

## Key Takeaways from Addresses of Eminent Speakers on the 06<sup>th</sup> Foundation Day of IIIPI

IIIPI observed its 06<sup>th</sup> Foundation Day on 25<sup>th</sup> November 2022 by organizing a Webinar on “Challenges & Expectations of Insolvency Profession (Virtual Mode)”. Shri Ravi Mital, Chairperson, Insolvency and Bankruptcy Board of India (IBBI) graced the Webinar as Chief Guest. Smt. Anita Shah Akella, Joint Secretary, Ministry of Corporate Affairs (MCA), Government of India, and Shri. Jayant Kumar Dash, Executive Director, Reserve Bank of India (RBI) were Guests of Honour. On this occasion, two publications of IIIPI – “Background Guidance on Valuation Process Under Insolvency and Bankruptcy Code 2016: Best Practices” and “Report on Best Practices on Individual Insolvency (with reference to Personal Guarantor to CD)” were also released.

This Inaugural Session was followed up with ‘Special Addresses’ and ‘Panel Discussion’ in which eminent personalities shared their perspectives. Hereinbelow, we present highlights from addresses of eminent speakers of this half-day event.



**Welcome and Opening Address**  
**Dr. Ashok Haldia**  
 Chairman, Governing Board-IIIPI

1. Six years are possibly a good period for an institution to establish itself, contribute to its mission and objectives and to engage with the stakeholders. In this context the 6th annual day program has become very important, and we understand the enormous responsibility reposed upon us.
2. The success and effectiveness of IBC depends on how Insolvency Professionals (IPs) work at the grassroot level and are able to generate trust and responsibility. Such responsibility is measured by the number of sick projects being brought back to life, and the quantum of dues the financial creditors are able to realise as a result.
3. As a frontline regulator, IIIPI performs this role in more than one way. While maintaining discipline and ensuring ethical conduct are important objectives, professionals should be able to deliver with excellence, integrity, and efficiency. Excellence, integrity, and efficiency are the hallmarks of the functioning of IIIPI as well.
4. At IIIPI, we are cognizant of the enormous expectations from IPs and provide them continuous professional training, exposure, and orientation.
5. IPs play multi-disciplinary roles such as CEO, negotiator and interface between stakeholders and adjudicating authority, etc. IIIPI organizes Executive Development Program (EDP) across three to five days to ensure managerial aptitude and capability to run the Corporate Debtor as a Going Concern. In these programs the IPs are provided

exposure through senior officials of corporate debtors which were resolved through resolution plans and also through the CEOs of the corporates who have acquired such corporate debtors as successful bidders.

6. With a view to provide international level exposure to IPs, IIPPI has organized programs with various international organizations in which insolvency professionals, regulators, and judges of the UK, the USA, Australia, South Africa, Singapore etc. have participated.
7. IIPPI recently organized two open house sessions for IPs – *first*, with Hon'ble President, NCLT and *second*, with Chairperson, IBBI. In these open house sessions, the IPs shared their issues and challenges. These programs have helped in building trust and confidence to a great extent between the Regulator and IPs.
8. As the Government and Regulator are preparing for IBC 2.0, there are several challenges and new requirements for IPs in terms of Group Insolvency,

Cross Border Insolvency and Pre-Pack. We have decided to constitute a study group to analyze as to why the Pre-Pack could not meet expectations and what should be done to make it a success. We have organized several programs for MSMEs and also prepared publicity materials to create awareness on Pre-Pack.

9. There are lot of expectations from IPs in terms of time take in CIRPs process and value maximization. We have also conducted a study on lower value realization under avoidance transactions, who is responsible for the same and how that can be addressed. The report of this study is being finalized.
10. The two publications of IIPPI being released, “Background Guidance on Valuation Process Under Insolvency and Bankruptcy Code 2016: Best Practices” and “Report on Best Practices on Individual Insolvency (with reference to PG to CD)” are based on the recommendations of respective 'Study Groups' after incorporating suggestions of insolvency professionals and experts.



### Address

**CA. Sripriya Kumar**  
Central Council Member,  
ICAI & Director, IIPPI

1. IBC, 2016 has heralded a new world of debt resolution from 'debtor-in- possession' to 'creditor-in-control'.
2. The Code is primarily centred to achieve two things *firstly*, value maximization and *secondly*, to ensure resolution and recovery in that order as quickly as possible.
3. The success of any legislation depends on two things – what we inherit and what we deliver. IBC seeks to bring out a linear and unified mechanism to approach the Adjudicating Authority and put the Corporate Debtor back on track. The success of any regulatory framework depends on four things – time, people, process, and institution. In this, I would treat the 'time' as first.
4. In comparison to other legislations such as Companies Act, IBC is relatively very young so we cannot draw a final judgement on its success. However, as far as high liquidations are concerned this may be because most of such companies are admitted in insolvency when value of their assets already stand eroded.
5. As per the IBBI data, the PUFEE transactions of

corporate debtors stands about ₹ 2.28 Lac Crore. It is not just the job of IPs but there should be a larger consensus on this issue. The financial creditors need to support the IPs to bring this amount back into the productive economic system.

6. RP has to work like a businessman. He has to believe that it is his company which s/he is trying to resolve and run.
7. We need to take a big leap in technology in terms of how a resolution professional can be supported with access to more data bases related to avoidance transactions and information utility (IU) so that s/he can appraise his work in context. Besides, if CoC takes decisions quickly, and is supportive, the IP would be emboldened.
8. In several judgements the Courts have reiterated the supremacy of 'Commercial Wisdom of the CoC'. It would be better if this 'Commercial Wisdom' is passed on to other institutions including the Resolution Professional.
9. IBBI's linear process of compliance is very important for this Code. The recent amendment on IPs' fee will help ensure professionalism.
10. IIPPI carries out its functions proactively and in timely manner. We organize discussions on various issues/proposals related to IBC which are also apprised to the regulator. I am sure, together we can make a better world and a better institutional framework.



### Guest of Honour

**Shri. Jayant Kumar Dash**

Executive Director

Reserve Bank of India (RBI)

1. The introduction of IBC, 2016 was a watershed event for RBI after various regulatory frameworks on resolution of stressed assets of banks were introduced at different points of time and tweaked from time to time.
2. In 2019, the RBI was tasked with initiation of CIRP for Financial Service Providers (FSPs) regulated by it under Section 227 of the IBC. This framework is now being used very actively.
3. The IPs are the key protagonists even when the supremacy of the CoC is recognized in the CIRP. It is collective responsibility of all the stakeholders to ensure that the outcomes under IBC, far exceed than that during all the previous experiments that RBI has tried.
4. IIIPI has rightly recognized the challenges of RPs such as adherence to timeline, increasing eventualities of liquidation, and ethical conduct aspect of stakeholders among others, which creates the basis of efforts in this direction.
5. The five major points related to timely resolution of a Corporate Debtor are as follows:
  - (a) **Control of Assets of CD:** Control of assets can prevent any deterioration in its economic value. RP can directly ask the details from promoters and if they are unwilling, s/he can approach to Adjudicating Authority (AA). However, when to pursue with promoters and when to pursue with AA? It is an art which can be learnt only by practice. Having industry specific questionnaire will be a good way to reduce the time.
  - (b) **Interim Finance:** If interim finance is available, only then the RP would be able to sustain value and maintain the Corporate Debtor a going concern and also manage the administrative expenses. However, raising interim finance has been difficult due to unwillingness of CoC as well as lenders. To convince the CoC for interim finance, the RP is required to understand the related industry, business model and have a good command on corporate finance. The lenders generally hesitate to extend interim finance despite its seniority status, flexibility, and benefits of classification as standard asset for one year, and eligibility to earn interest for one year in case of liquidation. This unwillingness is primarily due to delays in completion of the CIRP process.
- (c) **Managing Affairs of the Corporate Debtor:** Taking over the assets of the corporate debtor is only the beginning, whereas understanding business model, identifying key managerial process, key stakeholders, organization culture etc., are key to manage it successfully as a going concern. RPs should also be mindful of the financial constraints put up by CoC in hiring professionals for managing the affairs of the Corporate Debtor, which is also crucial to address any dispute.
- (d) **Convening CoC Meetings:** Sometimes successful resolution applicants withdraw after approval of the CoC and/ or Adjudicating Authority which leads to liquidation of the company. RPs should facilitate enough meetings of resolution applicants with CoC to ensure that only fit and proper resolution plans are shortlisted.
- (e) **Understanding limitations:** It is important for the IPs to be abreast of the latest developments in the courts especially those related to the interpretation of the IBC and Regulations. There is a greater onus on the RP to build trust and credibility of the process.
6. Some of the major challenges before the IBC include CoC members initiating independent recovery process against the Corporate Debtor, absence of the framework for Group Insolvency, de-linking of subsidiaries which are already into the insolvency process, litigations against the Corporate Debtor or its group companies and multiplicity of regulators. From the perspective of the RBI, preventing backdoor entry of erstwhile promoters, fast tracking of the audit of avoidance transactions, maintaining transparency are the primary challenges.
7. During resolution process IPs should maintain utmost transparency and host the information on the website of the company. S/he should also ensure that there is no leakage of sensitive information related to the resolution.
8. While the challenges of meeting the expectations of the IBC may appear hydra-headed, concerted efforts of stakeholders with an ethical approach to solve the problems supported by laws and regulations, the desired goals can be achieved. I hope the members of IIIPI will immensely benefit from deliberations in this Webinar.



**Guest of Honour**  
**Smt. Anita Shah Akella,**  
 Joint Secretary  
 Ministry of Corporate Affairs (MCA)  
 Government of India

1. IIPI, as a frontline regulator has been responsible for development and regulation of the insolvency profession. Besides, it has been building the knowledge blocks and capacity of the stakeholders.
2. Insolvency professional is a key pillar of the insolvency ecosystem upon whom rests a lot of responsibilities – effectiveness, timely functioning, and credibility of the entire edifice of the insolvency and bankruptcy resolution process rest on his shoulders. He plays various roles such as Interim Resolution Professional, Resolution Professional, Liquidator and Bankruptcy Trustee.
3. I take this opportunity to congratulate IIPI for six wonderful years of successfully countering the challenges through proactive and dynamic regulatory measures including the challenges that were faced during Covid-19 pandemic. I am glad to note the remarkable contribution of IIPI under the Code.
4. There has been a concern that a lot of the cases are being pulled into liquidation rather than being resolved. It is duty of all the stakeholders to ensure that the company runs as going concern and is resolved amicably within a timeframe. There is need to address the concerns related to delays and improving the realization.
5. There has been concern, expressed on various forums, regarding the conduct of insolvency professionals. This has led to disciplinary proceedings against IPs due to failure to comply with various provisions of the Code and orders of the courts, etc. Adherence to the Code of Ethics of the profession is very important for every professional.
6. We are trying to address the delays at the level of Adjudicating Authorities, but IPs should adhere to time limits prescribed in the Code and ensure that there is no delay from their part. There is a plethora of activities IPs need to perform so they should continuously update and upgrade themselves.
7. IPs should discharge their duties with utmost integrity, objectivity, independence, impartiality, and they should also make honest efforts to maximize the value of Corporate Debtor. IPs should also ensure that the process is run in a fair and objective manner and in the best interest of the stakeholders. While doing so, IPs should also guide their peers which is beneficial for entire ecosystem.
8. IPs should also be abreast of IT skills and new technology for faster resolution of the Corporate Debtor. It is important that we adopt technology and have a case management software in which all the necessary inputs including the 'the way case is flowing' is available on a single platform.
9. We need to make efficient, effective, and preferred legislation to deal with all issues. With the active support of IPEs, IPs, and other stakeholders, we will be able to make Indian insolvency system more robust and efficient.



**Chief Guest**  
**Shri Ravi Mital**  
 Chairperson  
 Insolvency and Bankruptcy  
 Board of India (IBBI)

1. IIPI is the most important organization that works with IBBI. IIPI should become so effective and efficient that IBBI need not to do anything regarding regulation of IPs. IBBI has recently started delegating disciplinary proceedings to IIPI. I wish IIPI grows and become more efficient and transparent organization. In the times to come, we will be happy, if you (IIPI) take over all our work related to IPs, so that we can concentrate our energies on other important matters.
2. Interim Resolution Professional (IRP) is named in the CIRP petition itself but has a little control on delays in its admission. Immediately after admission of the case, the Resolution Professional is expected to strictly follow the timeline prescribed in the Code.
3. Though RPs have little role in delaying the process, they are blamed the most. There is a need for other stakeholders to share the responsibilities of timelines during the insolvency and share the blame. The job of RP is quite difficult because he has maintained the unit as a going concern, here s/he is expected to be a master of all trades.
4. Loss of value and huge haircuts are two major concerns which needs to be addressed.
5. Under IBC, two kinds of valuation of the Corporate



Debtor are conducted – fair value and liquidation value. If you look at the fair value, you will find about 85% of the fair value is preserved during the IBC process. If value of the Corporate Debtor is lost before it is admitted in the CIRP, it will be very difficult to maximize the value. Besides, the value of the asset goes down as time goes by. The resolution is based on the value on the date of bid which cannot be equal to the value of company when it was running with a sound financial status.

6. RPs should be more efficient, as manager, accountants, and lawyers. That is why we have recently allowed Insolvency Professional Entities (IPEs) to become IPs at least for managing bigger CDs.
7. We will have to change the perception of people,

who are out of the system, about the IBC. That can be done only when we are able to counter their doubts with facts. We should tell the system that we have been able to preserve the fair value, etc.

8. Of course, there are problems as we are taking more time than prescribed in the IBC. However, in the earlier regimes it used to take 4 to 5 years.
9. There is a genuine criticism that some RPs are not working in a transparent manner. There is a need to improve transparency in our working, reply to all criticism, be more polite, work with the CoC and resolution applicants in a more coordinated and efficient manner.
10. Behavioural changes are more important for IPs. There are law and regulations but how we change our behaviour, is important.



### Special Address

**Shri. Ashwini Kumar Tewari**  
 Managing Director  
 (Risk, Compliance & SARG)  
 State Bank of India (SBI)

1. IIPCI is playing a very important role as a self-regulatory organization.
2. CoC is largely focussed on the value it can get from the Corporate Debtor. Thus, the IPs' job is not only to run the company as a going concern but also to preserve the value of the company so that it gets a viable resolution plan. There have been instances where promoters try to take out cash and assets of the company.
3. Though the appointment of professionals is cleared by the CoC, it is largely dependent on RPs for appointment of professionals during the CIRP. SBI is preparing broad guidelines on fees of professionals, qualifications etc. for appointment of professionals, which would facilitate the process.
4. Handling large number of creditors is again a challenge. There have been complaints from large operational creditors, which may be large groups including suppliers, government authorities and tax authorities. The operational creditors either do not get anything or they get very less. There is need to define the share of operational creditors including government agencies, in the proceeds obtained from the Resolution Plan.

5. Infrastructure requirement is another contentious issue as the IPs are required to manage multiple offices and sites of the company. This requires a multidisciplinary team of officials.
6. Confidentiality is another sticking issue as sometimes sensitive data come out in media. Besides, transparency, timelines, impartiality, constant vigilance are also very important.
7. Individual IPs can surely hire good professionals to run the show but there is always this challenge of having no fallback. In corporates, a team can handle the case and be made accountable. So far, we have not come across any such complain by banks but given the complexity of the job there may be possibility of missing some deadlines or having suboptimal output. We need some inputs/suggestions on this issue on whether there should be any threshold to handover the cases to IPEs and below that the individual IPs should be engaged so that the individual IPs are not completely wiped out from the system.
8. SBI holds training for CoC members to explain them the need for constant dialogue with the RP, documentation, compliance, and timelines. Committee members should be empowered to take basic decisions if not the critical ones.
9. Personal insolvency is also not taking off because either cases are not being admitted or not moving forward. Therefore, such cases should be conducted alongside the CIRP. Presently, the companies are

sold but personal insolvency cases continue. The bankers find it very difficult because there is no information about the value of the assets, value of the personal guarantee as records are not updated for long time. We look forward for some suggestions and background papers on this issue as well, like one released today by IIIPI.

10. Pre-Packaged Insolvency Resolution Process (PIIRP) of MSMEs is also not taking off as there are just three cases as of now. Here too, some thoughtful

discussion is required.

11. IBC is a living Code primarily due to proactive nature of IBBI. With the active support of various stakeholders, we will be able to face challenges.
12. The role played by IBBI and IIIPI in operationalizing the Code and ensuring thereby recoveries of the banks' debt, is a real national service for bringing the money back in in the economy.



### Special Address

**Mr. Adam Taylor**

Head of Economic and Finance  
(India) FCDO  
The United Kingdom

1. Governments of India and UK are committed to an ambitious roadmap for enhancing our trade and investment relationship by 2030.
2. UK's bilateral trade with India is expected to be over £70 billion by 2023. UK is the sixth largest investor in India while India stands second largest investor in the UK directly supporting 95,000 jobs. UK's financial services exports to India rose from £170 Million in 2015 to £340 Million last year. Thus, when India succeeds, the UK also succeeds.
3. Implementation of IBC, 2016 is a boost to Indian economy. A strong insolvency regime is critical to strong and dynamic economy. This is why the work of IIIPI is so important as a frontline regulator, quasi-judicial body, and the largest Insolvency Professional Agency (IPA) in India. UK is working with India to support reforms and ensuring effective implementation of insolvency regime.

4. At the 09<sup>th</sup> UK- India Economic & Financial Dialogue (EFD) 2017, the UK Chancellor and Indian Finance Minister agreed to share knowledge, best practices, and capacity in insolvency. This collaboration had deepened in the 10<sup>th</sup> and 11<sup>th</sup> Economic & Financial Dialogues respectively in 2020 and 2021. Under this collaboration, the UK government launched a program in 2019 and working closely with Ministry of Corporate Affairs (MCA), IBBI and IIIPI for strengthening India's insolvency regime.
5. In the last three years, this program has now touched 5,000 professionals including IPs, creditors, and regulators. During August 2022 in a program on "Role of Mediation in Insolvency and Bankruptcy" 200 IPs had participated and another workshop in October 2022 was attended by 300 IPs. The fourth year of this program aims to support the MCA, IBBI in strengthening India's insolvency regime, in particular, sharing of best practices on regulatory aspects, building capacity of stakeholders, policy development and developing stressed asset market in India.

## Panel Discussion

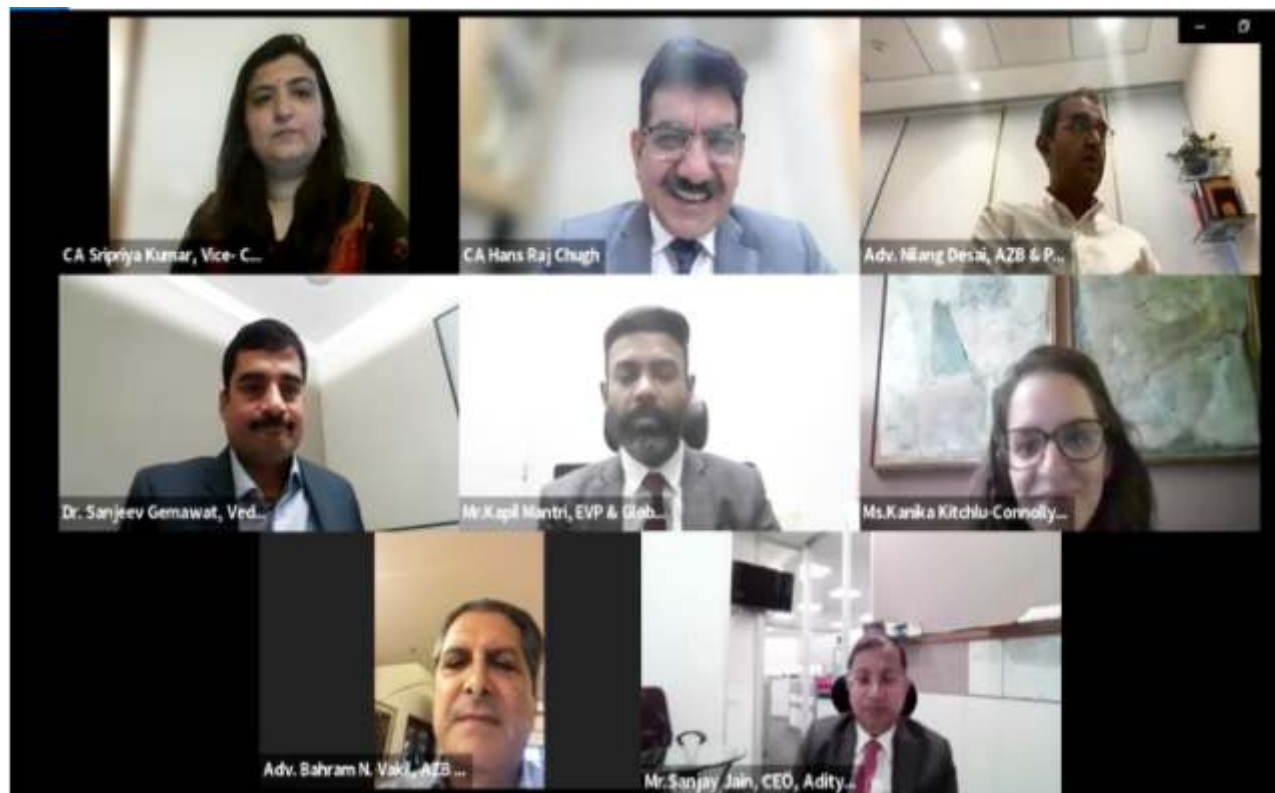
**Moderator:** CA. Hans Raj Chugh, CCM-ICAI and Director-IIIPI

**Panellists:**

- Adv. Bahram N. Vakil, Founding Partner, AZB & Partners
- Mr. Nilang Desai, Senior Partner, AZB & Partners
- Dr. Sanjeev Gemawat, Group General Counsel, Vedanta Group
- CA. Sripriya Kumar, CCM-ICAI and Director-IIIPI
- Ms. Kanika Kitchlu, Connolly, Partner-TLT, LLP, The UK
- Mr. Sanjay Jain, CEO, Aditya Birla ARC Ltd.
- Mr. Kapil Mantri, EVP & Global Head, Corporate Strategy, M&A, JSPL Group.

## Key Takeaways of the Session

1. As per IBBI Newsletter, till September 2022, 23,417 applications for initiation of CIRPs, having underlying default of ₹7.31 lakh crore were resolved before their admission. This demonstrates the change in the Credit Culture brought in by IBC, 2016. Besides, of the 3,946 closed cases, corporate debtors have been rescued in more than half of these cases.
5. Due to the IBC, 2016 borrowers are very cautious of not committing the default. Gone are the days when we used to hear – right businessman is that who



2. IBC has given rise to a new industry viz. distressed financing. Because of the protection provided to the debtors by the IBC, creditors are coming forward to provide funding to promoters of distressed corporate debtors who have good business prospects.
3. RP is expected to be a business manager during the CIRP process, in a fiduciary capacity. However, timely resolution and recoveries are influenced by an entire ecosystem. The success or failure of an RP depends on future relevance of the business, and CD's financial status at the time of commencement of the CIRP, among others.
4. The challenges in resolution of corporate debtors include lack of clear guidelines on Group Insolvency, Cross Border Insolvency, Interim borrows money from banks and learns business from borrowed money.
6. In terms of attracting international investment and giving them confidence, the journey has started. More success stories, if well publicised will generate more interest and more excitement in the market.
7. Some RPs, particularly backed by reputed IPEs are very proactive in marketing the corporate debtors to attract investors by sharing the relevant information creatively. Without right information, it becomes difficult for any bidder to participate in bidding process. The problem is aggravated more if RP is replaced. Sometimes RPs are not able to explain the expectations of CoC to resolution applicants. Besides, last minute changes in clauses EOI,

changes in deadlines, insistence on physical submission of the Resolution Plans etc. also discourage the investors. CoC should proactively promote marketing of the corporate debtor to get the best value from Potential Resolution Applicants (PRAs).

8. ARCs have been in market for over two decades and are governed under SARFAESI Act and RBI Regulations issued from time to time. ARCs have been buying stressed assets and resolving it through various means such as enforcement of their rights, restructuring of dues and settlement with borrowers. SARFAESI Act does not allow ARCs to become Resolution Applicant, but RBI has recently allowed ARCs to submit resolution plans under the IBC, 2016 with some restrictions. Presently about four ARCs are eligible to submit the resolution plan out of which three have not submitted any resolution plan so far.
9. In the pre-Covid period, the recoveries were quite good, and cases were timely resolved. Now, the delays have become major issue in the IBC.
10. Group Insolvency and Cross Border Insolvency often go together across the some of major economies across the world.
11. RPs should appraise and discuss the issues of various stakeholders of the Corporate Debtor such as suppliers and employees etc., so that a comprehensive solution could be chalked out.
12. RPs should discuss with CoC about factors behind failure of the Corporate Debtors, whether it is business failure, financial failure, or malfeasance to enable the CoC to determine the way forward. Insolvency profession is a full-time job. RPs should

have good team and use latest technology while running the process. Negotiation skills are crucial for the RP to earn support of various stakeholders of the CD.

13. Integrity, transparency, and confidence are very important for insolvency regime. The RP should ensure that the entire team particularly the juniors understand the legal framework and related compliance. S/he should have a proper 'Case Management System', build a network of professional, and engage with various stakeholders.
14. There is need to discontinue physical notarization and affidavits. If this process is made online, a lot of time could be saved. There should be an online platform for qualified resolution applicants. There should be some guidelines to ensure consistency in EMD amounts (Earnest Money Depots) as some corporate do not ask for it while some others demand up to ₹ 10 to ₹ 15 crore as EMD.
15. The biggest challenge ARC industry is facing is that banks sell their assets to ARC individually not as consortium. Thus, ARC is not able to figure out time frame for resolution and the resolution strategy. Consequently, they do not get the right value for acquiring their assets. This affects the international investors which are big participants in acquisition of financial assets through ARC.
16. In last couple of months and after the launch of Bad Bank, the banks have triggered Swiss Challenge in six cases involving total amount of ₹18,000 crore. Out of these, counterbids have been submitted in four cases. This is clear evidence that other ARCs have started participating in acquisition of assets. If assets are acquired by ARC, inter-creditor issued are solved faster resulting in early resolution of the CD.



**Vote of Thanks**  
**CA. Rahul Madan,**  
**MD-IIPII**

1. The occasion of 06<sup>th</sup> Annual Day is the time to reflect upon what more can be achieved in future. There is no denying of the challenges looming large but as true professionals it is our job to tackle and overcome them with our best efforts and intentions.

2. Going by wisdom, I can quote “what we think, we become and what we imagine we create!!”. For us to emerge victorious in our endeavours, it is imperative for all pillars under IBC to join forces and work together as we move ahead. In this particular context, the insightful thoughts and lessons expressed by our eminent guests today indeed go a long way in carving the direction for the future.