

# Insolvency and Bankruptcy News

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**Insolvency Law in Times of COVID-19** 

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# From Chairperson's Desk

### **Insolvency Law in Times of COVID-19**

Rescuing a viable firm is far more important than failing to liquidate an unviable one. In sync with its primary mandate, the Code must complement every endeavour to rescue lives of firms during times of the COVID-19 pandemic.

An economic law is essentially empiric and it evolves continuously through experimentation. The Insolvency and Bankruptcy Code, 2016 (Code) is no exception; it has been a road under construction for good reasons. It envisaged standard, plain vanilla processes to start with, but anticipated prompt course corrections to continue to remain in the service of the business and economy. Such corrections arose from difficulties encountered while implementing the provisions of the Code and from the changes in the economic environment. The Code has witnessed five legislative interventions since its enactment to strengthen the processes and further its objectives, in sync with the emerging market realities.

The Code recognises that insolvency is an outcome of market forces. It incentivises, facilitates, and empowers market forces to resolve insolvency in normal times. The first order objective of the Code is resolution. The second order objective is maximisation of value of assets of the firm and the third order objectives are promoting entrepreneurship, availability of credit and balancing the interests of stakeholders. This order of objectives is sacrosanct. In pursuance of these objectives, the Code enables market forces to pursue twin complementary remedies in respect of failing firms: (i) rescue a viable firm, and (ii) liquidate an unviable one. It searches for a white knight, who rescues a failing firm. It is unlikely to find a white knight if the firm is unviable. In such cases, the Code facilitates liquidation of the firm.

#### **COVID-19 Pandemic**

These are not normal times. The world is in the grip of the COVID-19, with no quick solution in sight. It is fast snowballing to an economic crisis. Some believe that it may hurt deeper than the deepest health pandemonium (1918 Spanish flu), the worst economic disaster (1930 Great Depression), or the most-devastating financial crash (2008 financial crisis), or may be, all of them put together. According to the IMF's World Economic Outlook of June, 2020, the global economy is projected to contract sharply by 4.9% in 2020 in the wake of the pandemic.

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

In its June 2020 report, the ADB estimates that India is expected to contract by 4.0% in fiscal 2020. According to IMF's World Economic Outlook, June 2020, India's economy is projected to contract by 4.5% following a longer period of lockdown and slower recovery than anticipated in April. RBI's Financial Stability Report released in July 2020 highlights that nominal sales and net profits of 1,640 listed private non-financial companies declined (y-o-y) by 3.4% [10.2% in Q4:2019-20] and 19.3% [65.4% in Q4:2019-20], respectively.

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

#### **International Response**

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

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

#### Response in India

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

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

Phases	Key Challenges	Critical Responses
Phase I: "Freeze" phase to deal with immediate impact of the health emergency by taking interim measures	Preventing viable firms from prematurely being pushed into insolvency	Implementing one or more extraordinary measures for a limited period of time:  Increasing barriers to creditor-initiated insolvency filings;  Suspending director's duty to file and associated liability;  Ensuring complementarities with debt repayment emergency measures.
Phase 2: "Transition" phase for response after the pandemic subsides and economic activity resumes	Responding to the increased number of firms that will not survive this crisis without going through insolvency	<ul> <li>Ensuring smooth functioning of workouts and debt restructuring mechanisms such as:</li> <li>Establishing informal out-of-court or hybrid workout frameworks;</li> <li>Facilitating business rescue through bridge financing;</li> <li>Extending procedural deadlines for a limited period of time;</li> <li>Suspending the requirement to proceed to liquidation if the business activity of the debtor has stopped while undergoing reorganisation;</li> <li>Encouraging e-filings, virtual court hearings and out-of-court solutions in insolvency cases.</li> </ul>
Phase 3: "Fighting debt overhang" during the phase when situation stabilises and there are aftereffects to deal with	Addressing individual financial distress resulting from the crisis	<ul> <li>Implementing modern consumer bankruptcy frameworks;</li> <li>Ensuring there are flexible options for debt rescheduling and repayment plans;</li> <li>Enabling a debt forgiveness mechanism or discharge is important for facilitating a fresh start.</li> </ul>

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

# The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020

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

The Ordinance does not absolve the company of COVID-19 default. It does not even exclude such default from the ambit of default under the Code. Such default remains a default for all purposes under the Code, except for the purpose of initiating insolvency proceeding against the

company. For example, such default can be the basis for submission of claim in an insolvency proceeding or initiation of insolvency proceeding against a personal guarantor.

The Ordinance clarifies that an application can be filed for initiating insolvency proceeding against a company for defaults committed before March 25, 2020. It does not suspend the applications already filed before the Adjudicating Authority (AA) for initiation of insolvency proceeding and pending for admission, and ongoing corporate insolvency proceedings - resolution and liquidation, including voluntary liquidation. Not does it suspend provisions relating to and ongoing insolvency proceedings against personal guarantors and financial service providers.

Though the broad rationale of the Ordinance is well understood, the rationale for some of its finer aspects are not obvious. The simplest of them relates to the period of suspension: why not for three months or for three years? What characterises COVID-19, as compared to any other rare event, is the degree of uncertainty surrounding it, making it difficult to figure out the appropriate period of suspension. The initial period is six months, which includes all three lockdowns. It can be extended up to one year based on assessment of the situation on the ground so that it matches the requirement.

Since the objective is to insulate companies which are victims of the pandemic, why should a company, which defaults during COVID-19 period, but not on account of COVID-19, have protection? There is hardly any company which is not impacted by COVID-19. There may be a handful of companies which did not default earlier but defaults during COVID-19 period for reasons other than COVID-19. Identification of such handful of companies would require determination in each case

whether the default during the COVID-19 period is on account of COVID-19, or for any other reason, or for a mix of COVID-19 and other reasons. From practical considerations, it makes sense to allow such rare cases have the protection rather than be theoretically correct and waste years in legal battles.

If the objective of the Ordinance is not to push certain companies into insolvency proceedings, why should such a company not have option to commence insolvency proceedings on its own volition? A key design feature of the Code is that it balances the rights and interests of all stakeholders, particularly of the equity and debt suppliers. It creates imbalance if only debtor has the right to initiate insolvency proceeding, while a creditor does not have, and vice versa. Further, irrespective of whether the debtor initiates or a creditor initiates the proceeding, the outcome is the same, which is not acceptable. In any case, the data indicate that only 2% of the insolvency proceedings that commenced during 2019-20 were self-initiated.

The non-availability of resolution applicants is the basis for suspension. Should it not apply to all companies whether they defaulted before or during COVID-19 period? The Ordinance distinguishes failures on account of the COVID-19 and for market pressures (competition and innovation). It is only fair that they are treated differently. The Ordinance prohibits resort to insolvency proceeding where a company, which withstands market pressures, but defaults on account of COVID-19. It enables resort to insolvency proceeding where a company defaults on account of market pressures, should the stakeholders wish, as in such cases, the stress is unlikely to disappear on the other side of COVID-19.

There is a recognition that MSMEs, who defaulted before March 25, 2020, have additional difficulties of resolution during COVID-19 times. The market for resolution plans for them is local, while the entire globe is the market for bigger firms. The value of an MSME often lies in informal arrangements, which a third party may not be able to harness through a resolution plan. Most of them have loans from informal sources and have no access to frameworks for resolution as available for banks. In view of these, the threshold of default for filing of an insolvency application was increased from  $\stackrel{?}{\scriptstyle <}$  I lakh to  $\stackrel{?}{\scriptstyle <}$  I crore to prevent MSMEs from being pushed into insolvency proceedings. The Government is working to make available a special insolvency resolution framework for them under the Code.

Why should COVID-19 default be kept out of insolvency proceedings for ever? A company, which was viable before the onset of COVID-19, may earn normal profits from current operations and become viable again, after the impact of pandemic subsides. It would, however, take years to wipe off the deep stress that arose during COVID-19 period. Depending on the nature of the industry and specific strength of a company, one may recoup the loss in one year while another may take many years, or even decades. If the company is pushed into insolvency when it is recouping the loss, the objective of the Ordinance would be frustrated.

A fear has been expressed that a company may deliberately default taking undue advantage of the Ordinance. It is very unlikely because the Ordinance has not suspended the liabilities in respect of COVID-19 default under various other laws. It has not even suspended COVID-19 default for all purposes under the Code. There are several checks and balances to discourage wilful default, including liability under section 29A. Further, it may not be fair to assume that a company would default even when it can repay. A slim possibility of misuse should not deter a policy, which benefits everyone.

With the Ordinance in place, have the stakeholders lost an effective avenue for resolution of stress? It is important to note that the Code is available for resolution for all defaults, except default arising during COVID-19 period. Further, there are several credible options for resolutions outside the Code. The stakeholders may use statutory, court supervised compromise or an arrangement under the Companies Act, 2013. They may use the RBI's prudential framework for resolution of stressed assets. They may sit across a table and work out a resolution without the involvement of court or outside any formal framework. The

concern that the Ordinance has taken away an effective avenue for recovery of dues has no basis as recovery of dues is not an objective of the Code. The menu available for creditors for recovery of dues is quite long.

There is an apprehension that there will be a surge of insolvency proceedings on the other side of the pandemic. This is very unlikely given that the stakeholders have many options during the COVID-19 period for recovery of loan as well as for resolution of stress. They may even explore innovative options for resolution in this challenging times. The number could be less as the companies have normal business operations after the pandemic subsides, higher threshold of default for initiation insolvency proceedings keeps MSMEs out of the reach as they resolve under the special insolvency resolution framework, and COVID-19 period defaults remain outside insolvency proceedings.

Some have misconstrued insertion of sub-section (3) to section 66 that it provides undue protection to the directors of a company for any fraudulent transaction during the COVID-19 period. It provides protection to directors in respect of liability under sub-section (2), which deals with exercise of due diligence to minimise the potential loss to creditors. It is necessary to limit the liability before the insolvency commencement date, as insolvency process cannot commence in respect of COVID-19 defaults. It has not touched sub-section (1), which deals with fraud. Further, section 166 of the Companies Act, 2013, which requires a director to discharge his duties with due and reasonable care, skill, and diligence, remains intact. Thus, there is no protection from fraud.

There is a misgiving in some circles that the suspension of the Code is a setback to insolvency reforms. As mentioned earlier, only a tiny part of the Code has been suspended, that too, for a short period. This suspension not only reinforces the prime objective of the Code, that is, to rescue the lives of companies from market pressures, but also endeavours to rescue companies having stress from force majeure circumstances. A study of our 30-year history of economic reforms indicate that some reforms have, at times, changed gears, moved one step back and two steps ahead, moved sideways, and even stood still, yet ultimately reached the destination. We need to stir insolvency reforms with extreme care in these trying times.

There have been concerns about work opportunities for professionals. There are thousands of applications for corporate insolvency proceedings at the admission stage, thousands of ongoing corporate insolvency proceedings, and thousands of ongoing corporate liquidations and voluntary liquidations. Fresh applications in respect of defaults that have occurred before March 25, 2020 would continue to be filed. Applications for insolvency proceedings against personal guarantors and financial service providers can be filed. Special insolvency resolution framework for MSMEs is on the way. Work has begun on development of a prepack insolvency framework. This is besides the professional opportunities available outside the Code. What professionals have on table is much more than what they can take.

#### **Conclusion**

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

(Dr. M. S. Sahoo)

### **IBBI Updates**

### Office During Lockdown

In the view of health hazard posed by the ensuing COVID-19 pandemic, both offices of the IBBI (Mayur Bhawan and Jeevan Vihar), were closed for a period of 21 days with effect from March 25, 2020, in pursuance of the Government directive, and all officers of the IBBI worked from home during this period. Thereafter, the offices have been functional in accordance with Government directives, which permitted certain officers to work from home as per roster. Standard Operating Procedures have been laid down for working in office to ensure safety of all officers, following the guidelines in this regard issued by the Ministry of Health and Family Welfare.

IT initiatives taken long before announcement of lockdown and during the lockdown ensured smooth work from home and meetings and interactions with stakeholders continued as usual. All officers were provided with Virtual Private Network linkage that ensured unhindered access to e-office and disposal of e-files online. Further, the 'Microsoft Teams' platform facilitated video meetings, including meetings of the Governing Board and Advisory Committees, and roundtables with and webinars for stakeholders.

#### **Contribution to PM-CARES Fund**

The employees of IBBI had contributed ₹ 5 lakh in the month of March, 2020 towards Prime Minister's Citizen Assistance and Relief in Emergency Situations (CARES) Fund set up for providing relief to those affected by the outbreak of COVID-19 pandemic. An additional contribution of ₹ 2,83,683 was made by the employees to this Fund in April, 2020.

### **Advisory Committee on Service Providers**

IBBI reconstituted its Advisory Committee on Service Providers on May 26, 2020 in accordance with the IBBI (Advisory Committee) Regulations, 2017. Upon reconstitution, the Advisory Committee has the following composition:

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

# Advisory Committee on Corporate Insolvency and Liquidation

IBBI reconstituted its Advisory Committee on Corporate Insolvency and Liquidation on June 12, 2020 in accordance with the IBBI (Advisory Committee) Regulations, 2017. Upon reconstitution, the Advisory Committee has the following composition:

SI. No.	Name and Position	Position in the Committee
I	Mr. Uday Kotak, Executive Vice Chairman and Managing Director, Kotak Mahindra Bank	Chairperson
2	Representative of the Ministry of Corporate Affairs	Member
3	Mr. Ajay Piramal, Chairman of Piramal Group & Shriram Group	Member
4	Mr. Ashish Kumar Chauhan, Managing Director and CEO, BSE Limited	Member
5	Ms. Ashu Suyash, Managing Director & Chief Executive Officer, CRISIL	Member
6	Mr. M. V. Nair, Chairman, Credit Information Bureau (India) Limited	Member
7	Mr. Nirmal Mohanty, Formerly Chief Economist, National Stock Exchange of India Limited	Member
8	Prof. (Dr.) Ranbir Singh, Vice Chancellor, NLU, Delhi	Member
9	Mr. R. K. Nair, Ex-Member, IRDAI	Member
10	Mr. R. Shankar Raman, Whole-time Director & Chief Financial Officer, Larsen & Toubro Limited	Member
П	Mr. Rashesh Shah, Chairman & CEO, Edelweiss Group	Member
12	Mr. Somasekhar Sundaresan, Legal Counsel	Member
13	Chairman, Indian Banks' Association	Member
14	MD, Insolvency Professional Agency of Institute of Cost Accountants of India	Member

### **Strategic Action Plan**

IBBI has been organizing its annual strategy meets to chart its path for the coming year to set its priorities, focus energy and resources on priority areas, and outline specific actions and sub-actions to achieve desired outcomes. The fourth such strategy meet was scheduled for  $27^{\text{th}}$  - $28^{\text{th}}$  March, 2020. However, the same could not take place due to COVID-19 outbreak. Notwithstanding, IBBI has drawn up its Strategic Action Plan for 2020-21 outlining its key objectives and strategies along with specific actions and tasks ahead for the organisation.

#### **MoU** with Invest India

IBBI signed a Memorandum of Understanding (MoU) with Invest India, on June 25, 2020, for cooperation in promotion of investment opportunities in stressed assets in India. Under the same, IBBI will provide information about corporate debtors (CDs) under corporate insolvency resolution process under the IBC for dissemination through Invest India's Stressed Assets Portal (SAP). Invest India shall, under the MoU, promote investment opportunities in stressed assets through the SAP on India Investment Grid and through other investor outreach activities.

# Legal and Regulatory Framework

#### **Central Government**

#### Aatmanirbhar Bharat Abhiyan

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

- (a) Minimum threshold to initiate insolvency proceedings raised to ₹ I crore from ₹ I lakh, which largely insulates MSMEs;
- (b) Special insolvency resolution framework for MSMEs to be notified under section 240A of the Code;
- (c) Suspension of fresh initiation of insolvency proceedings up to one year depending upon the pandemic situation; and
- (d) Empowering Central Government to exclude COVID-19 related debt from the definition of "default" under the Code for the purpose of triggering insolvency.



# **Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020**

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

#### **Definition of MSMEs**

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

- (a) a micro enterprise, where the investment in Plant and Machinery or Equipment does not exceed ₹ I crore and turnover does not exceed ₹ 5 crore;
- (b) a small enterprise, where the investment in Plant and Machinery or Equipment does not exceed ₹ 10 crore and turnover does not exceed ₹ 50 crore; and
- (c) a medium enterprise, where the investment in Plant and Machinery or Equipment does not exceed  $\ref{eq}$  50 crore and turnover does not exceed  $\ref{eq}$  250 crore.

### **Committee of Experts on Valuation Professionals**

The Committee of Experts (COE), which was constituted by Government to examine the need for an institutional framework for regulation and development of valuation professionals, submitted its report to the Government on April 2, 2020 along with a draft of 'Valuers Bill, 2020'. The report of the Committee is available on the website of IBBI.

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

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

#### **Committee on Cross Border Insolvency Rules**

The Committee on Cross Border Insolvency Rules and Regulations, which was constituted by Government under chairpersonship of Dr. K. P. Krishnan to propose the rules and regulatory framework that would enable the implementation of provisions relating to cross border insolvency, submitted its report to the Government on June 15, 2020. The committee is working on the extended scope to study and analyze UNCITRAL Model Law for Enterprise Group Insolvency and recommendation in the context of Code.

### **Payment of CGST**

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

The Central Government, vide notification dated May 5, 2020, amended the earlier notification to provide that such IRP/RP of a CD shall not include those CDs who have furnished the statements under section 37 and the returns under section 39 of the said Act for all the tax periods prior to the appointment of IRP/RP. Further, the IPR/RP shall be liable to take a new registration within 30 days of the appointment or by June 30, 2020, whichever is later.

#### **Cancellation of Summer Vacation**

The NCLT, through an order dated May 5, 2020, cancelled its summer vacations falling in the months of May, June and July, 2020. The NCLAT also, vide an order dated May 13, 2020, cancelled its notified annual vacation from June 1, 2020 to June 30, 2020 to make good the shortfall in working days occasioned due to imposition of lockdown on account of outbreak of COVID-19 pandemic.

#### **Default information from IU**

The NCLT, vide order dated May 12, 2020, directed that applications under section 7 of the Code for initiation of CIRP shall be filed along with default record from an information utility (IU). It also directed the Authorised Representatives / parties to file default record from an IU before the next date of hearing where an application under section 7 is pending for admission.

#### **IBBI**

#### **Amendments to Liquidation Regulations**

IBBI amended the Liquidation Process Regulations, 2016, vide notification effective from April 17, 2020, to provide that the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purpose of compliance with the time-lines for any task that could not be completed due to the lockdown, in relation to any liquidation process.

#### **Amendment to CIRP Regulations**

IBBI amended the CIRP Regulations, vide notification dated April 20, 2020, extending the date for filling of Forms after due date of submission, whether by correction, updation or otherwise, till October I, 2020. Such submission after October I, 2020, will require a fee of ₹ 500 per form for each calender month of delay.

#### **Governance of RVOs**

IBBI, vide a circular dated April 23, 2020, clarified that a member of the promoter organisation, which has promoted an RVO, shall not be eligible to be an independent director of the RVO. A promoter organisation may have its members - share holder member in case the promoter is a company, a trustee in case the promoter is an association of persons/trust, or a professional member in case the promoter is a professional body - as directors on the Governing Board of the RVO. However, such directors shall not be appointed as independent directors. The circular allowed three months for RVOs to reconstitute their Governing Boards to comply with the requirement of the circular.

#### **Guidelines for Panel of IPs**

IBBI issued the Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendations) Guidelines, 2020 on June 2, 2020. These Guidelines enable the Board to prepare a common Panel of IPs and share the same with the Adjudicating Authority (AA) for appointment as IRPs, Liquidators, RPs, and Bankruptcy Trustees from July I, 2020 to November 25, 2020.

#### **Amendment to IP Regulations**

IBBI amended the IP Regulations, vide notification dated June 30, 2020 to allow the Insolvency Professional Entities (IPEs) to provide support services to any IP. Prior to this amendment, an IPE could provide support services only to an IP who was its partner or director. This will further professionalise insolvency services and enable IPs access to regulated support services.

#### **RBI**

#### **Review of Resolution Timelines**

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

On a further review, vide another notification dated May 23, 2020, RBI excluded the period from March 1, 2020 to August 31, 2020 from the calculation of the 30-day review period, in respect of accounts which were within the review period as on March 1, 2020. In respect of all such accounts, the residual review period shall resume from September 1, 2020, upon expiry of which the lenders shall have the usual 180 days for resolution. Further, in respect of accounts where the review period was

over, but the 180-day resolution period had not expired as on March 1, 2020, the timeline for resolution shall get extended by 180 days from the date on which the 180-day period was originally set to expire. Consequently, the requirement of making additional provisions of 20% required under the prudential framework shall be triggered as and when the extended resolution period expires.

#### **Measures to Ease Financial Stress**

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

- (a) RBI had earlier permitted lending institutions to allow a moratorium of three months on payment of instalments in respect of all term loans outstanding as on March I, 2020. In view of the extension of the lockdown and continuing disruptions on account of COVID-19, RBI permitted them to extend the moratorium on term loan instalments by another three months, i.e., from June I, 2020 to August 31, 2020. Accordingly, the repayment schedule and all subsequent due dates, as also the tenor for such loans have been shifted across the board by another three months.
- (b) RBI permitted the lending institutions to allow a deferment of interest in respect of working capital facilities sanctioned in the form of cash credit/overdraft for another three months, from June 1, 2020 to August 31, 2020, in addition to the three months allowed on March 27, 2020 on payment of interest in respect of all such facilities outstanding as on March 1, 2020.
- (c) RBI permitted the lending institutions to convert the accumulated interest on working capital facilities over the deferment period (up to August 31, 2020) into a funded interest term loan which shall be repayable not later than the end of the current financial year (March 31, 2021). This will ameliorate the difficulties faced by borrowers in repaying the accumulated interest in one shot.
- (d) As the moratorium/deferment is being provided specifically to enable borrowers to manage the disruptions caused by COVID-19, this will not be treated as change in loan agreements between borrowers and lenders and, consequently, will not result in asset classification downgrade. This moratorium will also not qualify as a default for the purposes of supervisory reporting and reporting to credit information companies by the lending institutions.

#### **SEBI**

#### **Relaxations for Listed Companies**

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

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



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

### **Orders**

### **Supreme Court**

# In Re. Cognizance for Extension of Limitation [IA No.48411/2020 in Suo Motu Writ (Civil) No. 3/2020]

Taking into consideration the effect of the COVID 19 and resultant difficulties being faced by the lawyers and litigants and with a view to obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunal across the country, the Supreme Court ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act, 1881 shall be extended with effect from March 15, 2020 till further orders. It further ordered that in cases where limitation expired after March 15, 2020, the period from March 15, 2020 till date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises, shall be extended by 15 days after lifting of lockdown.

### State Bank of India Vs. Metenere Limited [Civil Appeal No.(s) 2570/2020]

Keeping in view the apprehension of bias on the part of the proposed IRP, raised by the CD, the NCLAT, by the impugned order, upheld the order of the AA requiring the substitution of the said IRP. On appeal, pending the matter for final hearing, the SC observed that the impugned order does not apply to any other proceedings in respect of CDs other than the respondent.

### **High Courts**

### Ultra Tech Nathdwara Cement Ltd. Vs. Union of India and Ors. [DB Civil Writ Petition No. 9480/2019]

After implementation of resolution plan, the Central Goods and Services Tax Department issued several demand notices to the CD on the pretext that the resolution professional (RP) / CoC did not pay entire dues of the Department as claimed in the resolution process and they were not heard at the time of approval of resolution plan. The High Court (HC) observed that the Code has been enacted to ensure that a CD under distress does not fade into oblivion and can be revived through a resolution plan. It noted that a resolution plan once approved by the AA is binding on all concerned to whom the CD may be having statutory dues, in terms of section 31. The OCs, including Central Government, have no right of audience in the resolution proceedings. The HC further noted that the amount of claim as assessed by the RP in favour of the respondents has already been deposited during the CIRP. It, accordingly, set aside the notices issued by the Department as illegal and arbitrary with an observation: "The authorities should have adopted a pragmatic approach and immediately withdrawn the demands rather than indulging in a totally frivolous litigation."

# Shakuntala Education & Welfare Society Vs. Punjab & Sind Bank $[WP@\ 2959/2020]$

The petitioner moved the HC seeking direction against the respondent to not declare its pending loan accounts as NPA and for grant of moratorium of three months to it in terms of RBI Circular that allowed moratorium in respect of all term loans outstanding on March 1, 2020. The respondent

claimed that the debt had fallen due on December 31, 2019 whereas the moratorium has been made applicable only qua instalments which became payable on or after March 1, 2020. The HC noted that the State Government has restricted the petitioner from demanding fees from the students due to the lockdown owing to Covid-19. It observed that any classification of the petitioner's accounts as NPA would certainly amount to altering the position as existing on March 1, 2020. Pending completion of pleadings, it restrained the respondent from declaring the account of the petitioner as NPA till next date of hearing.

### Electrosteel Steels Limited Vs. State of Jharkhand & Ors. [WP(T) No. 6324-6327/2019]

The petitioner filed an application challenging the garnishee order issued against it in lieu of tax dues. It submitted that the State Government being an OC should have filed its claim before the RP, and having failed to do so, prior to the finalisation of the resolution plan, the tax liability of the petitioner stood barred under section 31 of the Code, which has overriding effect over all other laws. The respondent submitted that the petitioner company had collected VAT from its customers but did not deposit the same in the State exchequer, thus, amounting to criminal misappropriation of the Government money. It pointed out that section 31 of the Code states that the approved resolution plan is binding on the stakeholders involved in the resolution plan. However, the respondent was never involved in the resolution process and the public announcement under section 13 was never published in the State of Jharkhand.

The HC noted that the tax amount, which had been sought to be realised, had already been realised by petitioner from the customers, but not deposited in the exchequer. Use of VAT amount for business purposes certainly amounts to criminal misappropriation of the Government money by the petitioner, and the State Government is entitled to realise the same with the penalty due thereon. The HC observed that it is debatable whether the amount of VAT already realised by the petitioner from its customers is covered within the definition of operational debt and it may not be a direct debt to the State Government. It further observed that the Code read with Regulations require the public announcement to be made in the newspapers with wide circulation at the location of the registered office (Ranchi) and principal office (Bokaro) of the petitioner, both of which are situated in the State of Iharkhand, but no public announcement of the CIRP was made in the State. Therefore, the respondent had no occasion to have any knowledge about the CIRP and was deprived of making the claim before the IRP. Since it was not involved in the resolution process, the resolution plan cannot be said to be binding on the State Government under section 31 of the Code.

# Pankaj Aggarwal Vs. Union of India & Ors. [WP© 3685/2020 and other appeals]

Petition was filed against an order of admission of application by the AA under section 9 of the Code. The petitioner, who is classified as an MSME, submitted that without appreciating the fact that the jurisdiction of the NCLT has been increased to ₹ I crore with effect from March 24, 2020, the AA admitted the application on a default exceeding ₹ I lakh. It owes at best ₹ 10 lakh to one of the respondents. The HC observed that the purpose of the notification increasing the threshold was to ensure that SMEs and MSMEs are not subjected to insolvency proceedings during the lockdown or immediately thereafter. It, prima facie, found this as an error by the AA. It stayed the insolvency proceeding till the next date of hearing, subject to the petitioner depositing an amount of ₹ 10 lakh with the Registrar General of the HC.

#### Mohan Lal Jain Vs. IBBI [WP(C)3692/2020]

The petitioner, who is an IP, challenged the order of the Disciplinary Committee (DC) of the IBBI imposing penalty on him for violation of moratorium. The HC stayed operation of the impugned order subject to the petitioner depositing  $\stackrel{?}{\sim}$  25 lakh within 10 days with the IBBI. Such deposit would be disbursable subject to any further orders that may be passed by the Court.

### **National Company Law Appellate Tribunal**

# Mr. Savan Godiawala Vs. Mr. G. Venkatesh Babu and Ors. [CA(AT)(Ins)No.715/2019]

The liquidator filed an appeal against the order of the AA which directed him to reimburse the respondent I, the amount incurred towards payment of compounding fee levied by the Court in connection with a criminal case filed against the CD. He challenged the order of the AA stating that criminal proceedings were initiated against the CD prior to CIRP and it was not in connection with any default committed during CIRP. He contended that the respondent 1, the then Managing Director, has committed the offence, therefore, he must face the consequences. If compounding fees is paid on priority, it will be in contravention of the mandate of section 53 of the Code. The NCLAT noted that the person responsible for and in charge of the day to day affairs to the CD at relevant time has committed the offence and he only can be punished. If the alleged offence is proved, then the CD as well as the respondent I will be convicted and the CD being a juristic person cannot be punished with imprisonment and only the respondent I can be punished with imprisonment. The liquidator contended that this was the reason why respondent filed the application for compounding of the offence and he wanted to escape from the consequences at the cost of CD, which is in liquidation. The NCLAT allowed the appeal.

# Shabad Khan Vs. M/s. Nisus Finance and Investment Manager & Ors. [CA(AT)(Ins)No. 82/2020]

The appellant submitted that respondents I and 2 being FCs could not be allowed to initiate and trigger three simultaneous CIRPs for one set of claims. The NCLAT, placing reliance on *Dr. Vishnu Kumar Agarwal Vs. M/s. Piramal Enterprises Ltd.* [Company Appeal (AT) (Insolvency) No. 346 of 2018], observed that the principal borrower, singly or jointly with other FCs, cannot initiate a second CIRP against a CD, in respect of the same set of claim, be it the principal borrower or one or other corporate guarantors. It remanded the matter back to the AA for a fresh look at the application for initiation of CIRP of the guarantor.

### Bank of India Vs. M/s. IRIS Electro Optics Pvt. Ltd. & Ors. [CA(AT) (Ins) No. 49/2020]

The appellant had submitted before the AA that the application for CIRP was filed by an FC, who is a related party of the CD, in collusion with the CD with a malicious intent of nullifying the action taken against the CD under the SARFAESI Act, 2002 and not for resolution of the CD. The AA admitted the application without determining the issue of collusion. The appellant further submitted before the AA that the related party had been assigned voting rights of 42.96% in the CoC. The AA directed determination of voting rights afresh. On fresh determination, the RP revised voting rights of the related party to 36.05%. The appellant secured 63.95% voting shares which could not empower it to seek replacement of RP. The appellant further challenged the voting share of the related party, and sought recall of order of admission, which were denied by the AA. The NCLAT observed: "Deferment of vital issue of related party' virtually resulted in assignment of voting share to it, thereby adversely impacting the voting share of the Appellant. It was not prudent on

the part of the Adjudicating Authority to defer consideration of the pivotal issue having significant impact on the 'Corporate Insolvency Resolution Process' initiated at the instance of an alleged 'related party', jeopardising the legal interests of the Appellant, who happened to be the 'Sole Secured Financial Creditor'. The exclusion of Appellant from 'Committee of Creditors' should have raised eyebrows about the role of 'Interim Resolution Professional', .... Thus, the voting share allotted to the Appellant was woefully inadequate leaving it short of the requisite percentage to seek replacement of the 'Resolution Professional' who was ex facie guilty of violating provisions of the 'l&B Code' by convening 'Committee of Creditors' but excluding the 'Sole Financial Creditor' i.e., the Appellant from being a part of it". While allowing the appeal, it directed the AA to record a finding about the status of the applicant as a related party and a finding on the applicant having fraudulently initiated CIRP.

# Indian Oil Corporation Ltd. Vs. Mr. Ashish Arjun Kumar Rathi, Liquidator of SBQ Steels Pvt. Ltd. [CA(AT)(Ins) No. 1116/2019]

The AA upheld the decision of the liquidator to reject the claims of the appellant, while noting that though the liquidator has not clearly mentioned in many words as to why he rejected those two claims, he has mentioned that there is no binding agreement between the parties obligating the CD to pay interest and that reason is more than sufficient for rejecting the claim. While admitting an appeal, the NCLAT observed that ascribing reasons is the 'heart and soul' of a reasoned order/ judgement. Not assigning reasons and that too in a rejection order relating to a claim is not a 'prudent and reasonable course of action'. It further observed that as per section 40 of the Code, a liquidator being an 'Authority' decides the matter in a quasi-judicial manner and his decision is open to challenge under section 42 of the Code. In terms of the ingredients of section 40, reasons are to be spelt out for rejecting the claims, which in the present case was not followed by the liquidator. A liquidator is an officer of the AA and is expected to perform his duties fairly, justly, and honourably in dealing with the claims of persons.

# Amitabh Kumar Jha Vs. Bank of India & Anr. [CA(AT)(Ins) No.1392/2019]

An application for CIRP was initiated by one of the FCs from the consortium of lenders. It was contended before the AA that as per intercreditor agreement, no member of the consortium can take any action in respect of default individually, therefore, an application under section 7 by an FC is not permissible. The AA, however, rejected this contention and admitted the application. The NCLAT held that the statutory right across the ambit of section 7 cannot be curtailed or made subservient to any inter-creditor agreement. It dismissed the appeal while observing that the contractual rights, unless recognised by the statute as a permissible mode, would not override the statutory mechanism.

# Allahabad Bank Vs. Poonam Resorts Limited & Anr. [CA(AT) (Ins) No. 1303-1304/2019]

Appeal was filed against the order of AA, who instead of admitting or rejecting the application under section 7 of the Code, directed forensic audit to investigate utilisation of credit facility extended by the FC to the CD. The NCLAT pointed out that speed is the password and all authorities under the Code must adhere to the prescribed timelines. It held that the AA cannot direct a forensic audit and engage in a long-drawn pre-admission exercise which will have the effect of defeating the object of the Code. It further observed that the satisfaction of the occurrence of default must be obtained from an IU or the evidence provided by the FC, and in case of failure, the AA can take appropriate decision. It observed that section 75 of the Code is a penal provision which postulates an enquiry and recording of finding in respect of culpability of the applicant

regarding commission of an offence and it cannot be allowed to thwart the initiation of CIRP unless forgery or falsification of documents is prima facie established. It set aside the order of AA.

# Union of India Vs. Oriental Bank of Commerce [CA(AT)(Ins) No. 1417/2019]

Appeal was filed against the order of AA (Principal Bench) which, *inter alia*, directed that in all matters under the Code and company petitions, the Union of India, Ministry of Corporate Affairs (MCA) through the Secretary should be impleaded as a party respondent so that authentic record is made available by the officers of the MCA and this shall be applicable to all the benches. While setting aside the said order, the NCLAT observed that direction to implead MCA as party respondent in all cases of IBC is beyond the powers of the AA and it tantamount to imposition of new rule in a compelling fashion.

# State Bank of India Vs. M/s. Metenere Ltd. [CA(AT)(Ins) No.76/2020]

An IP, who was an employee of the FC for 39 years and drawing pension, was proposed for appointment as IRP. The CD raised apprehension that the proposed IRP was unlikely to act fairly. Accordingly, the AA passed the impugned order directing the FC to substitute the IP by another IP to ensure that the CIRP was conducted in a fair and unbiased manner. The FC appealed against the said order on the ground that the proposed IP did not have any disqualification. It submitted that the IRP is not required to act as an independent umpire between the FC and the ex-management of the CD or decide any conflicting issues between them. It further submitted that the RP has no adjudicatory powers and only acts as a facilitator in the CIRP as all major decisions are taken with the approval of the CoC. The NCLAT rejected the contention of the CD that the IP is an interested person or IP suffers from any disqualification. It, however, noted that the appellant restricted its choice to the IP obviously having regard to past loyalty, which is reinforced by filing of instant appeal by the FC and this has to be viewed in the context of apprehension of bias raised by the CD. The NCLAT observed that this apprehension cannot be dismissed off hand and the AA was perfectly justified in seeking substitution of the IP, though the IP was not disqualified or ineligible to act as an IRP. It further observed that the appellant should not have been aggrieved of the impugned order as the same did not cause any prejudice to it.

# Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd. & Ors. [Restoration Application No. 01 of 2020 in CA(AT)Ins No. 308/2020]

The appellant challenged the liquidation order passed by the AA. The NCLAT observed that as no resolution plan was forthcoming, the liquidation cost was not ascertainable and the claims received were much higher than the assets available, the CoC recommended initiation of liquidation by a majority of 70.97%. While dismissing the appeal, it held that the decision of the CoC recommending liquidation of the CD after proper evaluation of the assets and liabilities, with no forthcoming resolution plan, is a business decision within the domain of commercial wisdom of CoC, which is not amenable to judicial review.

# Chhatisgarh Distilleries Ltd. Vs. Dushyant Dave and Ors. [CA(AT)(Ins) No. 461/2019]

The appellant had filed an application before the AA seeking direction to submit its resolution plan for consideration of the RP and CoC. The AA rejected the application on two grounds: (a) the appellant came after the submissions of approved resolution plan to the AA, and (b) the CoC or RP has not sought any relief to recall the approved resolution plan and for allowing them to reconsider the approved resolution plan along with the

new resolution plan offering better value. It cannot suo-motu direct the CoC to consider the new resolution plan or reconsider the already approved plan. The NCLAT, relying on the *Committee of Creditors of Essar Steel India Ltd. Vs. Satish Gupta &Ors.* [2019 SCC Online SC 1478], held that the jurisdiction of the NCLAT is in continuation of the proceedings and is circumscribed by section 32 of the Code which envisages that any appeal from order approving the resolution plan shall be on the grounds specified in section 61(3) thereof. It is not a court of enquiry. Accordingly, it dismissed the appeal.

### Mr. Srikanth Dwarakanath, Liquidator of Surana Power Limited Vs. Bharat Heavy Electricals Limited [CA(AT)(Ins)No. 1510/2019]

The liquidator faced a deadlock, when secured creditors (ten out of eleven) having 73.76% share in security interest relinquished their security interests to the liquidation estate, but one secured creditor (BHEL) with 26.24% of share did not. Consequently, he could not attempt a slump sale of the CD, as all secured creditors did not relinquish their security interests. He filed an application before the AA seeking permission to sell the assets of the CD under liquidation. The AA rejected the application stating that an arbitration award has granted lien over the assets of the CD to BHEL prior to the initiation of CIRP. The liquidator challenged the order of the AA. The NCLAT relied on section 13 of the SARFAESI Act, 2002 which requires confirmation by creditors having at least 60% of the value of total debt for taking any steps about the realisation of assets by secured creditors. It noted that that since BHEL did not have requisite 60% value in security interest, it did not have the right to realise its security interest. It observed that since secured creditors with 73.76% in value have relinquished the security interest into the liquidation estate, it would be prejudicial to stall the process at the instance of a creditor who has share of only 26.24%. While allowing the appeal, the NCLAT further observed that BHEL did not hold a superior charge over the rest of the secured creditors and the decision of 73.76% of majority creditors would bind the dissenting secured creditor.

# Shri Swwapnil Bhingardevay Vs. Khandoba Prasanna Sakharkar Khana Limited and Ors. [CA(AT)(Ins)No. 943/2019]

The appellant challenged the order of AA approving the resolution plan on the ground of material irregularities. It submitted that the RP issued notice for outright sale of CD as a going concern; he did not examine the resolution plan, he did not maintain confidentiality of liquidation value of the CD and the approved resolution plan is not feasible and viable. The NCLAT found that the CIRP suffered from material irregularities and the approved resolution plan suffered from feasibility and viability. It set aside the impugned order and remanded the matter to the AA.

# NTPC Ltd. (Sipat Project) Vs. Rajiv Chakraborty, IRP [CA(AT)(lns)No. 491-495/2020]

The appellants, who are OCs, assailed the order of the AA on the ground that the claims filed by them in regard to debts due and payable in future could not be rejected. The NCLAT observed that RP is not an adjudicating authority to admit or reject a claim and no mechanism in the nature of an appeal against the decision of RP has been provided during resolution process. It further observed that admission or rejection of a claim can be looked into by the AA only when the resolution plan is being considered by the AA under section 31. It is at that stage that the AA has to examine whether the interest of all stakeholders has been taken care of. It found apprehensions of the appellants unfounded in as much as the AA has already taken care to direct the RP to incorporate information relating to such claims, even if disputed, in the IM. Accordingly, it dismissed the appeal.

### Smt. Anamika Singh and Ors. Vs. Shinhan Bank and Ors. [CA(AT)(Ins)No.912-913/2019]

The appellants challenged the order of the AA declaring that they are not FCs on the ground that the monies advanced by them to the CD would come under the ambit of extortionate credit transaction due to an exorbitant interest rate of 65%. The NCLAT, after detailed examination of transactions, found transactions with six respondents as extortionate. It set aside those transactions being illegal and void. It found that transactions with three other respondents are not extortionate and they are unsecured creditors for the principal amount.

# Abhijit Guhathakurta, Monitoring Agency of the Corporate Debtor Vs. Royale Partners Investment Fund Ltd. [CA(AT) (Ins)No. 287/2020]

There were two appeals in this matter. In the first appeal, the appellant contends that, one Bench of the AA, while passing the impugned order in M.A. No. 515/2020, had acted arbitrarily and exceeded its jurisdiction in staying the proceeding in M.A. No. 249 of 2020 which was heard at length and reserved for orders by a co-ordinate Bench. The NCLAT observed that probity, judicial decorum, propriety and comity of judicial discipline require that a co-ordinate Bench cannot stay an order which was reserved by another coordinate Bench of the same tribunal. While allowing the appeal, it declared the order of stay to be per se illegal, nullity and non-est and held that the newly constituted Bench cannot sit in judgment as an appellate authority.

Based on an application of the monitoring agency, the AA directed the successful resolution applicant to implement the resolution plan. In the second appeal, the appellant challenged the said order on the ground of the monitoring agency did not have the locus standi to file such an application. The NCLAT observed that the AA, while approving the resolution plan, granted liberty to move any application required for implementation of the plan and to ensure successful implementation of resolution plan, the RP and the monitoring agency should take a lead role. It observed that nearly six months have gone by from the order of approving the resolution plan, the same was yet to be implemented by the appellant till date. It held that the appellant/respondent cannot avoid/evade or circumvent its 'solemn responsibility' to implement the resolution plan unconditionally in the strict sense of the term, without any further procrastination.

# Kotak Resources Vs. Dharmendra Dhelaria & Ors. [CA(AT)(Ins) No. 569/2019]

This appeal was against the order of the AA directing the CoC, which comprised of two creditors, to reimburse the CIRP costs in equal proportion to the RP on the ground that the AA had no jurisdiction to pass the impugned order and that the appellant could not be visited with the CIRP cost in view of the fact that the CIRP was not only for the benefit of the members of the CoC. The NCLAT observed that it is fallacious to contend that the AA lacked jurisdiction to provide for the resolution costs. It dismissed the appeal stating that the CD could not be saddled with the liability of the CIRP costs and only one creditor cannot be directed to reimburse the whole amount.

# Tata Consultancy Services Limited Vs. Vishal Ghisulal Jain [CA(AT)(Ins)No. 237/2020]

Appeal was filed against the order of the AA directing to stay the termination of the facilities agreement to provide computers, internet, broadband, etc., between the CD and the appellant, where termination notice was received after commencement of CIRP. The NCLAT observed that as on the date of the imposition of moratorium, the business and activities of the CD will have to be carried out to keep it as a

going concern. It upheld the stay order in the light of the duties cast upon the RP as well as the main objective of the Code.

## Ritu Rastogi, Resolution Professional Vs. Riyal Packers [CA(AT)(Ins)No. 482/2020]

Th RP submitted that the resolution plan was approved by the CoC well within the extended timeline but since he was left with only one day for filing the application under section 31 of the Code and before that he had to comply legal formalities such as seeking performance guarantee, he could not file the application within the permissible time. He further submitted that it is a fit case for exercise of power under rule 11 of the NCLAT Rules to mitigate the hardship. The NCLAT noted that the RP was late by 10 days to file the resolution plan for approval of the AA. It observed: "We are also of the considered opinion that failure to exercise discretion in a matter of this nature would have serious implications imperilling the legitimate interests of all stakeholders and inevitable conclusion would be to push the 'Corporate Debtor' into liquidation which has to be avoided at all costs ..... Refusal to exercise discretion by the AA considered opinion, has resulted in miscarriage of justice and frustrating the object of the 'I&B Code'." It allowed appeal and extended the CIRP by 10 days.

### Bank of India Vs. Nithin Nutritions Pvt. Ltd. [CA(AT)(Ins)No. 497-501/2020]

The AA observed that section 22(2) of the Code allows the CoC to resolve, in its first meeting, to replace the IRP by another RP. However, the CoC sought replacement based on a resolution in its 3<sup>rd</sup> meeting, which also did not assign any reason. It observed: "Law doesn't envisage that the CoC could replace the IRP appointed by the Authority at anytime it chooses. The provision does provide for any leeway or any exception to resolve to replace the IRP in any subsequent meeting. Considering the time bound manner the CIRP is to be concluded, the CoC cannot have the luxury of taking its own time. The CoC having not resolved to replace the IRP in its first meeting could not be allowed to replace him by a resolution in any of its subsequent meetings. The application, therefore, cannot be allowed".

On appeal, the NCLAT noted that the term of the IRP continues till the date of appointment of the RP under section 22. It allowed the appeal and held that the CoC has the requisite powers to propose change of the IRP even in meetings subsequent to the first meeting and there is no requirement to assign any particular reason for the same.

### State of Haryana Vs. Uttam Strips Ltd. and Ors. [CA(AT)(Ins)No. 319/2020]

The AA rejected an application to look into claim of Excise & Taxation Officer after the implementation of the resolution plan. On appeal, the NCLAT observed that though the claim is a statutory due which is an operational debt, the appellant has failed to file the same before the RP. Relying on Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. Supreme Court [Civil Appeal No.8766-67/2019 and other petitions]. The NCLAT held that since the appellant failed to submit its claim before the RP and the resolution plan has been implemented after approved of the AA, the successful resolution applicant cannot be burdened with the past liabilities. Such an act will make it impossible for the successful resolution applicant to run the business of the CD, ultimately defeating the entire purpose and mechanism of the Code.

### Sennimalai and Anr. Vs. Tourism Finance Corporation of India Ltd. & Anr. [CA(AT)(Ins)No. 536/2020]

The NCLAT, vide an interim order, observed that a master restructuring agreement between the CD and the FCs, does not in any manner curtail the exercise of right by the FCs in enforcing their claims under the Code. While directing the CIRP to continue, it observed that it shall be open to

the CD to place a plan for satisfying the claims of the FC as well as explore all legally permissible ways to exit from the insolvency process.

## Regional Provident Fund Commissioner Vs. T.V. Balasubramanian, Resolution Professional [CA(AT)(Ins)No. 1521/2019]

The AA allowed the application of the RP that during moratorium, no encumbrance or charge can be created over the property of the CD and that encumbrance, which had been created by way of attachment stands cancelled, without considering the reply of the appellant. On appeal, the NCLAT observed that the attachment order of the immovable property was passed much prior to the initiation of the CIRP but the incorporation of the attachment in the register was made subsequent to the admission of insolvency proceedings. It set aside the order of AA and held that the encumbrance certificate which was issued during the moratorium is only an incorporation of an earlier order in the record.

# Power2SME Pvt. Ltd. Vs. Allied Strips Limited & Anr. [CA(AT)(Ins)No.680/2019]

The AA approved resolution plan which provided for payment of 13.69% of admitted claims of FCs and 0.46% admitted claims of OCs. The appellant challenged the order on the ground of disparity of payment between the FCs and the OCs. Relying on Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. Supreme Court [Civil Appeal No.8766-67/2019 and other petitions], the NCLAT held that the difference in payment was the commercial wisdom of the CoC and a conscious decision on which it would not comment.

# First Global Finance Pvt. Ltd. Vs. IVRCL Limited & Anr. [CA(AT)(Ins)No. 918-919/2019]

The appellant filed an application challenging the rejection of the resolution plan by the AA. The NCLAT held that the CoC rejected the resolution plan due to non-compliance with the terms and conditions of the EOI and non-submission of EMD along with the resolution plan as required by the bid process memorandum. While upholding the order of the AA, the NCLAT observed that since liquidation proceedings are ongoing, there is always scope for the resolution applicants to opt for arrangement under sections 230 to 232 of the Companies Act, 2013 if they are eligible under the provisions of the Code.

### NBCC (India) Ltd. Vs. ICICI Bank Ltd, & Ors. [CA(AT)(Ins)No. 475/2020]

The appellant challenged the order of AA modifying the resolution plan on the ground that the business decision of the CoC cannot be interceded. In an interim order, the NCLAT allowed that the approved resolution plan may be implemented subject to the outcome of the appeal. It also directed that the IRP may constitute an interim monitoring committee comprising of the resolution applicant and three major institutional FCs.

### **National Company Law Tribunal**

# Sunil Kumar Agarwal, RP Vs. Suspended Board of Director of DIGJAM Ltd. [IA 144 of 2020 in CP(IB)No. 594/NCLT/AHM/2018]

The RP filed an application under section 30(6) of the Code for approval of resolution plan. Meanwhile, the resolution applicant filed an affidavit seeking certain revision/modification/relaxation in resolution plan in respect of time frame for payments to FCs/OCs due to the financial difficulties arising out of COVID -19 pandemic and consequent lockdown. The AA directed the resolution applicant to approach the CoC with a liberty to the CoC to file their terms, if any. While one FC having 83.31% voting share agreed to the modification fully, the other having 16.69% voting share agreed partially. The AA noted that there is no material change in the plan except for modification of timeline and such modification appeared genuine in view of the pandemic. Considering the

objectives of the Code, and RBI's 'Developmental and Regulatory Policy', the AA approved the resolution plan along with modified timelines.

### Indus Biotech Private Limited Vs. Kotak India Venture Fund-I [IA No. 3597/2019 in CP (IB) No. 3077/2019]

The applicant filed an interlocutory application before the AA praying to refer the parties to arbitration for settling their disputes instead of admitting the application under section 7. The CD had failed to redeem the Optionally Convertible Redeemable Preference Shares, as subscribed by the FC, in terms of the share subscription and shareholders agreement, which provided for an arbitration clause. The NCLT observed that since the subject matter underlying the application involves valuation of shares and fixing of Qualified Initial Public Offering date, which are arbitrable, an attempt must be made to reconcile the differences between the parties via arbitration. While allowing the application, it held that admitting the CD into CIRP would unnecessarily push an otherwise solvent, debt free company into insolvency which is undesirable.

### Agrocorp International Private (PTE) Limited Vs. National Steel and Agro Industries Limited [CP(IB) No. 798/MB/C-IV/2019]

The OC filed an application to initiate CIRP on the default by the CD to make payments in accordance with a foreign arbitral award arising out of a sale contract between the two parties. The CD claimed that a foreign award is not binding upon the parties in India when it is yet to be found enforceable by the competent court under the Arbitration and Conciliation Act, 1996, and also, since the award obtained has not attained any finality, there is a pre-existing dispute. The AA observed that the United Kingdom, where the arbitration award was passed, is a reciprocating territory and hence it would be capable of execution in India in terms of section 44A of CPC. Further, the AA was of the view that it was not possible to wait indefinitely for the CD to challenge the arbitral award. While admitting the application, it held that since the award was passed by a competent tribunal and there is no challenge to the award, the same cannot be considered as a pre-existing dispute.

### Mr. Harish P. Vs. M/s. Chemizol Additives Pvt. Ltd. [CP(IB)No. 62/BB/2020]

Application under section 9 of the Code was filed against the employer on the ground of failure of payment of the employment dues. The AA observed that the party before knocking at the doors of judiciary should have exhausted the alternate remedy available under the Arbitration and Conciliation Act, 1996, in terms of the employment agreement which is binding on both the parties. It noted that it is a settled position of law that the provisions of the Code cannot be invoked to settle dispute or recover outstanding amounts. It also noted that the CD prima facie appears to be solvent to resolve the outstanding amount. While declining to admit the application, the AA directed the CD to settle the issue amicably, failing which the applicant is at liberty to invoke the arbitration clause and to invoke appropriate remedy if he is aggrieved by the outcome of arbitration

# Mr. Ashish Chhawchharia, RP & Ors. Vs. Jet Airways [CP(IB)-2205/MB/2019]

The RP filed application seeking approval of the AA to sell one of the non-core assets of the CD to clear its overseas debt. The applicant claimed that the proceeds from the proposed sale would be used to clear the residual due payable to Export Import Bank of United States over a finance lease created on six aircrafts of the CD and to release the security interest of charge holder created in favour of the non-core asset. The AA observed that there was no objection from any member of CoC or from

the charge holder of the asset as well as the fact that the release of six aircrafts would add huge value to the CD. While allowing the sale, it directed that the proceeds should be utilised firstly for the payment to charge holder of the assets followed by the settlement of overseas debt and CIRP costs.

### Power Finance Corporation Limited Vs. Mr. Mahender Kumar Khandelwal [IA 234/2020 in CP(IB)492/07/HDB/2019]

Application was filed by the CoC seeking replacement of the IRP in accordance with section 22 of the Code. The IRP filed an application seeking the CoC to reconsider its decision and to continue him as RP. He claimed that the decision of the CoC has been based on a disciplinary order passed by the IBBI and it has not recorded any specific reason for the same. The AA observed that pursuant to stay on the IBBI order by the HC, the IRP cannot be excluded from the consideration of the CoC, yet it is only the prerogative of the CoC to decide whether to continue with the same IRP or replace him with another RP. While allowing the application to replace the RP, it held that in accordance with section 22 of the Code, no reasons are to be recorded for effecting such replacement by the CoC.

# Om Prakash Agarwal Vs. Tax Recovery Officer 4 & Anr. [Item No. 301, IA-992/2020 in CP/294/2018]

The liquidator filed an application to defreeze the accounts of the CD which was attached by Tax Recovery Officer. The Income Tax Department submitted that the income tax proceedings have overriding effect against other enactments and money attached by it is no more an asset of the CD. The liquidator submitted that the Income Tax Department has filed its claim against the CD and the same would be considered for distribution under section 53. The AA held that the monies of the CD lying in the bank accounts shall be construed to be an asset of the CD even if an attachment order is passed against the same. It noted that section 178 of the Income-tax Act, 1961 has been amended to allow the Code to have overriding effect. It directed the Bank to defreeze the accounts and release the amounts of the CD within 30 days.

# Om Prakash Agarwal Vs. Chief Commissioner of Income Tax (TDS) & Anr. [Item No. 203 CP/294/2018]

The liquidator filed an application seeking direction against the successful bidder and the Income Tax Authority not to deduct TDS from the sale of assets made in favour of the bidder on the ground that tax dues cannot be collected by the Government in priority to the waterfall mechanism under section 53 and section 238 has an overriding effect upon other enactments. The AA observed that the overriding effect under section 238 is applicable to the issues between the creditor and the debtor but not to TDS deductions. When the Government comes before the liquidator as creditor, it is bound by sections 53 and 238 of the Code. In this case, the Government is not making any claim as an OC. While directing the purchaser to pay the TDS amount, it held that deduction of TDS does not tantamount to payment of Government dues in priority to other creditors since it is not a tax demand for realisation of tax dues. It observed that the liquidator is not asked to pay TDS; it is the duty of the purchaser to credit TDS to the Income Tax Department.

# Astrazeneca Pharma India Ltd. Vs. Brosbel Engineering Private Limited [CP(IB)No. 130/BB/2020]

Application for initiation of CIRP was filed under section 9 on the ground of refund of an advance amount due to failure of supply of goods. The agreement between the OC and CD had an arbitration clause. The AA

observed that without invoking the arbitration clause or filing a civil or criminal action, the petitioner has invoked the provisions of the Code. Whether the CD is liable to return advance cannot be adjudicated in a summary proceeding under the Code. The AA held that since the AA is not a recovery forum to get back the advance amount paid, invoking the provisions of the Code is not an alternative remedy available to the applicant. While rejecting the application, it held that the petition being filed with an intention to recover an advance amount is against the object of the Code.

# Logwell Logistics & Aviation Services (OPC) Private Ltd. Vs. Velankani Electronics Private Limited [CP(IB)No. 10/BB/2020]

Application for initiation of CIRP was filed under section 9 for default of outstanding amount. The AA did not find any agreement between the parties about terms of payment or the rate of interest. It noted that the CD has the intention to repay the amount owed and is ready to pay the same as per payment schedule. The applicant rejected the same by insisting on charging interest at exorbitant rates and wishes to recover by seeking to trigger CIRP. While rejecting the application, the AA observed that this is unacceptable considering the present stress in the economy, when initiating a CIRP against a healthy company is not a good solution.

# Mr. Nitin Hasmukhlal Parikh, RP Vs. IDBI Bank Limited [IA 89/2018 in CP(IB)No. 18/7/NCLT/AHM/2017]

The RP filed application seeking liquidation of the CD on the ground that no resolution plan could be accepted and his appointment as liquidator. The AA ordered liquidation, but the Judicial Member differed on the appointment of RP as the liquidator, though recommended by the CoC, as some claimants were aggrieved by his conduct. The Technical Member appointed the RP as liquidator with an observation that aggrieved claimants may refer the matter to the IBBI for necessary action. The Judicial Member observed that a serious grievance has been made raising a doubt about the impartiality and independence of the RP regarding rejection of their claim. He noted that section 33(4) confers powers on the AA to replace the liquidator. Considering its powers, the role of liquidator in adjudication of claims and the grievance against the RP and in the interest of transparency and fairness in the liquidation process, he directed the CoC to reconsider its decision to appoint proposed liquidator and requested IBBI to propose the name of two IPs who can be considered for appointment as liquidator. The CoC shall consider these two names along with the RP and take appropriate decision.

# In the matter of Om Boseco Rail Products Limited [CP(IB)No.1735/KB/2019]

The OC filed an application for initiation of CIRP. The CD contested the application on the ground that the threshold default for CIRP has been raised to  $\stackrel{?}{\sim}$  I crore by a notification on March 24, 2020. The AA observed that it is a well settled law that a statute is presumed to be prospective unless it has been held to be retrospective either expressly or by implication. While admitting the application, it held that the amendment shall be considered as prospective as nothing contrary to it was mentioned in the notification.

# M/s. Arrowline Organic Products Pvt. Ltd. Vs. M/s. Rockwell Industries Limited [IA/341/2020 in IBA/1031/2019]

The CD filed application seeking recall of the order of admission passed by the AA. It contented that due to increased threshold of default, vide the notification on March 24, 2020, the AA should desist from pronouncing order of admission. However, the AA observed that it has no power to

recall or review under section 420 of the Companies Act, 2013 or Rule I I of the NCLT Rules, 2016 and the recourse available to the CD was to approach the NCLAT. While dismissing the application, it held that the notification will be applicable prospectively and any matter, which was filed, proceeded with and heard before the notification, shall be disposed of considering the threshold limit to be  $\stackrel{?}{\sim}$  I lakh.

# M/s. Santosh Hospitals Private Limited (under Liquidation) Vs. Ms. Deepa Venkat Ramani & Anr. [CP No. IBA/434/2019]

An application was filed by the Greater Chennai Corporation for taking possession of 'Santosh Hospital with infrastructure' from respondent for treating people affected by COVID-19. The AA took up the matter urgently on Sunday looking at the extraordinary situation warranting it to forthwith dispense justice. It allowed the application, subject to the conditions that (i) a detailed inventorisation to be carried out prior to handing over; (ii) the hospital to be delivered on 'as is where is basis'; (iii) any amount spent by applicant cannot be claimed from respondent; and (iv) the appellant shall not allow promoters or their representatives in hospital premises. It directed that the possession of the hospital would be handed over by the applicant without making any claim towards the amount spent for operationalising and running the hospital, once the situation improves.

# SCSL Buildwell Private Limited Vs. Pal Infrastructure & Development Pvt. Ltd. [IA No.2504/2019, 5/2020, 2056/2020, 2208/2020 in (IB)-755(PB)/2018]

An application was filed seeking correction of voting results wrongly computed by the IRP. The voting was on the proposal to replace the IRP and appoint another IP as RP. It was submitted by three allottee associations that homebuyers as class of creditors comprised of 72.39% of voting share in CoC voted for replacement of IRP with a voting share of 38.92%. In terms of section 25A of the Code, if a proposal receives more than 50% voting share of FCs in a class, the same is treated as 100% voting by the class in favour of the proposal. However, the IRP did not file an application for his replacement. He rather raised objections to the application made by FCs for his replacement. Considering the facts and legal position, the AA held that no further enquiry is required and allowed replacement of the IRP. It observed: "The IRP who is supposed to remain neutral, has come against the CoC as if he has personal interest in the affairs of the CD." It lamented that this application could not be adjudicated because of objections raised by the IRP and CIRP could not proceed for the last six months in view of this.

#### **Other Authorities**

# In the matter of M/s Mansi Oils and Grains Pvt. Ltd. [Order No. 02/WBAAR/2020-21 dated June 29, 2020]

The liquidator sought a clarification whether any sale of the assets of the corporate debtor amounts to supply of goods and/or services to attract GST, the West Bengal Authority of Advance Ruling Goods and Service Tax ruled that the sale of the assets like the plant and machinery, office equipment and furniture by the liquidator appointed under the Code is a supply of goods by the liquidator, who is required to take registration under section 24 of the GST Act. Hence GST is applicable on sale of said assets during liquidation. It also ordered that the liquidator should continue to remain registered till her liability ceases under section 29 (1) (c) of the GST Act.

#### **IBBI**

### In the matter of Mr. Koteshwara Rao Karuchola, IP (Order dated April 20, 2020)

The DC found that IP committed contraventions of various provisions of the Code, such as outsourcing his duty of verification of claims to an IPE and making payment to the IPE for the same as IRPC, etc. It imposed a monetary penalty of  $\stackrel{?}{\sim} 1,00,000$ /- on the IP and directed him not to accept any new assignment till the monetary penalty is deposited with the Board.

### In the matter of Mr. Bhupesh Gupta, IP (Order dated April 21, 2020)

The DC found that the IP allowed members of CoC to usurp his powers and continued to charge the same fees during liquidation process which he was charging while acting as an RP despite such clear and unambiguous provisions of regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016. It, inter alia, directed the IP to deposit ₹ 31,09,000/- in the liquidation estate of CD which he has drawn without any authorisation while acting as liquidator. However, IP was given liberty to claim fee in accordance with the provisions of law. He was further directed not to accept any new assignment as an IP till he deposits the aforesaid amount.

# In the matter of Mr. Ashwini Mehra, IP (Order dated April 27, 2020)

The DC observed that the IP displayed a negligent approach during the conduct of CIRP and disregarded the IBBI Circular dated June 12, 2018, which stated that insolvency resolution process cost (IRPC) shall not include any expense incurred by a member of CoC or a professional engaged by them. But the RP charged the fee of lender's legal counsel to the tune of ₹73.87 lakh from the IRPC. Further, the IP, on the direction of CoC, finalised the appointment of Kroll for the second forensic audit. Hence, the fees of ₹ 50,74,000 charged by Kroll should have been borne by the CoC members themselves and should not be included as IRPC. The DC also found that the IP had shared the IM discreetly with one Mr. Om Pathak of DPS Ghaziabad Society before Eol was published and before he conducted due diligence to ensure if they would qualify as eligible prospective resolution applicants. The DC suspended registration of the IP for six months and directed him to secure reimbursement of an amount of ₹ 1,24,61,642/- which was paid to lender's legal counsel and Kroll.

#### In the matter of Mr. Mohan Lal Jain, IP (Order dated May 30, 2020)

The DC found that the RP made payment of EMIs to the HDFC Pvt. Ltd., one of the FCs, during CIRP from the assets of the CD though section 14 of the Code prohibits transfer and disposal of any of the assets of the CD during the CIRP period. It imposed a penalty equal to 25% of the fee he has received in the process.

# In the matter of Mr. Kanwal Chaudhary, IP (Order dated June 2, 2020)

The DC found that the IP appointed two unregistered entities for valuations in the CIRP. The list of creditors presented by IP before the CoC did not contain complete details in accordance with regulation I 3 of the CIRP Regulations. Further, the unauthorised transaction made in favour of *Ireo Waterfront Pvt. Ltd.*, a group company of the CD, was within the knowledge of RP; however, he failed to take adequate measures until the inspecting authority (IA) pointed out the issue. In his communications

with stakeholders, he used letterheads indicating his profession as an Advocate only and no indication of his registration as an IP or his capacity as IRP or RP in the CIRP of CD was made. The DC suspended the registration of IP for a period of three months.

#### In the matter of Mr. Vijay Kumar Garg, IP (Order dated June 8, 2020)

The DC found that the IP converted the noble insolvency profession to a business, converted professional client relationship to that of money lending and borrowing, manipulated the market for insolvency professional services, attempted to siphon off crores of rupees from the ailing CD, acted under the influence of one creditor, and contravened provisions of the Code, Regulations and the Code of Conduct for ulterior purposes. He engaged an entity, which does not fall within the ambit of 'professional' under the Code, did not ensure that the fees of such entity were reasonable, purchased insurance policy in the name of a third party, conducted two meetings of the CoC even after filing the application for liquidation of the CD before AA and transacted business beyond the order of AA and beyond the provisions of the Code. Therefore, the DC passed an order, inter alia, imposing a monetary penalty equal to 25% of the fee payable to him in all three CIRPs, and a direction to Mr. Garg to ensure that no amount beyond the reasonable fee is paid to the entity and if any amount beyond this has been paid, he shall make it good to the CD within 45 days of the order. The IP was further directed to undergo pre-registration educational course and pass limited insolvency examination again. He was directed not to take up any new assignments till all the order is complied with.

#### In the matter of Mr. Dhanamjaya Reddy Lefata, IP (Order dated June II, 2020)

Mr. Reddy was registered with the Board. His application for registration was duly filled and forwarded by the IPA and submitted for registration. A complaint was received against him that he obtained certificate of registration by suppressing material fact that criminal proceedings were

pending against him at the time of applying for registration. The matter was examined, and on finding that Mr. Reddy did not disclose the said proceedings in the application for registration, his registration was cancelled.

### **Corporate Processes**

The data used in this section relating to corporate processes are provisional. These are getting revised as further information is received from IPs or the information in respect of a process changes. For example, a process may ultimately yield an order for liquidation even after approval of resolution plan or may ultimately yield resolution plan even after an order for liquidation.

#### **Insolvency Resolution**

Since the coming into force of the provisions relating to CIRP with effect from December 1, 2016, 3911 CIRPs have commenced by the end of June, 2020, as presented in Table 1. Of these, 380 have been closed on appeal or review or settled; 218 have been withdrawn; 955 have ended in orders for liquidation and 250 have ended in approval of resolution plans. Sectoral distribution of CDs under CIRP is presented in Table 2.

Table 1: Corporate Insolvency Resolution Process

	nbe	

Year / Quarter	CIRPs at	Admitted		Closure by					
	the beginning of the Period		Appeal/ Review/ Settled	Withdrawal under Section 12A	Approval of Resolution Plan	Commen- cement of Liquidation	at the end of the Period		
2016 - 17	0	37	1	0	0	0	36		
2017 - 18	36	705	89	0	20	91	541		
2018 - 19	541	1151	130	94	81	305	1082		
Apr - Jun, 2019	1082	301	37	30	26	96	1194		
Jul - Sep, 2019	1194	584	35	30	33	156	1524		
Oct - Dec, 2019	1524	622	49	24	39	150	1884		
Jan - Mar, 2020	1884	435	36	28	35	133	2087		
Apr - Jun, 2020	2087	76	3	12	16	24	2108		
Total	NA	3911	380	218	250	955	2108		

Source: Compilation from website of the NCLT and filing by Insolvency Profes

Table	2: Sectora	I Distribution	of CIRPs	as on	lune 3	₹0.	2020

Sector No. of CIRPs							
	Admitted			Closed			Ongoing
		Appeal/Review/ Settled	Withdrawal under Section 12 A	Approval of Resolution Plan	Commencement of Liquidation	Total	
Manufacturing	1595	130	88	129	418	765	830
Food, Beverages & Tobacco Products	204	11	9	12	55	87	117
Chemicals & Chemical Products	158	13	10	19	36	78	80
Electrical Machinery & Apparatus	115	П	4	5	45	65	50
Fabricated Metal Products	89	7	8	4	25	44	45
Machinery & Equipment	177	22	13	10	42	87	90
Textiles, Leather & Apparel Products	274	20	16	16	91	143	131
Wood, Rubber, Plastic & Paper Products	191	14	П	17	34	76	115
Basic Metals	277	21	7	34	67	129	148
Others	110	11	10	12	23	56	54
Real Estate, Renting & Business Activities	777	103	60	32	157	352	425
Real Estate Activities	186	30	12	5	17	64	122
Computer and related activities	114	13	12	0	24	49	65
Research and Development	5	I	I	I	0	3	2
Other Business Activities	472	59	35	26	116	236	236
Construction	421	56	25	21	66	168	253
Wholesale & Retail Trade	390	31	16	14	120	181	209
Hotels & Restaurants	89	П	5	9	18	43	46
Electricity & Others	120	8	2	9	19	38	82
Transport, Storage & Communications	117	12	6	7	40	65	52
Others	402	29	16	29	117	191	211
Total	3911	380	218	250	955	1803	2108

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

The distribution of stakeholders who triggered CIRP is presented in Table 3. OCs triggered 50.14% of the CIRPs, followed by about 43.21% by FCs and remaining by the CDs.

<sup>\*</sup>These CIRPs are in respect of 3843 CDs \*\*This excludes 1 CD which has moved directly from BIFR to resolution

Table 3: Initiation of Corporate Insolvency Resolution Process

Year / Quarter	No. of CIRPs Initiated by						
	Operational Creditors	Financial Creditors	Corporate Debtors	Total			
2016 - 17	7	8	22	37			
2017 - 18	310	286	109	705			
2018 - 19	567	513	71	1151			
Apr - Jun, 2019	154	130	17	301			
Jul - Sep, 2019	296	279	9	584			
Oct - Dec, 2019	334	270	18	622			
Jan - Mar, 2020	246	180	9	435			
Apr - Jun, 2020	47	24	5	76			
Total	1961	1690	260	3911			

The status of CIRPs as on June 30, 2020 is presented in Table 4.

Table 4: Status of CIRPs as on June 30, 2020

Status of CIRPs	No. of CIRPs
Admitted	3911
Closed on Appeal / Review / Settled	380
Closed by Withdrawal under section 12A	218
Closed by Resolution	250
Closed by Liquidation	955
Ongoing CIRP	2108
> 270 days	1094
> 180 days ≤ 270 days	539
> 90 days ≤ 180 days	402
≤ 90 days	73

#### Withdrawals under Section 12A

Till June, 2020, a total of 218 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 5.

Table 5: Closure of CIRP by Withdrawal till June 30, 2020

Amount of Claims Admitted* (₹ crore)	No. of CIRPs
≤ 01	99
> 01 ≤ 10	53
> 10 ≤ 50	34
> 50 ≤ 100	10
> 100 ≤ 1000	8
> 1000	3
Reason for Withdrawal*	
Full settlement with the applicant	68
Full settlement with other creditors	12
Agreement to settle in future	15
Other settlements with creditors	63
Corporate debtors not traceable	2
Corporate debtor struck off the Register	1
Applicant not pursuing CIRP due to high cost	4
Others	42
*Data awaited in 11 CIRPs	•

<sup>\*</sup>Data awaited in 11 CIRPs

#### **Resolution Plans**

It is seen that about 52.96% of the CIRPs, which were closed, yielded orders for liquidation, as compared to 13.86% ending up with a resolution plan. However, it is important to note that 72.48% of the CIRPs ending in liquidation (690 out of 952 of which data is available) were earlier with BIFR and/or defunct (Table 6). The economic value in most of these CDs had already eroded before they were admitted into CIRP. These CDs had assets, on average, valued at less than 5% of the outstanding debt amount.

Table 6: CIRPs Ending with Orders for Liquidation till June 30, 2020

State of Corporate Debtor	No. of CIRPs initiated by					
at the Commencement of CIRP	FC	ос	CD	Total		
Either in BIFR or Non-functional or both	277	310	103	690		
Resolution Value > Liquidation Value	62	34	24	120		
Resolution Value ≤ Liquidation Value*	347	374	111	832		

Note: 1. There were 51 CIRPs, where CDs were in BIFR or non-functional but had resolution value higher than liquidation value.

- 2. Data of 3 CIRPs is awaited.
- \* Includes cases where no resolution plans were received and cases where Liquidation value is zero or not estimated.

Till March, 2020, 221 CIRPs had yielded resolution plans as presented in the last newsletter. 13 CIRPs were later reported as yielding resolution plans during that period, as presented in Part A of Table 7. During April June, 2020, 16 CIRPs yielded resolution plans with different degrees of realisation as compared to the liquidation value as presented in Part B of Table 7. During the quarter, realisation by FCs under resolution plans in comparison to liquidation value is 194.30%. However, the realisation by them in comparison to their claims is 30.19%. Till June, 2020, realisation by FCs under resolution plans in comparison to liquidation value is 183.59%, while the realisation by them in comparison to their claims is 44.70%. It is important to note that out of the 250 CDs rescued under the processes under the Code, 81 were in BIFR or defunct.

Table 7: CIRPs Yielding Resolution

(Amount in ₹ crore)

SI. No.	Name of CD	Defunct (Yes/No)	Date of Commencement of CIRP	Date of Approval of Resolution Plan	CIRP initiated by	Total Admitted Claims of FCs	Liquidation Value	Realisable by FCs	Realisable by FCs as % of their Claims Admitted	Realisable by FCs as % of Liquidation Value
	<del> </del>		Part A: Prior Peri		, 2020)					
I	Shantha Projects Limited	No	10-10-18	26-09-19	FC	68.57	18.81	14.20	20.71	75.49
2	Sai Wardha Power Generation Limited*		09-11-18	17-10-19	FC					
3	New Phaltan Sugar Works Ltd*		20-02-19	11-11-19	FC					
4	Alex Green Energy Private Limited	Yes	18-02-19	25-11-19	oc	1154.00	9.16	10.12	0.88	110.48
5	Shree Raghav Ispat (India) Private Limited	Yes	10-05-18	06-12-19	oc	19.78	5.61	5.50	27.81	98.04
6	Xenia Abode Services Private Limited	No	09-01-19	08-01-20	oc	8.38	0.29	8.38	100.00	2889.66
7	Maple Realcon Private Limited	No	18-07-18	20-02-20	OC	94.69	40.60	94.69	100.00	236.48
8	Tantia Constructions Ltd	No	13-03-19	24-02-20	FC	1526.14	51.30	67.00	4.39	137.43
9	Krishna Godavari Power Utiilities Limited*		04-12-18	27-02-20	FC					
10	Satyamitra Stock Consultants Private Limited	Yes	09-08-19	04-03-20	FC	5.78	0.04	0.11	1.90	281.25
П	Madhya Bharat Phosphate Private Limited	Yes	11-09-18	05-03-20	oc	39.74	11.62	18.15	45.67	156.20
12	A P Enterprises Private Limited	No	13-11-18	18-03-20	oc	23.24	14.45	19.93	85.75	137.92
13	Jaihind Projects Limited	No	02-11-18	19-03-20	oc	1002.06	33.47	53.50	5.34	162.09
		•	Part B: A	pril - June, 2020	•					
ı	Anush Finlease and Construction Private Limited	Yes	30-05-19	01-04-20	FC	172.89	69.94	69.69	40.31	99.64
2	Trimax IT Infrastructure & Services Limited	No	21-02-19	04-05-20	FC	1701.23	103.82	166.01	9.76	159.90
3	Ganeshom Cereals Private Limited	Yes	13-12-18	18-05-20	FC	511.88	6.27	8.00	1.56	127.59
4	India Pencillins Limited	No	05-11-19	29-05-20	oc	0.00	0.15	0.00	NA	0.00
5	The Dhar Textile Mills Limited	Yes	15-02-19	04-06-20	FC	668.02	15.99	23.27	3.48	145.52
6	Evan Multispeciality Hospital & Research Centre Private Limited	No	03-12-18	08-06-20	oc	46.32	17.74	22.55	48.68	127.15
7	Aircel Limited	No	12-03-18	09-06-20	CD		1606.27			
8	Dishnet Wireless Limited	No	19-03-18	09-06-20	CD	19831.79	970.25	6630.00**	33.43	250.26
9	Aircel Cellular Limited	No	19-03-18	09-06-20	CD	1	72.71			
10	Pannalal Cold Storage Private Limited	No	21-10-19	15-06-20	FC	16.27	6.17	7.30	44.87	118.31
П	RNB Cements (P) Ltd	Yes	13-06-19	19-06-20	FC	142.41	33.82	34.00	23.87	100.53
12	Sarbat Cotfab Private Limited	No	15-02-18	08-06-20	FC	84.94	1.94	1.61	1.90	82.99
13	Uttam Value Steel Private Limited	No	26-06-18	30-04-20	FC	2479.49	696.35	775.00	31.26	111.29
14	Uttam Galva Metalics Limited	No	11-07-18	30-04-20	FC	3634.08	865.87	1056.00	29.06	121.96
15	Monet Exports Private Limited	Yes	20-12-18	26-06-20	FC	5.88	2.52	2.70	45.92	107.14
16	Digjam Limited	No	26-04-19	27-05-20	oc	70.86	93.79	70.86	100.00	75.55
	Total (April - June	, 2020)	•	•		29366.07	4563.60	8866.99	30.19	194.30
	Total (Till lune.	Total (Till June, 2020)							44.70	183.59

<sup>\*</sup>Data awaite

<sup>\*\*</sup> Zero Coupon Optionally Convertible Debentures of ₹ 6,630 crore to be issued to FCs in addition to 24% equity in respective companies Defunct: Not Going Concern/Erstwhile BIFR

### Liquidation

Till March, 2020, a total of 914 CIRPs had yielded orders for liquidation, as presented in the previous Newsletter. 17 CIRPs were later reported as yielding orders for liquidation during that period, as indicated in Part A of Table 8. During the quarter April - June, 2020, 24 CIRPs ended in liquidation, taking the total CIRPs yielding liquidation to 955 (excluding 6 cases where liquidation orders have been set aside by NCLAT / Supreme Court). The details of the CIRPs ending in orders of liquidation during the quarter is reported in Part B of Table 8.

Table 8: CIRPs Yielding Orders for Liquidation

SI.	Name of CD	Defunct		Date of	Date of
No.		(Yes /	Initiated	Commencement	Liquidation
		No)	by	of CIRP	Order
	Part A: Prior Perio	d (Till Mar	ch 31, 202	20)	
I	Sathya Sayee Cold Storage Private Limited	Yes	OC	08-01-19	24-07-19
2	Ex-Servicemens Multipurpose Services	Yes	OC	04-06-18	17-09-19
	(India) Private Limited				
3	Apna Scientific Supplies Private Limited	Yes	OC	10-08-18	24-09-19
4	St. John Freight Systems Limited	No	FC	10-12-18	26-11-19
5	Benaka Sponge Iron Private Limited	Yes	OC	07-03-19	26-11-19
6	Acaricide India Private Limited	No	OC	09-07-19	21-01-20
7	Royal Pressing and Components Private Limited	No	OC	15-03-19	13-02-20
8	OM Pizzas and Eats India Private Limited	Yes	OC	16-03-18	14-02-20
9	Dhanlaxmi Solvex Private Limited	Yes	FC	02-04-19	27-02-20
10	Tulsi Extrusions Limited	Yes	FC	28-12-18	02-03-20
П	S.B.O. Export Private Limited	Yes	OC	30-07-18	04-03-20
12	Ganga Advisory Private Limited	No	FC	24-01-19	04-03-20
13	Adya Oils & Chemicals Limited	Yes	FC	16-09-19	04-03-20
14	Honeycomb Technologies Private Limited	Yes	OC	24-05-19	12-03-20
15	Tasgaonkar Blossom Private Limited	Yes	FC	19-08-19	12-03-20
16	Fizzy Foodlabs Private Limited	No	OC	18-09-19	12-03-20
17	Rang Super Shopping Private Limited	No	FC	27-08-19	18-03-20
	Part B: Ap	ril - June,	2020		
I	Bhaskar Shrachi Alloys Ltd	Yes	OC	27-09-19	29-04-20
2	M.N. Horological Industries Private Limited	Yes	FC	23-07-19	05-05-20
3	Everwin Textile Mills Private Limited	No	FC	29-10-18	08-05-20
4	Priknit Retails Limited	Yes	FC	11-09-19	18-05-20
5	Mrunmaha Agro Foods Private Limited	Yes	OC	20-11-18	26-05-20
6	Bhatia Global Trading Limited	No	FC	23-05-17	29-05-20
7	The Jeypore Sugar Company Limited	NA	FC	25-02-19	29-05-20
8	Tirupur Sri Senthil Cotton Mills Limited	Yes	FC	25-09-19	29-05-20
9	Lotus Auto Engineering Limited	No	FC	07-08-18	01-06-20
10	Vintron Communication Private Limited	No	FC	15-10-19	08-06-20
П	Topworth Pipes & Tubes Private Limited	Yes	FC	11-12-18	12-06-20
12	GCL Private Limited	Yes	OC	01-05-19	15-06-20
13	Vintage Foods and Industries Limited	Yes	CD	23-07-19	15-06-20
14	Tirupati Balaji Polymers Private Limited	Yes	FC	12-07-19	16-06-20
15	Rathi Super Steel Limited	Yes	FC	12-06-19	19-06-20
16	Accord Industries Limited	Yes	FC	26-07-19	19-06-20
17	Nu Tek India Limited	Yes	FC	23-08-19	22-06-20
18	Siddharth Tubes Limited	Yes	FC	24-01-19	24-06-20
19	Usha Multipack Private Limited	Yes	FC	06-02-19	24-06-20
20	Air Pegasus Private Limited*	Yes	OC	23-08-19	24-06-20
21	Jeppiaar Power Corporation Private Limited	Yes	FC	04-03-19	25-06-20
22	Him Steel Private Limited	Yes	FC	15-07-19	25-06-20
23	R.S. Ajit Singh and Co. (Automotives) Private Limited	Yes	FC	31-07-19	26-06-20
	rrivate Limited				

Defunct: Not Going Concern/ Erstwhile BIFR

NA: Not Available

\* Direct Dissolution of CD ordered by AA.

The status of liquidation process as on June 30, 2020 is presented in Table 9

Table 9: Status of Liquidation Processes as on June 30, 2020

Status of Liquidation	Number
Initiated	955*
Final Report submitted	88
Closed by Dissolution	66
Closed by Going Concern Sale	3
Ongoing	867
>Two years	104
> One year ≤ Two years	324
> 270 days ≤ I year	145
> 180 days ≤ 270 days	138
> 90 days ≤ 180 days	133
≤ 90 days	23

<sup>\*</sup>This excludes 6 cases where liquidation order has been set aside by NCLAT / Supreme Court.

Till March 2020, 56 liquidation processes were closed by dissolution / going concern sale as presented in the last newsletter. Dissolution of five more CDs, which happened during the earlier period were reported later, as presented in Part A of Table 10. During April - June, 2020, 8 more liquidation processes were closed, taking total number of dissolutions / sold as going concern to 69. The details of the same are presented in Table 10.

Table	10: Details of Closed Liquid	ations				(Amou	ınt in ₹ crore)
SI. No.	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
		Part A:	Prior Period (	Till March 31,	2020)		
I	Sathya Sayee Cold Storage Private Limited*	24-07-19	3.27	NA	NA	NA	24-07-19
2	Benaka Sponge Iron Private Limited*	26-11-19	3.41	NA	NA	NA	26-11-19
3	Apna Scientific Supplies Private Limited*	24-09-19	Not Available	NA	NA	NA	24-09-19
4	DCS International Private Limited	17-11-17	3.80	0.85	0.90	0.74	08-11-19
5	Resurgent Infratel Private Limited	30-05-18	80.75	NA	NA	NA	03-01-20
			Part B: April	- June, 2020			
I	K. T. C. Foods Private Limited#	31-05-19	151.78	18.46	18.46	16.86	18-05-20
2	Pink Rose Lingerie Private Limited	04-12-19	40.62	0.09	0.10	NA	28-05-20
3	Apex Engineering Solution and Services Private Limited	25-07-18	19.34	0.58	0.5	0.38	29-05-20
4	Quetzel Furniture Systems Private Limited	16-10-18	9.28	0.59	0.12	NA	29-05-20
5	Linkson Ispat & Energies Private Limited	20-07-18	269.34	NA	NA	NA	17-06-20
6	Southern Online Bio Technologies Limited#	16-07-19	513.05	34.23	51.70	49.07	22-06-20
7	Air Pegasus Private Limited*	24-06-20	48.16	NA	NA	NA	24-06-20
8	Oasis Textiles Limited	22-11-17	1.62	0.07	0.62@	0.55@	30-06-20
	Total (April -	June, 2020)		1053.19	54.02	71.50	66.86
	Total (Till Ju	ine, 2020)		11401.11	130.51	149.62	141.74

<sup>&#</sup>x27;0' means an amount below two decimals.

### Sale as a Going Concern under Liquidation

Till June 30, 2020, three Corporate Debtors, namely, Emmanuel Engineering Private Limited, K.T.C. Foods Private Limited, and Southern Online Bio Technologies Limited, have been sold as a going concern under liquidation process. The total admitted claims during the liquidation process, in these cases, were ₹ 672.63 crore against the liquidation value of ₹ 57.31 crore. The liquidators in these cases were able to realise ₹ 76.09 crore.

The AA passes an order for liquidation under four circumstances. The details of liquidation as in terms of these circumstances are presented in Table II.

Table II: Reasons for Liquidations

Circumstance	Number of Liquidations			
	Where Final Reports Submitted	Ongoing		
AA did not receive resolution plan for approval	45	437		
AA rejected the resolution plan for non-compliance with the requirements	0	44		
CoC decided to liquidate the CD during CIRP	43	382		
CD contravened provisions of resolution plan	0	4		
Total	88	867		

Regulation I2 of the IBBI (Liquidation Process) Regulations, 2016 requires the liquidator to make a public announcement calling upon stakeholders to submit their claims as on the liquidation commencement date, within 30 days from the liquidation commencement date. The details of the claims admitted by the liquidators in 895 liquidations, for which data are available, are presented in Table I2.

The average time taken for completion of 250 CIRPs yielding resolution is 423 days, including the time excluded by the AA. However, if the time excluded by the AA is excluded, the average time for completion of CIRPs is 380 days (Table 13). The average time taken for completion of 955 CIRPs, which have yielded orders for liquidations, is 312 days.



NA means Not realisable/Saleable or no asset left for liquidation

<sup>\*</sup>Direct Dissolution; Claims pertain to CIRP period

<sup>#</sup>Sale as a Going concern.

② The CD received ₹ 55 lakhs by way of income tax refund and the same was distributed to the stakeholders

Table 12: Claims in Liquidation Process

(Amount in ₹ crore)

Stakeholders under Section	Number of Claimants	Amount of claims Admitted	Liquidation Value	Amount Realised#	Amount Distributed				
84 Liquidations where Final Report Submitted									
52 ^	6	31.23	1.94	1.78	1.78				
53 (I) (a)	NA	NA			13.91				
53 (I) (b)	716	10856.56			148.48				
53 (I) (c)	133	1.95			0.87				
53 (I) (d)	109	174.77			6.03				
53 (I) (e)	49	299.52	178.64	190.57	6.49				
53 (I) (f)	331	145.49		77. /	8.52				
53 (I) (g)	0	0			0				
53 (I) (h)	70	2.87			1.51				
Total (A)	1414	11512.39	180.58	192.35#	187.59				
	Ongoi	ng 807 Liquida	ations*						
53 (I) (a)					4153				
53 (I) (b)	31640	409683.97							
53 (I) (c)	24367	1225.43							
53 (I) (d)	8522	98362.68							
53 (I) (e)	845	17424.90	27413.05**	Not	Not				
53 (I) (f)	1955425	28527.17		Applicable	Applicable				
53 (I) (g)	0	0							
53 (I) (h)	696	2640.14							
Total (B)	2021495	557864.30							
Grand Total (A+B)	2022909	569376.69	27593.63						

<sup>\*</sup> Data for other liquidations are not available.

Out of 867 ongoing cases, liquidation value of only 749 CDs is available. Liquidation value of 563 CDs taken during liquidation process is ₹ 27413.05 crore and liquidation value of rest of the 186 CDs captured during CIR process is ₹9745.21 crore.

Table 13: Average time for approval of Resolution Plans/Orders for Liquidation

SI.	Average time	No. of	Time (In days)			
No.		Processes covered	Including excluded time	Excluding excluded time		
CIRPs						
1	From ICD to Approval of resolution plans by AA	250	423	380		
2	From ICD to order for Liquidation by AA	955	312	NA		
	Liquidations					
3	From LCD to submission of final report for Liquidations	88	296	NA		
4	For submission of final report under Voluntary Liquidation	250	336	NA		

#### Twelve large accounts

Resolution of 12 large accounts were initiated by banks, as directed by RBI. Together they had an outstanding claim of ₹ 3.45 lakh crore as against liquidation value of ₹ 73,220 crore. Of these, resolution plan in respect of eight CDs have been approved and orders for liquidation have been passed in respect of two CDs. Due to failure of implementation of approved resolution plan in respect of one CD (Amtek Auto Ltd.), the process has restarted. Thus, CIRPs in respect of two CDs and liquidation in respect of two CDs are ongoing and are at different stages of the process. The status of the 12 large accounts is presented in Table 14.

Name of CD	Claims	of FCs De Resolution		Realisation by all Claimants	Successful Resolution Applicant
	Amount Admitted	Amount Realised	Realisation as % of Claims	as a percentage of Liquidation Value	
		(	Completed		
Electrosteel Steels Limited	13175	5320	40.38	183.45	Vedanta Ltd.
Bhushan Steel Limited	56022	35571	63.50	252.88	Bamnipal Steel Ltd.
Monnet Ispat & Energy Limited Investments Pvt. Ltd.	11015	2892	26.26	123.35	Consortium of JSW and AION
Essar Steel India Limited	49473	41018	82.91	266.65	Arcelor Mittal India Pvt. Ltd.
Alok Industries Limited	29523	5052	17.11	115.39	Reliance Industries Limited, JM Financial Asset Reconstruction Company Ltd. JMFARC - March 2018 Trust
Jyoti Structures Limited Sharad Sanghi.	7365	3691	50.12	387.44	Group of HNIs led by Mr.
Bhushan Power & Steel Limited	47158	19350	41.03	209.12	JSW Limited
Jaypee Infratech Limited	23176	23223	100.20	130.82	NBCC (India) Limited
		Uı	nder Process		
Amtek Auto Limited	CIRP Resta	ted			
Era Infra Engineering Limited	Under CIR	•			
Lanco Infratech Limited	Under Liqu	idation		•	•
ABG Shipyard Limited	Under Liqu	idation			

#### **Resolution of FSPs**

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

#### **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. At the end of June 30, 2020, 692 corporate persons initiated voluntary liquidation (Table 15). Final reports in respect of 250 voluntary liquidations have been submitted by June 30, 2020.

Table 15: Commencement of Voluntary Liquidations till June 30, 2020

Period	Liquidations at	Liquidations	Liquidatio	Liquidations	
	the beginning	Commenced	Withdrawal	Final Reports Submitted	at the end
2017 – 18	0	184	0	- 11	173
2018 – 19	173	229	7	97	298
Apr - Jun, 2019	298	53	0	24	327
Jul - Sep, 2019	327	61	0	37	351
Oct - Dec, 2019	351	66	0	22	395
Jan - Mar, 2020	395	89	1	36	447
Apr - Jun, 2020	447	10	0	23	434
Total	NA	692	8	250	434

The status of 692 liquidations is presented in Table 16.

Table 16: Status of Voluntary Liquidations as on June 30, 2020

Status	No. of Liquidations
Initiated	692
Closed by withdrawal	08
Final Report Submitted	250
Closed by Dissolution	137
Ongoing	434
> Two years	77
> One year ≤ Two years	151
> 270 days ≤ I year	51
> 180 days ≤ 270 days	58
> 90 days ≤ 180 days	87
≤ 90 days	10

Of the 692 corporate persons that initiated voluntary liquidations till June 30, 2020, the reasons for these initiations are available for 678 cases, which are presented in Table 17.

Table 17: Reasons for Voluntary Liquidations

SI. No.	Reason	No. of Corporate Persons
1	Not carrying business operations	451
2	Commercially unviable	81
3	Running into losses	15
4	No revenue	24
5	Promotors unable to manage affairs	15
6	Purpose for which company was formed accomplished	14
7	Contract termination	5
8	Miscellaneous	73
Total		678

Most of these corporate persons are small entities. 429 of them have paid-up equity capital of less than ₹ I crore. Only 84 of them have paid-up capital exceeding ₹ 5 crore. The corporate persons, for which details are available, have an aggregate paid-up capital of ₹4643 crore (Table 18).

<sup>#</sup> Inclusive of unclaimed proceeds of ₹ 4.76 crore under liquidation.

<sup>^</sup> For 5 CDs, details on relinquishment or otherwise by secured creditors are not available. Accordingly, their details have been captured in section 53.

Due to failure of implementation of approved resolution plan in Amtek Auto Ltd., which was earlier included in the completed list, the process has restarted

The Resolution Plan approved in Jaypee Infratech Limited is under challenge before the Hon'ble NCLAT

Table 18: Details of 684 Liquidations (excludes 8 withdrawals) (Amount in ₹ crore) Details of No. of Paid-up Outstanding Surplus Assets Amount capital debt paid to Liquidations for 250 845 3091 18 2854 18 which Final Reports submitted 3798# 1693# Ongoing Liquidations 434 Total 684 4643 4784

It was reported in the last newsletter that dissolution orders were passed in respect of 120 liquidations. Dissolution orders in respect of 10 more liquidations, which were issued during the earlier period, were reported later, as indicated in Part A of Table 19. During the quarter April - June, 2020, dissolutions orders in respect of 7 more voluntary liquidations were passed taking the total dissolutions to 137. These 137 corporate persons owed  $\stackrel{?}{\sim} 9.49$  crore to creditors and through voluntary liquidation process, they were paid  $\stackrel{?}{\sim} 9.49$  crore.

Table I	9: Realisations under Voluntary Liquidation						(A	Amount in ₹ crore)
SI. No.	Name of Corporate Person	Date of Commencement	Date of Dissolution	Realisation of Assets	Amount due to Creditors	Amount paid to Creditors	Liquidation Expenses	Surplus
		Part A: Prior	Period (Till Marc	h 31, 2020)		·	·	
I	Moments Heights Private Limited	19-01-18	06-05-19	0.18	-	-	0.08	0.10
2	Kansal Hosiery Exports Limited	28-05-18	05-09-19	2.52	-	-	0.44	2.08
3	Alpha Coal India Private Limited	30-03-18	18-09-19	0.08	-	-	0.08	-
4	Keppel Brady Services Private Limited	30-03-18	15-10-19	0.70	-	-	0.07	0.63
5	Milano Luxury Garments Private Limited	03-11-17	21-11-19	2.15	0.06	0.06	0.12	1.96
6	Bhaskar Gensets Pvt. Ltd.	06-01-18	03-12-19	1.25	0.01	0.01	0.21	1.02
7	Shivdeep Hotels Private Limited	21-05-18	19-12-19	0.93	-	-	0.14	0.79
8	NRT IT Services India Private Limited	19-02-18	02-01-20	0.86	_	_	0.07	0.79
9	Elecom India Private Limited	09-02-18	23-01-20	0.53	0.05	0.05	0.20	0.28
10	Fiduciary Billing Solutions Private Limited	22-10-18	18-03-20	2.57	-	-	0.97	1.60
		Part I	3: April - June, 20	)20				
1	QNB (India) Private Limited	22-12-17	12-05-20	5.39	-	-	1.62	3.77
2	Bander Coal Company Private Limited	20-03-18	26-05-20	0.44	-	-	0.05	0.39
3	Welmedix Healthcare Private Limited	24-12-19	29-05-20	-	-	-	-	-
4	UC Gas Engineering Limited	26-08-19	16-06-20	0.04	-	-	0.04	-
5	Tri Vision Trading Private Limited	26-09-19	23-06-20	-	-	-	-	-
6	Pandit Holdings Pvt Ltd	24-02-18	24-06-20	0.01	-	-	0.01	-
7	IMCO Agro India Private Limited	24-04-18	29-06-20	2.66	0.09	0.09	0.03	2.54
Total	(April - June, 2020)			8.54	0.09	0.09	1.75	6.70
Total	(Till June, 2020)			2712.71	9.49	9.49	17.27	2685.94

### **Summary of Outcomes**

- (a) The first order objective of the Code is rescuing life of a CD in distress. The Code has rescued 250 CDs till June, 2020 through resolution plans. They owed ₹ 4.71 lakh crore to creditors. However, the realisable value of the assets available with them, when they entered the CIRP, was only ₹ 1.03 lakh crore. The Code maximises the value of the existing assets, not of the assets which do not exist. Under the Code, the creditors recovered ₹ 1.96 lakh crore, which is about 191% of the realisable value of these CDs. Any other option of recovery or liquidation would have recovered at best ₹ 100 minus the cost of recovery/liquidation, while the creditors recovered ₹ 191 under the Code. The excess recovery of ₹ 91 is a bonus from the Code. Recovery is incidental under the Code. Yet, the recovery for FCs, as compared to their claims, is around 45%, which is highest among all options available to creditors. Such recovery only reflects the extent of value erosion by the time the CDs entered CIRP.
- (c) Of the total CDs ending up with orders for liquidation, data in respect of 952 CDs are available. These had an aggregate claim of  $\stackrel{?}{\sim} 5.30$  lakh crore. Unfortunately, they had assets, on the ground, valued only at  $\stackrel{?}{\sim} 0.38$  lakh crore. Till June 30, 2020, 88 CDs have been completely liquidated. Many such CDs did not have any job or asset when they entered the IBC

- process. These included Ghotaringa Minerals Limited and Orchid Healthcare Private Limited, which owed  $\stackrel{?}{\scriptstyle <}$  8,163 crore, while they had absolutely no assets and employment. These 88 CDs together had outstanding claims of  $\stackrel{?}{\scriptstyle <}$  11,512 crore, but the assets valued at  $\stackrel{?}{\scriptstyle <}$  181 crore.  $\stackrel{?}{\scriptstyle <}$  192 crore was realised through liquidation of these companies.
- (d) A distressed asset has a life cycle. Its value gradually declines with time if distress is not addressed. The credible threat of the Code, that a CD may change hands, has changed the behaviour of debtors. Thousands of debtors are resolving distress in early stages of distress. They are resolving when default is imminent, on receipt of a notice for repayment but before filing an application, after fling application but before its admission, and even after admission of the application, and making best effort to avoid consequences of resolution process. Most companies are rescued at these stages. Only a few companies, who fail to address the distress in any of earlier stages, pass through the entire resolution process. At this stage, the value of the company is substantially eroded, and hence some of them are rescued, and others liquidated. The recovery may be low at this stage, but recovery in early stages of distress is much higher, and it is primarily because of the Code.
- (e) The Code endeavours to close the various processes at the earliest. It prescribes timelines for some of them. The 250 CIRBs, which have yielded resolution plans by the end of June, 2020, took on average 380 days (after excluding the time excluded by the AA) for conclusion of process. Similarly, the 955 CIRPs, which ended up in orders for liquidation, took on average 312 days for conclusion. Further, 88 liquidation processes, which have closed by submission of final reports till June 30, 2020, took on average 296 days for closure. Similarly 250

<sup>\*</sup>For ongoing liquidations, outstanding debt amount is not available.

<sup>#</sup> Paid up capital and assets of 418 and 404 cases, respectively, are available

voluntary liquidation processes, which have closed by submission of final reports, took on average 336 days for closure.

(f) Till June, 2020, a total of 250 CIRPs have yielded resolution plans. The cost details are available in respect of 178 CIRPs. The cost works out on average 0.75% of liquidation value and 0.38% of resolution value.

### **Individual Processes**

The provisions relating to insolvency resolution and bankruptcy relating to personal guarantors (PGs) to CDs came into force on December I, 2019. It was reported in the last newsletter that three applications were filed under these provisions. As per the information received from IPs, four more applications have been filed by the creditor under section 95 of the Code. Out of them two have been filed in NCLT, New Delhi and one each in NCLT, Bengaluru and NCLT, Mumbai.

### **Service Providers**

### **Insolvency Professionals**

An individual, who is enrolled with an IPA as a professional member and has the required qualification and experience and passed the Limited Insolvency Examination, is registered as an IP. An IP needs an Authorization for Assignment (AFA) to take up an assignment under the Code with effect from January I, 2020. IBBI made available an online facility from November 16, 2019 to enable an IP to make an application for AFA to the IPA, and an IPA to process such applications electronically. The details of IPs registered as on June 30, 2020 and AFAs held by them, IPA-wise, is presented in Table 20.

Table 20: Registered IPs and AFAs as on June 30, 2020 (Number)

(Number)									
City / Region		Registe	ered IPs		IPs having Authorisation for Assignment				
	IIIP of ICAI	ICSI IIP	IPA of ICMAI	Total	IIIP of ICAI	ICSI IIP	IPA of ICMAI	Total	
New Delhi	376	236	66	678	264	163	51	478	
Rest of Northern Region	324	171	47	542	229	127	31	387	
Mumbai	356	124	32	512	236	81	26	343	
Rest of Western Region	228	97	32	357	154	70	23	247	
Chennai	119	78	12	209	66	55	8	129	
Rest of Southern Region	305	169	48	522	202	118	39	359	
Kolkata	174	35	17	226	126	21	12	159	
Rest of Eastern Region	51	20	5	76	31	14	4	49	
Total Registered	1933	930	259	3122	1308	649	194	2151	

Of the 3134 IPs registered till date, registrations of four IPs have been cancelled through disciplinary process, and registrations of two IP cancelled on failing to fulfil the requirement of fit and proper person status. As per information available, six IPs have passed away. The registrations and cancellations of registrations IPs, quarter wise, till June 30, 2020 are presented in Table 21.

Table 21: Registration and Cancellation of Registrations of IPs

Year / Quarter		No. of IPs							
	Registered	Cancelled	Registered at the End of the Quarter						
Oct - Dec, 2016#	977	0	977						
2016 - 17 (Jan - Mar)	96	0	96						
2017 – 18	1716	0	1812						
2018 – 19	647	4	2455						
Apr - Jun, 2019	203	0	2663						
Jul - Sep, 2019	127	0	2790						
Oct - Dec, 2019	122	0	2913						
Jan - Mar, 2020	98	I	3008						
Apr - Jun, 2020	119	1	3127						
Total	3128	6	3122						

# Registrations with validity of six months. These registrations expired by June 30, 2017.

An individual with 10 years of experience as a member of the ICAI, ICSI, ICMAI or a Bar Council or an individual with 15 years of experience in management is eligible for registration as an IP on passing the Limited

Insolvency Examination. Table 22 presents distribution of IPs as per their eligibility (an IP may be a member of more than one Institute) as on June 30, 2020. Of the 3 I 22 IPs as on June 30, 2020, 285 IPs (constituting about nine per cent of the total registered IPs) are female.

Table 22: Distribution of IPs as per their Eligibility as on June 30, 2020

Eligibility	No. of IPs						
	Male	Female	Total				
Member of ICAI	1563	140	1703				
Member of ICSI	475	94	569				
Member of ICMAI	154	12	166				
Member of Bar Council	179	21	200				
Managerial Experience	466	18	484				
Total	2837	285	3122				

The Regulations provide that an IP shall be eligible to obtain an AFA if he has not attained the age of 70 years. Table 23 presents the age profile of the IPs registered as on June 30, 2020.

Table 23: Age Profile of IPs as on June 30, 2020

(Number)

Age Group (in Years)	IIIP ICAI	ICSHIP	IPA of ICMAI	Total
≤ 40	224	70	4	298
> 40 ≤ 50	688	332	46	1066
> 50 ≤ 60	615	243	62	920
> 60 ≤ 70	378	256	139	773
> 70 ≤ 80	24	26	8	58
> 80 ≤ 90	3	3	0	6
> 90	I	0	0	I
Total	1933	930	259	3122

#### Panel of IPs

In accordance with the IPs to act as IRPs, Liquidators, RPs and Bankruptcy Trustees (Recommendation) Guidelines, 2020, the IBBI prepared a panel of IPs having AFAs for the period July I, 2020 to November 25, 2020 and shared the same with the AAs (NCLT and DRT). Table 24 presents zone-wise number of IPs (holding valid AFA) empaneled for the said period. The IPs having registered office in the areas listed in column (2) of the table shall be eligible for appointment by benches of NCLT and DRT located in the zone listed in column (1).

Table 24: Zone-wise IPs in the Pane

Zone (I)	Areas Covered (2)	No. of Ips (3)						
New Delhi	Union Territory of Delhi	209						
Ahmedabad	State of Gujarat	63						
	Union Territory of Dadra and Nagar Haveli							
	Union Territory of Daman and Diu							
Allahabad	State of Uttar Pradesh							
	State of Uttarakhand							
Amravati	State of Andhra Pradesh	9						
Bengaluru	State of Karnataka	31						
Chandigarh	State of Himachal Pradesh	103						
•	State of Punjab							
	State of Haryana							
	Union Territory of Chandigarh							
	Union Territory of Jammu and Kashmir							
	Union Territory of Ladakh							
Cuttack	State of Chhattisgarh	28						
	State of Odisha							
Chennai	State of Tamil Nadu	98						
	Union Territory of Puducherry							
Guwahati	State of Arunachal Pradesh							
	State of Assam							
	State of Manipur							
	State of Mizoram							
	State of Meghalaya							
	State of Nagaland							
	State of Sikkim							
	State of Tripura							
Hyderabad	State of Telangana	92						
Indore	State of Madhya Pradesh	10						
Jaipur	State of Rajasthan	30						
Kochi	State of Kerala	19						
	Union Territory of Lakshadweep							
Kolkata	State of Bihar	92						
	State of Jharkhand							
	State of West Bengal							
	Union Territory of Andaman and Nicobar Islands							
Mumbai	State of Goa	147						
	State of Maharashtra							
Total		978						

### 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% of the voting share of the FCs, either resolve to appoint the IRP as the RP or to replace the IRP by another IP to function as the RP. Under section 22(4) of the Code, the AA shall forward the name of the RP, proposed by the CoC, under section 22(3)(b) of the Code, to IBBI for its confirmation and shall make such appointment after such confirmation. However, to save time in such reference, a database of all the IPs registered with the IBBI has been shared with the AA, disclosing whether any disciplinary proceeding is pending against any of them and the status of their AFAs. While the database is currently being used by various benches of AA, in a few cases, IBBI receives references from the AA and promptly responds to the AA. Till June 30, 2020, as per updates available, a total of 867 IRPs has been replaced with RPs, as shown in Table 25.

Table 25: Replacement of IRP with RP as on June 30, 2020

CIRP initiated by	No. of CIRPs				
	Where RPs have been appointed	Where RP is different from the IRP			
Corporate Applicant	239	106			
Operational Creditor	1434	487			
Financial Creditor	1452	274			
Total	3125	867			

#### **Insolvency Professional Entities**

During the quarter under review, four IPEs were recognised. As on June 30, 2020, there were 73 IPEs (Table 26).

Table 26: IPEs as on June 30, 2020

Quarter	No. of IPEs						
	Recognised	Derecognised	At the end of the Quarter				
2016 - 17 (Jan - Mar)	3	0	3				
2017 - 18	73		75				
2018 - 19	13	40	48				
Apr - Jun, 2019	6	0	54				
Jul - Sep, 2019	7	0	61				
Oct - Dec, 2019	6	0	67				
Jan - Mar, 2020	4	2	69				
Apr - Jun, 2020	4	0	73				
Total	116	43	73				

#### **Insolvency Professional Agencies**

IPAs are front-line regulators and responsible for developing and regulating the insolvency profession. They discharge three kinds of functions, namely, quasi-legislative, executive, and quasi-judicial. The quasi-legislative functions cover laying down standards and code of conduct through byelaws, which are binding on all members. The executive functions include monitoring, inspection, and investigation of professional members on a regular basis, addressing grievances of aggrieved parties, gathering information about their performance, etc., with the overarching objective of preventing malicious behaviour and malfeasance by IPs. The quasi-judicial functions include dealing with complaints against members and taking suitable disciplinary actions.

There are three IPAs registered in accordance with the Code and Regulations. IBBI has monthly meetings with the MDs of the IPAs and the IU on the 7<sup>th</sup> of every month, to obtain feedback on areas of concern for the profession and discuss the ways and means to deal with them. During these meetings, issues like disposal of grievances, use of technology in processes, conduct of IPs, addressing concerns emanating from COVID-19 are discussed.

### **Information Utility**

There is one IU, namely, the National E-Governance Service Limited (NeSL). IBBI meets the MD & CEO of the IU along with the MDs of IPAs on  $7^{\text{th}}$  of every month to discuss the issues related to receipt and authentication of financial information. It has requested IPAs to encourage their members to make use of the information stored with the IU for verification of claims during CIRP. Table 27 provides details of the registered users and information with NeSL, as informed by them.

Table 27: Details of information with NeSL (Number, except as stated)										pt as stated)			
At the end of Year/Month	Creditors agreer with N	nent	Creditor have sub informa	mitted	Debtors wh information submitted	on	Loan records o by	n-boarded	User registrations (debtors)	Loan reco authentic by debto	ated	Amount of und debt (₹ cro	
	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	FC&OC	FCs	OCs	FCs	OCs
2018-19	173	NA	114	169	1266445	230	1955230	316	15148	13762	37	4114988	16224
Jun, 2019	209	NA	160	231	2531930	570	3911146	52766	23565	22323	40	4910552	20455
Sep, 2019	226	NA	218	297	2737049	1764	4421280	86766	32177	35560	61	5625318	28016
Dec, 2019	246	NA	321	408	2926030	2121	4803931	125526	48551	68646	120	6919463	32038
Mar, 2020	267	NA	381	543	6551739	6191	9417317	167719	73332	109505	221	7873689	31910
Jun, 2020	269	NA	456	574	7464854	8336	10721829	204568	106840	149268	265	9855538	33151

NA: Not Available

### **Registered Valuer Organisations**

The Registered Valuer Organisations (RVOs) are frontline regulators. They provide the institutional arrangement for oversight, including the development and regulation of the registered valuers (RV). They grant membership to valuers, who comply with the eligibility requirements as provided in the Rules, conduct the educational courses in valuation and provide the training for the individual members. During the quarter, two RVOs, All India Institute of Valuers Foundation and International Business Valuers Association were granted recognition, taking the total to 14 RVOs. The IBBI meets MDs / CEOs of RVOs on the 7th of every month to discuss the issues arising from the valuation profession, to resolve queries of the RVOs and to guide them in discharge of their responsibilities.

Only RVs are authorised to undertake valuations required under the Companies Act, 2013 and the Code. The details of individual RVs, RVO-wise, as on June 30, 2020, is given in Table 28A. A total of 3083 individuals have registrations, two of them are registered for all three asset classes, 43 are registered for two asset classes and the balance 3038 are registered for one asset class.

	•		,	
Registered Valuer Organisation		Total		
	Land & Building	Plant & Machinery	Securities or Financial Assets	
RVO Estate Managers and Appraisers Foundation	45	8	5	58
IOV Registered Valuers Foundation	1023	168	117	1308
ICSI Registered Valuers Organisation	0	0	126	126
IIV India registered Valuers Foundation	106	33	32	171
ICMAI Registered Valuers Organisation	14	12	198	224
ICAI Registered Valuers Organisation	N.A.	N.A.	614	614
PVAI Valuation Professional Organisation	247	45	34	326
CVSRTA Registered Valuers Association	173	51	N.A.	224
Association of Certified Valuators and Analysts	N.A.	N.A.	2	2
CEV Integral Appraisers Foundation	38	13	0	51
Divya Jyoti Foundation	3	3	20	26
Nandadeep Valuers Foundation	0	0	0	0
All India Institute of Valuers Foundation	0	0	0	0
International Business Valuers Association	0	0	0	0
Total	1649	333	1148	3130

(Number)

Note: N.A. signifies the RVO is not recognised for that asset class

Table 28A: Registered Valuers as on June 30, 2020

RVs are permitted to form an entity (Partnership / Company) for rendering valuation services. There are 22 such entities registered as RVs as on June 30, 2020, as presented in table 28B. Ten of them are registered for three asset classes and one is registered for two asset classes.

Table 28B: Registered Valuers (Entities) as on June 30, 2020

(Number)

Registered Valuer Organisation	Asset Class	Number of Entities	Land & Building Plant & Machinery	Securities or Financial Assets
Institution of Estate Managers and Appraisers	2	2	2	2
IOV Registered Valuers Foundation	7	6	8	10
The Indian Institution of Valuers	1	I	1	I
ICMAI Registered Valuers Organisation	1	I	3	3
ICAI Registered Valuers Organisation	0	0	5	5
PVAI Valuation Professional Organisation	1	1	I	I
Total	12	H	20	22

The registration of RVs till June 30, 2020 is given in Table 29.

Table 29: Registration of RVs till June 30, 2020

(Number)

Year / Quarter	Land & Building	Plant & Machinery	Securities or Financial Assets	Total
2017 - 18	0	0	0	0
2018 - 19	784	124	288	1196
Jun, 2019	346	81	300	727
Sep, 2019	212	58	191	461
Dec, 2019	161	34	146	341
Mar, 2020	129	31	155	315
Jun, 2020	17	5	68	90
Total	1649	333	1148	3130

Of the RVs registered as on June 30, 2020, 913 RVs (constituting 29% of the total RVs registered) are from metros while 2217 RVs (constituting 71% of the total RVs registered) are from non-metro locations (Table 30).

Table 30: Region wise Registered Valuers as on June 30, 2020

(Number)

indicator region who registered variables as on june 30, 2020								
City / Region	Land & Building	Plant & Machinery	Securities or Financial Assets	Total				
New Delhi	63	28	145	236				
Rest of Northern Region	215	40	188	443				
Mumbai	97	46	192	335				
Rest of Western Region	458	89	166	713				
Chennai	103	30	105	238				
Rest of Southern Region	668	84	265	1017				
Kolkata	18	13	73	104				
Rest of Eastern Region	27	3	14	44				
Total	1649	333	1148	3130				

The average age of RVs as on June 30, 2020 stood at 48 years across asset classes. It was 50 years for Land & Building, 53 years for Plant & Machinery and 43 years for Securities or Financial Assets (Table 31). Of the 3130 RVs as on June 30, 2020, 281 RVs (constituting about nine per cent of the total registered valuers) are females.

Table 31: Age profile of RVs as on June 30, 2020

Number)

Age Group (in years)	Land & Building	Plant & Machinery	Securities or Financial Assets	Total
≤ 30	64	4	75	143
> 30 ≤ 40	207	49	451	707
> 40 ≤ 50	454	76	341	871
> 50 ≤ 60	723	99	195	1017
> 60 ≤ 70	172	73	84	329
> 70 ≤ 80	28	31	2	61
> 80			0	2
Total	1649	333	1148	3130

#### **Complaints and Grievances**

IBBI (Grievance and Complaint Handing Procedure) Regulations, 2017 enable a stakeholder to file a grievance or a complaint against a service provider. Beside this, grievance and complaints are received from the Centralised Public Grievance Redress and Monitoring System (CPGRAMS), Prime Minister's Office, MCA and other authorities. The receipt and disposal of grievances and complaints till June 30, 2020 is presented in Table 32.

Table 32: Receipt and Disposal of Grievances and Complaints till June 30, 2020

(Number)

Year/Quarter	Complaints and Grievances Received					Total			
	Under the F	Regulations	Through CPGRAMS/PMO/ MCA/Other Authorities)		Through Other Modes		Received	Disposed	Under Examination
	Received	Disposed	Received	Disposed	Received	Disposed			
2017 - 18	18	0	6	0	22	2	46	2	44
2018 - 19	111	51	333	290	693	380	1137	721	460
Apr - Jun, 2019	36	21	60	74	149	207	245	302	403
Jul - Sep, 2019	42	41	46	35	67	36	155	112	446
Oct - Dec, 2019	40	46	68	54	71	86	179	186	439
Jan - Mar, 2020	35	69	65	64	74	59	174	192	421
Apr - Jun, 2020	20	52	62	88	74	272	156	412	165
Total	302	280	640	605	1150	1042	2092	1927	165

### **Examinations**

### **Limited Insolvency Examination**

The IBBI publishes the syllabus, format etc. of the Examination under regulation 3(3) of the IBBI (Insolvency Professionals) Regulations, 2016. It reviews the Examination continuously to keep it relevant with respect to dynamics of the market. It has successfully completed four phases of the Examination. Fourth phase of the Examination concluded on June 30, 2019 and fifth phase commenced on July 1, 2019. It is a computer based online examination available on daily basis from several locations across India. NSEIT Limited is the test administrator. The details of the Examination are given in the Table 33.

Table 33: Limited Insolvency Examination

Phase	No. of Attempts (some candidates made more than one attempt)	No. of Successful Attempts
First Phase (Jan - Jun, 2017)	5329	1202
Second Phase (Jul - Dec, 2017)	6237	1112
Third Phase (Jan - Oct, 2018)	6344	1011
Fourth Phase (Nov, 2018 - Jun, 2019)	3025	506
Fifth Phase (Jul - Sep, 2019)	710	95
Fifth Phase (Oct - Dec, 2019)	889	119
Fifth Phase (Jan - Mar, 2020)	1007	164
Fifth Phase (Apr - Jun, 2020)	34	6
Total	23575	4215

#### **Valuation Examinations**

The IBBI, being the authority, under the Companies (Registered Valuers and Valuation) Rules, 2017, commenced the Valuation Examinations for asset classes of: (a) Land and Building, (b) Plant and Machinery and (c) Securities or Financial Assets on March 31, 2018. It reviews the Examination continuously to keep it relevant with the changing times. The second phase concluded on May 31, 2020 and third phase commenced on June 1, 2020, with the revised syllabus. It is a computer based online examination available on daily basis from several locations across India. National Institute of Securities Market is the test administrator. The details of the Examinations are given in Table 34.

Table 34: Valuation Examinations

Phase/Quarter	No. of Attempts (some candidates made more than one attempt) in Asset Class		No. of Successful Attempts in Asset Class			
	Land & Building	Plant & Machinery	Securities or Financial Assets	Land & Building	Plant & Machinery	Securities or Financial Assets
First Phase (Mar, 2018 - Mar, 2019)	9469	1665	4496	1748	324	707
Second Phase (Apr, 2019 - May, 2020)	3780	757	4795	380	95	656
Third Phase (Jun, 2020)	64	7	99	1	0	6
Total	13313	2429	9390	2129	419	1369

### **Suspension and Resumption of Examinations**

In view of the advisory on social distancing in the wake of COVID-19 and lock-down announced by the Central Government, all enrolments for the Limited Insolvency Examination and the Valuation Examinations were initially suspended from March 23, 2020 to April 14, 2020. The suspension continued in view of continued health pandemic.

The IBBI resumed the Limited Insolvency Examination from May 27, 2020 and the Valuation Examinations, with revised syllabus, from June 16, 2020 in areas/locations where such activities were permitted under State and local guidelines. However, the number of slots available has been limited due to the social distancing requirements. As the situation improves more centers are being made operational. The candidates whose enrolments were cancelled have been permitted to reschedule their examination.

### **Building Ecosystem**

### **Graduate Insolvency Programme**

The first batch of GIP with 37 students had commenced on July 1, 2019 at the Indian Institute of Corporate Affairs (IICA). After completing coursework at campus, the students proceeded for one year of internship with an average stipend of ₹ 6.42 lakh per annum, with the highest stipend of ₹ 12 lakh per annum. The next batch of 41 students commenced their classes on July 1, 2020. In this batch, 59% are lawyers by profession, 24% are chartered accountants, 10% are engineers and the rest are company secretaries and MBAs.

### **Meetings of various Committees**

#### **Advisory Committee on Service Providers**

The 5<sup>th</sup> meeting of the Advisory Committee on Service Providers took place on April 24, 2020 through video conferencing. Mr. T. V. Mohandas Pai, Chairperson of the Committee, chaired the meeting. The Committee discussed and made its recommendations on various matters such as engagement of IPE for support services, fee of IP and for support services of an IPE, limit on number of assignments to be handled by IPs, role of IBBI vis-à-vis IPAs, etc.

#### **Committee on Cross Border Insolvency**

The Committee on Cross Border Insolvency Rules constituted by MCA under the chairpersonship of Dr. K. P. Krishnan, met on April 21, 2020, May 12, 2020, May 27, 2020 and June 15, 2020 and deliberated on various aspects of its mandate.

#### **Advisory Committee on Corporate Insolvency and Liquidation**

The sixth meeting of the Advisory Committee on Corporate Insolvency Resolution and Liquidation was held on June 21, 2020 through Video Conferencing under the Chairmanship of Mr. Uday Kotak, Chairperson of the Committee. The Committee discussed and provided its suggestions on certain salient features of the proposed Special Insolvency Resolution Process (SIRP) for MSMEs, such as coverage, processes, balancing interests of stakeholders and timelines.

#### **Roundtables**

During this quarter, IBBI, in associations with the IPAs, conducted four roundtables on special resolution framework for MSMEs, through online modes, to seek feedback of the stakeholders for further refinements and improvements. The details of these roundtables are presented in Table 35.

Table 35: Roundtables on SIRP for MSMEs

SI. No.	Date(s)	Venue	In partnership with
1	18-06-20	Online	ICSHIP
2	20-06-20	Online	IIIPI
3	22-06-20	Online	IIPICAI
4	30-06-20	Online	NA

#### **Crowdsourcing of Ideas**

The stakeholders in the insolvency and bankruptcy ecosystem are diverse. They include all existing and potential creditors and debtors; professionals and institutions that are integral parts of the process of insolvency and bankruptcy resolution; foreign creditors and foreign firms that have business relations with domestic debtors; the judges and courts, as well as the departments of the Government through which the law is implemented. Each of these stakeholders have specific requirements and it is IBBI's endeavour to effectively engage them in the regulation making process. The process generally starts with a Working Group suggesting draft regulations. IBBI puts these draft regulations out in public domain seeking comments thereon. It holds a few round tables to discuss draft regulations with the stakeholders. It takes the advice of its Advisory Committee. The process culminates with the Governing Board of IBBI finalising regulations and IBBI notifies them. This process endeavours to factor in ground reality, secures ownership of regulations and makes regulations robust and precise, relevant to the time and for the purpose.

Despite the best of efforts and intentions, a regulator may not always have the understanding of the ground realities, as much and as early as the stakeholders and the regulated may have, 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 responding urgently to draft regulations proposed by the regulator. This is akin to crowdsourcing of ideas. This would enable every idea to reach the regulator. Consequently, the universe of ideas available with the regulator would be much larger and the possibility of a more conducive regulatory framework much higher. Keeping this in view, IBBI invited comments on May 4, 2020 from public, including the stakeholders and the regulated, on the regulations already notified under the Code. The comments received between April 13, 2020 and December 31, 2020 shall be processed together and following the due process, regulations will be modified to the extent considered necessary.

#### **Role of IPs in Avoidance Transactions**

The Code mandates the RP and the Liquidator to file applications in respect of avoidance transactions (preferential transactions, undervalued transactions, extortionate transactions, and fraudulent trading) with the AA seeking appropriate reliefs and directions permissible under the Code. The AA has disposed of a few such applications. Some matters have travelled up to the Supreme Court. For the sole purpose of educating IPs about this important aspect of the Code, the Board issued a facilitation letter apprising them of their role in respect of avoidance transaction, as delineated by the apex court.

#### **Research Initiative**

IBBI promotes research - legal, economic, and interdisciplinary - and discourse in areas relevant for the evolving insolvency and bankruptcy regime in general, and that in India, in accordance with the Insolvency and Bankruptcy Board of India Research Initiative, 2019.

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

#### **Webinars**

IBBI organised several webinars during the quarter in association with IPAs on various subjects as listed in Table 36.

Table 36: Webinars during April-June, 2020

	ile 36: Webinars during April-June, 2020				
SI. No.	Date	In association with	Торіс		
1	01-04-20	IPA ICAI	"Do's and Don'ts - Inspections" and Impact of IBC on Ease of Doing Business		
2	02-04-20	ICSI IIP	Relaxation of IBC threshold and Impact of IBC on Ease of Doing Business		
3	03-04-20	IIIP ICAI	Online CIRP Forms and Relationship Disclosures; and Impact of IBC on Ease of Doing Business		
4	07-04-20	ICSI IIP	Impact and practical issues during and post lockdown on IBC process and Impact of IBC on Ease of Doing Business		
5	08-04-20	IPA ICAI	Insolvency Resolution and Bankruptcy of Personal Guarantors to CD and Impact of IBC on Ease of Doing Business		
6	11-04-20	ICSI IIP	Code of Conduct for IPs; Disciplinary Proceedings & Impact of IBC on Ease of Doing Business		
7	14-04-20	ICSI IIP	Insolvency and Bankruptcy of Personal Guarantors to Corporate Debtors & Impact of IBC on Ease of Doing Business		
8	17-04-20	ICSI IIP	Scope of Mediation in Insolvency Proceedings & Impact of IBC on Ease of Doing Business		
9	06-05-20	IIIP ICAI	Interactive Session with IRP/RPs - Issues faced by them in CIRPs w.r.t. COVID-19 pandemic		
10	09-05-20	IIIP ICAI	Interactive Session with Liquidators - Issues faced by them in liquidations w.r.t. COVID-19 pandemic		
П	12-05-20	IPA ICAI	Information Utility: A Key Pillar of IBC Ecosystem		
12	13-05-20	IIIP ICAI	Experience Sharing: Resolution of Financial Service Provider		
13	15-05-20	IPA ICAI	Valuations under IBC - Impact on account of COVID-19 pandemic		
14	22-05-20	ICSI IIP	Management of Corporate Debtor as Going Concern during CIRP; Operations Management		
15	28-05-20	ICSI IIP	Reviewing and Challenging Avoidable Transactions under IBC: How to maximise the assets		
16	07-06-20	ICSI IIP	The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020		



Interaction on Issues faced by IPs in CIRPs w.r.t. COVID-19 pandemic, May 6, 2020



Webinar on Online CIRP Forms and Relationship Disclosures, April 3, 2020



Webinar on Information Utility: A Key Pillar of IBC Ecosystem, May 12, 2020



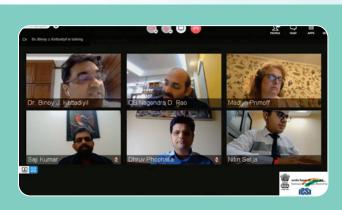
Webinar on Valuations under IBC - Impact on account of COVID-19 pandemic, May 15, 2020



Webinar on Management of Corporate Debtor as Going Concern during CIRP, May 22, 2020



Webinar on Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020, June 7, 2020



Webinar on Reviewing and Challenging Avoidable Transactions under IBC: How to maximise the assets, May 28, 2020

### **Advocacy And Awareness**

### **National Online Quiz on IBC**

With a view to promote awareness and understanding of the Code among stakeholders, the IBBI has launched a National Online Quiz on the Code, in collaboration with the Government of India's citizen engagement portal, quiz.mygov.in. The Quiz was open for a period of one month from July I - 31, 2020. The best performers will be awarded medals and cash prizes, while top 10% of the participants will be issued Certificates of Merit.

### **E-Moot Court Competition**

IBBI, as a knowledge partner of LNCT University, Bhopal, conducted the I $^{\rm st}$  INNOVIS-LNCT IBC E-Moot Court Competition from May 28 - 31, 2020. This provided the law students of the country a unique experience

in terms of dealing with technical and legal aspects of Corporate Law, especially the IBC, and to practice their mooting skills in a virtual online environment. A total of 34 teams participated in the four days long event. The team from the Rajiv Gandhi National University of Law, Patiala, comprising of Mr. Priyank Pandey, Mr. Vaibhav Mukhraiya and Mr. Ashish Paliwal was the winner. The team of ICFAI Law School, Hyderabad comprising of Mr. Apoorv Gupta, Mr. Akash Krishnan and Ms. Pooja Gandhi was runner-up. Mr. K. R. Saji Kumar, Executive Director, IBBI addressed the participants and adjudged the final round of the Competition.

### **Other programmes**

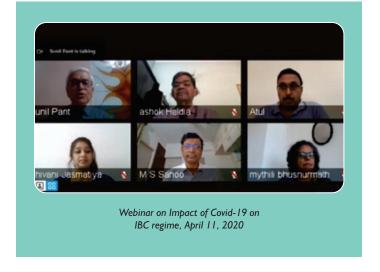
Senior officers of IBBI participated as guests and faculty in several programmes (in e-mode) during the quarter, the details of which are presented in Table 37.

**Table 37: Participation of Senior Officers in Programmes** 

SI.	Date	Organiser	Subject	Participation
1	11-04-20	IICA	GIP Prospectus	Chairperson
2	11-04-20	IICA	Interface of IBC and Competition Act	Chairperson
3	11-04-20	IIIPI	Impact of Covid-19 on IBC regime	Chairperson
4	13-04-20	IPAs	Inspection of IPs	Chairperson
5	13-04-20	ICSI IIP	Pre-Registration Educational Course	Mr. Saji Kumar, ED
6	20-04-20	ICSI IIP	IP: Crisis Manager and Manager in Crisis	Mr. Saji Kumar, ED
7	20-04-20	IIIP ICAI	Pre-Registration Educational Course	Mr. Saji Kumar, ED
8	21-04-20	FICCI	IBC Reforms	Chairperson
9	21-04-20	ASSOCHAM	COVID-19: Relief on IBC	Dr. Vijayawargiya, WTM
10	24-04-20	IPA ICAI	Appearance before NCLT/NCLAT - Court Craft	Mr. Saji Kumar, ED
11	28-04-20	ICAI RVO	Draft Valuers Bill, 2020	Chairperson
12	29-04-20	PVAI RVO	Draft Valuers Bill, 2020	Dr. Saini, WTM
13	01-05-20	PVAI RVO	Start-up Valuation and ABCDRI	Chairperson
14	08-05-20	PHDCI	Impact of Covid-19 on Insolvency	Mr. Pawan Kumar, ED
15	09-05-20	IOV RVF	Valuation Standards	Mr. Pawan Kumar, ED
16	12-05-20	RICS	New Valuers Bill-A Game Changer	Chairperson
17	16-05-20	IOV RVO	Draft Valuers Bill, 2020	Chairperson
18	23-05-20	ASSOCHAM	Corporate Restructuring, M&A and Joint Venture	Mr. Pawan Kumar, ED
19	26-05-20	IIIP ICAI	Address to Governing Board	Chairperson
20	26-05-20	IOV RVF	Development in Valuation Profession Global perspective	Mr. Shukla, WTM
21	27-05-20	ICAI RVO	Draft Valuers Bill, 2020	Dr. Saini, WTM
22	28-05-20	DTRTI, Chandigarh	Quality assessment	Mr. Pawan Kumar, ED
23	31-05-20	IBBI and LNCT University, Bhopal	Moot Court Competition	Mr. Saji Kumar, ED
24	06-06-20	NITI Aayog	Online Dispute Resolution	Chairperson
25	09-06-20	INSOL India	How IPs should tackle New Normal?	Chairperson
26	12-06-20	IIIPI ICAI	Insolvency Resolution: Public Interest & Ethics	Mr. Saji Kumar, ED
27	20-06-20	ENCUBE	Impact of COVI-19 on Insolvency and the Way Forward	Chairperson
28	24-06-20	IICA	Regulatory Policy and Ensuring Quality of Regulations	Dr. Vijayawargiya, WTM
29	24-06-20	IIIPI ICAI and IFC, World Bank	Impact of COVID-19 on the insolvency and bankruptcy regime- Global and Indian responses	Dr. Guru, ED
30	24-06-20	DTRTI, Chandigarh	Quality Assessment	Mr. Pawan Kumar, ED
31	25-06-20	City of London	Hitting a pause in a Pandemic - Insolvency & Bankruptcy Policy 2020 and beyond	Dr. Vijayawargiya, WTM
32	27-06-20	EIRC of ICAI	Are we ready for the change?	Dr. Saini, WTM



Dr. M. S. Sahoo addressing prospective GIP students, April 11, 2020





Webinar on COVID-19: Relief on IBC, April 21, 2020



Interaction on New Valuers Bill-A Game Changer, May 12, 2020



Interaction on Development in Valuation Profession Global perspective, May 26, 2020



Consultations on Draft Valuers Bill, 2020, May 16, 2020



Webinar on Insolvency Resolution: Public Interest & Ethics, June 12, 2020



Webinar on 'Are we ready for the change?', June 27, 2020

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