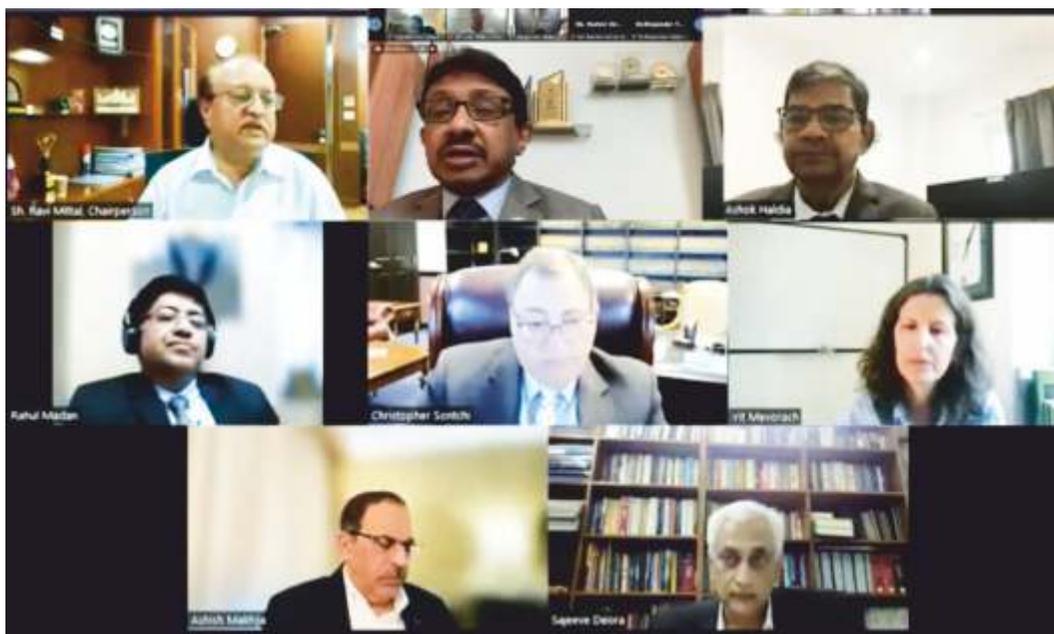


## Key Takeaways from the International Webinar organized by IIIPI jointly with III, USA on June 17, 2022

Indian Institute of Insolvency Professionals of ICAI (IIIPI) jointly with International Insolvency Institute (III), USA organized an International Webinar on “Cross Border Insolvency and Global Lessons for India” from 4.30 PM to 6.30 PM on 17th June 2022. The Inaugural Session of the Webinar was addressed by Shri Ravi Mital, Chairperson, Insolvency and Bankruptcy Board of India (IBBI), as Chief Guest. Besides, CA (Dr.) Debashis Mitra, President, The Institute of Chartered Accountants of India (ICAI), Mr. Evan J. Zucker, Of Counsel, Blank Rome LLP & III NextGen Chairperson (USA) and Dr. Ashok Haldia, Chairman, IIIPI also addressed the Inaugural Session.



The Inaugural Session was followed up with Special Address by Ms. Jaicy Paul, Chief General Manager (SARG), State Bank of India and a Panel Discussion moderated by CA. Sripriya Kumar, Central Council Member, ICAI. The panellists include Justice Christopher Sontchi, Hon'ble Judge US Bankruptcy Court, Delaware; Prof. Irit Mevorach, University of Nottingham, UK; Mr. Eric Danner, Partner, Cohn Reznick, Boston, USA; Mr. Raghupati Mishra, Group CFO, Liberty Steel Group, India; Adv. Ashish Makhija, Insolvency Professional, India; Adv. Sajeev Deora, Insolvency Professional, India. Here we are presenting the key takeaways of the Webinar.



### Welcome and Opening Address

**Dr. Ashok Haldia**

Chairman, Governing Board-IIIPI

1. It is the first ever initiative between IIIPI, the largest IPA in India and III, one of the largest professional bodies in the USA. I hope this initiative would go a long way in having more coordinated and collaborative efforts between the two large economies of the world.
2. IIIPI is the largest IPA in India with around 3,000 professional members. They are presently handling

about 75% cases of corporate debtors in insolvency processes, not only the numbers but also in terms of value as well.

3. IIIPI is a frontline regulator set up under the law. It's a quasi-judicial body and also a professional development body with multiple roles to play in the effective delivery of outcomes and achieving the objectives of the IBC, 2016.
4. With the rapid increase in globalization, cross border trade and investment, the mutual dependence of global economies has increased to a great extent. This is

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evident from the rising number of corporates from the USA having business interests in India and number of Indian corporates having business interests in the USA as well as globally.

5. In India, the IBC, 2016 does provide a cross border insolvency framework but that has hardly been taken recourse to by the government. IBBI has come out with a detailed framework for public comments.
6. This conference would help greatly in learning from the experience in the USA and also globally and help in

developing the cross-border insolvency framework in India. In earlier conferences, we were greatly benefited from insolvency professionals and experts globally.

7. As a preparatory exercise, we are in dialogue with other institutions – the regulatory bodies and insolvency professional bodies in other countries. Besides, we will have to bring in all the participants such as bankers, regulators, judicial authorities, in the Cross Border Insolvency.



**Guest of Honor**  
**CA. (Dr.) Debashis Mitra**  
President, ICAI

1. Today, about 60% of the insolvency professionals in India are members of ICAI.
2. ICAI and IIPI work closely with IBBI in furtherance of insolvency profession, and we take great pride in it.
3. Over the period, IIPI has grown quite well. Most recently, we have publications on quality and peer review mechanism. We have been a very active

participant in the development of the law relating to insolvency.

4. Cross Border Insolvency is a topic which we think has a great future. IIPI is working very hard on this, and it is our great pleasure to have an international audience in this seminar.
5. We will continue to work with SBI, International Insolvency Institute, USA, and most importantly IBBI in ensuring that the insolvency laws are understood by the stakeholders, and we shall do everything possible to promote the insolvency laws worldwide.



**Special Address**  
**Ms. Jaicy Paul,**  
Chief General Manager (SARG),  
State Bank of India

1. In this globalized economy, regulators, lenders, and insolvency professionals (IPs) across the globe are increasingly feeling the imperative need for putting in place an effective legal framework for addressing the issues while dealing with resolution of corporates having liabilities, assets, and operations in more than one jurisdiction.
2. Introduction of IBC has brought in a paradigm shift in the insolvency process in India. The most critical aspect of which is the shift from Debtor in Possession to Creditor in Control regime.
3. In comparison to the insolvency and bankruptcy laws in the USA and the UK, the IBC in India is quite new and evolving. However, the Central Government and IBBI have been very proactive to bring in the required amendments, based on experience and global best

practices, to improve effectiveness of the Code. This has brought change in behaviour of corporate debtors and encouraged a better credit discipline and compliance culture by the borrowers in the country.

4. Several jurisdictions have adopted the UNCITRAL Model Law to address the challenges in resolutions of entities having overseas assets and operations as it provides reciprocity from other jurisdictions. Cross Border Framework allows inclusion of overseas assets and operations of a Corporate Debtor undergoing CIRP which will further enhance value maximization.
5. Indian companies having assets and operations in foreign companies can face insolvency/bankruptcy as per the law of that country. This was witnessed in the case of Jet Airways wherein the bankruptcy process of the company was initiated in Netherland, and a Bankruptcy Administrator was appointed by a Dutch Court much before the CIRP commenced in India in 2019. In this case, NCLAT did a commendable job by ordering joint CIRP.

6. Cross Border Insolvency Framework will increase predictability of investment framework thereby making India an attractive investment destination for foreign investors and creditors.
7. Enactment of standardized Cross Border Insolvency Law along with Group Insolvency Law based on UNCITRAL Model Law, across various jurisdictions will greatly facilitate speedy and effective resolution of corporate debtors.
8. Extension of Cross Border regime to individuals especially Personal Guarantors to Corporate Debtors (PG to CD) will enable lenders to tap into overseas assets of promoters.
9. Adoption of the Model Law by majority of jurisdictions, standardization of provisions to the best possible extent, uniformity in interpretation of the law, and standardization of processes across jurisdictions will greatly enhance acceptability and effectiveness of the IBC, 2016.

### Panel Discussion

1. As India aspires to achieve the targets of \$5 trillion economy and Atma Nirbhar Bharat (Self-Reliant India), Foreign Direct Investment (FDI) is rising. Besides Indian businesses are also going offshore. Thus, Indian economy is getting more and more globally connected.
2. Any such foreign company doing business in India may not have assets in the physical form or real assets in India and vice-versa. In this scenario, we need to provide for an orderly mechanism for resolution of stressed assets, where changes in management and recovery are done in an orderly manner with an objective to recover assets kept overseas and help in dealing with cross border legal issues in a more efficient manner.
3. Foreign representatives will have to be registered with the IBBI with subject to disciplinary proceedings and other requirements. The IBC, 2016 provides high penalty for any wrongful actions.
4. The insolvency of Jet Airways, though involved cross border assets and operations, could not be considered a case study of Cross Border Insolvency as it was only on the periphery of this concept. The potential issues under the Cross Border Insolvency will be (a) Universality Vs. Territoriality and (b) Cooperation between the insolvency laws of different countries. There are instances when even bankruptcy courts in the USA did not recognize the decisions of their UK counterparts.
5. Under Cross Border Insolvency there should be equality for domestic and foreign corporates. Besides, standardization and harmonization of judicial practices across jurisdictions should be done on priority basis.
6. US adopted Model Law in 2006 after making some minor changes in Model Law to suit its legal customs, usage and other needs. Chapter 15 of the United States Bankruptcy Code enables the authorities to recognize Insolvency Proceedings in a foreign country.
7. In the UK, the Model Law was adopted in 2006 but after the USA. It has adopted several concepts and definitions such COMI, reciprocity requirements, coordination, and cooperation. However, the criminal proceedings etc., are kept out of its scope.



**Vote of Thanks**  
**CA. Rahul Madan**  
 MD-IIPI

1. Distress resolution in this highly globalized world requires a consistent, fair, and transparent framework in order to deal with the cross-border issues.
2. Global experiences on the UNCITRAL model law especially in the developed markets like the USA, the UK and other leading economies may hold many lessons for India where a Cross Border Framework is on the horizon.
3. Once the Cross-Border Framework is notified, there would be significant opportunities for IPs and other professionals.
4. Heartfelt gratitude to eminent guests for their words of wisdom!