organisations aspire to earn credibility and, in the process, become institutions. In institutional parlance this is called "legitimacy" that institutions acquire as organic brand equity[74]. It takes years, sometimes decades to build credibility. Four important objectives are motivating the IBBI in its transition to becoming an Institution and shaping its priorities. This, in turn is shaping the planning, delivery, monitoring and improvement of its tasks and processes over time. These are detailed below.

Fostering Confidence

Trusting relationships with stakeholders is the foundation of a credible organisation. To this end, the IBBI is engaging with each of its stakeholders in multiple ways and responding to emerging situations with transparency, consistency and objectivity.

(a) Considering that the Code is a paradigm shift in law from the erstwhile insolvency and bankruptcy regime and is a code complete in itself and is exhaustive of the matters dealt with therein[75], it is important to engage with the stakeholders to make them aware of the provisions of the new regime and manner of using the same in case of need, while seeking their inputs for strengthening and streamlining the processes under the Code. As detailed in Section C.3 of the report, the IBBI is engaging extensively and proactively with the stakeholders in various formats, namely, conferences, seminars, roundtables, workshops, and webinars and in various capacities, namely, faculty, panelist, speaker, guest of honour, and chief guest. In keeping with the requirements of its responsiblities, it is the endeavour of the IBBI to build capacity of the IPs and other service providers in the area of insolvency and bankruptcy given that the law in place is a new one and needs to be understood and interpreted correctly to enable delivery of the

[73] Ministry of Finance, Press Release dated 11th May , 2016.
[74] Williamson, Oliver E. (1996), "The Mechanisms of Governance", Oxford University Press, New York.
[75] M/S. Innoventive Industries Ltd. Vs. ICICI Bank & Anr. (2018) 1 SCC 407

Box 9: IBBI: A Unique Regulator

Most insolvency jurisdictions have two layers in the hierarchy of regulation, namely, Government and membership organisations. The UK, for example, has the Insolvency Service in the Department for Business, Energy and Industrial Strategy and five Recognised Professional Bodies (RPBs) recognised by the Secretary of State for Energy and Industrial Strategy for the purposes of authorising and regulating insolvency practitioners in the UK. The Indian jurisdiction has three layers in the hierarchy, namely, Government, the IBBI and IPAs, which are equivalent of RPBs. There is probably no agency exactly like the IBBI in any insolvency jurisdiction.

There is probably no agency like the IBBI in the Indian regulatory space. The establishment of a market regulator seems to be the primary objective of several legislations such as the Securities and Exchange Board of India Act, 1992, the Reserve Bank of India Act, 1934, the Insurance Regulatory and Development Authority of India Act, 1999, etc. As stated in the long title of the SEBI Act, it is an Act to provide for the establishment of the SEBI to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for connected matters. The breadth of responsibilities includes any measure as the SEBI thinks fit in furtherance of its objectives. The Code, however, provides for insolvency resolution processes of corporate persons and individuals. It also provides for an ecosystem, comprising the AA, IBBI, IPs and IUs for implementation of the Code. One of the objectives of the Code is the establishment of the IBBI. A few chapters of the Code provide for IBBI and list out its specific functions. Thus, the IBBI has a specified role in the insolvency and bankruptcy regime, while SEBI is exclusively responsible for every aspect of the securities market.

The Company Secretaries Act, 1980 makes provisions for the regulation and development of the profession of Company Secretaries and establishes the Institute of Company Secretaries of India (ICSI) for the purpose. While the ICSI develops and regulates the profession, it does not specify the rules to be followed by Company Secretaries for transactions under the Companies Act, 2013 or other relevant legislations. The IBBI develops and regulates the IPs. It also specifies the rules to be followed by IPs for transactions under the Code. Further, while the ICSI is exclusively responsible for the profession of Company Secretaries, the IBBI jointly with the IPAs, discharges the responsibility relating to the insolvency profession.

The SEBI and several other regulators develop and regulate markets. They, however, do not develop and regulate the professions, which render services in their jurisdictions. The ICSI and other similar regulators develop and regulate the professions, but do not develop and regulate markets where the professionals serve. The IBBI develops and regulates the profession of IPs and also develops and regulates the market where IPs render services. It has the responsibility to promote the development of, and regulate, the working and practices of IPs, IPAs, and IUs and other institutions, in furtherance of the purposes of the Code. It has regulatory oversight over the service providers in the insolvency space, and writes rules for processes, namely, CIRP, corporate liquidation, individual insolvency resolution and individual bankruptcy under the Code. It has been designated as the 'Authority' under the Valuation Rules for regulation and development of the profession of valuers in the country.

Like every other regulator, the IBBI has quasi-legislative responsibilities. It has been the endeavour of the IBBI to effectively engage with stakeholders in the regulation making process. It discusses the draft regulations in several roundtables with the stakeholders to revalidate the understanding of the issues the said regulations sought to address, and the appropriateness of such regulations to address the issues. It obtains comments of the public, through an electronic platform, on each draft regulation and sub-regulation. It also obtains the advice of the relevant AC on draft regulations. The regulations made by the IBBI have generally enjoyed judicial deference and been found useful by the AA, NCLAT and the SC. There are also instances where the regulations made by the IBBI did not pass the muster. The AA struck down regulation 36A[76] of the CIRP Regulations being *ultra vires* section 240(1) of the Code, in a collateral proceeding, and without notice to the IBBI.

Every regulator has certain executive responsibilities. It enforces the regulations it makes. It does so in respect of relevant market participants. For example, the SEBI enforces insider trading regulations on the company, board of directors, shareholders, investors, merchant bankers, auditors, IPs, etc. However, the IBBI does not enforce CIRP Regulations on CDs, promoters, creditors, RAs, etc. It, however, enforces regulations relating to IPs, IPAs and IUs. Some service providers probably do not fully understand their association with the IBBI. There are instances where service providers have floated organisations by name 'IBBI Insolvency Practitioners LLP'[77] or websites by name 'ibbivaluers.com'[78] which were discontinued on notice from the IBBI.

The IBBI has certain quasi-judicial responsibilities. It includes disciplining the IPs in case of deviant behaviour. However, there are instances where stakeholders have filed FIRs against IPs or attempted to discipline IPs. There are also orders imposing penalties[79] on IPs or restraining the IBBI from taking disciplinary actions or quashing[80] disciplinary proceedings initiated by the IBBI. The AA has made it clear[81]: *"If, there is any complaint against the Insolvency Professional then the IBBI is competent to constitute a disciplinary committee and have the same investigated from an Investigating Authority as per the provision of section 220 of the Code. If, after investigation 'IBBI' finds that a criminal case has been made out against the Insolvency Resolution Professional then the 'IBBI' has to file a complaint in respect of the offences committed by him. It is with the aforesaid object that protection to action taken by the IRP in good faith has been accorded by section 233 of the Code. There is also complete bar of trial of offences in the absence of filing of a complaint by the 'IBBI' as is evident from a perusal of section 236(1) (2) of the code."*

[76] State Bank of India Vs. Su Kam Power Systems Ltd. ,C. P. No. (IB) - 540 (PB)/ 2017
[77] IBBI Order No. IBBI/DC/09/2018 dated 6th September , 2018.
[78] IBBI Order No IBBI/DC/16/2020-21 dated 8th January , 2020
[79] Apna Scientific Supplies Pvt. Ltd. ,MA/154/2019 in CP/811/IB/2018
[80] Punjab National Bank Vs. Rana Global Ltd. (IB)-196(ND)2018
[81] M/s Alchemist Asset Reconstruction Co. Ltd Vs. M/s Hotel Gaudavan Pvt. Ltd. [Civil A No.16929-2017

envisaged outcomes. It organises and participates in several capacity building, advocacy and awareness programmes details of which have been provided in Table 13 of section C of this Report. In its endeavour to create awareness about the insolvency and bankruptcy regime amongst the students of higher education, it conducts essay competitions through Institutes of Learning and takes students of law, economics and professional courses as interns.

(b) The Board has notified regulations to deal with grievances and complaints of stakeholders, namely, debtors, creditors, claimants, RAs, service providers, or any other person having an interest in an insolvency resolution, liquidation, voluntary liquidation or bankruptcy process under the Code. These are being dealt with in an objective, transparent and timely manner. Table 32 in section D informs about the receipt and disposal of complaints and grievances in 2018-19. On receipt of any complaint against IPAs, its members or an IU, or in case the Board has reasonable grounds to believe that any IPA, IP or IU has contravened any of the provisions of the Code or rules or regulations, the Board causes an inspection, wherever required, to be done promptly. Based on examination of the inspection report or otherwise material available on record, the Board may issue a SCN to the accused detailing the specific conduct of the accused and the contravention of the specific provision of law. After following the principles of natural justice, a DC disposes of the SCN at the earliest.

(c) 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 reasoned order. The IBBI issued various orders during 2018-19 as under:

Sl. No.	Type of Order	Authority	No. of Orders Issued in	
			2017-18	2018-19
1	Rejecting applications for registration as IP	Board	06	03
2	Rejecting applications for registration as RV	Board	NA	01
3	Disposing of show cause notices	Disciplinary Committee	Nil	11
4	Appeals against the orders of CPIO	First Appellate Authority	05	29

(d) IPAs and RVOs are frontline regulators responsible for developing and regulating the insolvency profession and valuation profession. The IBBI meets MDs / CEOs of three IPAs, 11 RVOs and one IU on 7th of every month to discuss the issues arising from their governance and operations, practice of insolvency and valuation professions and insolvency and liquidation proceedings to arrive at collective solutions and develop best practices to deal with emerging problems.

(e) The IBBI shares the outcomes of processes under the Code through its website and quarterly newsletter. It collects and makes the data available in respect of CIRP, corporate liquidation process, voluntary liquidation process, service providers, examinations, and advocacy and awareness programmes. Further, standard accountability arrangements include laying of regulations, annual accounts and annual reports before the Parliament. The IBBI has been laying its regulations, annual accounts and annual reports that promotes transparency and enables scrutiny of its work by a wider audience.

Responsive Regulation

Regulation is not an unmixed blessing. Nor is there a regulation for every market failure. Regulation making is not a 'one-size-fits-all' approach. Different strategies and approaches are required to design an appropriate regulation that address 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. The Board has standardised the regulation making process to ensure that the regulations are effective as well as responsive, and not excessive. With this in mind, it has put in place the IBBI (Mechanism for Issuing Regulations) Regulations, 2018 which govern the process of making regulations and consulting the public.

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 makes every stakeholder a regulator. The IBBI also puts out discussion papers along with draft of the proposed regulation in public domain seeking comments thereon. This makes every stakeholder a partner in 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 regulator and the stakeholders and amongst the stakeholders themselves, when regulations are being framed. Further, in order to reach out to various stakeholders and get their feedback on draft regulations, the IBBI itself or in collaboration with the industry/ institutes/organisations, organises roundtables in various cities before finalizing the regulations. It also organises such roundtables to convey the intent of regulations so made to stakeholders and facilitate implementation of the regulations. A list of such roundtables, organized in the period under review, have been listed in Table 16 of Section C.

The IBBI has been servicing the following regulations as on 31st March , 2019:

Sl.No.	Regulations
1	IBBI (Model Bye-laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016
2	IBBI (Insolvency Professional Agencies) Regulations, 2016
3	IBBI (Insolvency Professionals) Regulations, 2016
4	IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
5	IBBI (Liquidation Process) Regulations, 2016
6	IBBI (Engagement of Research Associates and Consultants) Regulations, 2017
7	IBBI (Advisory Committee) Regulations, 2017
8	IBBI (Procedure for Governing Board Meetings) Regulations, 2017
9	IBBI (Voluntary Liquidation Process) Regulations, 2017
10	IBBI (Information Utilities) Regulations, 2017
11	IBBI (Inspection and Investigation) Regulations, 2017
12	IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017
13	IBBI (Employees' Service) Regulations, 2017
14	IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017
15	IBBI (Mechanism for Issuing Regulations) Regulations, 2018

While the framework for regulations for all processes and market intermediaries is in place, wherever any clarifications on the extant legal position is required, the Board has been providing the same through circulars. It has been the endeavour of IBBI to deliver on its mandate and come up with innovative and timely solutions to address the emerging needs. For example, where rate of interest has not been agreed to between the parties in case of creditors in a class, the IBBI specified that voting share of such a creditor shall be in proportion to the financial debt that includes an interest at the rate of eight per cent per annum.

Professionalisation of Insolvency Services

The influence of professionals in servicing a market economy has been increasing over the years. Given the growing complexity of markets, professionalisation to a large extent determines the competitive edge of nations and sustainability of prosperity. It is, therefore, incumbent that professions are developed with right ethos and capability, where members of the profession are held accountable for their services, while they enjoy an enviable reputation. India has recently witnessed birth of two professions, namely, insolvency profession and valuation profession, that have considerably professionalised insolvency services (Refer Box 1 in Section C).

A key function of the Board is to promote the development of the working and practices of IPs, IPAs, IUs and other institutions in furtherance of the objectives of the Code. It has been servicing the following service providers as on 31st March, 2019:

Sl. No.	Service Provider	Number as on 31st March	
		2018	2019
1	Insolvency Professionals	1812	2456
2	Insolvency Professional Entities	75	48
3	Insolvency Professional Agencies	03	03
4	Information Utilities	01	01
5	Registered Valuer Organisations	03	11
6	Registered Valuers	Nil	1186

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

The IBBI conducts the following Examinations online as on 31st March , 2019:

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 amended the IP Regulations to provide that an individual shall be eligible for registration if he has successfully completed Graduate Insolvency Programme (Box 10), as may be approved by the IBBI, subject to meeting other requirements. It constituted a WG to recommend the structure, content, and delivery mechanism for GIP under the provisions of IP Regulations. The WG submitted its report in December, 2018. Based on the recommendations of the Report and approval of the Governing Board, the IICA was permitted to launch the GIP. The first batch of GIP is scheduled to commence on 1st July, 2019 with a batch of 40 students.

Transparency in Decision Making

Transparency increases the confidence of the stakeholders in the system. Transparency in the internal functioning of a regulator implies that a robust standard of documentation is maintained about its internal functioning and the manner of making decisions. Since the regulator plays the role of the State, such documentation should be maintained at a level of detail that is sufficient to support an independent assessment of decisions taken by the regulator.

In the interest of transparency in internal processes, the IBBI has been regularly publishing regulations, outcomes of processes, summary of comments received from the stakeholders in the course of consultations for the regulations, annual reports, annual accounts orders passed in relation to regulated entities, minutes of meetings of the GB, recommendations of advisory committees of the board, reports of the WGs, external audit reports, orders DC, orders of the First Appellate Authority (FAA) under RTI Act, 2005 etc., on its website. It documents all its decisions with reasons. For example, show cause notices by the IBBI, state the grounds of the proposed action and information on the basis of which the notice has been issued.

Box 10: Graduate Insolvency Programme

To further develop the insolvency profession, the IBBI proactively engaged with the industry to structure and deliver a two-year full-time course, namely, the GIP to produce a cadre of IPs of the highest quality and standards. It visualises GIP as a graduate programme of global standard to produce top-quality IPs who can deliver world-class services as RPs, liquidators or in other capacities at a level that surpasses the expectations of the market and the regulator in general and their consumers in particular. The GIP will be a first of its kind programme in the World. Its content and design should serve an optimum utility not only for those who wish to take up the discipline of insolvency profession as a career but also for those who wish to take up other roles in the value chain, in India and foreign jurisdictions. The graduating students may choose to work as in-house counsellors or act as advisers with stakeholders participating or associated with insolvency and liquidation proceedings or in turnaround industry. Some may even elect to become academicians or researchers or work in media houses. Wherever they may work, they should be able to add value to the insolvency system. It should be an attractive programme for foreign students as well who wish to find career opportunities in India or other jurisdictions.

Candidates who have completed a basic professional course such as company secretary, chartered accountant, cost accountant, or law, or bachelors in technology or bachelors in electronics or a post-graduate with major in Economics, Finance, Commerce, Management or Insolvency with aggregate 50 per cent marks, are eligible for admission into GIP. The maximum age-limit for enrolment is 28 years. This will provide an avenue for young professionals, having talent but lacking experience, to take up the GIP as a career option. A student who successfully completes the programme shall be awarded a certificate which states that the GIP has been conducted by the Institute with the approval by the IBBI. The programme shall be delivered as an industry initiative requiring with at least half of the classroom component being delivered by practitioners.

The GIP is envisaged to be a 24 months programme consisting of an intensive residential classroom component of 12 months and a hands-on internship component at the cutting edge of the practice for 12 months. The internship will be an important aspect of the programme where a student will be exposed to multiple aspects of the insolvency and bankruptcy related activities and will be trained with multiple agencies, such as legal firms, banks / financial institutions, IBBI, NCLT, NCLAT.

The insolvency profession requires multiple skills, serving multiple stakeholders. While the GIP student will comprehensively learn about the entire spectrum of insolvency and turnaround related policies, laws and regulations, the programme shall also aim to inculcate the requisite soft skills such as, interpersonal and communication skills, people management, entrepreneurship, commitment and emotional quotient, amongst the students. A very important aspect of the profession is requirement of deep-rooted ethics, integrity and other virtues of an IP. The programme will aim to inculcate these virtues in students. It is envisaged that the GIP would command acknowledgement and respect on the strength of its uniqueness, high quality of content and delivery.

Conclusion

With a clearly laid out vision, purpose and objectives, the IBBI is making an honest effort to live up to the expectations of its stakeholders. However, it is to be borne in mind that IBBI is a new regulator, still learning and constantly introspecting to achieve the best outcomes for all stakeholders. Shortcomings cannot be ruled out. By regular brainstorming internally, with market participants, stakeholders and experts and course correction, it is striving to reduce these shortcomings. It has been receiving support and co-operation from all concerned in its pursuits. The MCA, CBDT, RBI, SEBI, CCI, NCLT, NCLAT, SC and others have been facilitating the processes under the Code.

IBBI is also following the global thinking in the area of insolvency and bankruptcy with the aim of drawing best practices from around the world and applying them in the Indian context, albeit with changes to suit the local dynamics. As detailed in Section K, IBBI has undertaken study tours to the UK and Australia to get insights into their insolvency regimes and have brought back learnings from them. Being futuristic in its thinking, IBBI is trying to develop the key profession of IPs for the insolvency and bankruptcy space, envisaging the increasing demand for such professionals in the near future.

H | PERFORMANCE OF THE GOVERNING BOARD

The Board is a body corporate having perpetual succession. It holds and disposes of property, enters into contracts and sues and is sued in its own name. The GB provides strategic direction to the Board and establishes its objectives, and controls and monitors the management, reviews its performance and holds it accountable for delivering on the objectives. While the Code specifies the duties and functions of the Board, the Code read with the IBBI (Procedure for Governing Board Meetings) Regulations, 2017 (Board Regulations) specify 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.

The GB had four meetings during 2018-19. The details of attendance of the Board members at these meetings are presented in Table 63.

Table 63: Attendance in Board Meetings

Name	Position	No. of Board Meetings in 2018-19	
		Held when in office	Attended
Dr. M. S. Sahoo	Chairperson	4	4
Ms. Suman Saxena	WTM	2	0
Dr. Navrang Saini	WTM	4	4
Dr. (Ms.) Mukulita Vijayawargiya	WTM	4	4
Mr. Gyaneshwar Kumar Singh	*Ex-officio* Member	4	4
Mr. G. S. Yadav	*Ex-officio* Member	1	1
Mr. Unnikrishnan A.	*Ex-officio* Member	4	4
Dr. Shashank Saksena	*Ex-officio* Member	3	3
Dr. Rajiv Mani	*Ex-officio* Member	1	1

With the approval of the GB, the IBBI notified one new Regulation during 2018-19. It also notified nine amendment Regulations during the year, amending existing Regulations to address the challenges and issues emerging from the implementation of the insolvency reform. Most of these Regulations were made after having consultation with the stakeholders online, in roundtables, and with the ACs. The GB reviewed activities and performance of the Board in the areas of service providers (IPs, IPAs, IPEs, IU, RVs, and RVOs), limited insolvency examination, valuation examinations, CIRP, liquidation process, and voluntary liquidation. It approved the Annual Accounts and Annual Report of the Board for the years 2016-17 and 2017-18. It also considered Inspection Policy and Manual for IPs, Manual for Examinations, Budget and investment policy of IBBI, appointment of internal auditors, infrastructure requirements of IBBI, etc.

ASSESSMENT OF PERFORMANCE

A well-functioning GB builds a bridge between the organisation and the stakeholders and the society at large and further articulates a strategy for the organisation. A well represented GB 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. A GB with relevant expertise 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.

In recent times, many GBs have recognised the importance of evaluation of their own performance, as part of their accountability duties. The performance of a GB can be evaluated broadly on three dimensions, namely:

(a) ***Board Composition and Quality,*** which cover aspects such as expertise and experience of Board Members, strategy to achieve laid down objectives, quality of debate and discussion in its meetings and its engagement with stakeholders.

(b) ***Board Meetings and Procedures,*** which cover aspects such as regularity and frequency of Board meetings, accuracy of minutes, amount of time spent on strategic and important matters and follow up on actions arising from Board meetings.

(c) ***Board Functions and Development,*** which include aspects such as integrity of accounting and financial reporting, promoting transparency and good governance and open channels of communication with the top management.

In order to evaluate its own performance, the GB of IBBI devised a Self-Evaluation Questionnaire comprising dimensions and parameters as identified above. Each of the Members responded to the questionnaire on a scale of 1 to 5. The responses were tabulated and an overall rating with respect to each dimension was arrived at. Table 64 summarises the performance of the GB based on responses of the Members to the questionnaire.

Table 64: Performance of Governing Board in 2018-19

Dimension	Parameter	Score	Rating
Board Composition and Quality	The Board has the appropriate mix of expertise and experience to meet the best interests of the organisation.	32	Excellent
	The organisation operates with a strategic plan or a set of measurable goals and priorities.	33	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.	33	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.	30	Satisfactory
	The Board has adequate number of committees as may be required, with well-defined terms of reference, including reporting requirements.	30	Satisfactory
	Board meetings encourage a high quality of debate with healthy and probing discussions.	35	Excellent
	The Board sets itself objectives and measures its performance against them on an annual basis.	32	Excellent
	The Board gives direction to officers on how to achieve the goals by setting, referring to, or revising policies.	31	Satisfactory
Total Sectional Score		256/280 **(91%)**	*Excellent*
Dimension	**Parameter**	**Score**	**Rating**
Board Meetings and Procedures	The Board meets with sufficient regularity and the frequency of meetings is enough for the Board to undertake its duties properly.	35	Excellent
	Board meeting agenda and related background papers are concise and provide information of appropriate quality and detail to take decision on the matter.	33	Excellent
	All the information regarding the meeting is disseminated to the members in a timely manner.	33	Excellent
	The actions arising from board meetings are properly followed up and reviewed in subsequent board meetings.	35	Excellent
	The minutes of Board meetings are clear, accurate, consistent, and complete and approved in timely manner.	35	Excellent
	Adequacy of attendance and participation by the Board members at the board meetings.	32	Excellent
	The amount of time spent on discussions on strategic and general issues is sufficient.	32	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).	31	Satisfactory
Total Sectional Score		266/280 **(95%)**	*Excellent*
Dimension	**Parameter**	**Score**	**Rating**
Board Functions and Development	The Board ensures the integrity of the organisation's accounting and financial reporting systems.	33	Excellent
	The integrity of process of independent audit of the organisation is maintained.	35	Excellent
	The Board has open channels of communication with the top management and others and is properly briefed.	32	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.	33	Excellent
	Board members make decisions objectively and collaboratively in the best interests of the stakeholders and feel collectively responsible for such decisions.	34	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.	35	Excellent
Total Sectional Score		202/210 **(96%)**	*Excellent*
Grand Total		**724/770 (94%)**	

The GB evaluated itself to have performed exceedingly well in all the three broad dimensions in 2018-19. It performed well in almost all the parameters identified within a dimension, for assessing its effectiveness and efficiency. The performance appeared very strong in the principles of transparency, efficient oversight of operations and strategic planning for achieving set objectives. Further, it is observed that the Board meetings encouraged a high quality of debate with healthy and probing discussions. The GB also actively followed up on actions arising from discussions and decisions of the Board meetings and reviewed them in subsequent meetings. It was particularly receptive to emerging developments and events and responded positively and constructively to them to enable effective decisions and their implementation, while promoting best practices in its governance. An assessment of the performance of the GB has at the same time helped identify a few parameters wherein the performance of the Board can be strengthened 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

With the aim to promote a conducive and robust ecosystem to support the implementation of the insolvency and bankruptcy regime, as mandated under the Code, the IBBI has taken several steps since its establishment. It is time to move further ahead into new domains, while further consolidating the progress made so far. The following could drive agenda of the GB in the next year.

Personal Guarantors

In the two years since the enactment of the Code, the provisions relating to corporate insolvency resolution, including fast track resolution, corporate liquidation and voluntary liquidation of CDs have been operationalised. There are, however, occasions when a CD takes a loan guaranteed by another corporate person, that is, CG to the CD, or an individual, that is, PG to the CD. The creditor may pursue a remedy against the CD, being principal borrower, or the guarantor, when there is a default in repayment of the loan. Section 14 of the Code was amended by an Ordinance with effect from 6th June, 2018 to exclude a surety in a contract of guarantee to a CD from the purview of moratorium to enable the creditor to pursue a remedy against the guarantor. The insolvency resolution of CG to a CD and of PG to a CD complement insolvency resolution of a CD. It is, therefore, desirable to commence insolvency resolution of PG (Box 11) to complement corporate insolvency resolution which already enables insolvency resolution of a CD and its CGs and to put PGs and CGs at the same level playing field.

Section 128 of the Indian Contract Act, 1872 provides that the liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract. When the guarantee is invoked and the guarantor defaults to repay to the creditor, both principal debtor and guarantor are jointly and severally liable for repayment. The creditor has option to proceed against either of the two, or both, in any order. In the matter of *Ferro Alloys Corporation Ltd. Vs. Rural Electrification Corporation Ltd.*[82], the NCLAT held that it is not necessary to initiate CIRP against the principal borrower before initiating CIRP against the CG. Without initiating any CIRP against the principal borrower, it is open to a FC to initiate CIRP under section 7 against the CG, as the creditor is also the creditor qua CG. The SC upheld the aforesaid order of the NCLAT on appeal.

Cross-Border Insolvency

The BLRC attempted to comprehensively solve the issues of bankruptcy and insolvency as a purely domestic issue, while acknowledging that the next frontier lies in addressing cross-border issues. The Parliamentary Joint Committee, which examined the Insolvency and Bankruptcy Code Bill, in its Report in April, 2016, noted that many corporate transactions and businesses in present times involve an international and cross border element, and hence cross border insolvency cannot be ignored for too long if India is to have a comprehensive and long lasting insolvency law and not incorporating this will lead to an incomplete Code. At the insistence of the Committee, sections 234 and 235 were inserted as an enabling mechanism pending a comprehensive framework. These sections enable Central Government to enter into bilateral agreements with foreign countries for applying the provisions of the Code.

With considerable progress in implementation of the provisions relating to corporate insolvency, it is time to think about a more comprehensive, internationally acceptable, cross-border insolvency regime. The ILC in its report submitted on 16th October, 2018, has proposed to add a chapter in the Code to introduce a globally accepted and well recognised cross border insolvency framework, considering the fact that some corporates transact businesses in more than one jurisdiction and have assets across many jurisdictions. Implementation of the framework will create an internationally aligned and comprehensive insolvency framework for CDs, which is essential in a globalised environment (Box 12).

Resolution of Financial Service Providers

The Code provides a consolidated framework for reorganisation, insolvency resolution and liquidation of corporate persons, LLPs, partnership firms and individuals in a time-bound manner. The 'corporate person' does not include any FSP, that is, a person engaged in the business of providing financial services and registered or authorised by a financial sector regulator. Section 227 of the Code, however, enables the Central Government to notify, in consultation with the financial sector regulators, FSPs or categories of FSPs for the purpose of insolvency and liquidation proceedings, in such manner as may be prescribed. There have been instances of stress in FSPs. Government had to take control of IL&FS, an FSP that defaulted in debt obligations, in October 2018, to arrest the spread of the contagion to the financial markets. Pending a dedicated framework for resolution of FSPs, the Code could be used in the interim to resolve insolvency of FSPs (Box 13).

[82] Company Appeal (AT) (Insolvency) No. 92,93 & 148 of 2017.

Box 11: Insolvency Resolution of Personal Guarantors

The Code, as amended by an Ordinance with effect from 23rd November, 2017, classifies individuals into three classes, namely, PGs, 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. A WG, constituted by the Board to recommend the strategy and approach for implementation of the provisions of the Code relating to individual insolvency, held the view that a phased implementation of individual insolvency and bankruptcy is the intention of the legislature and a practical necessity.

It is desirable to commence individual insolvency resolution in respect of a smaller set of business savvy individuals, namely, PGs, to complement CIRP. The provisions of the Code dealing with insolvency of partnership and proprietorship firms may be implemented in the second phase. In the third phase, the provisions of the Code dealing with insolvency of other individuals may be implemented. This would mean that while the Code would apply to insolvency resolution of PGs, while the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 would continue to apply to individual insolvencies in the interim. The learning from the implementation of the earlier phases would help facilitate a smoother roll out of the later phases.

The WG recognised that the three classes of individuals have distinct peculiarities and characteristics. The dynamics, conditions and factors involved in the insolvency and bankruptcy of individuals without business interest and individuals who have extended personal guarantee to CDs or carry out business activities through partnership firms or proprietorship firms are different. Individuals with business are likely to behave in a way consistent with the classical economic ideals on which business insolvency systems are founded. On the other hand, the behaviour of individuals without business interest is expected to be somewhat informal. In a paper, An Economic-Legal Perspective[83], the authors note the importance of informal issues in individual insolvency, the importance of friends and family, and informality in settlement of dues. The WG held the view that while insolvent individuals face a shared core of key issues, whether or not business activity is a part of the context of the insolvency, PGs and individuals with businesses carrying out economic activities require a different treatment due to economic considerations, number of creditors involved, personal guarantee and assets of guarantors, if any, and other relevant factors. It is, therefore, necessary to have separate rules and regulations for each of the three classes of individuals.

It is, however, important to note that PGs are individuals. The Code envisages a benevolent insolvency framework for individuals as compared to corporates. It keeps certain assets (work tools, basic furniture, personal ornaments valued up to a threshold, and a dwelling unit valued up to a threshold outside the insolvency process to enable the individual to continue to live with dignity. It provides for moratorium, which stays any pending legal action or proceeding in respect of any debt and prohibits the creditors of the debtor from initiating any legal action or proceedings in respect of any debt. It does not envisage an automatic process whereby failure of insolvency resolution process yields a bankruptcy process.

Further, the framework for individuals is vastly different from that provided in the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. Discharge of the individual is key to his rehabilitation in the society. Obtaining an order of discharge under erstwhile laws was difficult and could be refused by the court on various grounds, such as conduct of the individual in the run up to and during bankruptcy. The Code provides for an easier and objective process of discharge. In case of insolvency resolution, a discharge is obtained as per the repayment plan and may be either before or after complete implementation of the repayment plan. In bankruptcy, a discharge may be obtained once the proceeds from assets of the debtor are distributed to the creditors. However, if this has not been done within a year of commencement of bankruptcy, the debtor shall automatically be discharged on expiry of such year.

Where the principal debtor defaults in repayment of debt, the creditor may choose to go after the PG for repayment of her debt. Thus, insolvency proceedings of a CD and its PG are closely linked to each other. Recognising this, 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 CG or a PG thereof shall be filed before the NCLT. It further provides that insolvency resolution, liquidation or bankruptcy proceeding of a CG or a PG of the CD pending in any court or tribunal shall stand transferred to the NCLT dealing with insolvency resolution or liquidation proceeding of such CD.

Box 12: Cross Border Insolvency

Issues of cross-border insolvency arise where foreign creditors have rights/claims over a debtor's assets in insolvency proceedings; where a debtor has branches/assets in several jurisdictions; and where a debtor entity is subject to insolvency proceedings simultaneously in one or more jurisdictions. These give rise to complex situations since each nation would have its own law and institutions governing the insolvency proceeding. In such instances, it is necessary to have a mechanism for coordination and co-operation between courts and insolvency authorities such as administrators/liquidators of different countries, in order to protect and maximise the value of the debtor's assets and interests of stakeholders.

The UNCITRAL Model Law on Cross-Border Insolvency (Model Law), which is globally recognised and accepted, is available for guidance. It has been adopted by 46 jurisdictions. It ensures full recognition of a country's domestic insolvency law by giving precedence to domestic proceedings and allowing denial of relief under the Model Law if such relief is against the public policy of the country. It addresses the issues relating to recognition of foreign proceedings; coordination of proceedings concerning the same debtor; the rights of foreign creditors; rights and duties of foreign insolvency representatives; and cooperation between authorities in different jurisdictions. It could be considered for adoption with appropriate modifications to suit India's specific requirements.

[83] Bibek Debroy and Laveesh Bhandari (2004), Small Scale Industry in India Large Scale Exit Problems, (Academic Foundation).

The Model Law is based on broadly four main principles[84]:

(a) **Access:** The Model Law allows foreign IPs and foreign creditors direct access to domestic courts and confers on them the ability to participate in and commence domestic insolvency proceedings against a debtor. However, direct access for foreign creditors is envisaged under the Code even presently.

(b) **Recognition:** The Model Law allows recognition of foreign proceedings and provision of remedies by domestic courts based on such recognition. Relief can be provided if the foreign proceeding is either a main or a non-main proceeding. If domestic courts determine that the debtor has its centre of main interests (COMI) in the foreign country, such a foreign insolvency proceeding is recognised as the main proceeding.

(c) **Cooperation:** The Model Law lays down the basic framework for cooperation between the domestic and foreign courts, and domestic and foreign IPs. It provides for direct cooperation between: (a) domestic courts and foreign insolvency representatives; (b) domestic courts and foreign courts; (c) foreign courts and domestic IPs; and (d) foreign insolvency representatives and domestic IPs. Notably, cooperation may also be provided to foreign proceedings that have not been recognised as either main or non-main.

(d) **Coordination:** The Model Law provides a framework for commencement of domestic insolvency proceedings, when a foreign insolvency proceeding has already commenced or vice versa. It also provides for coordination of two or more concurrent insolvency proceedings in different countries by encouraging cooperation between courts.

The key advantages of adopting the Model Law with carve outs, as recommended by the ILC, are as under:

(a) **Increasing foreign investment:** Adoption of the Model Law will provide added avenues for recognition of foreign insolvency proceedings, foster cooperation and communication between domestic and foreign courts and IPs and so on. There will be significant positive signalling to global investors, creditors, governments, international organisations such as the World Bank as well as multinational corporations with regard to the robustness of India's financial sector reforms.

(b) **Flexibility:** The Model Law is flexible and respects the differences amongst national insolvency laws. Therefore, necessary carve outs in the Model Law is possible to maintain consistency with domestic insolvency law while adopting a globally accepted framework. For example, the moratorium under the Model Law may be tweaked to make it harmonious with the moratorium under section 14 of the Code and a reciprocity requirement may be incorporated for stakeholders in other countries.

(c) **Protection of domestic interest:** The Model Law enables refusal of recognition of foreign proceedings or provision of any other assistance if such action contradicts domestic public policy. Hence, it provides enough flexibility to protect public interest.

(d) **Priority to domestic proceedings:** The Model Law gives precedence to domestic insolvency proceedings vis-a-vis foreign proceedings. For example, a moratorium due to recognition of a foreign proceeding will not prevent commencement of domestic insolvency proceedings.

(e) **Mechanism for cooperation:** The Model Law incorporates a robust mechanism for cooperation and coordination between courts and IPs, in foreign jurisdictions and domestically. This would facilitate faster and effective conduct of concurrent proceedings.

Box 13: Resolution of Financial Service Providers

Sound micro-prudential regulation reduces the probability of failure of FSPs. However, eliminating all failure is neither feasible nor desirable. Since failure of large FSPs can be highly disruptive for clients and for the economy and there was no specific law in India for resolution of failures of FSPs, the FSLRC recommended[85] a unified Resolution Corporation to deal with resolution of FSPs.

The resolution of FSPs, with systemic links to the financial system, is generally in accordance with the 'Key Attributes of Effective Resolution Regimes for Financial Institutions' of the Financial Stability Board, an international body, which monitors and makes recommendations about the global financial system. Among other recommendations, the Key Attributes provide that resolution regimes for 'systemically significant or critical' financial institutions must be led by a Resolution Authority and provide for ex-ante features such as resolution and recovery planning.[86]

In the middle of this decade, it was considered to provide two different frameworks for resolution of two different kinds of firms, namely, FSPs and other firms (real sector firms), given their nature of funding and business. Other firms mostly rely on equity and debt and their resolution aims at value maximisation. However, many FSPs handle large amounts of consumers' money. Some of them are systemically important as their failure has potential to disrupt the financial system and have an adverse effect on the economy. Their resolution aims to promote financial stability. This is evident from the complementary approaches adopted by the BLRC and the Committee on Resolution of Financial Firms[87]. The BLRC noted: *"The Code will not cover entities that have a dominantly financial function, whose resolution is covered by the Resolution Corporation in the draft Indian Financial Code, proposed by the Financial Sector Legislative Reforms Commission…."*.

While the Code was under consideration of the Parliament, in his Budget Speech of 2016-17, the Finance Minister stated: *"A systemic vacuum exists with regard to bankruptcy situations in financial firms. A comprehensive Code on Resolution of Financial Firms will be introduced as a Bill in the Parliament during 2016- 17. …. This Code, together with the Insolvency and Bankruptcy Code 2015, when enacted, will provide a comprehensive resolution mechanism for our economy."* The Committee on Resolution of Financial Firms, which

[84] Report of the Insolvency Law Committee, October, 2018.
[85] Report of the Financial Sector Legislative Reforms Commission, 2013.
[86] Key Attributes of Effective Resolution Regimes for Financial Institutions, Financial Stability Board, October 15, 2014.
[87] Report of the Committee to Draft Code on Resolution of Financial Firms, 2016.

was constituted in pursuance of this budget proposal, noted: *"Standard insolvency and bankruptcy processes are usually not considered suitable for financial firms, particularly for those that handle consumer funds and those considered to be of systemic significance. Further, such processes, even if they are efficient, tend to drag on for longer periods of time than are acceptable for instances of financial firm failure, exacerbating the threats to consumer funds and systemic stability. Also, the fear of a financial firm going into a long-winded process may trigger "runs" on these firms even when they have not really failed. Hence, it is important to have a credible resolution regime under an expert statutory institution that is able to ensure efficient, orderly and fair resolution of financial firms."*

This Committee also noted: *"Only certain financial firms that do not handle consumers' money and do not pose systemic risk may be covered under the Insolvency and Bankruptcy Code, as the rationale for covering under a specialised resolution regime does not apply to such firms."* Accordingly, the Financial Resolution and Deposit Insurance Bill, 2017 (FRDI Bill) was introduced in the Parliament. It proposed to establish a Resolution Corporation and to confer upon the Corporation certain powers of resolution relating to transfer of assets to a healthy financial firm, merger or amalgamation, liquidation to be initiated by an order of the NCLT and some new methods of resolution, such as bail-in and creation of a bridge service provider. It designed the Corporation to resolve default of an FSP swiftly and efficiently and to protect the unsophisticated consumers. However, the bill was withdrawn.

Consequently, India is yet to have a specialised, comprehensive legal framework for resolution of FSPs. Till the time a comprehensive framework (akin to the FRDI Bill) for dealing with the insolvency resolution and liquidation proceedings of FSPs is put in place, applying section 227 appropriately can address stress in some FSPs. From the perspective of insolvency resolution, the FSPs could be classified into three categories, namely, (i) FSPs to which the resolution and liquidation process as set out under the Code may apply as it is; (ii) FSPs to which the resolution and liquidation process as set out under the Code may apply with appropriate modifications; and (iii) FSPs to which the Code may not apply and need to be resolved outside it.

FINANCIAL PERFORMANCE OF THE BOARD

The Code requires IBBI to maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India (C&AG). It further requires that the accounts of IBBI shall be audited by the C&AG.

Accordingly, 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 the year FY 2018-19 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 8th November, 2019. Tables 65 and 66 present a summary of financial performance of the Board.

Table 65: Income and Expenditure Statement for FY 2018-19

(Rs. lakh)

Income	2016-17*	2017-18	2018-19	Expenditure (out of)	2016-17*	2017-18	2018-19
Grants-in-Aid-Salaries	275.00	300.00	963.18	Grants-in-Aid-Salaries	66.99	508.01	963.18
Grants-in-Aid-Capital	192.86	--	--	Grants-in-Aid-Capital	3.09	66.23	--
Grants-in- Aid- General	203.28	333.00	1107.00	Grants-in- Aid- General	46.06	490.22	1107.00
Spent by MCA for IBBI	136.47	--	--	Spent by MCA for IBBI	136.47	--	--
Internal Revenue	89.73	330.41	551.83	Internal Revenue	--	420.14	212.29
Total	**897.34**	**963.41**	**2622.01**	**Total**	**252.61**	**1484.60**	**2282.47**

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

Table 66: Fund of Insolvency and Bankruptcy Board as on 31st March, 2019

(Rs. lakh)

Head	October, 2016-March, 2017			2017-18			2018-19		
	Inflow	Outflow	Balance	Inflow	Outflow	Balance	Inflow	Outflow	Balance
1	*2*	*3*	*4 = 2-3*	*5*	*6*	*7 = 4+5-6*	*8*	*9*	*10 = 7+8-9*
Grants-in-Aid-Salaries	275.00	66.99	208.01	300.00	508.01	-	963.18	963.18**	-
Grants-in-Aid-Capital	192.86	3.09	189.77	-	66.23	123.54	-	-	123.54
Grants-in-Aid-General	203.28	46.06	157.22	333.00	490.22	-	1107.00	1107.00**	-
Spent by MCA for IBBI	136.47	136.47	-	-	-	-	-	-	-
Internal Revenue	89.73	-	89.73	330.41	420.14	-	551.83	212.29**	339.54
Total	**897.34**	**252.61**	**644.73**	**963.41**	**1484.60**	**123.54**	**2622.01**	**2282.47**	**463.08**

*** Deficit of Rs.15.37 lakh under Grants-in-aid (General) has been set off against surplus under Grants-in-aid Salaries (Rs.14.90 lakh) and remaining has been funded out of internal Generated Revenue (Rs.0.47 lakh).*

IBBI received a total grant of Rs. 2070.18 lakh in 2018-19 from the Government. It earned a fee of Rs. 551.83 lakh from service providers. It spent a total of Rs. 2282.47 lakh in 2018-19.

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

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.

The Regulations, till recently, allowed the Board to levy fee on registration of IPs, IPAs and IUs. The IP Regulations were amended on 11th October, 2018 to provide that an IP shall pay IBBI a fee calculated at the rate of 0.25 per cent of the professional fee earned for the services rendered by him as such in the preceding financial year, on or before the 30th of April every year. It was further provided that any delay in payment of fee by an IP shall attract a simple interest at the rate of 12 per cent per annum on the amount of fee unpaid. Further, provisions pertaining to levy of fees on IPEs while applying for recognition, fee calculated as a fraction of turnover and certain event-based fee were also introduced *vide* said notification.

J | COMPLIANCE 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 67 presents brief details of compliances by the Board.

Table 67: 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 AA to check the disciplinary status of the IP, thereby eliminating the delay. However, the Board received 01 reference from AA in 2018-19 in this regard and responded to it.
	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 or Liquidators (Recommendation) Guidelines 2018' and under the 'Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendations) (Second) Guidelines, 2018' for appointment as IRPs during July - December, 2018 and January - June, 2019 respectively by the AA directly, without referring to the Board. However, the Board received 06 references from AA in 2018-19 in this regard and responded to all of them within the prescribed 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 AA to check the disciplinary status of the IP, thereby eliminating the delay. However, the Board received 38 references from AA in 2018-19 in this regard and responded to all of them.
	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 or Liquidators (Recommendation) Guidelines, 2018' and under the 'Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendations) (Second) Guidelines, 2018' for appointment as Liquidators during July - December, 2018 and January - June, 2019 respectively by the AA directly, without referring to the Board. However, the Board received 02 references from AA in 2018-19 in this regard and responded to all of them within the prescribed time.
	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 03 applications for registration as IP in 2018-19. It rejected all these applications, after considering written and oral submissions of the applicants, through a speaking order.
	Section 220 of read with the IP Regulations: The DC shall dispose of a SCN by a reasoned order in adherence with the principles of natural justice.	The DC disposed of 11 SCNs during 2018-19. It disposed of all these SCNs, after providing an opportunity of being heard, through a reasoned order
	Section 223: The Board shall make proper accounts and such accounts shall be audited by the C&AG.	The Board prepared accounts in accordance with the IBBI (Form of Annual Statement of Accounts) Rules, 2018. The C&AG audited the accounts of the Board for 2017-18 and forwarded the audit report *vide* its letter dated 29th January, 2019. It also audited the accounts of the Board for 2018-19 and forwarded the audit report *vide* its letter dated 8th November, 2019.
	Section 230 read with section 240: Regulations shall be made by Governing Board of IBBI.	The Board made 01 Regulations during 2018-19 and amended 09 Regulations. All these Regulations were approved by the GB and were notified promptly.
	Section 240: The Board needs to make Regulations on matters specified in the section.	As of 31st March 2019, the Board framed (a) 06 Regulations to regulate the service providers (IPs, IPEs, IPAs and IUs); (b) 04 Regulations to regulate processes (CIRP, Fast Track Insolvency Resolution Process, Liquidation Process and Voluntary Liquidation Process) (c) 04 Regulations to regulate internal functioning of the Board.
	Section 241: Regulations shall be laid before each House of Parliament.	The Board sent 13 Regulations (07 notified in 2017-18 and 06 notified in 2018-19) to Government for laying before Parliament during 2018-19. Balance 02 Regulations notified in 2018-19 were sent to Government in 2019-20.

The Income-tax Act, 1961

Section 139: The Board shall file the income tax return for every financial year.

The Board filed the income tax return for the financial year 2018-19 on 18th July, 2019.

Section 200: The Board shall deduct and deposit tax deducted at source (TDS), in respect of salaries, contracts and professional services as under:

For the month of	Due Date
April, 2018 - February, 2019	Within seven days from the end of the month.
March, 2019	30th April, 2019

The Board deducted TDS and deposited the same every month as under:

For the month of	Date of Deposit
April, 2018	7th May, 2018
May, 2018	7th June, 2018
June, 2018	6th July, 2018
July, 2018	7th August, 2018
August, 2018	7th September, 2018
September, 2018	5th October, 2018
October, 2018	5th November, 2018
November, 2018	5th December, 2018
December, 2018	4th January, 2019
January, 2019	6th February, 2019
February, 2019	6th March, 2019
March, 2019	29th - 30th April, 2019

Rule 31A: The Board shall furnish a quarterly statement of deduction of tax as under:

For quarter ending	Due Date
30th June, 2018	31st July, 2018
30th September, 2018	31st October, 2018
31st December, 2018	31st January, 2019
31st March, 2019	31st May, 2019

The Board filed the statements of tax deducted at source as under:

For quarter ending	Date of Filing
30th June, 2018	30th July, 2018
30th September, 2018	31st October, 2018
31st December, 2018	31st January, 2019
31st March, 2019	28th - 31st May, 2019

The Central Goods and Services Tax Act, 2017 (GST)

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. However, due dates for filing returns were extended as under:

For the month of	Due Date
April, 2018-September, 2018	31st October, 2018
October, 2018 - February, 2019	11th day of succeeding month
March, 2019	13th April, 2019

The Board filed the details as under:

For the month of	Date of Filing
April, 2018	28th May, 2018
May, 2018	8th June, 2018
June, 2018	9th July, 2018
July, 2018	9th August, 2018
August, 2018	10th September, 2018
September, 2018	31st October, 2018
October, 2018	10th November, 2018
November, 2018	11th December, 2018
December, 2018	11th January, 2019
January, 2019	11th February, 2019
February, 2019	11th March, 2019
March, 2019	13th April, 2019

<table>
<tr><td></td><td>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. However, due dates for filing returns were extended as under:
<table><tr><th>For the month of</th><th>Due Date</th></tr><tr><td>April, 2018</td><td>22nd May, 2018</td></tr><tr><td>May, 2018</td><td>20th June, 2018</td></tr><tr><td>June, 2018</td><td>20th July, 2018</td></tr><tr><td>July, 2018</td><td>24th August, 2018</td></tr><tr><td>August, 2018 - February, 2019</td><td>20th day of succeeding month</td></tr><tr><td>March, 2019</td><td>23rd April, 2019</td></tr></table></td><td>The Board filed the details as under:
<table><tr><th>For the month of</th><th>Date of Filing</th></tr><tr><td>April, 2018</td><td>22nd May, 2018</td></tr><tr><td>May, 2018</td><td>20th June, 2018</td></tr><tr><td>June, 2018</td><td>20th July, 2018</td></tr><tr><td>July, 2018</td><td>20th August, 2018</td></tr><tr><td>August, 2018</td><td>20th September, 2018</td></tr><tr><td>September, 2018</td><td>20th October, 2018</td></tr><tr><td>October, 2018</td><td>19th November, 2018</td></tr><tr><td>November, 2018</td><td>20th December, 2018</td></tr><tr><td>December, 2018</td><td>18th January, 2019</td></tr><tr><td>January, 2019</td><td>20th February, 2019</td></tr><tr><td>February, 2019</td><td>20th March, 2019</td></tr><tr><td>March, 2019</td><td>21st April, 2019</td></tr></table></td></tr>
<tr><td></td><td>Section 44(1): It requires every registered person paying tax to electronically furnish an annual return (GSTR 9) for every financial year on or before the thirty-first day of December following the end of such financial year. The due date for 2018-19 has been extended to 30th June, 2020.</td><td>The annual return (GSTR 9) for 2018-19 is due to be filed by 30th June, 2020.</td></tr>
<tr><td></td><td>Section 51(1): It requires specified persons to deduct tax at source from the specified payments made to suppliers of taxable goods or services.
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.
These provisions were made effective from 1st October, 2018. The due dates for filing returns for October, 2018 - March, 2019 has been extended to 31st August, 2019.</td><td>The Board collected and deposited the GST every month and filed monthly GSTR1 and GSTR 3B as under:
<table><tr><th>For the month of</th><th>Date of Filing</th></tr><tr><td>October, 2018</td><td rowspan="6">10th June, 2019</td></tr><tr><td>November, 2018</td></tr><tr><td>December, 2018</td></tr><tr><td>January, 2019</td></tr><tr><td>February, 2019</td></tr><tr><td>March, 2019</td></tr></table></td></tr>
<tr><td>The Right to Information Act, 2005</td><td>Section 4(1)(b): The Board shall make suo moto disclosures on the specified matters on its web site.</td><td>The Board updated the disclosures made in accordance with section 4(1)(b) of the RTI Act, 2005.</td></tr>
<tr><td></td><td>Section 7(1): The CPIO shall provide information to applicants within 30 days of receipt of application.</td><td>The CPIO provided information to 234 applicants. It provided the information in all cases within the timelines laid down by the RTI Act, 2005.</td></tr>
<tr><td></td><td>Section 19(6): The FAA shall dispose of appeals within 45 days.</td><td>The FAA disposed of 29 appeals received during the year within the stipulated time.</td></tr>
<tr><td>The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013</td><td>The Board shall constitute the Internal Complaints Committee.</td><td>The Board re-constituted the Committee on 27th February, 2019.</td></tr>
<tr><td>The Minimum Wages Act, 1948</td><td>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.</td><td>The Board has ensured compliance by the manpower service provider.</td></tr>
<tr><td>Employment Related Rules</td><td>Provident Fund / Pension for employees: The Board shall deduct and deposit provident fund and pension contributions of employees.</td><td>The Board deducted:
(a) subscription of employees towards provident fund and remitted the same to their respective employers, along with employer's contribution, in respect of the employees on deputation.
(b) deducted subscription of other employees towards National Pension System (NPS) and deposited the same in their respective NPS accounts.
(c) The Board deducted subscription of Chairperson and WTMs towards Contributory Provident Fund and deposited the same, along with employer's contribution, in a Recurring Deposit account.</td></tr>
<tr><td></td><td>Reservation in recruitment</td><td>The Board recruited Grade 'A' officers in accordance with Government Rules on Reservations.</td></tr>
<tr><td>General Financial Rules, 2017</td><td>Rule 234: As a grantee institution, the Board is required to maintain a Register of Grants and submit utilisation certificate every financial year.</td><td>The Board maintains a Register of Grants and submitted the utilisation certificate for 2018-19 on 12th July, 2019.</td></tr>
<tr><td></td><td>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.</td><td>The Board submitted utilization certificate for 2018-19 on 12th July, 2019 to the MCA.</td></tr>
</table>

K | ORGANISATIONAL MATTERS

RESPONSIBILITY CENTRES

Governing Board

Ms. Suman Saxena resigned as WTM of the IBBI with effect from 8th October, 2018 on account of personal reasons. The Government accepted her resignation *vide* notification dated 13th March, 2019.

The Government appointed, *vide* notification dated 26th February, 2019, Dr. Rajiv Mani, Joint Secretary and Legal Adviser, Department of Legal Affairs, Ministry of Law and Justice as *ex-officio* Member in place of Mr. G. S. Yadav, who ceased to be an *ex-officio* member on his superannuation from service on 31st December, 2018.

Table 68 presents the details of the members of the Governing Board as on 31st March, 2019

Table 68: Governing Board of IBBI as on 31st March, 2019

Name	Position 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 Saksena	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

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:

(a) Mr. Gyaneshwar Kumar Singh as Chairperson
(b) Mr. Unnikrishnan A., Member, and
(c) WTM in-charge of Finance and Accounts of the Board.

In the year 2018-19, the Audit Committee met three times. During its meetings, the Committee reviewed the Report of the Internal Auditors of the Board for the years 2016-17 and 2017-18; internal Audit Report for the half year ended on 30th September, 2018 and C&AG's audit reports on the annual accounts of the Board for the years 2016-17 and 2017-18. It approved the Financial Statements of the Board for the years 2016-17 and 2017-18 and Half Yearly financial statement of the Board for the period ended 30th September, 2018.

Disciplinary Committee

The Code envisages DCs comprising WTM(s) to consider and dispose of show cause notices under section 220(1) of the Code. The DC was constituted on 1st February, 2017 and has been reconstituted over time as indicated in the Table 69.

Table 69: Composition of Disciplinary Committee

Date of Constitution/ Reconstitution	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 had the following ACs at the end of March, 2019:

(a) AC on Service Providers with Mr. Mohandas Pai (Chairman, Manipal Global Education) as Chairperson;
(b) AC on Corporate Insolvency and Liquidation with Mr. Uday Kotak (Executive Vice Chairman and Managing Director, Kotak Mahindra Bank) as Chairperson; and

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

Internal Complaints Committee

In accordance with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Board constituted an Internal Complaints Committee on 1st September, 2017 to inquire into the complaints of sexual harassment of women employees. It reconstituted the committee on 27th February, 2019 to comprise as under:

(a) Dr. (Ms.) Mukulita Vijayawargiya, WTM, IBBI as Presiding Officer;
(b) Ms. Bina Jain, External Expert;
(c) Dr. Anuradha Guru, Chief General Manager, IBBI as Member; and
(d) Mr. Ritesh Kavdia, ED, IBBI as Member Secretary.

HUMAN RESOURCES

The IBBI is responsible for developing and building capacity of two professions, namely, insolvency profession and valuation profession. It is also responsible for professionalising the market for insolvency resolution. Given its unique role, the IBBI aims to attract the right talent, train them for the tasks and motivate them for excellence.

Research Associates

In accordance with the IBBI (Engagement of Research Associates and Consultants) Regulations, 2017, the IBBI engages research associates / consultants on contractual basis for short durations to assist the Board in discharge of its functions. There were 15 research associates from disciplines of Economics/Public Policy, Law and Business Management, on contractual basis as on 31st March, 2019.

Employees

In accordance with the IBBI (Employees' Service) Regulations, 2017, the IBBI recruited the first batch of Grade 'A' Officers in September, 2018, through an open competitive examination (written test, group discussion and interview). These officers are drawn from disciplines such as law, economics, commerce, management, company secretary, chartered accountancy and cost accountancy. They underwent an Induction Programme at IICA, Manesar, Haryana. Premised on TPI (theoretical knowledge, practical skills and interaction need) theory of induction, the programme aimed at preparing the officers for a regulatory role in the realm of insolvency and bankruptcy while exposing them to the nuances of the various processes under the Code and also work-life balance. During 2018-19, the IBBI continued to take officers on deputation at senior levels. Table 70 presents the actual strength of employees *vis-à-vis* the approved strength as on 31st March, 2019.

Table 70: Employees of IBBI

Position	Actual Strength as on 31st March, 2018	Approved Strength as on 31st March, 2019	Actual Strength	
			As on 31st March, 2019	Mode of Recruitment
Executive Director	03	04	03	Deputation and Secondment
GM / CGM	03	12	06	Deputation
AGM / DGM	07	12	05	Deputation
Manager / AMs	00	24	18	Direct Recruitment
Asstt. Section Officer	02	10	02	Deputation
Assistants	00		00	
Total	**15**	**62**	**34**	

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, in accordance with the IBBI Internship Guidelines notified on 16th August, 2017. 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 2018-19, 25 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. It celebrated Hindi Diwas on 14th September, 2018. The employees participated in various activities such as poetry, stories and songs in Hindi with great enthusiasm and won prizes.

Shramdaan Activity

IBBI organised *Shramdaan* Activity on 28th September, 2018 to accelerate momentum of *Jan-andolan* for realising Hon'ble Prime Minister's vision of clean India under *'Swachhata Hi Seva'* programme observed from 15th September to 2nd October, 2018.

Organisational Structure

The GB, in its meeting held on 16th January, 2017, approved an organisational structure, which envisages three Wings, namely, a Research and Regulation 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

Strategic planning provides a sense of direction and outlines measurable goals for an organisation. It helps to build shared vision, set priorities, focus energy and resources on priority areas, and outline specific actions and sub-actions to achieve desired outcomes. With the aforesaid objectives, the IBBI has been having annual strategy meets to chart its path for the coming year. It held the third strategy meet on 22nd-23rd March, 2019 at TERI Retreat Centre, Gurugram to formulate the Strategic Action Plan for 2019-20 outlining its objectives, strategies, specific actions and tasks.

Capacity Building

It is a constant endeavour of IBBI to enhance the capacities of its officials in the dynamic area of insolvency resolution and bankruptcy. In its endeavour to gain from interacting with academia, other regulators and key Government officials to get varied perspectives in this evolving area, the IBBI has had various domestic and international interactions.

Annual Strategy Meet on 22nd-23rd March, 2019

Distinguished Lecture Series

The IBBI invites eminent persons to share their thoughts and interact with the officers of IBBI. Table 71 presents details of lectures delivered by them during 2018-19.

Table 71: Distinguished Lectures in 2018-19

Sl.No.	Date	Name of the Speaker	Position / Organisation	Subject
1	12.04.18	Mr. Shardul Shroff	Executive Chairman, Shardul Amarchand Mangaldas & Co.	CIRP: Practice, Emerging Challenges and Jurisprudence
2	16.04.18	Mr. P. R. Ramesh	Chairman, Deloitte India	Data and Technology for Regulators
3	16.04.18	Mr. Rashesh Shah	President, FICCI	CIRP from the perspective of RAs
4	12.05.18	Mr. Pavan Kumar Vijay	Chairman, Corporate Professionals	Valuation, Valuation Standards and Valuation Profession
5	28.05.18	Mr. Anurag Das	Adviser, The Blackstone Group	India Stressed Assets Platform
6	11.06.18	Dr. Sameer Sharma	DG and CEO of IICA	Hourglass Philosophy
7	11.07.18	Prof. Dipankar Gupta	Author and Sociologist	Society and Insolvency
8	21.08.18	Dr. Shubhashis Gangopadhyay	Research Director, India Development Foundation	Laws and Economics of Insolvency
9	12.11.18	Mr. Mahesh Uttamchandani	Practice Manager for Financial Inclusion and Infrastructure, World Bank Group	World Bank Group's Principles for Effective Insolvency and Creditor/Debtor Regimes and the work of its MSME Task Force
10	14.11.18	Dr. G. Narayana Raju	Secretary, Legislative Department, MoL&J	Insolvency Law and Constitution of India
11	19.11.18	Dr. Shubhashis Gangopadhyay	Research Director, India Development Foundation	Economic Analysis of Regulations made by IBBI
12	22.11.18	Mr. Somasekhar Sundaresan	Legal Counsel	Genes of a Regulator
13	19.02.19	Ms. Helen M. Hicks	Global Valuation Leader, PwC	Business Valuation
14	19.02.19	Mr. Bryan Marsal	CEO and Co-founder, Alvarez and Marsal	The Lehman Brothers and Group Insolvency
15	05.03.19	Mr. Andrew J. R. Wollaston	Global Head of the Restructuring Practice, EY	A Case study on Nortel: Cross Border and Group Insolvency
16	18.03.19	Mr. Gregory Wallace	Deputy Global Managing Director, Deloitte Touche Tohmastu Limited	Financial Reporting and Corporate Failure
17	22.03.19	Dr. U. K. Chaudhury	Senior Advocate	Challenges for Regulator and the IBC Ecosystem
18	23.03.19	Mr. Satish Kumar Gupta	Resolution Professional	Experiences as the RP of Essar Steel (India) Limited

Training Programmes

Table 72 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, as detailed in Table 72. Besides, officers were nominated to participate in a number of seminars/conferences organised by stakeholders.

Table 72: Training Programmes attended by Officers of IBBI

Sl.No.	Date(s)	Kind	Venue	Training Provider	Scope of Training	No. of Officers
1	25.05.18 - 26.05.18	Workshop	New Delhi	IBBI, IMF & IICA	Emerging Practices in Corporate Insolvency, International Best Practices and Cross-country Experience	10
2	23.06.18	Workshop	New Delhi	IFC & IBBI	Monitoring and Regulation of Regulated Entities	09
3	25.06.18	Workshop	New Delhi	IFC & IBBI	Challenges of MSME Insolvency	06
4	03.08.18- 04.08.18	Conference	New Delhi	IGIDR & IBBI	Insolvency and Bankruptcy Reforms	11
5	08.10.18 -03.11.18	Training	Manesar	IICA	Induction Training for Grade 'A' Officers (1st Phase)	18
6	15.10.18 -18.10.18	Conference	Mauritius	IAIR	Sharing International Insolvency Trends and Developments	01
7	13.11.18 -14.11.18	Conference	New Delhi	INSOL India	Two Years of IBC and Road Ahead	08
8	17.11.18	Workshop	New Delhi	IBBI	Disciplinary Proceedings	21
9	24.11.18	Workshop	New Delhi	IBBI	Economic Analysis of Regulations	25
10	29.11.18	Conference	New Delhi	Pahle India Foundation	Budget 2019 - Appraising Reforms and Unfinished Business	01
11	03.12.18 - 15.12.18	Training	Manesar	IICA	Induction Training for Grade 'A' Officers (2nd Phase)	18
12	18.12.18	Conference	New Delhi	Vidhi & IBBI	IBC: Roadmap for Next Two Years	23
13	21.12.18	Training	New Delhi	CVSRTA & IBBI	Valuation and Its Perspectives	27
14	22.12.18	Workshop	New Delhi	IBBI	Conducting Inspection of IP	21
15	19.01.19	Workshop	New Delhi	IBBI	Valuation of Securities or Financial Assets	23
16	15.03.19 -16.03.19	Roundtable	New Delhi	SIPI & IBBI	IBC: Looking Ahead - Global Learning, Local Application	16
17	26.03.19 - 27.03.19	Workshop	New Delhi	CII & FCO	ÏBC 2016: Progress and Setting Roadmap for Cross Border and Personal Insolvency	11

MOU with IICA

The IBBI signed an MoU with the IICA on 10th April, 2018 envisaging collaboration in research and publication, advancement of knowledge, capacity building, awareness and advocacy in the area of insolvency and bankruptcy. In furtherance of the objectives of this MoU between IBBI and IICA, to support IICA in delivery of the GIP and generally to build capacity of the ecosystem, the GB of IBBI has approved setting up an "IBBI Insolvency Chair" in IICA for a period of three years. This Research Chair at IICA will go a long way towards building thought leadership and conducting policy research and advocacy towards the effective implementation of the Code.

Parliamentary Committee

Dr. M. S. Sahoo, Chairperson, along with Secretary and other officers of the Department of Financial Services, appeared before the Parliamentary Standing Committee on Finance on 17th April, 2018 for the briefing meeting on Banking Sector in India – Issues, Challenges and the Way Forward including NPAs / Stressed Assets in Banks / Financial Institutions.

MOU with MCA

The IBBI signed an MoU with the MCA on 14th September, 2018 envisaging assistance and cooperation for the effective implementation of the Code and sharing of information and data to facilitate various activities. It contemplates that the Government would provide continuous support to IBBI to discharge the responsibilities cast upon it under the Code. It lists out a number of activities to be undertaken by the IBBI during 2018-19.

Vigilance Week

IBBI observed vigilance week from 29th October, 2018 to 3rd November, 2018. Dr. M. S. Sahoo, Chairperson administered oath to the officers on this occasion. IBBI also received an integrity pledge certificate from the Central Vigilance Commission.

Cooperation Agreement with IFC

The IBBI signed a Cooperation Agreement with the International Finance Corporation (IFC), a member of the World Bank Group, on 6th March, 2019. The agreement envisages technical assistance by IFC, up to 30th June, 2021 for: (a) Workshops and Training for IPs and Officers of the IBBI, (b) Train the Trainers for Workshops for IPs, (c) Development of National Insolvency Programme, and (d) Insolvency and Valuation Examinations.

MOU with SEBI

The IBBI signed an MoU with SEBI on 19th March, 2019 envisaging (a) sharing of information and resources, (b) periodic meetings to discuss matters of mutual interest, (c) cross-training of staff, (d) capacity building of IPs and FCs, and (e) enhancing level of awareness among FCs.

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:

Website: The IBBI registered the domain name www.ibbi.gov.in and started a website for dissemination of its activities in November, 2016. The website was scaled up to disseminate details about the service providers, regulatory framework, Examinations, Orders by the Courts and Tribunals under the Code, Orders passed by the Board and the DC, etc. It also hosts details of various processes 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 on a daily basis 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 Examination for three asset classes, namely, Land and Building, Plant and Machinery, Securities or Financial Assets under the Companies (Registered Valuers and Valuation) Rules, 2017 from 31st March, 2018. The entire process, including registration, payment, enrolment, generation of question paper and evaluation is automated.

Online Registration: The entire process of registration, including submission of application, and payment of registration fee, as IP 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 website as soon as he is registered.

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

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

Premises

The IBBI continued to operate from 7th Floor, Mayur Bhawan, Connaught Place, New Delhi. In view of its increasing need for space, MCA allotted 2nd Floor of Jeevan Vihar, Parliament Street, New Delhi to IBBI. IBBI occupied it with effect from 12th November, 2018.

INCOME TAX EXEMPTION

The Central Government exempted the IBBI from income-tax for the financial years 2017-2022 in respect of the following incomes, namely:- (a) Grants-in-aid received from the Central Government; (b) Fees received under the Code; (c) Fines collected under the Code; and (d) Interest income accrued on these incomes. The fines are, however, deposited with the Government. The income-tax exemption is subject to the conditions that: (a) the IBBI shall not engage in any commercial activity; (b) the activities and the nature of the specified income of IBBI shall remain unchanged throughout the financial years; and (c) the IBBI shall file return of income in accordance with the Income-tax Act, 1961.

ANNUAL DAY CELEBRATIONS

To commemorate its establishment, the IBBI has instituted an annual day lecture by a distinguished thought leader having substantial contribution in the field of law and economics, including insolvency and bankruptcy. Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhaya, Chairperson, NCLAT delivered the IBBI Annual Day Lecture on 1st October, 2018 on "Emerging Trends in Law and Governance" at Nehru Memorial Museum and Library Auditorium, New Delhi. The lecture witnessed presence of Judicial and Technical Members of the NCLAT; President, NCLT; Chairmen and Members of Regulatory Bodies; Senior Officers of the Government; Chairmen and CEOs of Service Providers; Business Leaders, Advocates, Academicians, and IPs and RVs. On this occasion, a publication titled "Insolvency and Bankruptcy Code, 2016 and Distressed Assets Opportunities" prepared by the three IPAs, namely, the IIIP of ICAI, the ICSI IIP, and the IPA of the ICMAI, in partnership with the SIPI, was released.

Annual Day Lecture on 1st October, 2018

RIGHT TO INFORMATION AND TRANSPARENCY

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

The IBBI designated Dr. Anuradha Guru, CGM as a Central Public Information Officer (CPIO) under section 2(h) of the RTI Act on 2nd November, 2018 in place of Mr. Umesh Kumar Sharma, CGM for providing information to any citizen on an application made under the Act. It designated Dr. Navrang

Saini as the FAA on 2nd November, 2018 in place of Dr. (Ms.) Mukulita Vijayawargiya for the disposal of appeals against the orders of the CPIO under section 19(1) of the RTI Act. Table 73 presents the details of receipt and disposal of applications and first appeals under the RTI Act, during 2018 -19.

Table 73: Receipt and Disposal of Applications and First Appeals in 2018-19

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