REPORT

INTERNATIONAL CONFERENCE

ON

INSOLVENCY RESOLUTION PARADIGM: GLOBAL HEADWINDS & RESPONSES

24th-25th October 2020 (Virtual)

Organized by: Indian Institute of Insolvency Professionals of ICAI (IIIPI)

ABOUT IIIPI

The Insolvency and Bankruptcy Code, 2016 (Code) provides that no entity shall carry on its business as an Insolvency Professional Agency (IPA) under this Code and enrol insolvency professionals (IPs) as its members except under and in accordance with a certificate of registration issued in this behalf by the Insolvency and Bankruptcy Board of India (IBBI).

Against this backdrop of the Code and the IBBI (Insolvency Professional Agencies) Regulation, 2016 (IPA Regulation), the Institute of Chartered Accountants of India (ICAI) formed the Indian Institute of Insolvency Professionals of ICAI (IIIPI), a section 8 company to enrol and regulate insolvency professionals as its members in accordance with the Code read with its regulations.

IIIPI is the first insolvency professional agency (IPA) of India registered with IBBI. The certificate of registration was handed over to the agency by the then Hon'ble Minister of Finance Shri Arun Jaitley on 28th November 2016.

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ABOUT THE INTERNATIONAL CONFERENCE

Insolvency and Bankruptcy Code (IBC, 2016) in India is considered as showcase legislation and a major economic reform in India, hailed, among others, by the World Bank as reflected in improvement in India's 'Ease of Doing Business' ranking.

The founding principle of IBC was to rescue ailing businesses as going concern rather than simply recover dues through liquidation. The promise of IBC framework is reflected in the fact that till June 2020, realization by Financial Creditors under resolution plans in comparison to liquidation value, is 183%, while the realization by them in comparison to their claims is 46%, much better than that in earlier regime.

The IBC regime in India has been gearing up for the next phase comprising cross-border, pre-pack, and group insolvency framework(s). Though COVID-19 Pandemic has disrupted the ongoing momentum of IBC regime in India as well as globally, it has posed multiple challenges and triggered reforms to make the economies resilient to the pandemics in future.

To deliberate on global challenges and responses revolving around the above aspects, IIIPI organized two days long International Conference (Virtual) on the theme of “Insolvency Resolution Paradigm: Global Headwinds & Responses” on 24th – 25th October 2020. The conference was addressed by the eminent panellists including senior officials from Ministry of Corporate Affairs, IBBI, insolvency professionals, senior executives from Banks/FIs, NCLTs and insolvency experts from the UK, the USA, Australia, and Singapore.

In the inaugural session, the Guest of Honour Shri Arijit Basu, MD, Commercial Clients Groups (CCG), the State Bank of India (SBI) released the October 2020 edition of **“The Resolution Professional”**, the quarterly research journal of IIIPI.

DAY 1

INAUGURAL SESSION

on 24th October 2020 from 2.00 pm to 3.00 pm.

Welcome Address	:	**Dr. Ashok Haldia,** Chairman, IIIPI
Initiation Address	:	**CA. Nihar N. Jambusariya ,** Vice President, ICAI
Guest of Honour/Keynote Address	:	**Mr. Arijit Basu,** MD (CCG), SBI
Inaugural Address	:	**CA. Atul Kumar Gupta,** President, ICAI
Vote of Thank	:	**CA. Rahul Madan,** MD, IIIPI

KEY TAKEAWAYS

THE JOURNEY SO FAR

1. IBC played a key role in strengthening the banking system in India and in boosting the confidence of national/foreign investors in the economy. It is one of the most crucial economic reforms post-liberalization in 1991.
2. IBC has given equal opportunity to corporate (debtors) and banks (creditors) in businesses.
3. Most of the middle level and large sized corporates have managed their cash flows during COVID-19 pandemic.
4. About 62% of insolvency professionals are CAs. Besides, IBC has opened several new opportunities for CAs in the form of valuer, liquidator, technical experts in NCLT, NCLAT, high courts, and the Supreme Court, and various kinds of advisory services.
5. The initiatives of the Government of India in handling the economic crisis caused by COVID-19 related lockdowns were at par and in some cases better than developed economies such as Australia and Germany etc.
6. Multi-pronged approach of the Government of India to ensure liquidity in the market during COVID-19 crisis helped the industries across to wade through crisis.
7. IBC saves the companies from liquidation, which otherwise would lead to unemployment. Therefore, the demand will be adversely impacted which has been a top priority for economic revival.
8. India's global ranking in the World Bank's Ease of Doing Business (EoDB) Report improved from 130 in 2016 to 63 in 2019 among 190 economies of the world which shows a direct correlation between IBC regime and EoDB.
9. India's global recovery rate is 25.7% which is quite encouraging and inspiring.
10. In such a short span of four years of insolvency regime, India has achieved a lot and is competing with developed economies in having a robust insolvency ecosystem.

CHALLENGES AHEAD

1. Incidence of insolvency in India is predicted to increase by 26% in 2021-22 due to the estimated contraction of 1.5% in global economy.
2. Unsustainable debt was recognized as a leading symptom or fundamental issue in any 'business model'.
3. IBC suspension due to COVID-19 beyond December 25 may give impression that borrowers are fundamentally weak, and banks are likely to go back to square one where we are promoting ever-greening etc.
4. In the age of COVID-19 crisis, the government agencies need to maintain fine balance between relief to borrowers and retaining confidence of investors in the economy.
5. There is need to strengthen the IBC to face new challenges not only in the areas of group insolvency, cross-border insolvency, SMEs insolvency but even in the current framework owing to COVID-19 pandemics.
6. Some of the provisions of IBC are ambiguous leaving scope for interpretation.

THE WAY FORWARD

1. Indian banks need to strengthen their balance sheets because for a healthy economy strong banks are the needs of the hour.
2. There is an urgent need to learn from global practices in reviving economy from the damages caused by the COVID-19 pandemic.
3. A cautious approach needs to be adopted while considering further suspension of IBC due to COVID-19 pandemic. The government will have to weigh pross and cons in continuing a relaxed environment.
4. Every effort must be taken to revive a company from financial crisis while liquidation should be only the last alternative.
5. Our journey towards transparency and journey towards having mechanisms like IBC should not fall back. We should sustain measures to make our system to be more transparent.
6. There are chances of strong revival for Indian economy in 2021-22 provided the banks must be able to access market and capital at a reasonable cost.
7. As the IBC regime in India is still in the evolving, the insolvency professionals have the responsibility to test the existing provision in the practice and give their feedback for amendments.
8. Banks should support MSMEs with debtor friendly policies.
9. Loan moratorium is a good step but much more is required to be done to restore the confidence of investors.

PLENARY SESSION 1

PERSPECTIVE ON GLOBAL INSOLVENCY REGIME

on 24th October 2020 from 3.05pm to 4.20 pm

Guest Speakers : **CA. Prafulla P. Chhajed,** Director, IIIPI and CCM, ICAI

Mr. Paul Bannister, Head (Policy), Insolvency Service, Government of the United Kingdom (UK)

Dr. Ms. Mukulita Vijaywargiya, WTM, IBBI

Mr. Gyaneshwar Kumar Singh, Joint Secretary, the Ministry of Corporate Affairs

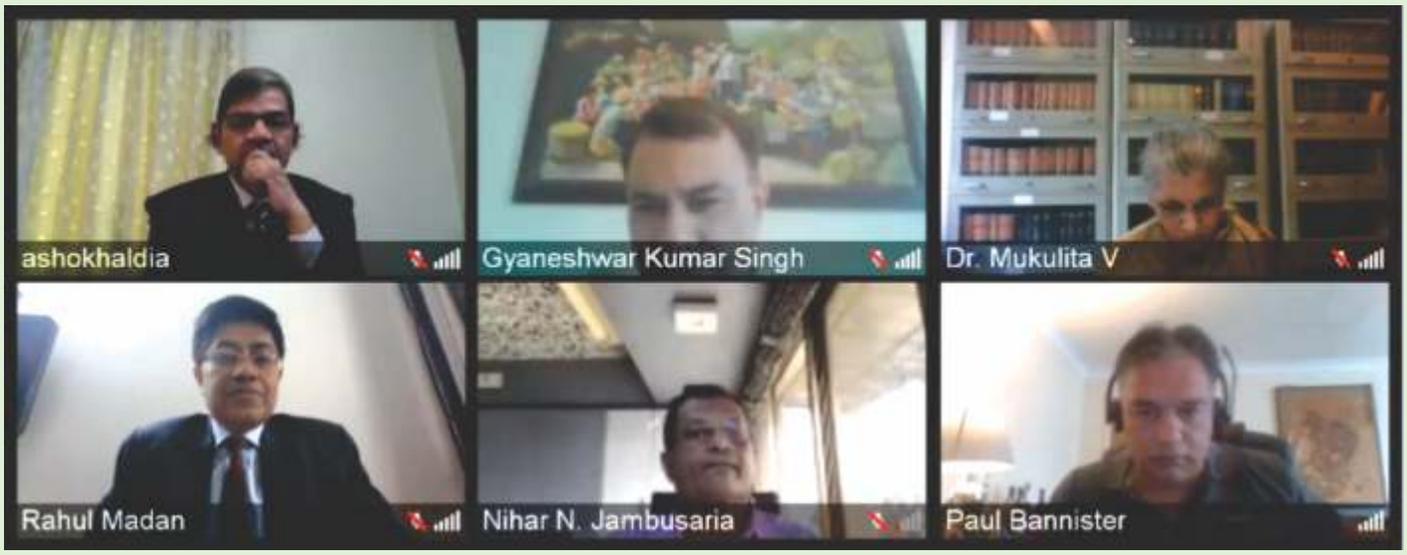
Special Address : Perspective on IBC
Mr. Rajesh Sharma, Hon'ble Member, NCLT, Mumbai Bench

Vote of Thanks : **Dr. Ashok Haldia,** Chairman, IIIPI

KEY TAKEAWAYS

PREVIOUS EXPERIENCES

1. Many times, it is not the failure of the business but the issues like cross border challenges, pandemic like COVID-19, that cause the collapse of businesses.
2. The implementation of IBC at a fast pace has set an example for the other law implementing bodies in India.
3. Despite the challenges, the implementation of IBC has made significant landmarks especially through changing the behaviour of the corporates and other stakeholders.
4. Besides serving the corporate sector, the IBC has also played a crucial role in saving livelihood.
5. The realisable value of the assets available with the 277 CDs rescued till September 2020, when they entered the CIRP, was only Rs. 1.02 lakh crore but through resolution plans Rs. 1.97 lakh crore were recovered.
6. Despite the disruptions caused by COVID-19 pandemic, the NCLAT and NCLT benches served the stakeholders with highest degree of commitments by using advance information technology tools.
7. The countries throughout the world are introducing measures to combat economic crisis caused by COVID-19 such as UK introduced Corporate Insolvency Governance Act (CIGA-2020), Australia increased threshold from $5,000 to $20,000 and insolvency notice period from 20 days to 6 months, and the USA introduced CARES Act and pumped about $2 trillion in its economy.
8. India has also introduced several initiatives to fight COVID-19 crisis such as deferment of IBC for six months, raising threshold limit to Rs one crore, financial packages, and impetus to ensure liquidity in the economy.
9. IBC framework has been tested via 12 complex cases which are often referred as 'Dirty Dozen Cases'.
10. About 14,000 insolvency cases amounting ~Rs 4 lakh crore were resolved mutually before they were admitted in the courts.
11. IBC played a crucial role in reducing NPA from 12.5% in 2018 to 8.5% in 2020.
12. Whenever professionals provided suggestions, the government either implemented or provided reasons on why it could not be implemented.



CHALLENGES AHEAD

1. A robust insolvency regime is need of the hour in the context of unprecedented COVID-19 crisis.
2. Even the United Kingdom that has a world class insolvency regime requires updating due to changing international context and UK's impending exit from the European Union (EU).
3. IBC also witnessed five amendments within three years to meet the challenges on the ground.
4. Strengthening the Adjudicating Authorities to ensure CIRP cases are disposed of as per the IBC timeline.
5. Avoidable Litigations were recognized as major hurdles in the resolution process due to which it becomes very difficult for the resolution professional to meet deadlines and minimize expenditure.
6. The true battle lies ahead in revival of companies in the unlocking phase and the role of communication technologies in this direction.
7. Finalizing a draft for insolvency framework for MSMEs under the IBC.

THE WAY FORWARD

1. With IBC in place, the concepts of sick companies and sick banks shall hopefully fade away in future.
2. Judicial cooperation is a pre-requisite for the insolvency system like in UK, it is inbuilt in the UK's Insolvency Act.
3. An ideal IBC ecosystem should completely rely on its instruments such as COC and unburden the judiciary.
4. Insolvency regulations should be updated on an ongoing basis for which the feedback of insolvency professionals is very crucial.
5. Latest instruments of information technology are very crucial for insolvency ecosystem.
6. IBC regime has a key role in realizing India's aspiration of $5 trillion economy.
7. More research is needed for a robust pre-insolvency framework under the IBC ecosystem.

SESSION 1

BALANCING RIGHTS OF STAKE -HOLDERS AT CROSS-PURPOSE

on 24th October 2020 from 4.20 pm to 5.45 pm.

Moderator	:	**CA. Hans Raj Chugh,** Director, IIIPI
Panellists	:	**Mr. Shardul S. Shroff,** Shardul Amarchand Mangaldas **Mr. Abhilash Lal,** Insolvency Professional **Dr. Eric Levenstein,** Chair, SARIPA, South Africa **Mr. David Kerr,** Insolvency Professional, UK
Vote of Thanks	:	**Dr. Ashok Haldia,** Chairman, IIIPI

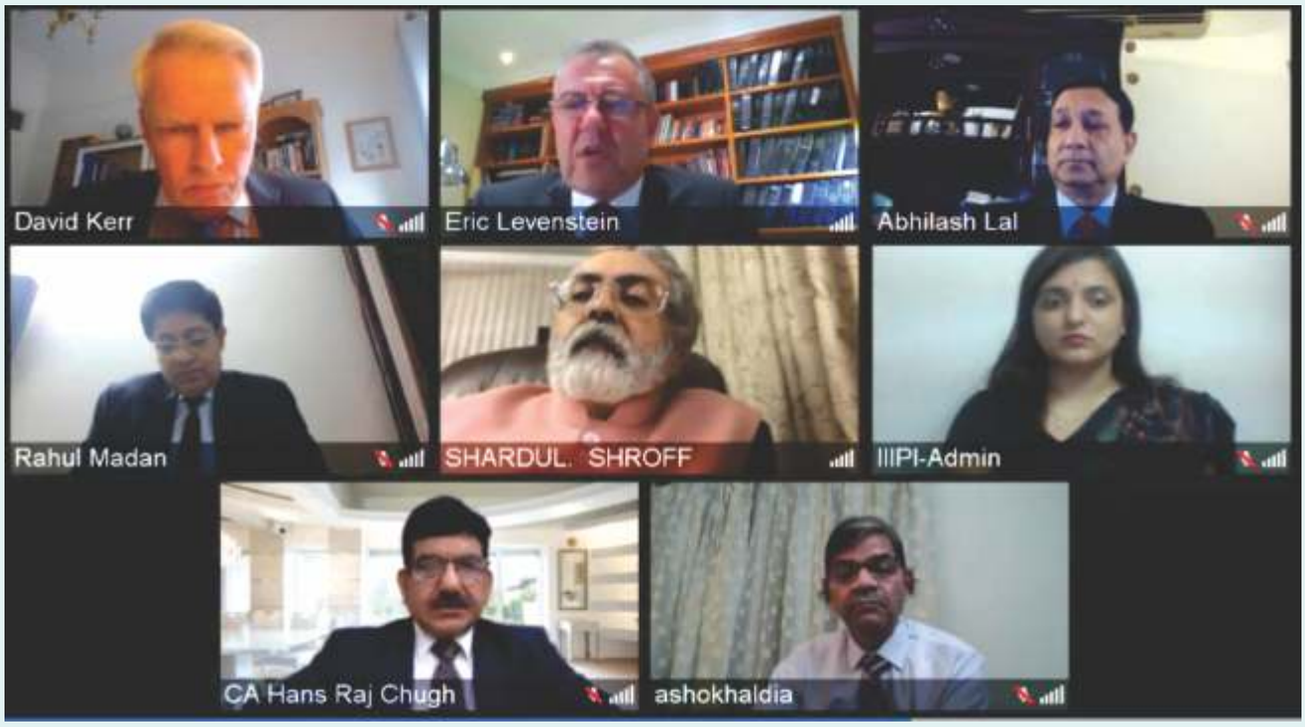
SCOPE

The session was highly educative as it thoroughly discussed about the landscape of IBC related legal delivery system in India and its experience in balancing rights across stakeholders, practical experience/ challenges of insolvency professionals' face-offs with existing management and of course COC, with an eye on future solutions. Besides, the participants were also enriched with the parallel narratives and perspectives from the UK and South Africa.

KEY TAKEAWAYS

PREVIOUS EXPERIENCES

1. In the case of Binani Cement, the Supreme Court upheld the decision of NCLAT to provide equitable treatment to financial and operational creditors. This was again upheld in Essar Steel case and subsequently the Law (section 53 of the IBC) was also amended.
2. The disputes between secured creditors, unsecured creditors and operational creditors have been resolved through judicial interventions based on equality which were rightly incorporated in the IBC through amendments.
3. RPs in South Africa has similar concerns that of India in maintaining supply of essential services for corporate debtors during CIRP due to legal loopholes.
4. Experience and challenges faced by insolvency professionals in South Africa and the UK which resulted in several amendments in their insolvency frameworks can act as early lessons in the Indian context.
5. UK is revising and updating its insolvency framework in the form of licensing the IPs and Corporate sector to deal with small insolvency and bankruptcy cases.
6. UK has a pool of 'independent opinion providers' for recommendations on insolvency process.



CHALLENGES AHEAD

1. The term stakeholder is not specifically defined and is still evolving. Different Acts in India define the stakeholders differently.
2. The rules disqualifying existing management and/ or limiting their rights in the COC have been a matter of dispute between debtors and creditors. This causes hurdles in selection of resolution plan.
3. Resolution Professionals have limited powers to ensure necessary supply of the debtor company during CIRP.
4. Interplay of competing rights and liabilities of different categories of creditors viz. financial (secured & unsecured), operational and dissenting ones.
5. Roles and responsibilities of individual guarantors in CIRP not clearly defined has resulted in several legal disputes.
6. Timely funding of operations during CIRP to make debtor a going concern, as interim finance.

THE WAY FORWARD

1. IBC should be amended to give more powers to IPs to ensure regular supply of essential/ critical items for the debtors such as hospitals.
2. Various stakeholders need to be mindful of their rights and duties, keeping up the spirit of the law.
3. Effective communication is very important in achieving the objectives of balancing the rights of various stakeholders.
4. RPs should update themselves in line with the pace of evolving jurisprudence.

SESSION 2

GROUP INSOLVENCY FRAMEWORK: EARLY LESSONS

on 24th October 2020 from 5.45 pm to 6.45 pm

Moderator	;	**CA. Hans Raj Chugh,** Director, IIIPI
Panellists	:	**Dr. Navrang Saini,** WTM, IBBI **Mr. C. Scott Pryor,** Professor, Campbell University LawSchool, USA **Mr. Sumit Binani,** Insolvency Professional
Vote of Thanks	:	**CA. Rahul Madan,** MD, IIIPI

SCOPE

This session was focussed on parallel difficulties in CIRP due to lack of a legal framework for group insolvency under the IBC, 2016. The panellists also provided inputs for a robust group insolvency regime in India. Besides, it was interesting to understand as to how the approach of 'Debtor in Control' that is prevalent in the USA would work differently as compared to 'Creditor in Control' that is followed in India

KEY TAKEAWAYS

INDIAN SCENARIO

1. Though IBC 2016 does not provide provisions for group insolvency, the AAs Authorities started actively considering this possibility and passed orders taking into consideration CDs and their interconnections with other group companies.
2. The procedural consolidation is differentiated from substantive consolidation by the courts while dealing with group insolvency cases.
3. In a landmark judgement in SBI V/s Videocon Industries on 9th August 2019, the AA ordered merger of 13 companies of Videocon in all respect including single management, pooling of resources and single accounting etc.
4. Prominent cases that highlighted the need to lift the corporate veil for group entities in certain situations and regulate the insolvency of groups include the IL&FS Group, which involves 169 other group entities, or the collective default by the Videocon group entities, Sachet Infrascture, Videocon, Amteck Auto, and Jaypee, etc.
5. The possibility of revival is higher if the linked companies are given opportunity to present resolution for the debtor.
6. Based on the recommendations of the U. K. Sinha Committee on Group Insolvency that submitted its report to IBBI on 23rd September 2019, a draft law for group insolvency framework in India has been worked upon but is yet to be passed by the Parliament.
7. As per the proposed group insolvency law three types of companies will be under group insolvency – holding, subsidiary and associate. Besides, the RP after approval of the COC may appeal the AA to consider a case as group insolvency even it does not fall within the three categories.

USA'S PERSPECTIVE

1. UNCITRAL Model Law on recognition and enforcement of insolvency related judgements are not yet adopted in the USA.
2. Insolvency and Bankruptcy framework in the USA came through in 1930s at Federal level. USA has state level insolvency laws due to which there are 50 state insolvency frameworks and one at the federal level.
3. Experience of issues being faced by stakeholders in the USA can act as early lessons in the Indian context.
4. Cross Border Insolvency in the major problem in the USA mostly for companies from Canada and Brazil as they insist for the law on their respective nations.
5. USA's insolvency is based on the principles of 'Debtors in Possession' (DIP) with significant checks and balances. However, if the law is to be redrafted today, probably 'Creditor in Control' would be preferred in the USA.

CHALLENGES AHEAD

1. Managing insolvencies having inter-group linkages.
2. Group is not properly defined i.e., the law silent on what constitutes a group company.
3. The need for a procedural and substantiative arrangement in respect of group insolvency framework.
4. The need for a procedural and substantive arrangement in respect of Group insolvency framework.
5. The lack of group insolvency framework is resulting in multiple insolvency applications in different AAs resulting in cost escalation of the debtor which is already in distress.
6. Substantiative Consolidation i.e., pooling of the resources of the companies of the group for value maximization.

THE WAY FORWARD

1. Group insolvency should be developed in a phased manner as it is a complex issue and requires extensive deliberations.
2. USA's insolvency system of 'Debtors in Control' in not recommendable for other countries as experience shows and in line with UNCITRAC Model Law, 'Creditor in Control' is preferable framework.
3. There should be enabling framework in the law which could involve AA for 'substantiative consolidation' for smooth completion of CIRP on time. This may not be a mandatory framework but a voluntary framework.

SESSION 1

2 INSOLVENCY OF FSPs AND INDIVIDUALS, CHALLENGES AHEAD

on 25th October 2020 from 10.00 am to 11.15 am

Moderator	:	**CA. Durgesh Kabra,** Director, IIIPI and CCM, ICAI
Panellists	:	**Ms. Anuradha Guru,** Executive Director, IBBI **Mr. R. Subramaniakumar,** Administrator, Diwan Housing Finance Ltd. (DHFL) by RBI. **Mr. David Kerr,** Insolvency Professional, UK
Vote of Thanks	:	**CA. Rahul Madan,** MD, IIIPI

SCOPE

The session discussed the insolvency of Financial Service Providers (FSPs) and individual insolvency in India in the backdrop of individual guarantors to corporate debtors. Mr. R. Subramainakumar threw light on the practical challenges of FSP insolvency while Mr. Kerr presented leading thoughts and lessons on the subject, especially in the domain of individual insolvency law and practice in UK.

KEY TAKEAWAYS

INDIAN SCENARIO

1. Before the pandemic we saw the onset of Insolvency of FSPs in a unique model whereby RBI, the banking regulator, has been bestowed with special powers to appoint administrator.
2. Diwan Housing Finance Ltd. (DHFL) is the first FSP resolution case to be tested under IBC's FSP regime in India. DHFL's stakeholders include 77,000 individual FD holders, 60,000 NCD holders and 6,000 employees.
3. In 2007, it was globally recommended to constitute Financial Stability Board to rescue Financial Service Providers (FSPs) during financial crisis. Subsequently, rules were framed in the UK and other countries.
4. Some countries have separate law on FSPs insolvency and individual insolvency, but India decided to include it under the IBC.
5. The laws related to FSPs insolvency and liquidation process were notified by the Ministry of Corporate Affairs notified 2019.
6. Unlike CIRP which mandates confirmation/replacement/ appointment of IRP as RP, the RP is permanent in FSPs resolution. Therefore, the time saved in transition could be utilized in implementing the insolvency process.
7. Individual insolvency has three categories – Personal Guarantors to Corporate Debtors, Proprietorship Firms and Partnership Firms and Other Individuals.

UK'S PERSPECTIVE

1. Fee of individual insolvency is very modest in the UK.
2. Insolvency Act in the UK provides a system of Individual Voluntary Arrangement (IVAs). The number of IVAs have increased very fast in last 15-20 years.
3. Deluge of individual insolvency cases and long pendency is a big challenge in the UK. There are IPs who handle over 1,000 cases but still it takes about one year for individual insolvency.
4. UK regulator is contemplating whether to go for corporate licensing or individual IP licensing or a combination of the two.
5. UK individual insolvency law is being amended to allow more breathing space for individual insolvents.

CHALLENGES AHEAD

1. Evolutionary phase of regulations on FSPs and Individual insolvency under IBC.
2. To keep FSP as going concern and implementation of administrative framework despite the checks and balances.
3. CIRP of the FSPs can be only initiated by an application of the financial regulator such as Reserve Bank of India which also has the power to appoint administrator.
4. Categories of FSPs are yet to be notified by the Central government.
5. As public money (deposits) is involved in FSPs, timely completion of the resolution process is a big challenge due to public pressure on government agencies.
6. As the law on individual insolvency is new, there is need for more research on how people are impacted and how judicial interventions could be minimized.
7. Constituting a representative Advisory Committee is the first big challenge for an Administrator of CIRP of FSP.
8. Soliciting bidders is a big challenge as it requires a fine balance between transparency and confidentiality of account books.
9. Maintaining confidentiality of records of depositors is a big challenge in FSPs insolvency.

THE WAY FORWARD

1. There is a great need for the administrator to take all the stakeholders on board and develop a strong compliance team for insolvency of FSP.
2. There is a need for a dynamic resolution plan for FSPs.
3. Individual insolvency should not be implemented in one go but in phases i.e., learning phase and implementation phase.
4. A robust communication plan and use of latest information technology for constant communication with the stakeholders is very crucial for the FSPs insolvency.
5. The individual insolvency laws should not be coercive but friendly to the individual debtors.

SESSION 2

INTERNATIONAL PERSPECTIVE ON MANAGING CROSS BORDER INSOLVENCY

on 25th October 2020 from 11.15 am to 12.30 pm

Moderator	:	**Mr. Sunil Pant,** Past CEO, IIIPI
Panellists	:	**Mr. Nilang Desai,** Partner, AZB Partners
		Dr. Mukulita Vijaywargiya, WTM, IBBI
		Mr. Paul Bannister, Head (Policy), Insolvency Service, Govt. of the UK
		Mr. Ashok Kumar, Partner, Black Oak LLC, Singapore
		Mr. Ashish Chhawchharia, Insolvency Professional
Vote of Thanks	:	**CA. Rahul Madan,** MD, IIIPI

SCOPE

In the backdrop of increasing interest of foreign investors and MNCs (Multi-National Companies) in Indian economy, the session was focussed on practical challenges in cross border insolvency particularly on the scope of judicial cooperation and concept of COMI (Centre of Main Interest). The panellists also discussed various measures to negotiate and ensure a reasonable balance among laws of different countries involved in the CIRP of the corporate debtor in the cases of cross-border insolvency.

KEY TAKEAWAYS

PREVIOUS EXPERIENCES

1. There have been cases where companies which went through CIRP, had assets in foreign countries.
2. Though IBC mandates for enabling framework, the ground reality is that there is no framework in India which easily allows cross-border insolvency.
3. Jet Airways could be cited as the first full-fledged cross-border insolvency case in India which involved huge cross-border assets and dealing with the insolvency laws of different nations.
4. The comparative experience of dual model being in the context of Singapore viz. UK based (creditors' friendly) and USA based (industry friendly).
5. The advantages accruing because of industry-friendly (rescue-friendly) model in Singapore which has become useful in COVID-19 in saving jobs in going concerns.
6. COMI in the case of Jet Airways was recognized by the Government of India, even in the absence of legal provision.
7. Guidance available under UNCITRAL to implement model cross-border framework in the United Kingdom.

UK'S PERSPECTIVE

1. Section 46 of UK's Insolvency Act 1986 provides a framework for judicial cooperation.
2. UK has one of the most developed cross-border insolvency regimes but going through significant changes due to challenges posed by Brexit and COVID-19 and also to benefit creditors.
3. Broad assistance is now available in UK under Cross-Border Resolutions under the UK Law including COMI, cooperation between UK courts and those in other countries. It depends what the courts consider appropriate taking into account the precedents and the UK law.
4. Chapter 4 allows courts to cooperate with the insolvency professionals to the extent possible with the UK law. The government is trying to implement the model law to address the questions raised against it.
5. UK Court judgements are well regarded and recognized in European and other countries; therefore, it is suggested to have a UK court order in cross-border insolvency up to the extent possible. But the Brexit is an emerging challenge for this.
6. There is no economic threshold to file cross-border insolvency case in a UK courts and the judges have sole discretion based on reasonable grounds.

SINGAPORE'S PERSPECTIVE

1. Restructuring of a corporate debtor is very much different from insolvency and liquidation.
2. Singapore has two competing models for restricting of the debtor – Creditor Lead (UK Model) and Debtor Lead (USA Model). UK model triggers insolvency.
3. It is philosophical issue to decide for a country whether it wants 'rescue culture' or the other for the industries.
4. Singapore decided to move towards a 'rescue culture' for industries which paid excellent results during COVID. If industries and jobs are to be saved, a system needs to be implemented which is conducive for industries.
5. However, both the systems are not recommendable for a country, together. There should be clarity in policy.
6. Courts have final jurisdiction to decide COMI.

CHALLENGES AHEAD

1. Cross-border insolvency involves complications due to laws of more than one country being applied in the process.
2. International protocol is important in cross-border insolvency but the most important is communication, coordination, and cooperation.
3. Role of offshore professionals like the Dutch trustees in resolving cross border cases like Jet Airways and Videocon.
4. To find out scope for the cooperation between UK and other countries as per Chapter 4 of the UK Law.
5. Protocol in cross border CIRP is very challenging during as the RP will be required to ensure compliance of the rules and regulations of both/all the countries involved in the process.
6. The cross-border insolvency is more dependent on judicial discretion rather than insolvency framework.
7. UK's insolvency law does not recognize foreign insolvency processes.
8. Making a final global list of creditors as IPs of different countries have their own list of creditors.

THE WAY FORWARD

1. There is great need for the mutual understanding by various stakeholders in a cross- border insolvency.
2. There is great need to unburden judiciary from insolvency regime and achieving a paradigm where the interests of both debtors and creditors are protected without judicial interventions.
3. The need of the hour is to develop global protocols to play a vital role in Cross Border Insolvency to have uniform procedures like in identifying the Center of Main Interest (COMI).
4. Working harmoniously is the best way to implement cross-border insolvency.
5. Protocols in cross-border insolvency should be flexible and emphasise on cooperation but not binding on countries.
6. There should be some "global universal principals for protocols" on cross-border insolvency on the lines of international judicial system.

SESSION 2

ETHICAL CONDUCT AND PUBLIC INTEREST AS UNDERLYING THEME OF INSOLVENCY RESOLUTION

on 25th October 2020 from 12.30 pm to 1.30 pm

Moderator	:	**CA. Durgesh Kabra,** Director, IIIPI
Presenters	:	**Mr. Saji Kumar,** ED, IBBI
		Mr. Rashmi Verma, IAS (Retd), Director, IIIPI
		Mr. Sharath P. Kumar, Insolvency Professional
		Mr. Ashok Kumar, Partner, BlackOak LLC, Singapore
Vote of Thanks	:	**CA. Rahul Madan,** MD, IIIPI

SCOPE

The panellists in the session emphasised that integrity, trust, and ethics are clearly the hallmarks of insolvency profession. Given the gravity of the plight, need for ethical conduct by the insolvency professionals in word, deed, and conduct, cannot be undermined. Therefore, a very high order of professionalism and ethical conduct is expected from insolvency professionals in conducting their assignments.

KEY TAKEAWAYS

PREVIOUS EXPERIENCES

1. Restructuring is an autonomous process under the IBC and the State does not intervene in the process at all.
2. The ten-commandments as enlisted under the professional code of conduct for IPs are only a general guide and that they should act with honesty and transparency. Though the IBC provides them immunity from their actions but only if they are done in good faith.
3. Only IBBI and IPAs can question conduct of insolvency professionals while other Government agencies can complain to IBBI.
4. The role of insolvency professional is as an officer of court.
5. There exist some grey areas due to which RP might be considered under the definition of public servant or not is still not clear before the law. In some cases, RPs have been treated as public servant by law enforcement agencies.
6. IP can be punished only as per the IBC rules but not under corruption laws.
7. Some IRPs/RPs were found to be quoting very high fee such while in some cases IPs quoted extremely low fee to secure business.

CHALLENGES AHEAD

1. Maintaining a fine balance between confidentiality and transparency of the corporate debtor.
2. Insolvency professional in his capacity as Resolution Professional or Liquidator works under the gaze of whole world.
3. Setting best practices for practicing and aspiring IPs.
4. To expose corrupt practices of the management or stakeholders of the corporate debtor.
5. Handling pressure from various interest groups.
6. Balancing the conflicting interests of various stakeholders of the corporate debtor.
7. RP can be held responsible or answerable for the unethical actions of his staff also.

THE WAY FORWARD

1. IPs should discharge their duties with impartiality, objectively and integrity.
2. A strong system of peer-review and peer pressure should be developed to inculcate high ethical values among IPs.
3. Insolvency professionals should ensure compliance of all the existing laws and keep in mind the greater interest of stakeholders and perception in the public.
4. Insolvency should act apolitically and not buckle under any kind of pressure.
5. RP should record the reasons of running the operations of the company in such a manner so that aspersions are not cast upon him/her.
6. RPs should also be familiar with the working of law enforcement and investigating agencies to save themselves from the hassles.
7. IPs should quote fee which is commensurate with the work but not exorbitant enough to make it un-affordable by the creditors.

SESSION 2 ISSUES FACED BY INSOLVENCY PROFESSIONALS AND WAY FORWARD

on 25th October 2020 from 2.15 to 3.25 pm

Moderator : **CA Rahul Madan,** MD, IIIPI

Panellists : **Mr. Pawan Kumar,** Dy. MD, IIFCL
Mr. Ashish Makhija, Insolvency Professional
Ms. Sripriya Kumar, Insolvency Professional
Mr. Dilip Jagad, Insolvency Professional
CA. Hans Raj Chugh, Director, IIIPI
Dr. Eric Levenstein, Chair, SARIPA, South Africa

Vote of Thanks : **Dr. Ashok Haldia,** Chairman, IIIPI

SCOPE

Huge and multiple responsibilities lie on the shoulders of IPs given the scope of their duties under IBC, after becoming de-facto CEO of the CD under CIRP. The session was focussed on how to make IPs' delivery more effective and impactful in rescuing corporate lives, with which are involved countless human lives as well. The panellists thoroughly discussed procedural issues, challenges posed by COVID-19, legal framework, COC, Other Stakeholders and lessons from South Africa.

KEY TAKEAWAYS

PREVIOUS EXPERIENCES

1. Members of COC do not come with adequate preparation which causes problems and avoidable delays of the meetings.
2. However, the IBC provides discretion to RPs in appointment of supporting staff, some RPs have appointed firms for support services in which either they were partners or joined as partner after completing the assignment. This is a big question mark on transparency and working with good intention.
3. The IBC mandates to engage professionals not the professional firms as the regulatory bodies like Bar Council of India (BCI) and ICAI exercise powers on professionals not on the professional firms.
4. Claw-back cases in India have locked up around Rs 1 lakh crore in the economy. If this money circulated, the economy will be benefitted.
5. There has been long pendency and delays in NCLT and NCLAT. In some cases, CIRP are stuck since 800 plus days.
6. About 35 IPs have been disciplined but around 70-80 % complaints were found to be frivolous.
7. There is no provision to distribute fee amount between IP and process advisor. In some cases, process advisor (firm) gets 90% of the fee and IP only gets 10% which shows process advisor is in greater control and IP is only the face.
8. The members appointed by creditors in the COC often lack basic knowledge of insolvency vis a vis to differentiate between resolution and recovery and insist on recovery. This lack of familiarity with the IBC among members cause delays by COC.
9. Income Tax and Sales Tax authorities generally do not submit their claims to the COC on time. And if they do, they do not participate or are active enough in the COC meetings.

SOUTH AFRICAN PERSPECTIVE

1. Business Rescue regime in South Africa started with the enactment of Companies Act 2008.
2. Due to ensuing COVID-19 crisis several companies are filing for business rescue.
3. South Africa has informal business rescue mechanism, but lack of moratorium is still a problem.
4. In South Africa, a business rescue practitioner should belong to a credible organization and have requisite license.
5. Incharge of business rescue supervises meetings in business rescue practices.
6. RPs need to be independent as stakes are very high. S/he will report to the board of directors for filing for business rescue in South Africa.
7. In South Africa's insolvency framework, Business Rescue Practitioner (BRP) is an officer of the court and has powers at par with directors. S/he supervises board meetings with other directors and takes crucial decisions. The board of directors are generally side-lined when it comes to taking decisions on business rescue process.
8. There is three months' time to complete the business rescue process.
9. Managing litigations and arranging interim finance are big issues in South Africa.
10. Six months window is provided for liquidation if the business rescue process could not succeed.
11. Even the business rescue plans are approved the implementation could be problematic because of various regulatory approvals such as competition commission approval, timeframe, and competition.

CHALLENGES AHEAD

1. The role of IP is like living in a glass house. Anyone is ready to throw a stone even at the slightest provocation.
2. Lack of transparency in appointment of professionals for support services for value maximization and operationalize the CD as going concern (GC).
3. IP is a court officer but whether s/he is a public servant answerable to law enforcement agencies is still a grey area.
4. Delays in CIRP cause dissatisfaction among stake holders and adversely affect the reputation of IRPs/RPs.
5. Law enforcement agencies such as Enforcement Directorate (ED), CBI, Income Tax Department etc., do not pay due regard to IBC provisions due to which RPs suffer.
6. All the communications from regulator IBBI are to be addressed on urgent basis. There is no breathing space for the RP. Too many compliances give a sense of over regulation of IPs.
7. There is no cap on the number of assignments an IP can handle. How can an IP become CEO of several companies simultaneously, handle several CIRPs and budgets?
8. Lack of guidelines and clarity on connected entities.
9. Getting funds for the operationalization of the CD is a tough task.
10. Even if the CD does not have any asset or business, RP is bound to complete liquidation and then move for dissolution.

THE WAY FORWARD

1. Principle-based approach to be followed by insolvency professionals and other stakeholders, for orderly development of insolvency resolution framework in the country.
2. IBBI should bring an elaborative code of conduct for the members of COC.
3. Professional Services for CIRP should be engaged in a transparent manner.
4. Maximum possible automation of IPs enrolment, registration, and other processes.
5. There is great need of reforms in adjudicating authorities/judiciary to ensure CIRP is completed on time with due justice to all the stakeholders.
6. IPAs should get more powers to regulate IPs on the same model of distribution of powers between SEBI and Stock Markets to regulate companies.
7. There is great and urgent need for detailed guidelines on professional standards of IPs in the light of cutting-edge trust and integrity. Besides, global principals should also be applied to make it more robust.
8. Capacity building of stakeholders is very important at all levels.
9. We need to develop best practices based on which conduct of IPs and COC members can be assessed. Besides, Standard Operating Procedures (SOPs) should be developed to conduct COP meetings, CIRP, Group Insolvency and Cross-Border insolvency etc.
10. High-quality research is required in various sectors of insolvency from national as well as global perspective.

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