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THE RESOLUTION PROFESSIONAL

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

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

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PREPARING FOR IBC 2.0

ABOUT IIIPI

The Insolvency and Bankruptcy Code, 2016 (Code) provides that no entity shall carry on its business as an Insolvency Professional Agency (IPA) under this Code and enrol Insolvency Professionals (IPs) as its members except under and in accordance with a certificate of registration issued in this behalf by the Insolvency and Bankruptcy Board of India (IBBI).

Against this backdrop of the Code and the IBBI (Insolvency Professional Agencies) Regulation, 2016 (IPA Regulation), The Institute of Chartered Accountants of India (ICAI) formed Indian Institute of Insolvency Professionals of ICAI (IIIPI), a Section 8 company to enrol and regulate IPs as its members in accordance with the Code read with its Regulations. The Company was incorporated on 25th November 2016.

IIIPI is the first Insolvency Professional Agency (IPA) of India registered with IBBI. The certificate of registration was handed over to the agency by the then Hon'ble Minister of Finance Late Shri Arun Jaitley on 28th November 2016.

OUR VISION

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

STRATEGIC PRIORITIES

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

CONTENTS

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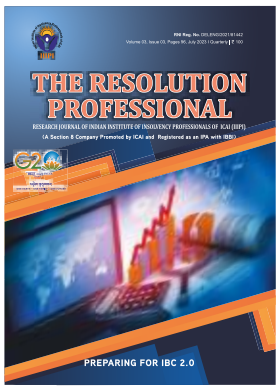
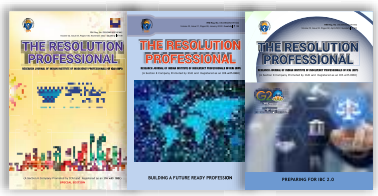


JULY 2023
IN THIS ISSUE...

CONTENTS



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Message from Chairman, Editorial Board

CA. Aniket Sunil Talati
President, ICAI
Chairman, Editorial Board-IIIPI

Greetings!

It is my great privilege to reach out to you in the 75th year of The Institute of Chartered Accountants of India (ICAI). In over seven decades of its glorious history, the ICAI has immensely contributed to the economic development of India by providing a robust framework for financial reporting of public finance, industrialization, and businesses across sectors.

The ICAI, besides providing professional inputs in policy formulation, has also been a reliable partner in economic reforms and has shouldered responsibilities in national and public interest. In line with this commitment, the ICAI constituted Indian Institute of Insolvency Professional of ICAI (IIIPI) on November 25, 2016, which has been the largest Insolvency Professional Agency (IPA) of India since its inception. As per the recent data of Insolvency and Bankruptcy Board of India (IBBI), over 55% Insolvency Professional (IPs) in India are members of ICAI. Furthermore, about 63% of country's total IPs who possess Authorization for Assignment (AFA) are members of IIIPI. Besides, several members of ICAI have worked/ are working as Member Technical in NCLTs/NCLATs. This reveals the contribution of ICAI in successful implementation of the Insolvency and Bankruptcy Code, 2016 (IBC).

A vibrant economy plays a crucial role in successful resolution of financially stressed corporates and realization by creditors, which is reflected in the latest data released by IBBI. In FY 2022-23, a record 180 corporate debtors (CDs) were rescued through resolution plans in which creditors realized ₹51,424.87 crores that is 86% higher than total realization in FY 2020-21 and second highest since 2016. It is also worthwhile to mention that about 37% of the companies resolved through resolution plans since the commencement of the IBC in 2016, were either defunct or pending with BIFR before their admission to Corporate Insolvency Resolution Process (CIRP). Besides providing the most number of professionals, IIIPI has contributed immensely to the development of the profession by providing framework for quality control, peer review policy, code of ethics, research-based inputs to policy makers, knowledge enhancement. IIIPI has also marked a lead in academic and professional collaborations with prestigious institutions for benefit of the insolvency profession such as Indian Institute of Management (IIMA), National Law University (NLU), Delhi and INSOL International, UK.

In addition to providing analysis of various theoretical aspects of insolvency ecosystem through in-depth articles, *The Resolution Professional* also publishes 'case studies' of resolution and liquidation cases across sectors and Interview/ Address of eminent personalities associated with the insolvency ecosystem which provide practical know how of insolvency processes to fellow insolvency professionals thereby helping them in deciphering complex issues and finding out feasible solutions.

I hope this edition of *The Resolution Professional* will benefit you all.

Wish you happy reading.

CA. Aniket S. Talati
President, ICAI
Director & Chairman, Editorial Board-IIIPI

Message from Chairman, Governing Board-IIIPI

Dr. Ashok Haldia
Chairman, Governing Board- IIIPI

Dear Member,

Insolvency reform is crucial for economic growth, which is directly related to the health of the banking institutions, because this is the widely accepted way to allay risks from highly indebted corporate sectors. In its latest report, the World Bank has predicted the global growth to decelerate from 3.1% in 2022 to 2.1% in 2023. During the same period, the GDP growth of advanced economies (United States, Japan, and Euro Area) has also been projected to decrease from 2.6% in 2022 to 0.7% in 2023 while Indian economy is expected to remain above 6.3% till 2025. The rising trend of Indian economy shows the scope, and the role India will be playing in the global economy in near future. In this scenario the reforms in Indian insolvency ecosystem have become imminent.

Indian Institute of Insolvency Professionals of ICAI (IIIPI), with a view to bring various stakeholders on a platform and create an ambiance for reform in IBC 2016, organized a Conference on the topic "Overcoming Emerging Challenges under IBC – Preparing IPA & IPs" through physical mode in New Delhi on June 16, 2023. Shri LN Gupta, Hon'ble Member (Technical) NCLT-Delhi graced the occasion as Chief Guest. Ms. Anita Shah Akella, Joint Secretary-Ministry of Corporate Affairs (MCA), Shri Santosh Kumar Shukla, Executive Director-IBBI, and Shri Ashwini Kumar Tiwari, MD-SBI were present as Guests of Honour and shared their views with corporate representatives, lawyers, and insolvency professionals on various aspects of the IBC 2.0 including Cross Broder Insolvency, Group Insolvency, Pre-Pack Insolvency, Individual Insolvency, and also the issues related to various sectors of the economy. The experts also discussed and deliberated on amendments proposed by IBBI and also the possible solutions for the challenges before the insolvency profession in near future. For wider dissemination of this intellectual discourse and bring more and more brains on board as change makers, we have published the key takeaways of the Conference in this edition of The Resolution Professional.

Initiatives by IBBI

Arranging information from promoters and management of the corporate debtor has been a tedious task for Insolvency Resolution Professional/ Resolution Professional (IRP/RP). The IBBI in a Discussion Paper released on June 7, 2023, has proposed that if the CD is unable to provide the list of assets and records, the same shall be prepared by the IRP/RP at the time of taking custody of assets and records. The list of assets and records shall be signed by the parties present and by at least two individuals who have witnessed the act of taking control and custody over such assets and records. Besides, reforms proposed by IBBI include provision of favourable voting on more than one Resolution Plans with an elimination and tie-breaker formula, timeline for submission of consolidated claims, increasing fee and responsibilities of Authorised Representatives, recording relevant minutes of CoC meeting, audit Insolvency Resolution Process Cost (IRPC) and addressing the aspects of limitation etc. The IBBI, in another 'Discussion Paper' released on the same date has proposed to revise PREC curriculum with a provision of exit assessment exam, and introduction of a straight-through approach for both enrolment and registration process.

After deliberations on these issues, we hope the final outcome will strengthen the insolvency framework in

India and will be a big step towards realizing the objectives of IBC 2.0.

Enhancing Professionalism

Insolvency Professionals (IPs) play a pivotal role in the insolvency ecosystem and also key stakeholders of all reforms. As they execute insolvency processes on the ground, opening avenues for enhancement in their professional aura has always been a priority for IIIPI. In furthering this objective, IIIPI recently secured the associate membership of INSOL International, United Kingdom (UK) and launched a scheme for 'Co-membership of INSOL International, UK' for its professional members at much concessional terms. With this association, IIIPI will be represented through INSOL International on the global stage for law reform and best practice developments. This would also help our IPs in building their capacity and capabilities, especially when Cross Border Insolvency is on anvil in India. So far, IIIPI has facilitated about 330 IPs to become individual members of INSOL International, UK. This initiative will go a long way in making Indian IPs at par with the best insolvency/bankruptcy professionals of the world and also open new avenues for them in the global market.

Capacity Building

Capacity building is one of the important roles of IIIPI. We have been organizing various programs solely and also in association with various organizations of national and international repute to provide our professional members a platform for exchange of ideas and practical experiences.

So far, IIIPI has constituted 16 Study Groups out of which the Reports of 13 Study Groups have been published and are available on IIIPI website. Further, a publication titled "Roles of Insolvency Professionals Across Insolvency Value Chain From Incipient State Till Post-Resolution Stage" has been released recently. As extension of study on 'Avoidance Transactions', templates for seeking information from lenders and submitting application to AA are also have been finalized recently. Presently, following Study Groups are under progress:

- Case Management system-IT infrastructure for IPs.
- Usage of Taxonomy/XBRL as Technology Solution for IBC Processes
- Contribution of IPs in timebound Resolution under IBC
- Analyzing reasons for delay during CIRP through Case Studies

Moreover, under the IIIPI Research Project Scheme, three research projects approved earlier are proceeding as per schedule. Further, two more studies have been approved recently.

After IIIPI recently entered into MoU with IIM, Ahmedabad, the 1st batch of residential "Management Development Program" (5 Days) at IIM Ahmedabad Campus, has been announced which shall be held from 20th to 24th September 2023.

More MoUs are being considered for capacity building training and research with leading institutions like Indian Institute of Corporate Affairs (IICA) and Indian Institute of Management (IIM), Bangalore, respectively.

As a leading IPA of the country, IIIPI has taken several out of the box initiatives for enhancing professionalism among its professional members. The Peer Review and Mentorship Programmes of IIIPI have received accolated across stakeholders for their role in standardization and improving the quality of insolvency profession. The members are encouraged to actively participate in these initiatives. Like the previous edition, the present edition of The Resolution Professional has an interview and a case study to provide a practical understanding of various aspects of the insolvency profession to the readers. I am thankful to Shri Natarajan Sundar, MD& CEO of NARCL for carving out time from his busy schedule for the interview.

I hope you will enjoy reading this edition of the journal.

Wish you all the best.

Dr. Ashok Haldia
Chairman, Governing Board-IIIPI

From Editor's Desk

Dear Member,

The insolvency ecosystem in India is on the cusp of shifting to next orbit of its evolution. It would be wise to prepare ourselves in advance rather than reacting to such changes and consequent challenges. Following this vision, IIIPI organized a conference (physical) on "Overcoming Emerging Challenges Under IBC – Preparing IPA & IPs" on June 16, 2023, whereby eminent dignitaries from MCA, IBBI, RBI, ICAI, and experts across bankers, lawyers, and insolvency professionals etc., shared their wisdom. Besides, through various studies, we keep working towards building robust insolvency ecosystem, seeking feedback from concerned stakeholders.

The present edition of *The Resolution Professional* starts with an Exclusive Interview of Shri Natarajan Sundar, MD & CEO, National Asset Reconstruction Company Ltd. (NARCL) in which he has shared his views on various aspects of the stressed assets and the role of NARCL in addressing NPAs of the Indian banking system.

We have also carried the "Key Takeaways from Addresses of Dignitaries in the Conference (Physical) on "Overcoming Emerging Challenges Under IBC – Preparing IPA & IPs" on June 16, 2023. 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, Shri Ashwini Kumar Tewari, Managing Director (Risk, Compliance & SARG), State Bank of India, 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 up with Special Address by Dr. Navrang Saini, Former Chairperson IBBI and two technical sessions in which experts across disciplinary and professional backgrounds shared their experiences.

This is followed up with "Key Takeaways from Addresses of Dignitaries in the Webinar on 'Interaction with CFOs of CDs & Successful Resolution Applicants' held on April 28, 2023. In this Webinar, Dr. Sanjeev Gemawat, Group Chief Counsel, Vedanta Group delivered the special address which was followed up with a technical session in which experts shared their practical knowledge and experiences on various aspects, given the context.

Moreover, this edition has five research articles and Case Study on 'Hindustan Photo Films Manufacturing Company Limited'. In the opening article 'Interplay between the Insolvency and Bankruptcy Code, 2016 and Income Tax Act, 1961', the author examines the interrelated provisions of both the legislations critical in exercising the responsibilities of an IRP/RP/liquidator. The second article 'Analysis of Taxability of Loan Waiver Transactions after Amendments in Finance Act, 2023' analyses the impact of the Finance Act, 2023 on taxability of haircuts under the IBC. In the third article 'Jurisprudence of IBC on Advance Payment by Creditor to Corporate Debtor', the author presents a thorough analysis on whether the advance payment given by the Creditor to the Corporate Debtor is a Financial Debt or Operational Debt? The fourth article, 'Why both Protection and Dissemination of Information under IBC is Critical for Successful Insolvency Resolution?' analyses the importance of reliable information at various stages of IBC processes, highlights loopholes and makes recommendations for preparing a robust information sharing mechanism. In the last article 'Data Driven IBC' the author makes a point for comprehensive data storage and exchange protocol in order to ensure a single source of truth for AI based algorithms to work.

Besides, the journal also has its regular features, i.e., Legal Framework, IBC Case Laws, IBC News, Know Your Ethics (Peer Review Policy), IIIPI News, IIIPI's Publications, Media Coverage, Services, Help Us to Serve You Better, and Crossword.

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

Wish you a happy reading.

Editor

Setting up of NARCL-IDRCL platform is a major reform to address the large NPAs of the Indian Banking system: Shri Natarajan Sundar, MD&CEO, NARCL

Once entire debt is aggregated at NARCL platform, the interest from market participant in forthcoming resolution is high as investors do not want to invest their time with too many players resulting in an inordinate delay.

Shri Natarajan Sundar

Managing Director & Chief Executive Officer (MD&CEO)
National Asset Reconstruction Company Ltd. (NARCL)

Shri Natarajan Sundar is the MD & CEO of NARCL, which been set up with a strategic initiative to clean up the legacy stressed assets with an exposure of ₹500 crore and above in the Indian Banking system.

Mr. Sundar is a veteran banker and had an extensive experience at State Bank of India (SBI). During his stint at SBI, Mr. Sundar held the position of Deputy Managing Director (DMD) and was working as Chief Credit Officer for the Bank. Prior to taking the responsibilities of DMD, Mr. Sundar was the Chief General Manager (CGM) in Credit Review Department (June 2018 to June 2020) and Project Finance SBU (June 2016 to June 2018). He carries over three decades of experience in the banking sector spanning across Corporate & Wholesale Banking, Corporate Credit, International Banking, Project Finance, etc.

In an Exclusive Interview with IIIPI for The Resolution Professional, Shri Sundar shared views on various aspects of stressed assets market in India and the role, responsibilities, and strategy of NARCL in resolving stressed assets in the country. ***Read on to know more....***

IIIPI: After over six years since inception of IBC, 2016 the outcome has been encouraging vis-à- vis the earlier regimes, though a lot more needs to be done for making the regime robust. What are your views on such outcomes with an eye on the future?

Shri Sundar: Some of the large operating assets have seen good resolution under the IBC. The Code has given due weightage to Creditors in Control process for resolution. Average recovery through IBC has been reported at 36% in FY23 compared to 23% in FY22 and a mere 17% in FY21. Through the realisation has improved recently it is still much lower than 54% recovery in FY18 and FY19, the first two years after the law came into force. The long-term recovery average is estimated at 26% as the time taken for resolution has increased from 370 days to 831 days. This has led to further deterioration in the value of the assets leading to an even lower recovery for non-operating assets under IBC. The Prospective Resolution Applicants are making their offers at steep discount to the fair value of the Corporate Debtor (CD) assets especially for non-operating assets resulting in major haircuts for the creditors. Also, the process is being stalled by some of the stakeholders under different pretexts, which are not entirely desirable.

Following changes need to be brought to fast-track resolution under IBC:

Mandatory admission of Section 7 applications, once default is established: An amendment to Section 7 of the IBC, to clarify that while considering an application for initiation of CIRP by financial creditors, the Adjudicating Authority (AA) is only required to be satisfied about the proof of debt and the occurrence of a default. The IBC norms says that a case cannot be rejected if the tribunal is satisfied with these two factors.

IBC rule could be modified so that any plea filed by FCs should be mandatorily admitted if these two conditions are met.

"IBC rule could be modified so that any plea filed by FCs should be mandatorily admitted if these two conditions (proof of debt and occurrence of a default) are met."

There should be no interventions from other courts preventing admission of CD into CIRP. For instance, there is a recent High Court order that granted stay on admission of steel company for insolvency process. As a result, the process gets delayed, and the resolution takes over two to three years. No such intervention be allowed to achieve timely resolution of stressed assets.

There is a need to set a deadline after which the promoters should not be allowed to submit unsolicited Resolution Plan under Section 12A. This will expedite the resolution process because often promoters submit a revised Resolution Plan after final plans from all the resolution applicants are shared with lenders and likely to be put for vote. This leads to litigation and delays in completion of CIRP.

IIIPI: Asset reconstruction companies envisaged under SARFAESI Act 2002 have played a critical role in recovering banking dues gone bad. How has been your assessment of the ARCs' (Asset Reconstruction Companies) journey so far and outcomes under SARFAESI?

Shri Sundar: The ARC journey has been evolving in nature. It started with purely fee-based model to 5:95 Cash:SR structure back in 2003-2004. The idea was to free up the bandwidth of the banking system and create a specialised entity by focusing only on resolution and recovery from the stressed accounts.

The integral attractiveness of structured trades (Cash + SR basis) was that Upside in the form of additional recovery over and above the purchase consideration to be shared with the lenders in the proportion of SRs being held by the seller and the ARC in the trust in a transparent manner.

SARFAESI was an enabling tool for ARCs to fast track the recovery compared to long drawn resolution process under BIFR and DRT.

The ARCs bid aggressively with favourable terms in the form of higher management fee and recovery incentive to recover its 5% investment and make sizable returns on the same. But this approach led to substantial under-recovery for the lenders and write-down of the SRs being held by them.

RBI enhanced the investment of ARC from 5% to 15% so that the ARCs can focus more on recovery as its contribution of the purchase consideration increased substantially. This led to rationalising of pricing of the assets to some extent.

The ARCs saw an opportunity to build larger AUMs and continued to bid aggressively with higher management fee and recovery fee/incentive The structured trades continued in a major way until 2018.

On the other hand, RBI discontinued all the regulatory forbearance under various schemes of CDR, SDR, S4A, JLF and 5:25 for restructuring of defaulted loans in Feb 2018. These were replaced by a single scheme of restructuring as per extant RBI circular dated Feb 2018 that was further replaced in Jun 2019. Thus, in the current market, the prominent modes of resolution are restructuring as per Jun 19' RBI circular, OTS/assignment of debt and resolution under the IBC framework.

2019 onwards banks moved towards all cash sale of assets as there was no relaxation in the provisioning norms. Also, the banks believed that upfront cash was the most credible source of recovery viz-a-viz the future cash flows that were contingent in nature. With higher provisioning coverage ratio, banks were more inclined towards upfront settlement.

"Considering the limited availability of capital with existing ARCs viz-a-viz the investment requirement for large NPA portfolio of banks, structured trades (on 15:85 Cash: SR basis) is best suited for resolution of large NPAs in the industry."

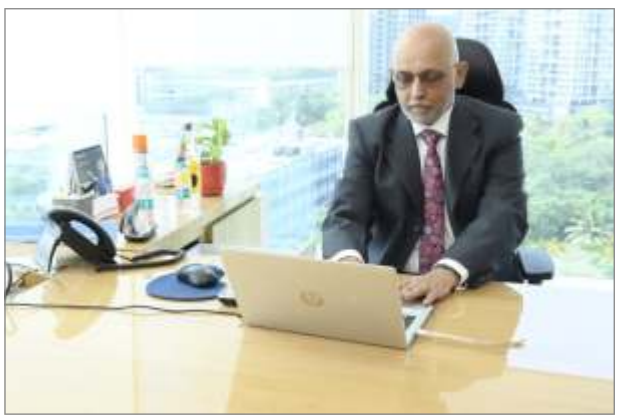
Considering the limited availability of capital with existing ARCs viz-a-viz the investment requirement for large NPA portfolio of banks, structured trades (on 15:85 Cash: SR basis) is best suited for resolution of large NPAs in the industry.

As the banks moved from 5:95 trades to all cash trades, the SARFAESI tool in the hands of banks/ FI and ARCs has been very useful although there have been attempts to derail the process by resorting to legal means by finding loopholes in charge creation by the lender. Overall, SARFAESI acts as a device for lenders to monetise tangible hard assets through SARFAESI to the extent

possible or enter into restructuring with the borrower at appropriate terms with market price linked recovery assumptions for the hard assets.

IIIPI: The NARCL, more popularly known as Bad bank, along with IDRCL have been created to resolve stress in the Indian banking. What is the vision behind this step? Also, what are the immediate priorities for NARCL?

Shri Sundar: As the banks moved towards cash deals only, the immediate concern was that only a few ARCs in the country were having capital to acquire large, distressed assets. Moreover, due to high cost of funding and uncertainties involved, the existing ARCs in the market were only keen to bid for the operational/ cash generating assets. The pricing for underutilised/ non- operational/ stuck assets was minimalistic or there were no bidders for the same.



Pricing these assets could be difficult as value unlock would happen after providing the requisite handholding to the under -utilised assets. Further the existing litigations are required to be perused by the stakeholders in a cohesive manner. The key enabling factor would be to aggregate debt in one single platform and work alongside with the borrower/investors, regulators/ authority, and the lenders to strike a balance and resolve the complex situation in a win-win proposition for all the stakeholders.

Hence at a mutually agreed market-based pricing, there could be a possibility for upside to the lenders once critical issues are addressed. Moreover, the downside risk is completely protected for the lenders. Thus, sale to a credible ARC on a 15:85 basis is a most optimum strategy for resolution and value maximisation from such assets.

"Thus, sale to a credible ARC on a 15:85 basis is a most optimum strategy for resolution and value maximisation from such assets."

To resolve these issues, NARCL and IDRCL were formed to facilitate the banking industry to resolve large legacy sticky assets, where there was no market making/ price discovery happening.

For example, in Infra sector for EPC and Road assets, NARCL/ IDRCL can aggregate a portfolio of stuck and litigated projects. It can subsequently pursue the long-standing arbitration awards and claims and fast track the realisation from the contingent receivables by active participation in the conciliation proceedings and investing for legal expenses wherever needed.

GoI has created the NARCL/ IDRCL platform which is owned by the Banks and facilitated it by providing the GoI guarantee for SRs issued by NARCL so that the selling lenders can take decision to aggregate the asset at NARCL in a timebound manner.

Lastly, the vision to create NARCL/ IDRCL was to free up the bandwidth of lenders and allow them to focus on core activity of increasing credit to fuel the growth levers of the economy and aggregate all the large NPAs exceeding ₹500 Cr to achieve timely resolution in a completely transparent manner.

IIIPI: Broadly speaking, what would be the modus operandi of NARCL and IDRCL, in resolving distressed assets with particular reference to dispensation under IBC being available as an alternative?

Shri Sundar: NARCL after due diligence and after obtaining a price advisory from IDRCL, makes a binding offer to acquire the large ticket NPAs from the banks. Basis the binding offer made by NARCL; a Swiss Challenge process is run to do a fair market price discovery of the asset. Once the assets are acquired, IDRCL, an exclusive advisor is entrusted with the responsibility of day-to- day activities for timely resolution of the asset.

The biggest advantage of NARCL platform is majority debt aggregation (more than 75% debt share) and implementation of the best suited resolution strategy to maximise the value for the Corporate Debtor (CD) as well as for all the stakeholders.

Key strategies to be adopted by NARCL/ IDRCL for asset resolution include:

a) Restructuring with existing borrower under extant RBI guidelines,

b) Monetization of assets through SARFAESI and other modes,

c) Resolution under IBC through implementation of resolution plan as per the CIRP/ Liquidation.

NARCL has been formed to resolve the legacy assets through various means and recovery through liquidation is the last option if other options fail.

"The biggest advantage of NARCL platform is majority debt aggregation (more than 75% debt share) and implementation of the best suited resolution strategy to maximise the value for the Corporate Debtor (CD) as well as for all the stakeholders."

It may be mentioned that NARCL (along with its exclusive advisor IDRCL) could contemplate IBC as one of the tools for resolution of the sticky assets. The range of other strategies for asset resolution by NARCL/ IDRCL is much wider as compared to resolution under IBC.

There are more flexibilities while restructuring a distressed account as compared to the lenders. For example, restructuring with the existing sponsors by ARCs would not mandatorily require an investment grade rating. Hence, restructuring can be explored such that borrower interest can be aligned to the extent possible to maximise the recovery for the lenders.

Also, since more than 75% of debt would be aggregated by NARCL, implementation of any resolution strategy might be much faster that would protect the economic value of the asset.

IIIPI: ARCs have been playing role as members of CoC from the inception of IBC. Further, recently RBI has allowed ARCs to participate even as Resolution Applicant under IBC processes, subject to certain conditions. How has this recent development changed the dynamics of ARCs' operations?

Shri Sundar: ARCs have normally played an active role in the resolution of assets by being a member of the CoC as a lender although at time with minimal debt share of the CoC.

The strength of the ARC lies in its expertise in financial turnaround of the asset. This aspect is achieved by implementing case specific financial restructuring to align the repayments with cashflows and effective monitoring on regular basis.

Considering the expertise in resolution of stressed assets, RBI has allowed ARCs to act a Resolution Applicant (RA). Acting as a RA would entail significantly much higher responsibilities to achieve a time bound resolution of an account. At the same time, it would provide ARC with more decision-making powers in the operational matters of the CD.

However, for various core activities of the CD, it would engage with the experts in the requisite areas of operations. The ARC might continue to run the business till the time it starts generating positive free cash flows and subsequently monetize the asset at higher enterprise valuation to facilitate its exit.

This will still require a huge set up of operational, legal, audit/ tax and compliance experts. In the present Eco system, as such not many ARCs are eligible to act as a RA. Those who are eligible would devise their well thought out strategy to participate in the IBC process as a RA.

In my opinion, ARCs would be very selective & bid cautiously for an asset under IBC to become as a Resolution Applicant.

NARCL along with IDRCL has recently submitted a consolidated resolution plan as a RA for two large NBFC accounts. After making a detailed assessment of the opportunity, we found that there was lot of synergies in taking up the account for resolution as a RA and submitted our resolution plan. NARCL plan has been voted by the COC as a successful resolution plan. Overall, we believe

> **Overall, we believe that by allowing ARCs to participate as RA will increase the competition amongst the participants and deepen the market.**

that by allowing ARCs to participate as RA will increase the competition amongst the participants and deepen the market. It would facilitate in maximisation of the value of the underlying assets and consequent better realisation for all the existing stakeholders.

IIIPI: The market for stress resolution in India is yet to gain depth. What sort of guidance and expectations, would you like to share with market participants and stakeholders in this regard?

Shri Sundar: GoI as well as the Regulators (RBI and SEBI) are continuously making concentrated efforts to provide enablers for expanding the market for distressed assets. With the reforms carried out over the due course of time, international players are also getting attracted to participate in Indian distressed asset market.

Setting up of NARCL -IDRCL platform is a major reform to address the large NPAs of the Indian Banking system. To provide the confidence to the lenders & subsequently to the investors, GoI has provided guarantee for the assets to be acquired by NARCL.

Since NARCL is participating in all type of sticky assets, it has provided a good market and price discovery for the lenders. In many assets, with NARCL participation, there is a substantial improvement in the acquisition price.

Once entire debt is aggregated at NARCL platform, the interest from market participant in forthcoming resolution is high as investors do not want to invest their time with too many players resulting in an inordinate delay.

Some procedural/ regulatory issues need to be resolved fast to make the system more efficient. For example, if issues like attachment of assets by agencies, check on prolonged frivolous litigations etc are addressed, it would help in deepening of the market.

> **Since NARCL is participating in all type of sticky assets, it has provided a good market and price discovery for the lenders.**

I am quite confident that NARCL-IDRCL would make a positive impact in achieving meaningful resolution of large sticky assets. Once a large chuck of assets is aggregated, NARCL would provide a good platform for development of secondary market for trading of SRs.

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.

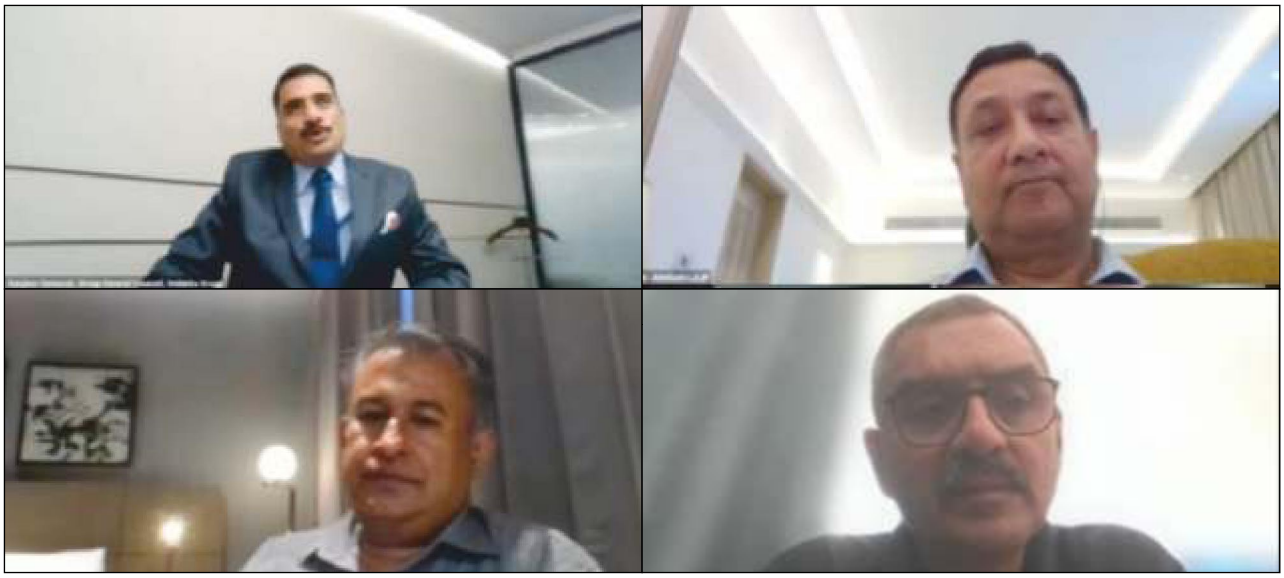
2. Of course, there are many challenges before us. But they should be ideally seen as a way to move ahead rather than anything else. As an evolutionary law, the IBC has been amended six times and more significant changes are expected in near future. We all within the ecosystem need to prepare ourselves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

Key Takeaways from Addresses of Dignitaries in the Webinar on "Interaction with CFOs of CDs & Successful Resolution Applicants (SRAs)" held on April 28, 2023

Indian Institute of Insolvency Professionals of ICAI (IIIPI) organized a Webinar (Virtual) on the topic "Interaction with CFOs of CDs & Successful Resolution Applicants (SRAs)" held on April 28, 2023.

Dr. Ashok Haldia, Chairman-IIIPI, delivered the Welcome and Opening Address for the Inaugural Session which was followed by Special Address of Dr. Sanjeev Gemawat, Group Chief Counsel, Vedanta Group. Thereafter, a technical session was conducted in which Mr. R. Venkataram, MD, Alvarez & Marsal; Mr. Abhilash Lal, Insolvency Professional; CA. K.V. Jain, Insolvency Professional, shared their practical knowledge and experiences on various aspects of resolution of a corporate debtor improving reach to investors from the market and facilitating hassle-free take over by the new management. We present 'Key Takeaways' from the Webinar, as follows:



1. Insolvency Professionals (IPs) need to step into the shoes of other stakeholders such as corporate debtors (CDs), prospective resolution applicants (PRAs), resolution applicants (RAs), and Financial Creditors (FCs) who are part of the Committee of Creditors (CoC). The IP in his/her role as CEO of the CD performs huge responsibility but needs to be cautious about expectations of various stakeholders.
2. Bankruptcy, insolvency, mergers, acquisitions, and amalgamations are just reflections of and dependent on the overall state of the economy of the country.
3. Insolvency and Bankruptcy Code, 2016 (IBC) is about revival of the company not just recovery so that the company moves in the next stage of its life, and everybody gets benefitted. However, in the course of its implementation, the recovery has become more important, which is a matter of serious concern.
4. IBC has created a positive credit culture in the ecosystem where companies are now apprehensive before committing any default. Besides, it has created a market where there is free entry, free competition and free exit.
5. IBC's derailment from resolution to recovery has dented the objective of legislation. About 10% of the total CIRP cases so far are in revival mode while 31% have gone into liquidation.
6. Chief Financial Officer (CFO) plays a pivotal role in the revival of the corporate debtor. He provides all the information, addresses apprehensions and responds to questions which are raised. Besides, he also plays a main role in implementing the Resolution Plan.

7. The role of CFO starts from the day of filing the CIRP application before the NCLT and continues for 4 to 5 years after implementation of the plan as queries are raised and petitions filed before the Adjudicating Authority (AA).

8. Section 30 and Section 31 of the IBC do not provide much scope of adjudication by Adjudicating Authority (AA). After approval of the Resolution Plan by CoC, the Adjudicating Authority (AA) is expected to act only as a registry. Adjudication should be kept distinct from distribution process. The AA may not go into adjudicating on issues related to distribution of assets as long as it is done in compliance to Section 53 of the IBC.

9. The frivolous litigation in the name of public interest, public policy, and various grey areas of the IBC delayed the resolution process which in turn causes huge loss to the value of the CD.

10. The very idea of "Creditors in Control" is defeated when creditors are more interested in recovery than revival. Focus on recovery makes the IBC antithetical to the very concept of revival. Therefore, we should bring debtors somewhere to facilitate the revival. The creditors should keep in mind that 'hair cut' is better than 'head cut'.

11. IPs should not be carried away with the theories and principles of equity and focus on revival of the CD as per the legal framework of the IBC.

12. After taking charge of the CD, the IRP/RP should have a thorough understanding of the nature of business. This goes a long way in value maximization and resolution of the CD and also hassle free take over by the investor.

13. IPs should act as trustee of the CD. The sharing of information with the CoC, PRAs, RAs and SRA may not be described in the law but is very crucial for resolution of the CD.

14. After the Rainbow judgement of the Supreme Court, AAs now desire commitments from the SRA in the Resolution Plan that they will be paying all EPFO dues, statutory dues, Income Tax liability etc. AAs ask the SRA not to impose any kind of condition in the Resolution Plan. If SRA demands any relief, AA refers it to concerned government department. Thus the 'clean slate' theory has been diluted. After the SRA comes into the picture, government departments and local bodies pressurize the SRA for their dues and even ask for the dues pending before admission of the CIRP.

15. Presently, there are no definite guidelines for implementation of the Resolution Plan but if it fails, the company is given one more chance. Thereafter, the CD goes into liquidation. Thus, the implementation of the Resolution Plan is very crucial and therefore, there should be adequate guidelines for implementing the Resolution Plan.

16. Resolution Applicants (RAs) should know what exactly the value of the CD is. Thus, they should be able to assess the potential of the CD and devise a payment plan.

17. After approval by NCLT, SRA runs the business as per its strategy including hiring of professionals, procurement, supply chain management, finance, accounts, and reporting etc.

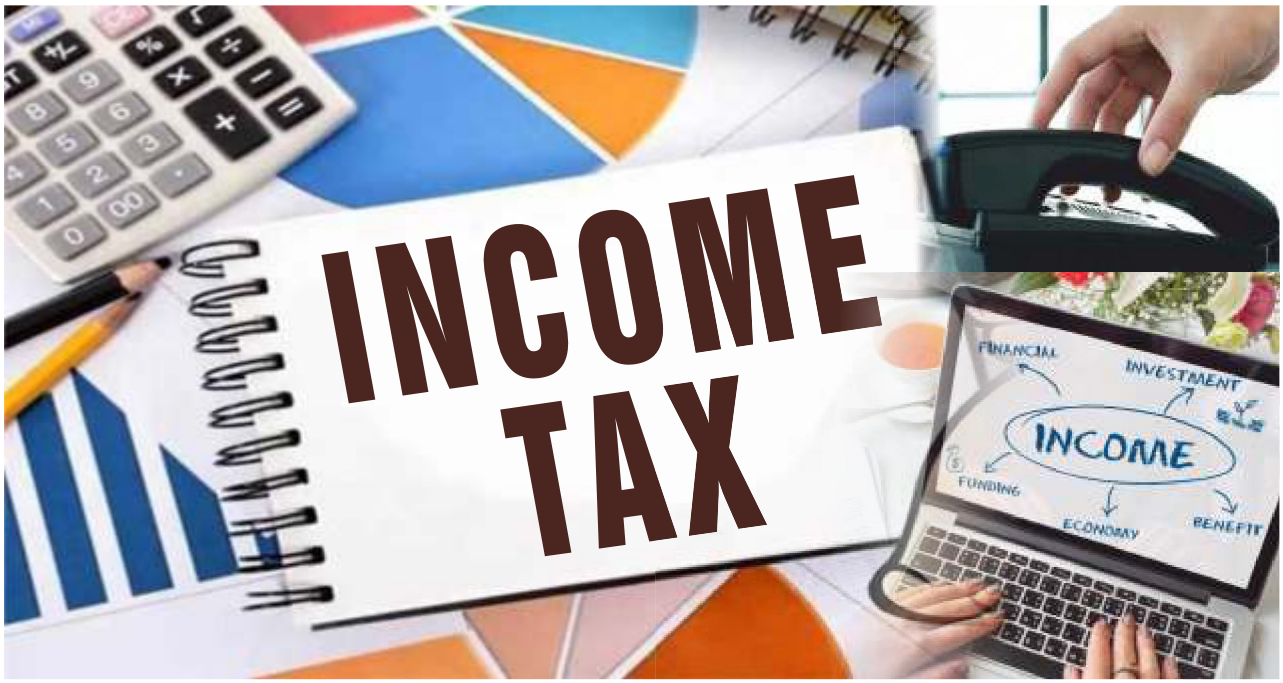
18. The acquisition of a company through Resolution Plan involves a cultural transition as well. There is certain amount of fear and trepidation among employees regarding their future. It is practically difficult to replace everyone on the CD. Therefore, the SRA should immediately communicate its policy to employees. Talent managers should identify key talents and plan a policy to retain them and also a policy on how to handle the others. Similarly, the new management is required to take a call on data storage, data sharing, software licenses, and IT systems etc.

19. SRA needs to do all the compliances related to stock market, local government, state government and central government, reach out suppliers, and dealers of the company with an emphasis that the quality to the service/ product should be improved under the new management.

20. There should not be interim moratorium for Personal Guarantors to Corporate Debtor (PG to CD) under Section 94 and Section 95 of the IBC because it delays the process of CIRP. However, final moratorium should be there as in case of the CD on commencement of CIRP.

21. Timeliness is the most important aspect for SRA. Uncertainty caused by the pendency of cases is demoralizing the investors.

Interplay between the Insolvency & Bankruptcy Code, 2016 and Income Tax Act, 1961



As per Section 17(2)(e) of the Insolvency and Bankruptcy Code, 2016 (IBC or the Code)- the IRP/RP is responsible for complying with the requirements under any law for the time being in force on behalf of the Corporate Debtor (CD). Hence it is critical for the Interim Resolution Professional (IRP)/ Resolution Professional (RP) to understand the interplay between the IBC and the other important enactments. As per Section 238 of the IBC – the provisions of IBC, 2016 shall override the provisions of other laws if they are inconsistent with its provisions.

In this article, the author has examined various provisions of the Income Tax Act, 1961 which are relevant to the provisions contained in the Code and are therefore critical in exercising the responsibilities of IRP/RP/ Liquidator. ***Read on to Know More…***

Vikram Kumar
The author is an Insolvency Professional (IP) Member of IIIPI. He can be reached at vikramau@gmail.com

1. Verification of Income Tax Return

Section 140 of the Income Tax Act, 1961 prescribes the person who is to verify the return of income. In the case of a company, the return is to be verified by the managing director or any director, if the managing director is not able to verify the return, or there is no managing director.

Section 17(1)(b) of the IBC prescribes that on appointment of an IRP, the powers of the board of company shall stand suspended. To facilitate the filing of income tax returns for entities under Corporate Insolvency Resolution Process (CIRP), the Finance Act, 2018 inserted Clause (c) after the second proviso to Section 140(c), which reads – "*where in respect of a company, an application for corporate insolvency resolution process has been admitted by the AA under section 7 or section 9 or section 10 of the IBC, 2016, the return shall be verified by the Insolvency Professional appointed by such AA*". This provision is effective from April 01, 2018.

The said amendment to the Income Tax Act, 1961 paves the path for filing of return of income by the IP appointed as an IRP/RP during the CIRP of the CD.

2. Carry Forward and Set off of Losses

Section 79 of Act provides that carry forward and set off of losses in a closely held company shall be allowed only if there is a continuity in the beneficial owner of the shares carrying not less than 51 percent of the voting power, on the last day of the year or years in which the loss was incurred.

Where a Resolution Plan is approved by the Adjudicating Authority (AA) under the IBC, the shareholding pattern of the said company would invariably change, resulting in denial of the benefit of carry forward and set off of accumulated losses. To overcome the said difficulties undermentioned amendments were made to the Income Tax Act, 1961:

"Section 79(2)(c)- nothing contained in this section shall apply to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the IBC, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner". This provision has been made effective since April 01, 2018.

The Finance Act, 2019 has further extended the benefit of carry forward and set off losses to the subsidiaries and the subsidiary of such subsidiary also. The extant provisions of Section 79(2)(d)(ii) of the Income Tax Act, 1961 says "the provision of section 79 shall not apply to those companies, and their subsidiary and the subsidiary of such subsidiary, where change in shareholding of such company, and its subsidiaries and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by NCLT under section 242 of the Companies Act, 2013, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner".

"The Finance Act, 2019 has further extended the benefit of carry forward and set off losses to the subsidiaries and the subsidiary of such subsidiary also."

The said amendment in the Income Tax Act has facilitated the Successful Resolution Applicant (SRA) to carry forward and set off of losses of companies acquired by a SRA pursuant to the Resolution Plan duly approved by the CoC and the AA.

3. Minimum Alternate Tax (MAT) on the "Book Profits"

Section 115JB of the Act provides for levy of a minimum alternate tax (MAT) on the "book profits" of a company. In computing the book profit, it provides, *inter alia*, for a deduction in respect of the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account. Consequently, where the loss brought forward or unabsorbed depreciation is nil, no deduction is allowed.

"Clause (iih) to Explanation 1 Section 115 JB of Income Tax Act, has facilitated the SRAs and RP/Liquidator (in case book profits arise) in reducing the income tax liability on account of MAT after acquisition of company."

Finance Act, 2018 inserted Clause (iih) to Explanation 1 in Section 115JB to provide that the aggregate amount of unabsorbed depreciation and loss brought forward shall be allowed to be reduced from the book profit, if a company's application for CIRP under the IBC has been admitted by the AA. This provision has been made effective from April 01, 2018.

The said amendment in the Income Tax Act has facilitated the SRAs (in case book profits arise) in reducing the income tax liability on account of MAT post-acquisition of companies pursuant to the Resolution Plan duly approved by the Committee of Creditors (CoC) and the AA. Further, the word "aggregate" has given special benefit to such companies in view of allowance of deduction of only lesser of the two (either losses or depreciation) in other cases.

4. Appearance by Authorized Representative

Section 288 of the Act provides for the persons entitled to appear before any Income-tax Authority or the Appellate Tribunal, on behalf of an assessee, as its "Authorised Representative" (RA), in connection with any proceedings under the Income Tax Act. While the IBC empowers the IP to exercise the powers of the Board of Directors of the CD, the lack of explicit reference in Section 288 of the Act for an IP to act as an AR of the CD has been raising practical difficulties.

Finance Act, 2020 inserted Section 288(2)(viii) to provide that any other person as may be prescribed may act as an AR. Rule 51B of the Income Tax Rules, 1962 prescribes such other category of persons as "in respect of a company

or a limited liability partnership, as the case may be, shall be the person appointed by the AA for discharging the duties and functions of an interim resolution professional, a resolution professional, or a liquidator, as the case may be, under the IBC, 2016 and the rules and regulations made thereunder".

Hence the IRP/RP/Liquidator can now act as the AR for the CD before the Income Tax Department by virtue of the amendment to Section 288 of the Income Tax Act, 1961.These provisions are also applicable w.e.f. April 01, 2020.

5. Modification and Revision of Demand Notice

A Successful Resolution Applicant (SRA) is often concerned with the legal tussle that the SRA shall face with the Income Tax Department on account of reduction in income tax liability as payable under a Resolution Plan duly approved by the AA. It is common to see that the Income Tax Department continues to challenge the reduced tax liability, and this creates an environment of uncertainty for the SRA.

Finance Act, 2022 inserted Section 156A to provide that the Assessing Officer shall modify the demand payable in conformity with the order of the AA and shall thereafter serve on the assessee a notice of demand specifying the sum payable, if any, and such notice of demand shall be deemed to be a notice under section 156 of the Income Tax Act. Hence the order passed by the AA approving a Resolution Plan shall be complied by the Assessing Officer and the revised demand notice in accordance with the resolution plan duly approved by the AA shall be issued by the Assessing Officer under Section 156 of the Income Tax Act, 1961.

"Section 156A (1) and 156A(2) of the Income Tax Act inserted via Finance Act 2022, will assist the SRA in smooth implementation of the approved Resolution Plan and avoid unnecessary litigation on account of Income Tax."

The extant provisions of Section 156A of the Income Tax Act, 1961 are reproduced below:

"Section 156A(1) Where any tax, interest, penalty, fine or any other sum in respect of which a notice of demand has been issued under section 156, is reduced as a result of an order of the AA as defined in clause (1) of section 5 of the IBC, 2016, the Assessing Officer shall modify the demand

payable in conformity with such order and shall thereafter serve on the assessee a notice of demand specifying the sum payable, if any, and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall accordingly, apply in relation to such notice.

Section 156A(2)- Where the order referred to in sub-section (1) is modified by the National Company Law Appellate Tribunal or the Supreme Court, as the case may be, the modified notice of demand as referred to in sub-section (1), issued by the Assessing Officer shall be revised accordingly."

These amendments have been implemented w.e.f. April 01, 2022. This will assist the SRA in smooth implementation of the approved Resolution Plan and avoid unnecessary litigation on account of income tax demand being raised by the Income Tax Department post approval of the resolution plan with reduced income tax liabilities.

6. Remission or Cessation of Liabilities Pursuant to Approval of a Resolution Plan

Any remission or cessation in respect of any trading liability is taxable under Section 41(1) of the Income Tax Act, 1961, where allowance or deduction in respect of such trading liability has been obtained in computing income for any previous year.

The extant provisions of Section 41(1) of the Income Tax Act, 1961 is reproduced below:

"Section 41. Profits chargeable to tax—

(1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year— (a) the first-mentioned person

has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or (b) the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year."

Further as per Section 28(iv), the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession is chargeable to income-tax under the head of profits and gains of business or profession.

6.1. Is remission or cessation of liabilities on account of approval of Resolution Plan liable to Income Tax?

Invariably the approval of Resolution Plan leads to a remission or cessation of liabilities. The same may be a remission or cessation on account of a term liability or an operational trading liability. Whilst the remission or cessation of the term liability is permitted by the Income Tax Department as a capital receipt not chargeable to income tax, the same is not permitted in the case of operational trading liability.

> **The remission or cessation of a term liability is not liable to income tax under Section 28(iv) of the Income Tax Act as per the Supreme Court judgement in the matter of *the Commissioner (appellant) Vs. Mahindra and Mahindra Ltd* (2018).**

The remission or cessation of a term liability is not liable to income tax under Section 28(iv) of the Income Tax Act as per the very famous judgment of the Hon'ble Supreme Court of India in the matter of *The Commissioner Vs. Mahindra and Mahindra Ltd*[1] *(2018),* the gist of the case is stated below:

(a) Facts of the Case: The respondent entered into an agreement with Kaiser Jeep Corporation (KJC) for expanding its jeep product line. KJC agreed to sell the dies and other equipment for $6,50,000/-. KJC also provided a loan to the Respondent for the said procurement at the rate of 6% interest repayable after 10 years in installments. Later on, the American Motor Corporation (AMC) took over the KJC and agreed to waive the principal amount of loan advanced by the KJC to the respondent. In the income tax return filed by the respondent, ₹ 57,74,064/- was claimed as cessation of its liability towards AMC and not liable to income tax as it was capital receipt.

(b) Issues before the Hon'ble Supreme Court of India: Whether ₹57,74,064/- due by the Respondent to KJC which later was waived off by the lender constitute taxable income of the Respondent or not?

(c) Decision of the Hon'ble Supreme Court of India

(i) For applicability of Section 28(iv) of the Income Tax Act, any benefit or perquisite arising from the business shall be in the form of benefit or perquisite other than in the shape of money, in the present case, the amount of ₹57,74,064/- is received as cash receipt due to the waiver of loan, hence the said amount cannot be taxed under the provisions of Section 28 (iv) of the IT Act.

(ii) Section 41(1) is also not applicable as the loan from KJC was in respect of plant, machinery and tooling equipment's which are capital assets of the Respondent. The said purchase amount had not been debited to the trading account or to the profit or loss account in any of the assessment years. Section 41 (1) of the IT Act particularly deals with the remission of trading liability, whereas in the instant case, waiver of loan amounts to cessation of liability other than trading liability.

The remission of any operational liability pursuant to the approval of a Resolution Plan under IBC is not treated as capital receipt and is routed as an item of profit and loss account thereby exposing it to a possibility of MAT on the same (when carry forward loss still exists).

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[1] The Commissioner (Appellant) Vs. Mahindra and Mahindra Ltd (Respondent), Civil Appeal Nos. 6949-6950 of 2004 dated April 24, 2018.

While suitable changes may be debated under Section 41(1) of the Income Tax Act, 1961 for exempting companies from remission or cessation of operational trading liability besides the existing remission for haircuts on term liabilities sought pursuant to an approved resolution by the AA under the Provisions of IBC, 2016 in the long term, it may be pertinent for the Resolution Applicant to seek full relief of any MAT / Tax Liability that may accrue on account of implementation of the Plan *vis a vis* the write backs on account of haircuts on operational liabilities after adjustment of any permissible carry forward of losses.

This shall also be rationale to the extent that taxes on write backs to the extent that the write offs are not adjustable / mitigated by permissible carry forward of losses are not an additional burden on the Resolution Applicant.

7. Amendment Required in Section 72A of the Income Tax Act, 1961

Section 72A contains provisions pertaining to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger of companies.

As per Section 72A, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was affected, however the benefit of Section 72A, shall be denied under the circumstances as laid down under Section 72A(2)(a) & (b). For e.g., one of the conditions is that the amalgamated company continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation. Such conditions are restrictive in nature and go against the spirit of resolution as laid down under IBC, 2016.

An exemption needs to be carved out under Section 72A for companies whose Resolution Plan is approved under the provisions of IBC, 2016.

An exemption needs to be carved out under Section 72A for companies whose Resolution Plan is approved under the provisions of IBC, 2016.

8. Section 178- Company in Liquidation

Section 178 of the Income Tax Act, 1961 mandates the liquidator shall not, without the leave of the Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Income Tax Officer about the tax liabilities due from the said company under liquidation and the liquidator is mandated to set aside an amount equal to the said tax liabilities as notified by the Income Tax Officer before the Liquidator can proceed to distribute the assets of the company under liquidation.

Hence as per Section 178 of the Income Tax Act, 1961, the Liquidator is required to first obtain a 'No Objection Certificate' (NOC) from the Income Tax Department before proceeding to distribute the assets of the companies under liquidation. However as per Section 178(6), the provisions of Section 178 are not applicable to the companies which are undergoing liquidation under IBC, 2016. The extant provision of Section 178(6) of the Income Tax Act, 1961 says – "*Section 178(6)- The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force, except the provisions of the IBC, 2016.*"

IBBI vide a circulation on November 15, 2021, dispensed with the requirement of obtaining NOC from the Income Tax Department under Section 178 of the Income Tax Act, 1961.

However, in spite of the extant provisions as contained in Section 178(6) of the Income Tax Act, 1961, in practice, the liquidators in case of voluntary liquidation of the companies under IBC, 2016 were obtaining the NOC from the Income Tax Department. The said practice was causing unnecessary delay in timely completion of the voluntary liquidation of the companies under IBC, 2016.

Through a Circular[2] on November 15, 2021, the Insolvency and Bankruptcy Board of India (IBBI) dispensed with the requirement of obtaining NOC from the Income Tax Department under Section 178 of the Income Tax Act, 1961. IBBI has clarified vide above mentioned circular that "*The process of applying and obtaining of such NOC/NDC from the Income Tax Department consumes substantial time and thus militates against the express provisions of the Code, and also defeats the objective of time-bound completion of process under the Code. Therefore, it is hereby clarified that as*

[2] Circular, IBBI/LIQ/45/2021 dated November 15, 2021.

per the provisions of the Code and the Regulations read with Section 178 of the Income Tax Act, 1961, an IP handling voluntary liquidation process is not required to seek any NOC/NDC from the Income Tax Department as part of compliance in the said process".

9. Section 46-Capital Gains on Distribution of Assets by Companies in Liquidation

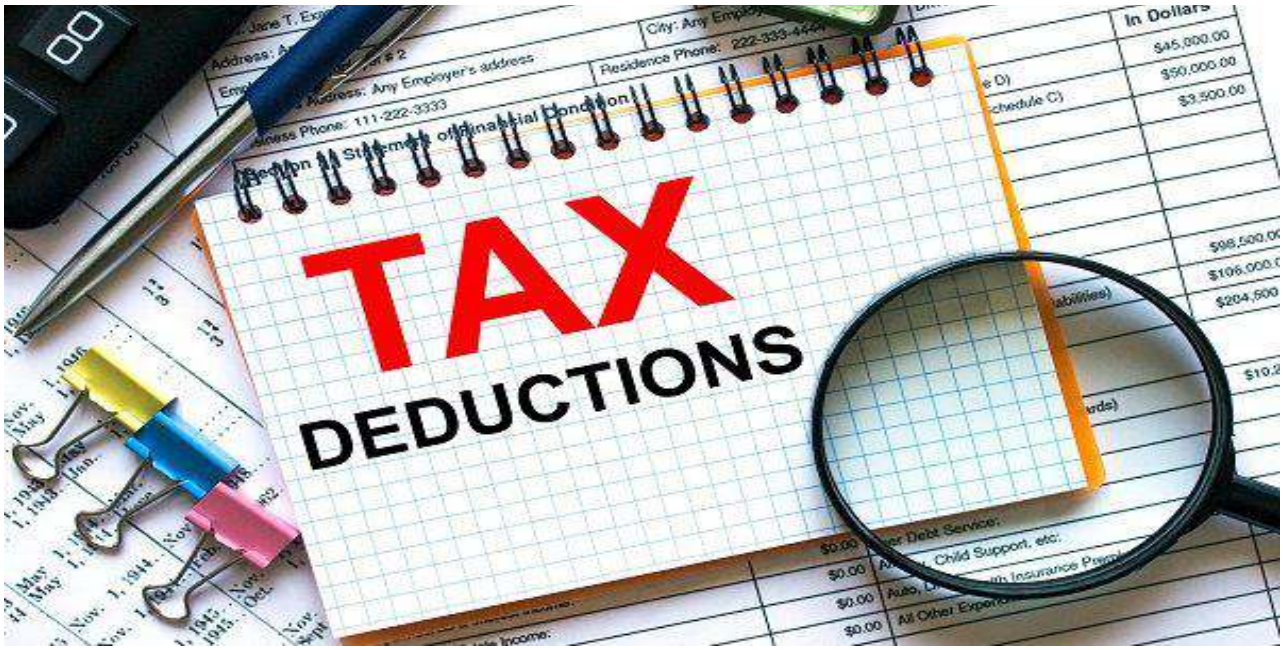
As per Section 46 of the Income Tax Act- where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head "Capital Gains", in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of Section 2(22)(c) and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48.

It is necessary to issue a clarification under Section 46 of the Income Tax Act, 1961, that in the case of voluntary liquidation or liquidation, if residual amounts being received in form of assets by the equity shareholders shall not require any further valuation under Section 56(2) read with rule 11UA of the Income Tax Act. Further it is also clarified that since the assets of the company are distributed in the event of the liquidation, the same shall not warrant a separate valuation under the Income Tax Act and Section 46(2) shall be given effect to by treating the consideration received as the fair value transferred.

"It is also to be clarified that since the assets of the company are distributed in the event of liquidation, the same shall not warrant a separate valuation under the Income Tax Act."

Thus, the interplay between the provisions of the Income Tax Act, 1961 and the IBC, 2016 is critical to understand for every IP for effectively discharging his duties as an IRP/RP/Liquidator and this plays a significant role in decision making of the prospective resolution applicant while deciding to buy/not to buy a certain company.

Analysis of Taxability of Loan Waiver Transactions after Amendments in Finance Act 2023



If the value of the approved Resolution Plan is less than the total value of Admitted Claims against the Corporate Debtor (CD), the difference is referred to as a Haircut. The Finance Act 2023 has brought whether intentionally or unintentionally the controversy of taxing write-back of amounts in the books of accounts under which Haircut may also become a taxable item. In this context, the author has presented an analysis of the taxability of 'Hair Cut' in the hands of the CD with respect to various provisions of the Finance Act 2023, Income Tax Act, 1961, and other related provisions. In conclusion, he suggests amendments in Section 28 (iv), Section 41(1), Section 56 (2) (X) (a), and Section 115JB of the Income Tax, to nip in the bud any possible legal dispute which may derail the objectives of the IBC, 2016. ***Read on to Know More…***

Manoj Kumar Anand
The author is an Insolvency Professional (IP) Member of IIIPI.
He can be reached at
anandmanoja@gmail.com

1. Introduction

Finance Act 2023 has brought whether intentionally or unintentionally controversy of taxing write-back of amounts in the books of accounts, which is popularly known in the IBC regime as "Hair Cut".

The memorandum explaining the Finance Bill stated, "Section 28 of the Income-Tax Act, 1961(hereinafter called as 'Act') provides for income that shall be chargeable to income-tax under the head "profits and gains of business or profession".

Sub-section (iv) of this section brings to chargeability the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession.

This provision was inserted through the Finance Act 1964 and the Circular No. 20D dated July 07, 1964 issued to explain the provisions of this Act stated clearly that the benefit could be in cash or in kind.

Therefore, the intention of the legislation while introducing this provision was also to include benefit or perquisite whether in cash or in kind.

However, Courts have interpreted that if the benefit or perquisite are in cash, it is not covered within the scope of this clause of Section 28 of the Act.

In order to align the provision with the intention of legislature, it is proposed to amend sub-section (iv) of section 28 of the Act to clarify that provisions of said clause also applies to cases where benefit or perquisite provided is in cash or in kind or partly in cash and partly in kind".

In this context let us also analyse the taxability of 'Hair Cut' in the hands of Corporate Debtor with respect to applicable sections being Section(s) 28(iv), 41(1), 56 (2) (x) & 115JB of the Act along with the right of Government to tax such transactions u/s 3,4 & 2(24) of Act read with relevant judicial decisions. Along with I-Tax provisions, we shall also analyze Ind AS 117 & AS 30 of Institute of Chartered Accountant of India (ICAI) parent accounting body of India and the opinion of Expert advisory committee of ICAI in this regard also.

2. Effect of amendments in Sec 28(iv) read with Sec 194R by Finance act 2023

Under section 28(iv) any benefit in the course of business or profession is treated as Income from Business & Profession. Since Loan/Creditor/Interest waiver is a benefit and hence it ought to be taxable under the I-Tax act 1961.

3. Under Income Tax, the relevant chargeability is governed by Sec 4 & 2(24) which stipulates as follows:

(a) Sec 4 says Income-Tax is charged on "total income of the previous year".

(b) Sec 2(24) defines the term 'income' which means all the receipts, unless specifically exempted are chargeable to tax.

4. Controversies

(a) Hon'ble SC in the case of *Commissioner Vs. Mahindra & Mahindra Ltd.* (2018) interpreted that sec 28(iv) is applicable only to Non-Cash Transactions. Hence, loan waiver being cash transaction (includes banking channel transactions), taxes weren't applicable on haircuts. Finance Act, 2023 plugged this loophole/interpretation and taxed all transactions (Cash & Non-Cash) u/s 28(iv). CBDT Circular No. 18/2022 dated 16-06-2022 from the A.Y. 2023-24 already provides specific exemption from TDS deduction u/s 194R for the banks, financial institutions, NDFCs, and other financial service providers for waivers given by them to lenders.

"The Supreme Court in the case of *Commissioner Vs. Mahindra & Mahindra Ltd.* (2018) said that Section 28(iv) is applicable only to non-Cash transactions. Hence, loan waiver being cash transaction, taxes weren't applicable on haircuts. However, amendments in Financial Act 2023 plugged this loophole and taxed transactions also."

(b) Taxability of Loan/Creditor/Interest (Hair Cut) waiver provisions from Accountant's perspective are as follows: -

(i) Ind As 109 deals with Derecognition of any Financial Liability' and para 3.3.3 is as follows:

"The difference between the carrying amount of a financial liability (or part of a financial liability) extinguished or transferred to another party and the consideration paid, including any non-cash assets transferred or liabilities assumed, shall be recognized as profit or loss".

(ii) Further, the Expert Advisory Committee of the ICAI in its various opinions regarding the waiver of loans has stated that waiver of loans should be credited to the statement of Profit & Loss. It means Successful Resolution Applicant while preparing first balance sheet after acquisition can not net off all balances & transfer the same to capital reserve may be a wrong treatment from Accountant's perspective?

5. Interpretation of Relevant Sections Under I-Tax Act 1961 for Taxability of Hair Cut

(a) Section 28 (iv) of the Act provides, inter alia, that the value of any benefit or perquisite arising from business, whether convertible into money or not, should be taxed as business income.

(b) Section 41(1) of the Act provides, inter alia, that if an allowance or deduction has been claimed by an assessee in respect of a trading liability and subsequently, obtains some benefit in respect of such trading liability by way of remission or cessation thereof in cash or in any other manner, such amount is deemed to be the business income of the borrower.

(c) Section 115JB of the Act, inter alia charges tax on Book Profits @ 18.50%. The methodology to arrive at the book profit is provided in the Explanation to the section. A safeguard is provided for companies undergoing insolvency or wherein Central Government has suspended board of directors, whereby the aggregate amount of

unabsorbed depreciation and brought forward losses would be allowed as deduction while arriving at book profit for the purpose of taxing u/s 115JB.

6. Planning Tools or Arguments to mitigate such taxability

Can benefit of overarching section 238 of IBC 2016 be obtained?

The answer is 'No' as no future benefits are permitted under the Insolvency and Bankruptcy Code, 2016 (IBC) and regulations made thereunder. The tax on remmision and cessation of liability is an event post approval of resolution plan by Adjudicating Authority and is not covered as relief or concession permissible under IBC. In the past no Adjudicating Authority authority has allowed this concession sought through resolution plans. (b) However, a caution is warranted as the following transactions have been held taxable u/s 28(iv) despite they look like to be not taxable as per above discussion:

> **The tax on remmision and cessation of liability is an event post approval of resolution plan by Adjudicating Authority and is not covered as relief or concession permissible under the IBC.**

(i) Earnest money of buyer forfeited *Ramesh Babulal Shah* v. *CIT [2015] 53.*

(ii) One Time Settlement Benefit given. *CIT* v. *Ramaniyam Homes (P) Ltd [2016] 68.*

(iii) Value of rent-free accommodation, furniture, and fixtures given to the director. *CIT* v. *Subrata Roy [2016] 385 ITR 547 (All.)*

(iii) Car received from disciple by preacher *CIT (Addl)* v. *Ram Kripal Tripathi [1980] 125 ITR 408 (All.)*

(iv) Shares received by the director. *D. M. Neterwala* v. *CIT [1986] 122 ITR 880 (Bom.).*

(v) Value of gift of land was held as a receipt by the assessee in carrying on of his vocation. *Amarendra Nath Chakraborty* v. *CIT [1971] 79 ITR 342 (Cal.)*

7. Concept of TDS deduction @10% by Operational Creditors u/s 194 R

Section 194R was brought into statute by the Finance act 2022 to tax those transactions which provided a benefit or perquisite to the beneficiary and remained untaxed. Examples being incentives in the form of foreign holidays package, cars, etc given to dealers were claimed as an expense by the provider but was never declared by such dealers as a benefit or a perquisite. In other words, the purported objective of TDS deduction under Section 194R as envisaged was to detect tax evasion for transactions that are not in the nature of loan waiver or bad debts. Hence, the section can't be applied to transactions under IBC 2016 companies, especially when Banks vide CBDT Circular No. 12/2022 dated 16-06-2022 is exempted. Also for operational creditors as for them amount not recoverable is bad debt in their books of account and bad debts are not taxable u/s 41(1) or 28(iv).

8. Concept of taxability Under Section 41(1)

It is attracted if any benefit arises from remission or cessation of trading liability. The difference in Trading & Non-Trading liability is understood by dividing Loan/interest in following parts:

- Capital Loan popularly known as Term Loan
- Cash Credit\Working Capital Loan,
- Interest on Loan Capitalised and
- Interest on Loan claimed as an expense.

8.1. Let's understand the taxability of all these with the following Judicial Judgements:

(a) Hon'ble Supreme Court in the case of *Commissioner v. Mahindra and Mahindra Ltd. [2018] 302 CTR 213* held that waiver of loans taken for capital assets amounts to the cessation of liability other than trading liability. Hence not taxable.

(b) Similarly in *Mahindra & Mahindra Ltd. v. CIT [2003] 261ITR 501 (Bombay)* it was held that as Tooling constituted capital asset and not stock-in-trade, section 41(1) was not applicable.

(c) However, Hon'ble Delhi HC in the case of *Logitronics (P.) Ltd. v. CIT [2011] 333 ITR 386* held that waiver of loan taken for trading purposes is taxable, that means working capital borrowings are taxable if waived by banks or financial service providers.

(d) Similarly, in *Rollatainers Ltd. v. CIT [2011] 339 ITR 54*, the Delhi High Court by referring to the judgment of the Bombay HC in the case of Mahindra & Mahindra (supra) held that writing off loans on a cash credit account is to be treated as "income" in the hands of the assessee.

Based on the above judgments the following conclusion for taxability u/s 41(1) is drawn:

(i) Not claimed as an expense earlier – Not taxable. However, it may be taxable u/s 28 (iv) wef. AY 2024-25.

(ii) Claimed as an expense earlier :- Taxable: working capital borrowings are considered as claimed as expense earlier when liability was created.

9. Concept of taxability Under Section 56 (2) (x)

It is apt to reproduce the relevant portion of the section 56(2)(x). as follows:

> *"56. (2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely:—*
>
> *……..*
>
> *(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April 2017,—*
>
> *--- (a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;*

The above section is applicable when the assessee receives any sum of money, 'without consideration' and in case of the waiver of the loan, no money is received in that particular year & hence not taxable.

10. 115JB (Minimum Alternate Tax)

(a) MAT 115JB says Notwithstanding anything contained in any other provision of this Act, ……is less than eighteen and one-half percent of its book profit, such book profit shall be deemed to be the total income of the assessee ……:

(i) Please note Ind AS 109/AS 30 as mentioned in detail at Para 5 above clearly states that extinguishment of liability should be recognised in the profit & loss account. In case the gains are transferred to Capital Reserve, this treatment is not in consonance with relevant provisions of Companies Act 2013 (Sec 129(1) 2nd Proviso) read with Annual Accounts Schedule III and Capital Reserve (Ind AS 109).

> ***In CIT Vs. T.V. Sundaram Iyengar & Sons Ltd* (222 ITR 344 (SC) it has been held that time barred trading loans are taxable.**

(ii) In other words, MAT u/s 115JB is payable for any Book Profit that arises from loan waivers as they are required to be routed through P & L a/c.

(b) Since we have discussed at great length, the taxability of loan/interest waiver, let's discuss another two practical situations also which we invariably encounter:

(i) **Taxability of time-barred Loans**: - In *CIT Vs. T.V. Sundaram Iyengar & Sons Ltd (222 ITR 344 (SC)* it has been held that time barred trading loans are taxable.

(ii) **Underlying presumption in loan waiver: - Whether Interest first or Principal later or Vice Versa :-** In *CIT Vs. T. S. PL. P. Chidambaram Chettiar ((1971) 80 ITR 467 (SC)* it has been held that payment is attributable in the first instance towards the outstanding interest.The same, has also been held in *CIT Vs. Maharajadhiraja Kameshwar Singh of Darbhanga [(1933) 1 ITR 94 (PC)]* the Privy Council).

Planning:- Thus, it is to be stated clearly that it is the Principal amount of loan waiver for all partial/full waiver of loans.

11. Conclusive Remarks:

Thus, the following Income Tax sections need to be amended, in the spirit of IBC, to nip in the bud any future controversies or uncalled for additions to the income : -

(a) Sec 28(iv) to further provide that value of any benefit or perquisite is not taxable for companies resolved under IBC 2016.

(b) Sec 41(1) to further provide that remission or cessation of any allowances or deduction made in respect of loss, expenditure or trading liability as incurred earlier years is not taxable for companies resolved under IBC 2016.

(c) Sec 56 (2) (X) (a) to further provide that any benefit accruing to Company (Corporate Debtor) resolved under IBC 2016 shall not be taxable herein.

(d) Sec 115JB must provide full exemption to companies resolved under IBC 2016.

IBC Jurisprudence on Advance Payment By Creditor to Corporate Debtor

Section 3 (6) of the IBC, 2016, clarifies, without ambiguity, the connection between a claim and the right to payment. Therefore, debt can be understood as something that generates a claim in the form of a right to be paid. The subsequent provisions of the Code also define Financial Debt and Operational Debt. However, the law is silent on the nature of advance payment made to the Corporate Debtor. Whether the advance payment given by the Creditor to the Corporate Debtor a Financial Debt within the meaning of Section 5(8) of the Code or an Operational Debt within the meaning of Section 5(21) of the Code? In the backdrop of various provisions of the IBC, 2016 and relevant judgements of NCLT, NCLAT and the Supreme Court, the author has presented a thorough analysis of the issue. ***Read on to know more…***

Rajesh Sharma
The author is Former Member (Technical), NCLT. He can be reached at rajeshsharmafca@hotmail.com

1. Introduction

Since the Insolvency and Bankruptcy Code, 2016 (IBC/Code) came into effect, many legal questions have arisen regarding the interpretation of its various provisions. The Code has been amended several times to enhance the effectiveness and efficiency of the processes described. The judiciary has also played a significant role in interpreting its provisions in a way that promotes the objective to maximize the value of the assets of the Corporate Debtor.

One interpretational challenge that has arisen is whether a claim for the refund of an advance payment against a Corporate Debtor is an Operational Debt or a Financial Debt? The definitions of "claim," "debt," "default," “financial debt” and "operational debt," in the Code have led to a number of legal challenges. These challenges were also faced by the Courts during the winding-up regime under the Companies Act, 1956 before the commencement of the Code.

2. Relevant Statutory Provisions of the IBC

Before discussing whether a claim for refund of an advance payment is considered an Operational Debt or Financial Debt under the Code, it will be appropriate to

highlight a few key clauses of the Code that may shed light on how this issue originally came to be:

'Claim' is defined as follows in Section 3(6) of the Code:

"(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured."

The connection between a claim and the right to payment in the provision is clear and leaves no room for ambiguity. Therefore, debt can be understood as something that generates a claim in the form of a right to be paid. It is important to consider the definitions of financial debt and operational debt, which can be found in Section 5 of IBC, 2016.

Section 3(11) of the Code provides the following definition of 'debt':

"a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt."

The definition explicitly defines the debt as a liability or obligation in respect of a claim which is due from any person and includes a Financial Debt and Operational Debt. This provision encompasses both the notions of "financial debt" and "operational debt."

The definition under Section 3 (11) of the IBC, 2016, explicitly defines the debt as a liability or obligation in respect of a claim which is due from any person and includes a Financial Debt and Operational Debt.

The following definition of 'default' is provided in Section 3(12) of the Code:

"non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be."

Default means that a debtor has failed to make a payment on a debt when it is due.

The term "Financial Debt" is defined as follows in Section 5(8) of the Code:

"means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money"

Section 5(21) of the Code provides the following definition of "Operational Debt":

"means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority."

According to the definition of 'operational debt' as described above, there are essentially two types of debts that might be considered operational debts:

a) A claim 'in respect of the provision of goods and services including employment; and

b) A debt the Corporate Debtor owes to the Central, State, or Local Authority.

3. Issue

Is the advance payment given by the Creditor to the Corporate Debtor a Financial Debt within the meaning of Section 5(8) of the Code or an Operational Debt within the meaning of Section 5(21) of the Code?

4. Analysis

The Adjudicating Authorities have taken different stances on the interpretation of 'Operational Debt' in different cases. The cases of *Eknath K. Aher v. Royal Twinkle Star Club Limited*[1] and *Sayali S. Rane v. Messrs. Cytrus Check Inns Limited*[2], are two of the early instances where a claim for a return of an advance payment was accepted as an Operational Debt. On requests made pursuant to Section 9 of the Code, the NCLT, Mumbai admitted two CIRP applications against two corporate debtors. Individuals who had bought holiday plan certificates from the Corporate Debtor companies filed the applications, and the said companies failed to return the applicants' purchases of such certificates in full as agreed upon. It was determined that this default had resulted in an 'operational debt' in favour of the applicants, as defined by the Code. Although it may be accurate to say that in both instances the corporate debtors did not object to the CIRP applications'

1. C.P. No. 895/IBC/NCLT/MB/MAH/2017, order dated May 2, 2017.
2. C.P. No. 896/IBC/NCLT/MB/MAH/2017, order dated May 2, 2017.

admission on the grounds that the applicants were not "operational creditors" as defined by the Code, this issue did not properly come up for discussion before the NCLT in these cases.

The cases of *Eknath K. Aher v. Royal Twinkle Star Club Limited* and *Sayali S. Rane v. Messrs. Cytrus Check Inns Limited* are two of the early instances where a claim for a return of an advance payment was accepted as an operational debt.

In the case of *Renish Petrochem FZE v. Ardour Global Private Limited*[3], Hon'ble NCLT used a broad interpretation of the term "operational debt" under Section 5(21) of the Code for the first time. In this instance, the Applicant had given some commodities to a business under the agreement that, in the event the buyer failed to pay the consideration amount, the payment for those items would be insured by a buyer associate organisation. It was questioned whether an Operational Debt could even be asserted against a guarantor after the Applicant preferred the application under Section 9 of the Code against the buyer associate organisation. The application was approved by the NCLT, Ahmedabad. Further in the case of *Auspice Trading Private Limited v. Global Proserv Limited*[4], for instance, the Applicant under Section 9 of the IBC, 2016 had placed orders for particular telecom equipment upon the Corporate Debtor and paid an advance based on commercial practice. The Applicant canceled the order and requested a refund of the advance payment. While the Corporate Debtor did refund a portion of the advance payment, the remaining total was still owed. Due to this, the applicant submitted an application for the Corporate Debtor to be admitted into Corporate Insolvency Resolution Process (CIRP). The Hon'ble NCLT, Mumbai, recognized the Applicant as an "operational creditor" according to the Code. In both of the cases mentioned above, NCLT has applied a purpose-driven interpretation and context-driven interpretation of 'operational debt' and concluded that claims made by the recipients of goods/services are included within its scope.

However, when it comes to the issue of a claim for a refund of the advance payment, the NCLT, Kolkata, has not taken such a broad interpretation of the phrase "operational debt". In *Ranual Technology Private Limited v. Calprin Ads Private Limited*[5], a creditor filed an application under Section 9 of the Code, alleging that the Corporate Debtor had received an advance of ₹10 lakhs as an "accommodation loan" but had failed to repay it despite repeated requests, and that this failure to repay the same amounted to an Operational Debt. The NCLT, Kolkata Bench rejected the creditor company's argument and ruled that the advance payment could not be taken into account. Further, in the case of *Daya Engineering Works Private Limited v. UIC Udhyog Limited*[6], an application was filed under Section 9 of the IBC, 2016 but the matter was dismissed by the NCLT, Kolkata on the grounds that neither party had a written agreement that would have permitted the buyer to obtain a refund of the advance payment from the debtor in the event that the agreed-upon quantity of goods was not supplied or was not supplied in full and that there is no Operational Debt at all because the amount due to the applicant does not match any of the requirements specified for the definition of Operational Debt. The NCLT, Kolkata, in this case, adopted a narrower interpretation of 'operational debt'.

NCLAT in the matter of *Overseas Infrastructure Alliance (India) Private Limited v. Kay Bouvet Engineering Limited*, allowed the appeal and remitted the matter to the NCLT by adopting a much wider interpretation of the definition of operational debt' as contained in Section 5(21) of the Code.

The NCLAT, in various cases, has provided different interpretations on this matter. For instance, the creditor requested repayment of the advance from the corporate debtor in the case of *Overseas Infrastructure Alliance (India) Private Limited v. Kay Bouvet Engineering Limited*[7], where the debtor was unable to pay and/or refused to do so. When the advance monies were not refunded, the creditor filed an application under Section 9 of the Code with NCLT, Mumbai, claiming that this created an "operational debt" and asking for the corporate debtor's admission into CIRP. The NCLT rejected the application on account of there being pre-existing disputes regarding the claim of the creditor. However, the NCLAT allowed the appeal and remitted the matter to the NCLT by adopting a much wider interpretation of the definition of operational debt' as contained in Section 5(21) of the Code

3. C.P. (I.B.) No. 33/9/NCLT/AHM/2017, order dated July 31, 2017.
4. CP No. 1584/IBC/NCLT/MB/MAH/2017, order dated February 23, 2018.
5. CP(IB) No. 212/KB/2018, order dated April 26, 2018.
6. CP(IB) No. 547/KB/2017, order dated May 16, 2018.
7. C.A. (AT) (Insolvency) No. 582 of 2018, judgment dated December 21, 2018.

and has construed the phrase 'a claim in respect of the provision of goods or services, as stated in such a definition, to not only cover claims from a supplier who has not received the agreed-upon payment from the buyer of its goods or services but also claims from a buyer/receiver who hasn't received the agreed-upon goods or services despite paying advance sums towards it.

Unfortunately, even after the ruling in *Kay Bouvet* (supra), conflicting orders were still being issued regarding whether or not an advance payment made by the buyer or receiver for the provision of goods and services counts as an Operational Debt.

Even though the facts of the present case were slightly different, the NCLAT's judgment in *Kavita Anil Taneja v. ISMT Limited*[8] contains contradictory observations to those in Kay Bouvet (supra), further muddying the waters. The advance was held to be an amount not only for the supply of goods but also as a contribution to the establishment of a joint venture, and therefore could qualify as a "financial debt." Although the Kay Bouvet (supra) judgment was only handed down a month ago, the NCLAT appears to have changed its mind about how broadly it had interpreted Sections 5(20) and 5(21) of the Code in this judgment.

In a similar vein, the NCLAT ruled in the cases of *Roma Infrastructures India Pvt. Ltd. v. A.S. Iron & Steel (I) Private Limited*[9], & *Andal Bonumalla v. Tomato Trading LLP*[10], relied on its ruling in Kavita Anil Taneja (supra) and determined that a claim for a refund of the advance amount or balance of the advance amount, as applicable, would not fall under the definition of "operational debt" under Section 5(21) of the Code in cases where an advance payment had been made for the supply of goods and the supplier subsequently failed to supply all or part of the goods that had been agreed upon.

Following that, a new issue had come up before the Appellate Tribunal in the case of *Joseph Jayananda v. Navalmar (UK) Ltd*[11] while interpreting the situation, the Appellate Tribunal, among other things, took a different stance with regard to the same situation that had been decided and/or settled in the case of *Andal Bonumalla v. Tomato Trading LLP*[12]. The advance payment in this instance was given for projects and capital goods, but the corporate debtor altered the amount to account for cost and expense. In this case, the NCLAT found that the advance granted by the creditor to the corporate debtor lacked any time value for money and, as a result, could not be regarded as a "financial debt." The payments owed under the transaction would be considered "operational debt" because the Corporate Debtor is an agent and service provider for the Operational Creditor.

"In the matter of *Joseph Jayananda v. Navalmar (UK) Ltd.*, the advance payment was given for projects and capital goods, but the Corporate Debtor altered the amount to account for cost and expense. The NCLAT considered the advance as Operational Debt."

In the recent landmark decision in the case of *Consolidated Construction Consortium Limited v. Hitro Energy Solutions Private Limited*[13], the appellant (Consolidated Construction Consortium Limited) entered into a contract to supply light fittings to Chennai Metro Rail Limited (CMRL). The appellant had placed purchase orders pursuant to the contract with CMRL. CMRL sent a cheque for ₹50 lakhs to the proprietary firm on behalf of the appellant but afterward terminated the contract. While the appellant cleared the dues towards the CMRL, it itself was unable to recover the stated sum from the proprietary concern on account of some facts and circumstances. While the NCLT decided in favor of the appellant, the NCLAT decided against it. When the creditor went into appeal before the Supreme Court, the Apex Court observed that the term “operational debt” under Section 5(21) of the IBC, 2016 is defined as a “claim with regard to the provision of goods and services”. As a result, it was stated that the definition does not limit the claim to simply those who provide goods and services, instead, it mandates that "the claim must have some relationship to the supply of goods or services, without identifying the supplier or recipient." "Operational debt" is defined by the Supreme Court as a debt that results from a payment made in advance to a corporation for the provision of goods or services.

8. C.A. (AT) (Insolvency) No. 545-546 of 2018, judgment dated January 24, 2019.
9. C.A. (AT) (Insolvency) No. 223 of 2019, judgment dated April 22, 2019.
10. C.A. (AT) (Insolvency) No. 752 of 2019, judgment dated August 20, 2020.
11. C.A. (AT) (Insolvency) No. 718 of 2020, judgment dated April 7, 2021.
12. C.A. (AT) (Insolvency) No. 752 of 2019, judgment dated 20 August 2020.
13. C.A. No. 2839 of 2020, Judgement dated February 04, 2022.

The distinction between the treatment of advance money provided by home buyers and advance payments made by recipients of goods and services has been addressed by the Supreme Court in the case of *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*[14], and further reiterated in the case of *Consolidated Construction Consortium Limited v. Hitro Energy Solutions Private Limited*[15]. The court highlighted the following differences to reconcile this differential treatment:

i) Homebuyers give advance money to developers; however, operational creditors are providers of goods and services.

ii) Contrary to home buyers, who have a crucial interest in the real estate project, operational creditors have no stake in the Corporate Debtor.

iii) Because an Operational Debt is based on the goods or services the Operational Creditor provides, there is no consideration for the time value of money in an Operational Debt. However, in real estate developments, funds are raised from home buyers while taking the time value of money into account.

In summary, the court recognized these differences to explain why the advance money provided by home buyers is treated as Financial Debt, while advance payments made by recipients of goods and services fall under the category of Operational Debt under the Code.

5. Conclusion

In the beginning, the Hon'ble NCLAT and NCLTs expressed reluctance to broaden the meaning of "operational debt" as it is defined in Section 5(21) of the IBC. But the Supreme Court's landmark judgment *Consolidated Construction Consortium Limited v. Hitro Energy Solutions Private Limited*, has brought essential clarity to the subject of Operational Debt. It is important to interpret terms like "claims" and "operational debt" broadly to protect the rights of operational creditors and avoid creating a separate category of creditors under the IBC.

"Supreme Court in the case of *Consolidated Construction Consortium Ltd., v. Hitro Energy Solutions Private Ltd.*, has explained that why the advance money provided by home buyers is treated as Financial Debt but constitutes Operational Debt if made by recipients of goods and services."

It is illogical to assume that goods and services can only flow in one direction for a claim to arise. In the past, creditors seeking refunds of advance payments could file petitions for winding up a company's affairs under Section 433(e) of the Companies Act, 1956. Therefore, it is fair and just to allow providers of advance payments to claim as operational creditors under the IBC.

We have observed cases where advance payments made by a creditor to a Corporate Debtor are claimed as an operational debt under the Code. However, we are yet to witness cases where payments made by a creditor to a Corporate Debtor are categorized as Financial Debt under the definition outlined in Section 5(8)(f) of the Code, which reads, "any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing". If such matters were to be filed, it would introduce a new perspective that remains untouched as of today.

[14] Writ Petition(s)(Civil) No. 43/2019, Judgment dated August 09, 2019.
[15] C.A. No. 2839 of 2020, Judgement dated February 04, 2022.

Why both Protection and Dissemination of Information under IBC are Critical for a Successful Insolvency Resolution?

Access to the right information at the right time is very crucial for various IBC processes starting from filing of CIRP application to withdrawal, resolution, or liquidation of the CD.

Creditors, lawyers, IRP/RP, CoC, investors, Successful Resolution Applicant, and ARCs etc., need reliable pieces of information to participate in CIRP and make relevant decisions. Besides, CIRP itself is a big source of information which is generated in CoC meetings, and during its interaction with various stakeholders. In this article, the author analyses the importance of reliable information at various stages of IBC processes, highlights loopholes and makes recommendations for preparing a robust information sharing mechanism.

Read on to know more…

Sanjeev Pandey
The Author is an Insolvency Professional (IP) Member of IIIPI.
He can be reached at
pandeysanjiv1962@gmail.com

1. Introduction

A major feature of a market economy is its dynamic selection mechanism whereby the strong and efficient enterprises replace weaker and less efficient ones, and new processes and products replace older ones. Some entrepreneurs and firms are unable to withstand the competitive pressure and exit the market, enabling their resources to move to more efficient employment. The Schumpeterian concept[1] of creative destruction encapsulates this dynamism. The establishment of new market-oriented economic systems in growing economies like India[2] accentuate the selection process and give it more prominence than in mature market economies.

The high rate of entry and exit of new firms in an economy also highlights the operation of the selection mechanism on the ground. One of the objectives of the Insolvency and bankruptcy Code, 2016 (IBC) is to regulate this selection mechanism. It establishes the procedures for the orderly exit of failed enterprises and the re-allocation of their assets and other resources into new firms and new activities. Moreover, the prescribed insolvency procedures

[1] https://businessjargons.com/schumpeters-theory-of-innovation.html
[2] Suphan Sarkorn, Rattaphong Sonsuphap, Pirom Chantaworn. (2022) The political economy transition in a developing country. Corporate and Business Strategy Review 3:2, special issue, pages 339-348.

in the IBC provide a legal assurance to the potential investors and creditors of a Corporate Debtor (CD) that even in the case of financial distress and business failure, there will be clearly defined legal processes at work to prevent a rush on the assets of the distressed firm and to regulate the distribution of the resolution proceeds of the firm under a Successful Resolution Plan (SRA) or distribution of liquidation dividend from the estate of the firm under liquidation amongst its creditors. This very purpose is served by the provision of moratorium to prevent any individual creditor from enforcing a claim against the company so that only the Insolvency Professional (IP), under the supervision of the insolvency court (NCLT), can make distributions to creditors in as per provisions of the IBC.

2. Genesis of Information Asymmetry

The triggering of the insolvency process is one of the important points at which the information asymmetry between the CD and others may generate serious perverse incentives and inefficient outcomes. It is essential that all stakeholders of a firm are made aware of its possible default or insolvency as soon as possible. Even in mature market economies with developed financial markets and institutions, it is recognised that a firm's financial distress may not always be picked up sufficiently early by the creditors, financial analysts, and markets. The management of a failing corporate debtor are in a unique position of knowing the affairs of the company and its potential imminent distress well in advance than other stakeholders.

Managers also have a tremendous incentive to distort information as they attempt to gain even more credit even when they are aware of their inability to pay. Since it is difficult to have an effective corporate control that can keep the management in check, there is a case for framing mandatory disclosure rules, and even stronger case in the context of insolvent corporate debtors[3]. The management of corporate debtors whose default is imminent, may embark on opportunistic behaviour aimed at benefiting themselves, by engaging in highly risky undertakings to prolong their control over the firm[4]. Thus, although as per law the insolvency procedure may be triggered by either the debtor itself or by a bona-fide creditor, it has often been argued that the management should be required by law to declare their insolvency within a short period of realising that their company may default on its debt. In the interest of addressing information asymmetry and considering the reluctance of large creditors like banks to initiate insolvency process even after an event of default, Bankruptcy regulator may consider making managers of defaulting company responsible to file a petition in bankruptcy court within a specific time of default.

3. Marketisation of Insolvency process

IBC has been designed as a market-oriented law and has enabled development of a new marketplace where sales of stressed corporate debtors take place and accordingly, the IBC has morphed into a branch of the laws governing mergers and acquisitions. The marketization of bankruptcy process has also been driven largely by two phenomena: (1) the growth of secondary markets for claims against distressed firms and (2) the growth of large pools of capital that purchase these claims, or other interests in, or assets of, failed companies[5]. The players in this arena can be either Asset Reconstruction Companies (ARCs) or AIFs or even large corporates with deep pockets. Today, all these entities play an increasingly important role in bankruptcy reorganization because of their access to capital, nimbleness of decision making and expertise in resolution.

4. Why Does Information Matter?

To function efficiently, markets need at least two things: capital and information[6]. While capital can be raised from markets, it is the availability of robust information about CD in an insolvency case, which is critical to development of efficient market for stressed assets.

Information plays an unusually important role in bankruptcy for both "private" and "public" reasons. The

[3] See David A. Skeel, Jr., Rethinking the Line Between Corporate Law and Corporate Bankruptcy, 72 TEX. L. REV. 471, 542 (1994).

[4] Failure's future: Controlling the market for information in Corporate Reorganisation by Jonathan C. Lipson

[5] For discussions of the development of this market see Robert D. Drain & Elizabeth J. Schwartz, Are Bankruptcy Claims Subject to the Federal Securities Laws?, 10 AM. BANKR. INST. L. REV. 569, 576 (2002) (describing the market for distressed debt, particularly trade debt, but noting the liquidity of debentures and bonds); Chaim J. Fortgang & Thomas M. Mayer, Trading Claims and Taking Control of Corporations in Chapter 11, 12 CARDOZO L. REV. 1 (1990); Paul M. Goldschmid, Note, More Phoenix Than Vulture: The Case for Distressed Investor Presence in the Bankruptcy Reorganization Process, 2005 COLUM. BUS. L. REV. 191, 193 n.6 (noting that the term "distressed-debt investors... refers to a class of investors who purchase the assets or claims of firms once their debt or operations become 'distressed'");

[6] See Ronald J. Gilson and Reinier H. Kraakman, The Mechanisms of Market Efficiency, 70 Va. L. Rev.549, 555 (1984) (discussing "focus on the distribution of information as a determinant of capital market efficiency."). "Despite certain anomalies, numerous studies demonstrate that the capital market responds efficiently to an extraordinary variety of information." Id. at 551

private rationale has been that forcing information disclosure has a deterrent effect that prevents pre-default misconduct by corporate debtors (e.g., the creation of secret liens/avoidance transactions/diversion of funds) and that it promotes reinvestment by enabling existing (or potential) stakeholders such as banks or even equity/debt investors to make informed decisions about further investment/credit to the corporate debtor, especially as regard to matters of valuation and governance.

Once a CD defaults and is insolvent, the creditors will need this information to decide whether to initiate CIRP or to sell their claims to ARCs, or to take alternate action to recover their dues. For a CD undergoing insolvency, creditors who are members of CoC will need this information to vote for or against a resolution plan. Hence, the availability of robust and reliable information about a corporate debtor will maximize its value, and thus creditors' recoveries.

5. Problem of Information Evasion/Alienation in Insolvent Companies

Most of the insolvency matters face the challenges of information asymmetry. Forcing timely disclosure of information about the insolvent CD from promoters/ managers to Resolution Professional (RP) as well as creditors has been a major challenge in the past and an important aspiration of IBC. In most CIRP (Corporate Insolvency Resolution Process) cases, the audited accounts of CD are not finalized for the several years prior to default. Even when the RP approaches NCLT and is able to get a suitable direction, promoters remain non-cooperative and non-compliant. However, neither our Company's Act nor IBC has been able to tackle this rampant evasion of information in the absence of effective disincentives and penalties. Without such critical information about past dealings of CD, the CIRP is frustrated at the outset, and it becomes very difficult to market the asset of CD to potential resolution applicants (PRAs) without robust and reliable data.

In addition to the above, most of the corporate debtors apparently enter bankruptcy with fewer unencumbered assets. This means they have little cash-flow available to devote to investigation into how and why the company ran into trouble in the first place. Such information about the CD is critical for its revival and to detect the avoidance

"IBC and underlying regulations need more clarity on the enforcement of provisions related to avoidance transactions so that creditors are encouraged to dive deeper into previous conduct of the CD and improve recovery."

transactions, but the reality is that most CoC members are reluctant to go for it in all out manner as costs of such detailed audit/ investigation are high and add to CIRP costs and reduce their recoveries from sale of assets. The CoC's haggling on the fees quoted by good forensic auditor is not conducive for such investigation. Lastly, even where significant avoidance transactions have been discovered through investigation, there are hardly any matters where creditors are able to recover funds by pursuing avoidance action in insolvency courts. Hence the IBC and underlying regulations needs more clarity on the enforcement of its avoidance provisions so that creditors are encouraged to dive in deeply into the past conduct of CD and are able to recover significant of haircuts through such recoveries from promoters.

6. How to Approach the Information Asymmetry

Legally speaking, the problem of information asymmetry can be approached from one of three perspectives. First, a "transactional" model views information sharing and verification as rational market behavior in commercial transactions. Thus, in a negotiated transaction, reasonable parties must recognize that information sharing is in their common interest, as this will facilitate the discovery of a "right" price for the deal in question.

A second model is adversarial, such as in litigation, where parties may have no common interest in sharing information. Thus, Court procedures involve rules and processes for discovery and production of evidence which force parties to share information, even if it is against their perceived self- interest. Accordingly, the civil litigation system allows extensive intrusion into the affairs of both litigants and even third parties.

A third model comes from the securities laws, which force market participants to disclose information, with the objective of removing any information asymmetries through a mandatory disclosure system that compels companies and other securities issuers to publish detailed information by way of Prospectus/Information Memorandum while selling new securities to the public

and require issuers to file and publish annual and quarterly reports containing similar information.

However, the reorganization under the IBC does not fit perfectly into any of these models because it is not exactly a "business deal," a "litigation" or a "securities transaction".

Keeping the above in view, let us now investigate the aspects of information required for successful conduct of insolvency process and information generated in an insolvency process.

7. IBC's Intervention in addressing Information Asymmetry

IBC has certain specific provisions to address information asymmetry by empowering the IRP/RP to seek information from the management, officers, employees of CD as well as from Information Utility (IU), statutory authorities, creditors, and other sources.

> **The unscrupulous promoters of defaulting corporate debtors often alienate the records/books of account from access of RP.**

IBC has introduced the innovative concept of IU, which is a public depository of all information related to debt transactions entered by the corporate debtors. The record of such transactions comes in handy for any financial or operational creditor in the event of a default. However, the real experience of the majority of RPs in accessing the old records, books of account, electronic databases, list of assets and liabilities from promoters and manager, despite enabling provisions of IBC has been far from satisfactory. The unscrupulous promoters of defaulting corporate debtors often alienate the records/books of account from access of RP by practices such as removing them from the office, taking away hard disks of computer systems, burning books of accounts, and sometime then filing reports of theft of books or loss in a fire.

8. Maintaining Confidentiality of Information Generated during CIRP

Apart from the information about corporate debtor's past dealing, assets, liabilities, technology, IPRs and patents, a considerable amount of information is generated during CIRP. These relate to valuation of CD, claims by creditors, confidential discussions in CoC regarding strategy of resolution and the contents of resolution plans, which must be kept confidential to maintain the sanctity of CIRP. Information confidentiality during CIRP is being subjected to increasing pressure, both internal and external to the system, which is likely to grow. The Resolution Applicants (RAs) bidding for stressed corporate debtors such as ARCs, AIFs etc. look for such insider information to unravel the complexity as it gives them an advantage in arriving at the realistic valuation of CD. They are even ready to go behind the back of RP to get such information directly from promoters or their employees.

To curtail such practices, IBBI Regulations prescribe confidentiality of such information and puts onus on the RP as leakage of information can compromise the integrity of the bidding process. However, despite the RP taking non-disclosure agreements from members of CoC before sharing such sensitive information, it has been the experience that confidential information is many times leaked to the other participants/applicants. This phenomenon has been counterproductive for maximization of value of CD as can been seen in some CIRPs where multiple resolution plans have bid value very close to each other or to the liquidation value. The members of CoCs and RPs must understand the impact of such leaked information on the values of resolution plans and must try to plug all the possible sources of leakage through adopting foolproof systems and procedures.

9. Public rationale of Information function of IBC

Although IBC has multiple policy goals as enshrined in its preamble, in essence the IBC balances two competing policy goals: maximizing creditor recoveries through maximization of value, on the one hand, versus rehabilitating the corporate debtor, on the other. Yet, insolvency reorganization under IBC also has a third, related goal: that is to create a transparent medium to force information about defaulting corporate debtors into the open, to enable the debtor's stakeholders—and the "Public at large"—to better understand the reasons for failure of the CD, and its possible repercussions. Moreover, as larger institutions fail, Regulators may be tempted—as they were with IL&FS—to "protect" the markets from systemic risk by keeping companies out of corporate insolvency, even at the expense of withholding information about how and why the company failed.

The rationale for making information about corporate debtors' public is also to enable the larger investing and

"The rationale for making information about corporate debtors' public is also to enable the larger investing and lending community to learn why a company failed."

lending community to learn why a company failed. The hope seems to be that knowledge reduces the likelihood of similar future failures or at least makes it difficult for such unscrupulous corporate debtors to raise funds from the public adopting similar tactics. Altering the flow of information thus affects not only the parties involved in any given resolution, but also those who construct financial transactions.

Although insolvency resolution is not the only way to produce information about financial failure, it is becoming an important one. Our knowledge about insolvency of Essar Steel, VOVL, DHFL or Jet airways, for example, would have been far more limited had the company not gone through CIRP. Today, the insolvency reorganization of companies has helped both investors as well as credit analysts to understand complex transactions that led to substantial loss of value leading to substantial haircuts suffered by lenders. They also enable new learnings for lenders in formulating new approaches to lending and risk mitigation tactics they can adopt in their loan appraisal systems and processes to avoid similar pitfalls in future lending.

The actual market values of insolvent entities discovered through CIRP also provide the lenders/ stakeholders with important industry specific benchmarks for valuing their security coverage in existing loans or potential loans. If, instead, such information about realizations or haircuts remains concealed, it will reduce their chances of learning from their past mistakes.

10. Conclusion

Thus, the future of CIRP and its interplay with credit markets will depend on how we set the rules on the production and sharing of information. Despite a vast literature on insolvency resolution, scholars and practitioners have paid inadequate attention to its information functions. Rather, they assume that the information needed to make intelligent market and social decisions in the insolvency process will miraculously and automatically work its way into the right hands. But they are wrong

because, if information is a commodity, it will be hoarded as surely as oil or gold and its non-availability to stakeholders will not augur well for the future of IBC.

"Thus, the future of CIRP and its interplay with credit markets will depend on how we set the rules on the production and sharing of information."

11. Recommendations

(a) The Government and IBBI need to give serious thought to information evasive practices of corporate debtors and suitably amend policy guidelines/ company laws to ensure timebound information out of corporate debtors and their management to address problem of information asymmetry.

(b) Financial Creditors, who are the biggest sufferers of information asymmetry and information evasion by promoters, should improve their systems to raise red flags early on when such critical information is not provided by the corporate borrower within strict timelines.

(c) Approved Resolution Plans, once fully implemented, should be placed in public domain to enable credit analysts and other market participants to learn from their finer points.

(d) Presentation of successful resolutions through case studies should be encouraged so that IPs, insolvency lawyers and other stakeholders are able to learn better techniques for successful resolutions.

Data Driven IBC

Data analysis plays a crucial role in reaching appropriate decisions in various processes under the IBC right from the admission of the case to its final closing. Therefore, a data-driven culture is imminent in the organizational hierarchy across all pillars of the IBC. In the present article, the author highlights the importance of Artificial Intelligence at various stages of the insolvency process from admitting cases to allocating the assignment to the most suitable IP, finalizing the Resolution Plan, and much more. The author argues that digitization in IBC needs upgradation for AI applications and makes a strong point for comprehensive data storage and exchange protocol in order to ensure a single source of truth for AI algorithms to work on. ***Read on to know more…***

Atul Grover
The author is an Insolvency Professional (IP). He can be reached at atulgroverr@gmail.com

1. Data Driven IBC (DD.IBC) - Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC) ecosystem is undergoing reforms at a rapid pace in order to keep up with rapidly changing legal, economic and sociological scenarios. It needs to harness the use of Artificial Intelligence (AI) in order to drive the IBC processes in a more efficient and effective manner and improve the outcomes including minimizing delays, increased transparency, increased participation of resolution applicants, facilitation in effective decision making, and maximization of value etc.

Data is central to the application of Artificial Intelligence (AI) and large amounts of data are required to train AI to create algorithms, learn patterns, relationships, and develop predictive models. It is the fuel that powers AI systems, providing the information needed for training, validation, and testing. Insolvency regimes around the world are shifting towards data-driven policy creation and evaluation. Governments are investing heavily in data creation, collation, and analysis in order to leverage AI to make decisions that will help them create relevant policies in their insolvency systems.

Digitization in IBC is at present not conducive to AI applications since it presently operates in a data-poor

environment and does not have standards around data storage and exchange formats. It is easy to inject data into a decision-making process, however it is hard to normalize and automate data driven processes. A data-driven-culture needs to be established in the organizational hierarchy across all pillars of the IBC.

The stakeholders of IBC presently work in silos and have their data stored in separate fragmented databases. There is a pressing need for a comprehensive data storage and exchange protocol in order to ensure a single source of truth for AI algorithms to work on.

2. DD.IBC - Data Sources

There are several sources from which financial and insolvency data can be collected and analyzed in order to build data-driven systems and applications. Data sources need to ensure that the data they hold is accurate, reliable, and is regularly monitored to ensure that it remains up-to-date and relevant.

Primary sources for financial data include balance sheets, income statements, cash flow statements, and other financial records of companies and include data sets from MCA, IBBI, IU, NCLT and IPs.

a) MCA (Ministry of Corporate Affairs) serves as an online repository of corporate data. It provides access to over 4 million companies, over 1 million directors, and over 12 million documents. Financial data is being stored in XBRL (eXtensible Business Reporting Language) format, which can enable the exchange of financial data between different systems.

b) IBBI (Insolvency and Bankruptcy Board of India) provides access to data and information related to IBC proceedings, process stakeholders including insolvency professionals, resolution applicants, financial and operational creditors, resolutions plans and court orders. The data collected by the IBBI is used to monitor the progress of insolvency proceedings, ensure compliance with regulations, and analyze trends in the insolvency market. It maintains data with respect to various processes (CIRP /CILP /CIVLP /PPIRP /FTIRP /PG2CD) under the Code. It disseminates information pertaining to orders issued by Tribunals and Courts, and the details of various stakeholders (IPs /IPAs / IUs / IPEs / RVs / RVOs) on its website.

c) IU (Information Utility) collects, stores, and maintains financial information of debtors, and provides access to such information to creditors and other stakeholders. This data set can be used to assess the creditworthiness of individuals and businesses, and to identify those who are likely to default on their loans.

"The data set of Information Utility (IU) can be used to assess the creditworthiness of individuals and businesses, and to identify those who are likely to default on their loans."

d) NCLT/NCLAT (Adjudicating Authority) uses the e-courts module which has data related to court proceedings such as case details, court orders, judgments, transcripts, and other legal documents.

e) IPs use case management systems or Office Applications including excel and word etc.

Secondary sources of insolvency data include government reports, stock exchange data, and corporate filings which are available from SEBI, RBI, and credit agencies like CIBIL as follows:

a) SEBI (Securities and Exchange Board of India) which protects the interests of investors and promotes the development of the securities market. It provides data regarding investment and trading activity, corporate disclosures, mergers and acquisitions, and investor complaints. The data collected by SEBI is used to ensure compliance with regulations, monitor market activities, and analyze trends in the securities.

b) RBI (Reserve Bank of India) which collects data related to the banking sector which includes information related to banking transactions, credit ratings, and other financial indicators. It ensures compliance with regulations, monitors the functioning of the banking sector, and analyzes trends in the banking industry.

c) CIBIL (Credit Information Bureau (India) Limited) which collects and maintains data from banks and other financial institutions and provides a credit score based on the data.

AI can help us understand complex situations more quickly and accurately, in order to make better decisions in the right direction. It is logical to identify specific problems, based on hard evidence collected after analyzing data from various sources, to collect and analyze feedback in order to effectively reinforce legislative interventions. However, the disintegrated IT platforms being used by different pillars of IBC are restricted to their individual mandates and do not allow for technology interventions between these institutions. The portals of these institutions work in silos and need to create protocols for them to be interlinked with each other in a structured manner. This will result in a single source of truth even when the data is being pulled from disparate databases. All stakeholders having access to the system can have the same view of the status of the insolvency process and in establishing the facts of the case.

3. DD.IBC - Data Integration

Besides shortage of data, overflow of inaccurate and useless data is a major challenge. Insolvency data in India is siloed in separate data sources which operate on separate technological platforms. The primary challenge is to integrate this fragmented data by re-normalizing data tables and creating data standards to streamline data exchange amongst various stakeholders. There is a need to combine data from multiple sources and consolidate it into one single source of truth.

> **The primary challenge is to integrate fragmented data by re-normalizing data tables and creating data standards to streamline data exchange amongst various stakeholders.**

Accurate up-to-date data which is consistent across systems can be integrated in real-time is critical for data analysis and informed decision making by AI systems. The challenges of data compatibility, data silos, data quality and data validation have to be addressed as explained below:

(a) **Data Compatibility**: Insolvency data comes from various sources. Each source has their own rules of data interaction. Extracting, transforming, and making data compatible with a common integrated system will be time and resource consuming. This will become more challenging with time as the number of data sources grows.

This issue is generally addressed using metadata which is data about data. It is information that describes the characteristics of data and provides context. It supports the validity, accuracy, and usability of related data. Metadata helps to harness the power of data, enabling faster and accurate data extraction. Without metadata management, data initiatives can spiral out of control.

(b) **Data Silos:** Data distributed across separate institutions is generally overlapping and inconsistent. This makes a holistic view of data very difficult. Data silos cause problems as the information is often stored in formats that are inconsistent with one another making data analysis impossible.

This issue is generally addressed by data harmonization which includes taking data from disparate sources, removing misleading or inaccurate items, and making all that cleaned and sorted data compatible. AI can play a critical role in the data harmonization process. AI makes it easier to prepare data from various sources, hence speeding up the development of big data applications.

(c) **Data Quality:** It is obvious that badly structured, incomplete or inaccurate data results in inefficient analyses. Bad quality of data may result from data-entry human errors, or faulty database structure (fields with the same meaning but different names across systems).

Needless to say, that data-driven culture needs to be adopted across various departments. Roles and responsibilities will have to be assigned adopting best practices like the data quality cycle (DQC). DQC is made up of analyzing, cleansing, and monitoring data quality. Data is cleaned according to established business rules and is protected and constantly monitored to ensure sustained quality.

(d) **Data Cross-validation:** It is cross-validation of data sourced from multiple databases. Data validation involves checking for inconsistencies, verifying that data is in the correct format, before performing calculations on the data.

(e) **Data-Based Reasoning**: Indicators are used to determine whether data is complete, accurate, and reliable or not. They are used in data-driven

decision-making and analytics to identify trends, patterns, and relationships in data.

4. DD.IBC - Data Interoperability

Data interoperability is the ability of different systems, applications, and services to exchange, integrate, and share data with each other. It is the ability for organizations to use disparate data sources and exchange data in a consistent and reliable way. It helps to provide a unified view of data and to efficiently manage and utilize data across multiple systems.

Open data standards/protocols (ODS) like Extensible Markup Language (XML) and Java Script Object Notation (JSON) formats, enable data to be interoperable and easily shared between different organizations and help to reduce the costs and complexity of data sharing, and making data more accessible to a wider range of users.

> **"XML/JSON are a way of encoding data in a format that is easily readable by humans and machines and enables data exchange, and data storage, in a manner that ensures data interoperability and accuracy."**

XML/JSON are a way of encoding data in a format that is easily readable by humans and machines and enables data exchange, and data storage, in a manner that ensures data interoperability and accuracy. Taxonomies are created based on XML/JSON protocols which enable interoperability and machine readability of the data. A few examples of which are as follows:

(a) **eXtensible Business Reporting Language (XBRL)** is an open standard for digital data exchange, specifically designed for business and financial reporting. It allows businesses to provide financial statements in a standardized format that is easily understandable by computers and other electronic devices. This makes it easier for businesses to share their financial data with regulators, investors, and other stakeholders. XBRL helps businesses save time and money by reducing the need to manually input and process financial data. XBRL also enables businesses to compare their financial performance with peers in their industry, and to accurately benchmark their own performance.

(b) **Insolvency XML (InsolXML)** is an open international standard for insolvency and restructuring data. It is currently being used in the United Kingdom, Australia, France, Germany, and the United States. It is being used for a variety of applications, including legal proceedings, insolvency and restructuring data exchange, and more. It is being used by legal professionals, financial institutions, and businesses to streamline their insolvency and restructuring processes.

(c) **LegalXML** is a set of standards developed by the Organization for the Advancement of Structured Information Standards (OASIS) to promote the use of XML in the legal industry. The standards are designed to provide an open, standardized way of exchanging legal documents and data. The LegalXML standards include standards for court filing and documents, legal citations, and legal notices. The LegalXML standards are an important tool for improving data exchange between different legal systems and applications.

5. DD.IBC – Applications

(a) **Early Warning Systems (EWSs)**

Insolvency regulators can use data analytics to develop risk assessment models and early warning systems. These models analyze financial data, industry trends, and other relevant factors to identify companies that are at risk of insolvency. By detecting early warning signs, regulators can intervene at an early stage and take appropriate actions to prevent insolvency or mitigate its impact.

EWS can help with MCA data for financial analysis and insolvency detection by analyzing and identifying patterns in data. AI systems can be used to detect anomalies and identify potential areas of risk. AI systems can also be used to compare financial data across different organizations and to identify trends and relationships. It can also be used to automate the process of financial analysis and insolvency detection, reducing the time and effort required. AI can help to improve the accuracy and reliability of financial analysis and insolvency detection.

(b) Asset Liquidation Marketplace (ALM)

An insolvency assets marketplace is a platform for buyers and sellers of distressed or insolvent companies' assets. These assets may include real estate, equipment, intellectual property, intellectual property rights, and other types of assets that are not easily liquidated. Insolvency assets marketplaces facilitate the sale of such assets at discounted prices to investors and other interested buyers. The goal of such marketplaces is to help companies in financial distress to maximize the value of their assets and to minimize the losses associated with insolvency.

"AI algorithms can be used to scan and analyze large amounts of information in order to identify potential investments that could provide the highest return. It can also be used to assess the risk associated with a potential investment."

AI can help in the marketplace of insolvent assets by providing a more efficient and effective way to identify, analyze, and evaluate potential investments. AI algorithms can be used to scan and analyze large amounts of information in order to identify potential investments that could provide the highest return. AI can also be used to assess the risk associated with a potential investment and to recommend potential buyers or investors. In addition, AI can help automate the process of negotiating and completing transactions, providing a more efficient and cost-effective option for buyers and sellers alike.

(c) Insolvency Dispute Resolution (IDR)

India is slated to become a $5 trillion economy. With a rise in the economy, disputes are bound to increase. There is a need to build the capacity of dispute resolution professionals like arbitrators, mediators, and lawyers especially for commercial disputes.

On the lines of ADR/ODR, international standards will have to be developed for IDR. Ethical delivery of Insolvency Dispute Resolution services will remain paramount to providing access to justice by harnessing the power of technology while reducing risks to data security, stakeholder rights, and confidentiality.

Nurturing Insolvency Professionals in IDR will play a critical role in advancing the IDR ecosystem, which could be a community driven, decentralized network of professionals.

(d) CIRP Management System

AI can provide a platform for a case management system, automated processes to file applications with the AAs, delivery of notices, enabling interaction of IPs with stakeholders, storage of records of CDs undergoing the process, and incentivizing participation of other market players in the IBC ecosystem. It may also allow regulators and the AAs to exercise better oversight over their respective domains of functioning through the consolidated information available on the e-platform.

(i) Automated Admission of CIRP Applications: Section 215(2) of the Code makes it mandatory for the creditors to submit financial information to the IUs. IBCAI algorithms can access this debt/default/dispute information from IU which can be relied on for speedy default verification and swift initiation of the CIRP. This will save substantial time spent by the AA in determining a default, which includes time taken for production of evidence, contesting of arguments of the necessary parties on the occurrence of a default, or existence of a dispute etc.

(ii) Automated Appointment of IRP: There are issues involving the appointment of IRP which may be done by the AA/FC/OC or even the CD. An IRP is required to hold the trust and confidence of all the stakeholders and is best appointed in an independent and transparent manner. AI algorithms can sift through 'Panel of IPs' and select the most appropriate IP for an assignment based on relevant factors such as domain-experience, proximity to the location, expertise, infrastructure. It can also suggest an appropriate fee structure based on the complexity of the assignment.

(iii) Automated determination of quantum of fine: In case any proceeding is maliciously initiated with no reasonable prospect of

success or based on insufficient evidence submitted without any purpose to determine the actual issue, AI can determine imposition of penalty where it believes that such an application has been filed with frivolous or vexatious intent.

(iv) **Automated creation of resolution plans:** AI algorithms can sift through thousands of resolution plans created thus far and can be trained to create effective resolution plans within the restraining parameters provided by the resolution applicants.

(v) AI algorithms can sift through various resolution plans and can select the plan which offers the best opportunity for lasting resolution given the objective to be met be it social or financial.

6. DD.IBC – Conclusion

Insolvency is an enormously complex industry. It involves a wide variety of public and private stakeholders (including financial and operational creditors, corporate and individual debtors, insolvency professionals, regulators, and NCLTs). Generally, the stakes are very high, and the environment is always ripe for disputes.

Designing an AI driven insolvency system requires a multidisciplinary approach that combines expertise in finance, data science, and regulatory policy. Data is

From the 'Panel of IPs', AI algorithms can select the most appropriate IP for an assignment based on relevant factors such as domain-experience, proximity to the location, expertise, and infrastructure. It can also suggest an appropriate fee structure based on the complexity of the assignment.

increasingly being used by insolvency regulators around the world to improve the efficiency, effectiveness, and transparency of insolvency processes. Here are some ways in which data can be utilized:

a) To provide insights and guidance for better oversight, evolution of insolvency systems and regulatory frameworks to the regulators and policymakers

b) To help in better assessment of creditworthiness of companies, management of insolvency risks, and decision-making processes to the financial institutions and creditors.

c) To complement their expertise in identifying and managing insolvency cases effectively to insolvency professionals and practitioners.

d) To serve as a basis for further research and exploration of innovative approaches to the researchers and academicians.

e) To make informed decisions and take proactive measures to avoid insolvency of the business owners and managers.

Address by Shri Naveen Verma, Chairman-RERA, State of Bihar in Webinar on "Real Estate CIRP's – Challenges & Solutions"

Shri Naveen Verma, Chairman-RERA, State of Bihar addressed the Webinar on "Real Estate CIRP's – Challenges & Solutions" organized by Indian Institute of Insolvency Professionals of ICAI (IIIPI) on June 23, 2023. Here we present highlights from his address:

1. The provisions of Real Estate (Regulation and Development) Act, 2016 {RERD Act} are adequate to address the specific needs of home buyers.

2. The Hon'ble Supreme Court has held in a matter of *Newtech vs State of UP* and others that the preamble of the RERD Act implies that the legislation is primarily to protect the interests of home buyers. It has also held that the Act applies with retroactive effect.

3. Under Section 31 of the RERD Act, allottees can file case against a promoter if they are not getting possession or a refund, or if they are facing other problems like deficiency in amenities, etc. In Bihar, the landowner is treated as an allottee under certain conditions. However, in these cases, the promoter may file a complaint against the landowner if there is a "joint development agreement" and landowner is obstructing the construction. If respondents do not appear after issuance of notices, RERA courts pronounce *ex-parte* orders.

4. Moreover, within RERA, we have an Adjudicating Officer (AO), a retired or serving District Judge rank officer, where cases for compensation can also be filed. Earlier there was some confusion among the home buyers as well as the RERA/AO as to which categories of complaints would be addressed by them. The Hon'ble Supreme Court has settled that matters related to delays in possession and refund would be exclusively handled by RERA.

5. A question has arisen whether RERA is entitled to take up cases (projects) which are not registered with it? Our view is yes though some tribunals have held that we should only take up cases concerning registered projects. However, the law has not yet been settled by a High Court or the Supreme Court.

6. The RERA courts have been given the necessary tools to enforce their orders either by recovery of its award as arrears of land revenue or being vested with the powers of civil court for execution of decrees. They have the authority to publish a list of defaulting promoters on their website.

7. Project registration is basically self-declaratory. RERA considers the documents filed, but mostly it is the promoter who is responsible for the veracity of the documents. All these information is available on website for public viewing. The intention is to make all relevant information available to buyers and prospective buyers so they can make informed decisions.

8. At the end of every quarter, the promoters are required to upload the status and progress of the project including number of units booked, supported by photographs and reports from CAs, engineers and architects on their web page on the RERA website. The RERD Act ensures that there would be negligible number of cases related to diversion of funds from projects.

9. Section 8 of the RERD Act, provides that in cases where the registration has lapsed or been revoked by RERA under Section 7, the association of allottees has the option to complete the remaining development works in the project. Normally, we ask the allottee association to come forward with a proposal on how they would want to get the flats completed, considering gap in financing, etc.

10. Suppose in a real estate project 100 apartments are to be constructed of which 50 flats are in the share of the landowners, and the promoter has sold 40 flats. Those forty homebuyers have the right to approach RERA, and suggest another builder/contractor to complete the work. In such cases we make the landowner as parties and ask the parties to get the valuation of work done and raise resources and then come to an agreement on the mechanism to complete the project. This effectively means transferring the ownership of the project from the builder to such entities. The remaining 10 unsold flats could be given to the allottee association if the value of work done is less than the amount collected by the allottees or can remain with the promoter or financial creditors if the promoter has done more work in comparison to the amount raised. In a couple of cases, we have passed orders stating that the allottee association gets the rights to the unsold flats, and the builder gets a profit margin on those flats. The RERAs invariably consult the appropriate Government in such matters.

11. I would like to quote an example. In Rajasthan, in a matter a bank took possession of some flats in a project where proceedings under Section 8 were already ongoing. The matter went up to the Supreme Court, and it was held that the home buyers get the first choice in such cases and the provisions of SARFESI Act do not apply.

12. The IBC indeed provides a comprehensive mechanism to resolve distressed companies. No other Act, as of date, offers such a robust resolution process. IBC allows the cleaning up of the company's financials, resolving its issues, and facilitating a transfer to a new owner who can start fresh and take responsibility for completing the project.

13. An aggrieved home buyer can either move the Real Estate Regulatory Authority (RERA) or the National Company Law Tribunal (NCLT) as both have concurrent jurisdiction. However, in case of conflict between the decisions/ judgements of RERA and NCLT, the latter would prevail as the IBC was enacted after the RERD Act.

14. Notwithstanding the above, the provisions of the IBC may be invoked as a last resort by home buyers. I feel that RERA, being focussed on the interest of home buyers, is able to come to speedier decisions. If we can coordinate more with IP/RP, it will be even faster. In case of projects facing insolvency, the matter can be referred to concerned RERA to check if any matter has been taken up by them. If the builder/promoter files a case for insolvency, the insolvency professional can refer the matter to us to determine if any third-party rights have been created and if those parties have filed cases.

15. There is a scope of coordination between RERA and the IP/ RP. Once the project is admitted under CIRP, the insolvency professional can access the RERA website and the webpage of the project for all relevant information. The RP can raise claims on the unsold flats during the Section 8 proceedings.

16. Educating homebuyers, about the IBC provisions as well as the RERA Act is very important. Section 33 of RERA provides for measures for advocacy and awareness about laws and policies relating to the real estate sector. So, we can coordinate with IIIPI, to make people more aware of the various provisions.

17. The lack of clarity on which body to approach has been a problem in the real estate sector, and we need to collectively address and improve this aspect

Resolution in Parts – A successful Case Study of Hindustan Photo Films Mfg. Co. Ltd.

CIRP of Hindustan Photo Films Manufacturing Company Limited (HPF), a wholly owned Government of India enterprise, is unique in the sense that it constitutes a composite arrangement of simultaneous partial resolution of the Corporate Debtor (CD) through a Resolution Plan and liquidation of remaining assets, simultaneously. It is the first of its kind in Indian history being declared insolvent under both erstwhile Company Law (liquidation) and thereafter under the IBC.

Incorporated on November 30, 1960, HPF used to manufacture photographic films, cine films, X-ray films, graphic arts films, and photographic paper. As it ran into financial distress, the Company was referred to the Board for Industrial and Financial Restructuring (BIFR), which vide order dated March 31, 2003, directed to wind up the Company. Meanwhile, Canara Bank, in its capacity as Debenture Trustee (Financial Creditor), filed a Company Petition before High Court of Madras which was later transferred to the NCLT, Chennai seeking initiation of the CIRP under Section 7 of the IBC. The NCLT ordered commencement of CIRP on January 07, 2022. IRP received claims of ₹44,001.60 Crores by financial creditors out of which ₹41,872.59 Crores were admitted.

The present case study, sponsored by IIIPI, has been developed by Mr. M. Suresh Kumar, Resolution Professional of HPF. In this case study, he has provided a first-hand step by step guide to rescue corporate life.

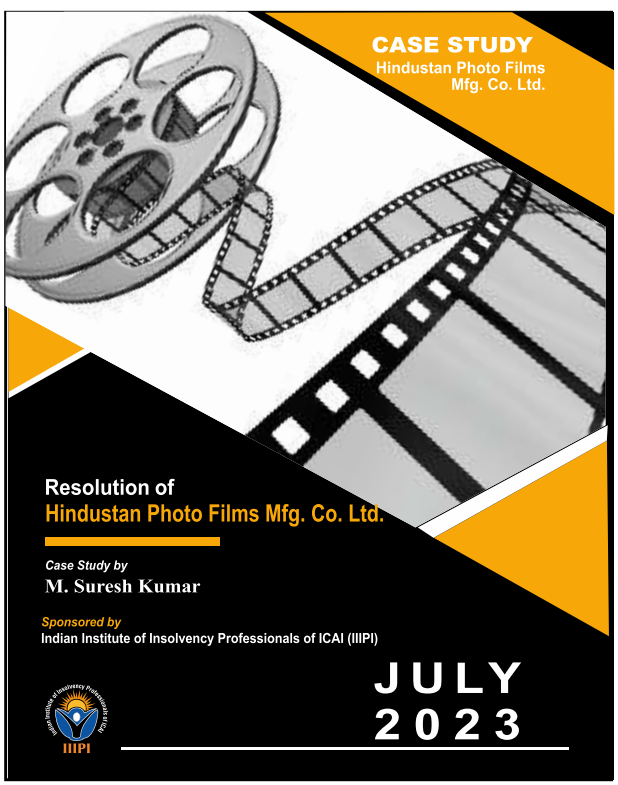
Read on to know more...

M. Suresh Kumar
The author is an Insolvency Professional (IP) Member of IIIPI. He can be reached at
msureshkumar@icai.org

1. Background of the Corporate Debtor

Hindustan Photo Films Manufacturing Company Limited (hereinafter referred to as HPF or the Company), the Corporate Debtor (CD), is a Company incorporated on November 30, 1960, by the Government of India with an aim to make the country self-reliant in the field of photosensitized products to cater to the needs of media, health care, infrastructure, and defense sector and to ensure the socio-economic development of the industrially backward District of Nilgiris. In its prime years of operation, the company used to manufacture photographic films, cine films, X-ray films, graphic arts films & photographic paper.

The main plant of the Company is located at Udhagamandalam in Tamil Nādu and the Conversion Unit/ Processing Chemical Plant is located at Ambattur, Chennai. Their photographic films are sold under the name "Indu", which means "silver" in Sanskrit (Silver Halides are used in film).



2. Debt & Security Interest

The CD has raised long terms funds for project expansion through issue of various series of Secured Debentures (Cumulative and Non-Cumulative) which were subscribed to by various banks and financial institutions in 1988. The said debentures are secured with first charge on all the CD owned assets on *Paripassu* (proportionate sharing among the class of lenders) basis. Apart from this term funding, the CD has availed various term loans and working capital loans from SBI and other nationalized banks, which have a charge on current assets and a second *Paripassu* charge on fixed assets of the Company. However, the lenders collectively have agreed to share the realization between the First & Second charge holders in the ratio of 70:30 before commencement of the CIRP.

3. Commencement of CIRP

As the CD became sick, reference was made to the Board for Industrial and Financial Restructuring (BIFR). The BIFR vide order dated March 31, 2003, passed an order to wind up the Company since there was no feasibility and viability for its revival. The same was forwarded to the Hon'ble High Court of Madras (C.P. No. 114 of 2003).

M/s. Canara Bank, in its capacity as Debenture Trustee (Financial Creditor), had originally filed a Company Petition before High Court of Madras and the later stands transferred to the Hon'ble NCLT, Chennai Bench seeking initiation of the Corporate Insolvency Resolution Process (CIRP) U/s.7 of the Insolvency and Bankruptcy Code, 2016 (IBC or the Code). The Adjudicating Authority (AA) ordered[1] for commencement of CIRP on January 07, 2022. The CIRP of the CD was never dreamt of by its employees, given the umpteen number of pending employees' cases before various courts of law.

> **"The Company became sick and was subsequently referred to BIFR March 31, 2003. Finally, the NCLT Chennai Bench ordered commencement of its CIRP on January 07, 2022."**

The Financial Creditor had initially recommended the appointment of an Insolvency Professional (IP), whose Authorization for Assignment (AFA) was unfortunately not renewed at the time of CIRP admission. Hence, on the directions of the AA, the applicant submitted a modified request for the appointment of an Interim Resolution Professional (IRP). Subsequently, Dr. C. Prabakaran was appointed as the IRP to take forward the CIRP.

4. Public Announcement & Claim Processing

The IRP made a public announcement and took control and custody of the CD assets located at Ooty and Chennai. The Board of Directors (mostly bureaucrats, Government & lenders nominees) had a special meeting and handed over the possession of the CD to the IRP to facilitate a smooth CIRP.

The IRP verified the claims received and constituted the CoC. A summary of claims admitted is given below for information:

[1] CIRP Admission Order, dated January 07, 2022, TCP No.1 of 2021 (CP/114/2003- on the file of Hon'ble High Court of Madras), (https://ibbi.gov.in//uploads/order/5bcedc9fe9685e36d0caa31799a1ba3f.pdf)

S.No.	Name of the Financial Creditor	Amount Admitted (In Crores)		
	Secured FC	**Principal (A)**	**Interest (B)**	**Total (C)**
1.	Life Insurance Corporation of India	19.98	657.58	677.56
2.	The Administrator of the Specified Undertaking of the Trust of India (SUUTI)	45.93	5,550.46	5,596.38
3.	UTI Trustee Company Private Limited	7.61	889.84	897.45
4.	Canbank Financial Services Limited	0.15	0.48	0.63
5.	Indian Bank	5.11	578.22	583.33
6.	Canara Bank (Asset Recovery Management)	10.49	1,659.16	1,669.65
7.	Canara Bank, Ootacamund Branch	6.23	47.02	53.25
8.	State Bank of India (SAMB, Cbe)	277.79	29,344.98	29,622.77
9.	The New India Assurance Company Ltd	1.00	3.50	4.50
10.	Peerless General Finance and Investment Co. Ltd	30.25	105.95	136.20
11.	Punjab National Bank	0.70	2.45	3.15

S.No.	Name of the Financial Creditor	Amount Admitted (In Crores)		
	Secured FC	**Principal (A)**	**Interest (B)**	**Total (C)**
12.	United India Insurance Company Limited	0.85	2.98	3.83
13.	Canbank Mutual Fund	0.80	2.80	3.60
14.	SBI Fund Management Limited	5.00	17.51	22.51
	Unsecured FC			
15.	Ministry of Heavy Industries, Govt of India	557.57	1,888.60	2,446.17
16.	KIOCL Limited	18.00	133.59	151.59
	Total	**987.47**	**40,885.12**	**41,872.59**

OTHER CREDITORS

Name of the Operational Creditor	Category	Claimed (In Crs)	Admitted (In Crs)
M. Ramakrishnan (Late)	Employees	0.0105	Nil
K. Unni Krishnan		0.1650	
Subramania Koushik. G.	Others	31.7660	
Canara Bank (Debenture Trustee)		1.8300	0.1830
J. B. Murali (Advocate)		0.0419	0.0419
Chennai Auto Ancillary Industrial Infrastructure Up gradation Company		0.2202	0.2043
Total		34.0336	0.4292

5. Change of Resolution Professional

Although the IRP was originally recommended by the Canara Bank Debenture Trustees, in the 1st CoC meeting, the lenders had not decided on the agenda for appointment of IRP as RP. The major lenders solicited proposals from various insolvency professionals to replace the IRP. The IRP replacement was approved in the 2nd CoC meeting held on March 07, 2022, through E-voting (approved with 99.29% voting) and was subsequently approved by AA on April 12, 2022.

> **The CoC suggested taking a fresh valuation during the Liquidation process with local valuers from Tamil Nādu, so that the local market factors are taken into consideration.**

As the RP appointment was delayed, the IRP went ahead with the appointment of registered valuers for all the three classes of assets. As the IRP had his IPE support office based in Mumbai, the valuers have been appointed from North India, which was discussed as a matter of concern in the CoC during the resolution plan discussion. The CoC suggested taking a fresh valuation during the Liquidation process with local valuers from Tamil Nādu, so that the local market factors are taken into consideration.

6. Assets of the Corporate Debtor

The asset holding structure of the CD was a bit complicated and the ownership of major assets was subject matter of a legal dispute. A summary of immovable properties held by the CD are as under:

Land & Building	Plant & Machinery	Securities / Financial Assets
• Lease Land 201.17 acres [Ooty] with factory building	Unit I & III [Ooty] Unit IV [Ooty]	Stock & Book Debts
• Lease Land 90 acres [Ooty] with factory building • Free Land 12.19 acres [Ooty] • Free Land 4.49 acres [Ambattur] with factory building	Unit II [Ambattur]	

The 291 acres of Forest land was assigned to the CD by Department of Forests, Government of Tamilnadu through various Government Orders (GO's) passed between 1960 to 1990, of which the 201 acres was a free of cost transfer and 90 acres was lease transfer. Both land assignments are subject to various conditions, of which one key condition

is "The land reverts back to the Government, if it is not used for the intended purpose by the company".

In the eyes of the public, the company was sitting with a huge land bank. Whereas the District Collector of Nilgris passed an order on February 19, 2020, remanding back the entire forest land to the Government, citing the reason that the same is not being utilized by the CD for the intended purpose. The said remanding order is the subject matter of a writ petition pending before the High Court of Madras and is yet to be decided[2].

Further the Forest department served a notice in 2021, demanding payment of rent & interest to the tune of 550 Crores for the usage of 90 acres of lease land.

7. Employees & their Claims

The CD has already discharged all its employees over the years through various Voluntary Retirement Schemes (VRS). At the commencement of CIRP, there was only one employee on roll and the safe custody of assets was ensured through outsourced contractors. The Government has nominated Shri. MRV Raja, General Manager in HMT Ltd, as the Chairman-cum-Managing Director, of the CD as an additional charge.

The last wage settlement of the employees took place in 1987 and there were no wage revisions thereafter. The unions negotiated a recoverable monthly advance (RMA) with the management and were paid. Over the years, many employees have superannuated / voluntarily retired and 1000+ cases were filed against the CD for Gratuity, RMA recovery, permanent employee status, leave benefits etc. The company had nearly 19 employee union / associations, who were defending all these cases before various judicial forums.

> **As many of the employees had migrated out of Ooty to other places in Tamil Nādu, the commencement of CIRP was not known to them in time and most of their claims were received belatedly.**

As many of the employees had migrated out of Ooty to other places in Tamil Nādu (mostly Coimbatore & Chennai), the commencement of CIRP was not known to them in time and most of their claims were received belatedly (after 90 days).

[2] All these disputes started with the Government acquiring 25 acres of unused lease land for construction of medical college / hospital, wherein the CD has challenged the same. As per the land lease GO, all disputes are subject to Arbitration, wherein the one-member arbitral bench will comprise of the District Collector of Nilgris, only.

8. Exceptional Employee Settlement during CIRP

During CIRP, there is no case of payment of creditors/ employees' old dues, which are outstanding as on the date of commencement of CIRP. However, the CIRP of this CD witnessed a unique settlement to its ex-employees during the CIRP period. Despite CIRP moratorium, ex-employees won a writ petition against the Government of India and CD for compensation, which was upheld by the Hon'ble Supreme Court during moratorium. A sum of ₹43 Crores was directly paid to ex-employees by Ministry of Heavy Industries, Government of India, through the Labour Commissioner during the CIRP.

> **The failure of the first round of EOI (no resolution plan) was an utter dismay to the CoC, as they were sitting with this non-performing asset for more than two decades.**

Brief Facts: In 2013-14, DHI approved VRS settlement for all the employees (subject to deduction of all the advances). Employees were settled after deducting their notional increment paid as advance from their settlement amount. The employees' union filed a writ (WA 1370 to 1372 of 2017) against this deduction of advances from the settlement amount directly against Government of India. In 2018, an employees' association won the writ appeal in the High Court Madras (initially single bench and later division bench). In response, the Government of India filed an SLP before the Supreme Court against this order of the High Court of Madras. The Supreme Court dismissed the said SLP on May 05, 2022, and ordered immediate payment.

Considering the ongoing CIRP, the SC ordered for direct disbursement to employees through office of Labour Commissioner, which was successfully completed by organizing claim submission camp at three locations viz., Ooty, Coimbatore & Chennai for the convenience of old employees who have settled across various parts of Tamil Nādu. The RP deputed a two-member team consisting of ex-employees of the CD, who were appointed by the RP on contract basis for better assistance in the CIRP, to assist office of Labour Commissioner for employee verification and validations.

9. First Round of EOI Process

The ratification for the appointment of RP by AA took about one month time. Considering the CIRP timelines,

the IRP and CoC went ahead with the preparation of Information Memorandum (IM) and proceeded with the issue of Form G (Invitation of EOI for the submission of the Resolution Plan) on March 23, 2022.

After the RP took over the CD, the 3rd CoC meeting was held on May 06, 2022, which dealt with the matters of Evaluation Matrix & RFRP and approved the same. In the First round of EOI, about Five PRA's (Prospective Resolution Applicants) evinced initial interest and qualified for submission of resolution plans. After a brief due diligence, due to ongoing land dispute with Government of Tamil Nādu, none of them turned up submission of Resolution Plan submission. The failure of the first round of EOI (no resolution plan) was an utter dismay to the CoC, as they were sitting with this non-performing asset for more than two decades.

10. Decision to Consider Resolution Plans for Part of CD Assets

The CoC met for the 4th time and discussed the next course of action. Considering the fact that the core asset of the CD (290 acres of leased land) being under lease and was revoked by the State Government (which is a subject matter of dispute pending before HC), resolving the Insolvency of the CD through a resolution plan became a challenge in this CIRP process. In such a scenario, RP proposed for resolution in piecemeal basis. Although there was no express provision in law for partial resolution plan by then[3], considering the stand taken by various NCLT's in real estate projects (wherein the Resolution plan for specific project instead of whole CD is accepted by AA) the RP's suggestion was accepted by the CoC and the 2nd EOI process was agreed.

The second round of resolution process kick started with re-issue of 'Form G' on June 27, 2022, this time in two newspapers - *The Economic Times (*All India Edition) and *Dinamani* (Vernacular all Tamil Nadu Edition) inviting prospective resolution applicants to revive the CD.

Particulars	Due Dates
Date of invitation of Expression of Interest	June 27, 2022
Last date for receipt of Expression of Interest	July 13, 2022
Date of issue of provisional list of Prospective Resolution Applicants	July 20, 2022
Last date for submission of objections to provisional list	July 25, 2022
Date of issue of final list of Prospective Resolution Applicants	August 2, 2022
Date of issue of Information Memorandum, Evaluation matrix and Request for Resolution Plans to Prospective Resolution Applicants	July 25, 2022
Last date for submission of Resolution Plans	August 24, 2022

Engagement of Process Consultants: Further, considering the suggestion of CoC members, appointment of Process Consultants for soliciting Prospective Resolution Applicants (PRA's) & Resolution Plans (handholding their referral PRA from EOI to successful plan submission & approval) have been agreed upon on success fee model. The brief terms agreed are:

Realisation of assets through an Approved Resolution Plan (Rs.) (A)	Process Consultant Fees (B= A* Rate below)
Upto ₹100 Crores	0.50%
Above ₹100 Crs and upto ₹250 Crores	1.00%
Above ₹250 Crs and upto ₹500 Crores	1.25%
Above ₹500 Crores	1.50% (Subject to a maximum of **₹10 Crores***)

***Note:** *Based on the total plan realization value, the applicable highest slab will be applied for the full value, subject to the maximum cap of Rs. 10 Crs.*

11. Acceptance of Belated EOIs

The initial turnout of EOI was poor. Although many investment banking firms showed interest in acting as process consultants, very few came with a PRA. The process consultants took longer time to study the IM and solicit their clientele for possible acquisitions.

> **In the interest of resolving the CD through a resolution plan, the CoC met on multiple occasions and approved belated EOIs.**

RP received belated EOI's. In the interest of resolving the CD through a resolution plan, the CoC met on multiple occasions and approved belated EOIs. Considering time, such approvals were done through Circular Resolutions

[3] Later Regulation 36B(6A) was inserted w.e.f 16.09.2022 facilitating piecemeal resolution, which facilitated the AA approval.

also. The successful resolution applicant's initial belated EOI was also approved through a circular resolution in Aug 2022. The interest and support of CoC, comprising of SBI, UTI & nationalized banks are commendable in resolving the case through a resolution plan.

12. Resolution Plan & Negotiations

With the incorporation of various belated EOI's, the final list of PRAs got modified multiple times and the resolution plan submission dates got extended up to September 30, 2022. Finally, the CoC received two resolution plans for consideration, of which one was not compliant with the requirements of RFRP, as the RA has not furnished the EMD/BG of ₹20 Crs as set out in the RFRP. In the first meeting of plan consideration, COC directed the RP to negotiate with the RA for plan value revisions. The negotiation meeting with the RA was held physically in the presence of key representatives of lenders.

The initial plan of RA, submitted by Shri. M.K. Rajagopalan, Chennai, was to acquire the entire assets of the CD for ₹102.60 Crs and use it for other business activities including industrial park, Medical & hospitality industry. On the other hand, the Liquidation value of the CD as a whole was ₹636.84 Crs, which includes the value of leased land. During the course of negotiation, as the RA was not offering any value for the leased land (as the lease itself was subject matter of legal dispute before HC), the RA agreed to modify the Plan for partial assets, which was owned by the CD. Further pricing negotiations were carried out. The RA finally submitted a Resolution plan for two assets owned by the CD as under:

Resolution Plan for acquisition of following assets through a scheme of arrangement (demerger) as under:

Description of Asset	Proposed Scheme	Plan Value	Fair / Liquidation Value
Factory Land & Building [Land 4.49 acres] along with P&M at Ambattur Industrial Estate, Chennai.	To be demerged from CD and merged with Transferee Company 1 of RA	₹102.60 Crs	₹ 89.11 Crs [FV] ₹73.16 Crs [LV]
Free Land 12.19 acres at Ooty.	To be demerged from CD and merged with Transferee Company 2 of RA		₹ 23.45 Crs [FV] ₹ 18.72 Crs [LV]

S. No.	Nature of Creditors	Amount [in Crs]
1	Secured Financial Creditor	100.80
2	Unsecured Financial Creditor	--
3	Operational Creditor [WM/Emp]	--
4	Operational Creditor [Others]	--
5	Equity Holders	--
	CIRP Cost	1.80
	Total Payable to the CD	**102.60**
	Fresh infusion for CAPEX works	2.70
	TOTAL	**105.30**

13. CIRP Time extensions

When the first round of EOI failed, to take forward the 2nd round, the CoC passed a resolution seeking 90 days extension after considering 53 days COVID exclusions. Further the Resolution Plan negotiations and bank approvals necessitated additional time, which was graciously granted by the AA at the request of CoC (special extension of 60 days i.e., up to 330 days).

14. Plan Approval by CoC & AA

After various discussion and internal approvals, the plan was finally approved by the CoC members for partial resolution of the CD assets and the remaining assets will undergo liquidation. The summary of voting results as under:

Approved	77.94 %
Dissent	13.36 %
bstain / Not voted	8.70 %

"With the consent of 8 secured lenders constituting 77.94%, the Plan was approved, and the letter of intent was given to Successful Resolution Applicant (SRA) for submission of Performance Bank Guarantee."

Despite granting more than a month's time for deciding on the voting, 7 out of 16 members (mainly unsecured lenders including MHI, Government of India, and some secured lenders) had not voted on the Plan. On the other hand, one of the key secured lenders SUUTI dissented for the plan. With the consent of 8 secured lenders constituting 77.94%, the Plan was approved, and the letter of intent was given to Successful Resolution Applicant (SRA) for submission of Performance Bank Guarantee. After receipt of the BG, RP

filed two applications before Hon'ble NCLT, Chennai bench seeking:

a) Approval of the Resolution Plan[4] along with scheme of arrangement (Two SBU's of CD merges with two different companies of the SRA) as proposed by the RA.

b) Liquidation order for Liquidating[5] the remaining assets of the CD.

After various rounds of detailed hearing in both virtual and physical mode, the bench directed the SRA to make some provisions in the Resolution Plan for Unsecured Financial Creditors & Operational Creditors, as their interests need to be protected to the extent possible. Considering the directive of the AA, the SRA filed an affidavit before AA for additional payment of ₹15 Lakhs over and above the approved value of the Resolution Plan out of which ₹11 lakhs were allocated for Unsecured Financial Creditors and remaining ₹5 lakhs were allocated for Operational Creditors.

After considering the additional affidavit, the AA passed two orders on March 31, 2023 – Firstly, approving Resolution Plan the part of assets of the CD, and Secondly, Liquidation of remaining assets, simultaneously.

After considering the additional affidavit, Hon'ble NCLT Chennai bench passed two orders on March 31, 2023 – *Firstly*, approving Resolution Plan for portion of assets of the CD, and *Secondly*, Liquidation of remaining assets of the CD, simultaneously. This has been the first of its kind order under the IBC, after introduction of Regulation 36B(6A) in CIRP Regulations for dealing with the Resolution Plan in parts.

15. Key Challenges to the RP

a) GoI, the shareholders themselves, joined the COC with voting rights for their outstanding loans. Although the government is a promoter, the erstwhile IRP treated them as unrelated party and included them in the COC.

b) A major portion of assets are taken by the State Government, by the order of District Collector of Nilgiris, and is a subject matter of a legal dispute before High Court.

c) 1000+ employee cases pending before various judicial forums up to Supreme Court

d) Not an operating entity and the CD's products and technology are obsolete in the market.

e) Exceptional settlement of ₹43 Crores to 633 employees during the CIRP period, despite moratorium

f) Reduction of Fixed Cost (Security and administration of 300 acres of land with 45 lakh Sq.ft of factory buildings & employee qtrs, spread across 3 small hillocks in Ooty).

g) Scope for new industries in the premises limited on account of environmental concerns in the region (forest land).

16. Plan Implementation & Liquidation

The Resolution Plan approval was communicated to all the relevant parties and the same stands fully implemented as of May 2023. Dissenting FC's and OC's have been paid on priority as per the IBC followed by distribution to the Secured Financial Creditors. The RP was also appointed as the Liquidator and the Liquidation process is ongoing.

17. Conclusion / Continuing Challenge to the Liquidator

After a detailed run of CIRP process with two rounds of EOI, the Resolution Plan was implemented successfully. In terms of realization, the amount realized by FC is miniscule in comparison to the total admitted claim of over ₹41,872.59 Crores. However, an NPA more than three decades old of the financial creditors, who had written off the asset fully in their books has fetched them some realization in FY 2023-24, which otherwise would have remained an issue perennially.

The continuing challenges for the Liquidator are:

a. Resolution of the pending dispute with Government of Tamil Nādu for remaining leased assets, so that the FC can get some material realizations.

b. Revaluation of all the remaining assets with local valuers (obsolete technology equipment's likely to result in only scrap value realizations)

c. Dealing with the grievances of 1000+ employees/ 200 plus court orders for employee settlements. Nil payment to employees as there is no outstanding due to them & there are no claims.

[4] Resolution Plan approval order dated March 31, 2023, IA(IBC)/99(CHE)/2023 IN TCP/1/2021 (https://ibbi.gov.in//uploads/order/0fc3ab13bdd814ba202eef585af871d9.pdf).

[5] Liquidation Order dated March 31, 2023, IA(IBC)/204(CHE)/2023 IN TCP/1/2021 (https://ibbi.gov.in//uploads/order/33b906bb3feab26c42e339f72b949db4.pdf).

Legal Framework

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

CIRCULAR

IBBI reiterates to attach record of default by IU along with CIRP Application under Section 7 or Section 9 of IBC

As per the Circular issued by IBBI dated June 16, 2023, creditors filing applications u/s 7 or 9 of the IBC must attach the record of default issued by the IU's. Earlier, IBBI vide Notification No. IBBI/2022- 23/GN/REG085, dated June 14, 2022 inserted sub-regulation (1A) of the Regulation 20 in IBBI (Information Utilities) Regulations, 2017 to mandate the Information Utility to process the financial information and issue the record of default to the creditor(s) so as to facilitate the creditors to attach the same with their insolvency applications under section 7 or 9 of IBC. The present Circular has been issued in pursuance to a recent order of the Hon'ble NCLT dated April 03, 2023, wherein all the applicants filing applications u/s Sections 7 or 9 of the IBC have been advised to comply with the above regulation and to produce the record of default issued by Information Utility for effecting hearing of their cases.

Source: *IBBI Circular No. IBBI/IU/59/2023, dated June 16, 2023.*

NOTIFICATION

MCA provides exemption from moratorium under IBC to Leased petroleum assets

The Notification dated June 14, 2023, reads - In exercise of the powers conferred by clause (a) of sub-section (3) of Section 14 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby notifies that the provisions of sub-section (1) of section 14 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), shall not apply where the corporate debtor has entered into any of the following transactions, arrangements or agreements, namely: - (i) the Production Sharing Contracts, Revenue Sharing Contracts, Exploration Licenses and Mining Leases made under the Oilfields (Regulation and Development) Act, 1948 (53 of 1948) and

rules made thereunder; and (ii) any transactions, arrangements or agreements, including Joint Operating Agreement, connected or ancillary to the transactions, arrangements or agreements referred to in clause (i).

Source: *CG-DL-E-16062023-246598, dated June 15, 2023, F. No. Insol-30/1/2023-Insolvency-MCA*

GUIDELINE

IBBI released the 'Panel of IPs' for July to December 2023

The 'Panel of IPs' has been prepared as per the 'The Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2023 issued on June 12, 2023'. It constitutes the Zone wise common Panel of IPs for appointment as IRP, Liquidator, RP and BT and share the same with the AA (Hon'ble NCLT and Hon'ble DRT). The Panel will have validity of six months i.e., from July 01, 2023, to December 31, 2023.

Source: *https://ibbi.gov.in/uploads/whatsnew/1d72267b24324e3c42c052f23d8b41f8.pdf*

DISCUSSION PAPERS

IBBI Invited Comments on Proposed Amendments for Timely Resolution of Corporate Debtors

IBBI has proposed a number of amendments to the existing insolvency regulations through a Discussion Paper. They include a new system of voting on more than one resolution plan, extending the timeline for submission of claims, introducing audit for insolvency resolution process cost, and increasing fee for the Authorized

Representatives among others.

To ensure that preference of Resolution Plan is captured, and creditors are able to vote freely, it is proposed to use a system of voting with preference, said the IBBI in the Discussion Paper dated June 07, 2023. As per the proposal, if no Resolution Plan achieves the 66 per cent required votes, the proposal with the least first preference votes is eliminated and its first preference is allotted to the second highest voted Resolution Plan. It also seeks to introduce compulsory audit of CIRP cost in the cases where the total assets of the corporate debtor (CD) as per the last available financial statements exceed ₹100 crore.

The proposed regulations also seek to make it compulsory for the resolution professional to provide reasons for the rejection of any claim to ensure transparency of the process and provide clarity to creditors whose claims have been rejected, while allowing creditors to submit claims beyond the 90-day limit without approaching the adjudicating authority. Besides, the proposed amendments also include changes related to facilitating information from promoters and management of the CD, taking over assets of the CD, declaration on limitation, increased responsibilities for Authorized Representatives, and recording relevant minutes of CoC meetings.

Source: *https://ibbi.gov.in/uploads/whatsnew/c4301ca9b10c5c83724a260f4e0fc250.pdf*

IBBI issued 'Discussion Paper' on Simplification of Enrolment and Registration Process for Ease of Entry and Exit in the Insolvency Profession

In this 'Discussion Paper', the IBBI has proposed that Pre-Registration Educational Course (PREC) will be conducted by specialized institution/s, PREC curriculum will have due emphasis on practical training aspects including exit assessment exam, PREC to include a course assessment at the end of the course and registration should be obtained within 12 months from successful completion of PREC. It is also proposed to introduce a straight through approach for both enrolment and registration process to run in one pass. Accordingly, Model Bye-laws Regulations will also be amended.

Source:https://*ibbi.gov.in/uploads/whatsnew/5aba9e309d9cce68abe4f1db73582c4b.pdf*

PRESS RELEASES

IBBI invites public comments on all its Regulations issued till date

The comments can be submitted on IBBI website between 31st May to 31st December 2023. Based on the comments during this period, various Regulations will be modified "to the extent considered necessary". The IBBI endeavours to notify modified regulations by March 31, 2024, and bring them into force w.e.f. April 01, 2024. "In a dynamic environment, despite the best of efforts and intentions, a regulator in such novel and emerging regulatory regime may not always be able to address the ground realities," said IBBI. It stated, "Further, the stakeholders may contemplate, at leisure, the important issues in the extant regulatory framework that hinder transactions and offer alternate solutions to address them. This is akin to crowdsourcing of ideas. This enables every idea to reach the regulator". It further added that due to this exercise, the universe of ideas available with the IBBI would be much larger and the possibility of a more conducive regulatory framework would be much higher.

Source: *Press Release No. IBBI/PR/2023/05 dated May 04, 2023*

IBBI published revised syllabus for Limited Insolvency Examination

IBBI conducts the Limited Insolvency Examination (LIE) in pursuance to Regulation-3 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, for prospective Insolvency Professionals. The said Regulations inter-alia empower IBBI to determine the syllabus, of LIE which shall be published on the website of the IBBI at least three months before the examination. The IBBI commenced the LIE on December 31, 2016.

The Board reviews the Examination continuously to keep it relevant with respect to dynamics of the market. It has successfully completed seven phases of the LIE. In accordance with the aforementioned regulations, IBBI has published the syllabus of phase 8 of the LIE. The revised syllabus is applicable for the examination to be conducted with effect from July 01, 2023.

Source: *Press Release No. IBBI/PR/2023/04 dated March 31, 2023*

IBC Case Laws

Supreme Court of India

M. Suresh Kumar Reddy Vs. Canara Bank & Ors. CIVIL APPEAL NO. 7121 OF 2022. Date of Supreme Court Judgement: May 11, 2023.

Facts of the Case

The Present Appeal is filled by M. Suresh Kumar Reddy (Appellant) being aggrieved by the impugned order passed by The Appellate Tribunal dated 05.08.2022. Canara Bank, being the successor of Syndicate Bank by the way of merger (Respondent) submitted the application for initiating CIRP against M/s Kranthi Edifice Pvt. Ltd. (CD) which was admitted by the AA by order dated 27.06.2022. The Appellant in the capacity of suspended director of the CD filed an appeal against the AA's order in the Appellate Tribunal but the same was dismissed by the Appellate Tribunal.

Syndicate Bank sanctioned a secured overdraft facility of ₹12 crores to the CD for one year apart from the Bank Guarantee limit of ₹110 crores. Thus, the facilities granted by the Syndicate Bank to the Corporate Debtor were fund based (Overdraft Facility) and non-fund based (Bank Guarantees). In the CIRP application, Respondent stated that the liability of CD under the Secured Overdraft Facility was approx. ₹74.5 Crores including the liability of approx. ₹19 Crores towards outstanding the bank guarantee. The appellant submitted that, there were several contracts granted by Telangana Government to CD and various communications is happened between government and syndicate bank about extending the bank guarantees on the request of CD but none of them entertained by the bank and this way the bank is responsible for triggering the default. The Appellant contended on the strength of *"Vidarbha Industries Power Limited v. Axis Bank Limited"* that the NCLT had the discretion that not to admit the petition u/s 7 of IBC even after the existence of debt and default had been proved, the Appellant further stated that under a onetime settlement scheme a sum of ₹6 crore has been deposited with the Respondent but eventually the said proposal was turned down and therefore the present appeal is filed.

The main issue raised before the Apex Court is that, whether the AA has the discretion not to admit the CIRP

application even after the existence of debt and default?

Supreme Court's Observations

The Apex Court while placing their reliance on its judgement given in *"Innoventive Industries Limited v. ICICI Bank and another"* and *"E.S. Krishnamurthy and others v Bharath HiTecch Builders Pvt. Ltd."* Stated that the AA only has to determine whether a 'Debt' (which may still be disputed) was due and remained unpaid and once AA is satisfied that the default in respect of debt has occurred there is hardly any discretion left with AA to refuse the application u/s 7 of IBC. The Apex Court further stated that even the non-payment of a part of debt, when it becomes due and payable, will also amount to default on the part of CD. Hence the view taken in *"Innovative Industries"* still holds good.

The Apex Court further stated that in the original Recovery Petition filed in DRT by the Respondent, the CD acknowledged the debt dated 05.05.2019, to the extent of ₹ 63.36 Crores and the same was reflected in the balance sheet of CD and in the light of communications exchanged between state government and syndicate bank it is true that Government addressed the letters to Syndicate bank for extending the bank guarantees and if the bank guarantees were not extended then the same are likely to be encashed by the government but the respondent specifically informed the CD by letter dated 18.01.2021, that the competent authority has not considered the proposal and also asked to clear the outstanding dues immediately, thus there is no doubt that CD committed the default, and on the basis of fact of the case there is no good reason on which AA could have denied the CIRP application.

Order: The Appeal has no merit and accordingly stands to be dismissed.

Case Review: *Appeal dismissed.*

M/s Vistra ITCL (India) Ltd & Ors. Vs. Mr. Dinkar Venkatasubramanian & Anr. Civil Appeal No.3606 of 2020. Date of Supreme Court Judgement: May 04, 2023.

Facts of the Case

The Present appeal is filed by M/S Vistra ITCL (India) Ltd. & Ors. (Hereinafter, referred as 'Appellants') after being aggrieved by the impugned order dated 24.08.2020 by the NCLAT. Amtek Auto Ltd.("CD") approached the Appellants to extend a short-term loan facility of ₹ 500 crores to its group of companies i.e. Brassco Engineers Ltd. and WLD Investment Pvt. Ltd. for the ultimate end use of the CD. Thereafter, two Security Trustee Agreements were executed, first between the appellant and WLD Investment Pvt. Ltd and second between the appellant and Brassco Engineers Ltd. The Board of the CD passed resolution to create security over the shares of JMT Auto Ltd. held by it. (Pledged Shares).

Meanwhile an application under Section 7 of the IBC, 2016 was admitted against the CD and an RP was appointed (hereinafter referred as 'Respondent'). The Appellant, in the capacity of secured creditor submitted Form C claiming a principal amount of INR 500 crores but the same was rejected by the RP which was not challenged by the Appellants. The RP received two resolution plans and the plan by M/s LHG was approved by the CoC. The Resolution plan was approved by the AA but as the LHG did not fulfil its commitment, the AA passed an order directing reconsideration of the CoC for consideration of DVI's plan. The Appellants filled application u/s 60(5) of IBC claiming the right on the basis of the pledged shares, the AA dismissed the application filed by the appellants. The Appellate Tribunal observed that the Appellants have not lend any money to the CD and the CD did not owe any financial debt to the appellants except the pledge of shares to be executed. Therefore, the Appellants would not be coming under the purview of financial creditor of the CD.

Supreme Court's Observations

The Apex court placing its reliance on Judgments in Anuj Jain Interim Resolution professional for Jaypee Infratech Ltd. vs. Axis bank Ltd. and Phoenix ARC Pvt. Ltd. vs. Ketulbhai Ramubhai Patel held that the CD is not liable to repay the loans advanced, in respect of which there were detailed, and separate agreements executed by the lenders with Brassco and WLD.

Further, the Apex Court held that the present plea of the Appellant to be treated as a financial creditor of the CD should be dismissed on the grounds of delay, laches and acquiescence. The Appellant had not objected to the resolution plan submitted by the erstwhile applicant – LHG and as a sequitur, its non-classification as a financial creditor in the CoC of the CD. The Apex court observed that the Appellant, a secured creditor is being denied the rights u/s 52, 53 of the code in respect of pledge shares. The Apex Court provided two options, first is to treat the secured creditor as a financial creditor of the CD to the extent of the estimated value of the pledged share on the date of commencement of CIRP or second is to treat the Appellant as a Secured Creditor in terms of Section 52 read with Section 53 of the Code.

Order: The order of the NCLAT affirming the view taken by NCLT is partly modified in terms of Apex Court's directions holding that the Appellant would be treated as a secured creditor, who would be entitled to all rights and obligations as applicable to a secured creditor in terms of Section 52 and 53 of the code and in accordance with the pledge agreement.

Case Review: *The Appeal disposed of.*

Abhishek Singh Vs. Huhtamaki PPL Ltd. & Anr. SLP (Civil) No.6452 of 2021. Date of Supreme Court Judgements: March 28, 2023.

Facts of the Case

This Appeal is filed by Mr. Abhishek Singh (hereinafter referred as 'Appellant'), a Suspended director of the Manpasand Beverages Ltd. (hereinafter referred as "CD") after being aggrieved by the AA's order dated 13.04.2021. The CD was in the business of manufacturing and distribution of fruit beverages. Huhtamaki PPL Ltd. (hereinafter referred as "Respondent"), used to supply packaging material to the CD. Later, The Respondent filed a petition under Section 9 of IBC, seeking initiation of CIRP of the CD, over a default of ₹1,31,00,825/-. The AA admitted the petition against the CD by order dated 01.03.2021. Two days after initiation of CIRP, the parties entered into settlement even before the CoC could be constituted. As per settlement terms, the CD paid ₹95.72 Lakhs to the respondent and the IRP filed an application before AA seeking withdrawal of CIRP against the CD.

Meanwhile an appeal was preferred before the Appellate

Tribunal against the admission order of AA dated 01.03.2021 on the ground that Section 9 of IBC was not maintainable as there was a pre-existing dispute. Later, the appeal was withdrawn with liberty to revive the appeal in case the settlement failed. The Appellate authority also granted stay on formation of CoC. The AA observed that (i) Appellant had violated the moratorium directions contained in admission order dated 01.03.2021, (ii) 35 creditors have filed their claims during the pendency of the CIRP application and withdrawal of the proceeding would adversely affect their rights, and (iii) Regulation 30A of IBBI Regulations was not binding upon it and such provision would not be of any help to the CD or Appellant. Therefore, the AA by its order dated 13.04.2021 rejected the settlement application and fixed the matter for disposal of the application under Regulation 30A after hearing all creditors.

Supreme Court's Observations

The Supreme Court referring to the judgements in *Swiss Ribbons Pvt. Ltd. & Anr. Vs UOI & Ors.* (2019) and *Kamal K. Singh v. Dinesh Gupta & Anr.* (2021) held that section 12A of IBC permits withdrawal of applications admitted under section 7,9 or 10 of IBC and does not debar entertaining applications for withdrawal even before constitution of CoC. The substituted Regulation 30A (as it stands today after the judgement of Swiss Ribbon) clearly provides for withdrawal applications being entertained before constitution of CoC.

The Supreme Court further stated that the AA committed an error in holding that Regulation 30A would have no binding effect as this would amount to defeating the very purpose of substituting Regulation 30A in IBBI Regulations. The Apex Court further held that large number of creditors filed their claim due to the delay on the part of AA in disposing of applications under Section 12A of IBC and Regulation 30A of CIRP Regulations.

Order: The impugned order of the AA cannot be sustained. The application filed under Regulation 30A of IBBI Regulations deserves to be allowed and the impugned order of NCLT is set aside.

Case Review: *Appeal is allowed and pending applications, if any, are disposed of.*

High Court

The Principal Chief Conservative of Forest & Ors. Vs. M/s Wind World (India) Ltd. Writ Petition No.20083 OF 2022 (GM – RES). Date of High Court Judgements: April 13, 2023.

Facts of the Case

The present writ petition is filed by The Principal Chief Conservators of Forests & Ors. (Hereinafter, referred as 'Petitioners'), after being aggrieved by impugned order dated 06.07.2022 passed by AA. M/s Wind World (India) Ltd, (hereinafter referred as 'Respondent') was granted a lease by the Karnataka Renewable Energy Development Corporation Ltd. in respect of land measuring 221.80 hectares for period of 15 years under a lease deed dated 03.09.2003. On being due, the leased land was applied for renewal and was pending before the competent Authority.

Meanwhile the Respondent requested state's approval to start the windmill as the same would get damaged if not put into functioning. For safeguarding the interest of Respondent, state gave the permission but was subject to clearance of the forest department. The Respondent, on declaration of it being an insolvent before AA invoked the section 14 of IBC. The proceedings were pending before the AA from 2018 and all the above permissions were granted during the said pendency. State Government suspended operations of the Respondent in the year 2022 as the forest clearances were not placed before it. The Respondent did not challenge the suspension but approached the AA by filling application u/s 60(5) of the code for passing an interim order. The Tribunal directs the government to permit functioning of the windmill by holding that it was essential to resolve insolvency of the Respondent. Pursuant thereto, the petitioner has filed the current writ petition.

The issue raised before the High court through the writ petition is that whether the AA has exceeded its jurisdiction by passing the Impugned order?

High Court's Observations

The High Court, referring to the judgment of "Gujarat Urja Vikas Nigam Limited", held that the AA had no jurisdiction to direct functioning/ continuing of the windmill without the forest clearances, merely because the state had granted such permission earlier. The AA cannot

overstep its jurisdiction. The High Court held that the Respondent has been taking undue advantage of indulgence of the State and has not taken any steps to submit a complete forest clearance proposal for renewal of the lease and has been continuing with the operation on ad hoc basis. The Respondent could not have knocked at the doors of the AA as it completely falls beyond the purview of the code.

Order: Impugned order dated 06.07.2022 passed by the AA stands quashed.

Case Review: *Appeal allowed.*

National Company Law Appellate Tribunal (NCLAT)

Arun Agarwal Vs. Mr. Ram Ratan Kanoongo & Ors. Comp. App. (AT) (CH) (Ins.) No. 109 of 2023 Date of NCLT. Judgement: June 08, 2023.

Facts of the Case

The present appeal is filled by the Arun Agarwal (hereinafter referred as 'Appellant') in the capacity of suspended Director of Suryajyothi Spinning Mills Ltd. ('CD") after being aggrieved by the impugned order dated 18.04.23 passed by the AA.

M/s State Bank of India filed application u/s 7 of IBC for initiating CIRP against the CD and the same was admitted by the AA vide order dated 05.09.2019. Accordingly, invitation for expression was issued on 30.11.2019, which was extended to 26.12.2019 and last date for submission of the Resolution plan was fixed till 30.01.2020. After multiple extensions the resolution plan was finally received on 31.07.2020, but the CoC did not accept the Plan as it was not compliant with the conditions under the RFRP (as it was a `Conditional Plan'). The CoC members informed the RP that they have received the One Time Settlement (OTS) proposal form one of the Corporate Guarantors of the CD and accordingly application u/s 12A was moved for considering the same. During the 18th CoC meeting, the SBI informed that the OTS proposal was under active consideration and directed the RP to seek another extension of 60 days of the CIRP period. The AA disposed of the Application as not maintainable as there were no resolution plans pending before RP and CoC and also stated that an OTS proposal was a matter between the CD and SBI.

Further, IA application for the liquidation u/s 33(1) was allowed as AA observed that the CIRP period had already expired on 13.01.2021 and there was no resolution plan for consideration. Hence, this appeal is filed by the suspended director of the company in Appellate Tribunal.

NCLAT's Observations

The Appellate Tribunal draws their reference to the order given by the Apex Court in Arun Agarwal Vs. Ram Ratan Kanoongo & Arn. in which the liberty was granted to the Appellant to approach the Appellate Tribunal and seek such relief as may be available to him under law and also directed that the Liquidator shall not take action adverse to the interest of the Appellant.

Further, the Appellate Tribunal, on the basis of minutes of 18th CoC meeting and letter issued by Corporate Guarantor stating that they are ready to pay the funds of SBI, held that in the event of any such settlement is able to be executed, with funds infused, keeping in view the spirit and intent of the Code, the AA shall proceed in accordance with the law giving 14 days' time peremptorily from the date of this `Order', failing which, the Appellate Tribunal does not find any tangible ground to interfere with the `Order of Liquidation' as `more than sufficient time' was granted by the AA to the Appellant herein to settle the matter.

Order: The Appeal stands disposed of. No costs. The connected pending `Interlocutory Applications', if any, are closed.

Case Review: *Appeal Disposed of.*

Arun Agarwal Vs. Mr. Ram Ratan Kanoongo & Ors. Comp. App. (AT) (CH) (Ins.) No. 109 of 2023 Date of NCLT Judgement: June 08, 2023.

Facts of the Case

The present appeal is filled by the Arun Agarwal (hereinafter referred as 'Appellant') in the capacity of suspended Director of Suryajyothi Spinning Mills Ltd. ('CD") after being aggrieved by the impugned order dated 18.04.23 passed by the AA.

M/s State Bank of India filed application u/s 7 of IBC for initiating CIRP against the CD and the same was admitted

by the AA vide order dated 05.09.2019. Accordingly, invitation for expression was issued on 30.11.2019, which was extended to 26.12.2019 and last date for submission of the Resolution plan was fixed till 30.01.2020. After multiple extensions the resolution plan was finally received on 31.07.2020, but the CoC did not accept the Plan as it was not compliant with the conditions under the RFRP (as it was a `Conditional Plan'). The CoC members informed the RP that they have received the One Time Settlement (OTS) proposal form one of the Corporate Guarantors of the CD and accordingly application u/s 12A was moved for considering the same. During the 18th CoC meeting, the SBI informed that the OTS proposal was under active consideration and directed the RP to seek another extension of 60 days of the CIRP period. The AA disposed of the Application as not maintainable as there were no resolution plans pending before RP and CoC and also stated that an OTS proposal was a matter between the CD and SBI.

Further, IA application for the liquidation u/s 33(1) was allowed as AA observed that the CIRP period had already expired on 13.01.2021 and there was no resolution plan for consideration. Hence, this appeal is filed by the suspended director of the company in Appellate Tribunal.

NCLAT's Observations

The Appellate Tribunal draws their reference to the order given by the Apex Court in *Arun Agarwal Vs. Ram Ratan Kanoongo & Arn.* in which the liberty was granted to the Appellant to approach the Appellate Tribunal and seek such relief as may be available to him under law and also directed that the Liquidator shall not take action adverse to the interest of the Appellant. Further, the Appellate Tribunal, on the basis of minutes of 18th CoC meeting and letter issued by Corporate Guarantor stating that they are ready to pay the funds of SBI, held that in the event of any such settlement is able to be executed, with funds infused, keeping in view the spirit and intent of the Code, the AA shall proceed in accordance with the law giving 14 days' time peremptorily from the date of this `Order', failing which, the Appellate Tribunal does not find any tangible ground to interfere with the `Order of Liquidation' as `more than sufficient time' was granted by the AA to the Appellant herein to settle the matter.

Order: The Appeal stands disposed of. No costs. The connected pending `Interlocutory Applications', if any, are closed.

Case Review: *Appeal Disposed of.*

M/s Smartworks Coworking Spaces Private Ltd. Vs. M/s Turbot Hq India Private Ltd. Company Appeal (AT) (Insolvency) No. 772 of 2022. Date of NCLAT Judgement: May 23, 2023.

Facts of the Case

The Present Appeal is filled by M/S Smartworks Coworking Spaces Pvt Ltd. in the capacity of Operational Creditor (hereinafter referred as 'Appellant') after being aggrieved by the impugned order dated 08.04.2022 passed by AA. The Appellant is engaged in the business of co-working and/or providing flexi office space. The Appellant entered into a Services Providers Agreement with M/s Turbot HQ India Pvt. Ltd. (hereinafter referred as 'Respondent") for the monthly rent of ₹ 3.52 lacs starting from 01.10.2018 to 30.09.2021. The Agreement had lock-in period of 36 months and did not create any right/title/interest in the property immovable or movable.

The Respondent via email dated 04.06.2019 informed the Appellant to end the contract by 01.09.2019 but the Appellant demanded the unpaid balance amount for the lock-in period. However, the Respondent stopped using the premises by 01.09.2019. The Appellant issued demand notice to the Respondent under section 8 of IBC, 2016 claiming the Operational debt of ₹ 1.29 Crore but the same was denied by the Respondent. Thereafter, the Appellant filed the application under section 9 of IBC, 2016. The AA held that the amount claimed by the Appellant for the lock-in period is not an operational debt and rejected the section 9 application by its order dated 08.04.2022. Therefore, the Appellant filed the appeal. The main issues arise before Appellate Tribunal is: (i) Whether the claimed amount considered as operational debt? (ii) Whether the agreement dated 17.08.2018 is compulsorily registerable instrument under the Registration Act 1908? (iii)Whether the agreement dated 17.08.2018 was originally engrossed on an unstamped paper?

NCLAT's Observations

The Appellate Tribunal placing its reliance on the judgment given in "*Jaipur trade Expocentre Pvt. Ltd. Vs. Metro Jet Airways training Pvt. Ltd.*" held that the debt

claimed by the Appellant is clearly a claim within the meaning of IBC and the debt become due because of the Respondent default and the Appellant is fully entitled to initiate CIRP u/s 9 of IBC.

While addressing second issue the Appellant Tribunal stated that the agreement does not purport or operate to create, declare, assign, limit or extinguish any right, title of interest in immovable or movable property, and therefore the agreement was clearly not required to be compulsorily registered under section 17(b) of Registration Act. The Appellate Tribunal further stated that when the Agreement was admittedly signed and executed between the parties and acted upon, mere fact that it not being engrossed on stamped papers shall have no consequence on the claim of the Appellant.

Order: The debt claimed by the Appellant in section 9 application is an Operational Debt and the Agreement dated 17.08.2018 was not compulsorily registrable and agreement having not been executed on stamp paper was inconsequential. AA to pass order of admission of Section 9 Application within a month. However, in the meantime the parties may enter into a settlement, if any.

Case Review: *Appeal is allowed.*

Westcoast Infraprojects Private Limited, Vs. Mr. Ram Chandra Dallaram Choudhary Company Appeal (AT) (Insolvency) No. 1258 of 2022. Date of NCLAT Judgements: April 28, 2023.

Facts of the Case

The Present Appeal is filled by the Westcoast Infra projects Private Ltd. (hereinafter referred as 'Appellant') after being aggrieved by the impugned order dated 06.09.2022 passed by AA. Liquidation Proceedings commenced against the Anil Limited ("CD") by order dated 25.10.2018 passed by AA, the Liquidator (hereinafter referred as 'Respondent') was appointed, and e-auction was held in regard to a property in question. The Appellant emerged as highest bidder for consideration of ₹373 Crores. The Appellant remitted an amount of ₹15 Crores as EMD (Earnest Money Deposit) before participating in the e-Auction.

The Respondent informed the Appellant vide letter dated 28.03.2022 to deposit the balance amount of ₹358 Crores within 30 days from the confirmation of sale i.e. on or before 27.04.2022 but the Appellant only deposited an additional amount of ₹ 1.6 Crore. Multiple communications were sent to the Appellant regarding the payment of balance amount within extended period of 90 days, i.e. on or before the 26.06.2022. Vide communication dated 17.06.2022, the Appellant prayed to the Respondent to extend the interest free period of 30 days till such time revenue entries are mutated in the name of Anil Limited. Denying the same, the Respondent stated that granting such permission is beyond his power and duties. Thereafter, the Appellant filed the IA in AA praying for extension of interest free period of 30 days. In the meantime, the Respondent informed the Appellant that as the balance amount was not paid, the sale process stands cancelled and the EMD and part payments deposited by appellant stand forfeited as per the Liquidation Process Regulation 2016 and as per Tender document also.

The AA passed an order dated 06.09.2022 that there is no ground to interfere with the liquidator working; IA application was consequently rejected by AA.

NCLAT's Observations

The Appellate Tribunal placing its reliance on the judgment delivered in *Potens Transmissins & Power Private Ltd. v. Gian Chand Narang* held that as per the Liquidation Process Regulations 2016 the 90 days extended time is the maximum period provided for making the deposits failing to which the sale shall be cancelled and the Liquidator is empowered to forfeit the EMD and part payments made thereof.

The Appellate Tribunal further held that neither there was any defect in the title nor the process of change of the name in the revenue record was any reason for the Appellant to delay the balance consideration. The Appellate Tribunal didn't find any defect in title of the CD and held that the issues related to permission of the Deputy Collector for sale were raised by the Appellant only to avoid payment of balance amount and to buy time in which Appellant failed.

Order: The AA did not commit any error in rejecting the IA and there is no merit in appeal.

Case Review: *Appeal dismissed.*

Mr. P. Eswaramoorthy Vs. The Deputy Commissioner of Income Tax (Benami Prohibition) Company Appeal (AT) (CH) (INS) No. 188 of 2022. Date of NCLAT Judgement: March 13, 2023.

Facts of the Case

The present appeal is filed by the liquidator (hereinafter referred as 'Appellant') of M/s Senthil papers and Boards Pvt. Ltd. ('CD') after being aggrieved by the AA order dated 29.03.2022. After the Resolution Plan was rejected by CoC, liquidation order was passed by the AA dated 14.02.2019 and a Liquidator was appointed.

The provisional attachments were made on 01.11.2019, meanwhile a show Cause notice was served by The Deputy Commissioner of Income Tax, Benami Prohibition (hereinafter referred as 'Respondent') dated 01.11.2019, to the CD, under the Prohibition of Benami Property Transactions Act, (PBPT), 1988. The Respondent alleged that the land on which the factory of CD is located is a Benami Property. During Demonetization, ₹400 Crores in `Old High Denomination Notes' were given to Senthil Group for the purchase of a Paper Mill in Coimbatore District, belonging to Smt. Sasikala, through her Intermediaries, etc. The Income Tax Department also issued a Provisional Attachment Order dated 01.11.2019 under PBPT Act and attached the concerned asset of the CD during liquidation. The Appellant filed an application under Section 60(5) of IBC before the AA, seeking setting aside of the provisional attachment order and argued that IBC prevails over PBPT Act. The AA dismissed the application by order dated 29.03.2022 and observed that the remedy lies before an appropriate forum and not with the AA.

NCLAT's Observations

The Appellate Tribunal held that attachment made as per Section 24(3) of 'The Prohibition of Benami Property Act,1988, cannot be a subject matter of proceedings under Section 60(5) of the IBC. A mere running of the eye of the ingredients of Section 60(5) of the Code, clearly indicates that it is not an all-pervasive Section, conferring `Jurisdiction', to an `AA', to determine any questions, relating to the `CD'.

One cannot fall back upon Section 60(5) of the IBC, for seeking remedy, concerning the matter, relating to `The PBPT Act, 1988'. The AA is not a proper Fora to determine the controversies revolving around the Attachment of Property under the PBPT Act 1988. Thus, the application filed by the Liquidator seeking setting aside of Attachment Order per se are not maintainable in the eye of law. The Appellate Authority further observed a `Moratorium' imposed under Section 14 of the IBC, 2016, does not affect the Provisional Attachment Order, passed under The PBPT Act, 1988.

Order: The view drawn by the AA in dismissing the applications including all IAs through its Impugned Order dated 29.03.2022 is free from `Legal Infirmities'. Consequently, the `Appeals' fail.

Case Review: *Appeal dismissed. All Connected pending Interlocutory Applications, if any, are closed.*

National Company Law Tribunal (NCLT)

Santoshi Finlease Private Ltd. Vs. Mothers Pride Dairy India Pvt. Ltd. and State Bank of India Vs. Santoshi Finlease Pvt. Ltd. & Mothers Pride Dairy India Pvt. Ltd., Company Petition No. (IB)-662 (ND)/2022, IA. No. 1695/ND/2023. Date of NCLT Judgement: June 12, 2023.

Facts of the Case

The present Petition is filled by the Santoshi Finlease Pvt. Ltd. (hereinafter referred as 'Petitioner') u/s 7 of IBC for initiating CIRP against Mothers Pride Dairy India Pvt. Ltd. (hereinafter referred as 'Respondent/CD') in this reference an IA were filled by the State bank of India (hereinafter referred as 'Applicant Bank') against the Petitioner and CD, fact of IA application and CIRP petition are overlapping, for the sake of convenience they are taken up together for adjudication.

Promoters of the CD, Mr. Anant Kumar Choudhary and Smt. Shalini Choudhary transferred 90% holdings to Mr. Navneet Jain. They resigned from the board and moved to Hong Kong, becoming NRIs. As per MCA data the current Directors Mr. Navneet Jain and Sh. Sushil Kumar singh changed the management of CD without taking prior NOC form the Applicant bank, Director Navneet Jain sought vending jobs from reputable companies to revive the CD, for that purpose a MOA dated 14.03.2018 were signed with Mother Dairy. In 2019 the Directors of CD entered

into an investment arrangement with a group of individuals (Mostly family members) called as 'Mittal Family members' and all of them were Directors of the CD from July to September 2019, being a majority on the Board of the CD, One Mr. Kaushal Mittal who is also the current director of Petitioner's company (i.e. Respondent No.1 in IA application) from 02.08.2005 to till today passed an alleged board resolution dated 30.07.2019 on behalf of CD and Mr. Yug Mittal the then director of CD and existing Director of the Petitioner executed the alleged loan agreement dated 17.08.2019 with Petitioner's Company on behalf of CD. The CD was admitted in to CIRP by order dated 13.11.2019 passed by AA on an application filed by the Ex-Director, Smt. Shalini Chaudhury and claims were collected during the CIRP, the Petitioner and its sister concern filed claims as Financial Debt and were listed as financial creditors without voting rights due to their status as related parties to the CD, later on the Appellate Tribunal set aside the CIRP by order dated 05.08.2022 Subsequently, the Applicant Bank re-initiated action against CD under the SARFAESI Act 2002 by reviving the Original Application of 2019 before the DRT in Delhi, as sole secured financial creditor and arranged a fresh valuation of properties of CD and sought for redirection of CMM/DM orders which were issued 03 years back. The reserve price for e-auction was approved at ₹28.68 crore, Applicant bank also took physical possession of the plant on 22.02.2023.

The Applicant Bank argues that the Section 7 Application under IBC filed by the Petitioner is an attempt to impede the recovery proceedings under the SARFAESI Act 2002. The Applicant Bank has already lost three years because of earlier CIRP order dated 13.11.2019 against CD.

NCLT's Observations

The AA observed that the alleged loan was disbursed and defaulted during the Directorships of Ms. Kaushal Mittal and Mr. Yug Mittal in the CD, who are the 'Current Directors' in the Petitioner Company and at whose behest the CIRP application u/s 7 of IBC has been filed. Placing reliance on the judgment given by Hon'ble Supreme court in *West Bengal State Electricity Board Vs. Dilip Kumar Ray, 2006*, wherein the term 'malicious' has been discussed, the court said it is evident that the CIRP application is not filed with an intent of seeking resolution of the CD but for causing injury to the CD by its own Ex- Directors.

The AA further stated, while placing reliance on the judgment given by the Appellate tribunal in *Wave Megacity Centre Pvt. Ltd. vs. Rakesh Taneja & Ors, 2022*, that Section 10 application can be rejected even if debt and default is proved but was filed with fraudulent and malicious intention. Thus, Section 10 should be read along with Section 65 before deciding the fate of an application under Section 10. The aforesaid observations are squarely applicable to a petition filed under Section 7 with malicious and fraudulent intent, said the Court.

Order: It was concluded that the CIRP application is filed with malicious intent. A penalty of ₹10,00,000/- (Ten Lakhs) was imposed on the Petitioner (Respondent No. 1 in IA Application) which shall be deposited in the Prime Minister's Relief Fund within 15 days.

Case Review: *The IA was allowed and the CIRP application was dismissed.*

DHL Supply Chain India Private Ltd. Vs. Eicher Motors Ltd. Company Petition No. (IB)-272(ND)2022. Date of NCLT Judgement: May 29, 2023.

Facts of the Case

The present petition was filled by the DHL Supply Chain India Pvt. Ltd. in the capacity of operational creditor (hereinafter referred as 'Petitioner') against Eicher Motors Ltd. (hereinafter referred as 'Respondent') for initiating CIRP u/s 9 of IBC over some unpaid dues.

The parties entered into 'Service Agreement for Warehouse', dated 29.08.2019 for taking the services of the Petitioner for logistics and warehousing. The term of the agreement was for three years effective from 01.10.2019 to 30.09.2022 and the entire term constituted a lock-in period for both the parties. In November 2020, the Respondent proposed to use the warehouse for storing Bikes and spare parts instead of storing genuine motorcycle accessories and apparel, but it didn't work out. The Respondent decided not to use the warehouse and sought to prematurely terminate the agreement. The Petitioner rejected the proposal for premature termination of the agreement vide its letter dated 21.04.2021 and as no response of said letter/notice was received, the Petitioner informed the Respondent to remove the assets lying in the warehouse. The Respondent via its reply dated 31.05.2021 stated that dismantling and shifting was to be done by the Petitioner. The Petitioner provided services to the

Respondent and raised various invoices including interest charged on the overdue invoice amount and claimed operational debt of approx. ₹8.3 crore. The demand notice dated 07.12.2021 u/s 8 of IBC was sent by the Petitioner via e-mail but the same was denied by the Respondent on the ground that the demand notice was not served at the Respondent's registered office or to the Whole Time Director or Designated Partner or Key Managerial Personnel.

In the light of above dispute, the Petitioner filled the CIRP application before AA.

NCLT's Observations

The AA while placing its reliance on the judgment pronounced by Hon'ble Supreme Court *in "Kirshna Texport and Capital Markets ltd. vs Ila A. Agarwal and Ors"*. held that there was no illegality or deficiency in the service of demand notice, which was duly served through the E-mail address of the Respondent with attention to its MD who was a Key Managerial Personnel of the Respondent company as defined u/s 2(51) of Companies Act 2013.

The AA, while examining the application on its merits and placing their reliance on the judgments given by the Hon'ble Supreme court in "India vs Raman iron Foundry" and *"Moblix Innovations Pvt. Ltd. vs Kirusa Software Pvt. ltd."* stated that there is sufficient material in the form of e-mail communications between the parties that there were pre-existing disputes before the issuance of demand notice. Further, on perusal of email dated 05.01.2021 it is clear that the Petitioner was well aware that the Respondent was vacating their warehouse as a part of their normal business transaction and therefore, the submission made by the Petitioner that it had no knowledge of the Respondent vacating the premises is misplaced.

Order: The correspondence on record prodigiously establishes severe disputes between the parties inter-se, with each party having claims/ counterclaims against the other. The Respondent too has raised plausible contentions, which require further investigation. There being pre-existing disputes between the parties, the Application is liable to be dismissed.

Case Review: *Application dismissed.*

IBC News

Chairman, RERA-Bihar emphasized the urgent need for coordination among IBC and RERA Mechanisms

Shri Naveen Verma, Chairman, RERA (State of Bihar) has emphasized that the need for legal frameworks across IBC and RERA to work together amidst challenges faced by ecosystem to resolve stress in real-estate sector. Shri Verma was addressing the Virtual conference on 'Real Estate CIRPs – Challenges & Solutions' as the Guest of Honour organized by Indian Institute of Insolvency Professionals of ICAI (IIIPI) in New Delhi on June 23, 2023. "The law has been settled to allow co-existence of IBC and RERA, both being specific laws. As IBC has been enacted late in time and shall prevail in case of any conflict between the two laws", he said. Dr.Ashok Haldia, Chairman, IIIPI's Board said, "In any real-estate stress, house owners suffer the most and they should be made aware of their rights under IBC and RERA". The Inaugural Session was followed by a technical deliberation by expert panellists, CA K V Jain, Insolvency Professional and Adv. Pulkit Deora.

Source: *IIIPI, Press Releases, June 23, 2023*

https://www.iiipicai.in/wp-content/uploads/2023/06/IIIPI-Newsletter-Volume-08-Number-26-June-26-2023.pdf

Compounding of interest is the factor pulling down the recovery ratio rather than the recovery of principal: Report

Based on the analysis of some resolved cases and response of banking experts, The Economic Times has reported that the addition of penal interest and other charges in stressed accounts have brought down recovery ratios even though recovery of the principal amount has been high.

In the case of Bhushan Power and Steel, which was part of 12 Big Accounts sent by the RBI for CIRP under IBC, 2016, the interest was more than double of the principal amount that was due. It is estimated that out of the dues of ₹47,158 crore, less than half or about ₹20,000 crore were the principal dues. The total claims by financial creditors in any account also include penal interest and other dues which inflate the outstanding, said the report. Quoting a banking expert, it says, the recovery calculation is very different in the case of one-time settlement where the settlement is done on the basis of outstanding principal

dues and interest is not taken into account. Another expert opines, banks take into account all dues so with penal interest, bank guarantee dues are also added. In infrastructure cases it also includes interest during construction which are exempted from payment but taken as due in case of a default. In the recently concluded resolution of JBF Petrochemicals, the banks recovered about 50% of their principal amount but in comparison to the total dues they suffered a haircut of 64%.

Source: *The Economic Times, June 20, 2023*

https://economictimes.indiatimes.com/markets/stocks/news/interest-compounding-pulling-down-recovery-in-ibc-cases/articleshow/101119215.cms?from=mdr

CIRP initiated for Anil Ambani led Reliance Innoventures

NCLT has admitted CIRP application against Reliance Innoventures filed by JC Flowers, a financing company based in New York. In fact, JC Flowers ARC had bought Yes Bank's ₹48,000 crore bad loan portfolio in December 2022 and according to court documents, these loans also include about ₹100 crore loans given by the bank to Reliance Innoventures in 2015 and 2017. However, Reliance Innoventures argues that the value of shares held as collateral in four other group companies is sufficient to repay the loan, but the Court relied on existing default.

Source: *Money 9.com, June 20, 2023*

https://www.money9.com/news/corporate/another-anil-ambani-co-goes-into-insolvency-111035.html

Germany's major automotive supplier enters into Insolvency

German automotive supplier Allgaier, known for its clientele including Porsche, has reportedly filed for insolvency. The company, which was acquired by Chinese investor Westron Group in July 2022, specializes in supplying sheet metal parts to major car manufacturers and also operates in toolmaking and process engineering.

In July 2022, China's Westron Group acquired Allgaier, bringing with it fresh equity capital, after a restructuring starting in 2020 had put it back in the black operationally. However, by the end of 2022, it had missed sales expectations.

Source: *Reuters.com, June 21, 2023*

https://www.reuters.com/business/autos-transportation/ german-automotive-supplier-allgaier-files-insolvency-2023-06-21/

Contribution of IBC in National Economy has been phenomenal: L N Gupta, Member, NCLT, Delhi

Shri L. N. Gupta, Hon'ble Member (Technical), NCLT has emphasized that both, existing and emerging challenges are equally important for a robust IBC ecosystem in India. He was addressing at Conference on "Overcoming Emerging Challenges under IBC – Preparing IPA & IPs" (physical mode) organized by Indian Institute of Insolvency Professionals of ICAI (IIIPI) in New Delhi on June 16, 2023. Ms. Anita Shah Akella, Joint Secretary, Ministry of Corporate Affairs (MCA), on this occasion while appreciating the role of IPs said that for an effective IBC, we need IPs of highest integrity and credibility.

Shri Ashwini Kumar Tewari, Managing Director SBI underlined the need for continuous dialogue between IPs and lenders. Shri Satish K. Marathe, Director, Central Board-RBI said that after initial difficulties the IBC has matured for fundamental change in scope, coverage and direction. On this occasion, a publication "Roles of Insolvency Professionals Across Insolvency Value Chain From Incipient State Till Post-Resolution Stage" was also released.

"The Board of IIIP of ICAI have set up a committee for developing a perspective on emerging scenarios for IBC and to proactively strengthen the Insolvency Professionals to cope with that, "said Dr. Ashok Haldia, Chairman of board of IIIPI.

Source: *The Businessline, June 17, 2023*

https://www.thehindubusinessline.com/economy/mca-calls-for-insolvency-professionals-with-high-integrity-and-credibility-to-strengthen-ibc/article66979348.ece

Ace Infracity Developers gets NCLT nod to acquire 3C Homes

The Resolution Plan of Ace Infracity Developers offers '100 per cent of the principal of farmer's compensation (₹71.66 crore), which is included in ₹173.46 crores agreed to pay to Yamuna Expressway Industrial Development Authority (YEIDA)'. Besides, under the resolution plan, allottees are getting possession of 512 residential plots of the project "Lotus City" valued at Rs 211 crore after being developed. CoC has already approved the Plan with 100% voting. The term of this Resolution Plan is 24 months within which the plots would be developed and delivered to the allottees.

Source: *Moneycontrol.com, June 15, 2023*

https://www.moneycontrol.com/news/business/nclt-approves-ace-infracity-resolution-plan-for-3c-homes-10804801.html

SpiceJet facing at least five cases of insolvency in the UK Courts

According to media reports, two aircraft-leasing companies have obtained summary judgment totaling over $15 million against SpiceJet in the high court of London in May 2023. Besides, there are, at least, three more cases lodged in the commercial courts of London against SpiceJet which are currently in different stages. This also includes a claim filed by a Turkish company. Presently, Wilmington Trust SP Services (Dublin)is pursuing a case against SpiceJet on the basis of a summary judgement from a UK Court. The other companies are also expected to approach NCLT in India.

Source: *Moneycontrol.com, June 14, 2023*

https://www.moneycontrol.com/news/companies-2/lithuania-nails-spicejet-after-inspection-fresh-insolvency-cases-in-english-courts-10789231.html

Australian Company, which clinched the first US clearance for its at-home Covid-19 test kit, faces Liquidation Australian

Covid-19 test maker, Ellume Ltd., has entered liquidation after a sale to Hough Consolidated Pty Ltd. fell through. The deal, valued at $38 million, unravelled due to repeated requests from Hough to extend agreement deadlines. Despite previous investments from Australia and the US, Ellume struggled for months and entered voluntary administration in August 2022. The company owed creditors approximately $140 million at the time. Ellume gained prominence as the first provider to receive emergency-use authorization from the FDA for its at-home test kits in December 2020. It received significant funding

from the US government to scale production and distribute its tests.

Source: *Bnnbloomberg.com, June 14, 2023*

https://www.bnnbloomberg.ca/covid-test-maker-once-crucial-to-us-response-set-to-liquidate-after-failed-sale-1.1933180

IBC 2.0 is expected to be rolled out soon: ICAI

"ICAI has been actively involved with the insolvency committee chaired by the MCA secretary and other stakeholders. IBC 2.0 will largely be based on the discussion paper issued by the government. It depends on the government, but I expect it to happen very soon," said Aniket S Talati, president, ICAI. During a presentation on IBC on Sunday in a Residential meeting in Agra, ICAI said, "Ministry of corporate affairs is looking for IBC 2.0 and is working very hard on it. The Insolvency and Bankruptcy Board of India (IBBI) and ICAI are together working on it and supporting the ministry of corporate affairs on it. We are expecting that within some time we will see IBC 2.0 which will certainly mitigate the issues pertaining to the insolvency resolution process". IBC 2.0 may include a fullfledged individual insolvency framework, pre-packaged insolvency for bigger corporates, group insolvency framework and use of tech in IBC, said ICAI.

Source: *Fortuneindia.com, June 10, 2023*

https://www.fortuneindia.com/enterprise/bankruptcy-code-20-to-be-rolled-out-soon-icai/112923

NCLT Approved highest ever 180 Resolution Plans amounting ₹ 51,424 Crore in FY2020-23

The number of Resolution Plans approved by NCLT benches across the country have increased from 147 in FY 2021-22 to 180 in FY 2022-23 while the realization by creditors has increased from ₹49,208.38 crore to ₹51,424.87 crore, respectively.

As per the data released by IBBI, the realization by creditors in FY 2022-23 has been second highest after FY2018-19. These resolutions have enabled creditors to recover 36% of their total admitted claims of ₹1,42,543 crore. The data further reveals that NCLT admitted 1,255 CIRP applications in FY2022-23, which is the highest since 2019. Since the commencement of the IBC 2016, a total of 678 Resolution Plans have been approved resulting in realization of ₹2.86 lakh crore for creditors. The fair value of the assets available to corporate debtors at the start of the CIRP was estimated at ₹2.65 lakh crore, with creditors realizing 68.47% of the liquidation value and over 83% of the fair value.

However, concerns have been raised about delays in CIRP matters, as the NCLT currently operates with a total strength of 37 members out of the sanctioned strength of 63. To function, a single NCLT bench requires at least one judicial member and one technical member. Out of the 6,567 CIRPs initiated by NCLT benches, 4,515 have been closed while 2052 are pending before NCLT. The manufacturing and real estate sectors have witnessed the highest number of CIRP admissions, including construction and wholesale & retail trade sectors.

Source: *The Economic Times, June 04, 2023*

https://realty.economictimes.indiatimes.com/news/regulatory/nclt-approves-180-resolution-plans-involving-realisation-amount-of-rs-51424-crore-in-fy23/100746186

GAIL completes takeover of JBF Petrochemicals

In pursuance to the Resolution Plan, GAIL (India) Ltd. has invested ₹2,100 crore in JBF Petrochemicals Ltd. The Resolution Plan was approved by NCLT in March this year. In a stock exchange filing, GAIL (India) Ltd. said it has 'infused ₹2,101 crore (equity - ₹625 crore and debt - ₹1,476 crore)" as per its commitment in the Resolution Plan. Accordingly, JBF has become a wholly owned subsidiary of GAIL with effect from June 1, 2023. The CIRP application against JBF was filed by IDBI Bank which reportedly had ₹5,628 crore of dues to financial and operational creditors.

Source: *Business Standard, June 02, 2023*

https://www.business-standard.com/companies/news/gail-infuses-rs-2-100-crore-in-insolvent-chemical-firm-jbf-petrochemicals-123060200589_1.html

BBTCL Makes Provision of ₹1,866 Crore to ease 'Go Airlines' Financial Woes

Bombay Burmah Trading Corporation Limited (BBTCL), the holding company of the Wadia Group, has made a provision of ₹1,866 crore for its investments in Go Airlines and related financial obligations. The provision was made following Go Airlines Ltd's application for insolvency under the Insolvency and Bankruptcy Code. Go Airlines suspended operations on May 3 without announcing a resumption date. BBTCL, as an investment company, has made strategic investments across various

businesses and geographies to enhance shareholder value. BBTCL has actively invested in GoAir since 2005 but faced financial challenges due to grounding of aircraft and engine issues. The company has also decided to fully provide for its exposure in GoAir, except for a recent investment of ₹290 crore. BBTCL holds 32.61% of the equity share capital of Go Airlines but has no de facto control over the company. BBTCL has reported a consolidated net loss of ₹533 crore for FY 2022-23.

Source: *Livemint.com, May 29, 2023*

https://www.livemintcom/companies/news/wadia-group-holding-co-makes-provisions-on-investment-in-go-air-11685346287659.html

Australian Company Files for Bankruptcy Protection to Facilitate Restructuring

Cancer-care provider GenesisCare has filed for bankruptcy protection following financial challenges resulting from a large debt load and a $1.5 billion acquisition of a healthcare service provider. The company plans to separate its U.S. business from operations in Australia, Spain, and the U.K. It has secured $200 million in financing to continue operations and maintain patient care. GenesisCare, which started as a single clinic in 2005, has over 300 locations and 5,500 employees across four countries.

Source: *marketwatch.com, June 01, 2023*

https://www.marketwatch.com/story/kkr-backed-healthcare-provider-genesiscare-files-for-bankruptcy-767ce70f

Section 66 of the Insolvency and Bankruptcy Code cannot be invoked against third parties: SC

The Apex Court, however, clarified that civil remedies available under the law must be pursued for recovery of dues from such parties. The Court also dismissed a request of clarification sought by Gluckrich Capital's application seeking clarification of a judgment and order passed by the Supreme Court of India on February 24, 2023.

"We are of the considered opinion that in such circumstances, it is for the Resolution Professional or the successful resolution applicant, as the case may be, to take such civil remedies against third party, for recovery of dues payable to corporate debtor, which may be available in law," said the Court. The Court also observed that even the Tripura High Court and various NCLTs have relied upon the observations made by SC in a binding precedent, in Usha Ananthasubramanian Vs. Union of India.

Source: *Taxguru.com, May 19, 2023*

https://taxguru.in/corporate-law/remedy-against-third-party-available-section-66-ibc-sc.html

Real Estate sector constitutes more than a fifth of CIRP cases, but approved Resolution Plans total only 13%: Study

According to the study, out of 611 approved Resolution Plans only 78 are from the real estate sector. The Study conducted by Grant Thornton Bharat reveals that litigation from promoters, treatment of claims by local development authorities and large number of homebuyers are some of the reasons for delays in the CIRP of corporate debtors related to real estate sector.

However, in certain instances, reverse insolvency has been reportedly effective in offering relief to buyers. Under this model, NCLT and NCLAT courts permit or authorize the promoter to complete the remaining construction work. The report recognizes that the main promoter is the most competent party to complete the project. "Favorable government policies and support from the judiciary system and homebuyers enabled lots of developers to complete their projects in the last 7 to 8 years," said the report. The report further mentions that Uttar Pradesh Real Estate Regulatory Authority (UPRERA), is several cases, used powers under Section 8 of RERA Act and authorized the main promoter to complete the remaining construction work of the project with consent of 51% allottees, supervision of a committee and monitoring of third-party construction consultant. The recent decision of NCLT to impose moratorium only on concerned projects without affecting the entire real estate group, has also been appreciated in the Report.

Source: *The Economic Times, May 29, 2023*

https://shorturl.at/mLNQ8

Not Mandatory to File Hard Copies in Addition To E-Filing: NCLAT

In an order dated May 15, 2023, National Company Law Appellate Tribunal (NCLAT) has said that "the filing of hard copies of Appeals/ Interlocutory Applications/ Reply / Rejoinder etc. shall not be mandatory with immediate effect". Consequently, the existing Standard Operating

Procedures (SOPs), Orders, Circulars, and Notices issued by the NCLAT regarding the filing process have been modified accordingly. This new directive streamlines the filing procedure and encourages the use of electronic means for all relevant filings in the NCLAT. Effective from January 4, 2021, the NCLAT has implemented an e-filing system for Appeals, Interlocutory Applications, Reply, Rejoinder, and other related documents.

Source: *NCLAT, May 15, 2023*

https://nclat.nic.in/sites/default/files/2023-05/Dispensing%20Physical%20Filing_1.pdf

In the interest of home buyers, Supreme Court turned down creditors' plea to bring entire Supertech group under CIRP

The Supreme Court, while observing that it will cause "immense hardship" and "uncertainty" to the home buyers if all the projects of real estate giant Supertech are brought within the insolvency proceedings, allowed Corporate Insolvency Resolution Process (CIRP) of its only one project - Ecovillage 2 in Greater Noida West, in its interim order.

Providing relief to the thousands of home buyers who bought flats in other projects of the Supertech, the Supreme Court rejected the plea of financial creditors to constitute CoC for the entire group, as ordered by NCLAT. The bench observed that the other projects are being continued by the Interim Resolution Professional (IRP) and efforts are being made for infusion of funds with the active assistance of the ex-management but without creating any additional right in the ex-management.

The creditors--Union Bank of India and Indiabulls Asset and Reconstruction Company Ltd---contended that the Appellate Tribunal did not have powers under IBC to allow project-wise CIRP, and to accept a resolution plan presented by the promoter without giving opportunity to the CoC. The Apex Court held that Appellate Tribunal order would continue to operate subject to the final orders to be passed by the court and also directed that with regard to Eco Village -II project any process beyond voting on the resolution plan should not be undertaken without specific orders from it.

Source: *The Times of India, May 11, 2023*

https://timesofindia.indiatimes.com/india/sc-turns-down-plea-to-bring-entire-supertech-group-under-insolvency-proceedings/articleshow/100168111.cms?from=mdr

No modified resolution plan, carrying however minor modification/revision, can be placed directly before AA: SC

The Supreme Court has held that if the modified resolution plan, carrying however minor modification/revision, is not finally approved by CoC, then presentation of such modified plan before the Adjudicating Authority for approval is an incurable material irregularity. "There can be no assumption that the CoC would have approved the plan in all possibilities and it's uncertain that no other aspect would have arisen for consideration by the CoC," said the Court while adjudicating an appeal filed in M.K. Rajagopalan Vs Dr. Periasamy Palani Gounder & Anr. The Court also ruled out concept of post facto approval by the CoC.

Source: *Livelaw.in, May 14, 2023*

https://www.livelaw.in/supreme-court/supreme-court-resolution-plan-approval-ibc-coc-approval-process-228663

Financial Challenges forces Romanian Companies to restructure their Business

A total of 1,644 companies in Romania went insolvent in the first quarter of 2023 (Q1), a number similar to the one in Q1 2022, when 1,610 insolvent companies were registered. Of the companies that went into insolvency, 23 are impactful companies, totaling over 1,950 employees, fixed assets worth over RON 589 million (EUR 120 mln) and a total turnover of RON 805 million (EUR 163 mln), according to an analysis by CITR, the insolvency and restructuring market leader in Romania. Globally, companies received various forms of support from governments, such as tax facilities, but these have mainly led to the accrual of additional debt, therefore, the companies' issues were not solved but merely postponed.

Source: *Romania-insider.com, May 09, 2023*

https://www.romania-insider.com/citr-romanian-companies-restructuring-financial-challenges

NCLT orders CIRP of Future Lifestyle Fashions

The CIRP petition was filed by the Bank of India on an alleged default of ₹185 crore, including interest till August 2022, forming a part of its financial debt. "It is noted that the corporate debtor admits the said outstanding debt. Therefore, this bench is of the view that this petition satisfies all the necessary requirements for admission

under Section 7 of the Code. Accordingly, the petition is admitted," said NCLT. As per the petition, the lender had granted credit facilities of ₹435 crore to the company in 2013 which were then renewed in January 2020. Besides, it had availed loans from other creditors as well.

Source: *Livemint.com, May 04, 2023*

https://www.livemint.com/news/india/national-company-law-tribunal-admits-future-lifestyle-fashions-for-corporate-insolvency-resolution-process-under-india-s-insolvency-code-11683223265390.html

Lenders who had signed ICA should have an opportunity to be heard by AA: NCLAT

Lenders, with the Bank of Baroda as the lead banker, who had signed the Inter-Creditor Agreement (ICA) with Reliance Home Finance Ltd. (RHFL) will now be heard by NCLT, Mumbai on 16th May in the debenture redemption case. Pointing to the provision of the Companies Act, 2013, the NCLAT noted that the tribunal is supposed to hear 'interested' parties, which will include the company itself or any other person interested in the matter. "Since the ICA lenders have played an important role in the financial rejuvenation of the company, they should be given an opportunity to be heard," said NCLAT. The Resolution Plan of RHFL, which went into insolvency in 2020 has been approved the Supreme Court. However, some debenture holders have chosen to stand outside the insolvency process.

Source: *Bqprime.com, April 27, 2023*

https://www.bqprime.com/law-and-policy/reliance-home-finance-insolvency-a-win-for-creditors-at-nclat

USA's Home Goods Retailor Giant 'Bed Bath and Beyond Inc. (BBBY.O) filed for Bankruptcy Protection

The Company filed for Chapter 11 bankruptcy protection after it failed to secure funds to stay afloat and has begun a liquidation sale. BBBY.O, which shot to popularity in the 1990s, has seen demand drop off in recent years as its merchandising strategy to sell more store-branded products flopped. Last year's moves to abandon that strategy, and to bring in more national brands that shoppers recognize, had not shown signs of working, with the company reporting a loss of about $393 million after sales plunged 33% for the quarter ending Nov. 26

Source: *Reuters.com, April 25, 2023*

https://www.reuters.com/business/retail-consumer/bed-bath-beyond-files-bankruptcy-protection-after-long-struggle-2023-04-23/

England and Wales reported highest Insolvency cases during March since past 3 years

The Insolvency Service Agency of England & Wales has reported 2,457 corporate insolvencies in March which were 1,784 in February 2023. According to the official data there has been 16% increase on a year ago. The increase is reportedly due to rising costs and a stagnant economy are main reasons behind this rise in insolvency cases. The Insolvency Service Agency has said creditors' voluntary liquidations were the biggest driver of corporate insolvency in March. "Businesses are struggling to secure financing and pay off their loans due to high interest rates and the wider impact inflation and consumer sentiment is having on sales and cash flows," said David Kelly, head of insolvency at accountants PwC.

Source: *Reuters.com, April 18, 2023*

https://www.reuters.com/world/uk/business-insolvency-england-wales-soars-march-2023-04-18/

RPs under IBC considered as public servant under purview of Prevention of Corruption Act: High Court

The Jharkhand High Court has ruled that an interim resolution professional falls under the definition of a public servant given u/s 2(C)(v) and 2(c)(viii) of the Prevention of Corruption Act, 1988. The decision was made in response to a case in which an interim resolution professional demanded ₹ 2,00,000 per month as bribe to influence the corporate insolvency resolution process. The professional argued that he did not fall under the definition of a public servant, but the court disagreed, stating that anyone serving public functions can be considered a public servant.

Source: *Livelaw.in, April 07, 2023*

https://shorturl.at/aguCP

Peer Review Policy

INTRODUCTION

The objective of Insolvency and Bankruptcy Code 2016 (IBC), as an economic beneficial legislation is to provide effective legal framework for resolution of distressed businesses by reorganising such businesses. IBC's first order objective is rescuing a company in distress and liquidation can be viewed only as the last resort. The second order objective is maximising value of assets of the company and the third order objective is promoting entrepreneurship, availability of credit and balancing the interests of all stakeholders. IBC provides for bifurcating the interests of the company from that of its promoters to ensure revival and continuation of the company by protecting it from its own management.

Insolvency professional (IP), in the capacity of Interim Resolution Professional (IRP)/Resolution Professional (RP) or Liquidator is one of the key pillars as envisaged under IBC, for achieving the said objectives. The legal framework under IBC requires an IP to establish fair and transparent conduct of insolvency resolution process, casting upon an IP, inter alia, following responsibilities reflective of qualitative aspects in such processes (in a non-exhaustive manner):

Provisions under IBC, 2016

a) Section 17 and Section 18 require that the IRP/RP is vested with the powers of the board of directors of the Corporate Debtor (CD). The officers and managers of the CD shall report to the IRP, providing him access to documents and records of the CD. The IRP/RP shall act and execute in the name and on behalf of the CD, all deeds, receipts, and other documents and take such actions, in the manner and subject to such restrictions, as may be specified by the Board.

b) Section 20 requires that the IRP/RP shall make every endeavour to protect and preserve the value of the property of the CD and manage its operations as a going concern. IRP/RP shall have the authority to appoint professionals, to enter into contracts on behalf of the CD or to amend or modify the contracts or transactions, to raise interim finance, to issue instructions to personnel of the CD as may be necessary for keeping the CD as a going concern and to take all such actions as are necessary to keep the CD as a going concern.

c) Section 23 requires RP to conduct the entire Corporate Insolvency Resolution Process (CIRP) and manage the operations of the CD during such process. Further RP is required to continue to manage the operations of CD after the expiry of such process, until an order approving the resolution plan under sub-section (1) of Section 31 or appointing a liquidator under Section 34 is passed by the Adjudicating Authority (AA). Further, in case there is a change in IRP to RP or from RP to RP/Liquidator, the incumbent IP shall provide all the information, documents and records pertaining to the CD in his possession and knowledge to the successor IP.

d) Section 28 requires IRP/RP, during the CIRP, to take prior approval of the Committee of Creditors (CoC) for certain actions.

e) Section 29 requires that IRP/RP shall provide to the resolution applicant access to all relevant information in the form of Information Memorandum (IM) in physical and electronic form to formulate a resolution plan.

f) Section 30 requires that the IRP/RP shall examine each resolution plan received by him and shall present the same to the CoC for approval.

g) As per Section 208(2), an IP is obliged to take reasonable care and diligence while performing his duties, to comply with all requirements and terms and conditions specified in the byelaws of the Insolvency Professional Agency (IPA) of which he is a member; to allow the IPA to inspect his records; to submit a copy of the records of every proceeding before the AA to the Insolvency and Bankruptcy Board of India (IBBI or Board) as well as to the IPA of which he is a member; and to perform his functions in such manner and subject to such conditions as may be specified.

Provisions as per Code of Conduct under Schedule I of IBBI (IP) Regulations

h) Clause 5 provides that an IP must maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences.

i) Clause 12 provides that an IP must not conceal any material information or knowingly make a misleading statement to the IBBI, the AA or any stakeholder, as applicable.

j) Clause 13 provides that an IP must adhere to the time limits prescribed in the IBC and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of his duties.

k) Clause 15 provides that an IP must make efforts to ensure that all communication to the stakeholders, whether in the form of notices, reports, updates, directions, or clarifications, is made well in advance and in a manner which is simple, clear, and easily understood by the recipients.

l) Clause 16 provides that an IP must maintain written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained to sufficiently enable a reasonable person to take a view on the appropriateness of his decisions and actions.

Monitoring by Insolvency Professional Agency (IPA)

m) The Code/IBC under Section 204(c) mandates monitoring by IPA of the performance of IPs with respect to legal compliance and empowers IPAs to call for information and records.

n) Clause 8 of IBBI (Model byelaws and Governing Board of IPAs) Regulations 2016, provide for constitution of Monitoring Committee by an IPA. Further, clause 15 of such regulations provide for formulation of Monitoring Policy by an IPA for the purpose.

o) The objective of monitoring of IPs is to ascertain whether the conduct of IPs is in overall interest of the stakeholders, CD as going concern and to ensure that the position of trust held by IPs is not abused by them and in cases where it is, to ensure appropriate action is taken.

Inspections of IPs by IBBI and IPA

p) Section 196(1) of the IBC empowers IBBI to carry out inspections and investigations, monitor the performance and call for any information or records, inter alia, from IPs.

q) As per Section 208 (2) (c) of the IBC, IPAs are authorized to conduct the inspection of IPs enrolled with it.

r) Further as per Clause 18 of the Code of Conduct an IP must appear, co-operate and be available for inspections and investigations carried out by the IBBI, any person authorised by the IBBI or the IPA with which he is enrolled.

In view of many duties and responsibilities cast upon IPs, it is of paramount importance for an IP, whether part of an IPE or not, to observe and maintain high standards of quality in connection with any professional assignment. Such approach shall enthuse confidence in other stakeholders about IP's services on one hand and support IP to face any regulatory or legal challenge, on the other. Moreover, IP should be seen to be following such high standards of quality from third person's perspective. In this connection, an independent review of services by third person, often a peer-practitioner rather than a regulator, can serve the desired purpose. This Peer Review mechanism is a proactive, and pre-emptive measure by IPs to enthuse confidence in stakeholders and regulator. Though this mechanism is proposed to be voluntary for smaller sized practitioners, it is proposed to make the mechanism mandatory for certain category of IPs as mentioned elsewhere in this policy document.

…..to be continued.

IIIPI News

Shri K.R.Saji Kumar, Additional Secretary, Legislative Department, Ministry of Law and Justice, Government of India addressing the 12th Executive Development Program (EDP) on Managing Corporate Debtor as Going Concern under CIRP (For IPs) organized by IIIPI from 20th to 24th June, 2023.

Shri Naveen Verma, Chairman, RERA (State of Bihar) addressing the Webinar on "Real Estate CIRP's – Challenges & Solution" organized by IIIPI on June 23, 2023.

Webinar on "Pre-Pack Insolvency Framework for MSMEs under IBC" organized by IIIPI on April 21, 2023.

Webinar on "First Successful PPIRP Case Study" on conducted by IIIPI on June 02, 2023.

Inaugural Session of "Limited Insolvency Examination – Preparatory Classroom (Virtual) Program Batch" starting from 19th to 23rd June 2023.

Inaugural Session of the IIIPI's 11th Batch of Limited Insolvency Preparation Training Program on March 27, 2023.

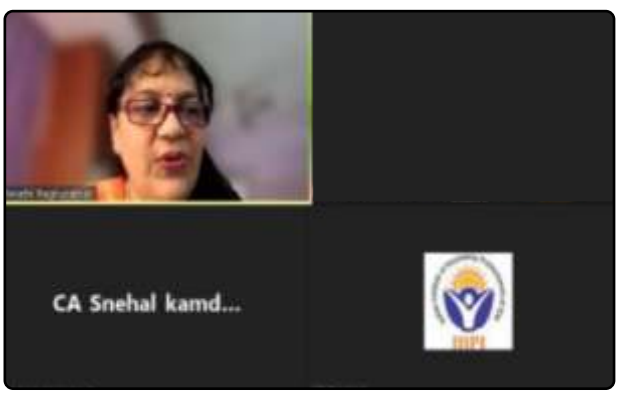
IIIPI News

Webinar on "Evolving Jurisprudence under IBC: Recent Judgements" organized by IIIPI on May 04, 2023.

Webinar on "Interaction with CFOs of CDs & Successful RAs" organized by IIIPI on April 28, 2023.

Webinar on "Common Issues under Monitoring/ Inspection and Peer Review & Mentorship Frameworks" conducted by IIIPI on May 26, 2023.

7th Batch of Executive Development Program (For IPs) on Mastering Legal Skills, Pleadings and Court Processes Under IBC (Online) from 24th to 27th May 2023.



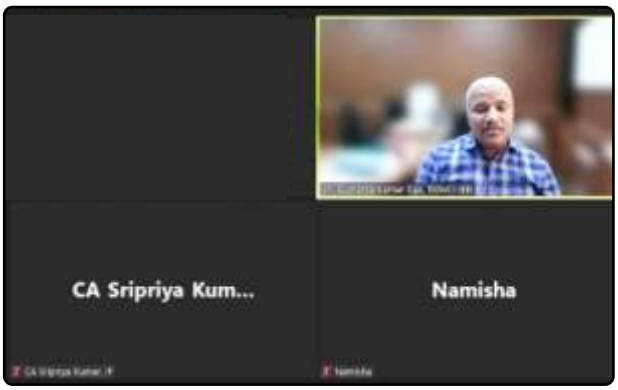
IIIPI conducted Webinar on "Guidance on Ethics and Quality Control for IPs" on June 09, 2023.

Webinar on "Allied Legislations around IBC- Knowhow for IPs" conducted by IIIPI on March 24, 2023.

IIIPI News

Webinar on "Common Issues on Monitoring/Inspection & Peer Review" organized by IIIPI on 17th March 2023.

Webinar on "07th June Discussion Papers by IBBI" organized by IIIPI on 07 th July 2023



Webinar on "CoC Meetings- Best Practices" organized by IIIPI on May 19, 2023.

Webinar on "Case Studies on Successful CIRPs" conducted by IIIPI on May 12, 2023.

Release of the publication "Roles of Insolvency Professionals Across Insolvency Value Chain from Incipient State till Post-Resolution Stage" during the Conference on "Overcoming Emerging Challenges under IBC – Preparing IPA & IPs" through physical mode in New Delhi on June 16, 2023.

IIIPI News

IIIPI marks its Global Presence by Associating with INSOL International, UK

Indian Institute of Insolvency Professionals of ICAI (IIIPI), the largest IPA and frontline regulator under IBC in India has marked its global presence by securing the associate membership of London based INSOL International, a world-wide federation of national associations of professionals. Now the Insolvency Professional (IP) members of IIIPI can avail individual co-membership of INSOL International at much concessional terms.

Dr. Ashok Haldia, Chairman of IIIPI's Governing Board, mentioned "With this association, IIIPI will be represented through INSOL International on the global stage for law reform and best practice developments. This would also help our IP members in building their capacity and capabilities, especially when Cross Border Insolvency is on anvil in India."

"I would like to take this opportunity to welcome IIIPI to INSOL International and I am sure that this will prove beneficial to all concerned. We look forward to seeing IIIPI's members at our events, as well as participate in various INSOL's projects and initiatives," said Mr. Jason Baxter, Chief Executive Officer, INSOL International in his message. As a leading IPA of the country, IIIPI has taken several out of the box initiatives for providing high quality professional education and research insights to IPs, policy makers and other stakeholders of the Insolvency and Bankruptcy Code, 2016 (IBC), thereby strengthening the IBC ecosystem in the country.

About INSOL International

INSOL International, based in London (UK), is a world-wide federation of national associations of accountants and lawyers who specialise in turnaround and insolvency. There are currently over 44 Member Associations with over 10,500 professionals participating as members of INSOL International. It usually grants its membership to individual professionals through the body/association of which such individuals are already a member in a particular country.

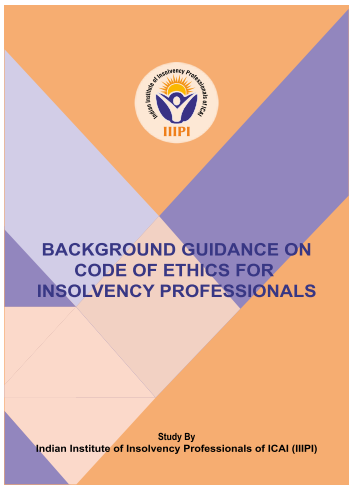
There is urgent need for better coordination among IBC and RERA mechanisms for resolving stress in real estate sector: Naveen Verma, Chairman, RERA, State of Bihar

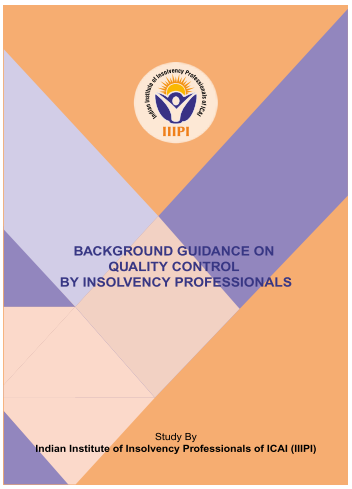
Shri Naveen Verma, Chairman, RERA (State of Bihar) has emphasized that the need for legal frameworks across IBC and RERA to work together amidst challenges faced by ecosystem to resolve stress in real-estate sector. Shri Verma was addressing the Virtual conference on 'Real Estate CIRPs – Challenges & Solutions' as Guest of Honour organized by Indian Institute of Insolvency Professionals of ICAI (IIIPI) in New Delhi on June 23, 2023.

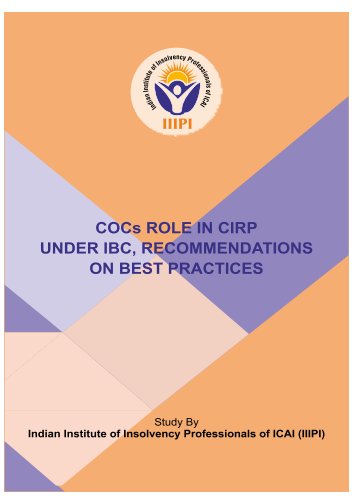
"The law has been settled to allow co-existence of IBC and RERA, both being specific laws. As IBC has been enacted late in time and shall prevail in case of any conflict between the two laws", he said. Dr.Ashok Haldia, Chairman, IIIPI's Board said, "In any real-estate stress, house owners suffer the most and they should be made aware of their rights under IBC and RERA". The Inaugural Session was followed by a technical deliberation by expert panelists, CA K V Jain, Insolvency Professional and Adv. Pulkit Deora.

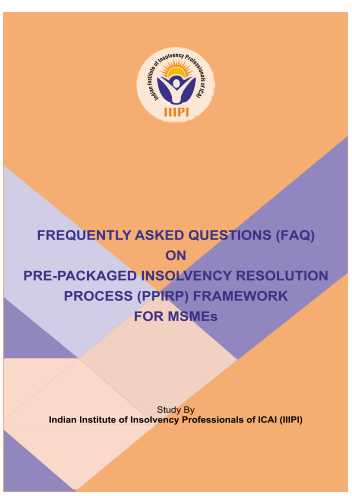
IIIPI's PUBLICATIONS

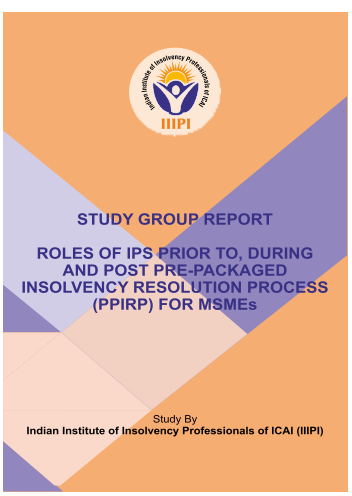
IIIPI has published 13 research publications based on the Reports submitted by various Study Groups. The Study Reports of some other Study Groups are under process. The soft copies (downloadable PDF) of all these publications are available on IIIPI website (https://www.iiipicai.in/publications/).

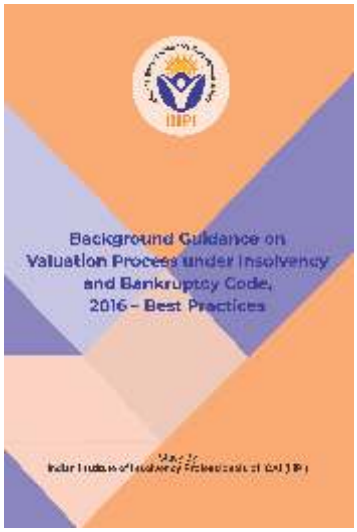


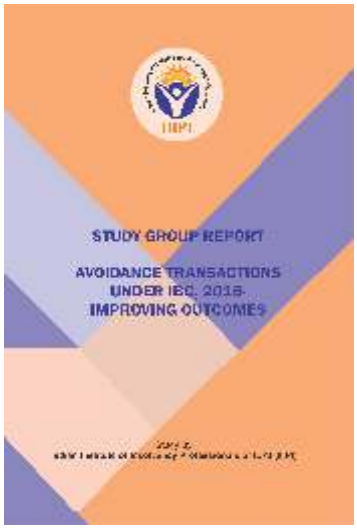


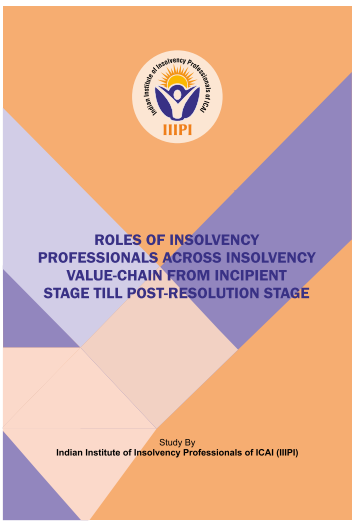


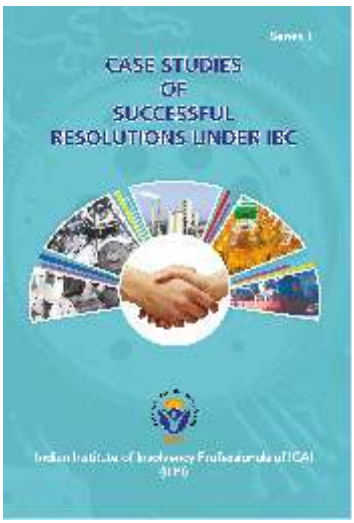












Weekly Publications

IIIPI Newsletter is an initiative of the IIIPI to provide weekly updates to IPs on IBC regime in India and relevant international news on insolvency and bankruptcy while IBC Case Law Capsules provide summary of pathbreaking judgements from the Supreme Court, High Courts, NCLATs and NCLTs.

IIIPI Newsletter

IBC Case Laws Capsules

Media Coverage

businessline.
Companies | Markets | Portfolio | Opinion | Economy

MCA CALLS FOR INSOLVENCY PROFESSIONALS WITH HIGH INTEGRITY AND CREDIBILITY TO STRENGTHEN IBC

June 17, 2023 at 02:05 PM.

IIIPI sets up committee to proactively strengthen IPs to cope with challenges

BY KR SRIVATS

Insolvency Professionals (IPs) of the highest integrity and credibility are needed for an effective insolvency and bankruptcy code (IBC) regime, Anita Shah Akella, Joint Secretary, Ministry of Corporate Affairs (MCA) has said.

She addressed an event organised by the Indian Institute of Insolvency Professionals of ICAI (IIIPI).

Her remarks are significant as it comes at a time when several issues are being raised on the functioning of IPs, and there is an all- round clamour for improving the ethics of such professionals.

India has over 3,000 IPs registered and regulated by the Insolvency and Bankruptcy Board of India (IBBI).

Since its implementation in 2016, the Insolvency and Bankruptcy Code (IBC) has proved to be transformative legislation in India.

The streamlined resolution process, enhanced creditor rights, focus on business rescue, increased recovery rates, and reduction in NPAs are all testament to the positive impact of the IBC. While there may be room for further improvement and fine-tuning, the IBC has undoubtedly brought about a positive change in India's insolvency landscape, promoting transparency, accountability, and investor confidence, say experts.

With continued efforts and refinements, the IBC is poised to play a pivotal role in shaping India's economic growth and development in the years to come, they added.

Speaking at the IIIPI event, L. N. Gupta, Member (Technical), NCLT, emphasised that the existing and emerging challenges are equally important for a robust IBC ecosystem in India. He said that the contribution of IBC to the national economy has been phenomenal.

Ashwini Kumar Tewari, Managing Director, State Bank of India, underlined the need for continuous dialogue between IPs and lenders.

He agreed to steps to be taken for further streamlining the interface between Insolvency Professionals (IPs) and the Committee of Creditors (COC). Satish K. Marathe, Director, Central Board-RBI said that after initial difficulties, IBC has matured for fundamental change in scope, coverage and direction.

A publication, "Roles of Insolvency Professionals Across Insolvency Value Chain From Incipient State Till Post-Resolution Stage" was also released on this occasion.

Meanwhile, Ashok Haldia, Chairman of Board of the IIIPI, said that the Board of IIIPI has set up a committee to develop a perspective on emerging scenarios for IBC and to proactively strengthen the Insolvency Professionals to cope with the challenges.

National Company Law Tribunal (NCLT) had in 2022-23 approved as many as 180 resolution plans, the highest annual number to date. The total realisation from stressed assets stood at ₹ 51,424 crore.

This has helped creditors of debt-ridden firms to realise 36 per cent of their total admitted claims of ₹ 1,42,543 crore for the year ended March 31, 2023.

The combined total liquidation value of the assets of 180 corporate debtors (CD) stood at ₹ 39,110.10 crore and the creditors received 131 per cent higher than it, official data with Insolvency and Bankruptcy Board of India (IBBI) showed.

It may be recalled that the NCLT approved 147 resolution plans in FY22, 121 in FY21 and 134 in FY20. The creditors had realised 23 per cent, 17 per cent and 26 per cent of their admitted claims, respectively.

In 2022-23, the NCLT admitted 1,255 applications from creditors to initiate the Corporate Insolvency Resolution Process (CIRP).

Business Standard

IIIPI FORMS COMMITTEE TO RECOMMEND MEASURES FOR GROWTH OF IBC ECOSYSTEM

May 09, 2023 | 9:00 PM IST Press Trust of India | New Delhi

The Indian Institute of Insolvency Professionals of ICAI (IIIPI) has constituted a committee to recommend measures to prepare the IBC ecosystem for the next phase of growth

The Indian Institute of Insolvency Professionals of ICAI (IIIPI) has constituted a committee to recommend measures to prepare the IBC ecosystem for the next phase of growth.

"After over six years since inception of IBC, there is a need to consider futuristic challenges and recommend to IBBI and other authorities, changes required in the ecosystem and for preparing IIIPI and insolvency professionals to support these," IIIPI Chairman, Ashok Haldai said.

IIIPI has constituted a board-level committee of its directors to recommend measures for preparing the IBC ecosystem for the next phase of growth by envisioning future changes and imperative requirements, according to a release on Tuesday.

Haldai welcomed IBBI's initiative to seek public comments on changes needed in regulations under IBC 2016.

IIIPI, promoted by the Institute of Chartered Accountants of India (ICAI), is the largest Insolvency Professional Agency (IPA) and frontline regulator under the Insolvency and Bankruptcy Code (IBC).

It works under the aegis of the Insolvency and Bankruptcy Board of India (IBBI).

(Only the headline and picture of this report may have been reworked by the Business Standard staff; the rest of the content is auto-generated from a syndicated feed.)

THE TIMES OF INDIA

IIIPI along with IIIM Ahmedabad to offer residential mgmt. development prog for insolvency professionals

New Delhi, May 03 (PTI) Indian Institute of Insolvency Professionals of ICAI (IIIPI) has joined hands with Indian Institute of Management, Ahmedabad (IIMA) to start residential management development programme for insolvency professionals. Both the institutes have signed a Memorandum of Understanding (MoU) in this regard, according to a release on Wednesday.

The programme for IIIPI's members will focus on building leadership and managerial capacity of professionals. It will be a five-day residential programme to be conducted at the campus of IIM, Ahmedabad.

IIIPI Chairman Ashok Haldia said managerial and leadership skills of insolvency professionals are critical for their role as trustee on behalf of stakeholders and at the same time as de facto CEO while resolving stressed businesses as going concern under the Insolvency and Bankruptcy Code (IBC) regime.

"The insolvency profession is a multi-disciplinary profession unlike any other, requiring constant capacity building of professionals. IIIPI is committed to upgrade the knowledge quotient of its members as its constant endeavour," he added.

M P Ram Mohan, Faculty Chair of Programme at IIMA, said, course IIIPI brings the nuances of management and leadership training to insolvency professionals.

businessline.

Capacity building. Managerial skills for IPs: IIIPI signs MoU with IIM Ahmedabad

Updated - May 03, 2023, at 01:04 PM.

They will roll out residential "Management Development Programme" for insolvency professionals.

BY KR SRIVATS

Indian Institute of Insolvency Professionals of ICAI (IIIPI), an Insolvency Professional Agency (IPA), has joined hands with Indian Institute of Management, Ahmedabad (IIMA) to roll out the first-ever residential "Management Development Program for Insolvency Professionals" in India.

Both the institutes have signed a Memorandum of Understanding (MoU) to this effect recently.

The process of announcing the first batch of the programme and shortlisting candidates among the professional members of IIIPI is underway.

Evolving profession

Ashok Haldia, Chairman-IIIPI said, "The insolvency profession is a multidisciplinary profession unlike any other, requiring constant capacity building of professionals. IIIPI is committed to upgrade the knowledge quotient of its members as its constant endeavor."

The 'Management Development Program' (Residential) for IIIPI's members would focus on building the leadership and managerial capacity of professionals in the context of managing distressed corporate debtors as de facto CEO under the provisions of IBC.

It will be a five days residential program conducted at the IIMA campus.

M P Ram Mohan, Faculty Chair of Program at IIMA, said, "Insolvency profession is evolving in India. Professionals are undertaking critical business and management functions once they are appointed as Resolution Professionals. This requires an understanding of how business functions, how the management of a firm thinks and acts etc. The course organised by IIMA for IIIPI brings the nuances of management and leadership training to Insolvency Professionals".

IIIPI, promoted by The Institute of Chartered Accountants of India (ICAI), is the largest frontline regulator under Insolvency Bankruptcy Code (IBC) in India with about 63 per cent Insolvency Professionals as its Members.

SAKSHI POST

Doctoral Research Programme in Insolvency and Bankruptcy in offing

May 04, 2023, 22:40 IST

New Delhi, May 4 (IANS) With an objective to promote high-quality research in the field of insolvency and bankruptcy, the Indian Institute of Insolvency Professionals of ICAI (IIIPI) along with the National Law University Delhi (NLUD) will award a fellowship to pursue Ph.D in the domain of insolvency and bankruptcy laws and regulations.

Ashok Haldia, Chairman of IIIPI's governing board, told IANS that this fellowship shall be available for admission from the next academic year (2024). It shall be disbursed in instalments over three years of the Ph.D. programme.

Risham Garg, a professor at NLUD, said that insolvency is itself a new law, introduced only in 2016.

"So there are only a few scholars in India who are persuing or have done their research in insolvency. Here at NLUD, one seat for a Ph.D scholar is being sponsored by the IIIPI," Garg said.

To start this new fellowship programme, IIIPI and NLUD have reached on a common platform after inking an MOU.

"We are discussing with several other institutions for sponsored fellowship in this research programme," Garg said.

As per the MoU, the main topic and sub-topics of research will be decided by NLUD's doctoral committee in accordance with the guidelines of the University Grants Commission (UGC). The university will also hold a consultation with the IIIPI.

NLUD shall be responsible for selecting the appropriate candidate for the Ph.D programme as per the UGC guidelines. There will also be a mechanism for evaluating the progress of research work as per the Ph.D regulations.

On successful completion of the programme, NLUD will award Ph.D degree to the scholar while IIIPI will publish the research work.

IIIPI, promoted by the Institute of Chartered Accountants of India (ICAI), is the largest frontline regulator under IBC in India with about 63 per cent of insolvency professionals as its members.

IIIPI works under the aegis of the Insolvency and Bankruptcy Board of India (IBBI) to build professionals' capacity and to provide policy inputs to regulators.

TOI

THE TIMES OF INDIA

IIIPI forms committee to recommend measures for growth of IBC ecosystem

PTI/ May 9, 2023, 20.38 IST

The Indian Institute of Insolvency Professionals of ICAI (IIIPI) has constituted a committee to recommend measures to prepare the IBC ecosystem for the next phase of growth

New Delhi, May 9 (PTI) The Indian Institute of Insolvency Professionals of ICAI (IIIPI) has constituted a committee to recommend measures to prepare the IBC ecosystem for the next phase of growth.

"After over six years since inception of IBC, there is a need to consider futuristic challenges and recommend to IBBI and other authorities, changes required in the ecosystem and for preparing IIIPI and insolvency professionals to support these," IIIPI Chairman, Ashok Haldai said.

IIIPI has constituted a board-level committee of its directors to recommend measures for preparing the IBC ecosystem for the next phase of growth by envisioning future changes and imperative requirements, according to a release on Tuesday.

Haldai welcomed IBBI's initiative to seek public comments on changes needed in regulations under IBC 2016.

IIIPI, promoted by the Institute of Chartered Accountants of India (ICAI), is the largest Insolvency Professional Agency (IPA) and frontline regulator under the Insolvency and Bankruptcy Code (IBC).

It works under the aegis of the Insolvency and Bankruptcy Board of India (IBBI).

(Only the headline and picture of this report may have been reworked by the Business Standard staff; the rest of the content is auto-generated from a syndicated feed.)

Media Coverage

Services

Indian Institute of Insolvency Professionals of ICAI (IIIPI)

ICAI Bhawan, 8th Floor, Hostel Block, A-29, Sector-62,

NOIDA, UP – 201309

Office Hours: 09:30 AM to 06:00 PM (Monday to Friday), except closed on holidays

Contact Details

0120-2990080 / 81 / 82 / 83
0120-2975680 / 81 / 82 / 83

Sl No	Department	Email Id
1	Enrolment & Registration as an Individual IP	ipenroll@icai.in
2	IPE Enrolment & Registration as an IP	ipe.enroll@icai.in
3	Program	ipprogram@icai.in
4	Authorization for Assignment	ip.afa@icai.in
5	CPE	iiipi.cpe@icai.in
6	Change of Address/e-mail/contact number/ any other required changes	iiipi.updation@icai.in
7	Grievance/Complaint	ipgrievance@icai.in
8	Disciplinary /Legal	iiipi.legal@icai.in iiipi.dc@icai.in
9	Monitoring (For reporting compliances on CIRP forms, Relationship, fees and cost disclosures, Half yearly returns)	ip_monitoring@icai.in iiipi_monitoring@icai.in iiipi.helpdesk@icai.in
10	Publication	iiipi.pub@icai.in
11	Membership Surrender	iiipi.surrender@icai.in

FEEDBACK

Dear Reader,

The Resolution Professional is aimed at providing a platform for dissemination of information and knowledge on evolving ecosystem of insolvency and bankruptcy profession and developing a global world view among practicing and aspiring insolvency professionals in India.

We firmly believe in innovations in communication approaches and strategies to present complicated information of insolvency ecosystem in a highly simplified and interesting manner to our readers.

We welcome your feedback on the current issue and the suggestions for further improvement. Please write to us at iiipi.journal@icai.in

Editor

The Resolution Professional

Help Us to Serve You Better

Peer Review Mechanism

IIIPI has recently launched the Peer Review Framework and online-portal for the usage by IIIPI's members. Peer Review refers to an examination of a professional's performance or practices in a particular area by other experienced professionals in the same area. The Peer Review Process attempts to provide a comprehensive framework to benchmark the professional services under review to help improving performance, decision making, adoption of best practices and standards including ethics, compliance with relevant laws, established standards and principles. This Peer Review Mechanism is a proactive, and pre-emptive measure by IPs to enthuse confidence in stakeholders and the Regulator. The Peer Review Portal can be accessed on IIIPI website under e-Services (iiipicai.in).

For further details, please write to us at*: iiipi.peerreview @icai.in*

Mentorship Program

A mentorship program by IIIPI, as a concept, has been launched in July 2022 for imparting practical exposure to new IPs by the experienced IPs. Salient features of mentorship program are as follows:

1. Its is voluntary and pro bono between the mentor and mentee.
2. IIIPI acts as facilitator for providing online portal for usage by its members in the capacity of mentor/ mentee.
3. Mentor to provide initial guidance and handholding to mentee.
4. Mentors should have experience of managing and completed at least three CIRP or Liquidation.
5. Mentees should have been appointed as IRP/RP/ liquidator by the order of AA in at least one assignment.
6. The period of mentorship shall be for a period of six months.
7. Mentees shall be awarded with a certificate from IIIPI of having completed a mentorship program successfully.

Discussion Forum

As a capacity building measure for our professional members, IIIPI has introduced a web-based 'Discussion Forum' (or query platform) for exclusive usage by IIIPI's members to raise and respond to the queries of professional nature under the broad headings of – (1) CIRP, (2) Liquidation, (3) Voluntary Liquidation, (4) Personal Guarantor to Corporate Debtor, and (5) Pre-Pack. You can access the Discussion Forum on IIIPI under e-Services at *https://forum.iiipicai.in/member*

Co-Membership of INSOL International, UK

As a capacity building initiative, IIIPI has entered into an alliance with INSOL International, UK for offering to IP members of IIIPI (only), the professional membership of INSOL International, UK at concessional terms (on optional basis). This Co-Membership would also help IP members of IIIPI in building their capacity and capabilities, especially when Cross Border Insolvency is on anvil in India.

INSOL International, UK is a world-wide federation of national associations of accountants and lawyers who specialise in turnaround and insolvency. There are currently over 44 Member Associations with over 10,500 professionals participating as members of INSOL International. A member-driven network maximising global economic value by improving solutions to Cross-Border issues, advancing restructuring and insolvency systems through the deep expertise of our members. Followings are the benefits of Co-Membership:

- Preferential Rates: Benefits from substantial discounts when attending conferences and seminars.
- Global Network: Connect with an international network of peers online and through an impressive programme of global events.
- Education: A range of internationally recognised qualifications tailored to the international insolvency industry.
- Technical Library: Access comprehensive reports and publications plus exclusive quarterly members' journal online.
- Raised Profile: Professional details listed in the online directory of INSOL International, searchable to all members worldwide.
- Get Involved: Share your expertise and connect with similarly focused practitioners by joining a technical project or committee.

Book your Advertisements in IIIPI's journal The Resolution Professional

Dear Member,

The Resolution Professional, quarterly research journal of IIIPI, is the first-ever peer-review refereed research journal of its kind with a focus on the insolvency ecosystem in India. The journal is aimed at providing a platform for dissemination of information and knowledge-sharing on the IBC ecosystem and developing a global world view among Insolvency Professionals (IPs). It carries Articles, Case Studies, Key Takeaways from Important Events, Code of Ethics, Legal Framework, IBC Case Laws, IBC News, Know Your Ethics, IIIPI News, IIIPI's Publications, Media Coverage, Services and Crossword, etc.

The soft copies of the journal are emailed to all the IPs, several ministries, NCLATs, NCLTs, IBBI, ICAI's Indian and offshore offices, State Governments, Universities, Management Institutions, PSUs, industry bodies, lawyers, media, foreign professional bodies and much more. Besides, about 1,000 physical copies are also circulated among dignitaries and subscribers.

The soft copies of the journal are also available free of cost on IIIPI website in three different formats (a) Flip Book (b) HTML Highlights, (c) IIIPI e-Journal PDF Downloads and, (d) Full PDF.

We trust, this audience base will be helpful for you to increase your reach for various purposes while discharging your responsibilities as an IRP, RP, Liquidator or Bankruptcy Trustee under the IBC, 2016. Accordingly, you can book your Classified Advertisements under the following categories:

- Advertisement for recruiting staff in the IP's own office.
- Advertisement inserted on behalf of the Corporate Debtor (CD) requiring staff/ professionals or wishing to acquire or dispose of business or property.
- Advertisement for the sale of a business or property by an IP acting in a professional capacity as Interim Resolution Professional (IRP), Resolution Professional (RP), Bankruptcy Trustee, Liquidator, or Administrator or any other capacity/ ies notified by IBBI.
- Change in the Address, contact number and email id.

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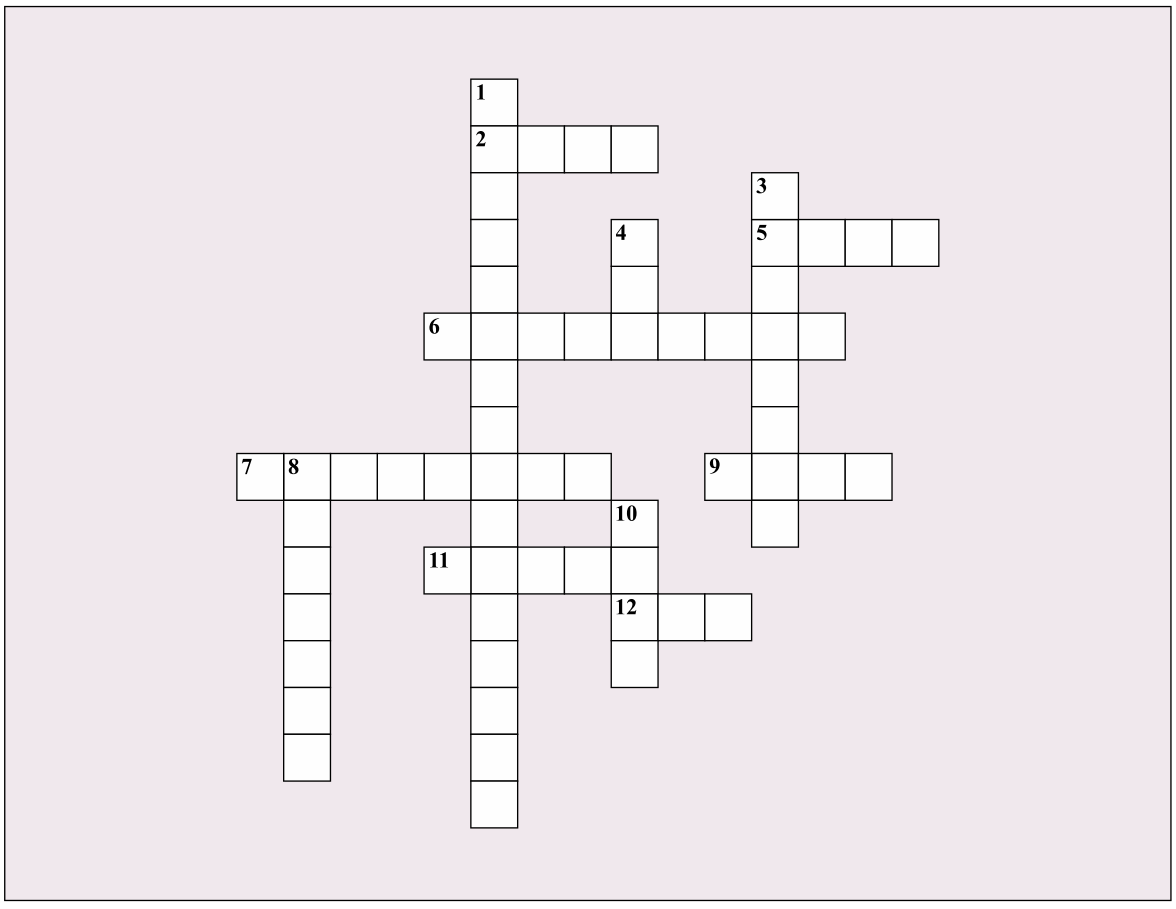
The content of display advertisements should be broadly related to stakeholders of the insolvency profession.

The booking of Advertisements for July 2023 edition is open. Please send us your request with content (text and creatives etc.) at iiipi.journal@icai.in at the earliest. The advertisements will be published after approval of the Competent Authority.

IBC Crossword



Across

2. Resolution Professional shall continue as the Liquidator unless replaced by_____
5. _____makes model bye-laws to be adopted by Insolvency Professional Agencies.
6. Not more than _____of the Directors of an Insolvency Professional Agency shall be insolvency professionals.
7. The AA shall pass a bankruptcy order within __ days of receiving the confirmation or nomination of the Bankruptcy Trustee.
9. IBBI got exemption u/s 10 of IT act for _____ financial years by Central Govt. through a notification dated March 01, 2023.
11. Any order passed by the Disciplinary Committee shall be placed on the website of the IPA within ____ days from passing of the said order.
12. Approval of ____will be needed to create any security interest over the assets of the CD.

Down

1. ____Resolution Plan is approved by AA in FY 2022-23.
3. The CoC in its first meeting should either appoint IRP as RP or replace IRP by another RP by the majority vote of not less than _____ percent.
4. The duties of the Interim Resolution Professional include compilation of business and financial operations for previous_____years.
8. AA may impose penalty which shall not be less than ₹_____ in case of initiating voluntary liquidation proceedings with fraud intent.
10. The extension of fast track ClRP shall not be granted more than_____

Answer Key: IBC Crossword, April 2023

1. Bankruptcy trustee
2. One hundred eighty
3. Law
4. CoC
5. DRT
6. Fifty Four F
7. Sixty Thousand
8. One hundred eighty six
9. Three Hundred Eighty Seven
10. Suraksha
11. Seven hundred ninety three
12. Five
13. One Hundred Twenty

GUIDELINES FOR ARTICLE SUBMISSION

THE RESOLUTION PROFESSIONAL, quarterly peer-reviewed refereed research journal of Indian Institute of Insolvency Professionals of ICAI (IIIPI), with RNI Registration Number DELENG/2021/81442/ invites research-based articles for its upcoming editions on a rolling stock basis. The contributors/authors can send their article/s manuscripts for publications in The Resolution Professional as per their convenience at iiipi.journal@icai.in. The same will be considered for publication in the upcoming edition of the journal, subject to approval by the Editorial Board. The articles sent for publication in the journal should conform to the following parameters:

- The article should be of 2,500-3,000 words and cover a subject with relevance to IBC and the practice of insolvency.
- The article should be original, i.e., not published/broadcast/hosted elsewhere including on any website.
- The article should:
  - Contribute towards development of practice of Insolvency Professionals and enhance their ability to meet the challenges of competition, globalisation, or technology, etc.
  - Be helpful to professionals as a guide in new initiatives and procedures, etc.
  - Should be topical and should discuss a matter of current interest to the professionals/readers.
  - Should have the potential to stimulate a healthy debate among professionals.
  - Should preferably expose the readers to new knowledge area and discuss a new or innovative idea that the professionals/readers should be aware of. It may also preferably highlight the emerging professional areas of relevance.
  - Should be technically correct and sound.
  - Headline of the article should be clear, short, catchy and interesting, written with the purpose of drawing attention of the readers. The sub-headings should preferably within 20 words.
  - Should be accompanied with abstract of 150-200 words. The tables and graphs should be properly numbered with headlines, and referred with their numbers in the text. The use of words such as below table, above table or following graph etc., should be avoided.
  - Authors may use citations as per need but one citation/ quote should have about 40 words only. Lengthy citations and copy paste must be avoided.
  - Plagiarism (including references) should be below 10%.
  - The authors must provide the list of references at the end of article.
  - A brief profile of the author, e-mail ID, postal address and contact number along with his passport size photograph and declaration confirming the originality of the article as mentioned above should be enclosed along with the article.
  - The article can be sent by e-mail at **iiipi.journal@icai.in**
  - In case the article is found suitable for publication, the same shall be communicated to the author/s at the earliest.

NOTE: IIIPI has the sole discretion to accept, reject, modify, amend and edit the article before publication in the Journal. The copyright for the article(s) published in the Journal will vest with IIIPI.

For further details, please contact:

THE RESOLUTION PROFESSIONAL
Indian Institute of Insolvency Professionals of ICAI
ICAI Bhawan, 8th Floor, Hostel Block,
A-29, Sector 62, NOIDA– 201309
☎ **0120-2975680/81/82/83**

Indian Institute of Insolvency Professionals of ICAI (IIIPI)

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Regd. Office: Post Box No: 7100, ICAI Bhawan, Indraprastha Marg, New Delhi - 110002

Admin. Office: ICAI Bhwan, 8th Floor, Hostel Block, A-29, Sector-62, Noida - 201309

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