Title-Code: DELENG19833
DCP Licensing No. F. 2 (T-7) Press / 2021
Volume 02, Issue 01, Pages 96, January 2022 I Quarterly | ₹ 100

THE RESOLUTION PROFESSIONAL

RESEARCH JOURNAL OF THE INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI (IIIPI)

(A Section 8 Company Promoted by ICAI and Registered as an IPA with IBBI)

RESCUING THE CORPORATE LIVES

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 IPs as its members in accordance with the Code read with its regulations. The Company was incorporated on 25th November 2016.

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 Late Shri Arun Jaitley on 28th November 2016.

OUR VISION

To be a leading institution for development of an independent, ethical and world-class insolvency profession responding to needs and expectations of the stakeholders.

STRATEGIC PRIORITIES

- Capacity building of members by enhancing their all-round competency for their professional development in global context.
- Capacity building of other stakeholders for facilitating efficient and cost effective insolvency resolution proceedings.
- Deploying an independent regulatory framework with focus on ethical code of conduct by the members.
- Working closely with the regulator and contributing to policy formulation including with respect to the best practices in the insolvency domain.
- Conducting research on areas considered critical for development of a robust insolvency resolution framework.

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Imprint Line: Printed and published by Rahul Madan on behalf of Indian Institute of Insolvency Professionals of ICAI (IIIPI) and printed at VIBA Press Pvt. Ltd., C-66/3, Okhla Industrial Area, Phase-II, New Delhi - 110020 and published at ICAI Bhawan, P.O. Box No. 7100, Indraprastha Marg, New Delhi – 110002., **Editor: Rahul Madan**

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Message from Chairman, Editorial Board

CA. Nihar N. Jambusaria
President, ICAI
Chairman, Editorial Board-IIIPI

Dear Member,

Wish you a happy and prosperous 2022!

Despite the hardships caused by the second wave of Covid-19 pandemic, 2021 will always be remembered as the year for paradigm shifts at multiple levels. The year witnessed completion of five years of the IBC regime, besides introduction of many changes. The most significant of them, is introduction of Pre-Packaged Insolvency Resolution Process (PPIRP) framework for MSMEs thereby, making the IBC diversified and wide-ranged. However, we have yet to make diligent efforts to see this framework being used effectively. The reasons for such underutilization may lie in lack of awareness or incentive among stakeholders, especially MSME segment therefore, there is a need to put in efforts in this direction. IIIPI has been working towards improving the awareness and usage of PPIRP.

By the year end, the stage has been set for the Cross Border Insolvency. I feel proud in acknowledging the efforts and contribution of Insolvency Professionals (IPs) in building sufficient knowledge and experience in CIRPs and setting the stage for the cross-border insolvency framework as a next logical step. Furthermore, such knowledge and experiences have helped building up the base for policy formulation thereby ensuring a robust legal framework.

In addition, the recommendations of Shri G N Bajpai panel to set up a national dashboard for 'reliable and real-time insolvency data' would go a long way in ensuring vibrant and dynamic insolvency resolution market in India. In yet another significant development, the Central Government has unveiled the policy for privatization or closure of non-strategic state-run firms, including through IBC route. Further, the operationalization of Bad Bank – National Asset Reconstruction Company Ltd. (NARCL) has brought about a significant change in resolving distressed assets in India. The Ministry of Finance has reportedly given the NARCL a target to complete the takeover of 22 identified top non-performing accounts (NPAs) involving Rs.80,000 crore by March 31, 2022. These policy initiatives under the IBC coupled with judicial interpretations have redefined the IBC regime during 2021 which will influence insolvency resolution in time to come.

It is pleasant to see that the IBC is gradually approaching towards a holistic resolution framework. We are hoping that the Central Government will soon come up with drafts on two important aspects of the IBC – Individual Insolvency and Group Insolvency. Keeping in mind the importance of the IBC's objectives, it has become even more important for IPs to carry out responsibilities entrusted upon them, ethically and remain mindful about the public interest as the underlying theme.

I hope you all will continue with this pace of innovating, experimenting, setting professional standards, and leading reforms in the IBC ecosystem. While the country is celebrating 'Azadi Ka Amrit Mahotsava', let's resolve to make IBC beneficial for all the stakeholders.

Wish you all the best.

CA. Nihar N. Jambusaria
President, ICAI
Chairman, Editorial Board-IIIPI

Message from Chairman, IIIPI-Board

Dr. Ashok Haldia
Chairman, Governing Board
IIIPI, New Delhi

Dear Member,

Happy and Prosperous 2022!

The year gone by has been a roller coaster ride across hope and despair, a year of leaps in learnings and overcoming challenges posed by Covid, among others. After a Covid-driven hiatus, which led to discontinuation of physical events, by the end of the year, IIIPI could organize a couple of events in hybrid mode.

For IIIPI, the high point of the year culminated into celebrations of our 5th Foundation Day on November 25, 2021, in a physical event in New Delhi, preceded by completion of 5 years of IBC during May 2021. At the celebratory event, we were obliged to have the presence of Shri Piyush Goyal, Hon'ble Union Minister of Commerce & Industry. While exhorting the profession to respond to onerous responsibility, he appreciated the role played by IPs and IIIPI in the success of IBC. Besides, eminent personalities from cross section of stakeholders such as Dr. Navrang Saini Chairperson IBBI, CA. Nihar N. Jambusaria President ICAI, Shri Sudhaker Shukla WTM IBBI, Shri Paul Bannister Policy Head Insolvency Service Govt. of UK, Shri J. Swaminathan Managing Director SBI, Prof. Pryor C. Scott Campbell University USA, and Shri A K Bhattarcharya Executive Director Business Standard, graced the occasion benefitting the participants with their wisdom.

The event also witnessed the release of IIIPI's publication on case studies on successful CIRPs, a first of its kind initiative. We plan to bring out another edition focusing on learnings from unsuccessful CIRPs and smaller cases under IBC.

In a webinar on Individual Insolvency jointly by IBBI, IIIPI, and British High Commission, Shri Suresh Prabhu, Former Minister, Govt. of India, highlighted the salutary aspects of insolvency law for ensuring ease of doing business, by giving honourable exit to entrepreneurs due to genuine failures.

The recent data released by the IBBI exhibits that with a share of ~63% or 2,618 IPs, IIIPI continues to be the largest IPA carrying forward its legacy to strengthen the insolvency profession. As per the data, 4,708 CIRP cases have so far been admitted by NCLT for insolvency process out of which 3,068 have been closed while 1,640 cases are pending. Notwithstanding thousands of cases waiting at the admission stage, the achievement so far has indeed been credible.

The year has witnessed notification of Pre-Pack insolvency framework for MSMEs and of late, draft Cross Border insolvency framework has been released for public comments. As another significant development, Central Government operationalized Bad Bank (NARCL) towards improving the scenario for resolution of stressed assets in the country.

Though the risk of next wave of Covid has been looming large on the economy, cautious optimism is perceptible among the businesses and their stakeholders about being able to wade through such wave ever striking, successfully. Such optimism is apparently due to previous experience and learnings especially through more digitation across many processes adopted by various stakeholders.

At IIIPI, we continue to innovate with an objective to act as one-stop shop to fulfil all the professional requirements of our professional members, some of which have been shared as follows.

Partnering the Reforms

Reforms in legal framework involves a multistage process. It requires intellectual debate from initiation to drafting to final implementation on ground. Under the aegis of IBBI, IIIPI has been an active partner in pushing reforms in the IBC, 2016. It provided wide consultation-based inputs on policy on various matters to IBBI.

During 2021, IIIPI upped the efforts and came out with at least four research-based study group reports, viz. (i) Group Insolvency : Learnings from International Experience (ii) Recommendations on COC's Best Practices (iii) 'Study Group Report: Roles of IPs Prior to During and Post PPIRP for MSMEs' along with 'FAQ on PPIRP for MSMEs' and (iv) 'Enhancing Roles of Small Sized IPs', which would act as guide to Insolvency Professionals (IPs) and create better awareness among other stakeholders. Furthermore, IIIPI made presentations on the above reports to Ministry of MSMEs and IBBI. Acknowledging the need to spread awareness and usage of PPRIP framework especially among MSMEs, IIIPI is in the process of creating a helpline for MSMEs through its website in near future.

IIIPI also developed, in association with other IPAs, best practice papers on (i) appointment of professionals during CIRP/Liquidation and (ii) conducting meetings of the Committee of Creditors (COC) under CIRP. These papers shall be soon released under the aegis of IBBI.

Presently, six different Study Groups constituted by IIIPI, comprising members from across different professional backgrounds, are at various stages of completing their reports. These Study Groups are in respect of:

- Improving and amending IBC framework post-Covid;
- Developing Code of Ethics for IPs in line with international best practices;
- Framework for Quality Control and Assurance Mechanism for Services Rendered by IPs along with Peer Review Mechanism.
- Designing Mentorship Program for IPs';
- Best Practices on Liquidation Process; and
- Cross Border Insolvency Framework: Building Capacity of Professionals and Stakeholders.

Capacity Building

Enhancing the capacity of members and stakeholders, is one of the key roles of IIIPI as a frontline regulator. In addition to mandatory pre-registration educational courses (PRECs), IIIPI has over last quarter or so, taken capacity building measures, among others, on Managing Corporate Debtors as Going Concern Under CIRP; Mastering Legal Skills, Pleadings and Court Processes under IBC; Individual Insolvency - Preparing for Future; Digitalisation of Insolvency Processes. It organized programs in association with IBBI, CII, NeSL, WASME and other organisations. It also organized Interaction with CFOs of CDs and successful Resolution Applicants.

We expect that in year 2022, frameworks for cross border, individual insolvency, and group insolvency may be notified, thus making the IBC a full-fledged and a word-class dispensation. With the expansion of the IBC's scope, the challenges of the capacity building are also rising. IIIPI has recently decided to form a Research Committee to take up various research projects on regular basis. The areas identified for urgent focus, are Individual Insolvency, Cross Border, Group Insolvency and Mediation among others. This will further improve the quality of capacity building initiatives of IIIPI and enable us to serve the members better.

Small practitioners are at the center of IIIPI's work programs. Apart from a targeted study and capacity building measures on areas of concerns, we are launching shortly, a mentorship program benefitting these members. Discussion Forum available on IIIP's portal has been found to be very useful.

I am confident the ensuing legislative reforms coupled with the initiatives by IIIPI duly supported by professional commitment of our members, will surely realize the objectives of IBC resolutely.

Wish you all the best.

Dr. Ashok Haldia

Chairman, Governing Board

IIIPI

From Editor's Desk

Dear Member,

Wishing you a very happy and prosperous New Year 2022!

In the past five years, the IBC regime has matured to a level where it is increasingly winning the trust and confidence of various stakeholders. This success has been achieved through a synchronized and sustained effort of the legislature, judiciary, executive, regulators, and Insolvency Professionals (IPs) among others. The speed at which the policy makers are addressing the market needs to make the IBC relevant is visible from six legislative and many more regulatory interventions since the IBC came into being in 2016. In the context of next five years for IBC regime, better described as IBC 2.0, many procedural and substantive changes in this beneficial economic legislation are expected. The stage looks set for introducing Cross-Border Insolvency during 2022 after the public comments were sought on the draft legislation recently. The frameworks on group insolvency and individual insolvency are also on the anvil.

On the occasion of the 5th Foundation Day of IIIPI on 25th November 2021, we had an opportunity to get enlightened from the visionary ideas and valuable guidance of Hon'ble Union Minister Shri Piyush Goyal, Ministry of Commerce & Industry, Consumer Affairs, Food & Public Distribution, and Textiles. We have presented the transcript of his address as such in this edition of the journal, for the benefit of our audience.

Besides, in this edition we have presented four research articles and two successful CIRP Case Studies – Bhushan Steel Limited by Mr. Vijaykumar V. Iyer and Jalpower Corporation Limited (JPCL) by Mr. Amit Jain.

In the opening article "Section 53 of IBC, 2016: Camouflage Key Player in the Revival Process" the author has highlighted a loophole in the Section 53 which is prone to be misused for thwarting the core objectives of the IBC. The author has strongly recommended for immediate legislative intervention to plug the same. In the second article "Prospects of Bad Bank in Indian Banking Industry: Experiences from Abroad" the author, after presenting a comparative analysis of legislative framework on Bad Banks in India with some representative developed and developing economies, has enlisted key takeaways for India. In the past, the Section 238 of the IBC has caused intense legal battles with government agencies due to overlapping legal jurisdictions. The author of the third article "Whether Imported Goods, for which no Customs Duty is paid, can be sold during CIRP/Liquidation?" has presented an analysis of legal dispute between Section 238 and Customs Act 1962, which also has superseding power. The fourth article "Importance of Communication in Insolvency Processes" analyses the importance of communication in value maximization and success of the insolvency processes under the IBC.

In this edition we are carrying the remaining part of the Statement of Best Practices: "Meetings of the Committee of Creditors Under Corporate Insolvency Resolution Process" (Joint paper by all the IPAs). Furthermore, we have dedicated a special feature on addresses of eminent speakers on the 5th Foundation Day of IIIPI.

Besides, the journal also has its regular features, i.e., Legal Framework, IBC Case Laws, IBC News, IIIPI News, Media Coverage, Services and Crossword.

Please feel free to share your candid feedback to help us improve the quality of the journal, by writing to us on iiipi.journal@icai.in

Wish you all the best.

Editor

ADDRESS BY THE HON'BLE MINISTER SHRI PIYUSH GOYAL

Chief Guest at 5th Foundation Day of IIIPI on 25th November 2021

Shri Piyush Goyal
Hon'ble Union Minister
Ministry of Commerce & Industry
Consumer Affairs, Food & Public Distribution,
& Textiles

Shri Piyush Goyal (57) is the Minister of Commerce & Industry (2019-present), Consumer Affairs, Food & Public Distribution (2020-present), Textiles (2021-present), and Leader of the Rajya Sabha (2021-present). He was earlier the Minister of Railways (2017-21). In his tenure, Indian Railways achieved the best ever safety record of zero passenger deaths in accidents and also launched first indigenous semi-high speed train Vande Bharat Express. He is also recipient of 4th Annual Carnot Prize in 2018 for pathbreaking transformations in India's energy sector.

Shri Goyal has had a brilliant academic record – all-India second rank holder Chartered Accountant and second rank holder in Law in Mumbai University. He was a well-known investment banker and has advised top corporates on management strategy and growth. He also served on the board of India's largest commercial banks such as the State Bank of India and Bank of Baroda.

On the 5th Foundation Day of IIIPI, he graced the event as Chief Guest and shared his view on various aspects of the IBC regime. ***Read on to know more....***

Happy to meet with the professionals like you. We have been reading about all your works for the last few years since IBC, 2016 came into operation. It is probably the first time I am meeting all of you as a group, and I am glad that you have the Indian Institute of Insolvency Professionals of ICAI (IIIPI), which I believe engages in knowledge sharing, training, skill-development, understanding each other's issues, and problems, and therefore, the need of such a body is truly important.

It is the fifth foundation day of IIIPI, you have covered a lot of ground over the last few years. We are seeing a lot of large accounts getting resolved. Of course, we also had a lot of criticism in the last phase in terms of delayed resolutions, in terms of processes which could not be completed in the stipulated timeline. However, the good part is that we have always had a dialogue and learnt a lot in the past five years of the IBC implementation. It has been obviously a game changing reform because from the days when insolvency would take probably decades, we have come to a situation where we can reasonably expect resolution to happen within a stipulated timeline with an occasional delay. But the resolution is happening. That is a reality. I must compliment all of you for the work that you have done. It is also very redeeming to see that IBC has also reached five years of completion earlier this year in May 2021.

Five years is a good amount of time to understand the nuances of a new law. Based on your experiences, we have been making amendments wherever required and called for. I do believe, we will be able to see significant positive action in terms of what is good for the banking system, credibility of India, and our financial architecture that persons who do not pay back will be taken to task. Insolvency had happened in the past also. We had several efforts such as BIFR (Board of Industrial and Financial Construction), SICA (Sick Industries and Companies Act), and SARFAESI. But possibly the IBC has been the most successful so far. If you look at the level of recovery or timelines of recovery or any other aspect of the performance of IBC, the work that the Resolution Professionals (RPs) have done, is truly praiseworthy.

This legislation was also important from the perspective of Ease of Doing Business because confidence in the system that people can be forced to pay back their dues is important if you want to attract investment and business. From that extent also, it has been quite a game changing law by putting the creditor back in the driver's seat. Otherwise, there was a time when people would borrow from banks or take material from companies and then decide as per their whims and fancies on when and how they want to pay. In that regime, the resolution mechanism was so weak that more often we only saw ever-greening of credits rather than truly an effort to recover them. Since the enactment of IBC, India's ranking in resolving insolvency in the World Banks' Ease of Doing Business (WBEDB) saw meteoric rise of 84 places, and I truly believe all of you had a role to play in this success story.

"It is the 5th Foundation Day of IIIPI. IBC has also reached the 5-year milestone. Going forward we will be able to see positive action in terms of what is good for the banking system & the credibility of India."

The recovery rate has also improved, dramatically. I am told that earlier it used to be only 26%. Now, we are currently looking at 60% to 70% recovery with much shorter timelines which is also valued because if the interest meter stops earlier, you resolve the faster and get your money back. Besides, you are also saving in terms of time value of the money. There are consequential advantages for banks as well which do not need to price their loans very high because they are not worried about default and the long-time taken in recovery. This will help in bringing down cost of credit.

More importantly, what we have achieved through IBC and with your effort, has been the shift in the attitude of people - both of lenders and the borrowers. It has acted quite an effective deterrent against the unscrupulous behaviour of borrowers who hardly looked upon it as a duty that they have to repay the debt. It has also helped in terms of giving the bankers – (a) a cautionary note that do not indiscriminate lending and apply due diligence well, and (b) the confidence that in case of any unforeseen circumstances they can recover their money. If, after proper due diligence and good effort, the entrepreneur fails to make his business successful, s/he has been given the confidence that money can be recovered. However, the most important aspect of the IBC is that it has freed up a lot of capital blocked up in the banking system which will help us to save companies & businesses – many of which would have otherwise gone down the tube or closed. Obviously, in the process the IBC has saved jobs which is probably one of the most important elements of our work.

During Covid-19, the government took the proactive step of suspending IBC from March 2020 to March 2021 which was a relief because it was truly a tough period for all businesses. We have also come out with schemes to support businesses through liquidity particularly for the MSMEs sector or smaller businesses. All of which have helped India bounce back much faster and much better. The economic recovery that we are seeing all around is truly phenomenal particularly in terms of speed with which the recovery is coming back to normalcy. We are looking at good growth prospects of the economy. Next 5-10 years seem to be very-very bright.

I remember the time when I was much younger in the profession, it was jokingly said that bankruptcy is the state of things which exist when a man is unable to pay his debts and his solicitor and accountant divide his property between them. So, once an entrepreneur defaults and is not able to pay back, the matter is between the lawyers and the accountants while the entrepreneur becomes irrelevant. Now, at least we see that process is becoming faster and entrepreneurs being concerned about losing their businesses. There is more serious effort towards resolution which is good news for all of us.

"The Insolvency and Bankruptcy Code legislation was very important in terms of ease of doing business. It was a game changer."

Although, at this stage I would also like to raise a little cautionary note. As a Resolution Professional, I think, very large and fiduciary duty is cast on you. We are the trustees of the capital employed in the business that any failed bank account or creditor needs to recover. I do hope that all of us realise how onerous is the responsibility cast on us. Even if a few or some of us do not perform duty with honesty, integrity and in the best interests of the debtor, this can truly cause a lot of harm to the entire profession. It is important that all of us recognise this.

It is equally important that as an institute, IIIPI also plays its role in regulating the work of the resolution

professionals, remaining vigilant, monitoring the integrity of professional members, and ensuring that due justice is given in case any of them faces any difficulty or pressure, threat, or other challenges to get the highest value for the creditor. In such cases, the duty is cast upon the institute to support the IP. So, the institute really has a double role to play - ensuring that our professionals do their job well and ensuring that no harm or nothing wrong comes or happens to any of the professionals in the honest discharge of his/her duties. Of course, please do not start protecting somebody who is not doing his job well or not doing his job to the best of his abilities and with full integrity. So, IIIPI as a frontline regulator is expected to contribute very highly and immensely in strengthening the IBC regime. I believe you have four pronged roles – regulatory, executive, capacity building and quasi-judicial. I am given to understand that today, it is the largest Insolvency Professional Agency (IPA) in India with almost 63% of the IPs are members. So, it's your responsibility to make the IBC and the entire process successful. Furthermore, working to the best of the abilities to get maximum return, is very large upon the leadership of IBBI, IIIPI, and all the professionals who are assembled here or otherwise your members. I do believe a number of Chartered Accountants, Lawyers, Cost & Management Accountants, Company Secretaries and other professionals, who have gone through the training program, have become insolvency professionals and are working towards making this entire process a big success. I do believe that all of us understand that what we are doing is national service. What we are doing is reviving the confidence in businesses and entrepreneurship in the country. Therefore, please do not look at it only as an assignment, only as a job, or only as something which is a mechanical exercise with timelines.

"We have achieved a change in the attitude of people both lenders and borrowers because of IBC and your efforts. It has given the confidence that the money can be recovered."

We need to apply our mind and put in our best effort. While running a company, during the resolution period you have to exercise complete due diligence and do the job extremely carefully as if you are the owner of that company or that business. Because in some sense as an RP you are almost foisted on an organisation and become the de facto Managing Director running the show. Thus, a lot of confidence has been placed on you. As professionals

we all understand that greater the power, bigger is the responsibility on each one of us. So, while you exercise your power as resolution professionals, you will have to also demonstrate the same level of responsibility in the work that you carry out.

Your work also has a big impact on saving jobs, and once you save those jobs and revive a company you actually become a change agent to generate new employment. As you save the banks from large NPAs, you are providing resources to create new banking opportunities and new investments. Therefore, with this combination of employment, financial ability, and making the investment available you help the economy growing forward. Now, can you imagine the big job that is at hand and that each one of you is carrying! It is not only about saving jobs or saving investment or economy but also promoting new jobs and promoting investments. This gives a big push to economic growth in the country. As professionals and citizens of India, I am sure each one of you will continue to work in this profession as the change agent for a better future for those millions of people who have still not got an opportunity, the kind of education and working that each one of us in the room has been privileged to have in our lives.

As professionals, if I may venture to suggest, you should look at five guiding principles in our work. At the top of the line, I will consider integrity which is the most important guiding principle that should determine the way we work. Objectivity - whatever work we are doing, we should do it with a sense of understanding, knowing what we are set out to do. Are we doing the job in a systematic matter? Are we setting out the timelines or plans effectively? Obviously with our experience, studies, and knowledge we are expected to display the highest level of professional competence. We have to be really competent

in our work. Fourthly and very importantly, confidentiality. Are we truly maintaining the highest levels of confidentiality in our work? That's very critical. We are privy to a lot of confidential data. Fifthly, transparency. Is our work documented well? Are we ensuring that anything we do, does not raise suspicion tomorrow on our intent? Are our activities truly for the benefit of the outcome that we are set out to do. If we follow all these five principles, that could truly be the kind of professional behaviour that is expected of professionals assembled in this room – members of the IIIPI, that is truly what professional ethics is all about. Therefore, the summation of these five principles would in a way be professional ethical behaviour, professional ethical management of our work.

"To shield the businesses from distress in COVID19, Govt took the proactive measure to suspend the insolvency proceedings arising from default during March 2020 to March 2021, other support schemes by the Govt. in terms of liquidity have helped India bounce back."

Many of us also do valuation of assets or get our assets valued day in and day out. That's also an area which requires a lot of application of mind which can be done smarter and more sensibly. If we set very low benchmarks or do not assess the liquidation value of a company correctly or any one of us tampers with the valuation or influences the valuation by not disclosing fully all the assets or all the potential values of the asset which is under consideration or under sale, then we are doing an injustice to our work.

I think we could use technology in a big way for these works. Whether it is evaluation or resolution, when we are speeding up the resolution of bad loans, I think technology can play a big role, and I would urge IIIPI to focus and see what kind of tools we can develop for our professionals to help them in their work, and I will tell you how small things through technological innovation can make a difference. For instance, a simple thing like creating benchmark. When you benchmark assets, may be with replacement value or other assets which have been sold in recent past, comparable quality of assets or the value of assets if they were to be sold piecemeal or whole (which is better), various mechanisms can be deployed. If put transparently, may be some small easy-to-use software can

"What the IIIPI is doing is national service. It is reviving the faith in entrepreneurship and businesses. It has a big impact on saving jobs by reviving a company. It becomes a change agent to create new job opportunities."

help us understand values of an asset with different formulas, and help us truly arrive at a good understanding of what we can recover from an asset. Therefore, I would urge IIIPI to look at capacity building, upskilling of our professionals regularly so that we can be abreast with what's have been newer developments, study the best international practices, if possible. Nowadays banks have started doing out-of-court settlements for faster resolution. Need is to ensure that it is not being misused but is done in a way which is truly fair in the interest of the banking system or in the interest of the debtor and creditor both.

Let us work together. It is time for the IIIPI to see how we can go to the next five years of this new law in a much more efficient, professional, and outcome-oriented fashion. We need to look at new innovative ideas to see how we can save financial institutions or processes from failing and ensuring that your work gets the true recognition. Wherever something wrong is happening, we are the ones who should get that better or faster resolved than anybody else can. Since, we can keep a peer-reviewer's watch on what the work all our professional brothers and sisters are

"5 guiding principles must determine the way resolutions professionals should work: Integrity, Objectivity, Professional Competence, Confidentiality and Transparency."

doing, we can ensure the sanctity and integrity of our profession, along with building the credibility of the work that we are doing.

My best wishes to all of you on completion of five years, I wish you success in the work, in the years ahead, and pray for you and your family's good health and good future.

Thank you.

Highlights from Addresses of Eminent Speakers on the 5th Foundation Day of IIIPI

IIIPI observed the 5th Foundation on 25th November 2021 in a hybrid mode under which a physical event was organized at The Park Hotel in New Delhi and the same was webcasted online. The program comprised of 'Inaugural Session' followed by 'Special Address: Contemporary Thoughts on IBC' in which eminent personalities expressed their views on five years journey of the IIIPI in strengthening the Insolvency and Bankruptcy Code, 2016 (IBC or Code), imminent challenges, and prospects. On this occasion a book titled 'Case Studies of Successful Resolutions Under IBC' published by IIIPI was also released. Here, we are presenting key takeaways from their addresses:

Welcome Address

Dr. Ashok Haldia

Chairman, IIIPI's Governing Board

1. Since its inception, the IBC regime is built on key pillars including NCLT, IBBI, IPAs and Insolvency Professionals. Today, IIIPI has more than 60% of the professional members in the country who have been 75% of CIRPs in value terms. As per IBBI records, 2556 IPs hold Authorisation for Assignment (AFAs) out of which about 62% are members of IIIPI. Thus, the IIIPI is leading in all aspects. Five years down the road we can claim to be one the best IPAs in the country.
2. As a frontline regulator, the IIIPI has four roles – Regulatory, Executive, Capacity Building and Quasi-Judicial.
3. IBC is constantly evolving. The IBC version 2.0 shall include capabilities to develop cross border insolvency, group insolvency, individual insolvency, prepack, and many more frameworks, yet to come, may be in the form of mediations and the settlements that the banks undertake.
4. IIIPI's role, for developing the profession, is to enhance the excellence of the professionals in many ways including dissemination of technical expertise. We have been organising training programmes, particularly the Executive Development Programmes (EDPs), interaction with stakeholders - NCLT, CAs, industries, lawyers, bankers, among others. We have also brought out number of technical publications, contributing in terms of technical knowledge, law making, constituting Study Groups on different facets of the IBC.
5. The Resolution Professional, journal of IIIPI, has been acclaimed as one of the best in the country among the insolvency professionals. The technical studies that we have brought out indicate the contribution by the professional members and the IBC in development and growth of insolvency profession. This includes studies on the Group Insolvency, CoC, suggestions that the IIIPI made post COVID in terms of enhancing the efficacy of IBC, IBBI, NCLT, and for that matter the insolvency professionals themselves. The critical suggestions were made to further understand, how to streamline the legal processes to reduce the time that is required in resolution of the CIRP, and how to imbibe and infuse technology into the entire CIRP process.
6. We are also conscious of the small and medium IPs. A Study Group was formed, and number of recommendations were considered how to strengthen them, how to carry them along, and how to do handholding exercise. A Discussion Forum on the IIIPI site has already been launched.
7. IIIPI has developed a vision, and a strategic perspective as to how we steer IIIPI down the road, after the first five years, to meet the challenges of the IBC.
8. We are also working on a quality assurance mechanism internally within the IP firm, and whether there is a need of external mechanism. We are interacting actively with IBBI, providing the policy inputs like the recent one by sharing our perspective of the problems of the IPs when they deal with the CoCs.
9. We are thankful to IBBI and the Chairman, its members, and the entire IBBI team. I would term them as non-conventional regulators being down to earth and very approachable.
10. ICAI President has guided us in terms of handholding the IIIPI, technical and financial support, and providing strategic inputs in taking the IBC regime forward.

Guest of Honour
CA. Nihar N Jambusaria
President,
The Institute of Chartered Accountants of India (ICAI)

1. In 2016, the Central Council of ICAI had long discussions on whether to enter insolvency activity or not. Finally, the Council decided to form IIIPI as a Section 8 Company. Five years down the line, we are happy to see the growth of the IIIPI in terms of both numbers and quality.

2. As per the latest IBBI data, about 55% of the 3,816 IPs are the members of the Institute of Chartered Accountants of India (ICAI). Furthermore, about 84% of the IPs who are members of the IIIPI are CAs. However, the IBC regime is not confined only to accounting and finance. It is a multidisciplinary function where you require services of advocates, engineers, or even valuers, and many other professionals as well.

3. In pursuance to the proposal of the ICAI Council, the Ministry of Corporate Affairs (MCA) has approved the rules for multidisciplinary partnerships in CA partnership firms for insolvency profession w.e.f. July 01, 2021. So, all those IPs who are not CAs can join in one firm where CAs, and non - CAs can be partners which will be a win-win situation for everybody.

4. Presently, company secretaries, cost accountants, valuers, and architects are allowed to join multidisciplinary CA partnership firms. However, the Bar Council of India (BCI) does not allow its professionals to join such firms. We will pursue this matter with the BCI so that they are allowed particularly in the Insolvency and Bankruptcy Code. There could be many more meaningful partnerships that may lead to the high quality of service.

5. The whole objective of bringing out this law, if I recall, was to consolidate all fragmented small insolvency laws which were formed over past many years but not working towards the common objective. The governments all over the world realised that a system should evolve whereby the defaulting borrowers do not liquidate but continue thereby sustaining employment opportunities. I think, in five years this law has matured enough to deliver the objective.

6. Group Insolvency, Cross Border and Prepack Insolvency are the new concepts which are being coined in India. Individual Insolvency is also being considered to make this law more mature and holistic. I am sure when all these concepts will mature, this profession will be enriched, leading to professional satisfaction of the members.

7. As Dr. Haldia mentioned that for capacity building of the members, IIIPI is putting in lot of efforts. The journal of IIIPI is becoming popular and adding value for all IPs.

8. At ICAI, we have IBC Committee which supports IIIPI in terms of capacity building of members, so let us together resolve and decide that we make this profession meaningful and flourishing. Let us create a win-win situation for all stakeholders under IBC regime.

9. IIIPI has been conducting several workshops to train members to act as CEOs fruitfully for those enterprises which are subjected to processes under IBC. Such efforts, I am sure, would continue in future. With this, let me compliment IIIPI for completing five years of good work.

Guest of Honour
Dr. Navrang Saini
Chairperson,
Insolvency and Bankruptcy Board of India (IBBI)

1. Set up on October 01, 2016, the Insolvency and Bankruptcy Board of India (IBBI) was given a mandate to commence the corporate insolvency proceedings by 01 December, 2016, in just 60 days. This mandate could not have materialised if the professional institutes had not come forward.

2. Insolvency Professional Agencies (IPAs) are agents of IBBI and indirectly of the Government. Thus, IPAs can ensure the transmission of laws thereby helping the policies to achieve objectives.

3. In terms of hierarchy, IPAs constitute sixth layer of delegation after the Parliament, government, ministers, bureaucracy, and independent regulatory agencies such as IBBI and SEBI, etc.

4. IIIP of ICAI (IIIPI) is a wholly owned subsidiary of ICAI. It is also the largest IPA in the country with over 63% share of membership across the three IPAs.

5. It takes considerable effort and time to build reputation. We at IBBI have strived to build and safeguard the reputation of the insolvency profession to ensure that it becomes the most enviable profession in the country. IPAs should continuously focus on ethics.

6. IIIPI has displayed its commitment in building the capacity of its members by conducting contemporary programmes and webinars. An agency like IPA has to guide its members from time to time. For this, they also develop best practices from the experiences gained by their members.

7. The IIIPI also has taken many initiatives to publish its study materials and guides for its members. However, ultimately it depends on the members who have to actually follow the guidelines/best practices, and to give their output.

8. Nowadays the most important challenge for the IPs is to complete the process within the timeline prescribed under the code.

9. I urge IIIPI, to conduct some more programmes taking inputs from IPs who despite challenges, completed the CIRP within the timeline. If they can share their experiences which they have gained out of the process, it would be useful for other professionals.

Special Address
Shri Sudhaker Shukla
WTM, IBBI

1. IBC 2.0 would bring procedural reforms and in this direction, we are looking to consolidate new ideas to unleash the reforms under IBC in future.

2. IBC has witnessed six legislative interventions and 74 regulatory interventions. That is the speed with which we are addressing the market needs and striving to remain relevant in the market.

3. On the reform front, discussion paper on Cross-Border has been made available on the website. Deliberations by Insolvency Law Committee (ILC) and K P Krishnan Committee have been captured in the background paper of such discussion paper. We are trying to include personal guarantors within the regime of Cross-Border.

4. Second big step which we are thinking is consolidation process which is basically related to 'enterprise group'. Currently 'enterprise group' does not find mention in the Code, though a judgment can facilitate this. It requires more churning of ideas to come out with an incredible regime on this front.

5. CoC members, representing banks or other creditors, are not within the purview of IBBI. However, issuance

of guidelines in the form of code of conduct are expected shortly. It is felt that there should be a mechanism in place where CoC related complaints can be addressed.

6. RBI's Committee has recommended participation of ARCs as an RA in CIRP with some limitations. This is a welcome step since RAs during Covid times were shying away from the market.

7. Currently, there are two PDAs (Platform for Distresses Assets) made available for IPs and professionals. My request to professional members would be to use these platforms extensively, either National e-Governance Services or Mjunction Services.

Special Address
Shri Swaminathan J.
MD, SBI
(Risk, Compliance and SARG)

1. As we endeavour to provide freedom of entry and ease of doing business there must be a framework for an orderly resolution as well if the business is considered unviable. In this context, the advent of IBC, 2016 is a welcome step by the Government.

2. Compliments to IBBI and IIIPI for having brought in an ecosystem for successful implementation of a stellar legislation like this in a short period of five years. Though, for a legislation of this nature five years is too short a period, the success that we have managed to achieve, is incredible.

3. The coordination between Committee of Creditors (CoC) and IP is the need of the hour. Both have same objective i.e., the orderly resolution of the corporate debtor and therefore, should work hand in hand. CoC should be represented by senior officials who have proper understanding of the IBC.

4. IIIPI has documented some of the successful resolutions in the form of a book which has been released today. There is a lot to learn from such compilation.

5. I am aware that ICAI, IIIPI, IBA, the banks, and other stakeholders have been investing a lot in terms of conducting webinars and training programmes for continuous skill building. This is something which, for this industry, will never be enough. The more we handle, the more we learn that the outcomes are going to be better.

6. Coming to the aspect of balancing rights of stakeholders, I think transparency, consistency, and ethical way of conducting ourselves must be the cornerstone for all our actions.

7. It is important that CoC as a forum and RP together have a deeper understanding of the underlying business. I am not faulting the CoC for pursuing the recovery or pursing the interest of the financial creditors but what we have got to understand is at the end of the day it is a resolution process through which recovery happens. It's not the other way round.

8. Lastly, setting up a new business is fine but then preserving a business that has got into stress and reviving it is indeed a noble service. Because, you are preserving employment, you are preserving economy – it is a great opportunity for all of us to nurture the economy to its health.

Special Address

Shri C. Scott Pryor

Professor, School of Law, Campbell University

United States of America (USA)

1. USA's bankruptcy system is quite different from the IBC. It is more judicially driven, and it is far more interested in bringing all the stakeholders together. It does that through a complex process of classification of creditors, voting, and then ultimately tabulation of those votes, and then significant hearings before the bankruptcy court with respect to confirmation of a bankruptcy plan.

2. In the year 2012 onwards, financial creditors began taking a lead and institutional creditors developed much more refined way of pre-packaged form of chapter 11, Bankruptcy.

3. In the USA system there is nothing that corresponds directly to the IBBI but the closest would be the office of the United States Trustee (UST). The job of the UST is not to act as a trustee in the sense of representing the interest of the creditors but rather as a trustee of the bankruptcy process itself. UST can interfere in the restructuring plan if some creditors are not convinced or have not understood the plan in the right context.

4. I would recommend and suggest that the Pre-Packaged insolvency is a fine way of having a successful and less expensive restructuring operation. But it takes a sophisticated resolution professional and sophisticated

financial creditors. Besides, it also requires the willingness on the part of financial creditors and leading operational creditors to take a self-imposed haircut and apply the savings to apply to other operational creditors.

5. In the USA, individual bankruptcy, or Chapter 7 bankruptcy, has proved to be very successful as a means of providing an individual, help in crisis that can take place due to an uninsured or unexpected illness, job loss or divorce, etc. In other words, creditors of the individual debtors of the US fully understand that their individual debtors may seek bankruptcy relief. This has been of a great help during the Covid-19 pandemic in the USA.

6. At some point when the Covid crisis resolves itself, the Government of India should go forward to notify individual insolvency. I hope! It can be done successfully.

Special Address

Shri Paul Bannister

Head (Policy), Insolvency Service

Government of the United Kingdom (UK)

1. It is fascinating to watch from distance the positive approach and strengthening of the Indian Insolvency Legal Framework which is going through the latest pre-pack insolvency resolution regime. More importantly how the Indian insolvency practitioners' community is using the tools provided by the framework to greater effect in rescuing businesses and returning assets to the creditors. It is also very impressive to see the ever-increasing number of Insolvency Professionals who are registered with the Indian regulators.
2. Most of the economies, in response to Covid pandemic, implemented very similar types of measures that covered both fiscal and regulatory aspects. Many of these measures have now expired and the average effects of the national lockdown restrictions continue to affect businesses' ability to really bounce back strongly.
3. In the UK, there has been further restrictions on creditors in enforcing their debts and slowing collection of loans given by government to firms. In addition, we are seeing schemes introduced to deal with commercial debts.
4. You may be aware that the UK is developing an arbitration scheme to help landlords come to agreements with their commercial tenants to deal with nearly seven billion pounds worth of payable debts. Of course, government has a vital role to play in this but so do insolvent practitioners and their regulators.

5. In the UK, we have introduced a new company-moratorium which keeps businesses free from creditor's enforcement actions up to 20 business days. Another rule requires insolvency practitioner to act as the monitor to ensure the rules of the moratorium are followed. It is interesting to note how insolvency practitioners are grappling with the new legislative rules.
6. Industry and stakeholders look upon us as the regulators to ensure that the standards are maintained and enforced where necessary. It gives investors the confidence in their money and their investments. I look at the Indian regulatory regime with increasing confidence, which has increased to the level of world's most developed insolvency regimes. IIIPI should be proud of its development and achievements.
7. To cooperate and help each other is the way to go in coming years – there is always more to do to respond to ever increasing challenges, but I know you will rise to these.

Special Address

Shri A K Bhattacharya

Executive Director

Business Standard (Newspaper)

1. With every passing year, the IBC has strengthened itself. This happens to be the 50th year of India's first institutional effort at tackling industrial sickness. The birth of the Industrial Reconstruction Corporation of India (IRCI) took place in 1971 in Calcutta (Kolkata), which later became the capital of sick industries in India.
2. My fear for IBC, is that the process itself is facing a challenge. As a completely new regulatory structure, IBC regime should be given a fair trial and full support

from everyone concerned without which it will go back to the IRCI way.

3. All of us should be on guard in tackling and resisting those politically inspired changes in the IBC regime,

which has the best promise and the best chance of succeeding. The way the law has been framed has given a kind of legal cover and a transparent mechanism where professionals are being encouraged.

4. IBBI is one of the few regulators which not only regulates the professionals but also the market and utilities as well. This structure should remain intact and should be improved upon. Besides, there should be focus on capacity building and creating more IPs.
5. The loopholes lying between regulation and IPs shouldbe addressed in the sense that the IPs do not lose their professional autonomy and their accountability to the regulator.
6. Businesses are changing and so are business models. I am sure the nature of the sickness shall also change. We are talking about e-commerce and companies that deal in cryptocurrencies etc. Where do they go when they get sick? So, is there a scope for IPAs to focus more on skills upgrade so that they stay in tune with the changing world.
7. The haircut is not as much of a concern as the time by which you resolve it. If you can bring down the time of the resolution process to the level as stipulated in the law, my reading is that the haircut will cease to be a controversy.

Vote of Thanks

CA. Rahul Madan

MD-IIIPI

1. Given the public interest as the overarching theme, the success of Insolvency Profession stands on the pillars of trust, transparency, and ethical conduct of the stakeholders.
2. In this direction, IIIPI actively focusses on development of ethical standards and best practices to be followed by members.
3. Covid has caused havoc to economies worldwide which has also made all of us to be more mindful of public interest, innovative, and technology savvy.
4. New frameworks may be announced soon on Individual Insolvency, Cross-Border, Group Insolvency. However, more needs to be done on the fronts of mediation, arbitration, and out of court frameworks. Notification of PPIRP is a step forward in this direction.
5. In future, continuous quality improvement, learning from past mistakes, following best practices, and ethical conduct by the stakeholders are the way to go. It

is my firm belief that if we all as stakeholders focus attention on the right inputs in terms of our thought processes and our actions, the output in the form of resolution with value maximisation will surely come through.

6. We have taken note of the valuable suggestions made by eminent speakers and shall ensure to implement them at IIIPI to the best of our ability, to strengthen the IBC ecosystem. With these positive thoughts I express heartfelt gratitude to our chief guest Hon'ble Minister, and dignitaries for being with us and sharing their words of wisdom.

Section 53 of IBC, 2016: Camouflage Key Player in the Revival Process

Practical experiences reveal that the Section 30 (2) of the IBC has apparently come in the way of waterfall mechanism provided under Section 53. For instance, if a creditor with minor voting share votes against the Resolution Plan but the Plan is finally accepted by the CoC, the dissenting creditor may get more money than the top creditor. This demoralizes the efforts of the assenting creditors particularly the lead creditor in resolving the Corporate Debtor. In this article, the author through various illustrations has highlighted the tricky nature of the Section 30 (2) of the IBC and has suggested a feasible solution to address the issue through amendment either in Section 30(2)(b) or 53(1)(b)(ii) of the IBC.

Read on to know more…

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1. Introduction

The core theme on which the entire Insolvency and Bankruptcy Code, 2016 (IBC or Code) is built upon is revival of the Corporate Debtor. It has been five years since the Code was implemented and now it has crossed its infancy. Though the Code has been and is being witnessing the fruits of its implementation process, still there are cases where the Corporate Debtor goes into Liquidation in whenever and wherever the resolution fails.

Nevertheless, the Code read with its Regulations has been framed in such an efficient way that even during Liquidation there could be sale of the Corporate Debtor as a Going Concern and hence the chances of revival of the Corporate Debtor during Liquidation cannot be ruled out. If in case the Corporate Debtor fails to taste the fruits of being sold as a Going Concern during liquidation, then steps in the last leg of the Liquidation process being the sale of the assets where a greater emphasis is placed on the realizations and distribution of the proceeds. It is at this juncture comes into role, the key player Section 53 of the IBC.

2. Glimpses of Section 53 of IBC

Section 53 lays down the waterfall mechanism in accordance with which the proceeds from the sale of the Liquidation assets shall be distributed in the order of priority stipulated therein. The provision could be quoted as follows:

".....the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within

such period as may be specified, namely: -

(a) the insolvency resolution process costs and the liquidation costs paid in full;

(b) the following debts which shall rank equally between and among the following:

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

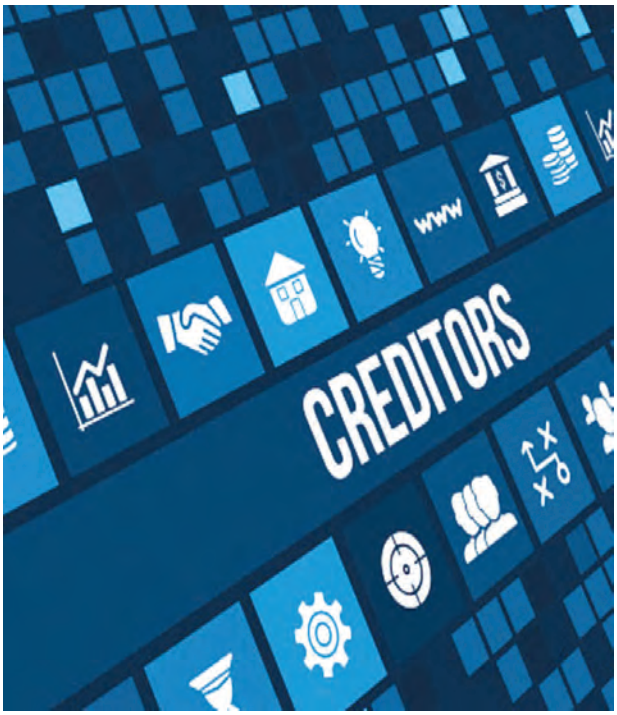
(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(h) equity shareholders or partners, as the case may be"

2.1. Interpretation of the Section 53

On a close interpretation of Section 53 on a real time basis in the case of most of the Corporate Debtors under Liquidation, it is predominantly the Secured Financial Creditors who stand to gain something from the realizations while all other creditors following them are left high and dry. Even here it is to be noted that Secured Financial Creditors (SFCs) gain only 'something', which clearly indicates towards the fact that even the SFCs are not able to recover their dues to the full extent, the reason being the asset value of the Corporate Debtor being abysmally low as compared to the dues owed by it, thereby resulting in insufficient realizations.

Thus, in Liquidation, it is Section 53, which plays a pivotal role, since all the stakeholders being Financial Creditors, Operational Creditors, and other stakeholders who are entitled to distribution of proceeds under section 53 in the Company would be interested in knowing how much of their debts are capable of being saved from turning into bad debts.



3. Role of Section 53 during the Corporate Insolvency Resolution Process

However, it is interesting to note that even in the event of the prime revival process, i.e., Corporate Insolvency Resolution Process (CIRP), Section 53 plays a key role rather implicitly. In fact, it takes an influential role in deciding the fate of the Corporate Debtor.

Through this small illustration, let us probe to understand the Camouflage nature of Section 53:

Facts:

- Company XYZ Limited has been admitted into the CIRP.

Table 1: Liquidation Value of the assets of the Corporate Debtor

S. No.	Asset Description	Liquidation Value (₹ in Crores)
1	Fixed Assets	250
2	Current Assets	50
	Total	**300**

Table 2: Details of the Creditors of the Company along with their claim amounts and security interest:

S. No.	Name of the Creditor*	Claim admitted (₹ in Crores)	Voting share % in CoC	Security Interests
1	A	1000	50%	1st Charge on Fixed Assets. 2nd Charge on Current Assets.
2	B	600	30%	2nd Charge on Fixed Assets. 1st Charge on Current Assets
3	C	400	20%	2nd Charge on Current assets.
	Total	**2000**	**100%**	

***Note:**

(a) All Creditors are Secured Financial Creditors.
(b) It is assumed that there are no other creditors barring the creditors mentioned in Table 2.

3.1. Company PQR Ltd has submitted a Resolution Plan for the Corporate Debtor wherein an amount of ₹ 200 Crores is allocated to the SFCs which shall be divided amongst the SFCs in the ratio of their voting shares in the CoC. The total amount payable to SFCs shall remain constant and shall not be subject to any further increase.

Table 3: Allocation of the Resolution Plan Value to the SFCs as per the terms provided in the Resolution Plan

S. No.	Name of the Creditor	Amount allocated (₹ in Crores)	% of amount allocated.
1	A	100	50%
2	B	60	30%
3	C	40	20%
	Total	**200**	**100%**

4. Distribution to Financial Creditors in the event of assent/dissent by the SFCs.

Scenario 1:

Table 4: Distribution to SFCs in case all the 3 Creditors being A, B and C vote in favour of the Resolution Plan

S. No.	Name of the Creditor	Actual Amount provided in the Resolution Plan (₹ in Crores)	Amount distributed after the approval of the Resolution Plan (₹ in Crores)	Gain (+)/ Loss (-) to Creditors
1	A	100	100	—
2	B	60	60	—
3	C	40	40	—
	Total	**200**	**200**	—

Scenario 2:

Distribution to SFCs in case all the 3 Creditors being A, B and C vote against the Resolution Plan: In that case, since the Resolution Plan failed to secure the 66% votes in favour of it, the Resolution Plan stands rejected and hence there is no question of distribution under the Resolution Plan.

Scenario 3:

Distribution to SFCs in case Creditor A votes in favour of the Resolution Plan and either B or C vote against the Resolution Plan

Table 5A: A and B assent, C dissents

S. No.	Name of the Creditor	Actual Amount provided in the Resolution Plan (₹ in Crores)	Amount distributed after the approval of the Resolution Plan (₹ in Crores)	Gain (+)/ Loss (-) to Creditors
1	A	100	87.5	-12.5
2	B	60	52.5	-7.5
3	C*	40	60.0	+20
	Total	**200**	**200.0**	

Table 5B: A and C assent, B dissents

S. No.	Name of the Creditor	Actual Amount provided in the Resolution Plan (₹ in Crores)	Amount distributed after the approval of the Resolution Plan (₹ in Crores)	Gain (+)/ Loss (-) to Creditors
1	A	100	78.60	-21.40
2	B*	60	90.00	+ 30
3	C	40	31.40	- 8.60
	Total	**200**	200.00	

***Note:**

(a) As per Section 30(2) of the IBC, 2016

"The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan ……provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor".

The phrase "in the event of a liquidation" gains prominence at this juncture.

Thus, in the event of Liquidation B and C will get the following amounts:

B → ₹ 300 Crores (Liquidation Value) * 30% (Voting share) = ₹ 90 Crores.

C → ₹ 300 Crores (Liquidation Value) * 20% (Voting share) = ₹ 60 Crores.

Since the amount payable to the SFCs has already been allocated at ₹ 200 Crores, the excess payments made to dissenting Financial Creditor shall be adjusted against the amounts payable to the assenting creditors proportionately.

(b) The main conundrum arises only in "Scenario 3"

- As per Section 30(4) of IBC, the committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent.
- Since A being a 50% majority shareholding Creditor, the consent of A is indispensable for the approval of the Resolution Plan by the CoC.
- However, either 'B' or 'C' can take a different call rather than approving a Resolution Plan, since the approval of any of them result in voting by requisite majority which would result in successful approval of the Resolution Plan.

4.1. Questions

In the event the Resolution Plan gets approved in accordance with Table 5A or Table 5B, then there arises a need to address the following questions:

(a) **Would it be right for a Creditor to realize more from a Resolution Plan to which it has dissented? While the Creditor with the highest voting share who has voted in favor of the Resolution Plan gets a lower amount?**

Explanation:

Let us take the case of Table 5B:-

Creditor A has a voting share of 50% and receives ₹ 78.60 Crores, whereas Creditor B who has a voting share of 30% receives ₹ 90 Crores.

(b) **If all creditors conceive the same notion that they can realize more by dissenting, then all the votes will be cast against the Resolution Plan, in that case will not the entire revival of Corporate Debtor turn futile?**

Explanation:

If both Creditor B and Creditor C decide to dissent the Resolution Plan since their realization would be more in case of dissenting rather than assent, then the Resolution Plan will lose 50% of the votes which eventually results in rejection of the Resolution Plan by the CoC.

> **"Even here it is to be noted that Secured Financial Creditors (SFCs) gain only 'something', which clearly indicates towards the fact that even the SFCs are not able to recover their dues to the full extent."**

(c) **In order to avoid this conundrum and ensure a fair play amongst the Creditors, should the amounts allocated to the stakeholders under the Resolution Plans have a value higher than the Liquidation Value?**

Explanation:

Most of the companies falling into the hands of CIRP have been subject to lack of proper maintenance and irregular operations by the company management prior to the

commencement of CIRP. In few cases the companies have even been shut down for several years back the line prior to CIRP Commencement. Thus, the Prospective Resolution Applicants willing to acquire the Corporate Debtor will have to incur significant spending on refurbishment and other aspects. Taking these capital costs into consideration, it may not be feasible in all the cases for the Resolution Plan to provide a value to the stakeholders which is higher than the Liquidation Value of the Corporate Debtor. This may serve as an impediment in successful revival of the Corporate Debtor and would defeat the entire purpose of the Code.

"However, the main reason behind this conundrum is that the Section 53 neither establishes any distinction nor provides for further bifurcation amongst the Secured Financial Creditors on the basis of charge holdings extent."

5. Root Cause of the Conundrum and its Impact

(a) With reference to the above illustration, the major cause of concern is that in the CIRP, merely by voting in favour of the Resolution Plan and playing a pivotal role in the Resolution Plan implementation process, Creditor "A" suffers a loss in either case where "B" or "C" dissents the Resolution Plan and despite the same the Resolution Plan gets approved with the requisite majority.

(b) However, in the contrary, in the event of Liquidation, had the First Charge holder of the Fixed Assets being Creditor "A" not relinquished their security interests, then they would have enjoyed the priority in the realization proceeds and would have been on a better footing than in case of approval of the Resolution Plan. If the company gets into Liquidation, then it is also noteworthy that the realization of the Liquidation Value is highly questionable, because once the company gets into the hands of Liquidation then it would become a prey to rock bottom rates and uplifting it to a reasonable price may involve lot of time and efforts. Thus, the irony here is that Creditor A will suffer a loss for being a key factor in the revival of the company – the prima facie intention of the IBC Code, 2016 in case the Resolution Plan gets approved, and he will also suffer a loss in case the Company gets into Liquidation. Thus, Creditor A will suffer a loss either way.

(c) In common practice, the claim of first charge holder shall prevail over the claim of the second charge holder and where debts due to both the first charge holder and the second charge holder are to be realised from the property belonging to the mortgager, the first charge holder will have to be repaid first.

(d) However, the main reason behind this conundrum is that the Section 53 neither establishes any distinction nor provides for further bifurcation amongst the Secured Financial Creditors on the basis of charge holdings. All SFCs who have relinquished their security interests are treated as one class irrespective of the charge holdings and hence no differential treatment is attributed to any individual creditor within the same class.

6. Contextual References: Followings are the recent case laws related to this issue-

(a) In the matter of *Technology Development Board Vs Mr. Anil Goel and 2 others* (Company Appeal (AT) (Insolvency) No.731 of 2020), the issue was raised before NCLAT on whether "whether there can be no sub-classification inter-se the Secured Creditors in the distribution mechanism adopted in a Resolution Plan of the Corporate Debtor as according priority to the first charge holder would leave nothing to satisfy the claim of Appellant who too is a Secured Creditor". The NCLAT in its order[1] on April 05, 2021, held as follows:

"The word "fair" may be interpreted in wide ways by different parties. One treatment which may be considered fair to one creditor may not be so with respect to another creditor."

(i) The impugned order holding that the inter-se priorities amongst the Secured Creditors will remain valid and prevail in distribution of assets in liquidation cannot be sustained.

[1] NCLAT, Technology Development Board Vs Mr. Anil Goel and 2 others, (Company Appeal (AT) (Insolvency) No.731 of 2020), April 05, 2021.

(ii) We allow the same with direction to the Liquidator to treat the Secured Creditors relinquishing the security interest as one class ranking equally for distribution of assets under Section 53(1)(b)(ii) of IBC Code and distribute the proceeds in accordance therewith".

However, the Supreme Court vide an order on June 29, 2021, has imposed a stay on the operation of the above judgement of the NCLAT.

7. Proposed Feasible Solution

Though the explanation 1 to Section 30(2) of the Code, states that the provisions of this clause shall be fair and equitable to such creditors, it still remains a grey area as to what can be construed as "fair and equitable". The word "fair" may be interpreted in wide ways by different parties. One treatment which may be considered fair to one creditor may not be so with respect to another creditor. Subsequently, there may arise disagreements between the Creditors while trying to identify as to what distribution constitutes fairness. Thus, the word "Fair" here will remain subjective unless an explicit meaning is being assigned to it under the Code and thus in order to remove the iota of doubt, the following amendments may be considered in Section 30(2)(b) or Section 53(1)(b)(ii) of the IBC.

7.1. Amendment of Section 30(2)(b): Section 30(2)(b) of the IBC should be amended as follows:

".....provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, *"which shall be the lower of the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53."*

Or

7.2. Proposed Amendment in Section 53(1)(b)(ii): This subsection should be amended as ... debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52 "provided there shall be an inter se ranking of the Secured Creditors on the basis of the Charge holdings".

8. Conclusion

With the advent of IBC, 2016 numerous companies have been saved from becoming extinct. Since the entire Code being predominantly a creditor driven process where the decision to resolve or liquidate the Corporate Debtor rests on a collective body termed as CoC. It would be in the best interests of all the stakeholders as well as the Corporate Debtor if their interests are balanced in a fair manner without giving rise to any prejudicial benefits to one creditor over the other. In the light of the above, it's high time to amend the sections of the IBC. The suggested amendments will ensure a fair play among the creditors and facilitate faster resolution of the corporate debtor.

[2] Supreme Court, Technology Development Board Vs Mr. Anil Goel and 2 others, Civil Appeal Diary No. 11060/2021, (Company Appeal (AT) (Insolvency) No.731 of 2020), June 20, 2021.

Prospects of Bad Bank in Indian Banking Industry: Experiences from Abroad

With the mounting bad loans in the banking industry, aggravated by the effects of Covid 19, the Government of India announced the setting up of a public Asset Management Company ('AMC') / bad bank to address the resolution of stress in the banking system. The concept of bad bank has been around internationally for quite some time and the track record of the bad banks has been mixed. We have picked up six such institutions from developed and emerging economies and summarized their experiences and the lessons that they hold for running a successful bad bank. It has been observed that the successful bad banks have been implementing rapid disposal of assets, innovative technologies, sunset clause, strong governance and transparency with frequent reporting. ***Read on to know more…***

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Introduction

The discussion on the setting up of a bad bank or a public Asset Management Company (AMC) has been doing the rounds for a long time and received fillip with the recommendations by the Sunil Mehta led Committee, under Project Sashakt. While the Committee refrained from calling it a Bad Bank, it recommended the establishment of an Asset Reconstruction Company (ARC) to take over assets > ₹500 crore and turn them around before selling them off to strategic investors. The announcement in the FY 22 budget to set up an ARC and an AMC for stressed asset resolution, saw the idea of a 'Bad Bank' gain further traction.

Given the stockpile of stressed assets, aggravated by the impact of Covid-19, the setting up of the Bad Bank has been envisaged as a measure to resolve stress from the banking system, in conjunction with the existing mechanisms, including the Insolvency and Bankruptcy Code, 2016 (IBC) and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).

1. National Asset Reconstruction Company Limited (NARCL) and India Debt Resolution Company Limited (IDRCL)

In September 2021, the government announced the setting up of NARCL, with the avowed objective of consolidating stressed assets for their subsequent resolution. The NARCL will be majority owned by public sector banks in which the State Bank of India, Union Bank of India and Indian Bank have picked up 13.27 per cent stake each, while Punjab National Bank has acquired about 12% stake[1] in NARCL.

NARCL has an objective to acquire high value stressed assets (> ₹ 500 crore) from the banking institutions, aggregating ~ ₹ 2 lakh crore, in a phased manner. NARCL will pay the agreed value for the bad assets in the form of 15% upfront cash and the balance 85% through government guaranteed security receipts. The cabinet has cleared the proposal to provide a government guarantee worth ₹ 30,600 crore to the security receipts issued by NARCL. This guarantee will cover the shortfall between the face value of the security receipt and the actual realization value from the sale or liquidation of the asset. It will be valid for a period of five years.

Under the process, the lead bank, on receiving an offer from NARCL, will go for a 'Swiss Challenge', wherein other asset reconstruction players will be invited to better the offer, to discover a higher valuation for the non-performing asset on sale.

"In the first phase, 22 fully provisioned assets, aggregating ₹ 90,000 crores have been identified for transfer to the NARCL."

In the first phase, 22 fully provisioned assets, aggregating ₹ 90,000 crores have been identified for transfer to the NARCL. Alongside NARCL, India Debt Resolution Company Limited (IDRCL) has been proposed as a service company/operational entity which will manage the assets and engage market professionals and turnaround experts. The public sector banks and public financial institutions will hold up to 49% stake in IDRCL and the

balance will be held by private sector institutions. The NARCL-IDRCL structure will work in tandem with NARCL acquiring the stressed assets and IDRCL being engaged in their management and value addition.

As per the report issued in November 2021 by the Committee set up by the Reserve Bank of India (RBI) for the review of the working of AMCs (RBI Committee), the sub-optimal performance of the AMCs currently in operation has been attributed, inter alia, to paucity of funds and lack of focus on acquiring necessary skill sets for holistic resolution of distressed borrowers. NARCL with a corpus of ₹ 6,000 crores, and a government guarantee of ₹ 30,600 crores for SRs issued by it, will be well-positioned to make attractive offers to the lenders. Further, given IDRCL's proposed mandate as a service entity which will engage with professionals and turnaround experts, it should be better equipped to deal with the resolution of stressed assets.

While it is early days and the full picture on the working of both the institutions is yet to emerge, we thought it would be worthwhile to look at the experiences of other countries who have taken this route.

2. Practices from Other Jurisdictions

Distressed public asset management companies have been established in various jurisdictions, particularly during financial crises or to deal with high level of non-performing loans. However, their performance has been mixed. We have summarized below the performance of six representative economies from amongst the developed and emerging nations[2], and the lessons that they hold for us.

[1] https://www.livemint.com/industry/banking/narcl-bad-bank-to-soon-bring-more-directors-on-board-11634461601346.html

[2] Public Asset Management Companies: A Toolkit (2016). World Bank Group (https://openknowledge.worldbank.org/handle/10986/24332)

2.1. South Korea

During the financial crisis of Korea during 1997-98, when the liquidity in the banking system was scarce, the Korea Asset Management Corporation (KAMCO) set up by the Government, played a vital role in facilitating the restructuring process by purchasing distressed assets from the banks, merchant banks, investment trusts, securities firms, insurance companies and other non-banking financial institutions, which allowed the banks to resume their normal lending. Disposal of such distressed assets was achieved by KAMCO through numerous methods including competitive auctions, establishment of joint ventures, restructuring, collection of rescheduled repayments, international bidding, bulk (pooled) sales and issuing asset-backed securities.

One of the most effective methods of disposal of stressed assets was through the introduction of an online national auction portal called OnBid. This portal integrates the information from KAMCO and disseminates it to the public, providing a one-stop online shop for the whole auction process from searching assets to executing the contracts. Over the years, OnBid has proved to be highly successful as an effective and efficient mode for auctioning stressed assets. KAMCO focused on rapid disposal of the assets and resorted to workout / restructuring only in the limited cases where there was clear potential to enhance the value. It largely adopted market-oriented pricing mechanism in purchasing the NPLs and recovered more than the purchase price it paid for the assets. By the end of December 2002, KAMCO had resolved ~ 60 percent of its US$92 billion in assets, at an average recovery rate of 46.8 % of the face value[3].

KAMCO has been a successful experience on account of various factors. It was quick to respond to the needs of investors and tailored products accordingly. It aggressively sought out foreign investors, who helped bring in fresh liquidity into the market along with technical expertise. It helped improve information flow on the assets which led to better risk assessment and improved pricing.

2.2. Indonesia

The Indonesian Bank Restructuring Agency (IBRA) was established by the Indonesian Government as one of the measures to tackle the banking and economic crisis that fell upon the country following the Asian Monetary Crisis in mid-1997. IBRA was established on 26 January 1998 with an initial lifespan of 5 (five) years, which was extended till its termination on 30 April 2004. With the establishment of IBRA, the Government was instituting a 'bad bank' to allow the removal of bad loans from the banks, with an aim to promote the recovery of Indonesia's financial system.

> **"On Bid, an online national auction portal in South Korea, provides a one-stop online shop for the whole auction process from searching assets to executing the contracts."**

IBRA had decided to function in two divisions – asset management of credits (AMC) and asset management of investment (AMI). As a part of the bank restructuring program, all the loss-making loans from state and other banks were transferred to IBRA. Obtaining clear title to the assets for the securities undertaken against the loan became a difficult task for IBRA. Further, it resorted to 'direct sale' of loans which did not require the publishing of a public tender. The potential buyer was to offer a minimum of 70% of the face value of the stressed asset and it was directly sold to him.

Over its lifetime, IBRA sold approx. 60% of its NPL portfolio with around 87% of the sales occurring just between 2002 and 2004. The average recovery rate of IBRA was only a meagre 22%, which reflected both the poor quality of loans and the lengthy time taken for sale of such NPL. The IBRA was largely a failed exercise on account of various factors including political interference, and also lack of transparency regarding the valuation of assets and recovery efforts[4].

2.3. Malaysia

Danaharta was established as a national AMC by the Malaysian Government on 20 June 1998, in response to

[3] https://www.imf.org/external/pubs/ft/wp/2004/wp04172.pdf

[4] https://www.imf.org/external/pubs/ft/wp/2001/wp0152.pdf

the financial crisis. The main motive behind the establishment of Danaharta was the removal of NPLs from the financial system. NPLs accounted for a whopping 11.4% of the banking system loans in August 1998. Danaharta acquired assets at a market price and in exchange issued zero coupon government guaranteed bonds with a maturity period of five years. The threshold above which a financial institution could transfer its NPLs to Danaharta stood at above RM 5 million.

As of September 2005, Danaharta had resolved almost all the NPLs and recovered ~ RM 30.35 billion vs. the aggregate transfer value of RM 52.42 billion of the loans acquired, resulting in recovery of ~ 58%. While the date of last transfer to Danaharta took place in March 2001, the last date for asset disposal was 31 December 2005 when Danaharta was eventually wound up[5].

"Danaharta of Malaysia has been recognized as a successful national AMC by international agencies such as the World Bank."

Overall, Danaharta has been recognized as a successful national AMC by international agencies such as the World Bank. Among its various attributes which contributed to its success including strong legal authority, adequate financial support, and clear mandate, a key contributing factor was strong corporate governance and transparency. Its board published quantitative key performance indicators (KPIs) to assess Danaharta's effectiveness. It adopted the Malaysian Code on Corporate Governance. Danaharta published quarterly reports on its activities on its website and also recruited experienced professional staff, who were rewarded on the basis of achievement of KPIs.

2.4. Ireland

The National Asset Management Agency (NAMA), established in 2009, was created to tackle the financial crisis in Ireland and function as a bad bank. NAMA has focused on non-performing property and real estate loans. NAMA acquired, in total, ~ €74 billion worth of loans from the institutions participating in the NAMA scheme and issued securities worth ~€31.8 billion to such institutions, based on a transparent independent expert evaluation.

NAMA's success has been quite apparent in the decrease in the loans and receivables of NAMA to ~ € 0.85 billion in 2020[6]. Though NAMA does not have an expiry date, it would be wound up when the Minister of Finance determines that its existence is no longer necessary.

Its success has been driven by a clear mandate with a commercial focus and its primary objective is to get the best possible returns for the state and to do so expeditiously. Further, NAMA benefits from transparency and independence. NAMA reports quarterly and its management reports to Parliament every six months. Although NAMA is under high scrutiny, it has also been granted operational independence which allows NAMA to resist pressure from purchasers to sell at fire sale prices and from debtors.

2.5. United States of America

Following the success of Grant Street National Bank (GSNB), a private bank created by Mellon Bank to transfer and resolve its own stressed assets, the government of the United States of America decided to establish a thrift management entity called Resolution Trust Corporation (RTC) in 1989. The stressed assets of the banks which were declared to be insolvent by the Office of Thrift Supervision, were eventually taken up by the Resolution Trust Corporation. RTC solicited bids from a wide variety of bidders and over time, developed standard procedures, documentation, forms which the potential investors could use to bid on various institutions. RTC was also responsible for selling more than $450 billion of their real estate and disposing of 95% of their overall assets with a recovery rate of more[7] than 85%. While RTC was not exactly an asset management company, its experiences hold good for an AMC. RTC derived it success from focusing on timely funding and

[5] https://elischolar.library.yale.edu/cgi/viewcontent.cgi?article=1182&context=journal-of-financial-crises

[6] https://www.nama.ie/uploads/documents/Final-NAMA-Annual-Report-2020.pdf

[7] Frederick Mishkin and Stanley Eakins, Financial Markets and Institutions, Addison Wesley Longman, 2000, p. 498.

early and speedy disposition of assets. Of course, presence of a liquid, capital market assisted in the quick asset disposition. Strong internal controls, use of private sector professionals and well-designed incentives also contributed to the success of the institution.

2.6. Sweden

Various countries throughout Europe have resorted to utilization of the good bank – bad bank approach in order to deal with the crises the banking sector in their countries. The initial bad banks in Europe were set up in Sweden when the Swedish government set up two bad banks i.e., Securum and Retriva around 1992. Securum was responsible for taking over 1/3rd of the balance sheet of the country's largest bank Nordbanken and was funded by the government. On similar lines, Retriva was set up for the purpose of taking over the toxic / stressed assets of another bank i.e.Gota Bank. In total, Securum and Retriva combined had acquired ~ $871 million worth of stressed assets. Retriva was later merged with Securum.

While Securum was owned by the government, the management consisted of private individuals who were experts in their relative fields. This expertise proved to be useful in managing the stressed assets.

By the time, Securum was wound up in 1997, it had disposed of 98% of its portfolio of assets highlighting its great success by being wound up 5 years earlier than expected[8]. Securum's strategy for disposal of assets was straightforward and effective. Companies with low profitability, a low interest coverage ratio, a high debt/equity ratio, or no track record were filed for bankruptcy. Companies deemed to have potential were reorganized through mergers, acquisitions, and sales of assets.

It had the operational flexibility to take whatever actions were necessary to maximize the value of its assets. Securum was staffed by professionals, who had experience in restructuring, operating, and selling companies.

[8] Journal of Financial Crises – Swedish AMCs: Securum and Retriva - Mallory Dreyer

3. Conclusion and Key Takeaways

Basis the experiences of the above international banks, we have summarized below certain key drivers for success of a public AMC.

3.1. Rapid disposal of assets

One of the lessons from the experiences of the international banks is the focus on quick disposition of the assets. The board / management of the NARCL / IDRCL combine has to frame a clear strategy to identify upfront the assets which are capable of further value enhancement so that the turnaround / restructuring efforts are restricted to only those few. The default approach should be to focus on immediate commencement of disposal activities. One of the other common factors in the successes of the global institutions has been the deployment of tailored processes for disposal rather than a 'one size fits all' approach. KAMCO for instance widely resorted to international bidding and pooled sales, apart from the traditional competitive auctions.

> **"RTC of USA was also responsible for selling more than $450 billion of their real estate and disposing of 95% of their overall assets with a recovery rate of more than 85%."**

The 22 initial NPAs which have been identified for transfer to NARCL are fully provisioned, long vintage stressed assets, with most of the large ones having already been admitted into the NCLT for Corporate Insolvency Resolution Process (CIRP). Thus, NARCL may have a limited role to influence the resolution in these cases except perhaps to expedite the decision-making as a single point of contact. However, given that the proposal is to transfer bad assets aggregating ~ ₹ 200,000 crores, in a phased manner, NARCL, going forward, would preferably be entrusted with stressed assets of a much a shorter vintage. A flexible approach, aimed at targeting a wider investor pool and focused on rapid disposition of the asset should see NARCL preserving the value of the asset.

3.2. Strong commercial focus, with a sunset clause

A strong commercial focus, with a sunset clause, would drive efficiency and reduce the pressure on the exchequer. Further, a sunset clause would guard against 'mission

creep' and diffusing the original mandate. Most successful public AMCs have had a sunset period ranging from 5 to 15 years, depending on the nature of the assets.

NAMA, Danaharta, were issued clear, narrow mandates. Further, they appointed board members and staff, with private sector / international experience in asset management and awarded them performance-based incentives. The operational independence certainly boosted the outcome of these entities. IBRA, on the other hand, had a mandate which was overly broad and not aligned with its operating environment. While it was originally envisioned to be a bank restructuring agency, it was assigned several other tasks (eg. pursuing bank owners for misuse of liquidity support), which were not necessarily compatible with its operating environment. It also created sequencing problems and led to delays in its original task of asset disposition.

While a clear mandate has been set out for NARCL / IDRCL, one needs to wait and watch if the sunset clause would be introduced and how it would engage with professionals to ensure commercial focus.

3.3. Strong governance and transparency, with frequent reporting

A key common thread running through the successful institutions cited above, is strong governance and transparency. The importance of transparency, strong internal controls and oversight, frequent reporting can hardly be overstated in a public AMC, especially, when combined with operational independence. NAMA, Danaharta, Securum, KAMCO, all excelled at this.

NARCL / IDRCL should imbibe these best practices in respect of establishing clear KPIs, building annual plans and publishing the actual achievements. It should adopt a strong code of conduct, with zero tolerance for non-compliance. Periodic third-party evaluation of progress of the institutions may also be carried out.

3.4. Independent market driven valuation

Transfer price based on market value established through a transparent, due diligence process conducted with the assistance of independent experts would enhance transparency. NAMA, Danaharta, for instance acquired the assets at market prices.

Currently, it is envisaged that NARCL will provide the anchor price and the banking institutions will run a Swiss Challenge process, inviting other ARCs to better the price. The anchor price should be determined based on expert evaluation and an independent due diligence process. One of the key arguments of those opposed to a 'bad bank' is that it merely transfers the asset from one pocket to another. A market driven price would encourage the bad bank to show recoveries and have a commercial focus.

3.5. Transfer of Assets to NARCL

In most jurisdictions, the transfer of assets to the bad bank was either compulsory or encouraged through a carrot and stick policy. For instance, in the case of Danaharta, one of the 'sticks' was the Central Bank would not provide recapitalization if the bank did not transfer its non-performing loans to Danaharta. Likewise, by way of a carrot, the Central Bank allowed banking institutions to amortize losses resulting from the sale to Danaharta up to a period of five years.

While the first tranche of 22 NPAs has been identified and agreed for transfer to NARCL, going forward, there is no clarity as to the measures proposed to facilitate debt aggregation and encourage transfer of early stage stressed assets to NARCL. A strong carrot and stick policy should be put in place, e.g., regulatory forbearance on early transfer to NARCL, compulsory transfer on approval by the requisite majority, additional provision for dissenting with the majority.

3.6. Enabling regulatory environment for the AMC to perform

Across the successful AMCs, an enabling legal framework was created for the AMCs to fulfill their tasks. While we have a robust regulatory framework governing AMCs, there should be a provision for a limited period moratorium on legal proceedings against the borrower which would enable the AMC to focus on the resolution plan. (A similar recommendation has also been made in the report issued by the RBI Committee).

There is no doubt that there has arisen a need to address the burgeoning non-performing loans. At 9.23%, the NPA percentage of India is second[9] only to that of Russia at 9.29%. While a public AMC may not be a permanent solution, it can be an effective intervention, with appropriate safeguards, as has been experienced internationally.

[9] https://www.financialexpress.com/industry/banking-finance/are-bad-banks-really-good/2338952/

Whether Imported Goods, for which no Customs Duty is paid, can be sold during CIRP/Liquidation?

Under the IBC, 2016, an IP in his capacity as IRP/RP or Liquidator is empowered to take possession of all the assets of the Corporate Debtor (CD). What if any asset/s of the CD is/are in the custody or possession of any Bonded Warehouses of Customs due to unpaid tax? The law is silent on this issue. In a recent case, the NCLT used the 'residual powers' provided under Section 60 (5) of the IBC to adjudicate this issue.

Read on to know more…

1. Introduction

The Corporate Insolvency Resolution Process (CIRP) completes with the takeover of the Corporate Debtor (CD) by the successful resolution applicant. However, if the CD fails to get a Resolution Plan, the NCLT (Adjudicating Authority or AA) under Section 33 (1) of the IBC can order liquidation. Like a Resolution Professional (RP), the Liquidator is also responsible for identifying the assets of the CD, ascertain the claims of the creditors against the corporate debtor and distribute the sale proceeds of the assets to the creditors proportionate to their claims.

Generally, the Government dues are given preference over other creditors in realization of the amount on sale of assets of the debtor but under the IBC the government dues are considered at par with the other operational creditors. Therefore, the concerned government department is to make claims to the RP or Liquidator in its capacity as an Operational Creditor. In case the RP or Liquidator rejects the claims, the concerned department can move to NCLT which has also been given residuary jurisdiction under Section 60 (5) of the Code which means if any issue does not fall under any particular Section of the Code but is related to the insolvency process, the AA can adjudicate on it under Section 60 (5) of the IBC. With reference to the relevant provisions of Customs Act, the IBC and

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jurisprudence, the issues to be discussed in this article are: (a) whether the Customs Department, which is a government department, can sell the imported goods of the corporate debtor for which customs duty is payable during pendency of the insolvency process? and (b) whether the importer has to relinquish his title to the imported goods?

2. Clearance of imported goods

The 'imported goods', under the provisions of Customs act, are the goods brought into India from a place outside India but do not include goods cleared for home consumption[1]. All imported goods shall remain in the port area unless cleared for import[2]. These imported goods are cleared only after payment of the customs duty. If the customs duty is not paid the importer cannot clear the goods. As per the Customs Law, the authorized person shall file the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing[3]. Furthermore, the importer is required to present a bill of entry within 30 days of the arrival of the goods at the Port. The imported goods for which no bill of entry has been filed or cleared for import can be sold by the custodian of those goods i.e., customs department[4]. In this case, since the importer did not file a bill of entry for several years, he was considered by the Customs Department to have relinquished his title to the imported goods. Those imported goods were lying at the port at the time of initiation of CIRP.

3. Case law

The NCLAT in in the matter of *Central Board of Indirect Taxes Vs. Sundaresh Bhatt, Liquidator of 'ABG Shipyard' and other (2021)*[5]' has deliberated on the issues raised in this article.

ABG India, the largest private sector shipbuilding yard in India, which is undergoing Liquidation had imported some materials for construction and building of ships.

However, these materials were not used and were lying in Bonded Warehouses of the customs department at the time of liquidation process. Regarding these materials, the Corporate Debtor i.e., ABG Shipyard had also availed the benefits under the Export Promotion Capital Goods Scheme ('EPCG) and other related schemes/notifications. As the Export Obligation Discharge Certificate was not submitted, the Office of the Commissioner of Customs (Export), EPCG (Monitoring Cell), Mumbai, hereafter Customs Department, issued notices to the CD to pay the duty as per law. Meanwhile, the CIRP of ABG India was initiated due to financial constraints.

In the process to take over all the goods and assets of the Corporate Debtor, the Liquidator approached the Customs Department to release the imported goods. However, the Customs Department refused to release the imported goods to the liquidator. Subsequently, the Liquidator filed an IA before the Adjudicating Authority with the prayer to direct the Customs Department to allow removal of the materials lying in the Customs Bonded Warehouses without payment of Customs Duty, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016. The AA, through an order dated February 02, 2021, issued the following directions:

a. The Department is directed to allow the applicant-liquidator to remove the material, which is lying in the Customs Bonded Warehouses without any condition, demur and/or payment of Customs Duty.

b. The Department is at liberty to lodge its claim with the Liquidator with regard to the Customs Duty charges payable on the release of material, which form part of the assets of the corporate

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[1] Section 2 (25), The Customs Act, 1962 (No. 52 of 1962).

[2] Section 45 (b), ibid.

[3] Circular No.08 /2021-Customs, dated March 29, 2021, Government of India, Ministry of Finance, Department of Revenue Central Board of Indirect Taxes and Customs https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-08-2021.pdf

[4] Regulation 4 of Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018.

[5] 2021 (11) TMI 796 - National Company Law Appellate Tribunal, Principal Bench , New Delhi - Insolvency & Bankruptcy (https://www.taxmanagementindia.com/visitor/detail_case_laws.asp?ID=415015)

debtor in liquidation, before the Liquidator.

c. The Department shall allow removal of goods/material within two weeks, from the date of receipt of an authentic copy of this order from the Liquidator.

d. The Department shall not proceed for auctioning, selling or appropriating the materials owned by the corporate debtor, for the purpose of recovery of its customs duty, which may tantamount to violation of the Code and put the applicant/ liquidator of the corporate debtor Company (under Liquidation) in disadvantageous position.

"Generally, the Govt. dues are given priority in realization of amount on sale of assets of the debtor but under the IBC the govt. dues are considered at par with other operational creditors."

3.1. Submissions by Customs Department in NCLAT: Against the order of the AA, the Department filed an appeal before the NCLAT with an appeal to set aside the order of the NCLT and submitted as follows:

a. The impugned order does not consider the question of the title of imported warehoused goods, lying in a Bonded Warehouse from 2005 onwards.

b. Since the Bonded Warehoused goods do not belong to the debtor the Liquidator cannot take control of the same.

c. Even before the commencement of liquidation proceedings, the corporate debtor itself could not have taken possession of the imported warehoused goods except by paying the applicable customs duty after an order clearing the goods for consumption was passed by Customs Department.

d. Therefore, the Liquidator cannot be in a better position than the corporate debtor itself.

e. The goods once warehoused cannot be released from the warehouse unless and until the import duties are paid as per the provisions of Customs Act and therefore the goods cannot be released to the Liquidator unless and until the import duties are paid by the liquidator.

f. The issue 'Whether the corporate debtor has clear and perfect title over the Bonded Warehoused goods under Customs Act, 1962', is a legal issue, the appellant has validly raised in the appeal, even though the same had not been raised before the AA.

3.2. Liquidator's Rejoinder in NCLAT: In response, the Liquidator filed rejoinder which could be summarized as under:

a. The appellant refuses to release the goods of the corporate debtor and asserts its right to sell the same, despite the order of Liquidation passed by the Adjudicating Authority, which would bar such proceedings under the Customs Act.

b. Since the appellant filed 'Form C' with the liquidator claiming the customs duty payable by the corporate debtor evidencing the goods in the custody of warehouses are belonging to the corporate debtor. Therefore Section 48 of the Act would not attract in this case.

c. By issuing a notice under Section 72 of the Customs Act against the corporate debtor and filing its claim with the Liquidator, the appellant acknowledges the ownership of the corporate debtor about the warehoused goods.

d. The claim filed by the appellant is based on the premise of ownership of these goods. Therefore, it is clear that the corporate debtor has not lost the ownership rights over the goods.

e. The corporate debtor has never relinquished title to the goods either under Customs Act or under the Code. No communications in this regard have also been made to the appellant. The appellant has not produced any shred of evidence to show that the corporate debtor has actively or consciously relinquished title to the goods.

"Since the Bonded Warehoused goods do not belong to the debtor the Liquidator cannot take control of the same, argued the Customs Department."

f. Even if some of the assets/goods are not in possession of the corporate debtor, it does not amount to relinquishment of rights over the said goods in any manner whatsoever.

g. The Liquidator could not have, after the commencement of CIRP and Liquidation process, relinquished the title of the goods in favor of the appellant.

h. The Customs Department does not have a right to

auction the goods of the corporate debtor under the provisions of the Customs Act, specifically under Section 48 of the Customs Act, and must hand over custody of the goods to the Liquidator.

"In the matter of *Solitaire India Pvt. Ltd. Vs. Fairgrowth Services Pvt Ltd* (2001), the Supreme Court ruled that if two special statutes contain non-obstante provisions, the later statute must prevail."

i. Under Section 142A of the Customs Act, the statutory charge of the appellant is expressly subordinate and subject to the provisions of the Code.

j. Section 33 (5) of the Code, which squarely applies upon the passing of an order of liquidation, 'no suit or other legal proceeding shall be instituted by or against the corporate debtor'. The term 'legal proceedings for a moratorium in liquidation', will include proceedings for recovery of taxes.

k. In liquidation, the priority of debts shall be governed by the law relating to the liquidation process and not the law under which such debt is claimed to have arisen. Accordingly, Appellant cannot invoke the powers under Sections 48, 72, 142, 142A or any other provisions of Customs Act to recover its alleged dues in priority to other dues.

l. The Government dues are covered under Section 53 (1) (e) of the Code. Therefore, they are placed in the 5th position in priority while distributing the proceeds in liquidation.

m. Section 238 of the Code provides that its provisions shall have a superseding effect notwithstanding any law inconsistent with the Code.

n. There is an apparent inconsistency between the provisions of the Customs Act and the Code.

o. In the matter of *Solitaire India Pvt. Ltd. Vs. Fairgrowth Services Pvt Ltd* (2001), the Supreme Court ruled that if two special statutes contain non-obstante provisions, the later statute must prevail. Thus, the appellant cannot bypass the mandatory requirements of the Code by unlawfully resorting to provisions of the Customs Act[6].

p. The appellant neither raised the issue of jurisdiction before the Adjudicating Authority nor made ground in the present appeal.

q. The appellant did not deny that the corporate debtor has imported these goods. Therefore, the corporate debtor has a right over the goods, even if they are not in possession of the corporate debtor.

r. Consequently, the Adjudicating Authority has the jurisdiction to entertain the application of the Liquidator under Section 60(5).

s. The appellant has not taken any steps since 2014 to take into possession and confiscate the goods under the Customs Act.

t. They have sought to enforce this right after the order of liquidation was passed in July 2019, which cannot be permitted since the appellant has already filed its claim for the duty payable by the corporate debtor.

u. Determination of ownership of goods must be seen in terms of the Code and not under the Customs Act.

v. Therefore, the Liquidator can even take those assets that are not in possession of the corporate debtor.

3.3. Observations of NCLAT: The Appellate Tribunal observed that the Adjudicating Authority has passed the impugned order on the premise that the Code is a special law that provides a non-obstante clause under its Section 238 with overriding effect over other prevailing law and statute, time being in force. If there are two special statutes, which contain non-obstante provisions, the later statute must prevail. The Code is a subsequent law to the Customs Act. Therefore, by virtue of Section 238 of the Code, the Code shall have an overriding effect on the other proceedings of the Customs Act. Therefore, the Adjudicating Authority held that appellant Customs Department cannot legally withhold the releasing of the material/goods, which are the property of the corporate debtor in liquidation and impose a prerequisite condition for making payment of the customs duty by the Liquidator of the corporate

[6] Casemine.Com (https://www.casemine.com/judgement/in/619dd84c342cca63ce973229)

debtor because the claims of the appellant have to be treated as a Government Dues and needs to be dealt with under the waterfall mechanism provided under Section 53 of the Code.

"The NCLAT further observed that the corporate debtor did not claim the goods imported by it from 2012 to 2015, lying in the Custom's Bonded Warehouses without payment of duty."

The NCLAT further observed that the corporate debtor did not claim the goods imported by it between 2012 and 2015, lying in the Customs Bonded Warehouses without payment of duty. Since the goods are not claimed they cannot be considered as the corporate debtor's assets. The corporate debtor entered the liquidation process on April 25, 2019. Even after the lapse of four years, the corporate debtor never cleared the bills of entry for some of the said goods. Section 45 of the Customs Act provides that all imported goods shall remain in the port area unless cleared for import. Section 48 of the Act further provides that the imported goods for which no bill of entry has been filed or cleared for import can be sold by the custodian of those goods. The NCLAT concluded that the importer has relinquished his title to the imported goods by not filing a bill of entry for several years and not removing the imported goods.

The NCLAT next considered the duties of Liquidator. Section 35 (1) (b) of the Code, empowers the Liquidator to take control of the corporate debtor's assets and properties. It is the bounden duty of the Liquidator first to ascertain the assets, for which custody has been sought, belong to the Corporate Debtor. The NCLAT concluded that the importer deemed to have lost his title to the imported goods since he did not file the bill of entry for several years and did not pay the Customs Duty and other charges and did not take clearance for home consumption. Therefore, the Custom Authorities are empowered to sell the goods and to recover the government dues. The Liquidator had no power to take into possession of those goods in respect of which the corporate debtor itself had relinquished its claim and left it abundant without taking any steps for clearance of the goods for home consumption by paying the customs duty and other applicable charges.

Furthermore, the NCLAT analyzed the provisions of Customs Act, Section 45, Section 47, Section 48 and Section 71 in relation to imported goods and clearance of goods by paying customs duty and relied on various judgments in this regard.

4. Conclusion

The Court clarified that the imported items can not be removed without paying duty under the Customs Act. Furthermore, the NCLAT also upheld the jurisdiction of the NCLT on the matter under Section 60 (5) (c) of the IBC. As the Corporate Debtor had abandoned the imported goods in the Customs Warehouses for a long time without payment of duty and also had not taken any step to take possession of those goods, the NCLT rejected the claims of Liquidator. The Appellate Tribunal directed the Customs Department to take possession of the goods under Section 72 and sell them to recover dues. The court also put it on record that AA committed an error in directing the release of goods without paying customs duty and other applicable charges. Though the liquidator has an option to challenge the NCLAT order in the Supreme Court, the final decision in this matter has the potential to impact the CIRP and Liquidation process in future.

Importance of Communication in Insolvency Processes

Communication plays a pivotal role in the success of insolvency process. Almost all the communications whether they are meant for court, creditors, employees, and other stakeholder of the corporate debtor are either released by the resolution professional himself or on his behalf. Therefore, designing the communication for target audience, selecting the right channel and feedback analysis to assess the impact and need for communication is quite significant. Today, advancement in information technology has provided us several options in encoding messages with using a blend of text, photos, videos, and animation etc. Besides, a bouquet of media such as print, electronic, email, website, videoconferencing, social media, etc. are available in the market for insolvency professionals. One of the most important communication strategies of an IP is to be vigilant of the kind and standard of language and the body gesture while delivering messages from various forums. ***Read to know more...***

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Introduction

The role of an Insolvency Professional (IP) in his/her capacity as an Interim Resolution Professional (IRP), Resolution Professional (RP), or Liquidator is often compared with that of a Chief Executive Officer (CEO) of a company. This is because immediately after being appointed by the Adjudicating Authority (AA), IP takes control of entire operations and business of a Corporate Debtor (CD). However, the job of a CEO of a CD does not stand comparable to that of a CEO of a flourishing company for it is akin to the captain of a sinking ship with a responsibility to rescue.

This responsibility has made the insolvency profession a highly multidisciplinary profession wherein an IP is required to possess a wide range of skills. In a very short span of 180 days (extendible to 270 days), an IRP/RP is required to take several decisions related to a wide range of stakeholders such as bankers, promoters, employees, suppliers, customers, contractors, taxpersons, entrepreneurs, evaluators, among others. Besides, s/he is also responsible for directly reaching out to these stakeholders, making them aware about the insolvency process, understanding their interests, protecting the assets of the CD, inviting

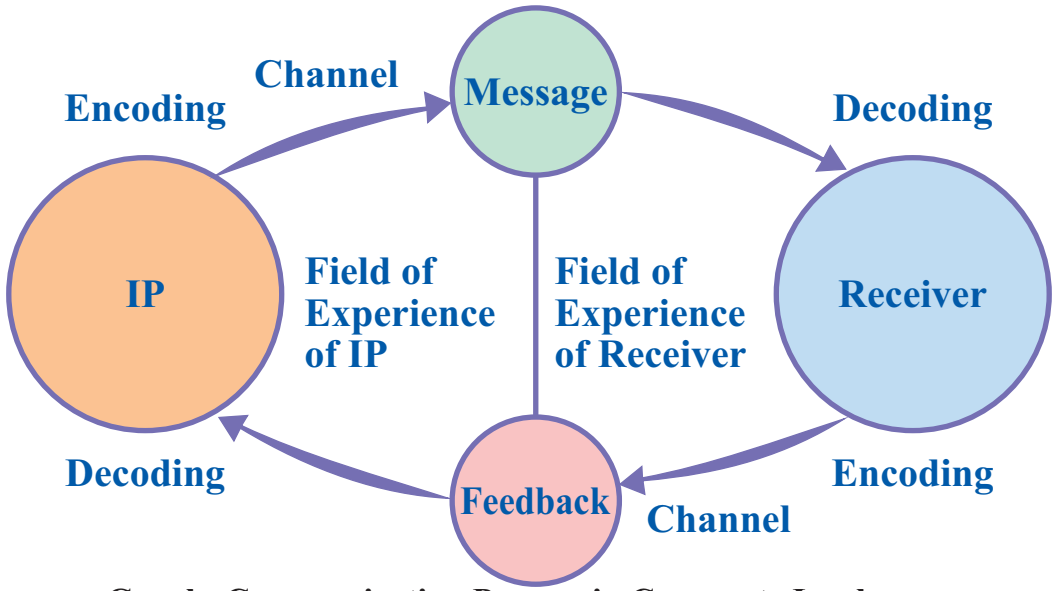
resolution plans, facilitating a successful resolution, distributing proceeds (as a liquidator) etc.

In this process the IRP/RP or Liquidator is required to communicate with various stakeholders and get their active support in the insolvency resolution process. Given the timeline prescribed by the Insolvency and Bankruptcy Code (IBC), 2016, and a wide range of stakeholders, communication becomes very crucial in entire insolvency process.

2. Communication Process

The importance of communication in our professional, social, and personal life has been highlighted in what is considered by many as the first ever book of humans – the holy Rigved[1]. Thereafter, ancient Indian scientists developed several theories and methodologies of communication which were used for interpersonal communication, group communication, and mass communication as well. In the Indian intellectual heritage, they are popular in the form of shastrarth, panchayats, plays, dance, and songs. The Indian approach to communication puts great emphasis on communication skill of the communicator (proponent and respondent), composing accurate and flawless messages and feedback analysis/interpretation. It provides equal status to both the communicators i.e., sender and receiver. Though, several other channels or media of communication like books, letters, inscription on stones, walls, caves, and metallic pillars etc. are available, communication was primarily face-to-face.

Innovation and development of various information technologies which started with the invention of telegram by the American inventor, Samuel F. B. Morse, in 1844, and telephone by Graham Bell in 1876. Thereafter, several other inventions in the field of communication technology such as television, computers, laptop, internet, mobile phones, internet, email, video conferencing etc. have brought phenomenal change in the field of communication studies. In line with these technological inventions, communication scientists have also presented various models of communication.



Graph: Communication Process in Corporate Insolvency

Initial models of communication were linear in nature which were based on the idea of sending messages from sender to receiver. The Osgood Shramm Model[2],

[1] Rigved. 8.101.5
न यः सम्पृक्षे न पुनर्हवीयते न संवादाय रमते।
तस्मान् नो अद्य समृतें उरुष्यतं बाहुभ्यां न उरुष्यतं ॥
(Those who don't take interest in questioning, invoking or engaging in Samvad (regarding the Almighty); please protect us from such powers and also from any type of association with such powers)

[2] Osgood-Schramm Model: https://studymasscommunication.wordpress.com/2019/09/08/the-osgood-schramm-model/

[3] Binani, Sumit (2021): CIRP of Monnet Ispat & Energy Ltd., The Resolution Professional, October, p. 50-51.

presented by Wilbur Shramm and Charles Osgood in 1964, argues that communication is a two-way process. Thereafter, there has been an emphasis on understanding communication in wider perspective. Contemporarily, communication is explained as an exchange of meaningful messages from one person or group to the other person or

> **The Indian approach to communication puts great emphasis on communication skill of the communicator - composing accurate and flawless messages and feedback analysis and provides equal status to both sender and receiver.**

group. These messages could be written, oral, visual, or multimedia. Thus, the process of communication involves seven major components:

(a) **Sender or Communicator:** In the insolvency process, the IP acts as main communicator because most of the messages are drafted, finalized, and disseminated either by himself or by his support team on his behalf.

(b) **Message:** The content of the message which could be in the form of text, audio, video, Power Point Presentation (PPT), Multimedia etc. Designing communication, is, therefore, very crucial in the entire process of communication. Furthermore, body language and behavior of the IP also matter a lot in delivering communication. Though experience of the communicator is of great significance in encoding or designing the communication, 10 Cs of effective communication[3] may be applied to ensure messages are well articulated and properly constructed before they are disseminated. They are as follows:

(i) **Courteous:** Courteousness or politeness is the first step in all forms of communication. A courteous communicator can easily cover some of his mistakes while an arrogant one may face problems despite having more information, knowledge, and facilities for the stakeholders.

(ii) **Clear:** Communicator should be very clear about the purpose or objective of the communication. It is better to design separate communications for separate purposes. However, if the communication has several sub-objectives under a broad objective, they should be mentioned in different paragraphs or section but woven around a common central idea.

(iii) **Concise:** Conciseness means giving more information in a few words. There should not be any unnecessary word or sentence/s in the message/s. Besides, there should not be any scope for speculation which creates uncertainty of any kind among the target audience. Being a court officer, the IRP/RP is expected to talk about facts which should not express his personal prejudices or possibilities.

(iv) **Concrete:** It refers to being specific and meaningful. The vague messages do not portray any meaningful response to further effective communication.

(v) **Correct:** Correctness refers to correct grammar, punctuation, capital letters, and spellings in written communication and proper pause, stress, pitch, and emotion in oral communication.

(vi) **Coherent:** The words, facts, figures, and arguments in the message should be arranged in proper sequence to ensure a harmonious flow. This makes the message easy to grasp and conveys the intended meaning.

(vii) **Credibility:** The message should be framed in such a manner that it contributes to enhancing credibility of the insolvency resolution process, the insolvency profession, and the overall IBC regime.

(viii) **Consideration:** Viewing or analyzing significance of one's message from the perspective of target audience. Due consideration should be given when one is addressing the committee of creditors or when one is appearing in court.

(ix) **Creativity:** Creative presentation plays a very significant role in effective communication and helps the target audience to grasp the message easily. The IRP/RP should use graphs, pictures, ppt, videos, and other creative modes to facilitate effective communication.

(x) **Complete:** Communicator should cross check whether all the required information is provided

in the message or not. If it is oral communication, the communicator should address all the questions. In case the IRP/RP does not have an answer to any question, s/he should politely seek time and circulate the desired information among the target group/s.

(c) **Channel or Medium:** Through which the messages are sent to the recipients such as email, WhatsApp, social media, video conferencing platforms, television, newspaper, official documents, etc. In this age of information technology, the IRP/RP has a wide range of channels for transmitting messages to the recipients or target groups. During the Covid-19 period, video conferencing has emerged as one of the most preferred channels of communication, and even the courts communicated via video conferencing. This use of information technology is also helpful to communicate with the ground team and supervising various units/offices of the company from a centralized location.

(d) **Receiver:** The person who decodes or interprets the message. The sender of a message must, therefore, consider the impact his message will have on the receiver. A communication would be incomplete till it is received and acknowledged by the receiver; and interpreted and understood in the same context and meaning as expressed by the sender.

"It is recommended that an IP uses diversified mode of communication such as periodic text emails, multimedia emails, e-newsletter, e-pamphlets, e-posters, audio messages, short videos, social media etc. to reach out to the target groups."

(e) **Ambience:** Ambience plays an important role in communication. A conducive or favorable ambience may mask the deficiencies or flaws of message/s while a negative ambience may play spoilsport for the same message/s.

(f) **Field of Experience:** Communicator and stakeholders both are influenced by their respective set of experiences, beliefs, background etc. The 'field of experience' matters a lot in drafting or encoding messages and their dissemination by communicator and their interpretation by the receiver or respondent.

"The person or target group plays a great role in designing the communication strategy right from finalization of the message to selection of medium to dissemination and analysis of the feedback."

(g) **Barriers of Communication:** Field of experience or environment, background, beliefs of the sender and receiver all influence encoding and decoding of the messages. Besides, technical snags, faulty messages, improper presentation may also pose hurdles in the process of communication.

3. Stakeholders or Target Groups of Communication in Insolvency Process

Every message whether it is textual, visual, or spoken is meant for consumption of a person or group. The person or target group plays a great role in designing the communication strategy right from finalization of the message to selection of medium to dissemination and analysis of the feedback. Therefore, the IP should be very careful in choosing a suitable communication strategy for the target audience or group. The role of an IP in a Pre-Pack insolvency process starts earlier in comparison to the Corporate Insolvency Resolution Process (CIRP). However, all insolvency processes involve following similar audiences or target groups:

(a) **Promoters/Management:** In case of Pre-Packaged Insolvency Resolution Process (PPIRP) for MSMEs, the IP is required to work as a consultant for the promoter/s and creditor/s in finalizing a Base Resolution Plan (BRP). However, in the case of CIRP, the IP takes over the company from promoters and constitutes a Committee of Creditors (CoC) at its place. Therefore, the IP needs to be very cautious in his/her approach of communication with promoters and erstwhile management.

(b) **Senior Officials of the CD:** Under the IBC, an IRP/RP is responsible for running the CD as Going Concern (GC). Therefore, the active support and confidence of senior officials

becomes very important. It's the responsibility of the IRP/RP to ensure that performing officials continue to work with the CD while negative minds don't misuse the opportunity to spoil or pollute the environment.

"IRP/RP should be cautious and vigilant while communicating with media otherwise s/he will risk parting with confidential/proprietary information."

(c) **Employees and Employee Unions:** It is recommended that the IP should also immediately communicate with the employees of his appointment and taking charge of the company to them. They should also be briefly explained about the insolvency resolution process. As soon as possible, the IRP should have a meeting either physically or through video conferencing with the employees at all the sites or units of the CD.

(d) **Committee of Creditors (CoC):** The rules and regulations relating to the constitution of CoC are well defined in the IBC and deliberated through various judgements of NCLAT and the Supreme Court. IRP needs to be very conscious while inviting claims from creditors, and in admitting claims. After constitution of the CoC, the RP acts as a medium of communication between the CoC and rest of the stakeholders.

(e) **Judiciary:** The insolvency process is conducted under direct supervision of the AA which is the concerned NCLT Bench of the area. The IRP/RP communicates with the NCLT, NCLAT, HC, and the Supreme Court through his lawyer and legal officials. As an officer of the court, the RP/Liquidator has a direct responsibility to be of able assistance to the Court. His applications, pleadings, submissions, and communications during hearings must be guided by the seven components of communication listed above.

(f) **Customers:** Businesses depend on customers who get the product or services of the company directly or through intermediaries. Maintaining positive relationships with such third parties through trustworthy communication helps in running the company as a going concern thereby resulting in value maximization.

(g) **Contractors/ Vendors/ Suppliers/ Wholesalers/ Retailers:** Though very crucial in running the operations of the company, contractors/vendors/ suppliers tend to stop working during the financial crisis due to delays in the payments. Some insolvency professionals have also mentioned about hostile situation and strike at plant locations by trade unions, transporters, dealers, and/or other market organizations. Threats, both physical and otherwise, have been made by trade unions/other third parties to members of the IRP/RP team. Therefore, maintaining continuous and amiable communication with a sympathetic and empathetic approach would enable a more harmonious interaction with such third parties.

(h) **Local/ Dependent Population:** These problems often occur at manufacturing plants where they hire labourers on daily wage basis. If not handled properly, they may create security problems for the assets of the company and safety of employees. Companies allocate some funds for CSR (Corporate Social Responsibility) activities which are generally stopped during financial crisis. For example, Sumit Binani, the RP of Monnet Ispat & Energy Ltd. (MIEL), with due approval of the CoC, ensured that the CSR activities taken up by the company were continued. He established positive communication with organizations and continued financial support to health care facilities for nearby villages, schools and conducted training programs for the youths.

(i) **Tax Authorities:** Though Section 14 of the IBC provides moratorium from tax and other liabilities of the company, tax authorities often send demand notices to the company during insolvency process. The RP should be very

[4] Business Today (2021): Discom cannot terminate PPA with insolvent power company: SC, March 09 (https://www.businesstoday.in/latest/economy-politics/story/discom-cannot-terminate-ppa-with-insolvent-power-company-sc-290388-2021-03-09)

[5] Tata Consultancy Services Vs. Vishal G. Jain, RP, S. K. Wheels Pvt. Ltd., Civil Appeal No. 3045 of 2020, Supreme Court (2021).

careful in replying to those notices which otherwise may land in unnecessarily legal disputes. The RP should facilitate the provision of the information required by the authorities and remain respectful in all his communications.

"The IP needs to maintain a balance between legality and simplicity so that the messages are interpreted by the target group in a desired manner."

(j) **Operational Creditors:** OCs constitute a large group of stakeholders such as suppliers of raw materials, electricity suppliers, employees, tax authorities, government authorities etc. Communication becomes critical when trying to ensure continuity of goods and services that are essential in nature for the corporate debtor while the corporate debtor remains challenged in making timely payments for the same. There can be conflicting assessments on what are essential goods and services depending on the facts and circumstances. This is also reflected in two recent judgements[4&5] of the Supreme Court. In my opinion, having a collaborative approach in communication, trying to solve the problem together and helping both, the corporate debtor, and the supplier, without seeking external intervention by the court would be a more effective communication method.

(k) **Regulator (IBBI and IPA):** IPAs are required to provide mandatory information in the provided formats and forms to their respective Insolvency Professional Agency (IPA) and the Insolvency and Bankruptcy Board of India (IBBI). This information should be flawlessly drafted as even an iota of confusion may land the IRP/RP in trouble. Also importantly, all filings must be made in a timely manner within the timelines prescribed.

(l) **International Communication:** If the CD has offshore offices/units, the IRP/RP is required to communicate with the authorities in foreign land. One must understand whether English must be the main means of communication in that part of the world, and where it is not, be accordingly simple and lucid when communicating rather than using long complicated sentences.

(m) **Media:** Though media does not play a direct role in all the insolvency proceedings, it influences perception of various stakeholders in high profile cases. The IRP/ RP should as far as possible, exercise restraint from communicating with the media during the insolvency resolution process. IRP/RP should be cautious and vigilant while communicating with media otherwise s/he will risk parting with confidential/proprietary information. This is because digging out sensitive pieces of information and exposing them in the public is considered merit in journalistic profession.

Where required to interact with the media, the insolvency professional must ensure that only correct factual information is provided to media. In case of any ambiguity in any information or in case of any misreporting of what the insolvency professional has communicated, clarifications should be needed to be issued without any loss of time.

(n) **Miscellaneous Stakeholders:** If the company is listed in the stock market, the IRP/RP is required to regularly communicate with SEBI, BSE, and NSE etc. and keep them updated on the resolution process as mandated. In addition to the above, there may be other stakeholders depending on the field and profile of the company. For example, in the CIRP of DHFL, the public deposit holders and investors were core stakeholders. But in CIRP of Oyo Rooms, the hoteliers became core stakeholders.

4. Types of Communication in Insolvency Process: Based on the nature of the message and the target audience, communications during the insolvency process could be divided as follows:

(a) **Legal/ Technical Communication:** IRP/RP represents the company in a Court, sues and can be sued. Besides, he is responsible for communicating with government authorities, moderates the meetings of the CoC, communicates the

decisions of the CoC to the AA and other platforms of judiciary, communicating with the IBBI and IPA etc. All these communications are very specific wherein the text has their specific meanings. S/he must be accurate, clear, and concise while communicating with these forums and institutions. Though s/he is assisted by a team, the final responsibility lies with the IRP/RP. The credibility of the IRP/RP as a professional is always at stake. Besides, in case of fault, IP could also be penalized by IBBI and/or concerned IPA.

(b) **Business Communication:** Running the CD as Going Concern is primary responsibility of the RP for it is crucial for the core objectives of the IBC i.e., Resolution, Value Maximization and Promoting Entrepreneurship, availability of credit and balancing the interests of all the stakeholders. In the process, the IRP/RP is required to strike deals with business partners, arrange for interim finance, and ensure that all the business stakeholders of the company such as contractors, suppliers, wholesalers, retailers, and operational creditors etc. continue the supply of goods/services and inputs required for smooth operation of the company. If the consumers of the CD are demoralized and loose the trust in the company, it is the job of IRP/RP to plan communication campaign through the right mode and channel to win over confidence of the stakeholders.

(c) **Conversational Communication:** From the perspective of communication, this is more complex because one needs to prepare one's message, select appropriate channel, minimize barriers of communication, and create conducive ambience to ensure that the target group is receptive enough to grasp the message in the intended way. Besides, the communicator is also required to put in place a mechanism for response analysis and prepare for next communication. The stakeholders of this category constitute employees, contractors, labourers, employees' unions, and the local population.

IRP/RP will be required to decide language to be used and its standard as per the educational standard of the target group. Contract labour, employee unions, employees, and local population have different levels of education and understanding so one communication language mode and channel may not be fit for all. Besides, in oral communication i.e., while addressing public gatherings, official meetings etc. through face to face or video conferencing, the IRP/RP needs to be very careful about the kind of language, standard of language and body gesture etc. In conversational communication, the creative presentation through pamphlets, leaflets, posters, short films, videos, newsletters, advertisements in local newspapers etc. may be more effective.

> **"Maintaining positive relationships with such third parties through trustworthy communication helps in running the company as a going concern thereby resulting in value maximization."**

(d) **Image Management:** Mainstream media plays an important role in winning back and holding the confidence of stakeholders. Though appropriate messaging in the form of media interviews, press releases, event coverage, etc. through media, an IP can improve image of the company and its products. Here targeted messaging plays vital role in which classification of the target audience, designing of the message/s, selection of channel, mode of communication etc. are very important. It is recommended that an IP uses diversified mode of communication such as periodic text emails, multimedia emails, e-newsletter, e-pamphlets, e-posters, audio messages, short videos, social media etc. to reach out to the target groups. The image of the corporate debtor plays a significant role in enhancing brand value and credibility of

[6] The Economic Times (2021): Supreme Court directs UP Police to immediately release Jaypee Infra IRP, March 03 (https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-appalled-over-arrest-of-court-appointed-irp-for-jaypee-infratech-orders-immediate-release/articleshow/81295898.cms)

its products in the market which is crucial in value maximization. The IP should remember to be in continuous compliance with the Code of Conduct particularly on confidentiality of information and must deploy appropriate restrain when communicating one's achievements.

(e) **Miscellaneous:** Communication with government authorities, police[6], law and order agencies, foreign countries, CoC will require a curated approach for the context.

5. Conclusion

The insolvency resolution process involves almost all forms of communications i.e., intrapersonal, inter-personal, group and mass communication. IP is the competent authority to approve messages related to the company, acts as a moderator during the meetings of the CoC, and also engages in direct/face to face communication with various stakeholders either through virtual mode or in-person meetings. The IP needs to maintain a balance between legality and simplicity so that the messages are interpreted by the target group in a desired manner. From the perspective of communication, the role of IRP/RP is like the Chief Communication Officer of the CD. Besides, he is responsible for engaging, winning over and boosting the confidence of all stakeholders, and maintain the credibility of the insolvency resolution process.

Therefore, s/he should be very cautious in drafting the messages for each group/ stakeholder and crosscheck them before dissemination whether they are textual or oral. Besides, there should also be a proper mechanism in place for response analyses. Even a single piece of wrong information, misinformation or disinformation or any message conveyed in haste and /or in anger could potentially derail the insolvency resolution process and may even put at risk the safety and security of the IRP/RP and his team.

Performance Analysis of Bhushan Steel Limited, Pre, During and Post CIRP

Bhushan Steel Limited (BSL) was among the 12 Large Accounts identified by the Reserve Bank of India in June 2017 with instructions to lenders for file CIRP applications. In pursuance of the insolvency application of the State Bank of India, the Principal bench of the National Company Law Tribunal (NCLT) vide an order on July 26, 2017, admitted the Corporate Insolvency Resolution Process (CIRP) of the Company. The NCLT also appointed Mr. Vijaykumar V. Iyer as the Interim Resolution Professional who was subsequently confirmed as the Resolution Professional (RP) by the Committee of Creditors (CoC). The RP and team, with the support of stakeholders, maintained manufacturing and sale operations of the Company. This enabled the team to market the Company, generate interest and obtain two compliant resolution plans before the Company's custody was handed over to Tata Steel Ltd, the successful resolution applicant.

The present case study, sponsored by IIIPI, was developed by Mr. Iyer with his colleagues Mr. Sandeep Negi and Mr. Abhishek Sood. In this study, he has provided a first-hand step by step guide to resurrect a corporate life.

Read on to know more…

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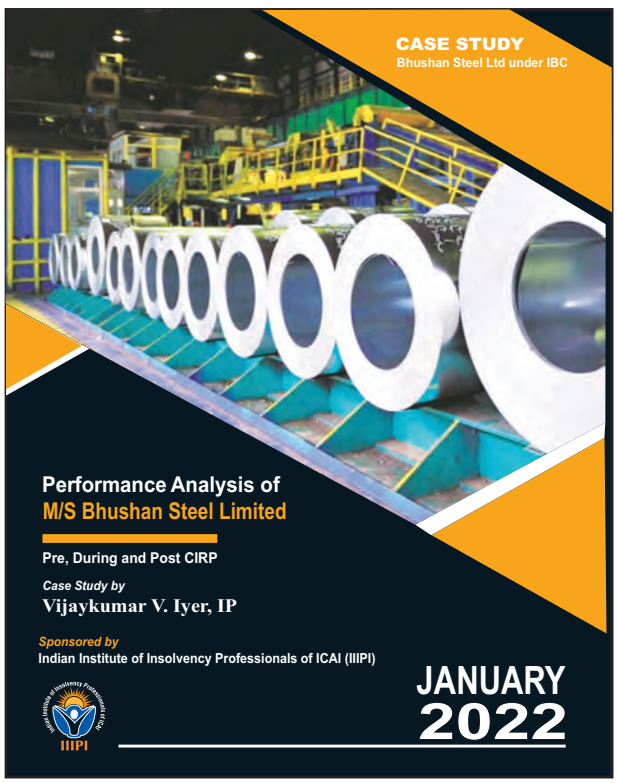
1. Introduction

Bhushan Steel Limited, (the Corporate Debtor or the Company) renamed as Tata Steel BSL Limited, is a leading producer of primary and secondary steel in India. The case of Corporate Insolvency Resolution Process (CIRP) was admitted against the Company under the Insolvency & Bankruptcy Code, 2016 (IBC or the Code) in the Principal Bench of the National Company Law Tribunal (NCLT) in July 2017.

During the CIRP, the Resolution Professional (RP) and RP Team, as per the provisions of the Code, maintained the operations of the Corporate Debtor as a going concern. Besides, the RP and team also conducted the resolution process which resulted in the resolution plan of Tata Steel Limited being submitted for the consideration of the Adjudicating Authority i.e., NCLT. The NCLT approved the resolution plan, and the Corporate Debtor was expeditiously transferred to the successful resolution applicant, Tata Steel Limited (TSL).

The present case study discusses the operational parameters, the challenges and steps taken for sustained



and improved operations, and cash position of the Company during the CIRP, thereby, facilitating a successful resolution as envisaged under the Code.

> **"Having facilities closer to customer locations enable the Company to respond to customer requirements in an expedited manner."**

2. Company Profile

a) Bhushan Steel Limited, listed at Bombay Stock Exchange (BSE) and National Stock Exchange of India Limited (NSE), has been a leading primary and secondary steel producer in India.

b) The Company was established in 1983, by Mr. Brij Bhushan Singal, Chairman and founding Director. At the time of CIRP commencement, Mr. Neeraj Singal, was the CEO and Managing Director.

c) The production capacity of the Company is 5.6 Million Tonnes Per Annum (MTPA) and the product portfolio comprised of Hot Rolled Coils, Cold Rolled Coils, Galvanized & Colour Coated Products, High Tensile Steel Strips, Hardened and Tempered Steel strips, pipes and tubes and billets.

d) The Company primarily caters to the automobile and white goods industry and is one of the largest steel suppliers to the Indian automobile industry.

e) The Company has manufacturing facilities at three locations in India, namely, Sahibabad in Uttar Pradesh, Angul in Odisha and Khopoli in Maharashtra. Additionally, it has offices, service centers, warehouses, sales depots at various locations across India.

f) The Company established its first plant at Sahibabad, Uttar Pradesh, in 1989, for the production of cold rolled and galvanized steel products servicing the automotive and consumer durables customers.

g) The second plant was set up at Khopoli, Maharashtra in 2004, to expand its geographical reach and product portfolio.

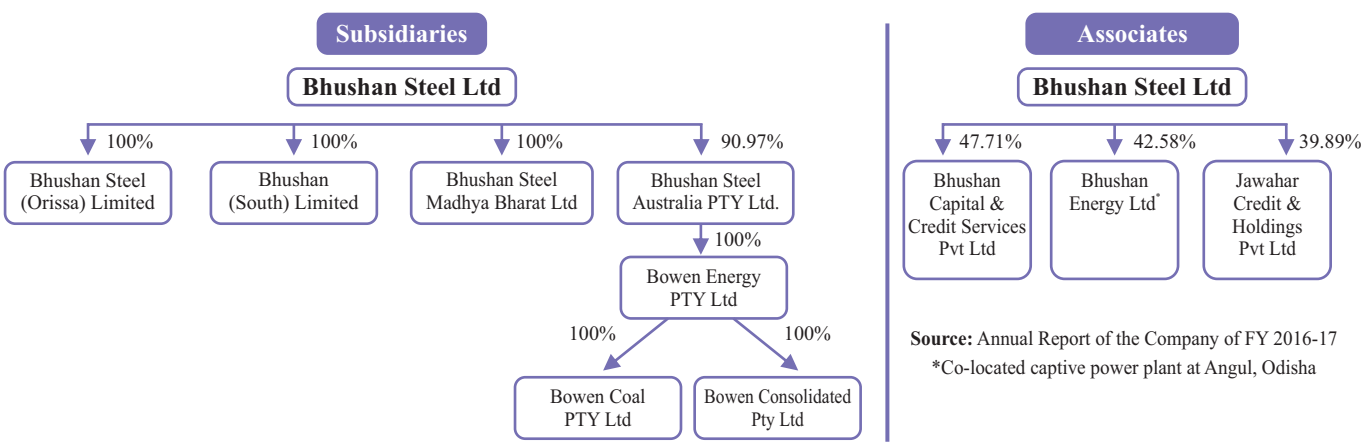
h) The Khopoli plant manufactured precision tubes, API Pipe and high tensile steel strapping, Hardened & tempered (H&T) steel, color coated sheets, besides cold rolled and galvanized sheets.

i) As part of backward integration, the third plant, an integrated steel plant with capacity of 5.6 MTPA of liquid steel, was set up in Angul, Odisha to produce hot rolled (HR) coils and billets. This marked the Company's entry into the primary steel sector.

j) The Company has a widespread distribution network, comprising 14 warehouses cum marketing offices in India. Of these, three locations are service centers equipped with facilities for cutting tubes to custom sizes required by customers. Having such facilities closer to customer locations enable the Company to respond to customer requirements in an expedited manner.

k) The Company also owns ~50 acres of land at Pilkhuwa (near the Sahibabad Plant) along with railway siding which is used as a distribution center for Northern India and for supplying raw material from the integrated steel plant (Angul) to the Sahibabad plant. The Company also has a rented yard at Paradip Port for facilitating imports of coking coal.

Graph-1: Subsidiaries & Associates



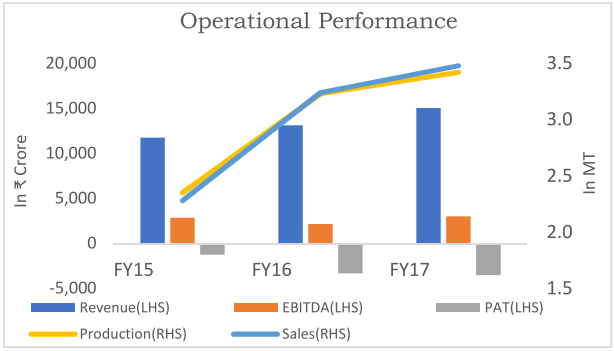
Source: Annual Report of the Company of FY 2016-17

*Co-located captive power plant at Angul, Odisha

l) The Company had won rights to the 'Kalamang Mine' in Odisha with a premium of 100.05% through auction. The mine had reserves of 92 million tonnes of iron ore.

m) Furthermore, the Company has several subsidiaries, step-down subsidiaries and associates[1] as depicted Graph -1.

Graph 2 : Operational Performance



3. Pre-CIRP Performance

3.1. Performance in Three Previous Years[2]

As is evident from the above, the Company was operating at a significant capacity with a large revenue base and positive earnings before interest, taxes, depreciation, and amortization (EBITDA). However, due to high interest cost, the Company was incurring Profit After Tax (PAT) losses and was in financial stress.

3.2. Reasons of Financial Stress

The key reasons[3] for high debt and subsequent financial stress in the Company as informed to the RP and team are summarized below:

a. Non-allocation of captive iron ore mine in Odisha

(i) As per MoU with Govt. of Odisha, the Company was to be allocated a captive iron ore mine which would have ensured a cost-effective feedstock, basis which the Company went ahead with setting up the large integrated steel plant in the State.

(ii) However, no mine was allocated and therefore the Company had to rely on purchased ore which is expensive, requires relatively higher inventory and higher working capital on account of payment in advance for inventory purchases.

b. Delays in commissioning of several projects at Angul Plant

(i) Key components of Oxygen plant were damaged during transportation for installation, and had to be sent to Germany for repairs, which lead to a five-month delay in plant commissioning.

(ii) Ramping up of Blast furnace operations was delayed as it was observed that the support structures were under-designed and needed to be replaced.

(iii) In addition, Cold Blast pipelines were offered to be replaced by the supplier based on its experience at another site, which lead to a further six-month delay in commissioning.

c. Accident in blast furnace which lead to closure of Angul plant

(i) There was an unfortunate incident of fire/explosion in Blast Furnace-2 during the trial run in November 2013. As a result of the same, the Odisha Pollution Control Board directed the closure of Blast Furnace–2.

> **"Though the Company was operating at a significant capacity with a large revenue base and positive earnings before EBITDA, it was incurring PAT losses and was in financial stress."**

(ii) The Blast Furnace-2 was restarted at significant cost, after a period of six months, during which time, the Company suffered losses on account of accumulated interest and loss of income due to delay in commissioning.

d. De-allocation of Coal Block

(i) The Company was allocated the New Patrapara Coal block by the Union Ministry of Coal in 2006 along with seven joint allottees.

(ii) In 2012, Ministry of Coal de-allocated the coal block pursuant to recommendations of the Inter-Ministerial Group (IMG) due to no substantial progress in development of the coal block. The IMG noted that time was lost due to litigation between the joint allottees and there was a significant delay in finalization of the mining plan. Subsequently, the Supreme Court cancelled all coal block allocations in 2014.

[1] Annual Report of the Company of FY 2016-17

[2] The Company's Financial Statements

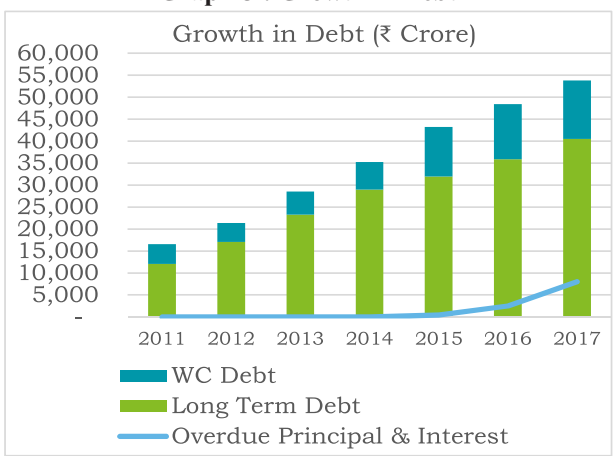
[3] Information Memorandum (IM) prepared by SBI Caps for Flexible Debt Structuring, in March 2015.

(iii) The Company had relied upon the coal block to setup a coal washery, DRI route of steel manufacture and a captive power plant. The deallocation of the coal block impacted the viability of the DRI route as the Company had to purchase expensive coal from the open market, and thus DRI capacity was not utilised optimally.

Due to the above factors, the Company's total debt outstanding increased, including accumulated interest prior to commissioning of the Angul plant. The Company and its lenders made several attempts at revival, including flexible restructuring of ~₹ 30,000 crores under the 5/25 scheme in July 2015. However, despite such efforts, the Company was not able to service its outstanding debt and the account was classified as a Non-Performing Asset (NPA) by several lenders.

The below chart evidences the ballooning debt (long term debt and working capital debt) and the overdue position. Long term debt increased by 235% from ₹12,087 Crore in FY2011 to ₹40,495 Crore in FY2017, while the working capital debt soared by 198% from ₹ 4,474 Crore (FY2011) to ₹13,326 Crore (FY2017) over the same period. In addition, the overdue interest and principal was ₹ 8,026 Crore in FY2017.

Graph-3 : Growth in Debt



4. Corporate Insolvency Resolution Process (CIRP)

4.2. Appointment of IRP / RP

In June 2017, Reserve Bank of India (RBI) identified 12 large accounts which were in default and instructed the lenders to file the application for initiation of CIRP. The Company was identified on this list.

On July 13, 2017, application was filed by State Bank of India (Applicant) before the NCLT against Bhushan Steel Limited in terms of Section 7 of the Insolvency and Bankruptcy Code, 2016 read with its Rules and Regulations. The NCLT admitted the application of State Bank of India and appointed Mr. Vijaykumar V. Iyer as the Interim Resolution Professional (IRP) vide its order dated July 26, 2017 (Insolvency Commencement Date, ICD). The IRP was subsequently confirmed as the Resolution Professional (RP) by the Committee of Creditors (CoC) pursuant to the voting at the first CoC meeting held on August 24, 2017. With the active support of financial creditors and other stakeholders, the CIRP was completed within stipulated timelines envisaged under the Code and followed through with a quick implementation of the approved resolution plan.

The summary of the CIRP timeline is presented in **Annexure 1**.

4.2. Initial Assessment

The written order initiating the CIRP was issued by the NCLT on July 26, 2017, and the RP along with RP Team reached the Company's head office in New Delhi on the morning of July 27, 2017, for initial meetings with the management team and to take charge of assets of the Corporate Debtor.

"Long term debt increased by 235% from ₹12,087 Crore in FY2011 to ₹40,495 Crore in FY2017, while the working capital debt soared by 198%."

The initial meetings were held at the corporate office between the key members of the management and the RP, RP Team- the legal advisors to the RP and the technical experts appointed by the RP. The objective of the initial meetings was to meet the promoters, directors, Key Managerial Personnel (KMPs) to explain the CIRP protocols, the roles & responsibilities of the RP, and to explain the expectations and cooperation sought from the promoters, directors, KMPs to achieve a successful resolution. The meetings were also utilised to further understand the issues and financial situation of the Company. their concerns and immediate pain points. In such meetings, the department heads from the plant locations also joined virtually.

Additionally, the RP Team and technical experts took charge of the three operating units of the Company

(Angul, Khopoli and Sahibabad). Similar initial meetings were held with the department heads and their teams at the respective plant locations.

Following are some of the key takeaways from these initial discussions:

a. Sustaining Plant operations

The infrastructure at the Company's plants was reasonably state-of-the-art and operating parameters were comparable to other key players in the Indian steel industry. The Company was able to operate its plants at viable utilisation levels with positive EBITDA. However due to high debt accumulated, such EBITDA was not sufficient to service the debt and Company was caught in a debt trap.

b. Condition of plants

The technical experts were convinced with respect to the capabilities of the plant. However, based on their analysis suggested certain capital expenditure to improve operating efficiencies such as improvement in SMS gas holder and pulverized coal injection facility and the completion of Coke Dry Quenching ("CDQ") facility to comply with environmental regulations.

c. Security and safeguarding of assets

The RP and RP Team also evaluated the security services and their positioning especially considering the vast area over which the plant facilities were spread, and the large number of employees and workmen living within the Company's township at Angul. A security agency was deployed to supplement and oversee the existing security arrangements and to safeguard each of the plant locations and assets therein.

d. Remote Plant locations

The integrated steel plant of the Company at Angul is located in a remote location within a sensitive tribal area.

e. Centralised operations under oversight of Promoters

While the manufacturing and dispatch activities were carried out from the plants, the primary marketing, sales and distribution activities were carried out from the corporate office of the Company by a few senior employees in consultation with, and with oversight of, the promoters. These consultations were largely verbal with limited audit trails.

Similarly, the technical head and procurement heads were also based out of the corporate office – and had been working with the promoters and the Company for a long period of time.

> **"The situation was exacerbated by the initiation of the CIRP, as all dues prior to the ICD were to be included in the claims."**

f. Working Capital Position

(i) Being an operational unit, the Company was generating cash to fund operations. However, due to the financial stress a portion of the cash generated was diverted towards meeting debt obligations.

(ii) Further, the Company was maintaining minimal inventory levels which was a precarious situation for a continuous plant (Angul) as any inventory shortage could result in an unsafe shutdown of the plant. Such an unsafe shutdown could lead to significant damage to the plant, high restart costs and risk of harm to labour deployed at the plant. Therefore, it was imperative to increase and manage the inventory levels to ensure Angul plant's operations were not disrupted.

g. Sensitive situation at plant locations and strike by labours and transporters

There were unpaid dues of labour contractors, transporters and other vendors with payments being made with delay due to the financial position of the Company. The situation was exacerbated by the initiation of the CIRP, as all dues prior to the ICD were to be included in the claims.

There were labour strikes/factory gate lockdowns on account of delay in payment of wages by sub-contractors, which needed immediate attention due to continuous nature of operations at Angul. There were also instances for example where a transporter held material hostage for their unpaid dues.

4.3. Identified objectives

The key objectives identified by the RP for fulfilling his obligations under the Code were:

a. To protect and preserve a sizeable asset with a continuous nature of operations at significant risk of damage in case of disruption in operations.

b. Managing day to day operations despite large outstanding dues including dues to various statutory bodies.

c. Managing a large set of stakeholders with diverse interests.

4.4. Measures taken to address challenges, maintain operations during CIRP process

The measures taken by the RP and RP Team to meet the challenges and maintain operations to achieve optimal resolution at the earliest and in not more than the 270 days (180 days + 90 days of extension provided by the Adjudicating Authority) as prescribed in the Code include the below:

a. Managing Operations

The RP and RP Team deployed senior technical people for assistance in managing the operations of the Company. The team shadowed the KMPs and was included in all key decisions with respect to operations, while the day-to-day operations were left to the existing management and employees.

> **"Considering the critical role of employees and labour it was ensured that salary dues are paid by 10th to 12th day of the following month."**

Such deep involvement led to control over operations, and some key steps by the RP and RP Team to improve operations such as restricting supplies to customers with long overdues, limiting related party transactions, etc.

(i) Sales

The centralised sales team of the Company booked orders for delivery over the short term and there were no significant long-term sale contracts.

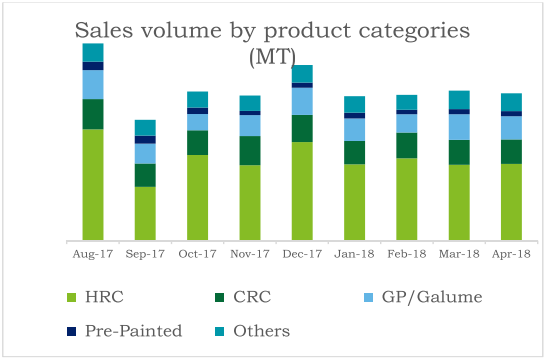
Further, historically it was observed that sales in the months of July / August were low for the steel industry. However, the Company witnessed significantly high sales in August 2017, the month immediately following the commencement of CIRP period.

Sales in September 2017 were subsequently low, in part due to the relatively high offtake in August, and in part due to the concern of various customers in the initial period of CIRP regarding continuity of operations of the Company and assurance of supplies.

The RP Team interacted with various customers and assured them of continued operations.

During the CIRP period, the Company was able to maintain sales with an average monthly offtake of ~324k MT (August 2017 – April 2018).

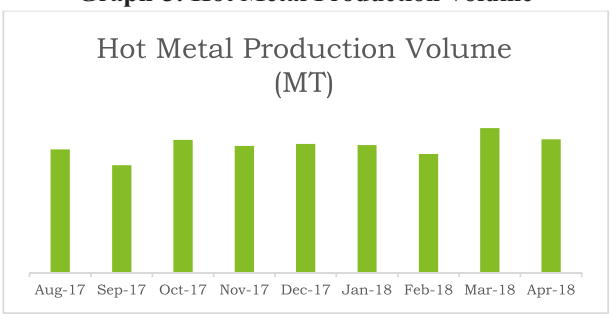
Graph-4: Sales volume by product categories



(ii) Production

The Company was also able to maintain production levels during the CIRP period, with average hot metal production during the period (August 2017 – April 2018) at ~335k MT, despite limited inventory to start with.

Graph-5: Hot Metal Production Volume



b. Managing Working Capital / Cash

In order to ensure control over the cash generated from operations, the RP Team initiated preparation of weekly budget, and tracked performance against such budget which covered:

(i) Collections

(ii) Raw material purchases

(iii) Labour payments

(iv) Statutory payments

On subsequent stabilization of operations, the budget was prepared on a monthly basis.

Further, all the payment requests received from the Company were reviewed and scrutinized at multiple levels by the RP Team and only post such scrutiny were payments forwarded to the bank for processing. In addition, periodic reconciliation was carried out between final payments made by the bank and approved payments to ensure that no unauthorized payments were being made.

Such control over cash / payments also helped the RP

Team in prioritising key inventory items and in ensuring that adequate inventory level was maintained at all times.

Due to the above steps, the CIRP period resulted in adequate inventory build-up, and cash surplus for the Company, with net cash generated at the end of CIRP of >₹ 500 Crore. In addition, there was margin build-up for Letter of Credit (LCs) / Bank Guarantee (BGs) to the tune of >₹ 500 Crore.

"RP and RP Team remained in close dialogue with such suppliers. As a result, there were no disruptions in operations/sales during the CIRP."

c. Various regulatory authorities

At the commencement of CIRP, intimations were sent to major authorities informing them of commencement of CIRP, and requesting them to file their claims, if any, as per the provisions of the Code.

On receipt of notices from authorities, replies were sent to them intimating about the provisions of the IBC. The RP and RP Team closely monitored the communication with such authorities and held meetings with several critical authorities including labour department officials who had oversight of the Angul Plant.

d. Critical suppliers and key customers

At the commencement of CIRP, intimations were sent to major customers and suppliers informing them of commencement of CIRP, and requesting them to file their claims, if any, as per the provisions of the Code.

Meetings were also held with selected suppliers and customers to assure them of continued operations during the CIRP period and the need for their on-ground support.

Further, to continue operations of the Company as a going concern, existing suppliers were needed to continue supply of critical raw materials. As per the Code, past dues were to be included in claims as on Insolvency Commencement Date (ICD), however, some key suppliers demanded past payments for making continued supplies.

RP and RP Team remained in close dialogue with such suppliers. As a result, there were no disruptions in operations / sales during the CIRP.

The Company was hence enabled to achieve one of its highest ever monthly production and sale of liquid steel during the CIRP period.

e. Employees / Labour

The RP and RP Team held regular meetings with key employees, labour contractors / labour commissioner seeking support during CIRP.

Further, considering the critical role of employees and labour, the payments were streamlined and prioritised, resulting in payment of salary dues by 10th to 12th day of the following month, an improvement over extant practice of deferred payments.

The Company was hence able to ensure that there were no significant disruptions during the CIRP period on account of delayed payments.

f. Books of account and financial statements

Being a listed entity, the Company was required to prepare quarterly financial statements and publish the same to the stock exchanges. As a result, there was a process in place for updating the books of account and finalisation of financial statements. In order to meet the strict timelines under the listing requirements, the RP and team maintained oversight of such procedures. Further, the notes to account relevant to the CIRP process were particularly reviewed by the RP and team.

"In order to meet the strict timelines under the listing requirements, the RP and team maintained oversight of such procedures."

With respect to annual financial statements, the CIRP commenced in the month of July 2017, and by then the company had already prepared its annual report for the previous financial year. Further, as the CIRP was completed by the month of May 2018, and the affairs of the Corporate Debtor were transferred to the incoming management, the annual report for FY2018 was finalised and published by the incoming management of the successful resolution applicant.

"To attract investors, the RP Team prepared marketing material for the transaction and reached out to several strategic and financial investors, both domestic and international."

5. Resolving claims of creditors

Total claims of ₹ 62,002 crore as on ICD were submitted by various categories of creditors, out of which claims of ₹ 57,505 crore were admitted by the RP and RP Team, post detailed verification.

Table 1 : A summary of claims against the Company

S. No.	Category of Creditor	No. of claims	Amount claimed (₹ Crore)	Amount admitted (₹ Crore)
1	Financial Creditors other than preference shareholders	53	56,080	56,022
2	Financial Creditors – Preference shareholders*	48	2,357	-
3	Operation Creditors other than Workmen and Employees	1,035	3,563	1,483
4	Operational Creditors - Workmen and Employees	40	1.90	0.32
	Total	**1,176**	**62,002**	**57,505**

**The preference shareholders were related parties of the Corporate Debtor.*

During the CIRP, large claims were received from several financial creditors with varied restructuring structures and consortiums. RP and RP Team invested considerable amount of time to go through these facility agreements, inter creditor agreements, security documents and bank statements to plot the sanctioned, disbursed, and outstanding amounts including unpaid interest and penal interest, charges, etc. and the security interest for each of the facilities.

Several financial creditors had submitted manual calculations of interest and such calculations were meticulously rechecked with iterations between the RP Team and financial creditors. Considering the different methodologies followed by the financial creditors in maintaining accounts at their end, especially for NPA accounts, the RP Team had to examine each claim individually without reliance on any set template.

A point of note is that during the plan implementation phase it was required to identify each Financial Creditor which was the beneficiary of pledge of shares given by the promoters. The methodologies followed and the extensive documentation by the RP Team facilitated the successful resolution applicant, TSL, in identifying the pledge beneficiaries and in implementing the resolution plan.

Some of the major challenges in claim verification and approach to mitigate such challenges are as follows:

a) Inadequate support from the management

Receiving adequate information from the management of the Corporate Debtor was a challenge and access to the accounting system (systems, applications, and products, SAP) was delayed. RP and the RP Team engaged vigorously with the management and conducted multiple meetings with the promoter and KMPs to obtain the relevant information.

This is apart from obtaining directions by the Adjudicating Authority to the KMPs and promotors to provide support to the RP on an application filed under section 19 of the Code.

b) Lags in accounting of invoices and improper accounting system

It was observed that the books of account of the Company were not up to date and there was a time lag which could be witnessed in recording of invoices. This limited the reliability of the books of account of the Company for the purposes of claim verification.

It was observed that in several cases, the classification in the books of accounts was erroneous which required detailed reconciliations to be conducted.

The Company also utilised two accounting software – one for capital expenditure, and one for operating expenditure and other items. The two systems were not integrated and were manually aggregated and included in the financial statements.

"It was observed that in several cases, the classification in the books of accounts were erroneous which required detailed reconciliations to be conducted."

RP and team conducted meetings with the claimants to understand the nature of their claims and further performed the reconciliation with the books of accounts.

The RP Team also took assistance from the accounting team and the auditors of the Company in performing reconciliation exercise to facilitate verification of the claims.

c) Each claimant had its own story to tell

Claims received were different in nature and no particular methodology could be applied for verification to all or most of the claims. Each claim was required to be studied in detail, the underlying work orders and invoices were

required to be verified and then the claim was admitted basis the supporting documents submitted by the claimant and the detailed reconciliation exercise undertaken by the RP Team.

There were claimants who were unaware of the claim submission process as prescribed in the Code and hence the RP Team explained the key process as per the Code to such claimants and handheld them in filing their claims.

> **Some of the claims, including from Statutory Authorities, were under litigation. On the advice of the legal advisor, such claims were admitted at a notional value of ₹ 1.**

d) Claims including Tax Deducted at Source (TDS)

Many of the operational creditors also sought to claim their TDS liabilities since the Corporate Debtor had not furnished the TDS certificates to them, despite depositing the tax against the same. The RP Team after understanding the matter, instructed the management to issue TDS certificates to such vendors which lead to reduction in their claim amounts and further developed confidence in such vendors and suppliers.

e) Claims under litigation

Some of the claims, including from Statutory Authorities, were under litigation at various forums. Advise was sought from the legal advisor on such claims, and basis their inputs, such claims were admitted at notional value of ₹ 1 since the amount payable against such claims was sub-judice and could not be determined as of the ICD. Details of such cases formed part of the data room to be accessed by potential resolution applicants.

f) Claims pending for >5 years

Certain creditors filed claims for outstanding dues of last seven to eight years and it was noted that they provided critical capital goods or services to the Company. The lapse of extended time complicated the reconciliation / verification of such claims.

RP and team had to undertake detailed discussions with such creditors, the projects team and accounting team of the Corporate Debtor to understand and reconcile such claims as part of the verification.

For example: in the case of one of the large operational creditors where capital goods were supplied several years prior to ICD, there were many on-going disputes and several failed attempts at reconciliation in the past. The RP Team organized multiple meetings with key officers of the Corporate Debtor and management of the claimant and undertook a detailed reconciliation exercise to resolve past disputes, taking cognizance of past settlement agreements (even if not honored) and verified the claim amount which was acceptable to both the parties.

6. Activities related to the resolution plan

The Code provides for a public issuance of invitation for expression of interest. Considering the size of the Company, the RP and team also thought it prudent to aggressively market the asset to all potential investors in order to garner adequate interest in the resolution process.

The RP Team prepared marketing material for the transaction and reached out to several strategic and financial investors, both domestic and international.

As a result of such efforts, and the quality of the underlying asset, the RP received expression of interest from over twenty parties, of which most of the parties thereafter signed the confidentiality undertaking sought and received access to the virtual data room created by the RP. Close to ten parties also completed site visits as part of their diligence exercise – showing keen interest in the process.

a. Evaluation Matrix

Considering the large number of members of the CoC and the size of the asset, the CoC appointed an external advisor to assist them in the resolution process, in preparation of the Request for Resolution Plans (Process Document), and finalization of evaluation criteria for inviting eligible resolution plans from potential resolution applicants. This Process Document was disseminated to potential resolution applicants through the Virtual Data Room (VDR) to provide them a framework for submission of resolution plans, and to clearly outline the evaluation criteria for the resolution plans.

b. Diligence process by potential resolution applicants

As mentioned above, a VDR was maintained to facilitate the diligence process from multiple parties across geographies and considering the strict timeline envisaged under the Code. Further, physical data room access was also provided for legal and secretarial documents which were otherwise unwieldy in terms of scanning and uploading to the VDR.

In order to expedite and facilitate the diligence by multiple potential resolution applicants, the RP, with approval from CoC, commissioned a Legal Diligence Report and a

Technical Diligence Report.

The RP also facilitated meetings of potential resolution applicants with the management of the Corporate Debtor, and a committee of members of the CoC, along with CoC Advisor & legal advisor to the CoC.

c. Receipt of Resolution Plans

In pursuance to the code, RP received resolution plans from three resolution applicants.

The resolution plans, as per the Process Document, were received in sealed envelopes. To ensure integrity of the process, the RP further sealed the envelopes in an outer covering which was initialled by representatives of RP, legal advisor to the RP and the respective resolution applicant.

Such exercise was undertaken to ensure that there was no possibility of the resolution plans being inadvertently disclosed prior to the formal opening.

d. Opening of Resolution Plans

In order to maintain complete transparency and integrity of the resolution process, the resolution plans were opened only in the presence of representatives of all the three resolution applicants, and in a recorded session.

All resolution applicants were informed of date and time for the bid opening and were invited to attend the same.

The sealed cover put in place by the RP was opened post confirmation from the resolution applicants that such covers were not tampered with. Subsequently, the sealed envelopes provided by the resolution applicants were opened.

On opening of the resolution plans, the back of each page of each resolution plan was stamped and initialled by the RP, representatives of each resolution applicant, legal advisor to the RP, legal advisor to the CoC and the CoC advisor for evaluation of resolution plans. The objective of such initialling was to remove any potential allegations that a particular page in the resolution plan has been subsequently modified.

The transparency maintained in the receipt and opening of resolution plans, ensured that there was no allegation of misconduct in opening of the resolution plans.

e. Evaluation of resolution plans

Resolution plans and associated documents were subsequently scanned and shared with the CoC members, legal advisor to CoC, legal advisor to RP, and CoC advisor for evaluation of resolution plans, through the VDR only, which ensured that the security protocols applied in the VDR were applied to the resolution plan documents as well to maintain confidentiality. The access to VDR was only provided to those members of CoC and its advisors who had signed NDA as per the Code.

In accordance with the Code, the RP, with assistance from the legal advisor to RP, ensured compliance of the resolution plan with the Code and shared the compliant resolution plans with the CoC.

"The sealed cover put in place by the RP was opened post confirmation from the resolution applicants that such covers were not tampered with."

Subsequently, the CoC and its advisors evaluated the resolution plans in accordance with the Process Document and the communicated evaluation criteria.

The RP facilitated presentations by each of the resolution applicants to a committee of members of the CoC to highlight the key aspects of the resolution plan, and provide any explanations, wherever relevant.

f. Announcement of H1 resolution applicant

As per the Process Document, the H1 resolution applicant was declared, and same was communicated to the H1 resolution applicant. Other resolution applicants were also informed that they had not been selected as H1.

g. Discussions with H1 resolution applicant

Discussions were held between the H1 resolution applicant and the CoC members to cater to concerns and requirements of CoC members and the outcome of these discussions, was suitably recorded in the form of amendments to the resolution plan and shared with the CoC members for their consideration.

The final, negotiated resolution plan was put to vote and unanimously approved by the CoC.

It may be noted that three members of the CoC (cumulatively less than 0.5% voting share) were not able to vote within the stipulated timelines due to various logistical issues, and subsequently filed affidavits before the NCLT to be considered as consenting members of the CoC with respect to the approved resolution plan.

h. Pre-work

Once the resolution plan was approved, it was immediately filed with the NCLT for its consideration and approval. While there were a few applications filed against

the resolution plan, due to the transparent process followed, there was no allegation of impropriety in the process.

In order to implement the plan expeditiously post approval and avoid any unnecessary delays, several preparatory meetings were held between legal advisors to the CoC, legal advisor to the RP, RP and the successful resolution applicant, TSL, to chalk out the plan for implementation of the approved resolution plan.

Key bottlenecks / dependencies for implementation were identified during such discussions and steps were taken to resolve the same.

A detailed implementation structure was planned out along with timelines which were followed strictly and successfully completed.

Applications for requisite approvals were made to the RBI and Competition Commission of India by TSL prior to receipt of approval from the NCLT to ensure that no time was lost subsequently.

Further, the applications to other relevant authorities such as the Securities and Exchange Board of India (SEBI), and stock exchanges were prepared in advance, so that they could be sent immediately on receipt of approval on the resolution plan.

The proposed transactions documents and process were also discussed in detail and finalized prior to NCLT approval.

In order to ensure payments as envisaged under the resolution plan were made to the respective accounts on time, the RP Team verified and collated the bank account details of each Financial Creditor and also obtained confirmations of the same from such creditors.

Further, the CoC advisor prepared detailed computations of amounts to be paid to each financial creditor as per the resolution plan, and also the shares under pledge to be invoked / allocated to financial creditors as applicable. The resolution plan also envisaged allotment of shares to each of the financial creditors and the necessary internal approvals from creditors and documentation for allotment of shares was prepared and kept ready for expedited execution on approval of the resolution plan.

The resolution plan envisaged a partial payment to each of the financial creditors. Detailed discussions were held with respect to novation of the unpaid debt to TSL, which was captured in the transaction documents. Further, negotiations were also held between TSL and the CoC to determine the manner for appropriation of payments under the resolution plan to ensure a tax efficient structure for TSL.

All these steps ensured that the resolution plan was implemented in an expedited manner once the approval from NCLT was received.

i. Closing actions

The approval from NCLT was received on May 15, 2018 and thereafter, the agreed upon transaction documents were executed by each Financial Creditor and TSL.

The closing steps included opening of bank accounts as per the transaction documents, conduct of Board Meeting of the Corporate Debtor to allot shares to TSL, infusion of funds by TSL towards allotment of such shares, reconvening of Board Meeting for infusion of funds to repay the financial creditors and actual transfer of funds as per the Code and approved resolution plan.

The total realisation by creditors under the resolution plan was as below:

Table-2: Realisation by creditors under the resolution plan

S. No.	Category of Creditor	Amount Admitted	Resolution Achieved
1	Financial Ccreditors other than preference shareholders	₹ 56,022 Crore	₹ 35,200 Crore + 12.26% shareholding in BSL
2	Operation Creditors other than Workmen and Employees	₹ 1,483 Crore	₹ 1,200 Crore
3	Operational Creditors - Workmen and Employees	₹ 0.32 Crore	₹ 0.32 Crore
	Total	₹ 57,505.05 Crore	₹ 36,400.32 Crore + 12.26% Shareholding in BSL

7. Post CIRP / acquisition activities[4,5]

In pursuance to the NCLT order dated May 15, 2018, the

[4] Business Today, How Tata Steel turned around bankrupt Bhushan Steel, May 18, 2021 (https://www.businesstoday.in/latest/corporate/story/how-tata-steel-turned-around-bankrupt-bhushan-steel-296337-2021-05-18)

[5] Annual report of TSBSL for FY2020-21

custody of the Corporate Debtor, was handed over to TSL on May 18, 2018. The Company was subsequently renamed as Tata Steel BSL Limited (TSBSL) w.e.f. November 27, 2018.

TSL re-designed the organisational structure and created dedicated functional departments within a month of acquisition for safety, environment, Corporate Social Responsibility (CSR), vigilance and ethics, human resources, transformation, shared services, and industrial by-product management, among others.

"Post-CIRP, Company has achieved revenue of ₹ 21,536 Crore in FY2021 and a consolidated net profit of ₹ 2,518 Crore."

The gross debt of erstwhile Bhushan Steel Limited was ₹ 63,020 crore as of 2018. The debt stands at ₹ 17,028 crore on March 31, 2021.

- TSBSL focused on leveraging group synergies with Tata Steel group companies to increase use of captive raw material, optimizing product mix to maximize system benefits, horizontal deployment of best practices across the value chain, manufacturing of TSL branded products at the plants and leveraging the channel and distribution network of TSL for increasing the share of branded products. The plant achieved multiple BPDs (best-demonstrated-performance) throughout the year across multiple cost & throughput parameters which accelerated the journey towards 5.2 MTPA of crude steel production.
- Key initiatives on throughput include - debott lenecking across upstream units like Raw Material Handling System ('RMHS'), Steel Melting Shop ('SMS'), Hot Strip Mill ('HSM') etc. and multiple downstream units, maximizing the utilization of Direct Reduced Iron ('DRI') kilns (7 kilns in operation). Besides these, the initiatives focused on value creation including – customer diversification in multiple segments, ramping up volumes of branded products (including launching of three new brands – ColorNova, GalvaNova, GalvaRos), increasing the sales of value-added products, external sales of DRI and various by-products (1st ever dispatch by rakes).

8. Conclusion

As a result of the above revival efforts, the Company has achieved revenue of ₹ 21,536 Crore in FY2021 and a consolidated net profit of ₹ 2,518 Crore and is currently a viable asset contributing to the income generation in the nation. The stock price of the Company has also increased from ₹ 27.65 per share on May 18, 2018 (date of implementation of resolution plan) to ₹ 52.15 on March 31, 2021, significantly contributing to the wealth generation in the country and underlining the fact that Bhushan Steel Limited is one of the marquee successes of the IBC regime.

Resolution of Jalpower Corporation Limited (JPCL) under IBC

Resolution of Jalpower Corporation Limited (JPCL), was complex as the only project site of the Company was partially constructed and was stalled for over six years. There were no cashflows or cash reserves in company. The holding company, which was also the primary construction contractor, was already going through liquidation process. The company was operating with skeleton staff and was barely complying with statutory requirements.

Pursuant to the insolvency application by one of the lenders with the Hyderabad Bench of the National Company Law Tribunal (NCLT), JPCL was admitted into Corporate Insolvency Resolution Process (CIRP) on April 9, 2019.

RP and his team completed the CIRP of company in less than two years despite the impact of COVID-19 which severally impacted the functioning of NCLT and inadvertently delayed the resolution process.

This case study, sponsored by IIIPI, has been developed by Mr. Amit Jain, the Resolution Professional of JPCL. The case is thought-provoking and showcases the challenges in the path to resolution and emphasizes on role and responsibilities of Resolution Professional and on working with various stakeholders for achieving the objectives of IBC. ***Read on to know more…***

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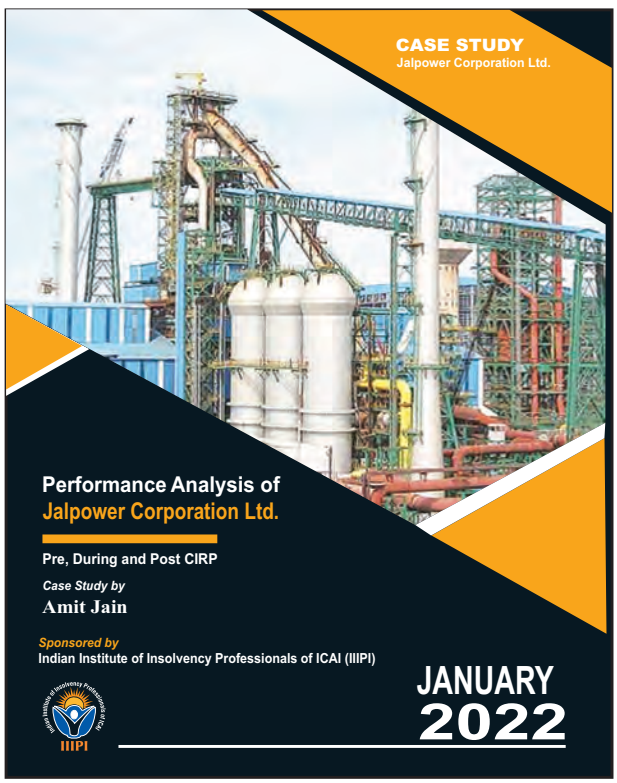
1. Introduction

Jalpower Corporation Limited[1] (JPCL) was awarded Rangit Stage-IV Hydro Electric Project in 2004 by the Government of Sikkim (GoS) as part of national drive for the development of hydro potential of the country. The agreement was to setup run-of-the-river type power plant with pondage and with installed capacity of 120MW (3x40MW) on Rangit river in West & South Sikkim. The implementation agreement was signed in 2005 on BOOT basis (Build, Own, Operate and Transfer) jointly with the GoS for 35 years from the date of commercial operation.

Initial project cost was estimated ~ ₹ 775 Crores which was funded by debt and equity in the ratio of 75:25. The Corporate Insolvency Resolution Process (CIRP) of the company was initiated on April 9, 2019 under the Insolvency and Bankruptcy Code, 2016 (IBC or Code).

2. Company and project profile

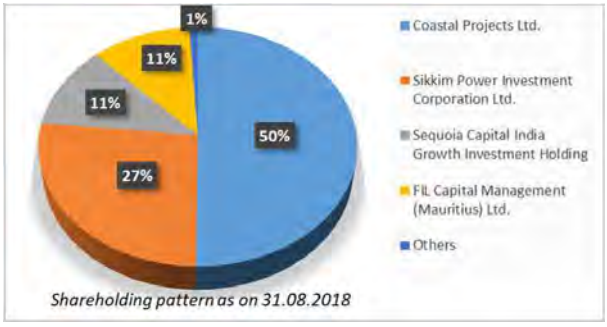
a. JPCL, an unlisted Public Limited Company was incorporated in 2004. Company was engaged in setting up of 120 MW (3X40) Rangit Stage-IV run-off-river



[1] Jalpower Corporation Ltd. (https://www.jpcl.co.in/)

hydroelectric power plant on Rangit River in Sikkim, India on BOOT basis jointly with GoS. The project is spread over 16km which comes under both and west & south Sikkim.

b. Shareholding pattern as on August 31, 2018, is represented in Graph 1.



Graph 1: Shareholding pattern

c. JPCL procured 31.34-hectare forest land, 8.06-hectare private land and 6.40-hectare temporary lease land for the project.

d. JPCL executed Power Purchase Agreement (PPA) with Tata Power Trading Company Limited for sale of 60% power on cost plus basis as per CERC norms and balance 40% on merchant basis.

e. JPCL had bulk power transmission agreement with Power Grid Corporation of India Limited (PGCIL) for 25 years.

f. JPCL had an agreement with a supplier for the supply of Electromechanical equipment.

g. JPCL had agreement with a supplier for supply of Hydromechanical equipment.

h. Key Technical specifications of project:

(i) Run of the River type with pondage.

(ii) Installed capacity 120MW (3x40MW).

(iii) Concrete Gravity dam with height of 44m above crest level.

(iv) 3 numbers of intakes and 2 Admits.

(v) Surface powerhouse and 220KV DC line to 220KV pooling station of power grid.

(vi) Francis turbine.

(vii) Desilting chamber for continuous operations during monsoon.

(viii) Maintenance free Gas Insulated Switchyard (GIS).

(ix) Surge shaft with steel liner.

(x) Equipment designed for 10% continuous overload.

(xi) The project cost includes two spares runner beside mandatory spares for 5 years for minimizing the downtime

i. Construction of project started during June 2008, however, after ~40% completion the project stalled during October 2013 due to paucity of funds.

j. **Status of construction:** In May 2013, JPCL submitted a request to lenders for funding the additional cost with original debt equity ratio. The revised estimated cost was ₹ ~10,600 crores and additional cost to construction was estimated to ~₹ 5,000 crores.

k. **Major reasons for cost overrun**

(i) Increase in cost of detailed survey and consultancy charges for design and engineering of the project.

(ii) Higher compensation paid to the private landowners.

(iii) Introduction of diversion tunnel and other changes in design during construction.

(iv) Poor geology encountered during construction.

(v) Hold up of works due to severe earthquake nearing about 6.9 on Richter scale in September 2011.

"The Company was engaged in setting up of 120 MW Rangit Stage-IV run-off-river hydroelectric power plant on Rangit River jointly with the Government of Sikkim on BOOT basis."

(vi) Occurrence of landslides in dam area.

(vii) Floss/increased discharge of Rangit River.

l. Management of under-construction project and key issues handled during process

As the project was stalled for over 6 years and company had no revenue streams, there was no cash reserve in company to run the CIRP process. With only skeleton staff, Resolution Professional (RP) had an uphill task to carry out resolution process. Once RP took charge of the company, followings steps were taken to keep the company as Going Concern during resolution process:

2.1 Understanding the project and company operation

2.1.1 RP had several rounds of meeting with management of the company for understanding the project nuances and to keep the company as going concern for prospective resolution approach including:

> **"As the project was stalled for over 6 years and company had no revenue streams, there was no cash reserve in company even to run the Corporate Insolvency Resolution Process."**

a. Salient features of the project;

b. Estimated "cost to complete";

c. Relative pros and cons of the project which may invite attention / be attractive to prospective resolution applicants;

d. Drawings/ technical specifications of project which would be sought by prospective resolution applicants later in the process;

e. Project viability reports done earlier etc.

2.1.2 Understanding key stakeholders of company and meetings with them for seeking their assistance in resolution process.

2.1.3 Understanding key contracts which were critical to continue for the continuance/ safety of project assets and for the benefit of Project.

2.1.4 Details of employees, their terms of employment, respective roles, compensation etc.

2.1.5 Critical project related compliances and registrations.

All the above helped the RP significantly in populating the data room for the resolution process and being in a position of readiness for resolution.

2.2 Retention of employees/workforce and rationalization of cost

2.2.1 The company was working on skeleton staff i.e., seven employees at head office and four employees at plant location. The employees were having apprehension regarding their salaries and job security post the initiation of CIRP.

2.2.2 Considering the project was stalled for over 6 years, availability of old records and technical expertise of employees associated with project was very critical. RP explained the process of resolution under IBC regime to the employees and continuity of employment for them and was successful in getting their cooperation in the resolution process.

2.2.3 The company had two key managerial and technical persons who were withdrawing approx. 80% of total salary payout to skeleton staff.

2.2.4 They were the only technical people who were associated with the project since the beginning and had legacy knowledge about project. RP had to balance between ensuring their continuity as well to rationalize salary to reasonable levels and reduce the burden on CIRP. RP was able to negotiate a reduction of salary payout by ~ 50%. Besides, no payout was made to these two senior personnel until resolution/ handover was achieved.

2.3 Continuation of dewatering activities and security of project asset

2.3.1 Due to monsoon and geology of the project site (tunnel and desilting chambers) there was constant need to avoid waterlogging. The activity was very critical for safety of the project. Considering the criticality of activity, it was prudent to continue with dewatering activity. Due to limited funds, RP was conservative in funds handling and managed such CIRP costs through a combination of interim finance from lenders and deferring other payments to the extent feasible.

> **"RP was able to negotiate a reduction of salary pay out by ~50%. Besides, no pay out was made to these two senior personnel until resolution/ handover was achieved."**

2.3.2 The construction site was spread over ~16 km hence, keeping adequate security was a priority.

2.3.3 At first, RP understood the existing terms with security agencies including number of security personnel, their shifts, commercials etc. RP negotiated better terms with the security agencies including increasing number of shifts, taking their assistance in regular stock reports etc.

2.3.4 Security of magazine house (where explosives

were stored) was also critical - any lapse of security would have been extremely detrimental to the project.

2.3.5 RP kept adequate armed security personnel to avoid any mishappening at the magazine house and continuous clearing of surrounding area was also taken care of.

2.3.6 Again, due to limited fund availability, RP had to defer some payments.

"As the wellbeing of 29 project affected families was the integral condition of implementation agreement, RP ensured that regular payout was made to families to avoid any dispute."

2.4 Maintenance of Project affected families

2.4.1 As per implementation agreement, the company was required to provide employment to 29 project affected families i.e., the families who have been relocated and had given their land to company for construction of project.

2.4.2 As the wellbeing of 29 project affected families was the integral condition of implementation agreement, RP ensured that regular payout was made to families to avoid any dispute which otherwise would have negatively affected the implementation agreement and the resolution process.

2.5 Security of project equipment

2.5.1 As the project were stalled for over 6-year, high value of uninstalled equipment was lying at project site at different locations.

2.5.2 The equipment providers had been maintaining a covered store at project site. Since there was no visibility on recommencement of construction, the supplier had removed its store manager from site.

2.5.3 As identification and verification of equipment material was critical to determine the assets of company, RP approached the supplier's team and successfully managed to get their assistance in verification and tagging of their equipment through multiple site visits which eventually was useful at the time of handing over the project to the successful resolution applicant.

2.6 Identification of construction equipment not owned by company

2.6.1 The Holding company was the EPC contractor for JPCL. Once construction was stalled, the holding company had left their construction equipment at the project site.

2.6.2 Since the holding company was undergoing liquidation proceedings under IBC, it was critical to identify their assets to avoid any overlap/ overvaluation of company assets.

2.6.3 RP reached out to the liquidator of the holding company and managed to get the primary list of their equipment at JPCL project site. The list of equipments was verified by internal team of JPCL and segregated.

2.7 Restoration of electricity at project site

2.7.1 In the month of August 2020, due to heavy rain fall and landslides, power supply was disrupted at project site. When RP approached the electricity department for restoration of power supply - the department refused to entertain our request due to non-payment of long outstanding dues.

2.7.2 It was peak monsoon time and restoration of electricity was critical to continue the dewatering activity (any disruption in dewatering activity would have put the project structure at risk). Also, due to non-supply of electricity there was risk of theft.

2.7.3 RP contacted the power department officials through on ground team and explained the CIRP process and applicability of moratorium against penal action. The electricity department was still reluctant to restore electricity due to overdue payments. Also, some defects were noticed by the department in the power meter which needed to be addressed. With regular follow up and meetings, RP was able to restore electricity at project site after paying some partial amount of current dues pertaining to post-CIRP commencement period and reaching an agreement for installation of temporary meter and regularizing of payment of electricity bills going forward.

2.8 Site management due to Covid pandemic during CIRP

2.8.1 Due to unprecedented COVID pandemic situation, the management of site activity without any disruption became a priority to ensure compliance to dynamic government guidelines.

2.8.2 RP created a mechanism of weekly reporting from security agencies and dewatering agencies to know the wellbeing of their employees who are assigned at project site. The reporting was duly verified by company employees and RP team during the CIRP period.

2.9 Project Insurance

2.9.1 As the project was uninsured at the commencement of CIRP, it was imperative to get the project insured at the earliest.

2.9.2 RP approached different insurance companies and understood details on types of insurance, category of risk and amount of sum insured for getting the project insured.

2.9.3 Through a tight negotiation process, the insurance cost was reduced substantially.

2.10 Inter-Creditor Issues

2.10.1 There were two lenders in the consortium lending. One of the lenders had granted an additional loan facility and created charge with RoC.

2.10.2 The other lender challenged the said facility and amongst other claims/ disputes, alleging that the charge created was without NoC from the other lender as invalid.

2.10.3 The matter was discussed at length in the Committee of Creditors (CoC) meetings and after legal opinions and multiple meetings with senior bank officials, consensus was arrived at and suitably documented in CoC meeting.

3. Corporate Insolvency Resolution Process (CIRP)

3.1 Appointment of IRP & RP

3.1.1 The NCLT vide its order dated April 09, 2019, admitted the petition filed on behalf of Power Finance Corporation (PFC) for initiating the CIRP for JPCL under the provisions of the IBC. By the same order, NCLT also appointed Mr. Sanjay Kumar Dewani as the Interim Resolution Professional ("IRP") of the Company.

3.1.2 The CoC in its first meeting appointed Mr. Amit Jain as the Resolution Professional ("RP") of the Company which was subsequently approved by NCLT through an order dated June 21, 2019.

3.2 Invitation to submit the Resolution Plan

3.2.1 RP published the invitation for Expression of Interest (EOI) on June 18, 2019 calling for submissions of EOIs from interested resolution applicants.

3.2.2 No EOI was received till the last date of submission of EOI i.e., July 04, 2019, accordingly RP extended the last date of submission of EOI to July 31, 2019.

"Considering the interest of stakeholders, RP took various initiatives to expedite the process of approval of the Resolution Plan including filing of the Interim application with NCLT for urgent listing."

3.2.3 As part of market making for the asset, RP approached several strategic and financial players and sought their participation in the Resolution process. A total of thirty-five (eighteen strategic and seventeen financial) players were approached and were requested to participate in the EOI process. The brief profile of prospective applicants was shared with lenders along with the discussion progress for wider participation in the process. The objective was to have wider market participation for more competition and value maximization for stakeholders.

3.2.4 In response to the said invitation, seven EOI's were received

3.3 Receipt of Binding Resolution Plan

3.3.1 Multiple discussions were held with such potential resolution applicants. The preparatory work done after taking charge as RP helped, since business queries raised by prospective resolution applicants were largely addressed through information in the Information Memorandum and data room. Several rounds of questions and answers were done in CoC meetings where senior management personnel from the Company were also asked to attend – this helped in addressing questions on historical events, technical specifications etc. which made the

process more informative and efficient for the prospective resolution applicants.

3.3.2 Last date for submission of resolution was extended multiple times at the request of the prospective resolution applicants and the final last date for submission of the resolution plan was December 04, 2019. Till such date, RP received the binding resolution plans from two Applicants.

3.4 Approval of the Resolution Plan by the CoC

3.4.1 Multiple CoC meetings were convened where RP presented the key facts of the Resolution Plan submitted by both the Resolution Applicants.

3.4.2 Members of the CoC deliberated upon the various facts of the resolution plan. Discussions were held with both the Resolution Applicants and CoC requested for revision in the Resolution Plan.

3.4.3 Revised Resolution plans were submitted by both the applicants by the statutory deadline.

3.4.4 RP presented the key facts along with the financial proposal of both the Resolution Plans and addressed questions from the members of the CoC. Both the Resolution Plans were compliant as per regulation 38 of CIRP regulations. However, CoC in 16th CoC meeting decided that the other resolution plan was not viable & feasible on commercial grounds.

3.4.5 After multiple discussions and deliberations Resolution Plan of NHPC Limited was confirmed to be compliant with all requirements of the RFRP, Code and that it was feasible and viable in the opinion of the members of the COC and accordingly was approved by the members of the CoC by 100% votes in favor of the Resolution Plan.

3.4.6 Pursuant to the section 30(6) and section 31 of the IBC, RP filed an application with NCLT dated January 25, 2020, for approval of the CoC approved Resolution Plan submitted by NHPC.

3.5 Delayed approval by the NCLT

3.5.1 The application filed for the approval of the Resolution plan was listed for hearing on multiple dates.

3.5.2 Approval of the Resolution plan was delayed due to the outbreak of the Covid-19 pandemic.

3.5.3 Considering the interest of all stakeholders, RP took various initiatives to expedite the process of approval of the resolution plan including filing of the Interim application with NCLT for urgent listing of the resolution plan approval application.

3.5.4 Resolution plan approval application was listed for hearing on July 31, 2020, and after hearing the clarifications from the legal counsel, the order was reserved by the NCLT.

3.5.5 Post the above hearing RP approached the Registrar of NCLT, Hyderabad, sent an email requesting the authorities to pronounce the order with respect to approval of resolution plan which was reserved on July 31, 2020.

3.5.6 Since the approval was delayed, a request was received from the successful resolution applicant i.e., NHPC Limited whereby they conveyed their intention to initiate the tendering process for the project prior to the approval of its resolution plan to expedite the preparation of the working of the project.

3.5.7 RP discussed with members of the CoC on the request of NHPC and explained the facts and rationale behind the requests. The said request was unanimously approved by CoC.

3.5.8 During this interim period, RP was in constant touch with the Successful Resolution Applicant to understand the requirements for an effective handover. This period was utilized by the RP team and Corporate Debtor staff to list out various files, number them, do regular stock checks, etc. so that the time taken for handover is reduced significantly. RP also asked the Successful Resolution Applicant to be ready with its preparation for takeover of the Company i.e., be ready with its nominees of Board of Directors, new CEO etc. All these preparations helped RP to complete the handover formalities in a short period of ~2.5 months after NCLT approval.

3.5.9 The NCLT finally passed an order[2] approving the Resolution Plan on December 24, 2020.

[2] The Hindu Business Line (2021). NHPC gets NCLT's nod to take over Jalpower Corporation (https://www.thehindubusinessline.com/companies/nhpc-gets-nclts-nod-to-take-over-jalpower-corporation/article33522196.ece)

4. Handover of the Corporate Debtor to NHPC Limited

4.1 Pursuant to the approval of the Resolution Plan by the NCLT, a Monitoring Agency ("MA") was formed with RP as one of the members.

4.2 Closer to the handover date, a major stumbling block was the presence of assets of the holding company (in liquidation) lying at the project site. NHPC requested for the removal of the said assets as a precondition for taking handover.

4.2.1 RP and team regularly followed up with the Liquidator of the holding company for removal of equipment and requested multiple times to act on ground through local support, however, apart from meeting vendors, no action could be taken by the Liquidator of the holding company for removal of equipment.

After due deliberation and multiple discussions with NHPC and lenders, it was agreed that in case the holding company is unable to incur/ finance the cost for removal of its equipment from the site, the lenders will reimburse NHPC for shortfall of expenses for relocation of such equipment from corporate debtor's site. Basis a confirmation by lenders, NHPC agreed to take over the site.

5. Completion of Handover to NHPC Limited

On March 31, 2021, within two years from the Insolvency Commencement Date and in ~ 2.5 months from the approval of resolution plan by the NCLT, the handover was completed and NHPC Limited transferred the total consideration as per resolution plan to company designated account and on same date RP transferred the amount to all stakeholders including lenders, operational creditors, employees and CIRP dues as per distribution provided in resolution plan. The company is now thriving as a subsidiary[3] of NHPC.

Conclusion

The resolution process of JPCL was challenging and complex – to be able to find a resolution of a half complete hydro power asset (with significant cost to complete obligation) in ~ six months of takeover as RP and then to complete handover within 2.5 months of NCLT approval (in spite of Covid challenges) was immensely satisfying. In the end, an asset which was facing imminent closure was salvaged through the IBC process and this indeed will help the country/ economy (with a fully complete and running hydro power plant in ~ two to three years), has saved jobs and will generate more jobs in coming years; besides lenders and other operational creditors found a settlement which otherwise have had to be completely written off. The resolution process of Jalpower Corporation Limited hence upheld the primary motive of IBC i.e., "to accelerate resolution in case of insolvency or bankruptcy of businesses, save bankrupt businesses, and speed up recovery of loans."

[3] PSU Connect (2021). NHPC`s subsidiary JPCL awards Lot-I Civil Work contract of Rangit IV HEP (https://www.psuconnect.in/news/NHPCs-subsidiary-JPCL-awards-Lot-I-Civil-Work-contract-of-Rangit-IV-HEP/29161/).

Legal Framework

Here are some important amendments, rules, regulations, circulars, notifications, and press releases related to the IBC Ecosystem.

CIRCULARS

IPs do not need to provide "Identification Number" for seeking identification details of stakeholders in CIRP

The IBBI through a circular titled 'Filing of List of Creditors under Clause (ca) of Sub-Regulation (2) of Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016' has directed Insolvency Professionals (IPs) to file the list of creditors on its electronic platform of the Board for dissemination on its website, www.ibbi.gov.in, in the stipulated revised format within three days of the preparation of the list or modification. The Board had issued the Circular No. IBBI/CIRP/36/2020 on November 24, 2020, for the same. The column, "Identification No." has been removed considering the partial modification of the circular under reference to avoid misuse of sensitive personal information which is not to be revealed on public platforms. The rest of the contents shall remain same.

Source: *IBBI Circular No. IBBI/CIRP/47/2021, dated November 24, 2021..*

IPs do not need to provide "Identification Number" for seeking identification details of stakeholders in Liquidation Process

The IBBI through a circular titled 'Filing of List of Stakeholders under Clause (d) of Sub-Regulation (5) of Regulation 31 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016' has directed the liquidators to file the list of stakeholders and modifications on its electronic platform, www.ibbi.gov.in, in the stipulated revised format within three days of the preparation of the list or modification. The Board had issued the Circular No. IBBI/LIQ/40/2021 on March 04, 2021, for the same. The column, "Identification No." has been removed considering the partial modification of the circular under reference to avoid misuse of sensitive personal information which is not to be revealed on public platforms. The rest of the contents shall remain same.

Source: *IBBI Circular No. IBBI/LIQ/46/2021, dated November 24, 2021.*

No Income Tax NOC/NDC required for voluntary liquidations

The IBBI through a circular titled 'Clarification Regarding Requirement of Seeking No Objection Certificate or No Dues Certificate from the Income Tax Department During Voluntary Liquidation Process under the Insolvency and Bankruptcy Code, 2016' has stated that a liquidator, within five days of his appointment, must call for submission of claims by financial creditors and operational creditors including government within thirty days from the liquidation commencement date. Not following the same, the corporate person shall be liable to get dissolved. According to the provisions of the Code and Regulations read with Section 178 of the Income-tax Act, 1961, an Insolvency Professional (IP) is not required to seek any NOC/NDC from the Income Tax Department as the process of applying and obtaining of such NOC/NDC consumes substantial time defeating the objective of time-bound completion of process under the code.

Source: *IBBI Circular No. IBBI/LIQ/45/2021, dated November 15, 2021.*

GUIDELINES

IBBI Published final panel of IPs for January to June 2022

IBBI on December 30, 2021, published Final Panel of IPs prepared in accordance with 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (second) Guidelines, 2021' for the period from January 1, 2022, to June 30, 2022.

The names of IPs featuring in the list can be appointed as IRP, RP, Liquidators, Bankruptcy Trustees for the period

mentioned above. Thereafter, IBBI will publish a new panel of IPs for the above-mentioned purpose.

Source: *https://www.ibbi.gov.in/uploads/whatsnew/6a77e5bcf009173614e660fdb48e33e5.pdf*

IBBI Extends Online Educational Courses till March 31, 2022

Due to rising cases of Omicron Covid variant and threat of third wave, IBBI has extended online educational courses and professional development sessions on IBC till March 31, 2022. With respect to each course, the IPA/RVO is supposed to provide a compliance report to the IBBI within seven days after course completion. Essentially, according to the guidelines issued in July 2020, the records of every course must be maintained for at least three years.

Source: *https://ibbi.gov.in//uploads/legalframwork/58782cc53126e4e8cfc18103d7d5798d.pdf*

PRESS RELEASES

IBBI Celebrated 5th Annual Day

Dr. Bibek Debroy, Chairman, Economic Advisory Council to Hon'ble Prime Minister delivered the Fifth Annual Day Lecture on "From No Exit to Easy Exit - A Case Study of IBC" as Chief Guest in Fifth Annual Day of the Insolvency and Bankruptcy Board of India (IBBI) on October 01, 2021.

In his address, Dr. Debroy noted the potential role of IBC in promoting entrepreneurship. He highlighted evolution of insolvency laws over the centuries and appreciated the modern framework of IBC. Dr. Debroy referring to the ancient Indian wisdom from Chanakya Niti noted the successful nurturing of IBBI in first five years and suggested that stage is now set right for it to further take plunge towards maturity. On this occasion, Shri Rajesh Verma, Secretary, Ministry of Corporate Affairs and Dr. Krishnamurthy Subramanian, Chief Economic Adviser, Ministry of Finance were Guests of Honour. Dr. M. S. Sahoo, Former Chairperson, IBBI and other dignitaries also expressed their views.

Source: *https://ibbi.gov.in//uploads/press/0157fc040e0e6bf2deb024217d9f6e73.pdf*

Dr. Navrang Saini, Whole Time Member, IBBI has been given additional charge as Chairperson, IBBI

The Central Government on 13th October 2021 assigned additional charge of Chairperson, Insolvency and Bankruptcy Board of India (IBBI) to Dr. Navrang Saini, Whole Time Member, IBBI, in addition to his existing duties for a period of three months from 13th October 2021 or till the joining of a new incumbent to the post or until further orders, whichever is earlier. The same has been extended till March 05, 2022, through an order dated January 04, 2022.

Dr. Navrang Saini took charge as WTM, IBBI on 31st March 2017. He has PG degrees in Management and Law along with PhD in Corporate Law and professional qualification as a Company Secretary. Dr. Saini has served the Ministry of Corporate Affairs in various capacities. During his tenure as Registrar of Companies, Delhi, and Haryana, Dr. Saini implemented the first mission mode e-governance project of the country 'MCA21' as a major pilot project. In IBBI, he is presently looking after Registration & Monitoring Wing comprising Insolvency Professionals, Insolvency Professional Entities, Information Utilities, Insolvency Professional Agencies, Registered Valuers, Registered Valuers Organisations, Inspection, Investigation, Surveillance and Grievance Redressal.

Source: *https://ibbi.gov.in//uploads/press/6071df2124de1ad71fbc 79cfdd6a1394.pdf*

IBBI published new syllabus and details for the LIE Examination-March 2022

The Insolvency and Bankruptcy Board of India 'IBBI' vide its press release dated November 30, 2021, has published the syllabus and details of the Limited Insolvency Examination (Examination) under regulation 3 (3) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 for the examination to be conducted from March 01, 2022.

In the new syllabus, maximum 70% weightage has been given to the case studies which includes Case Studies on CIRP and Liquidation, Case Studies on PPIRP, Case Studies on Individual Insolvency and Bankruptcy, Case Studies on Business and General Laws, and Case Studies on Business & General Ethics. The General Laws has been given 07% weightage while IBC, 2016 got 4% weightage and 6% weightage was given to "All Rules, Regulations and Circulars notified under the Code". The press release includes syllabus of examination including various laws and case studies, details of examination and list of important judgements of NCLT, NCLAT, High Courts, and the Supreme Court.

Source: *https://ibbi.gov.in//uploads/press/4a516765a9e826b156d77df5bbec5976.pdf*

IBC Case Laws

Supreme Court of India

E S Krishnamurthy & Ors. Vs. M/S Bharath Hitech Builders Pvt. Ltd. Civil Appeal No 3325 of 2020, Date of Judgment: December 14, 2021

Facts of the Case

The present appeal has been filed under Section 62 of the IBC 2016, which arose from the judgment of the National Company Law Appellate Tribunal, which upheld the order of the National Company Law Tribunal, Bengaluru Bench (Adjudicating Authority 'AA'). The facts of the case are that a petition under Section 7 of IBC was instituted by the appellants for initiating the CIRP in respect of the respondent, the NCLT declined to admit the petition and instead directed the respondent to settle the claims within three months, which was upheld by NCLAT. The AA had decided to dispose the petition based on following, Firstly, the respondent's efforts to settle the dispute were bona fide, as they had already settled with majority investors, including few petitioners, Secondly, the settlement process was underway with other petitioners, Thirdly the procedure under the IBC was summary in nature, and could not be used to individually manage the case of each of the petitioners before it and Fourthly, initiation of CIRP in respect of the respondent would put in jeopardy the interests of home buyers and creditors, who have invested in the respondent's project, which was in advanced stages of completion. The NCLAT upheld the AA's order based on the following facts, Firstly, the AA decided to dismiss the petition at the 'pre-admission stage' as the settlement process was underway, Secondly, the AA protected the rights of petitioners by setting a time-frame for settlement and leaving the option of approaching it in case their claims remained unsettled, Thirdly, the respondent was shown leniency even if the timeframe had passed due to the effects of pandemic and Fourthly, in disputes of this nature, the claims of the home buyers are priority and liquidation should be last resort.

The Apex Court stated that the main issue of the case was whether in terms of the provisions of the IBC, the AA can without applying its mind to the merits of the petition under Section 7, simply dismiss the petition on the basis that the corporate debtor has initiated the process of settlement with the financial creditors.

Supreme Court's Observations

The Apex Court stated that in the present case, the AA noted that it had listed the petition for admission on diverse dates and had adjourned it, to allow the parties to explore the possibility of a settlement and no settlement was arrived. Further, AA did not entertain the petition on the ground that the procedure under the IBC is summary, and it cannot manage or decide upon each claim of the individual home buyers. Further, the AA held that since the process of settlement was progressing "in all seriousness", instead of examining all the individual claims, it disposed of the petition by directing the respondent to settle all the remaining claims "seriously" within a definite time frame and the same was upheld by NCLAT. The Apex court stated the AA has clearly acted outside the terms of its jurisdiction under Section 7(5) of the IBC. The AA is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the AA must then either admit or reject an application respectively. These are the only two courses of action

which are open to the AA in accordance with Section 7(5). The AA cannot compel a party to the proceedings before it to settle a dispute. The Court further referred its Judgment in Pratap Technocrats and Arun Kumar Jagatramka v. Jindal Steel & Power Ltd. stating that the IBC is a complete code in itself. The AA and Appellate are creatures of the statute. Their jurisdiction is statutorily conferred. The statute which confers jurisdiction also structures, channelizes and circumscribes the ambit of such jurisdiction. Thus, while they can encourage settlements, they cannot direct them by acting as courts of equity.

Order

The Apex Court keeping the above in view allowed the present appeal and set aside the impugned judgment of the NCLAT and NCLT and the petition under Section 7 of the IBC was accordingly restored to the NCLT for disposal afresh.

Case Review: *Appeal Allowed.*

Committee of Creditors of Amtek Auto Limited through Corporation Bank Vs. Dinkar T. Venkatsubramanian and Ors. Civil Appeal No 6707 of 2019, Date of Judgment: December 01, 2021.

Background of Case

The present appeal by the Committee of Creditors 'CoC' of Amtek Auto Limited through Corporation Bank arises from the impugned judgment and order passed by the National Company Law Appellate Tribunal, New Delhi 'NCLAT' in Company Appeal (AT) (Insolvency) No. 219 of 2019.

The facts of the case are that in the CIRP of Amtek Auto Limited – Corporate Debtor (CD), RP had invited prospective resolution applicants to submit a Resolution Plan whereby Deccan Value Investor LP 'DVI' and M/s Liberty House Group Private Limited "Liberty" were considered by the COC. However, DVI withdrew, and revised plan of Liberty was considered and approved by the COC and NCLT, Chandigarh Bench 'AA'. Later, Liberty did not act as per the approved Resolution Plan. Subsequently, the CoC filed an application under Section 60(5) and 74(3) of the IBC before AA informing about Liberty and prayed to reinstate the COC and RP to ensure that CD remain as a going concern. Further, CoC prayed to grant 90 days to the RP to make another attempt for a fresh process rather than forcing CD into liquidation on account of fraud committed by Liberty.

The AA held that Liberty has defaulted in its obligation under the approved Resolution Plan and granted COC and RP to approach the appropriate authority under the IBC for the determination of default. Further, AA denied the request for carrying out a fresh process by inviting the plans again and directed the reconstitution of the COC for re-consideration of the Resolution Plan submitted by DVI and disposed of the appeal. The CoC then approached NCALT feeling aggrieved and dissatisfied with the order passed by AA. Thereafter, RP invited fresh applications from prospective resolution applicants to submit resolution plans. An interest was received from DVI and two others. The same was rejected and DVI was declared as an ineligible resolution applicant. Against the said rejection, DVI filed an appeal before the appellate authority. The NCLAT in its order held that considering the earlier order of AA, the COC was required to consider all resolution plans subject to the pending appeal. The DVI submitted the revised resolution plan. However subsequently, the NCLAT by the impugned judgment and order disposed of the appeal filed by the COC and rejected the prayer for exclusion of time and ordered the liquidation of the CD, resulting in present appeal.

Supreme Court's Observations

The Supreme Court while issuing notice in the present appeal, had stayed the liquidation proceedings, and permitted RP to invite fresh offers. Thereafter DVI submitted fresh offer which was approved by CoC. Subsequently DVI tried to withdraw, which was rejected by the Apex Court. The Court was of the view that the approved resolution plan has to be implemented at the earliest and that is the mandate under the IBC. Further, the time limit has been condoned in view of the various

litigations pending between the parties and in the peculiar facts and circumstances of the case. Therefore, any further delay in implementation of the approved resolution plan submitted by DVI and approved by AA, would defeat the very object and purpose of providing specific time limit for completion of the insolvency resolution process, as mandated under Section 12 of the IBC. The Apex Court directed implementation of the approved resolution plan and an amount of Rs. 500 crores deposited by DVI as per the approved resolution plan be transferred to the respective lenders/financial creditors as per the approved resolution plan and/or as mutually agreed. Any lapse on the part of any of the parties in implementing the approved resolution plan with the time stipulated here in a bove shall be viewed very seriously.

Order

The Supreme Court in view of the above disposed of the Present Appeal.

Case Review: *Appeal Disposed*

Tata Consultancy Services Limited Vs. Vishal Ghisulal Jain, Resolution Professional, SK Wheels Private Limited. Civil Appeal No 3045 of 2020, Date of Judgment: November 23, 2021

Background of Case

The present appeal arises from judgment of the National Company Law Appellate Tribunal 'NCLAT' which upheld the interim order of the National Company Law Tribunal 'NCLT or AA' which stayed the termination by the Appellant of its Facilities Agreement with SK Wheels Private Limited (Corporate Debtor 'CD').

The facts of the case are that Appellant and CD entered into a Facilities Agreement which obligated the CD to provide premises with certain specifications and facilities to the Appellant for conducting examinations for educational institutions and whereby the Agreement stated that either party can terminate the agreement immediately by written notice to the other party provided that a material breach committed by the latter is not cured within thirty days of the receipt of the notice. Subsequently, the Appellant issued a termination notice and thereafter the parties contested the facts leading up to the issuance of the notice. The Appellant stated that there were multiple lapses by the Corporate Debtor in fulfilling its contractual obligations, which it failed to remedy satisfactorily including issues of power supply and shortage of housekeeping staff, among other deficiencies. Whereas CD submitted that certain routine operational requirements were highlighted by the appellant from time to time, which were rectified within a reasonable duration and the termination notice wasn't issued on the ground that material breaches had occurred, and a thirty days' period was to be given to cure the defects before the agreement was terminated.

Supreme Court's Observations

The Supreme Court considered two issues arising in the appeal, Firstly, whether the NCLT can exercise its residuary jurisdiction under Section 60(5)(c) of the IBC to adjudicate upon the contractual dispute between the parties and secondly, whether in the exercise of such a residuary jurisdiction, it can impose an ad-interim stay on the termination of the Facilities Agreement. The Apex Court stated that it is evident that the appellant had time and again informed CD that its services were deficient, and it was falling foul of its contractual obligations. There is nothing to indicate that the termination of the Facilities Agreement was motivated by the insolvency of the CD and the alleged breaches noted in the termination notice were not a smokescreen to terminate the agreement because of the insolvency of CD. Thus, the Apex Court was of the view that NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of the CD. In the absence of jurisdiction over the dispute, the NCLT could not have imposed an ad-interim stay on the termination notice and the NCLAT has incorrectly upheld the interim order of the NCLT. The Apex Court issued a note of caution to the NCLT and NCLAT regarding interference with a party's contractual right to terminate a contract. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of the CIRP and the termination of the contract should result in the corporate death of CD. Further, the narrow exception crafted in the

matter Gujarat Urja must be borne in mind by the NCLT and NCLAT even while examining prayers for interim relief.

Order

The Supreme Court in view of the above disposed of the Appeal and set aside the judgment of the NCLAT and the proceedings initiated against the Appellant were dismissed for absence of jurisdiction.

Case Review: *Appeal Disposed*

V Nagarajan Vs. SKS ISPAT and Power Ltd. & Ors. Civil Appeal No. 3327 of 2020, Date of Judgment: October 22, 2021

Background of Case

The present appeal arises under Section 62 of the IBC 2016 from the judgement of the NCLAT, Delhi Bench which was dismissed as barred by limitation. The appellant had filed an appeal against the NCLT order which had dismissed the appellant's application in a liquidation proceeding, seeking interim relief against the invocation of a bank guarantee by SKS Power Generation Chhattisgarh Ltd (Respondent no. 10) against Cethar Ltd. (Corporate Debtor 'CD').

The facts of the case are that the appellant (IRP, RP, and Liquidator of CD) after an unsuccessful attempt at resolution, instituted proceedings under Sections 43 and 45 of the IBC to avoid preferential and undervalued transactions of the CD in favor of Respondents. The appellant claimed to have discovered that SKS Ispat and Power Ltd (Respondent No 1) and its subsidiary had colluded with the promoters of the CD and defrauded the latter of over INR 400 crores by entering a fraudulent settlement of only INR 4.58 crores. Further, Respondent No 10, allegedly at the behest of Respondent No 1, sought to invoke certain bank guarantees issued by the CD for its failure to perform its services. Hence, the appellant filed a Miscellaneous Application to resist the invocation of performance guarantee until the liquidation proceedings concluded, which was refused by NCLT. Further, the Appellant stated that, the free copy of the NCLT order was not issued and on account of the lockdown, the appeal before the NCLAT was delayed and was filed with an application for exemption from filing a certified copy of the order as it was not issued. The NCLAT in its order stated that the appeal filed was barred by limitation as the statutory time limit of thirty days had expired and an application for condonation of delay had not been filed. Further, Rule 22 of the NCLAT Rules provides that every appeal must be accompanied with a certified copy of the impugned order, which had not been annexed and no proof that the same had not been issued, provided by appellant. Further, there were no grounds for interference since a performance guarantee is explicitly excluded from the ambit of a 'Security interest' which is subject to a moratorium under Section 14 of the IBC.

Supreme Court's Observations

The Apex Court regarding the issue of when will the clock for calculating the limitation period run for proceedings under the IBC stated that owing to the special nature of the IBC, the aggrieved party is expected to exercise due diligence and apply for a certified copy upon pronouncement of the order it seeks to assail, in consonance with the requirements of the NCLAT Rules. Further Section 12(2) of the Limitation Act allows for an exclusion of the time requisite for obtaining a copy of the decree or order appealed against. The litigant has to file its appeal within thirty days, which can be extended up to a period of fifteen days, and no more, upon showing sufficient cause. A sleight of interpretation of procedural rules cannot be used to defeat the substantive objective of a legislation that has an impact on the economic health of a nation. On the second question of "Is the annexation of a certified copy mandatory for an appeal to the NCLAT against an order passed under the IBC?". The Apex court stated that Rule 22(2) of the NCLAT Rules mandates the certified copy being annexed to an appeal, which continues to bind litigants under the IBC. While the tribunals, and even Apex Court, may choose to exempt parties from compliance with this procedural requirement in the interest of substantial justice, the discretionary waiver does not act as an automatic exception where litigants make no efforts to pursue a timely resolution of their grievance. The appellant having failed to apply for a certified copy, rendered the appeal filed before the NCLAT as clearly barred by limitation.

Order

The Apex Court dismissed the appeal stating that the appellant was present before the NCLT when interim relief was denied and no effort on his part was demonstrated to secure a certified copy of the said order and relied on the date of the uploading of the order on the website. The lockdown on account of pandemic and the suo motu order of Apex Court had no impact on the rights of the appellant to institute an appeal in this proceeding and the NCLAT had correctly dismissed the appeal on limitation.

The Apex Court dismissed the appeal stating that the appellant was present before the NCLT when interim relief was denied and no effort on his part was demonstrated to secure a certified copy of the said order and relied on the date of the uploading of the order on the website. The lockdown on account of pandemic and the suo motu order of Apex Court had no impact on the rights of the appellant to institute an appeal in this proceeding and the NCLAT had correctly dismissed the appeal on limitation.

Case Review: *Appeal Dismissed.*

National Company Law Appellate Tribunal (NCLAT)

Bimalesh Bhardwaj & Ors. Vs. Value Infratech India Pvt Ltd & Ors. Company Appeal (At) (Ins) No. 112 of 2021, Date of NCLAT Judgment: November 29, 2021

Background of Case

The present appeal has been filed by the Appellants aggrieved by the order of the Adjudicating Authority 'AA' (NCLT, New Delhi) for liquidation of the Corporate Debtor 'CD' (Value Infratech India Pvt. Ltd. 'Respondent No. 1') under Section 61 of the IBC, 2016. (P.1) The facts of the case are that Appellants are homebuyers in the project 'SKYWALK RNE' being developed by CD have stated that the Resolution Professional 'RP' has clubbed the claims of Respondent No.1 to 3 amounting to Rs.30.70 crores along with compound interest @ 24%, thereby giving Respondent No. 4 (Capri Global Capital Limited) undue advantage of much higher voting share than was permissible, in the constitution of CoC. Further, the CoC in its second meeting had decided for liquidation of CD, despite objection put forth by Authorized Representative 'AR' of the homebuyers. Further, the RP showed undue favor to Respondent No. 4 by adding up all the loans provided by Respondent No. 4 to Respondent No. 1 to 3, thereby giving advantage of inflated voting share. (P. 2) The Appellants further claimed that RP did not follow the procedure prescribed in the IBC for inviting Expression of Interest for submission of Resolution Plan. In accordance with the wish of Respondent No. 4, and in undue haste, the RP submitted a proposal for liquidation of CD before the CoC in its second meeting and as it was given highly inflated voting rights, the resolution for liquidation of the CD was approved in the COC meeting. Hence, the Appellants have claimed this decision illegal on two pertinent issues, Firstly Whether the CoC was constituted by the Resolution Professional in accordance with IBC provisions? and Secondly, Whether the recommendation for liquidation of CD was taken by the CoC in contravention of IBC provisions?

NCLAT's Observations

The Appellate Tribunal was of the view in the present case, that the information memorandum was not prepared with full and correct details of assets and liabilities of the CD. The RP also did not pursue the application filed u/s 19(2). As a result, the CoC decided to abandon the step of inviting of EOI for Resolution Plan. Thereafter in undue haste, the CoC decided to go for liquidation of the CD. The decisions of CoC were a blotted one, since it was taken in the CoC, in which Respondent No. 4 was given voting right much in excess of its real and correct share. Further it found surprising as to how RP could prepare an information memorandum without getting access to the records and documents of the CD. It found that the CoC was not constituted in accordance with the provisions of IBC and the CIRP was not pursued with fairness and due diligence by the RP and the resolution for liquidation of the CD was taken in a meeting with an improper voting share and taken in unseemly haste.

Order

The NCLAT in view of the above directed as follows in the Present Appeal: -

- The CoC as constituted in the CIRP of the CD was not

in accordance with provisions of IBC, therefore its constitution is quashed.

- The claims of various FCs including home buyers should be appropriately fixed, keeping in view the order of this Tribunal in CA (AT) (Ins) 29 of 2020.
- The IA for exclusion of time spent in pursuing the application before the AA under sections 19(2) and 21-A of the IBC should be preferred before the AA for appropriate order.

Further, it directed AA to replace the RP with a suitable one, as the action of the RP in this matter caused prejudice to homebuyers and directed IBBI to investigate the conduct of the RP in observing various provisions of IBC and take appropriate action.

Case Review: *Appeal Disposed.*

Hemanshu Jamnadas Domadia Vs. Central Bank of India & Ors. Company Appeal (At) (Insolvency) No. 623 of 2020 Arising Out of Order Passed in CP (IB) No. 554/7/NCLT/AHM/2018 Date of NCLAT Judgment: November 10, 2021

Background of Case

The present appeal results from the impugned order passed by the National Company Law Tribunal, Ahmedabad bench (Adjudicating Authority 'AA') whereby the AA admitted the Application filed under Section 7 of the IBC, 2016. The facts of the case are that the Appellant is the Ex-Director and Shareholder of Silver Proteins Pvt Ltd (Corporate Debtor 'CD'), aggrieved by the Impugned Order passed by the AA against the order of admission of an Application filed under Section 7 of the IBC 2016. The CD had availed credit facilities worth Rs. 19,12,50,000/- from the Respondent Bank. However, as the CD was facing a liquidity crunch and had defaulted to repay the loan amount. Consequently, the Respondent Bank classified the account of the CD as 'Non-Performing Asset'. The CD resisted the Application on two grounds, Firstly, the Application filed by the Respondent Bank was barred by limitation as the Application was filed after the prescribed limitation period, i.e., three years, under Article 137 of the Limitation Act, 1963, and secondly, the Application was not filed by a duly authorized person of the Respondent Bank hence not maintainable. Hence this instant appeal.

NCLAT's Observations

The Appellate Tribunal regarding the issues of Whether the Application/Petition is filed by an Authorised Person? referred the judgement of Hon'ble Supreme Court in the case of Rajendra Narottam Das Sheth and Another stating that in the present case, the Application under section 7 of the Code was filed by the Assistant General Manager of the Respondent, who also happens to be the principal officer. Hence, authorised through a General Power of Attorney in his favour, under which he is authorised to grant loan, execute documents for and on behalf of the bank, recover loans, if necessary and further, entitled to initiate proceedings under the IBC. Additionally, Respondent Bank has filed a copy of the permission letter, which categorically allows the bank to file the present Application. Hence, the signatory to the Application is well authorised to sign the Application. Further, regarding the Whether the Application/Petition filed u/s 7 of the I& B Code is barred by limitation? it stated that the burden of prima facie proving occurrence of the default and that the Application filed under Section 7 of the Code is within the period of limitation, is entirely on the financial creditor 'FC' and the decision to admit an application is made on the basis of material furnished by the FC, the AA is not barred from examining the material that is placed on record by the CD to determine that such Application is not beyond the period of limitation. Undoubtedly, there is sufficient material in the present case to justify enlargement of the extension period in accordance with Section 18 of the Limitation Act and such material has also been considered by the AA before admitting the Application. The plea of Section 18 of the Limitation Act not having been raised by the FC in the Application cannot come to the rescue of the Appellants in the facts of this case. In the present case, if the documents constituting acknowledgement of the debt had not been brought on record by the CD, the Application would have been fit for dismissal on the ground of lack of any plea by the FC before the AA with respect to extension of the limitation period.

Order

The Appellate Tribunal in view of the above dismissed the appeal and stated that AA had rightly admitted the Application and the Appeal filed by the Appellant has no merit and deserves to be dismissed.

Case Review: *Appeal Dismissed.*

Intec Capital Limited Vs. Eastern Embroidery Collections Private Limited Company Appeal (At) (Insolvency) No. 428 of 2021 Arising Out of Order Passed in CP (IB) No. 161(ND)/2021, Date of NCLAT Judgment: October 26, 2021

Background of Case

The present appeal results from the impugned order passed by the National Company Law Tribunal, New Delhi bench (Adjudicating Authority 'AA') whereby the AA rejected the Application filed under Section 7 of the IBC, 2016. The facts of the case are that Intec Capital Ltd (Appellant) filed application under Section 7 of the IBC, 2016 for initiation of CIRP against the Eastern Embroidery Collections Private Limited 'EECPL' (Corporate Debtor 'CD' and Corporate Guarantor) for the sum borrowed by the partnership firm M/s Eastern Overseas 'EO'. Appellant had issued two loans to a total tune of Rs. 1,16,85,000/- and the payments of which were not made even after repeated requests as per the agreed repayment schedule. After that, an Arbitration proceeding was also initiated, resulting in an award in favour of the Appellant.

The AA had rejected the prayer for initiation of CIRP against the CD on two grounds. Firstly, the Appellant had applied under Section 7 of the IBC and not under Section 95 of IBC, 2016. Secondly, the Appellant had filed the Application for Initiation of CIRP against the Personal Guarantor and not followed the applicable Rules. As, the Appellant was required to submit the Application under Section 95 (4) of the IBC, after service of demand notice as required under Section 95 (4) (a) read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor's) Rules, 2019, if the debt was not paid within 14 days from the date of service of demand notice. The present appeal results from the impugned order passed by the National Company Law Tribunal, New Delhi bench (Adjudicating Authority 'AA') whereby the AA rejected the Application filed under Section 7 of the IBC, 2016. The facts of the case are that Intec Capital Ltd (Appellant) filed application under Section 7 of the IBC, 2016 for initiation of CIRP against the Eastern Embroidery Collections Private Limited 'EECPL' (Corporate Debtor 'CD' and Corporate Guarantor) for the sum borrowed by the partnership firm M/s Eastern Overseas 'EO'. Appellant had issued two loans to a total tune of Rs. 1,16,85,000/- and the payments of which were not made even after repeated requests as per the agreed repayment schedule. After that, an Arbitration proceeding was also initiated, resulting in an award in favor of the Appellant. The AA had rejected the prayer for initiation of CIRP against the CD on two grounds. Firstly, the Appellant had applied under Section 7 of the IBC and not under Section 95 of IBC, 2016. Secondly, the Appellant had filed the Application for Initiation of CIRP against the Personal Guarantor and not followed the applicable Rules. As, the Appellant was required to submit the Application under Section 95 (4) of the IBC, after service of demand notice as required under Section 95 (4) (a) read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor's) Rules, 2019, if the debt was not paid within 14 days from the date of service of demand notice.

NCLAT's Observations

The Appellate Tribunal was of the view that there were two points for consideration, Firstly, is the CD personal guarantor of the EO? and Secondly, Whether EECPL is the corporate guarantor and therefore CD of the EO, in terms of Subsection (7) and (8) of Sec 3 of IBC, 2016 and will the applicable Rules be Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016? The Appellant contended that AA curtailed the remedies available of making an application for resolution of Insolvency of the CD, who qualifies under the definition of 'Corporate Person' and 'Corporate Debtor' as stated under Section 3 (7) and (8) of the IBC, 2016 and that the findings of the AA that Section 5 (22) of the IBC, which defines

'Personal Guarantor' comes into play, was against the law. It further stated that the AA under the wrong apprehension considered CD to be a Personal Guarantor while it is Corporate Guarantor. The Appellate Tribunal stated that the AA failed to notice that EO had taken Personal Guarantee of Mr. Mahendra Singh Narang and Mrs Manjit Kaur in addition to the Corporate Guarantee given by the CD. Therefore, on the occurrence of default, it was the sole prerogative of the EO to initiate action against the Principal Borrower or the Personal Guarantor of the Corporate Guarantor and since the Appellant had initiated action under IBC, 2016 against the Corporate Guarantor, the Application could not have been dismissed on the erroneous assumption that the Application should have been filed against the Personal Guarantor under Section 95 of the Code. The Appellate Tribunal further referred the Judgement of Hon'ble Supreme Court in Laxmi Pat Surana V Union Bank of India and Another 2021 SCC Online SC 267 wherein, Apex Court rejected the contention of the Appellant that since the loan was offered to the proprietary firm (not a corporate person), action under Section 7 of the Code cannot be initiated against the Corporate Person even though it had offered Guarantee in respect of the transaction. In this case, Principal Borrower is a proprietary firm, and CD had given the Corporate Guarantee for the said loan. The law laid down in the abovementioned case is fully applicable in the present case.

Order

The Appellate Tribunal in view of the above was of the considered view that CD was the Corporate Guarantor of the EO and not a Personal Guarantor. Therefore, in terms of Sub-section (7) and (8) of Sec 3 of IBC, 2016 it is a CD. Further, the applicable Rules would be 'Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016'. Further, the Appellate stated that the AA committed an error in holding that action should have been initiated against the Personal Guarantor of the CD under Section 95 of the Code instead of proceeding against the CD. Hence, the appeal was allowed, and the impugned order passed by the AA was set aside.

***Case Review*:** *Appeals Allowed.*

Gundeep Gurdeep Singh Sood & Ors. Vs. Corporation Bank & Ors. Company Appeal (At) (Insolvency) No. 1099 of 2020 Date of NCLAT Judgment: 29 October 2021

Background of Case

This Appeal has been preferred by the Suspended Board of Directors of Kromme Glass Private Limited (Corporate Debtor 'CD') aggrieved and dissatisfied by the order passed by National Company Law Tribunal, Kolkata Bench (Adjudicating Authority 'AA'). The application filed before AA by the Respondent No. 1 (Corporation Bank) under Section 7 of the IBC, 2016 was admitted, commencing CIRP of the CD. The facts of the case are that for the purpose of diversifying business, CD approached Respondent No. 1 to obtain credit facilities and the same was agreed. The CD received credit facility in Credit Facility, Term Loan, Working Capital and Bank Guarantees to the tune of Rs. 7,20,00,000/-, 2,22,00,000/-, 17,40,00,000/- and 1,50,00,000/- respectively. The credit facilities were made by the consortium of Respondent No. 1 and Union Bank of India. Further, to diversify its business, the CD requested for revision of the credit facilities and after negotiations, the Respondent No. 1 agreed to revise the credit facilities to the extent of Rs. 11,50,00,000/-. Subsequently, as the CD was facing financial difficulties, which resulted in default in repayment of the credit facilities resulting in its account being declared as Non-Performing Asset. Thereafter, the Respondent No. l made over a consolidated notice under Section 13(2) and 13(3) of the SARFAESI Act, 2002 to the CD, as the CD failed to make payment of the dues of the Respondent No. 1, a proceeding under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, was initiated in the Debts Recovery Tribunal –II, Ahmadabad. The Respondent No. 1 did not proceed with appeal filed before the DRT any further and initiated a proceeding under Section 7 of the IBC, 2016. The AA vide its impugned order admitted the application filed under Section 7 of the IBC resulting in this Appeal.

NCLAT's Observations

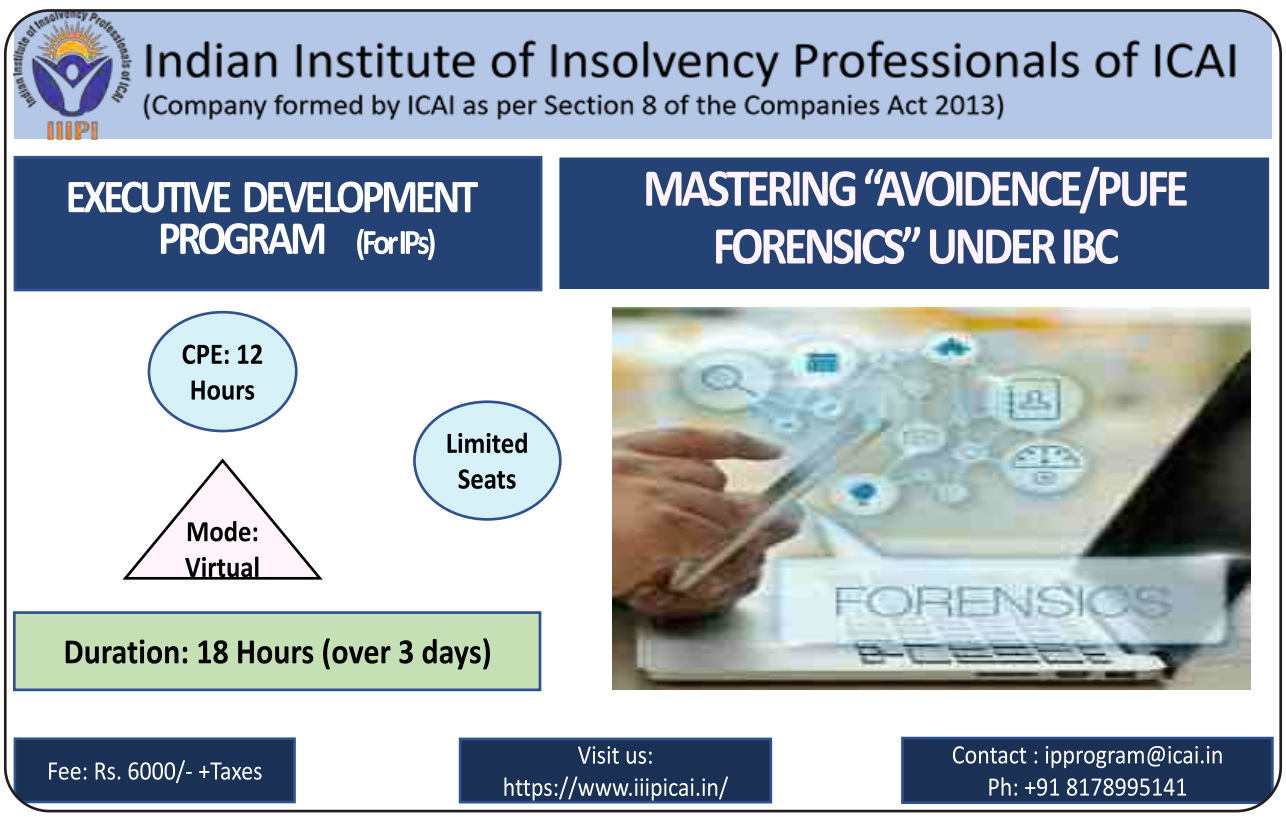
The Appellate Tribunal in view of the above facts and financial statements placed by Respondent No. 01 duly signed by the Appellants wherein the Appellants took plea

in the Rejoinder that the signature of the Appellants in the financial statements and in the audit report of the CD, cannot be an acknowledgement to be made within the limitation period and the Respondent No. 1 would not be entitled for fresh period of limitation. Further, Respondent No. 1 placed a letter signed by the Appellant Offer for One Time Settlement (OTS) in NPA A/c, of CD, in which the Appellants proposed to settle the account with both the Banks at a total offer value of Rs. 8.75 Crores which also amounted to acknowledgment of debt. Although, the Appellant in the Rejoinder tried to dispute these documents on the above-mentioned ground. Therefore, Respondent No. 1 will not be entitled to a fresh period of limitation. Further, the Appellate Tribunal took note of the fact that no interim order was passed by it as per the status report of the Respondents. Further, the CIRP has been completed and resolution plan has been submitted before the AA for approval. It is admitted fact that in the letter the Appellants stated that they are ready to settle the amount with both the Banks at the total value of 8.75 Crores, this OTS amounts to acceptance of the debt and in view of the law laid down in the judgment passed by Hon'ble Supreme Court in 'Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal & Anr. reported in 2021 (6) SCC 366 the application under Section 7 of the IBC is not barred by limitation.

Order

The Appellate Tribunal in view of the above was of the considered view that there was no illegality in the impugned order, and it affirmed the impugned order passed by the AA. It found no merit in the instant Appeal and dismissed the same.

***Case Review*:** *Appeal Dismissed.*



IBC News

SEBI approves Special Situation Funds (SSFs) for investment in Stressed Assets and ARCs

The Securities and Exchange Board of India (SEBI) on December 28 has approved introduction of Special Situation Funds (SSFs) to be invested in stressed assets. SSFs will be introduced as a sub-category under Category-I Alternative Investment Funds (AIFs).

In a press release after the board meeting, SEBI said SSFs will "invest only in stressed assets" such as stressed loans available for acquisition in terms of the Reserve Bank of India (RBI) norms or as part of a resolution plan approved under the IBC. These funds will also be invested in security receipts issued by Asset Reconstruction Companies (ARCs), securities of companies in distress and any other "asset/security as may be prescribed by the board from time to time". The SEBI-Board has also given node for amending Foreign Portfolio Investor (FPI) regulations and introducing a provision for appointment or re-appointment of any person, including as a Managing Director or a Whole Time Director or a Manager, who was earlier rejected by the shareholders at a general meeting. Besides, the share market regulator has decided to tighten norms for utilisation of IPO (initial public offering) proceeds by companies. The SEBI chairperson, Ajay Tyagi, has said that the market regulator has no intention to control the prices of IPOs in any manner. These amendments are mainly a reaction to several IPOs earlier this year and follow consultation papers issued by SEBI, he noted.

Source: *The Wire.in, December 30, 2021.*

https://thewire.in/government/sebi-tightens-norms-for-ipo-proceeds-utilisation-amends-various-other-regulations

UK witnessed record Low Number of Insolvency Cases in 2021

Despite the pandemic, a record low number of UK firms have fallen into administration, also indicating that furlough measures reduced the number of non-voluntary insolvencies throughout the year, however, an indication as well that the next year could see the rise. According to reports, this is expected to increase by the end of the year but will remain significantly short of the 1,121 from last year and the record low of 1,044 in 2015. Among sectors,

Energy Sector was strongly affected.

Source: *Business-live.co.uk, December 30, 2021*

https://www.business-live.co.uk/economic-development/insolvencies-hit-record-low-2021-22604153

RBI Report on 'Trend and Progress of Banking in India, 2020-21' presents a positive picture

The Capital to Risk weighted Assets Ratio (CRAR) of Scheduled Commercial Banks (SCBs) has strengthened from 14.8 % in at end of March 2020 to 16.3 % at end of March 2021 and further to 16.6 % at end of September 2021, partly aided by higher retained earnings, recapitalisation of public sector banks (PSBs) and capital raising from the market by both PSBs and private sector banks (PVBs). These are among the findings of the Reserve Bank on India (RBI) in its report titled 'Trend and Progress of Banking in India 2020-21, released on December 28, 2021. Furthermore, the report highlights that Return on Assets (RoA) of SCBs improved from 0.2% at end-March 2020 to 0.7% at end-March, aided by stable income and decline in expenditure. "SCBs' gross nonperforming assets (GNPA) ratio declined from 8.2 % at end-March 2020 to 7.3 % at end-March 2021 and further to 6.9 per cent at end September 2021," said the report. Besides, the Covid period, when IBC was suspended, constituted one of the major modes of recovery in terms of amount recovered, added the Report.

Source: *Reserve Bank of India, Press Release, December 28, 2021*

https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=52956

UK Government invites views on creating a single regulator for Insolvency Practitioners

The key changes set out in the consultation include - establishing a single independent regulator to sit within the Insolvency Service, replacing the current four Recognised Professional Bodies; extending regulation to firms that offer insolvency services, as the current regime only covers individual Insolvency Practitioners; create a public register of all individuals and firms that offer insolvency services and create a system of compensation and redress.

Source: *Gov. UK, December 21, 2021*

https://www.gov.uk/government/news/government-proposes-strengthening-insolvency-regulation

Spain to reform its 'slow and convoluted' insolvency system for EU recovery funds

Under the pressure of European Union (EU), the government of Spain has agreed to reform its insolvency law which has been receiving criticism for being 'slow and convoluted'. The EU has put a condition before the Spain for reforms before providing recovery funds. "We do not want any viable business to have to close its doors because of one-off financial difficulties, nor do we want any entrepreneur to give up their business because of a failed project that will weigh them down for ever," said, Justice Minister Pilar Llop to media persons. Spanish companies have been among the most active in Europe in applying for state-backed credit and liquidity lines during the pandemic, said media reports. The draft proposal will now be sent to Congress as a bill and is expected to be added to the statute books by mid 2022.

Source: *Reuters.Com, December 21, 2021*

https://www.reuters.com/markets/europe/spain-streamlines-bankruptcy-process-get-eu-recovery-funds-2021-12-21/

Unpaid Listing Fee of Stock Exchange in not Operational Debt: NCLAT

The NCLAT in the matter of *Bombay Stock Exchange Vs. KCCL Plastic* of Gujarat has ruled that the unpaid Listing Fee comes under regulatory dues but not the operational credit. Therefore, the Stock Exchanges like BSE and NSE have no right to initiate insolvency proceedings of companies listed with on the ground of unpaid Listing Fees. The court has upheld the NCLT decision of rejecting the BSE application. "The Insolvency Law Committee suggests that the regulatory dues are not to be recovered under 'operational dues' said the two member NCLAT Bench. Ahmedabad based KCCL Plastic was listed with the BSE on October 27, 1993. KCCL Plastic owes Rs. 10.7 lakh to the BSE.

Source: *December 20, 2021*

https://timesofindia.indiatimes.com/business/india-business/unpaid-listing-fee-is-not-operational-debt-nclat/articleshow/88381181.cms

UK's central bank raised interest rates since the Covid19 pandemic began

The UK's Central bank has hiked its benchmark interest rate in the face of troublesome levels of inflation for the first time since Covid-19 pandemic hit the country. The increase in its main rate to 0.25% from the record low of 0.1% seemed perplexing given the news around omicron's rapid spread across the UK hurting many businesses, particularly in the hospitality sector. Central banks raise rates to fight inflation and lower them when economies fall weak, as they were during the pandemic. After the rate increase, the pound soared in currency markets as it got trading 0.7% higher at $1.3360.

Source: *December 16, 2021*

https://ca.finance.yahoo.com/news/inflation-vs-omicron-bank-england-093922856.html

Government frames policy for insolvency of non-strategic PSUs

PSUs will be no longer immune from insolvency process. In the new public sector companies' policy, the Central Government has authorised Department of Public Enterprises (DPE) to drive the privatisation or closure of state-run firms in cases where liabilities are exorbitantly high. As per the norms, the entire process of closure should be completed within nine months of approval by the Cabinet Committee on Economic Affairs (CCEA). The move is to be implemented for PSUs in sectors other than atomic energy, space, defence, transport, telecommunications, energy and minerals, and financial services. It is aimed at benefitting several companies which the government had proposed to sell and have not found buyers for the last several years. DPE in

consultation with Niti Aayog, Department of Investment and Public Assets Management (DIPAM) and Expenditure Department will prepare the list of companies eligible for insolvency.

Source: *The Times of India, December 15, 2021*

https://timesofindia.indiatimes.com/business/india-business/psus-with-high-liabilities-may-face-ibc-based-closure/articleshow/88289170.cms

NCLT cannot compel Creditors to Settle with Defaulter: Supreme Court

NCLT has the power to either summarily reject or entertain pleas for initiation of insolvency proceedings. However, it has no authority to ask creditors to settle with a defaulter.

This judgement was delivered on December 14,2021 by a bench of Justices D Y Chandrachud and A S Bopanna in the matter of *E S Krishnamurthy Vs. M/s Bharath Hitech Builders*. "The Adjudicating Authority must either admit the application under Clause (a) of sub-section (5) or it must reject the application under clause (b) of sub-section 5. The statute does not provide for the Adjudicating Authority to undertake any other action, but for the two choices available," said the judges. The court observed that while the NCLT and NCLAT can encourage settlements, they cannot direct them by acting as courts of equity. In this case the NCLT declined to admit a petition filed under Section 7 of the IBC for initiating CIRP and instead directed the Corporate Debtor to settle the claims within three months. The NCLAT also upheld the order. "The NCLT is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively," observed the Bench. It further added, "What the Adjudicating Authority and Appellate Authority, however, have proceeded to do in the present case is to abdicate their jurisdiction to decide a petition under Section 7 by directing the respondent to settle the remaining claims within three months and leaving it open to the original petitioners, who are aggrieved by the settlement process, to move fresh proceedings in accordance with law".

Source: *Live Law.in, December 14, 2021*

https://www.livelaw.in/top-stories/supreme-court-sec-7-ibc-nclt-cannot-direct-settlement-187638

Public Sector Banks Restructure 10 Lakh MSMEs Loans till November 2021

MSMEs loan accounts have jumped by 58 per cent as they have been restructured by public sector banks (PSBs). About 6.19 lakh loan accounts got restructured by January 31, 2020 and involved Rs 22,650 crores. As of November 26, 2021, this number increased to 9.8 lakh accounts which amount to Rs 58, 524 crores. According to the government data shared in the Rajya Sabha, the inputs received from PSBs, apart from MSME loans, portray resolution plan/restructuring as implemented in 8.5 lakh accounts of individual borrowers which amount to Rs 60,662 crores as of November 15, 2021.

Source: *Financial Express, December 07, 2021*

https://www.financialexpress.com/industry/sme/msme-fin-msme-loans-restructured-accounts-by-psbs-jump-58-in-nearly-two-years-of-covid/2383925/

RBI Files Application for Initiation of CIRP of Reliance Capital

The Reserve Bank of India (RBI) on December 02, 2021, referred Reliance Capital Ltd to the Mumbai bench of the National Company Law Tribunal (NCLT) after it superseded its board and seized control. In a press statement, the RBI has informed that it has "filed an application for initiation of corporate insolvency resolution process (CIRP) against Reliance Capital Ltd".

Reliance Capital is the third financial services provider (FSP) to be sent to the tribunal after the government notified the insolvency framework for FSPs on November 15, 2019. Unlike insolvency proceedings for companies from other sectors, an FSP creditor or debtor cannot approach the tribunal, as the same has to be referred by a regulator i.e., RBI. Dewan Housing Finance Corp Ltd (DHFL) and two Srei group firms were similar cases in the past. The bondholders of Reliance Capital had urged RBI to consider referring the company for insolvency process, citing challenges faced in the asset monetization process and non-cooperation from the company. The trustee for bondholders, Vistra ITCL, constituting 96% of Reliance Capital's debt, put up several company assets, including its insurance ventures, asset reconstruction firm and securities arm on sale. RBI stated, "As per Rule 5 (b) (i) of the FSP Insolvency Rules, an interim moratorium shall

commence on and from the date of filing of the application till its admission or rejection."

Source: *Mint, December 03, 2021*

RBI refers Reliance Capital to insolvency tribunal (livemint.com)

NCLAT Rejected Kotak Bank's Appeal for 'Restructuring' of MSEL's Loan to Avoid Likely 'Haircut' under Insolvency Process

Restructuring of loans is more beneficial to the creditors as they will not have to take a haircut, Kotak Mahindra Bank had submitted. In the eventuality of a resolution plan being implemented or liquidation process being initiated, financial creditors, including Kotak Mahindra Bank, will have to take a haircut, it added. While rejecting the plea, the NCLAT said that the tribunal was aware of the proposal, but the lenders' consortium has not filed any application for deferment of the proceedings before it. Besides, the courts also rejected other arguments of the Kotak Bank such as date of default, and locus standi etc.

Sourc: *Zee News, December 01, 2021*

https://zeenews.india.com/companies/nclat-rejects-kotak-banks-plea-to-set-aside-insolvency-proceedings-against-msel-2415222.html

Piyush Goyal Listed Out Five Guiding Principles for IPs

Addressing the Insolvency Professionals (IPs) on the 5th Foundation of IIIPI, Union Cabinet Minister Shri Piyush Goyal listed out five guiding principles for IPs – integrity, objectivity, competency, confidentiality, and transparency. He also emphasized that insolvency assignment is not just an assignment but a national service.

"This has a big impact on 'saving jobs and reviving companies' and by creating new banking opportunities," said Goyal. He further added that IIIPI members are serving the nation's interest by saving businesses and entrepreneurship in the country. Stating that the IIIPI being the largest body of such professionals in the country, he called on developing innovative technologies for IPs. Goyal said the Centre suspended the IBC for a year – from March 2020 till March 2021 — in view of the coronavirus disease (Covid-19) pandemic. "This helped India bounce back much faster. The economy is doing well and five years down the line the outlook looks very, very bright," he added. Shri Goyal said that the IBC has brought about a marked shift in attitudes of lenders and borrowers, acting as an effective deterrent against unscrupulous borrowers and imparted banks the tool to follow due diligence and confidence about recovery. Commenting on suspension of IBC from March 2020 to March 2021, due to Covid19 pandemic, he said, "This helped India bounce back much faster. The economy is doing well and five years down the line the outlook looks very, very bright."

Source: *Hindustan Times, November 25, 2021*

https://www.hindustantimes.com/india-news/piyush-goyals-calls-insolvency-and-bankruptcy-code-gamechanger-reform-101637853120828.html

IPs Must Work on Time as Valuation Falls Every day, Says Dr. Navrang Saini, IBBI Chairperson

IBBI Chairperson Dr. Navrang Saini has said that the value of a stressed asset declines every passing day. It has also been observed in some cases that the resolution value was almost close to the liquidation value,".

He was addressing a webinar in Kolkata on 13th November 2021. He further said that IPs should be transparent, and they should also ensure that the resolution plans are worked out in a time-bound manner as in some cases, it had crossed more than 400 days and there are some hitches still left in the resolution process which will go away with time. He said there are around 3900 IPs in the country but many of them are not getting any assignment as some are monopolising them and that IBBI is aiming at giving equal opportunity to all of them in the interests of the stakeholders. IBBI has also provided a code of conduct for the IPs, but perfection will come with time, he added.

Source: *The New Indian Express, November 13, 2021*

https://www.newindianexpress.com/business/2021/nov/13/valuation-falls-everyday-professionals-must-work-on-time-insolvency-and-bankruptcy-board-of-india-2383203.html

Strategic Investors Are Bringing More Value to the Table than Financial Investors in CIRP under IBC

According to a report, as in 12 large insolvency resolutions where strategic investors were involved, lenders could recover nearly 50% on average, while recovery was far less at around 12% when financial investors bought distressed companies. In comparison to the Essar Steel in which lenders recovered 87% of their admitted claims through CIRP, creditors of the Videocon get only 5%. The size of loan recovery is also a function of the quality of

underlying assets as well as the long-term perspective of the investors.

Source: *The Economic Times, November 10, 2021*

https://economictimes.indiatimes.com/news/company/corporate-trends/strategic-investors-offer-higher-value-for-distress-companies/articleshow/87631239.cms

RBI Committee Recommends for Allowing ARCs as Resolution Applicants under IBC

A six-member committee of the Reserve Bank of India (RBI) headed by its former Executive Director (ED) Shri Sudarshan Sen has recommended for allowing Asset Reconstruction Companies (ARCs) to participate as Resolution Applicant in insolvency process under the IBC, 2016.

"Expertise acquired through IBC in resolving borrower insolvency will help ARCs in maximizing recovery of dues," said the committee. The committee was formed to review extant guidelines governing the ARC sector. "Acquisition of assets in the books of ARCs may lead to conflict of interest as ARCs may prefer to focus more on the resolution of assets held in their own books compared to the assets for which they may be acting as manager," added the committee.

Source: *Bloomberg, November 3, 2021*

https://www.bloombergquint.com/business/rbi-panel-calls-for-allowing-arcs-as-resolution-applicants-under-ibc

Indian e-Commerce Firm Meesho Announces USD 5.5 mn ESOP Liquidation Program to Raise Funds

In yet another initiative to attract investments, E-commerce firm Meesho has announced a USD 5 million Employee Stock Ownership Plan (ESOP) Liquidation Program. In November 2020, the company had announced a USD 5 million ESOP Dilution Program.

The latest ESOP Liquidation Program will be open for all eligible current and former employees with vested stocks. The program will start in early November and will be completed by December. However, the company which has nearly 1,200 full-time employees, did not disclose how many people are expected to be benefitted by the initiative. .

Source: *Business Standard, October 29, 2021*

https://www.business-standard.com/article/companies/e-commerce-firm-meesho-announces-5-5-mn-esop-liquidation-programme-121102900770_1.html

After Evergrande, Three More Chinese Real Estate Firms Heading for Bankruptcy

Real Estate companies in China are facing bankruptcy due to shutdown of factories and lack of electricity. China's foreign creditors are showing signs of distress. After Evergrande, which owes more than $300 billion dues, three more companies Sinic Holdings, China Properties Group and Fantasia are heading for bankruptcy.

Source: *Wionews.com, October 19, 2021*

https://www.wionews.com/world/chinese-companies-default-amid-rising-debt-bubble-422114

Justice Ashok Bhushan Appointed NCLAT Chairperson and Justice Ramalingam Sudhakar as NCLT President

Justice Ashok Bhushan, former Judge of the Supreme Court has been appointed as Chairman of the National Company Law Appellate Tribunal (NCLAT) for a period of four years, or "till he attains the age of 70 years, or until further orders."

Justice Bhushan's appointment as full time Chairperson of the NCLAT has been made at the place of Justice S. J. Mukhopadhaya, who retired in March 2020. In his capacity as Judge in the Supreme Court, Justice Bhushan was part of several key verdicts, including the 2019 ruling in the Ayodhya case and the SC's suo motu intervention in the migrant crisis during the Covid-19 pandemic in 2020.

The Central Government has also appointed Justice Ramalingam Sudhakar, former Chief Justice of the Manipur High Court as the President of the National Company Law Tribunal (NCLT), for a period of five years, or till he attains the age of 67 years, or until further orders. Justice Sudhakar will be the second full time President of NCLT after its first chairperson, Justice M M Kumar, retired in January 2020.

These appointments are considered crucial for the IBC regime when the insolvency proceedings are receiving criticism for delays due to long pendency in NCLTs and NCLATs. Presently, NCLAT has two benches – New Delhi and Chennai; while NCLT has 14 Benches. The Government has recently appointed 11 judicial and 10 technical members to the NCLT.

Source: *The Indian Express, October 30, 2021*

https://indianexpress.com/article/india/justice-ashok-bhushan-is-new-nclat-chairperson-7598209/

Supreme Court Allows Appointment of PMC for Stalled Projects of Unitech Group

A bench of Justices DY Chandrachud and M R Shah said that the new board of management of Unitech Group can proceed ahead with the appointment of PMCs for completion of the stalled projects.

The bench said that work can be awarded to the PMCs in part A projects and also fixed a fee for their work. The top court also took note of the Action Taken Report (ATR) filed by the new board of management about the settlement of claims with Suraksha ARC saying no resolution has been found yet. Furthermore, the Court also observed that looking at the transaction of Suraksha between the erstwhile management of Unitech it appears that there is a need for a probe into money laundering by the Enforcement Directorate.

Source: *Moneycontrol.com, October 29, 2021*

https://www.moneycontrol.com/news/business/sc-allows-new-board-of-unitech-to-appoint-pmcs-for-completion-of-stalled-projects-7648961.html

Germany's Frankfurt Hahn Airport, an International Low-Cost Flights Hub, Files for Insolvency

The airport, which is primarily used by low-cost airlines such as Ryanair and cargo airlines and served about 1.5 million passengers in 2019, is 82.5% owned by Chinese airport group HNA, while the German state of Hesse has a 17.5% stake.

In February, a Chinese court opened insolvency proceedings against HNA at creditors' request, though China's Liaoning Fangda Group and Hainan Development Holdings have since said they could settle the debt HNA owes to retail investors. It was not immediately clear how the insolvency would affect flight operations.

Source: *Reuters, October 19, 2021*

https://www.reuters.com/business/german-cheap-flight-hub-frankfurt-hahn-files-insolvency-2021-10-19/#:~:text= BERLIN%2C%20Oct%2019%20(Reuters),insolvency%20would%20affect%20flight%20operations.

Finance Minister Highlights Investment Opportunities at Home in Meeting with CEOs of Major USA Corporates

In her visit to the USA, the Union Finance Minister Ms. Nirmala Sitharaman met global industry leaders and highlighted investment opportunities in India generated by various initiatives of the government under the committed leadership.

"With the current reset in the global supply chain and clear headed and committed leadership in India, I see opportunities galore in India for all investors and industry stakeholders," said Ms. Sitharaman during her address to global business leaders and investors at a roundtable organised in the USA by FICCI and the US-India Strategic Partnership Forum in New York on Saturday. "Start-ups in India have grown tremendously, and many are now raising money through capital markets. This year itself, more than 16 of them will qualify as unicorns," she added. The recently launched initiative of National Infrastructure Master Plan #GatiShakti, digitization, technology in the financial sector were reportedly discussed in the roundtable. Mastercard Executive Chairman Ajay Banga and Mastercard CEO Michael Miebach,FedEx Corporation President and Chief Operating Officer Raj Subramaniam, CitiCEO Jane Fraser and IBM Chairman and Chief Executive Officer Arvind Krishna,Executive vice president and head of Prudential Financial, Inc's InternationalBusinesses Scott Sleyster and Legatum Chief Investment Officer Philip Vassiliouwere among the eminent personalities present in the roundtable.

Source: *The Economic Times, October 17, 2021*

https://economictimes.indiatimes.com/news/economy/foreign-trade/with-current-reset-in-global-supply-chain-opportunities-galore-in-india-for-investors-and-industry-stakeholders-nirmala-sitharaman/articleshow/87077767.cms

UK Government has Introduced Legislation Designed to Support Small Businesses

Although there will no longer be restrictions on presenting statutory demands, from 1 October until 31 March 2022, the threshold for presenting a winding up petition will be increased from £750 to £10,000. It will be possible for more than one creditor with a total aggregate debt of £10,000 or more to jointly present a winding up petition. The extra time to trade is limited to a 21-day period. After the statutory demand, creditors must write to a company providing 21 days for repayment proposals to be made before they can present a winding up petition.

Source: *The Scotsman, October 08, 2021*

https://www.scotsman.com/news/opinion/columnists/small-businesses-facing-insolvency-are-getting-extra-support-joanne-gillies-3410546

Statement of Best Practices: "Meetings of the Committee of Creditors Under Corporate Insolvency Resolution Process"

(Joint paper by all the IPAs)

(Continued from previous edition...)

8. Conduct of the Meeting

8.1 At the commencement of a meeting, the Resolution Professional shall take a roll call when every participant attending through video conferencing or other audio and visual means shall state, for the record, the following -

a) his name;

b) whether he is attending in the capacity of a member of the committee or any other participant;

c) whether he is representing a member or group of members;

d) the location from where he is participating;

e) that he has received the agenda and all the relevant material for the meeting; and

f) that no one other than him is attending or has access to the proceedings of the meeting at the location of that person.

8.2 After the roll call, the Resolution Professional shall inform the participants of the names of all persons who are present for the meeting and confirm if the required quorum is complete.

8.3 The resolution professional shall ensure that the required quorum is present throughout the meeting.

8.4 From the commencement of the meeting till its conclusion, no person other than the participants and any other person whose presence is required by the resolution professional shall be allowed access to the place where meeting is held or to the video conferencing or other audio and visual facility, without the permission of the resolution professional.

8.5 Resolution Professional has to provide information memorandum in electronic form to each member of the CoC along with all other relevant information.

8.6 The Resolution Professional also has to take a confidentiality undertaking from the members of the COC before sharing information and documents relating to Resolution Applicants, valuation, financials and Resolution Plans. The details of valuation are required to be disclosed to every member of the CoC in electronic form, on receiving a confidentiality undertaking. Thus, information and documents need to be disclosed or supplied to entitled persons, in the specified manner, at the specified time, after meeting the specified requirements.

8.7 The resolution professional shall ensure that minutes are made in relation to each meeting of the committee and such minutes shall disclose the particulars of the participants who attended the meeting in person, through video conferencing, or other audio and visual means.

8.8 The resolution professional shall circulate the minutes of the meeting to all participants by electronic means within forty eight hours of the said meeting.

9. List of Creditors and authorised representatives to be available for inspection

9.1 The list of creditors, and authorised representatives shall be available for inspection by the persons who submitted proofs of claim at the first meeting of Committee of creditors

9.2 The Resolution Professional may place the updated list of creditors, if any, at every meeting of COC and shall be available for inspection with required documents, if needed.

9.3 The updated list of creditors should also be filed on the electronic platform of the Board for dissemination on its website.

10. Voting by the committee

10.1 The resolution professional shall take a vote of the members of the committee present in the meeting, on any item listed for voting after discussion on the same.

10.2 The authorised representative of a particular class of financial creditors will vote in the CoC, on behalf of all financial creditors represented by him as per the decision taken by a vote of more than 50 percent of the voting share of the financial creditors of such class, who have cast their vote. Such majority vote within a class of creditors will be counted as a 100 percent vote from that class of creditors in favour or against a voting item.

Illustration: If out of a class of 100 homebuyers, 51 or more homebuyers vote in favour of a resolution plan, then all homebuyers would be considered to have voted in favour of the resolution plan.

10.3 At the conclusion of voting at the meeting, the resolution professional shall announce the decision taken on items along with the names of the members of the committee who voted for or against the decision, or abstained from voting.

10.4 Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved: Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting.

10.5 The resolution professional shall-

a) circulate the minutes of the meeting by electronic means to all members of the committee and the authorised representative, if any, within forty-eight hours of the conclusion of the meeting; and

b) seek a vote of the attending members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with Regulation 26 of CIRP Regulations where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes.

10.6 The authorised representative shall circulate the minutes of the meeting received to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.

10.7 No creditor, whether secured or unsecured, irrespective of its voting power or share, or no pool of creditors such as Joint Lenders' Forum is a substitute of the CoC. A Resolution Professional cannot take directions of a creditor having significant voting power or a pool of creditors.

11. Voting through electronic means

11.1 The resolution professional shall provide each member of the committee the means to exercise its vote by either electronic means or through electronic voting system in accordance with the relevant provisions of CIRP Regulations.

11.2 The authorised representative shall exercise the votes either by electronic means or through electronic voting system as per the voting instructions received by him from the creditors in the class pursuant to sub-regulation (6) of regulation 25 of CIRP Regulations.

11.3 At the end of the voting period, the voting portal shall forthwith be blocked.

11.4 At the conclusion of a vote held under this Regulation, the resolution professional shall announce and make a written record of the summary of the decision taken on a relevant agenda item along with the names of the members of the committee who voted for or against the decision, or abstained from voting.

11.5 The Resolution Professional shall circulate a copy of the written record made under clause 11.4 above to all participants by electronic means within twenty four hours of the conclusion of the voting.

12. Minutes of the meeting

12.1 The Resolution Professional shall keep and preserve minutes of all meetings of COC as per the record retention schedule advised by IBBI from time to time.

12.2 The Resolution Professional has to circulate the minutes of the meeting to all participants by electronic means within forty eight hours of the meeting.

12.3 Resolution Professional shall maintain its minutes in physical as well as in electronic form.

12.4 The Resolution Professional will however follow a uniform and consistent form of maintaining the minutes.

12.5 The minutes of all meetings of a particular CIRP will be bound together at the end of the period of CIRP, for safekeeping by the Resolution Professional.

12.6 Minutes shall not be tampered in any manner after being finalised post gathering comments from the members of the Committee and must always be circulated in pdf form in order to avoid any tampering.

12.7 There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.

12.8 Minutes shall be kept at the office of Resolution Professional, from where he conducts the CIRP.

13. Contents of Minutes

(a) General Contents

Minutes shall state, at the beginning, the serial number, name of the Corporate Debtor, classes of creditors, name of Resolution Professional, name of authorised representative, day, date, venue and time of commence-ment of the meeting.

In respect of a meeting adjourned for want of Quorum, a statement to that effect by the Resolution Professional shall be recorded in the Minutes.

Minutes shall record the names of the members of COC present physically or through electronic mode, the Resolution Professionals, members of suspended Board of Directors, authorised representatives, other participants and invitees, if any, including invitees for specific items.

The names of the participants shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the Resolution Professional.

The capacity in which an invitee attends the meeting and where applicable, the name of such invitee and the relation, if any, of that invitee to the company shall also be recorded.

(b) Specific Contents

Minutes shall inter-alia contain the following:

(i) Minutes shall specifically disclose the particulars of the participants who attended the meeting in person, through video conferencing or other audio and visual means.

(ii) In case of a member of COC participating through electronic mode, his particulars, and wherever required, the location from where he participated.

(iii) <u>Views of members of suspended Board of Directors of Corporate Debtor/operational creditors and other participants</u>

The views of the members of suspended Board of Directors/operational creditors and other participants may be recorded in the minutes

(iv) <u>Views of Dissenting financial creditors</u>

The views of Dissenting financial creditors must be recorded in the minutes.

(v) Details of financial creditors abstained from voting.

(vi) Details of financial creditors not participated in the meeting.

(vii) Details of financial creditors who voted in favour of the Resolution.

(viii) Details of financial creditors who voted against the resolution.

(ix) The time of commencement and conclusion of the meeting.

(x) Apart from the resolution or the decision, minutes shall mention the brief background of all proposals and summarise the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned.

(xi) The decisions shall be recorded in the form of Resolutions, where it is statutorily or otherwise required. In other cases, the decisions can be recorded in a narrative form.

(xii) IRP/RP should give his/her independent opinion on each matter voted, based on the facts of the matter voted on. This should form part of the meeting. This will ensure that justification for the decision is available at a later date, along with related records, for analysis/verification.

14. Recording of Minutes

14.1 Minutes shall contain a fair and correct summary of the proceedings of the meeting.

14.2 The Resolution Professional shall record the proceedings of the meetings.

14.3 The Resolution Professionals may exclude from the minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.

14.4 Minutes shall be written in clear, concise and plain language.

14.5 Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense.

14.6 Minutes need not be an exact transcript of the proceedings at the meeting.

14.7 Where any earlier Resolution(s) or decision is superseded or modified, minutes shall contain a specific reference to such earlier Resolution(s) or decision or state that the Resolution is in supersession of all earlier Resolutions passed in that regard.

15. Signing and Dating of Minutes

15.1 Minutes of the meeting of the COC shall be signed and dated by the Resolution Professional.

15.2 The Resolution Professional shall initial each page of the minutes, sign the last page and append to such signature the date and the place where he has signed the minutes.

15.3 Any blank space in a page between the conclusion of the minutes and signature of the Resolution Professional shall be scored out.

Annexure A

Illustrative list of items of business for the Agenda for the first meeting of the Committee of Creditors

1. The Interim Resolution Professional to take the Chair.
2. To ascertain the quorum of the Meeting.
3. To reduce the Notice Period.
4. To take note of the List of Creditors prepared by the Interim Resolution Professional.
5. To take note of the steps taken by the IRP for taking control and management of affairs of the Corporate Debtor since the Insolvency Commencement date.
6. To ratify and reimburse expenses incurred/to be incurred by the Applicant as insolvency resolution process costs for the fees to be paid to the Interim Resolution Professional and other expenses such as publication of public announcement, which form a part of CIRP cost. To ratify fees relating to IRP, and to approve the said cost as insolvency resolution

process costs.

7. To ratify cost relating to public announcement and approve reimbursement of the same.
8. To ratify the cost/fee of the legal advisors to the Interim Resolution Professional for Professional services procured since insolvency commencement date.
9. To ratify the cost/fee of the / Professionals appointed by the Interim Resolution Professional for services procured since insolvency commencement date.
10. To appoint a Resolution Professional and to fix the remuneration and expenses to be incurred which shall constitute Insolvency Resolution Process Cost.

Annexure B

Illustrative list of items of business for the Agenda of the *subsequent* meetings of the Committee of Creditors

1. The Resolution Professional to take the Chair.
2. To ascertain the quorum of the Meeting.
3. To take note of minutes of previous meeting of Committee of Creditors.
4. To take note of the updated List of Creditors prepared by the Resolution Professional.
5. To take note of the steps taken by the Resolution Professional since the last meeting of the CoC till date.
6. To consider, discuss and approve the appointment and fees of Professionals and to ratify the cost of Professional as insolvency resolution process cost .
7. To take note of the Information Memorandum prepared under Regulation 36 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) Regulations, 2016 and matters incidental thereto.
8. To update the CoC on Corporate Debtor's Cash flows and operations.
9. To consider, discuss and approve the eligibility criteria for potential resolution applicants.
10. To ratify the cost/fee of the Registered Valuers appointed by the Resolution Professional for services procured since insolvency commencement date.
11. To take note of the Expression of Interest (EOI).
12. To discuss and approve the Evaluation Matrix as proposed by the Resolution Professional for evaluating the plans as may be received from prospective resolution applicants.
13. To discuss and approve the appointment & remuneration of any professional.
14. To ratify the cost incurred for publication of Expression of Interest (EOI) for inviting Resolution Plan from the prospective Resolution Applicants.
15. To take note of the EOI received from prospective Resolution Applicant.
16. To take note of the Request for Resolution Plan (RFRP).
17. To discuss and approve the extension of time by 90 days for completion of Corporate Insolvency Resolution Process.
18. To replace the Resolution Professional with another Resolution Professional.
19. To reduce the notice period for convening the meeting of Committee of Creditors.
20. To discuss on the resolution plans by respective resolution applicants.
21. To Discuss on the Resolution Plan submitted by ……..
22. To consider and approve the final resolution plan dated …….....…. submitted by ……....……

Form for appointment of Authorised Representative

CIN:

Name of the Corporate Debtor:

Registered office:

Date of the Meeting:

Name of the Member of CoC:

Registered address:

1. Name: …….

Address:

E-mail Id:

Signature: ,

I/ We being the member of the Committee of Creditors, hereby appoint as my/our Authorised Representative to attend and vote for me/us and on my/our behalf at …… Meeting of Committee of Creditors, to be held on ……at the……..,and at any adjournment thereof in respect of such resolutions as are indicated below:

Resolution No.

1 ……

2 ……

3 ……

4 ……

5 ……

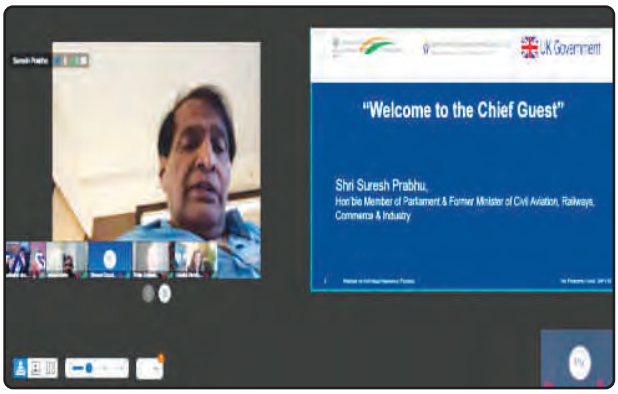
Signed this ….. Day of…… 202..

Signature of Member/s of Committee of Creditors:

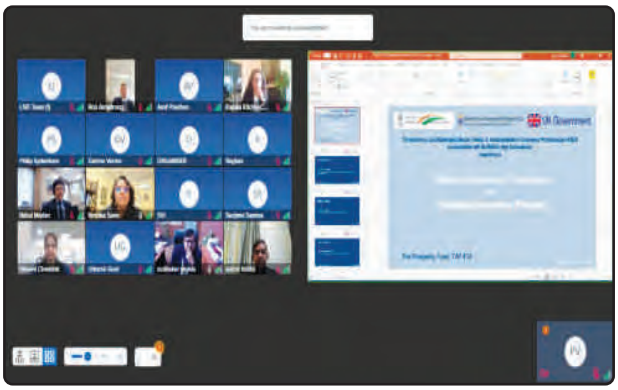
Signature of Authorised Representative:

Note: This form in order to be effective should be duly completed and deposited at the Registered Office of the Corporate Debtor, before the commencement of the Meeting.

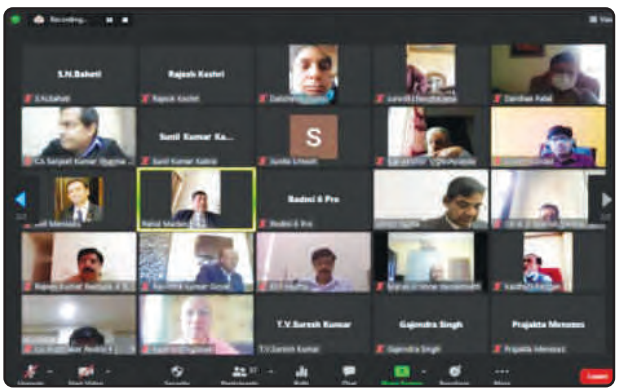
IIIPI News



Chief Guest Hon'ble MP Shri Suresh Parbhu addressing Online Seminar on Individual Insolvency Process jointly organized by IBBI, IIIPI and British High Commission on 03rd December 2021.

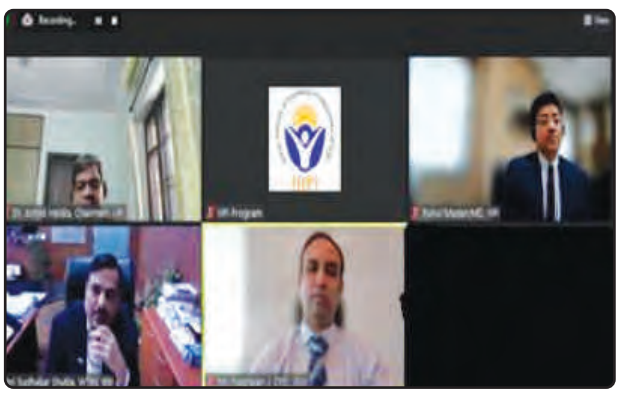


A snapshot of Online Seminar on Individual Insolvency Process jointly organized by IBBI, IIIPI and British High Commission on 03rd December 2021.

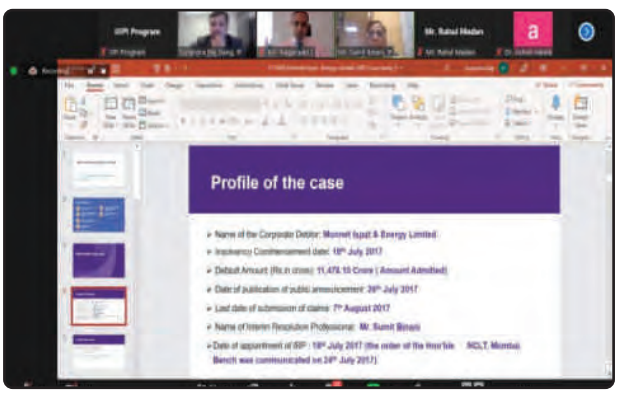


A snapshot of the Inaugural Session of the 5th Executive Development Program (EDP) on Managing Corporate Affairs as Going Concern under CIRP (for IPs) on 17th December 2021.

IBBI Chairperson Dr. Navrang Saini addressing the 01st Regional Residential Conference (RRC) on IBC organized by IIIPI jointly with Coimbatore Branch of SIRC of ICAI from 16th to 18th December 2021.



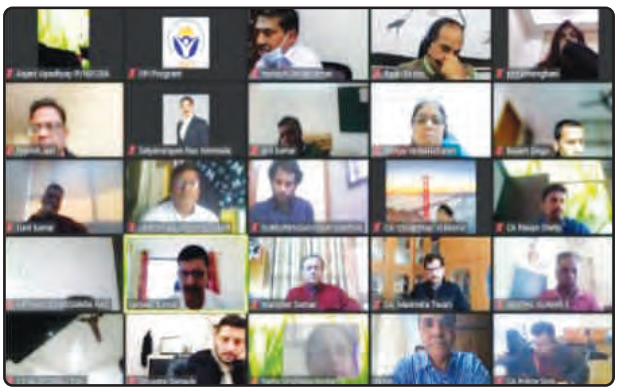
IIIPI organized Webinar on Interaction with CFOs of CDs and Successful Applicants on 11th November 2021.



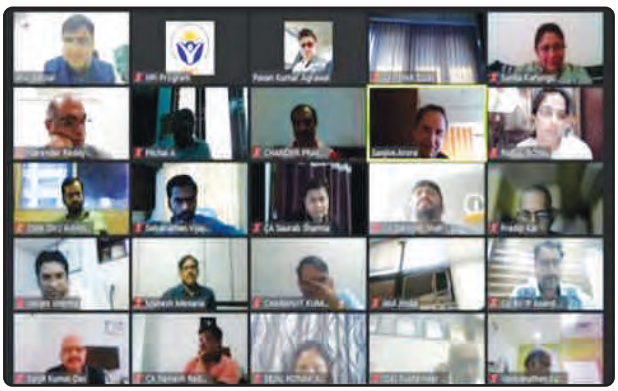
IIIPI organized Webinar on 'Successful CIRP Case Study of Monnet Ispat & Energy Ltd. and Industry Know-how' on October 06, 2021.

Shri Amit Pradhan, Executive Director, IBBI, addressing the seminar physically on "Individual Insolvency: Preparing for Future" organized by IIIPI in Hybrid Mode on 18th Nov.2021.

Shri David Kerr, Insolvency Professional, UK. addressing the seminar through video conferencing on "Individual Insolvency: Preparing for Future" organized by IIIPI in Hybrid Mode on 18th November 2021.



A snapshot of the 51st PREC on December 12, 2021.

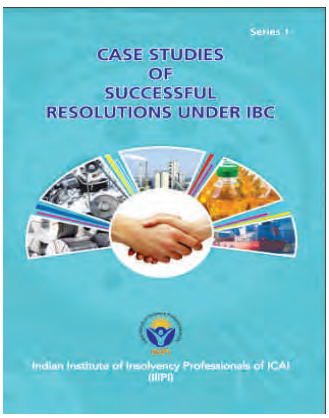


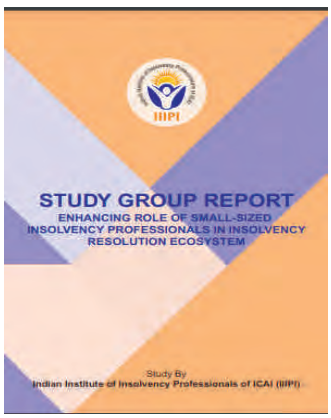
A Snapshot of the 48th Batch PREC from 06th-12th Oct 2021.

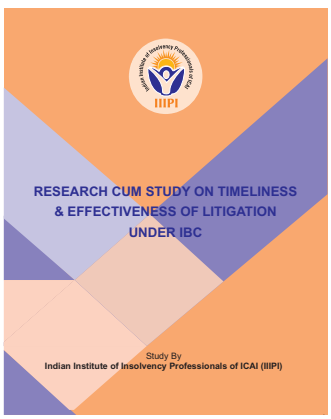
Team IIIPI on IIIPI's 5th Foundation Day on 25th November 2021 with Dr. Ashok Haldia, Chairman, IIIPI-Board (9th from right-standing row) and CA. Rahul Madan, MD-IIIPI (10th from right-standing row).

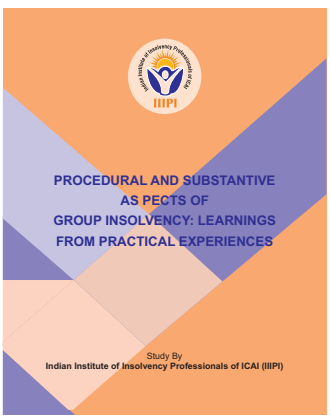
IIIPI's PUBLICATIONS

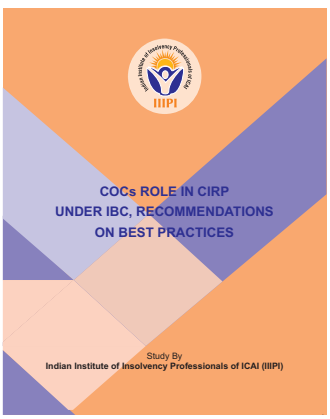
IIIPI has published five research publications based on the Reports submitted by various Study Groups. The Study Reports of some other Study Groups are under process. The soft copies (downloadable PDF) of all these publications are available on IIIPI website (https://www.iiipicai.in/publications/).

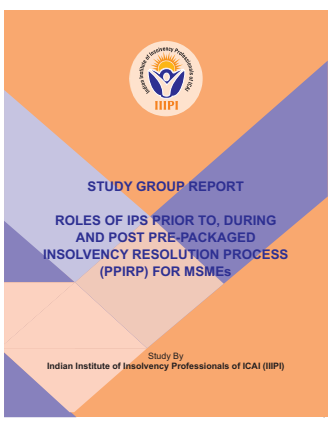


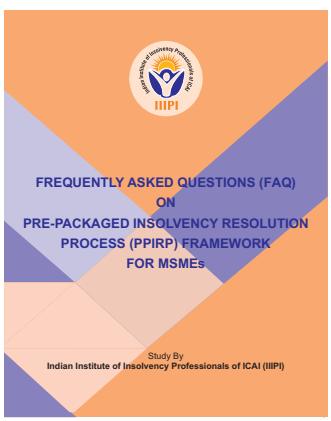












Media Coverage

Insolvency and Bankruptcy Code, 2016 a gamechanger reform, says Piyush Goyal

ANI | Updated: Nov 25, 2021 22:48 IST

New Delhi [India], November 25 (ANI): The Union Minister of Commerce and Industry Piyush Goyal (/topic/piyush-goyal) on Thursday termed the Insolvency and Bankruptcy Code (/topic/insolvency-and-bankruptcy-code) (IBC), 2016 as a "gamechanger reform (/topic/gamechanger-reform)" that has been the most successful law in insolvency resolution in the country.

Addressing the fifth Foundation Day function of the Indian Institute of Insolvency Professionals of ICAI (IIIPI) here today, Goyal hoped the faster Insolvency Resolution enabled by the IBC will eventually pave the way for banks to bring down the 'Cost of Credit'.

"Since the enactment of IBC, India's rank in 'Resolving Insolvency' indicator in World Bank's Ease of Doing Business Report has seen a meteoric rise of 84 places! Our recovery rate has also dramatically improved from 26 (cents on dollar) to 71.6 (cents on dollar)," he said.

Goyal said the IBC has brought about a marked shift in attitudes of lenders and borrowers, acting as an effective deterrent against unscrupulous borrowers and imparted banks the tool to follow due diligence and confidence about recovery. The Minister further said that in view of the Covid crisis, the Centre suspended the IBC for a year, from March 2000 to March 2021.

"This helped India bounce back much faster. The economy is doing well and five years down the line, the outlook looks very, very bright," he said.

Goyal lauded the IIIPI members and said that they are serving the nation's interest by saving businesses and entrepreneurship in the country. "This has a big impact on 'Saving Jobs and Reviving companies' and by creating new banking opportunities," he said. (ANI)

Business Standard

IBC has brought change in attitude of lenders, borrowers: Goyal

Goyal said IBC is a game changing reform compared to the past, when resolution would take probably decades

Press Trust of India | New Delhi

Last Updated at November 25, 2021 18:04 IST

The Insolvency and Bankruptcy Code (IBC) has brought about change in the attitude of both lenders and borrowers, besides promoting ease of doing business, Commerce and Industry Minister Piyush Goyal said on Thursday.

Goyal said IBC is a game changing reform compared to the past, when resolution would take probably decades.

"...we have come to a situation where we can reasonably expect resolution to happen within a stipulated timeline with that occasional delay. But resolution is happening. That is a reality." he noted.

Goyal was speaking at the 5th Foundation Day of the Indian Institute of Insolvency Professionals of ICAI (IIIPI).

"We have achieved a change in the attitude of people both lenders and borrowers because of IBC and your efforts. It has given the confidence that the money can be recovered," he said.

The minister exuded confidence that going forward, there will be significant positive action in terms of what is good for the credibility of India and its financial architecture.

Any borrower who does not pay back his dues will be called to task, Goyal said.

The minister also called upon IIIPI members to follow five guiding principles in work -- integrity, objectivity, professional competence, confidentiality, and transparency.

"And if we follow these five principles, that would be truly the kind of professional behaviour that is expected of professionals assembled in this room...," he said.

He further said harnessing technology is important to speed up resolution of bad loans and urged IIIPI to look at capacity building and upskilling of professionals.

"In our world, whether it's valuation, whether it's resolution, and we are speeding up the resolution of bad loans, I think technology can play a big role. And I would urge IIIPI to focus and see what kind of tools we can develop for our professionals to use to help them in their work" Goyal added.

He also said what IIIPI is doing is national service and reviving the faith in entrepreneurship and businesses.

To shield businesses from distress in the COVID-19 period, the government took the proactive measure to suspend insolvency proceedings arising from defaults during March 2020 to March 2021, the minister added.

The Insolvency and Bankruptcy Code was enacted five years ago.

THE FINANCIAL EXPRESS

IBC has brought change in attitude of lenders, borrowers: Piyush Goyal

By: PTI | November 25, 2021 6:05 PM

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Hindustan Times

Piyush Goyal calls Insolvency and Bankruptcy Code 'gamechanger reform'

Union minister Piyush Goyal said the IBC has brought about a marked shift in attitudes of lenders and borrowers, acting as an effective deterrent against unscrupulous borrowers and imparted banks the tool to follow due diligence and confidence about recovery.

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Published on Nov 25, 2021 08:52 PM IST|
Byhindustantimes.com, New Delhi

Union minister of commerce andd industry Piyush Goyal on Thursday called the Insolvency and Bankruptcy Code (IBC), 2016, a "gamechanger reform" that has been the most successful law in insolvency resolution in the country.

Addressing the 5th foundation day function of the Indian Institute of Insolvency Professionals of ICAI in New Delhi earlier in the day, Goyal hoped the faster insolvency resolution enabled by the IBC will eventually pave the way for banks to bring down the 'cost of credit'.

"Since the enactment of IBC, India's rank in 'resolving insolvency' indicator in World Bank's 'Ease of Doing Business Report' has seen a meteoric rise of 84 places. Our recovery rate has also dramatically improved from 26 (cents on dollar) to 71.6 (cents on dollar)," he said.

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Goyal said the Centre suspended the IBC for a year – from March 2020 till March 2021 — in view of the coronavirus disease (Covid-19) pandemic. "This helped India bounce back much faster. The economy is doing well and five years down the line the outlook looks very, very bright," Goyal said.

Goyal added that the IIIPI members are serving the nation's interest by saving businesses and entrepreneurship in the country. "This has a big impact on 'saving jobs and eviving companies' and by creating new banking opportunities," he said.

Stating that the IIIPI being the largest body of such professionals in the country, it has a fiduciary duty cast on its members and has a three-pronged roles to play — legislative, executive and quasi-judicial.

Goyal listed out five guiding principles for insolvency professionals — integrity, objectivity, competency, confidentiality and transparency. He called upon the Chartered Accountants to use technology in resolution of bad loans, look at new innovative ideas and set benchmarks.

लोकमत English

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8 Companies & Economy

THE ECONOMIC TIMES | MUMBAI | FRIDAY | 26 NOVEMBER 2021 | WWW.ECONOMICTIMES.COM

'IBC Altered Attitude of Lenders, Borrowers'

Our Bureau

New Delhi: Commerce and industry minister **Piyush Goyal** on Thursday said the Insolvency and Bankruptcy Code (IBC) has brought about a change in the attitude of both lenders and borrowers, besides promoting ease of doing business.

Addressing the Indian Institute of Insolvency Professionals of ICAI (IIIPI), he also said that any borrower who does not pay back his dues will be called to task and the IBC is a game changing reform compared to the past, when resolution would take probably decades.

"We have come to a situation where we can reasonably expect resolution to happen within a stipulated timeline with that occasional delay but resolution is happening...It has given the confidence that the money can be recovered," he said.

The minister exuded confidence that going forward, there will be significant positive action in terms of what is good for the credibility of India and its financial architecture.

The Economic Times, November 26, 2021

Services

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FEEDBACK

Dear Reader,

The Resolution Professional is aimed at providing a platform for dissemination of information and knowledge on evolving ecosystem of insolvency and bankruptcy profession and developing a global world view among practicing and aspiring insolvency professionals in India.

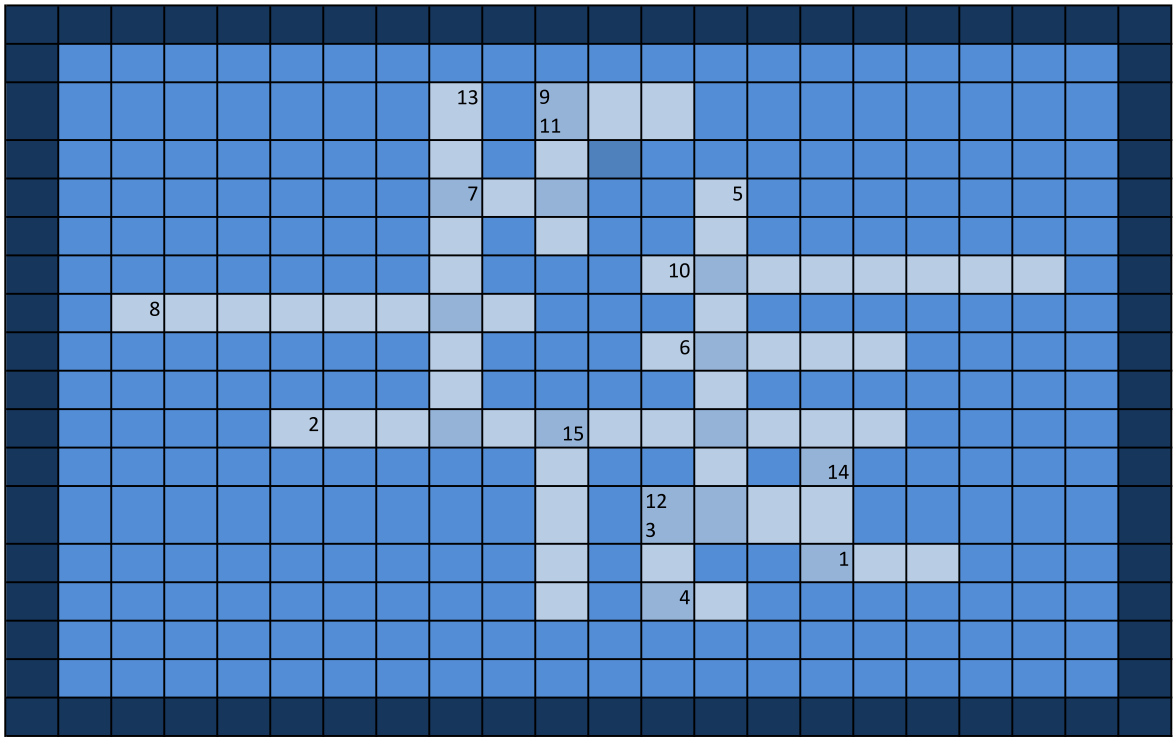
We firmly believe in innovations in communication approaches and strategies to present complicated information of insolvency ecosystem in a highly simplified and interesting manner to our readers.

We welcome your feedback on the current issue and the suggestions for further improvement. Please write to us at iiipi.journal@icai.in

Editor

The Resolution Professional

IBC Crossword



Across

1. International Monetary Fund has projected the Indian economy to grow at____% in 2022 in its latest World Economic Outlook Report.
2. Under the chairmanship of Shri _____RBI set up a committee to undertake a comprehensive review of the ARCs in the financial sector ecosystem.
4. Central Government has recently appointed ____ new members to strengthen the NCLT.
6. As per the MSME Ministry, what is an enterprise called if investment is up to ₹ 1 crore and turn over does not exceed ₹ 5 crores?
7. On August 06, 2021, the IBBI signed a Memorandum of Understanding (MoU) with _____ for a research collaboration.
8. The _____ Model Law on cross-model insolvency, 1997, was designed with the objective to facilitate world economies in cross-border insolvency.
9. How many companies have been sold as going concern during Liquidation process, by September 30, 2021?
10. Which is the first Corporate Debtor to be admitted for insolvency under PPIRP of MSMEs provision of the IBC?
12. ₹ _____crore is the amount offered by the successful Resolution Applicant to takeover Ruchi Soya Ltd. through Resolution Plan under the IBC.

Down

3. Till July 2021, how many CIRPs ended in Resolution Plans?
5. Under which section of the IBC, 2016, the new resolution plans shall not be admitted once a plan has been approved by the CoC?
11. Which group has become the second FSP to undergo insolvency process under IBC?
13. Name of Malaysia's Asset Management Company.
14. Which Section of the IBC provides it superseding powers over other laws passed by the Parliament?
15. Which country was recently announced to introduce reforms in its insolvency laws for want of EU recovery funds?

Answers: IBC Crossword, October 2021

1. Arcelor Mittal India	2. 10 Lakh	3. Five	4. 90%	5. Form FA
6. 45 Days	7. Personal Guarantors	8. Information Utility	9. 25000	10. 164
11. PKPU	12. 30 Minutes	13. Orator Marketing	14. Section 11	15. Five

GUIDELINES FOR ARTICLE SUBMISSION

THE RESOLUTION PROFESSIONAL, the quarterly peer-reviewed referred research journal of the Indian Institute of Insolvency Professionals of ICAI (IIIPI), an RNI verified Title (DELENG19833/ F. No.: 1364856/08.04.2021), invites research-based articles for its upcoming editions on a rolling stock basis. The contributors/authors can send their article/s manuscripts for publications in The Resolution Professional as per your convenience at iiipi.journal@icai.in. The same will be considered for publication in the upcoming edition of THE RESOLUTION PROFESSIONAL, subject to approval by the Editorial Board. The articles sent for publication in the journal should conform to the following parameters:

The articles sent for publication in the journal should conform to the following parameters:

- The article should be of 2,500-3,000 words and cover a subject with relevance to IBC and the practice of insolvency.
- The article should be original, i.e., not published/broadcast/hosted elsewhere including on any website.
- The article should:
  - Contribute towards development of practice of Insolvency Professionals and enhance their ability to meet the challenges of competition, globalisation, or technology, etc.
  - Be helpful to professionals as a guide in new initiatives and procedures, etc.
  - Should be topical and should discuss a matter of current interest to the professionals/readers.
  - Should have the potential to stimulate a healthy debate among professionals.
  - Should preferably expose the readers to new knowledge area and discuss a new or innovative idea that the professionals/readers should be aware of. It may also preferably highlight the emerging professional areas of relevance.
  - Should be technically correct and sound.
  - Headline of the article should be clear, short, catchy and interesting, written with the purpose of drawing attention of the readers. The sub-headings should preferably within 20 words.
  - Should be accompanied with abstract of 150-200 words. The tables and graphs should be properly numbered with headlines, and referred with their numbers in the text. The use of words such as below table, above table or following graph etc., should be avoided.
  - Authors may use citations as per need but one citation/ quote should have about 40 words only. Lengthy citations and copy paste must be avoided.
  - The authors must provide the list of references at the end of article.
  - A brief profile of the author, e-mail ID, postal address and contact number along with his passport size photograph and declaration confirming the originality of the article as mentioned above should be enclosed along with the article.
  - The article can be sent by e-mail at **iiipi.journal@icai.in**
  - In case the article is found suitable for publication, the same shall be communicated to the author/s at the earliest.

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