Key Takeaways from Addresses of Dignitaries in the Conference (Physical) on "Overcoming Emerging Challenges Under IBC – Preparing IPA & IPs" on June 16, 2023

Indian Institute of Insolvency Professionals of ICAI (IIIPI), with an aim to bring various stakeholders on a platform and foster dialogues among them in preparing for IBC 2.0, organized a Conference on "Overcoming Emerging Challenges under IBC – Preparing IPA & IPs" 16th June 2023 at Royal Plaza Hotel, New Delhi.

Shri L. N. Gupta, Hon'ble Member (Technical), NCLT graced the Conference as the Chief Guest while Ms. Anita Shah Akella, Joint Secretary, Ministry of Corporate Affairs (MCA), Shri Ashwini Kumar Tewari, Managing Director (Risk, Compliance & SARG), State Bank of India (SBI), and CA. G. C. Misra, Chairman, Committee on IBC-ICAI were Guests of Honour. Dr. Ashok Haldia, Chairman-IIIPI delivered the Welcome and Opening Address. On this occasion a publication "Roles of Insolvency Professionals Across Insolvency Value Chain From Incipient State Till Post-Resolution Stage" was also released.

The Inaugural Session was followed by Special Address of Dr. Navrang Saini, former Chairperson-IBBI and two panel discussions. Shri Satish K. Marathe, Director, Central Board-RBI delivered the Valedictory Address. The key takeaways from addresses of dignitaries in this program, are presented below:

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

1. It is my pleasure to welcome the august guests on the dais and also the distinguished delegates who are participating in the Conference. This is the first physical conference after a while. Here, I see the cross section of professionals present here and also the cross section of those responsible for guiding and steering IBC, 2016 in the current regime.

2. Today, the debate is not about what the IBC has achieved nor where its success or failures lie but about how to build institutional and individual capacity and preparing ecosystem for the future. That is the real purpose of this conference.

3. The Board of IIIPI has constituted a committee to

look into what is unfolding and how it is unfolding, for instance, Cross Border Insolvency, Individual Insolvency, possible shift from Creditors-in-Control to Lenders-in-Control or a Hybrid Model. Several transformational changes may take place in future.

4. We are bringing several research publications and knowledge-based documents on which we seek the feedback of members for further refinement.

5. We are also working on a case management system to make the entire process, which the RP undertakes, transparent.

6. There are concerns of the Government and other stakeholders about conduct of professionals. It is our duty to address and minimise these, correct the wrong-doers, and move forward for successful implementation of the IBC and consequent economic development of the country.

7. IIIPI has initiated an exercise to draw lessons from various orders of Disciplinary Committee of IBBI, in respect of mistakes committed by IPs. The outcome of this exercise shall be circulated among IPs.

8. IIIPI has implemented a 'Peer Review Mechanism' to ensure standardisation of CIRP process wherein the works of an IP are peer reviewed by an experienced fellow IP. This innovative step shall help standardizing the insolvency profession in India.

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

1. The IBC, enacted in 2016, has been in existence for over six years. It was intended to be an economic legislation that would bring about numerous changes and act as a panacea for all ills. Since its implementation, it has been widely acknowledged and hailed as one of the most significant and comprehensive economic reforms in recent times.

2. The IBC has always risen to the occasion, successfully overcoming challenges. Over the past few years, we have witnessed six amendments to the IBC. The ecosystem is supported by key pillars such as the IBBI (the Regulator), NCLT, NCLAT, and the CoC. Of course, the IPs serve as the fulcrum and backbone of this system. The IBC has facilitated the rescue of 2045 CDs over the years. Out of these, 678 were resolved through resolution plans, 959 through appeal review settlement, and there were 848 withdrawals as of March 2023. Additionally, 2030 CDs were subjected to the liquidation process.

3. We have had several rounds of discussions regarding why there are liquidations are higher rather than resolutions. A complete transformation has taken place due to the constant threat of the CD being subjected to the IBC. This threat implies a potential loss of management for them. IBC has been very effective means of reducing NPA of banks and reclaiming or reorganizing their assets.

4. We are dealing with issues in the admission process of CIRP cases which sometimes runs into 530 days. Once the default is established, NCLTs should admit the CIRP. This way we can reduce the time taken for getting sick companies into admissions. We are trying to bring changes in every step be it at CIRP level or at Liquidation level.

5. The colloquium, held in November 2022 at the behest of the Honourable Prime Minister, had the primary objective of facilitating free and frank interactions among all stakeholders. The purpose was to understand why, despite the provisions laid down in the law, the desired outcome of IBC was not being achieved.

6. Many things can be improved by the behavioral changes in each stakeholder. For instance, banks may file for CIRP within 180 days (about 6 months) of the default. Secondly, it is important to ensure that NCLT admits cases in 14 days. We should think about new innovative ideas and IPs with high professional integrity to gain the faith of system.

7. There is a pressing need to enhance the skills and capabilities of IPs due to the ever-evolving regulatory and legal framework. We encounter new jurisprudence

on a daily basis, making it essential for IPs to stay updated and adapt. Recognizing this requirement, the IBBI introduced the concept of Insolvency Professional Entities (IPEs).

8. Five basic *mantras* can greatly assist IPs, namely "POISE", where P stands for professionalism, O for objectiveness, I for integrity, S for security and confidentiality, and E for efficiency and effectiveness. These guiding principles encompass the essential qualities and standards that IPs should uphold in their professional practice.

9. As an IP, it is crucial to assess and evaluate these risks diligently and take appropriate measures to mitigate them to the fullest extent possible.

10. We are planning to come up with an integrated IBC software which will include a module for case management software to encompass various CIRP related processes. With a single case management software, all relevant information and the complete trail of the case will be readily accessible.

11. The creativity and success of the RP lies in resolving and rescuing rather than liquidating the CD.

12. IBC is a dynamic law. We must continue to rise against evolving challenges by enhancing capacity through continuous professional education.

Guest of Honour
CA. G. C. Misra,
Chairman,
Committee on IBC-ICAI

1. The IBC law is at nascent stage and is still evolving. A lot needs to be done and expectations especially from the IPs are high.

2. To be able to discharge responsibilities with excellence, the technology can play an important and defining role.

3. I congratulate and compliment IIIPI for serving more than 63% of IPs of the country. Presently about 4300 IPs are registered with IBBI out of which about 2700 are being catered by IIIPI.

4. We are certainly waiting for IBC 2.0. In the upcoming Monsoon Session, we are hopeful that some crucial Bills related to the IBC, 2016 will be passed by the Parliament, which will be certainly beneficial to all the stakeholders.

5. All stakeholders need to come together, cooperate in taking the IBC regime towards realizing its avowed objectives.

Guest of Honour
Shri Santosh Kumar Shukla
Executive Director,
Insolvency and Bankruptcy
Board of India (IBBI)

1. India has developed this profession in very short time. IBBI's responsibility is to respond to the market positively and constructively. Market drives the law and not the way round.

2. IBC legislation offers ample opportunities for innovation. But it is crucial that all stakeholders, including regulators and first-line regulators, share the responsibility to fulfil them. The responsibility does not solely rest on one pillar; it extends to all parties involved.

3. The early days of IBC were characterized by a steep learning curve, which was successfully navigated. Initially, IBC lacked specific provisions for withdrawals. However, the judiciary's innovative approach confirmed this and ultimately the law was amended.

4. Within a short period, we have about 10,000 professionals, including members of IPAs and RVOs. The Parliament, the Executive, and the regulators have promptly and effectively responded to the challenges. If we examine the six amendments that have been introduced, all of them were introduced through ordinances. It indicates that

when there are obstacles that cannot be resolved through the market, the Parliament comes forward and provides the legal framework. Besides, each amendment has been examined by the highest judiciary.

5. Undoubtedly, a significant credit should be attributed to the IPs, who are effectively accomplishing their duties. This responsive approach has enabled policymakers to swiftly implement corrective measures. In my opinion, the focus has always been on addressing the market's needs rather than rectifying mistakes.

6. There is a clear need for institutionalization of profession to which IBBI has duly responded with the provisions of Insolvency Professional Entities (IPEs). However, it remains uncertain whether, in future, only institutional professionals will continue to exist in the market. Nonetheless, the requirement for an institutional vision of the system has become evident. The central idea is to bring together talent and foster competency, professionalism, and expertise in handling complex situations.

7. The market is dynamic and has astronomical expectations from you as IPs. The foremost objective should be to bring the dying company back on its feet so that jobs and credit can be saved. Secondly, value maximization should be considered, and the courts prioritize this as well. If you delay, you will lose value, resolution, availability of credit, and jobs. Losing sight of the value means losing all the objectives.

8. The colloquium held last year, included numerous roundtables where we engaged with all of you. We have published several discussion papers, amended regulations, and proposed amendments. All the discussion papers and amendments are available for review. We encourage you to thoroughly read through them and provide your valuable suggestions.

9. We must proactively take on the responsibility of achieving the objectives of the IBC. As the landscape evolves and becomes more complex, there is a need for sectoral exploration and addressing cross-border issues.

10. There is substantial evidence of behavioural change under the IBC regime. I am pleased to share that in the financial year 2022- 2023, we have observed the highest number of resolutions in 180 cases. These resolutions have resulted in the recovery of over ₹51,000 crore for the creditors. This will have a significant long-term impact on the economy. We often face delays that exceed the mandated time frame due to the complexities and excessive litigation involved. I remain optimistic about the IBC framework and the market will find a way to embrace it.

11. I believe that IPAs have done a commendable job, but there is room for improvement. The duties assigned to them under the Code are extensive and go beyond their role as regulators responsible for registration and education. While those are essential functions, they also have a crucial role in ensuring that the resolution process aligns with the Code's objectives.

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

1. It has been proved in the short existence of about 6 to 7 years that IBC is an effective legislation but it's a journey. Many changes are happening in this dynamic law all the time on the basis of feedback from stakeholders, the market requirements and the process of recovery. This is the law where Regulator (IBBI) constantly interacts with the market and continuously finetunes the law through changes.

2. The stakeholders need to meet more often. Though IIIPI and IBBI organize such events at time, the banks also need to interact as they are the key stakeholders. State Bank of India recently organized meeting of Chairman and Members, DRT (Debt Recovery Tribunal), bank officials and IPs. We organize training events and invite IBBI officials, lawyers, IPs, and others. However, as the bank

personnel get transferred, the CoC members change. We are contemplating on how we should improve on this front.

3. Initially, legacy NPAs were very old and did not have any assets or cash reserves to run the corporate debtor. However, some were rescued and are presently being run as successful corporates. In other cases, even liquidation, through a suboptimal solution, was a feasible option. Before IBC, even liquidation through high courts was not an easy task. There were thousands of zombie companies which were floating around. As such, the IBC has done good to clean up by liquidating these companies.

4. However, the new companies, which are admitted under the IBC are not completely dead. The IBBI Chairperson has also emphasised it time and again that they should be brought earlier under the IBBI. Banks also use the IBC to pressurise the borrowers because no borrower wants to lose the company or control on his company. Though not publicised much, this has a good result in terms of recovery before the case is admitted by the NCLT.

5. The delay in admission of cases is however a major challenge before the IBC regime. The law is very much clear that as long as the debt is established, the CIRP application should be admitted. I came to know the law is being amended to clear the doubts and make the process more hassle free.

6. In our bank, we have started to share the information with IU. Hopefully, this will evolve to automate this process. If the duration of admitting the cases is reduced to about 2 to 3 months, it will be a significant achievement. If the CIRP cases are admitted in less time, the borrowers will be under pressure and a lot of resolution and settlement will happen.

7. The Prepack framework has been implemented for MSMEs. This could not succeed for MSMEs, largely because MSMEs directly come to bank instead of following the legal process which is quite costly. Though not much discussed, CIRP cost is an important factor as it is required to be paid upfront as per the waterfall.

8. Interim Finance has been a major concern. There are many reasons for it but the most important is that the banks are wary of infusing money in an insolvent account. There is lack of clarity on responsibility and accountability of the officials who can take such a decision. However, in the USA and the UK, there are class of creditors to fund the company in the interim process and they get a priority of charge. We may give reasonable priority to interim financers. This is very crucial to run the company as going concern.

9. Ethics for the Committee of Creditors is another issue which needs to be addressed and we are looking into it to further refine the process. There was also discussion on IPs getting removed by the CoC. Though we will try to make the process more transparent, but sometimes it becomes inevitable to correct the wrong. If the outcome is not satisfying, the banks should have the right to approach the IBBI. The IBBI in consultation with IPAs should also start a 'Rating System' which should be transparent and displayed on its website.

10. Recovery is the hardest thing to achieve. If the company can be run so, be it and if not, the banks or operational creditors should get the money back to the extent possible in the shortest possible time.

Chief Guest
Shri L. N. Gupta,
Hon'ble Member (Technical), NCLT

1. The achievements made under the IBC in the last seven years have been possible due to the combined efforts of insolvency professionals, IBBI, information utility, the government, and adjudicating authorities. Thanks to the visionary legislation of IBC, over 28,000 cases involving a staggering amount of ₹11.88 lacs crore have been disposed of by the NCLT since its inception in 2016.

2. No other single reform can compare in terms of the amount of money it has released to the economy. Among the total 41,000 cases filed under IBC, more than 28,000 cases have been disposed of as of March 2023, resulting in a disposal rate of over 68%. If we consider the company law matters as well, the disposal rate exceeds 77%. Out of the total 93,000 odd cases filed in NCLT, almost 72,000 cases have been disposed of by March 2023. Therefore, the contribution of IBC to the national economy is unmatched. Consequently, IBC has been rightfully praised as a landmark reform that has enhanced India's image and ranking in the Ease of Doing Business Index.

3. Drawing from my experience as a Member in the AA, I have identified several challenges. Firstly, despite obtaining consent in Form-2 and all parties being present during the hearing and order pronouncement, IRP's have been unable to obtain information regarding the commencement of CIRP. Consequently, the CIRP process has been hindered. We encountered a case where the IRP did not receive any intimation for an entire year. Therefore, I urge IPs to remain vigilant and stay updated on court proceedings to prevent such situations.

4. Another challenge faced by IPs is related to taking control of assets, documents, and information pertaining to CD promptly upon admission of CIRP. When the Board of Management is suspended, they often do not cooperate, necessitating the IPs to invariably file a 19(2) application. However, filing the 19(2) applications should not mark the end of their responsibilities. In fact, every possible effort should be made to ensure control over all the assets and documents of the CD, with an aim to maximize its value.

5. While taking over the assets of the CD, it is equally crucial to initiate a simultaneous process of conducting a true, fair, and expeditious valuation of those assets through registered valuers. This step holds significance not only for maximizing the value of the assets but also in establishing the minimum liquidation value, which has an impact on OCs and dissenting FCs.

6. In some cases when a CD is admitted into CIRP and is a going concern, the operations either lack support or are completely halted. As per Section 20, it is the responsibility of the IP to ensure that CD remains a going concern and all out efforts are needed in this direction.

7. At times, the constitution of the CoC can pose challenges, either due to improper verification or incorrect categorization of claims. It is the responsibility of the IPs to ensure diligent constitution of the CoC through scrutiny and proper categorization of claims. Special care must be taken to avoid including any related party as defined in Section 5(24) of the IBC in the CoC. Instances have arisen where the inclusion of a related party led to the rejection of resolution plans.

8. Another challenge pertains to the disposal of claims, from both OCs and FCs (including home buyers). Timely and proper disposal of claims can effectively minimize the filing of IAs and subsequent litigation. Furthermore, at times resolution plans are submitted without a valid performance guarantee or incomplete 29A affidavits, or incomplete Form-H. The lack of due diligence causes delays in the approval of plans. To expedite the hearing process, they can also include a brief synopsis and a checklist of the necessary enclosures/ requirements for approval of the Resolution Plan.

9. Adhering to timelines is crucial as it enables a faster resolution or liquidation of the corporate debtor, thus preventing erosion of the value of its assets and enabling creditors to recover their dues.

Additionally, IPs face the important challenge of identifying the PUFE transactions for filing under Sections 43, 45, 47, 49, 50, or Section 66 and following them up for early disposal. The approach should be to maximize the value of assets.

10. Sometimes we encounter incomplete or insufficiently prepared applications, which can result in delays or rejections. In some instances of liquidation, we have observed the disposal of valuable assets at extremely low prices under the guise of being non-realizable assets. In my opinion, it is the responsibility of all stakeholders, including IPs, to preserve, safeguard, and maximize the value derived from the assets of the CD.

11. The AA faces the challenge of a constantly increasing number of petitions under different sections of the IBC, as well as a large volume of IAs filed by various parties. In order to prevent wastage of judicial time and resources, IPs should make sincere efforts to avoid frivolous applications wherever possible.

12. AA gives priority to Section 7 cases filed by the banks. A significant number of cases have already been disposed of, and we received a list some time ago that identified 92 such cases. Today, the number of these cases has been reduced to less than 15. However, often the banks are not adequately represented, as their main counsels are unavailable. Instead, proxy counsels appear on their behalf and frequently seek adjournments on various grounds. This results in delays in the disposal.

13. Another related issue is when respondents claim to have recently submitted a One-Time Settlement (OTS) proposal to the bank and is under review. However, when we attempt to verify this information with the opposing side, they lack the necessary information. It would be beneficial if the bank could file an affidavit confirming that an OTS proposal is indeed under consideration. This would allow the case to proceed while granting the bank the option to reinstate the application in the event that the OTS proposal is not approved.

14. Other crucial issues related to CIRP process are delay in communication, taking over the assets of the Corporate Debtor, valuation of assets, running the CD as a Going Concern, Value Maximization, PUFE transaction, frivolous applications and gaming the law which need to be addressed on a priority basis.

15. I congratulate and thank the IIIPI for organizing the conference. This kind of interaction would decrease gap between stakeholders and provide better opportunities.

Special Address

Dr. Navrang Saini,
Former Chairperson-IBBI

1. The IBBI, through a recent amendment, has allowed IPEs to act as IPs. Presently, there are 153 registered IPEs out of which 107 are reportedly active. Besides, we have 4296 IPs as on date. The frameworks related to Cross Border Insolvency, Group Insolvency, Individual Insolvency may be introduced soon by the Government.

2. Use of technology is key to success in implementation of IBC. Therefore, this initiative has been named as IBC 21, just on the lines of MCA 21. After implementation of IBC 21, it may remove systematic bottlenecks and improve the interfaces between various pillars and verticals across the ecosystem. IBC 21 will provide end-to-end technology solution from debt default to implementation of the Resolution Plan. Comprehensive system shall support IPs, generate the alerts at every stage of the process through the Artificial Intelligence (AI) features.

3. IBBI has been very proactive to meet the challenges emerging from to time. As per the recent Discussion Paper dated June 07, 2023, the Regulator has mooted nine new measures to increase – (a) possibility of resolution, (b) the value of the resolution, (c) timely resolution. To achieve these objectives new voting system has been floated, allowing multiple voting to each resolution plan to maximise aggregate recovery and potentially reduce the dominant creditors' influence in the evaluating exercise. It has also been proposed mandatory audit of CIRP cost by a Chartered Accountant (CA) who is also recognized as an IP.

4. There is need of "CIRP Standards" on the lines of the "Accounting Standards" prepared by The Institute of Chartered Accountants of India (ICAI). This should be implemented either by IBBI or IPAs.

5. IPs must look at every paper before signing it or sending it to the authority or filing any application before NCLT or NCLAT. IPs must read thoroughly and follow the process properly but not take decisions on assumptions. IPs should have confidence in taking decisions without being overconfident.

6. IIIPI should compile a compendium of past mistakes committed by IPs drawing reference from DC orders and circulate them among members.

7. Some common mistakes, which has been noted from various orders include, (a) delay in filing various reports especially the progress report in liquidation, (b) excessive CIRP/liquidation cost. (d) professional fee being more than the fee of RP/Liquidator, (e) not following the process of appointment of professionals and advisors. (f) private sale without the approval of AA, (g) non-filing of avoidance (PUFE) transactions (h) non-disclosure of relationships, etc.

8. There should be competition among the IPs for early completion of the assignment. Challenges are there but IPs should strive to convert the inherent challenges into opportunities.

Panel Discussion – I
(Understanding Challenges and Preparing for IBC 2.0)

Chair: CA. G. C. Misra, Chairman, Committee IBC-ICAI

Panellists: ·

- Shri Shiv Anant Shanker, Chief General Manager (CGM)-IBBI
- Shri Nagarajan J., CFO-Bhushan Power & Steel (JSW Group)
- Advocate Anoop Rawat, Senior Partner, Shardul Amarchand Mangaldas & Company
- CA. Sajeve Deora, IP

1. Though a fine line cannot be drawn between generalist and specialist IPs, skills do matter significantly. The panel emphasized the need for IPs to continuously upgrade their skills and adapt to the evolving demands of the profession.

2. IPs are encouraged to indicate their preferred areas of specialization, considering their track record of handling CIRPs for various companies. Selecting an IP for a CIRP was likened to selecting a CEO, necessitating access to relevant information for making informed decisions.

3. The need for clear guidelines regarding payments to foreign operational creditors is much needed, as this often becomes a challenge. The RBI approvals should be streamlined and integrated into the CIRP to expedite payments to foreign operational creditors.

4. RPs should ensure continuity of trade and provide confidence to vendors, allowing RAs to maximize the value by offering additional value for the trade.

5. RP should assist the RA in recovery of receivables and advances made by the CD, which have not been recovered and have been written off. There is a need for a proper handover, to ensure a smooth transition from the RP to the RA.

6. In a recent HC judgment IPs have been treated as public servants. Though the judgment arose from a corruption case, labelling all insolvency professionals as public servants could be problematic. Treating IP's as public servants may deter capable professionals from participating in the resolution process, which could hinder effective resolution efforts.

7. There is need for cross-border coordination and cooperation between courts in the light of the judicial insolvency network guidelines.

8. There is need to develop skill sets and specialization areas within insolvency domain, like certificate courses in turnaround management, fraud, and analytics, etc. There is merit in extending preferential membership rates to international associations and allowing CPE credits for attending foreign programs.

9. The complexity of handling digital assets and the various CBDC's issued by corporate entities worldwide should be understood better.

10. The purpose of proposed amendments in the context of ease of entry and exit by professionals, is to maintain the profession's high standards while creating a more straightforward and accessible process.

11. Maintaining the operational status of assets of CD as observed by applicants during diligence process, can be critical in instilling confidence in investors and can impact bid values. Engaging agents to oversee or run the assets during the resolution process period can be helpful.

12. During the monitoring period, it is expected that no litigations or tax demands arise that may hinder the resolution process. In case any such issues emerge, the RP should be proactive in getting them stalled in the appropriate courts.

13. The issue of credits, such as tax credits, presents a challenge for SRA. Support from the RP in engaging with the relevant department and seeking solutions to preserve these credits would instil further confidence and positively impact the overall value.

14. The involvement of multiple authorities, such as CBI, SFIO, ED, local police, etc., adds to the challenges faced by RP. These proceedings significantly impact the time allotted for CIRP or liquidation, contributing to delays. A survey among professionals would likely reveal the substantial amount of time lost in dealing with these litigations.

15. Settlement possibilities should be explored for avoidance transactions before resorting to filing applications.

Panel Discussion – II
(Preparing Profession, IPAs & IPs)

Chair: Dr. Navrang Saini, Former Chairperson-IBBI

Panellists:

- Shri Manishkumar Chaudhari, CGM-IBBI
- Ms. Jaicy Paul, CGM-IBBI
- Advocate Nipun Singhvi, IP, Manging Partner, NSA Legal
- CA. Anuj Jain, IP

1. It is said that the regulating activities often turns into over-regulation. Generally, economic laws are ambitious, and all the situations are addressed under the regulatory framework. Therefore, while designing the regulatory framework, the Regulator is required to consider multifarious circumstances and balance the interests of all the stakeholders. In the process, the Regulator is required to keep in mind the worst non-complying stakeholder including his/her behavioural aspect. So, the overregulation should be seen in context of adequacy of regulatory framework.

2. The regulations are not intended to punish the professionals but to protect the profession. If the Regulator (IBBI) will not take any action, other institutions or court will do. Of over 4 thousand IPs, disciplinary actions have been taken against about 150 IPs. In most of the cases (about 80%) the disciplinary proceedings do not convert into disciplinary orders. Disciplinary proceedings of IBBI are not a criminal proceeding and complainants are not allowed to plead. However, if there is no provision under the IBBI's regulatory framework and the complainant reaches High Court, the other party will be allowed to plead. Besides, the action/ penalty or punishment will be more severe. So far, in none of its disciplinary orders IBBI has invoked permanent suspension of the IP but only temporary suspension.

3. The best year under IBC in terms of collection was 2018-19 when the banking system collected about ₹ 1.12 trillion which was 54% in terms of recovery percentage. As of today, our average recovery is 32%. There have been only 11 accounts which provided 100% or more recovery. From the perspective of the banks, it is the recovery against the default what matters. However, from the perspective of the Resolution Applicant (RA), it is the value of the assets and the possibility of making it viable. Thus, the perspective of the bidder (RA) is completely different.

4. When the bank (financial creditor) files a CIRP petition against the CD, the promoter/s immediately stop cooperating and fight to retain the ownership of the company. If the admission of CIRP gets delayed for months or years, the possibility of removing assets during pendency of the case becomes very high. Besides, the value deteriorates during the insolvency process and related delays. Thus, the banks also think twice before filing the CIRP petition and try to find out an amicable solution before approaching the NCLT.

5. Multitude of litigation is a big challenge. There are accounts where 50 to 60 more IAs are filed, and the court could not pass orders without deciding all the pending IAs. We need to prepare a 'negative list' which are settled by the court and under which the IAs will not be allowed?

6. The pendency of cases could be minimised by digitalization, enhancing infrastructure, and appointing more judicial and technical members.

7. Group and Cross-Border insolvency pose a major challenge. For instance, two companies of the same group went into CIRP. Both of them received separate resolution plans. If Group Insolvency was permitted, the consolidation of the assets of both the companies would have yielded better value. Underlying issues are, (a) whether or not RP will be same for all companies. (b) composition of CoC, (c) consolidation of assets etc. In Indian context, many companies across sectors are family driven, therefore the Group insolvency becomes critical.

8. If the money has been taken out of India and assets are created abroad, the concerned country does not cooperate. Some agreements for insolvency on the pattern of direct/indirect taxation should be done before bringing in Cross Border Insolvency. Online courts should be made compulsory because the judges of concerned country are required to sit together and decide.

9. The companies which were shut down for years or pending with BIFR have lowered the average recovery under the IBC. If all the companies which were admitted into the CIRP were in operational stage or shut down in very recent past, the recovery would have been higher. Another problem is most of the stakeholders like government agencies, customers, society, and suppliers etc. do not understand the concept of insolvency and the intended benefits.

10. There are two parts of responsibilities bestowed upon a Resolution Professional in the insolvency process – *firstly,* managing the process and acting as a neutral

person or umpire or arbitrator, and *secondly*, keeping the business as a going concern. The second part is more challenging because there is less clarity. Most of the people think that RP replaces the management including CEO or MD of the company which is not true. In big and complex businesses, there are second level, or third level of management and the RP cannot replace CEO or any other professionals. He replaces only the decision-making authority and takes decisions based on some credible scientific data, logical reasoning, and sound advice. However, the day to day running of the business should best be left to the management.

11. CoC, Regulator, and other stakeholders, should understand that RP is not the management, but s/he is the best person to advice the CoC about the interim management of the company. Besides, the CoC should also get involved in major decisions of the CD and the RP should not be replaced merely for executing those decisions if they do not achieve the intended results. There is a need to extend protection to professionals for the work done in good faith. This will encourage good professionals to join the insolvency process.

12. There have been cases, wherein CD was not left with money even to file petitions and pay the fee of lawyers. Thus, the Interim Finance should be divided into two parts – (a) Essential Payments (b) Working Capital. Essential Payments needs to be mentioned in the IBC, as IRPs/RPs are sometimes not paid for months or years. The CoC may have a view on working capital.

13. The CoC wants the RPs to do all the compliances and also to correct all previous non-compliances. This becomes very difficult specially when there is no money left with the CD.

14. The Government officers at ground level have hardly any clarity regarding the resolution. They take actions despite the moratorium and then the only remedy is the court. This consumes a lot of time and resources of the company.

15. The term 'commercial wisdom of CoC' should also be explained in law to avoid its misuse of misinterpretation. RP faces investigations of EOW, Enforcement Directorate (ED), police, and other law enforcement agencies. Information asymmetry is another major challenge before the IPs because the law enforcement agencies sometimes ask for information of 10 years old or more.

16. Being a frontline regulator, IPAs play an important role in terms of developing the profession and insolvency process. IBBI's model byelaws is the minimum requirement but IPAs should devise their own byelaws so that they can move beyond that also.

17. The IPs should strive to become a 'Resolution Expert' rather than a 'process expert' to bring more confidence among creditors which can bring a positive change in the insolvency ecosystem.

18. The Regulator should bring in a mode RFRP to improve standardisation. This is because most of the litigations are based on the process. The problem today is selling the company as going concern, because this is also not standardized the process. These standardizations will help in resolution and selling the CD as going concern.

19. We should introduce (a) Pre-Pack for large corporations, (b) creditors should be classified into various classes along with their rights, (c) roles and responsibilities of monitoring committee should be clarified, and (d) concept of primacy of security should be introduced.

Valedictory Address

Shri Satish K. Marathe,
Director, Central Board
Reserve Bank of India (RBI)

1. It was really an enlightening conference for me also to which I am thankful to the organizers.

2. Borrower and lender relationship has certainly undergone a paradigm shift after 2016. Though many cases have not been heard, the fact that about 20,000 matters are either settled for withdrawn, is an indicative that IBC has started working.

3. During my interaction with IPs, I was told that insolvency took about 10 years in foreign countries to settle down. Here, in India we have achieved a lot and should be happy about it. Just as GST has now started giving results despite some glitches, I believe, IBC will also meet the same fate.

4. The risk management structure is in place in almost all the commercial and public sector big banks for about 18-20 years. It is fairly matured, and the structure has also evolved wonderfully. That's why we see in the current year and also in the last year, the banking industry in India has been at its peak health in terms of capital adequacy, Gross and Net NPAs or provisioning ratios.

5. Smelling stress at an early stage is very important for all banks and particularly where they have taken large exposures. We will have to look into on how the resolution succeeds rather than liquidation.

6. The average amount of default of about significant number of CDs, which were admitted under IBC, either closed or pending in various courts, is about ₹1 crore only. We need to deliberate on this issue as we cannot afford a national law which liquidates businesses for ₹1 crore of default.

7. Public awareness about the IBC needs to be heightened. People in general do not know, what is the IBC? What is its purpose? The general public looks down upon promoters and entrepreneurs.

8. Lastly, I would like to remember Late Shri Arun Jaitley Ji because he was the one person who believed, GST will work! IBC will work! He left us early, but we need to realize his dreams for the larger interest of the country.

Vote of Thanks

Rahul Madan
Managing Director IIIPI

1. We all appreciate the role of IBC which has been acknowledged as an expeditious and unique mechanism to resolve the distress and also promoting ease of doing business (EODB) in the country.

2. Of course, there are many challenges before us. But they should be ideally seen as a way to move ahead rather than anything else. As an evolutionary law, the IBC has been amended six times and more significant changes are expected in near future. We all within the ecosystem need to prepare ourselves proactively rather than reactively. In this backdrop, today's sessions have been quite insightful.

3. We have taken notes of the insightful thoughts of the dignitaries, be it in terms of training on Cross Border dispensation or highlighting issues faced by IPs. We have already taken many steps and more ideas will now be acted upon.