

## Key Takeaways from the International Conference Organized by IIIPI Jointly with IBBI on March 26, 2022

IIIPI jointly with the Insolvency and Bankruptcy Board of India (IBBI) organized an international conference (Virtual) on 'IBC in India & International Perspective' on March 26, 2022. The Inaugural Session of the conference was graced by Shri Bhupender Yadav, Hon'ble Minister for the Ministry of Labour and Employment, and Ministry of Environment, Forest & Climate Change, as the Chief Guest. It was followed by three technical sessions on the contemporary topics viz. International Perspectives on Insolvency Law, Individual Insolvency: Perspectives and Challenges, and Changing Expectations of Stakeholders. In addition to the Indian Insolvency Professionals (IPs), experts and officials, insolvency/bankruptcy professionals/experts from four nations including UK, South Africa, Australia, and Singapore participated in the conference as panellists. Furthermore, the representatives of World Bank Group, INSOL International, London High Court, IBBI, Ministry of Law & Justice, State Bank of India, etc., also addressed the conference.

On this occasion, CA. (Dr.) Debashis Mitra, President-ICAI released three publications of IIIPI viz. 'Background Guidance on Code of Ethics for Insolvency Professionals', 'Peer Review Policy', and 'Background Guidance on Quality Control by Insolvency Professionals'. Here we are presenting the key takeaways of the conference.

*Read on to know more...*

### Welcome and Opening Address

**Dr. Ashok Haldia**

Chairman, Governing Board-IIIPI

1. The topic of the day 'IBC in India and International Perspective' is consistent with the role that the Insolvency Professional Agencies (IPAs) are expected to play as the pillar of the IBC, and the role that IIIPI, as one of the largest and most proactive IP in the country, is playing.
2. IIIPI's previous International Conference on the 'Changing Perspectives of the IBC' organized in October 2020, brought together the global minds on the issues related to IBC Version 2 such as Cross-Border, Pre-Pack, Mediation, Individual Insolvency, and Group Insolvency etc. It provided valuable inputs to the regulators and the Government on new framework, and also in preparing the IPs on what lies ahead.
3. This conference today brings together the regulators, corporate debtors, CFOs of the stressed companies, CFOs of the investor companies, IPs, chartered accountants, and other professionals including the media.
4. Corporate Stress is common throughout the world in terms of finance, investment, and business etc. Therefore, sharing the international perspective is very important.
5. As a proactive organization, IIIPI always endeavours to meet the expectations of stakeholders and win over their trust and confidence.
6. IIIPI has been the largest IPA in India with over 60% IPs



as its members who have handled over 75% of insolvency assignments under the IBC. These are not the numbers alone but also reveal the quality of services IIIPI delivers to its professional members.

7. The IPs are one of the three pillars of the IBC. The success of the IBC, as it is widely acknowledged, is dependent upon efficacy, efficiency, trust, and confidence with which IP's carry on their onerous responsibilities. This should not only be trustworthy but should enthruse confidence among stakeholders.
8. Today, IIIPI released three publications - 'Background Guidance on Code of Ethics for Insolvency Professionals', 'Peer Review Policy', and 'Background Guidance on Quality Control by Insolvency Professionals'. The first publication pertains to the perimeter within which the IPs need to discharge their professional responsibilities, second is related to quality control system within their own organizations and also to be overseen by external organisations, and third publication is regarding peer-review process of the IPs by the IIIPI.

**Guest of Honor**

**CA. Aniket Sunil Talati**  
Vice President, ICAI

1. Since IBC came into being in 2016, IIIPI has remained active and ensured that it continues to engage with stakeholders specially during the Covid-19 pandemic.
2. The successful achievement of IBC's objectives depends on the cohesive functioning of the key pillars which include not just the IBBI, IIIPI, IPs and CoC but also the judiciary which plays very important role.
3. Initially, a lot of the provisions which were envisaged in IBC were in the form theory but once the IPs started getting into the field and faced the challenges that we faced, jurisprudence developed gradually.
4. The stakeholders deserve appreciations what we have achieved in the past five years, however, many challenges prevail particularly in the form of delayed processes. Presently, against prescribed 180 days, an insolvency process takes on an average 428 days. Judiciary has important role to play on how these timelines can be met. .
5. IBBI, IPAs, and IPs should discuss and deliberate, through such conferences, on practical challenges and opportunities.
6. For any legislation, regulation is important but also important is development of the profession. Therefore, important challenges of the profession being faced by IPs should also be discussed.

**Guest of Honor**

**CA. (Dr.) Debashis Mitra**  
President, ICAI

1. The Indian Institute of Insolvency Professionals of ICAI (IIIPI) has been promoted and founded by The Institute of Chartered Accountants of India (ICAI), which is the second largest accounting body of the world, on November 25, 2016. Set up on July 01, 1949, the ICAI, currently, has 3,50,000 members and over 7.5 lakh students.
2. ICAI has 44 overseas chapters. It has presence in 47 nations and 73 cities of the world.
3. IIIPI has grown from strength to strength over time. It is getting better and better and trying to be more professional in its functioning.
4. IBC 2016 has come a long way. The most important aspect of the Code has been the timeline – quick disposal of the cases. Whether you resolve or liquidate timeliness becomes very important.
5. The role of CAs in successful implementation of the Code has been very important. More than 55% of IPs in India are CAs, and more than 75% of insolvency assignments in value terms are handled by the professional members of the IIIPI. That is how the IIIPI has grown over a period of time. That is the way IIIPI has attracted the best of talent.
6. When the Government of India talks of Pre-Pack and Cross-Border Insolvency, the IIIPI makes sure that



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there is capacity building amongst the insolvency professionals.

7. What is challenging now is the technology that is changing. IIPI need to work to ensure professionals are abreast with the latest technologies.
8. Today, IIPI has released publications related to the insolvency profession - Peer Review Policy, Code of Ethics and Quality Control. I am glad to see, the IIPI is getting into these kinds of domains quality and standards of IPs.



### Guest of Honour

**Mr Paul Bannister,**

Head Policy- Insolvency Services, Govt. of UK

- 1) There are not many sectors in the Indian economy that are more regulated than IBC. Such strong regulatory framework boosts the investors' confidence to invest.
- 2) The three publications that were released by the IIPI, shall provide necessary confidence to the stakeholders.. We too have similar documents in the UK. In such a short period of time, the journey travelled by the IIPI is highly commendable.
- 3) As we emerge from the Covid-19 pandemic, priorities revolve around restoring regulatory framework particularly in the insolvency profession.
- 4) Cross Border Insolvency and Individual Insolvency are big issues in the UK as the focus areas in coming months. On Cross-Border Insolvency framework, the UK is committed to develop Cross-Border co-operation across territories. If a foreign court issues a judgment relating to an English law contract, provided the conditions are met, foreign judgments would have to be recognized by the courts in the UK.
- 5) There has been quite a bit of difference in opinion internationally over how the original model law and



Cross-Border Insolvency should be interpreted.

- 6) Group Insolvency pertains to a group of companies that are to be coordinated under a single insolvency process to which our insolvency regimes are not explicitly geared up. The UK is working on a Group Insolvency Model of which the main premise is where an overall plan will be developed involving all the relevant companies that each company in the group can individually sign up to. The court will then be empowered to enforce a group plan that would enable resolution of a business that is spread across several companies to be treated as one whole rather than dealing with each insolvent company to give better possible outcome.

## Session 1: Panel Discussion on 'International Perspectives on Insolvency Law'

**Moderator:** CA. Hansraj Chugh, Director, IIPCI

### Panellists:

Dr. Eric Levenstein Chairman, SARIPA, South Africa and Board Member, INSOL International,

Mr. Michael Brereton, President ARITA and Director Williambuck, Australia

Mr. Rob Armstrong MD, Restructuring Advisory, Kroll, UK

Mr. Ashok Kumar, Partner, Blackoak LLC, Singapore

Mr. K.R. Saji Kumar, Joint Secretary, Ministry of Law & Justice

Mr. Sandip Garg, ED, IBBI

### Key Takeaways

1. The principles that underline the UNCITRAL model law, particularly providing a timeline for the insolvency processes could help to address the issues of timeliness. This is imperative the chances of resolution of a corporate debtor decreases with deterioration of the value of assets.
2. While introducing Cross Border Insolvency framework in India, many complexities would need to be solved. The law will have to deal with the various rights of stakeholders according to the laws in various countries besides protecting the interests of Indian stakeholders.
3. Australia introduced the Cross-Border Insolvency law almost ten years ago, and it is essential to sign the Cross-Border Law for conducting insolvencies across the countries.
4. UNCITRAL's principles have been incorporated in South Africa. The insolvency law has become more relevant than ever before. The banks have been supportive and have saved companies in trouble.
5. Business Rescue provides apt assistance, and also includes increasing employment opportunities that is the priority of South African Government. An insolvency practitioner sits with the stakeholders and works out the plan which needs to be voted at 75% or more by the creditors to pass it.
6. In the UK, the revamping of the insolvency law is currently taking place including of framework on Pre-Packaged Insolvency. There has been substantial increase in voluntary liquidations, in UK.
7. In Singapore, the ecosystem is shifting towards more inclusive approaches including training of Insolvency practitioners with a course for the postgraduates to learn country-oriented approaches. Fair amount of jurisprudence has been developed to inculcate international laws' framework, Pre-Pack System. The priority is to attract new investment through these reforms.



## Session 2: Panel Discussion on 'Individual Insolvency-Perspectives and Challenges'

**Moderator:** CA. Durgesh Kabra, Director, IIIPI

### Panellists:

Ms Kanika Kitchlu, Connolly Partner, TLTL LLP, UK

Mr David Kerr, IP, UK

CA Sajeve Deora, IP

Adv. Shradul Shroff Partner, Amarchand Mangaldas

Mr. Sanjeev Pandey, Head & DGM (NCLT), State Bank of India

CA Sumit Binani, IP

### Key Takeaways

1. The efficacy of IBC processes lies in identifying the threat earlier and come up quickly. Whether you are a Corporate Debtor or Guarantor, the moment you find your company is in difficulty trigger this process quickly. The same is recommendable in the case of Individual Insolvency.
2. The simultaneous proceedings against CD and the Personal Guarantor, ensure better recovery in value terms because the soft assets of the CD such as brand name and trade names etc. are owned by the promoters of the company who are also the Personal Guarantors to the CD.
3. Funding of the corporate debtor is a major challenge across economies including the UK. There are some circumstances where there are no upfront assets or no upfront cash. However, the market is quite evolved and so one has funders, insurers, and creditors who could be asked to fund as well.
4. Acting promptly, initiating the process on time, coordination across jurisdictions, protection of assets, different enforcement options, and finally creditors' support, are main ingredients of success in bankruptcy process.
5. IBC regime should learn from foreign insolvency regimes such as the UK to expedite the cases in the courts.
6. Intermingling assets of the Personal Guarantor, and the Corporate Debtor is a major issue under the IBC regime which is leading to failure of resolution processes. For instance, land of the CD belongs to the promoter but the building and machines etc. belong to the CD. Therefore, the land cannot be part of the insolvency process.
7. Individual debtors generally borrow low amount of debt involving monthly dues of say, only a few thousands. Dealing with the volume of individual insolvencies involving low values, is a tough task due to shortage of sufficient judges. If the government wants to implement this framework effectively, a vast infrastructure would be needed across India.
8. Due to long pendency of cases in the courts, the CDs face value deterioration which causes adverse impact on their resolution. Besides, even the bank recovery processes are going extremely slow. So, this needs a drastic amendment in terms of the number of judges in the tribunals.



## Session 3: Changing Expectations of Stakeholders

### Special Address

**Mr. Sagar Siva Shankar**

Operations Officer, Market Advisory, IFC,  
World Bank Group



1. Insolvency reform is important because it increases the availability of the credit, lowers the cost of credit, promotes culture of entrepreneurship, and facilitates setting up of Startups.
2. World Bank Group has convened several task forces on various topics of relevance on insolvency, the most relevance being MSME insolvency task force. The report was released in 2021 which is available online. Besides, the World Bank Group works with different jurisdictions on various aspects of insolvency.
3. To assess the impact of Covid-19 on businesses, World Bank Group conducted Business Pulse Survey across 40 plus countries. We found a disproportionate impact of the Covid-19 pandemic on female-owned businesses across economies. Every jurisdiction has taken some measures for insolvency related reforms.
4. Increased usage of alternate dispute redressal measures especially in the pre-insolvency stage to resolve disputes and defaults, can help develop accessible and affordable procedures for MSMEs.
5. During the pandemic, we focused on judicial training on insolvency and information technology. In March 2020, we carried out the judicial sensitization program for over 50 members of the NCLT as well as the NCLAT from across India. We have developed a training module for judges across the world which they can take online.

### Special Address

**Mr Akhil Gupta**

Vice Chairman, Bharti Enterprises



1. There is near unanimity in corporate and banking circle that the introduction of IBC has been the most important and transformational reforms in India in recent times.
2. Before the IBC, there was a perceived immunity among the promoters against any serious consequence if they defaulted the debts owed by creditors because creditors had no powers to step into their businesses. Those promoters were suffering from "too big to fail syndrome" but IBC has made them believe that their business can be taken over by creditors.
3. Though pendency of cases at NCLTs and NCLATs are biggest concerns under the IBC, we have resolved several cases. There is need to appoint more judges to ensure justice is given timely.
4. If a Resolution Plan is passed by the CoC with due procedure, the courts should not be allowed to intervene on the ground of 'fair and equitable' except in the criminal matters.
5. Pre-Pack Insolvency should be extended to all the businesses. Besides, Section 29 (a) should be made more robust to prevent promoters from interfering in the insolvency process by filing resolution plans through themselves or associated firms.

### Special Address

**Mr. James Pickering**

Deputy Judge of London High Court  
and Chairman of Enterprise Chambers  
and Queen's Counsel

1. If you are successful, you are less likely to change. But the reality is, whether we like it or not, the world is always changing. In short, whether we like it or not we have to adapt. We have witnessed this during lockdowns induced by Covid-19 pandemic.
2. During such times, we started virtual hearing of cases through video conferencing. I used to receive instructions on WhatsApp and documents on email. Thus, we adapted, and carried on, even if it was not like real-life hearing.
3. It helped us to avoid the postponing the hearings for months and reduce pendency of cases. Now, it takes hours not months to finish hearings. In the perfect world, we disclose documents, so there has to be some kind of compromise.



4. Justice delayed is justice denied. Is that justice which makes you to wait for years? If everything is over or its tool ate or tool costly, justice is deemed to be denied. One cannot spend all the time or money for justice.

### Special Address

**Ms. Rashmi Verma**

IAS (retd.) and Director, IIPI

1. The events like ongoing war between Russia and Ukraine, which is affecting the energy prices, will adversely impact businesses especially MSMEs.
2. Public interest and ethics are inherent elements and crux of insolvency resolution process. This has two components, firstly, objectives and outcomes of decision-making process should be in public interest, and secondly process and procedures adopted by decision makers should be in public interest.
3. In the IBC processes, the responsibility of acting in public interests falls on the shoulders of the IPs, who are required to balance the divergent and often conflicting interests of various stakeholders. Therefore, it is quite fair to call insolvency profession a private profession in public interest which is often compared to medical profession.



4. Then the insolvency professional should comply the principles of natural justice i.e., giving all stakeholders equal opportunity. They should listen to all the stakeholders, take their interest into account and act reasonably in a trustworthy, confidential and

transparent manner in asset management under all the IBC processes.

5. The IPs, therefore, needs to work efficiently, effectively and in a cost-effective manner. IBC has been evolving

### Special Address

**Mr D. R. Chaudhuri**

MD, NeSL

1. During the Covid-19 pandemic, the use of IT tools helped to ensure continuity of businesses. The tools we used during the lockdown may continue to be used effectively in some manner.
2. Digital Document Execution (DDE) platform of NeSL is highly user friendly. The banks are also securing themselves from any eventuality, including the delinquency of the loan on this platform. Now, the Digital Stamp Duty related documents of various state government are also permitted on this platform.
3. All information or documents required for initiation of insolvency proceedings against a person are readily available to the IPs at NeSL platform including documents which are evidence to the creation of debt.

and continues to evolve. It is adapting to the changing economic and social scenarios. The publications of IIIPI on Code of Ethics, Quality Controls and Peer Review will go a long way in ensuring that the conduct of the IPs is ethical, time bound and in the public interest.



4. Banks and financial institutions can go for increased digitization in debt related processes. They may get rid of obsessions for physical signatures on documents and identification which will save their resources from storing the documents and avoid risk of fire and forgery.

### Moderator

**CA. Rahul Madan**

MD-IIIPI

1. In its journey of over five years, the IBC is considered a revolutionary legislation. Its achievements are credible including changing behaviour of promoters, facilitating ease of doing business and other parameters.
2. Of course, there are challenges but at the same time these challenges do provide avenues and potential for future growth and the course correction. In this globalised economy advanced features in the IBC like Cross-Border and Group Insolvency should be backed by international experience.
3. Exchange of knowledge and sharing of experiences provides the way to take this agenda forward. In this context, mutual cooperation and cohesive ecosystem



are the recipes for success. Besides, the role of technology needs to be further strengthened.