



सत्यमेव जयते

भारतीय दिवाला और शोधन अक्षमता बोर्ड

Insolvency and Bankruptcy Board of India

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Insolvency and Bankruptcy News

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Automating
the Wheels of Commerce

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Insolvency Associates Launch Ceremony at New Delhi on 10th July, 2018



5th SBI Banking and Economic Conclave, 2018 at Mumbai on 4th July, 2018

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Automating the Wheels of Commerce

Standardisation and dematerialisation of credit contracts and their online execution will speed up the processes under the Insolvency and Bankruptcy Code, 2016, while propelling business to the next level.

Wheel is the most influential invention of science in the history of mankind. It is the mother of almost every technological invention and one cannot think of the world without it. It undergoes continuous metamorphosis to meet every emerging need. Literally, there are wheels on wheels and wheels within wheels. Powered by automation, wheels are now extremely intelligent, potent and universal.

Contract is the wheel of commerce. It is the most influential innovation of commerce in the history of mankind. It is the foundation of every business and market innovation and one cannot think of the world without it. Literally, there are contracts on contracts, contracts within contracts and one contracts to contract to contract. It is under continuous metamorphosis to meet every business need.

The securities market undertakes transactions probably with the highest efficiency, speed and security, thanks to three institutional developments, namely, standardisation, dematerialisation and online execution of contracts, which are key components of contract automation. It trades in demat contracts; every trade is a contract executed online.

A share is the simplest contract traded in securities market. It is a contract between a shareholder and the company, subject to the Articles and the Statutes. It provides specific terms in respect of a class of shares of the company. The Articles of Association of a company provide generic terms in respect of all shares of the company. The specific statutes (the Companies Act, 2013), which enable issue of shares, provide the global terms in respect of all shares across companies. The general statutes (the Indian Contract Act, 1872) provide the universal terms in respect of all contracts across contracting parties.

On the bedrock formed by its Articles, the Companies Act, 2013, and the Indian Contract Act, 1872, a company issues a class of shares. Neither the company nor the prospective shareholders negotiate details of every term in case of each issue of shares. Nor do they prepare, sign and preserve bulky contracts. Even a transfer of shares from one person to another does not require a fresh contract between the company and the incoming shareholder.

The terms relating to shares have been standardised by the parties over centuries of transactions. Most of them have found place in course of time in the Articles, specific statutes and general statutes. Consequently, a share carries only a few terms and is sleek. This eliminates protracted negotiation by the parties, delay in conclusion of transactions, and the possibility of unfavourable terms for the weaker party. It facilitates development of jurisprudence around standard terms, and significantly reduces costs, avoids disputes, and promotes contract enforcement.

The securities market provides an electronic platform for online execution of contracts. The platform matches the interests of the parties and executes a standardised contract, online between them, with the least effort, cost and time. Once executed, the contract evidences unmistakable meeting of minds and irrefutable rights and obligations, and thereby avoids any concerns of contract enforcement.

Preparation, preservation and servicing of paper-based contracts are very costly, in addition to being susceptible to theft, forgery and mutilation. The securities market has addressed these concerns by dematerialising the contracts. A company issues demat shares; a depository holds demat shares; a stock exchange provides trading of demat shares; an investor deals in demat shares and the Government levies taxes on issue and trading of demat shares. This enables almost instantaneous transfer as well as consummation of contracts, while facilitating storage, retrieval, validation and authentication of contracts.

One would imagine that given the obvious advantages, the securities market must have embraced online execution as well as dematerialisation with open arms. There was, however, tough resistance to online trading of securities and dematerialisation of securities for years and both required considerable regulatory persuasion and fiat. In course of time, both turned out to be greatest stories of contagious success catapulting India's securities market to global benchmark. Many contracts such as lease agreements, wills, sale of goods, are now standardised and executed online. Many other contracts such as securities, kisan vikas patra, insurance plans, warehouse receipts, are now held and or transferred in demat form.

A debtor usually contracts with many creditors. It increases her capacity to raise debts and consequently the likelihood of default. When a default occurs, the sum of claims of individual creditors usually exceeds the value of assets of the debtor. The bankruptcy law steps in to satisfy the claims while preventing a run on the assets of the debtor. This requires perfect knowledge of every contract of credit.

The Insolvency and Bankruptcy Code, 2016 envisages the applicant to submit records of the default while initiating corporate insolvency resolution process. It envisages a creditor to submit claim along with proof of existence of debt. It expects that an information utility would make authentic record of debt and default available to the adjudicating authority and the resolution professional to facilitate timebound completion of processes. Automation of credit contracts would not only facilitate insolvency resolution and bankruptcy processes, but also yield similar benefits as have been realised in the securities market.

One occasionally argues that the credit market mostly uses bilateral, tailor-made contracts to provide terms of credit and that depending on the amount of credit, purpose of credit, nature of security, creditworthiness of the debtor, etc., each credit contract is unique. However, each contract has a finite number of terms and all possible terms in all possible contracts are also finite. It is possible to develop a lengthy template carrying all possible terms and the parties may fill up the template according to the terms they agree upon for a credit. Or, there can be 'n' templates to meet the needs of each class or subclass of credit and the parties may pick up the template relevant to the purpose. The template may even provide flexibility to parties to modify or specify a special term to meet their requirements. It can be made sleek by parking common terms outside the contract. Many lenders today use a templated approach for a variety of credit contracts. Borrowing through credit cards is an example of a fully automated contract.

For credit contracts to enjoy the confidence of stakeholders and form the indisputable basis for initiation of processes under the Code and determination of claims of creditors, it is necessary to maintain the sanctity and integrity of the process of automation. An information utility or any other regulated third party created for the purpose may make standardised demat templates available on an electronic platform where parties can enter into credit contracts online. It may facilitate electronic stamping of such contracts, keep custody of all such contracts and make them available to parties and the entitled authorities for their legitimate uses.

Automation of contracts, irrespective of the business, would make contracting efficient, protect the weaker party and strengthen contract enforcement, and consequently improve ease of doing business. Like automation of wheels, it would propel the business to the next level, in a greener environment.

Dr. M. S. Sahoo

IBBI Updates

'Hindi Diwas'

IBBI organised 'Hindi Diwas' on 14th September, 2018 to celebrate popularity of Hindi as the official language of the Union of India and to promote its use further in official work. The employees participated with great enthusiasm in various activities such as poetry, stories, and songs in Hindi and won prizes.



Celebration of Hindi Diwas on 14th September, 2018

Shramdaan Activity

IBBI organised *Shramdaan* Activity on 28th September, 2018 to accelerate momentum of *Jan-andolan* for realising Hon'ble Prime Minister's vision of clean India under 'Swachhata Hi Seva' programme observed from 15th September to 2nd October, 2018.



Shramdaan Activity on 28th September, 2018

MoU with Ministry

IBBI signed an MoU with the Ministry of Corporate Affairs on 14th September, 2018. The MoU was signed by Dr. Navrang Saini, Whole Time Member, IBBI and Mr. Gyaneshwar Kumar Singh, Joint Secretary, Ministry of Corporate Affairs. The MoU envisages assistance and co-operation for the effective implementation of the Code and sharing of

information and data to facilitate various activities. It contemplates that the Government would provide continuous support to IBBI to discharge the responsibilities cast upon it under the Code. It lists out a number of activities to be undertaken by the IBBI during 2018-19.

Recruitment

IBBI recruited 18 Grade 'A' officers, the first batch of its kind, through an open competitive examination. These officers have been drawn from disciplines such as law, economics, commerce, management, company secretary, chartered accountancy and cost accountancy.

Chief Minister's Distress Relief Fund

The IBBI employees expressed solidarity with the people of flood-hit Kerala, which faced the deadliest deluge in the last century. A cheque for ₹2 lakh was handed over to Mr. Puneet Kumar, IAS, Resident Commissioner, Kerala House, in New Delhi on 21st August, 2018, towards the Chief Minister's Distress Relief Fund.



Cheque handed over to Mr. Puneet Kumar, Resident Commissioner on 21st August, 2018



Meeting of the Working Group on Graduate Insolvency Programme on 25th August, 2018



Meeting of the Working Group on Individual Insolvency on 10th September, 2018



Talk by Dr. Shubhashis Gangopadhyay on 21st August, 2018.

Income-tax Exemption

The Central Government exempted the IBBI from income-tax for the financial years 2017-2022 in respect of the following incomes, namely:-

- Grants-in-aid received from the Central Government;
- Fees received under the Insolvency and Bankruptcy Code, 2016;
- Fines collected under the Insolvency and Bankruptcy Code, 2016; and
- Interest income accrued on (a), (b) and (c) above.

The income-tax exemption is subject to the conditions that-

- the IBBI shall not engage in any commercial activity;
- the activities and the nature of the specified income of IBBI shall remain unchanged throughout the financial years; and
- the IBBI shall file return of income in accordance with the Income-tax Act, 1961.

Distinguished Speakers

The following distinguished speakers, among others, delivered talks and interacted with the officers of IBBI during the quarter:

- Prof. Dipankar Gupta, renowned author and sociologist on 'Society and Insolvency' on 11th July, 2018.
- Dr. Shubhashis Gangopadhyay, Director, India Development Foundation on 'Law and Economics' on 21st August, 2018.



Talk by Prof. Dipankar Gupta on 11th July, 2018.

Legal and Regulatory Framework

Central Government

The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018

The President had promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 on 6th June, 2018 with a view to balancing the interests of various stakeholders, especially the home buyers and Micro, Small and Medium Enterprises (MSMEs), promoting resolution over liquidation of corporate debtor by lowering the voting threshold of CoC and streamlining provisions relating to eligibility of resolution applicants. The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2018 was passed by Parliament and became an Act on 17th August, 2018 on receiving the assent of the President.

The Companies (Registered Valuers and Valuation) Rules, 2017

Pursuant to rule 11 of the Companies (Registered Valuers and Valuation) Rules, 2017, any person, who was rendering valuation services under the Companies Act, 2013 on the date of commencement of these rules, was allowed to continue to render valuation services without a certificate of registration under the rules up to 31st March, 2018. The Central Government had extended the aforementioned timeline to 30th September, 2018 vide notification dated 9th February, 2018. This has now been further extended to 31st January, 2019 vide notification dated 25th September, 2018.

Committee to advise on valuation matters

In pursuance of the Companies (Registered Valuers and Valuation) (Second Amendment) Rules, 2018, the Central Government nominated the following members to the Committee to advise on valuation matters on 6th July, 2018:

- Nominee of ICAI Registered Valuers Organisation;
- President, the Institute of Chartered Accountants of India (ex-officio);
- President, the Institute of Company Secretaries of India (ex-officio); and
- President, the Institute of Cost Accountants of India (ex-officio).

Insolvency and Bankruptcy Board of India

The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 4th July, 2018. The following are the salient amendments to the regulations:

- a. Wherever the corporate debtor has classes of creditors having at least ten creditors in the class, the IRP shall offer a choice of three IPs in the public announcement to act as the authorised representative (AR) of creditors in each class. A financial creditor in a class may indicate its choice of an IP, from amongst the three choices provided by the IRP, to act as its AR. The IP, who is the choice of the highest number of creditors in the class, shall be appointed as the AR of the financial creditors of the respective class.
- b. An application for withdrawal of the matter admitted under section 7, 9 or 10 of the Code (for closure of CIRP) may be submitted to the IRP or the RP, as the case may be, before issue of invitation for EoI, along with a bank guarantee towards estimated cost incurred for certain purposes under the process. The CoC shall consider the application within seven days of its constitution or seven days of receipt of the application, whichever is later. If the application is approved by the CoC with 90% voting share, the RP shall submit the application to the AA on behalf of the applicant, within three days of such approval.
- c. Where rate of interest has not been agreed to between the parties in case of creditors in a class, the voting share of such a creditor shall be in proportion to the financial debt that includes an interest at the rate of eight percent per annum.
- d. Where the appointment of RP is delayed, the IRP shall perform the functions of the RP from the 40th day of the insolvency commencement date till a RP is appointed.
- e. A meeting of the CoC shall be called by giving not less than five days' notice in writing to every participant. The CoC may, however, reduce the notice period from five days to such other period of not less than 48 hours where there is any AR and to 24 hours in all other cases. The AR shall circulate the agenda to creditors in a class and announce the voting window at least 24 hours before the window opens for voting instructions and keep the voting window open for at least 12 hours.
- f. The RP shall form an opinion whether the CD has been subjected to certain transactions (preferential, undervalued, extortionate or fraudulent transactions) by 75th day and make a determination of the same by 115th day of the insolvency commencement date. Where the RP makes such a determination, he shall apply to the AA for appropriate relief before 135th day of the insolvency commencement date.
- g. The resolution professional shall publish an invitation for EoI by the 75th day from the insolvency commencement date. The invitation shall specify the criteria, ineligibility, the last date for submission of EoI and other details and shall not require payment of non-refundable deposit. Any EoI received after the specified time shall be rejected. The RP shall conduct due diligence based on material on record and issue a provisional list of prospective resolution applicants within 10 days of the last date of submission of EoI. On considering objections to the provisional list, the RP shall issue the final list of prospective resolution applicants, within 10 days of the last date for receipt of objections.
- h. The RP shall issue the information memorandum, the evaluation matrix and the request for resolution plans (RFRP), within five days of issue of the provisional list to the prospective resolution applicants and allow at

least 30 days for submission of resolution plans. The RFRP shall detail each step in the process, and the manner and purposes of interaction between the RP and the prospective resolution applicant, along with corresponding timelines. The resolution plan needs to demonstrate that (i) it addresses the cause of default; (ii) it is feasible and viable; (iii) it has provisions for its effective implementation; (iv) it has provisions for approvals required and the timeline for the same; and (v) the resolution applicant has the capability to implement the resolution plan. The CoC shall evaluate the resolution plan strictly as per the evaluation matrix to identify the best resolution plan and may approve it with the required majority. If approved by the CoC, the RP shall endeavour to submit the resolution plan to the Adjudicating Authority at least 15 days before the maximum period for completion of CIRP, along with a compliance certificate in the specified Form.

- i. The regulations provide for a model timeline of the CIRP assuming that the IRP is appointed on the date of commencement of the process and the time available is 180 days.

Empanelment of Insolvency Professional Entities

IBBI observed that a few market participants were seeking empanelment of IPEs and a few IPEs were seeking empanelment with market participants. In view of this, a direction was issued vide circular dated 6th July 2018 to the IPEs to refrain from seeking empanelment with or joining any panel of any market participant, while clarifying that:

- a. An IPE can provide only support services to the IPs who are its partners or directors; and
- b. No person other than a person registered as an IP with the IBBI can render services as an IP. An IPE is neither enrolled as a member of an IPA nor registered as an IP with the IBBI. It cannot act as IP under the Code.

Representation of Financial Creditors

As members of the CoC, the financial creditors discharge several critical responsibilities, including invitation, receipt, consideration and approval of resolution plans under the Code. Their conduct has serious implications for continued business of a CD and consequently on the economy. The AA has expressed concern about their conduct in a few matters. The IBBI directed vide circular dated 10th August, 2018 that the IRP / RP shall, in every notice of meeting of the CoC and any other communication addressed to the financial creditors, other than creditors under section 21 (6A) (b), require that they must be represented in the CoC or in any meeting of the CoC by such persons who are competent and are authorised to take decisions on the spot and without deferring decisions for want of any internal approval from the financial creditors.

Director / Partner in IPE

The IBBI (Insolvency Professionals) Regulations, 2016 require an IPE to inform IBBI, within seven days, when an IP ceases to be its director or partner or joins as its director or partner. In pursuance of the above, the IBBI, vide circular dated 31st August, 2018, directed that an IPE shall inform (a) within seven days from the date when an IP ceases to be its director or partner or joins as its partner or director; and (b) forthwith and in any case, not later than 7th September, 2018, if it has failed to inform any cessation or joining of an IP as its partner or director in the past. It also directed that such information shall be provided by the authorised signatory of the IPE in the specified format by email from the email address of the IPE registered with the IBBI.

Voting in the Committee of Creditors

The IBBI clarified vide circular dated 14th September, 2018 that-

- a. The Code read with regulations provide for the manner of collection and verification of claims.
- b. The IRP constitutes the CoC comprising financial creditors, whose claims have been admitted, as members.

- c. The voting power of a member in the CoC is based on the amount of admitted claim in respect of the financial debt.
- d. A financial creditor, whose claim has not been admitted, is included in the CoC as member, as and when its claim is admitted.
- e. Inclusion of a financial creditor in the CoC as a member after constitution of the CoC does not affect the validity of any decision taken by the CoC prior to such inclusion.
- f. The CoC decides the matters by the specified percentage of voting share of members.

Thus, a person, who is not a member of the CoC, does not have voting right in the CoC. A person, who is not a member of the CoC, cannot be regarded as one who has voted against a resolution plan or abstained from voting.

Other Authorities

The Central Government amended the Securities Contracts (Regulation) Rules, 1957 on 24th July, 2018. This amendment provides that where the public shareholding in a listed company falls below twenty-five per cent as a result of implementation of the resolution plan approved under section 31 of the Code, such company shall bring the public shareholding to twenty-five per cent within a maximum period of three years from the date of such fall, in the manner specified by the SEBI. However, if the public shareholding falls below ten per cent the same shall be increased to at least ten per cent within a maximum period of eighteen months from the date of such fall, in the manner specified by the SEBI.

Orders

A brief of select decisions of judicial and quasi-judicial bodies during the quarter July – September, 2018 is as under:

Supreme Court

K. Kishan Vs. M/s Vijay Nirman Company Pvt. Ltd. [Civil Appeal Nos. 21824 & 21825-2017]

In this matter, the AA admitted an application under section 9 of the Code vide order dated 29th August, 2017, with an observation that pendency of the petition under section 34 of the Arbitration and Conciliation Act, 1996 was irrelevant because claim stood admitted and there was no stay of the award. The Appellate Tribunal dismissed an appeal against the said order holding that the non-obstante clause under section 238 of the Code would override the Arbitration Act and order of an arbitral panel was a record of operational debt. The Hon'ble Supreme Court held that section 238 would apply in case there is an inconsistency between the Code and the Arbitration Act. It noted that an application under section 9 of the Code must be rejected if a notice of a dispute has been received by the OC. In this matter, filing of a section 34 petition against the award shows a pre-existing dispute and the dispute continues even after the award, at least till the final adjudicatory process under sections 34 and 37 has taken place. However, dispute would disappear if the section 34 petition is clearly and unequivocally barred by limitation. Accordingly, the Hon'ble Supreme Court held that a CIRP cannot be initiated in respect of an operational debt where an arbitral award has been issued against the OC, which has not yet been finally adjudicated upon, and accordingly set aside the judgement of the Appellate Tribunal.

Chitra Sharma and Ors. Vs. Union of India and Ors. [WP (Civil) No. 744 of 2017 & connected WPs & SLPs]

It was held that since no resolution plan of Jaypee Infratech Limited (JIL) was approved by the CoC till expiry of the extended period of CIRP (270 days) on 12th May, 2018, the NCLT was required to pass an order for liquidation. However, there was an unanimity of opinion that the liquidation of JIL would not subserve the interests of the home buyers.

The Hon'ble Supreme Court noted that clauses (c) and (g) of section 29A debar Jaiprakash Associates Limited (JAL), the holding company of JIL, from participating in resolution process. It, therefore, did not allow JAL to participate in resolution process as it would cause serious prejudice to the discipline of the Code and would set at naught the salutary provisions of the statute.

While examining the provisions in the Code, the Hon'ble Supreme Court observed: *"The success of the process is contingent upon the competence of the IRP and the CoC."* Having regard to material change brought in by the Ordinance treating home buyers as FCs, who would have substantial voting power in the CoC and the fact that it was in seisin of the proceedings to ensure that the home buyers are protected, it decided to revive the CIRP to do complete justice to secure the interests of all concerned. It observed: *"Moreover, this Court should follow the discipline of the IBC which has been enacted by Parliament specifically to streamline the resolution of corporate insolvencies. Matters involving corporate insolvencies require expert determination. The legislature has made specific provisions which are conceived in public interest and to facilitate good corporate governance. The Court should not take upon itself the burden of supervising the intricacies of the resolution process."* Rejecting the suggestion to have a court appointed committee to supervise the resolution process outside the IBC, it held: *"We must particularly be careful not to supplant the mechanisms which have been laid down in the IBC by substituting them with a mechanism under judicial directions. Such a course of action would in our view not be consistent with the need to ensure complete justice under Article 142, under the regime of law. Hence, the power under Article 142 should be utilised at the present stage for the limited purpose of recommencing the resolution process afresh from the stage of appointment of IRP by the order dated 9 August 2017 and resultantly renew the period which has been prescribed for the completion of the resolution process..."*

Sunrise I4 A/S Denmark Vs. Ravi Mahajan [Civil Appeal Nos. 21794 - 21795 of 2017]

The Appellate Tribunal vide order dated 6th December, 2017 had set aside an order of admission on the ground that the record of default under section 7(3)(a) of the Code was missing and the application was made by an advocate and not by the party in person. While setting aside the order of the Appellate Tribunal, the Hon'ble Supreme Court observed: *"In Macquarie Bank Limited Vs. Shilpi Cable Technologies Limited, we have since taken the view that, in the case of operational creditors, the petition filed by a foreign company need not to observe such requirements of a statute which are impossible of compliance, namely, of getting a certificate from Indian financial institutions evidencing default in repayment of a debt. We also think that the petition filed by an advocate would be maintainable, as has been held in Macquarie Bank supra. We are of the view that the said judgment would apply in the case of financial creditors as well."*

Pr. Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd. [SLP No. 6483 of 2018]

Upholding an order of the Delhi High Court, the Hon'ble Supreme Court held that in view of section 238 of the Code, the provisions in the Code will override anything inconsistent contained in any other enactment, including Income-Tax Act.

State Bank of India Vs. V. Ramakrishnan & Anr. [Civil Appeal No. 3595 of 2018]

In this matter, first respondent was personal guarantor in respect of credit facilities availed by CD from SBI, the appellant. Since, the CD did not pay its debt in time, the appellant issued a notice under the SARFAESI Act demanding outstanding payment from the respondents. Since no payment was made, a possession notice under the SARFAESI Act was issued on 18th November, 2016. Meanwhile, the CD filed an application under section 10 of the Code for initiation of its own CIRP, which was admitted on 19th June, 2017 and moratorium under section 14 of the Code was imposed. The first respondent filed an application before the NCLT pleading that moratorium would apply to the personal guarantor and as a result, the

proceedings against him and his property would be stayed. The NCLT allowed the interim application restraining the appellant from moving against the first respondent. The Appellate Tribunal, vide order dated 28th February, 2018, dismissed an appeal against the order of the NCLT. The Hon'ble Supreme Court, therefore, considered the issue whether section 14 of the Code, which provides for a moratorium, would apply to a personal guarantor of a CD. It noted that section 14 refers to the CD and the CD alone. It observed: *"Section 14 refers to four matters that may be prohibited once the moratorium comes into effect. In each of the matters referred to, be it institution or continuation of proceedings, the transferring, encumbering or alienating of assets, action to recover security interest, or recovery of property by an owner which is in possession of the corporate debtor, what is conspicuous by its absence is any mention of the personal guarantor. Indeed, the corporate debtor and the corporate debtor alone is referred to in the said Section. A plain reading of the said Section, therefore, leads to the conclusion that the moratorium referred to in Section 14 can have no manner of application to personal guarantors of a corporate debtor."* It also noted that the scope of moratorium under section 14 is different from that under sections 96 and 101. It observed: *"We are also of the opinion that Sections 96 and 101, when contrasted with Section 14, would show that Section 14 cannot possibly apply to a personal guarantor. When an application is filed under Part III, an interim-moratorium or a moratorium is applicable in respect of any debt due. First and foremost, this is a separate moratorium, applicable separately in the case of personal guarantors against whom insolvency resolution processes may be initiated under Part III. Secondly, the protection of the moratorium under these Sections is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor are stayed. The difference in language between Sections 14 and 101 is for a reason. Section 14 refers only to debts due by corporate debtors, who are limited liability companies, and it is clear that in the vast majority of cases, personal guarantees are given by Directors who are in management of the companies. The object of the Code is not to allow such guarantors to escape from an independent and coextensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to them. However, in so far as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor – often it could be a personal friend. It is for this reason that the moratorium mentioned in Section 101 would cover such persons, as such moratorium is in relation to the debt and not the debtor."* It took note of the amendment in section 14 (3) of the Code which makes it clear that section 14 does not apply to a surety. Accordingly, it allowed the appeal.

High Courts

Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central) Income Tax Department, Hyderabad and others [WP No. 8560 of 2018]

The petitioner purchased an immovable property in the liquidation proceeding of VNR Infrastructures Limited. The sub-registrar refused to register the property in the name of petitioner at the behest of the Income-tax Department which claimed a charge over the immovable property pursuant to attachment proceedings against which the writ petition was filed.

The Hon'ble High Court noted that it entails construction and interpretation of the provisions of the Code in juxtaposition to the Income-tax Act, 1961. It observed: *"It is clear that the Income Tax Department does not enjoy the status of a secured creditor, on par with a secured creditor covered by a mortgage or other security interest, who can avail the provisions of section 52 of the Code. At best, it can only claim a charge under the attachment order, in terms of section 281 of the Act of 1961."* As regards the purpose of attachment, it referred to the judgements in Ananta Mills Ltd. (High Court Gujarat) and Prem Lal Dhar (Privy Council), where it has been held that attachment only prohibits private alienation of the property, but the attaching creditor does not acquire any interest in the property. It noted that section 178 of the Income-tax Act, 1961 provides for a priority in appropriation of the amounts set aside by the liquidator for clearance of the tax dues. However, liquidation of a company could be under different enactments. In case of liquidation of a company under the Code, section 178 of the Income-tax Act, 1961 stands excluded by virtue of the

amendment of section 178 (6) with effect from 01.11.2016, in accordance with section 247 read with the Third Schedule to the Code. Therefore, in the event an assessee company is in liquidation under the Code, the Income-tax Department can no longer claim a priority in respect of clearance of tax dues of the said company.

The Hon'ble High Court held that the tax dues, being an input to the Consolidated Fund of India and of the States, clearly come within the ambit of section 53(1)(e) of the Code. It further held that the Income-tax Department cannot claim any priority merely because the order of attachment dated 27th October, 2016 was long prior to the initiation of liquidation proceedings under the Code against VNR Infrastructures Limited. Further, section 36(3)(b) of the Code indicates in no uncertain terms that the liquidation estate assets may or may not be in possession of the CD, including but not limited to encumbered assets. Therefore, even if the order of attachment constitutes an encumbrance on the property, it still does not have the effect of taking it out of the purview of section 36(3)(b) of the Code. The said order of attachment, therefore, cannot be taken to be a bar for completion of the sale under a liquidation proceeding under the Code. The Income-tax Department necessarily has to submit its claim to the liquidator for consideration as and when the distribution of the assets, in terms of section 53(1) of the Code, is taken up.

Mr. H. K. Sharma & 131 Ors. Vs. Union of India & Ors. [WP No. 15812, 21803-21929, and 21930-21933 of 2018]

The Hon'ble High Court had stayed the operation and implementation of the Companies (Registered Valuers and Valuation) Rules, 2017 (Rules) as far as the petitioners are concerned vide order dated 7th June, 2018. However, it was brought to the notice of the Hon'ble High Court that the Rules provide for a transitional arrangement, which allows that valuers, who intend to carry on valuation work under the Companies Act, 2013, can do so without a certificate of registration up to 31st March, 2018. Further, the Rules do not affect the valuers who are rendering services under any law other than the Companies Act, 2013. In view of the above, the Hon'ble High Court vacated the stay.

Insolvency and Bankruptcy Board of India Vs. State Bank of India & Ors. [WP (C) 10189 of 2018]

The AA, vide order dated 5th September, 2018 in the matter of Su Kam, declared regulation 36A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulation), which provided for invitation of expression of interest, ultra vires of section 25(2) (h) read with section 240(1) of the Code. The issue raised before the Hon'ble High Court was: 'whether NCLT could strike down the provision of the said regulation 36A. The Hon'ble High Court granted a partial stay of the order of the AA to the effect that cases where expression of interest has already been issued by the RPs need not be interdicted.

National Company Law Appellate Tribunal

Central Bank of India Vs. RP of the Sirpur Paper Mills Ltd. & Ors. [CA (AT) (Insolvency) No. 526 of 2018]

In this matter, the resolution plan treated all FCs equally. It was approved by the AA vide order dated 19th July, 2018. The appellant contended that the resolution plan was against provisions of regulation 38(1)(c) of the CIRP Regulations as the dissenting FCs have been provided with equal amount to those FCs who have agreed with the resolution plan. The NCLAT held that no discrimination can be made between the FCs in the resolution plan on the ground that one has dissented and voted against the resolution plan or the other has supported and voted in favour of the resolution plan. The right to dissent has been provided under 30 (4) of the Code and hence a creditor who has dissented cannot be unsuited on the ground that it has dissented.

The NCLAT took note of section 240 of the Code empowering the IBBI to make regulations. It reiterated that the IBBI may make regulations, but it should be consistent with the Code and rules made thereunder, to carry out the provisions of the Code. Therefore, it held that the provisions made by the IBBI cannot override the provisions of the Code, nor can it be

inconsistent with the Code. It observed: “Clause (b) and (c) of Regulation 38 (1) being inconsistent with the provisions of I&B Code, and the legislators having not made any discrimination between the same set of group such as 'Financial Creditor' or 'Operational Creditor', Board by its Regulation cannot mandate that the Resolution plan should provide liquidation value to the 'Operational Creditors' (clause (b) of regulation 38 (1) or liquidation value to the dissenting Financial Creditors (clause (c) of regulation 38 (1)).”

Jagmohan Bajaj Vs. Shivam Fragrances Pvt. Ltd. & Anr. [CA (AT) (Insolvency) No. 428 of 2018]

A shareholder of the CD admitted into CIRP assailed the admission on the ground that a serious dispute of oppression and mismanagement of the CD was pending adjudication under sections 241 and 242 of the Companies Act, 2013. The NCLAT held that the Code is a special law having an overriding effect on any other law and triggering of CIRP cannot be defeated by taking resort to pendency of internal dispute between directors of the CD or pendency of adjudication. It observed: “The statutory right of a Financial Creditor satisfying the requirements of section 7 of the I&B Code to trigger Insolvency and Resolution Process cannot be made subservient to adjudication of an application u/s 241 and 242 of the companies Act, 2013. I&B Code is supreme so far as triggering of Insolvency Resolution Process is concerned and same cannot be eclipsed by taking resort to remedies available under ordinary law of the land.” Since the appeal was frivolous and the appellant has encroached upon the precious time of the NCLAT, it was saddled with costs of ₹1 lakh.

Andhra Bank Vs. F. M. Hammerele Textile Ltd. [CA (AT) (Insolvency) No. 61 of 2018]

Andhra Bank, being guarantor of the CD claimed to be an FC. The AA, however, rejected the claim vide order dated 17th November, 2017 as it has no right to claim any amount in view of section 3(6) of the Code and the right of remedy may arise only in case of breach of contract. While allowing appeal against the order, the NCLAT stated that the CIRP is not a recovery proceeding and cannot be termed to be litigation between two adversaries. It observed: “If a 'Resolution Applicant' is successful on approval of 'Resolution Plan' under Section 31, the 'Corporate Debtor' instead of going through the rigor of liquidation process, continues, though there may be change of management and ownership; the right of the Creditors does not extinguish, if claim is not taken care in the 'Resolution Plan'.” It further observed: “It is not necessary that all the claims as are submitted by the Creditor should be a claim matured on the date of initiation of Resolution Process/admission, even in respect of debt, which is due in future on its maturity, the 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor' can file such claim. Even a creditor may choose not to file claim, if not matured and may decide to submit claim on its maturity, after completion of the period of 'Moratorium', subject to survival of the 'Corporate Debtor'. The debt which the 'Corporate Debtor' owes for payment in future, if not taken into consideration in the 'Resolution Plan' does not extinguish automatically.” It found that any indemnity obligation in respect of a guarantee comes within the meaning of 'Financial Debt' under section 5(8) of the Code.

Export Import Bank of India Vs. Resolution Professional JEKPL Pvt. Ltd. [CA (AT) (Insolvency) No. 304 of 2017 and 16 of 2018] and Axis Bank Ltd. Vs. Edu Smart Services Pvt. Ltd. [CA (AT) (Insolvency) No. 302 of 2017]

JEKPL had given counter corporate guarantee in favour of EXIM Bank, which invoked guarantee on 30th March, 2017. The RP rejected to consider EXIM Bank as a FC in the CIRP of JEKPL. The AA vide order dated 27th November, 2017 affirmed the decision of the RP.

Axis Bank submitted a claim as FC in the CIRP of Edu Smart in respect of the corporate guarantee. The RP rejected the claim on the ground that the corporate guarantee cannot be invoked during moratorium under CIRP. The AA vide order dated 27th December, 2017 held that the claim of Axis Bank was contingent on the date of commencement of the CIRP.

The NCLAT held that default of debt has nothing to do with the claim of a person. It observed: “Any person who has right to claim payment, as defined under Section 3(6), is supposed to file the claim whether matured or unmatured. The question as to whether there is a default or not is not to be seen.” It held: “... maturity of claim or default of claim or invocation of guarantee for claiming the amount has no nexus with filing of claim pursuant to public announcement ...”

V. R. Hemantraj Vs. Stanbic Bank Ghana Ltd. & Anr. [CA (AT) (Insolvency) No. 213 of 2018]

By an order dated 27th April, 2018, the AA admitted an application under section 7 of the Code filed by Stanbic Bank Ghana Limited for initiation of CIRP. A shareholder of the CD filed an appeal against the order on grounds that (i) the applicant is not a FC; and (ii) there is no document of debt or default. It was submitted that the satisfaction of the AA is a condition precedent for initiating a CIRP and a 'foreign decree' of the High Court of Justice, Queens Bench Division Commercial Court which is an ex-parte decree, cannot be treated to be a record of default. The NCLAT held: “Application under Section 7 or 9 or 10 of I&B Code being not money claim or suit and not being an adversarial litigation, the Adjudicating Authority is not required to write a detailed decision as to which are the evidence relied upon for its satisfaction. The Adjudicating Authority is only required to be satisfied that there is a 'debt' and default has occurred.” It further held: “The decree passed by High Court of Justice, Queens Bench Division, Commercial Court of England, can be challenged only before the Court of Competent jurisdiction. The same cannot be assailed before the Adjudicating Authority, till its existence is denied.”

Amandeep Singh Bhatia & Ors. Vs. Vitol S.A. & Anr. [CA (AT) (Insolvency) No. 502 of 2018]

The appellants are former directors and personal guarantors of the CD which is under liquidation. On considering an application under section 60 (5) (c) read with section 67 of the Code, the AA directed that the appellants shall not leave the country without prior permission. The appellants contended that the AA has no power to give such direction. In view of provisions of sections 66 and 67 of the Code, the NCLAT held: “... it cannot be stated that the Adjudicating Authority is not empowered to direct the ex-Directors not to leave the country without prior permission of the Adjudicating Authority.”

Tomorrows Sales Agency Pvt. Ltd. Vs. Rajiv Khurana, R.P. for Power Himalayas Ltd. & Ors. [CA (AT) (Insolvency) No. 162 of 2018]

The resolution applicant challenged the order of the AA refusing to approve the resolution plan claiming (a) consent of shareholders for transfer of shares has not been taken, (b) there is discrimination in the matter of payment to promoters and OCs, and (c) two of the directors of the CD have been allowed to be retained by the resolution applicant. The NCLAT noted that the resolution plan has consent of 94.5% of the shareholders and approval of CoC by 100% voting share. The payment plan has been renewed to provide 100% upfront payment for OCs and to pay promoters only if the financial position of the CD permits. The NCLAT observed that mere retention of two of the directors of the CD does not violate section 29A of the Code. Accordingly, it set aside the order of the AA.

Shri Ram Residency Pvt. Ltd. Vs. Kuldeep Verma, designated as Resolution Professional, Jalan Intercontinental Pvt. Ltd. & Ors. [CA (AT) (Insolvency) No. 202 of 2018]

In this matter, the AA directed the RP, vide order dated 7th May, 2018, to receive a modified offer from a resolution applicant, and allowed the successful resolution applicant to submit a revised offer before 9th May, 2018. While setting aside the said order, the NCLAT held that the AA has jurisdiction to call for further resolution plan, but for the reasons to be recorded. It observed: “In the present case all procedures having followed and in absence of any infirmity, we hold that the Adjudicating Authority had no jurisdiction to give another opportunity to the 8th respondent or even to the Appellant.”

Mr. Suresh Narayan Singh Vs. Tayo Rolls Ltd. [CA (AT) (Insolvency) No. 112 of 2018]

The AA rejected, vide order dated 3rd January, 2018, the application filed by the authorised representative of 284 workers of 'Tayo Rolls' under section 9 of the Code as it was filed jointly by the OCs, and not individually. While setting aside the said order on appeal, the NCLAT observed: "Section 5(20) read with Section 5(21) of the 'I&B Code' makes it clear that the workmen of a Company come within the meaning of 'Operational Creditor'. If Sections 8 & 9 are read with Form-5, it will be clear that the person authorized to act on behalf of the 'Operational Creditor' is entitled to file an application under Section 9. Therefore, where workmen/employees are 'Operational Creditors', the application may be made either by an 'Operational Creditor' in an individual capacity or as a joint capacity by one of them who is duly authorized for such purpose." It also held that if there is a 'debt' and there is a 'default', the application being complete, the AA should have entertained it, instead of raising a technical ground that it was filed on behalf of 284 workmen.

Shah Brothers Ispat Pvt. Ltd. Vs. P. Mohanraj & Ors. [CA (AT) (Insolvency) No. 306 of 2018]

The question arose for consideration was whether the order of moratorium covers a criminal proceeding under section 138 of the Negotiable Instruments Act, 1881 which provides punishment of imprisonment for a term which may extend to 3 years or with fine which may extend to twice the amount of cheque or with both. The NCLAT held that section 138 is a penal provision, which empowers the court of competent jurisdiction to pass order of imprisonment or fine, which cannot be held to be proceeding or any judgement or decree of money claim. Imposition of fine cannot be held to be a money claim or recovery against the CD nor order of imprisonment, if passed by the court of competent jurisdiction on the Directors, they cannot come within the purview of section 14 of the Code. It observed: "In fact no criminal proceeding is covered under Section 14 of I&B Code."

Canara Bank Vs. Sri Chandramoulisvar Spinning Mills [CA (AT) (Insolvency) No. 429 of 2018]

In this matter, the NCLAT held: "... if the application under Section 9 is complete and there is no 'existence of dispute' and there is a 'debt' and 'default' and then the Adjudicating Authority is bound to admit the application. The appellant is aggrieved as it has already taken steps under SARFAESI Act, 2002 but such action cannot continue as the I&B code will prevail over SARFAESI Act."

Dharmendra Kumar Vs. IBBI & Ors. [CA (AT) (Insolvency) No. 313 of 2018]

The appellant, who was appointed as IRP, filed an application seeking discharge from the CIRP. The AA rejected the request vide order dated 16th May, 2018, imposed a cost of ₹50,000 on the appellant and observed that the attitude of the appellant was unprofessional. Referring to section 22 of the Code, the NCLAT observed that if the CoC resolves to appoint the IRP as RP, consent is required from the IRP as to whether he intends to continue as RP or wants to be discharged. Without his consent, the IRP cannot be forced to continue beyond 30 days. It observed: "In the facts and circumstances and perusal of the records we are of view that Adjudicating Authority's directions to impose cost and to refer the matter to IBBI for initiating action against the Appellant is uncalled for. For the reason aforesaid, we set aside the part of the impugned order by which the Adjudicating Authority (i) imposed cost on the Appellant, (ii) passed strictures against him and (iii) directed the IBBI to initiate disciplinary proceeding."

R. G. G. Vyapaar Pvt. Ltd. Vs. Arun Kumar Gupta & Anr. [CA (AT) (Insolvency) No. 509 of 2018]

The RP rejected the claim of an FC. The AA by impugned order dated 11th July, 2018 rejected the same because it had already approved the resolution plan. While dismissing appeal against the said order, the NCLAT observed: "... the Adjudicating Authority has no jurisdiction to reopen resolution process under Section 31 of I&B Code, the said Authority rightly rejected the application. No relief can be granted in absence of any challenge to the approved resolution plan."

Equipment Conductors & Cables Ltd. Vs. Transmission Corporation of Andhra Pradesh Ltd. [I.A. No. 973 of 2018 in Company Appeal (AT) (Insolvency) No. 366 of 2018]

The NCLAT noted that prima facie case has been made out by the appellant. It observed: "However, taking into consideration the fact that if appeal is allowed and Corporate Insolvency Resolution Process is initiated against the Respondent - 'Transmission Corporation of Andhra Pradesh Ltd.', the government undertaking may face trouble. Therefore, by way of last chance we grant one opportunity to respondents to settle the claim with the Appellant, failing which this Appellate Tribunal may pass appropriate order on merit." (Since set aside by the Hon'ble Supreme Court vide order dated 23rd October, 2018)

National Company Law Tribunal

Jindal Saxena Financial Services Pvt. Ltd. Vs. Mayfair Capital Private Ltd. [C.A. No. 523 (PB)/2018 in C. P. No. (IB)-84(PB)/2017]

The AA, by order dated 4th July, 2018, suggested appropriate regulations to regulate CoC. In this matter, there were four financial creditors who attended the first meeting of the CoC. In the said meeting, the CoC did not approve appointment of IRP as RP since two of the four financial creditors, having aggregate voting rights of 77.97% required internal approvals from their competent authorities. The AA observed: "We deprecate this practice. The Financial Creditors/Banks must send only those representatives who are competent to take decisions on the spot. The wastage of time causes delay and allows depletion of value which is sought to be contained. The IRP/RP must in the communication addressed to the Banks/Financial Creditors require that only competent members are authorized to take decisions should be nominated to the CoC. Likewise, Insolvency and Bankruptcy Board of India shall take a call on this issue and frame appropriate Regulations."

State Bank of India Vs. Monnet Ispat & Energy Ltd. [MA 346/2018 in CP (IB) 1139 (MB)/2017]

In this matter, the resolution plan did not provide for any value of OCs. While approving the resolution plan, the AA observed: "Although the liquidation value due to the operational creditor as per the Code is NIL, on the suggestion made by this Bench, the Resolution Applicant have come forward by filing an affidavit agreeing to pay Rs.25 crore within a period of one year from the date the final resolution plan becomes effective, to the operational creditors (other than employees and workmen) in the manner directed by this Bench."

As regards Government dues, the AA observed: "As to the exemption of stamp duty in respect of reconstruction and amalgamation proposed in the resolution plan, for there being no express provisions conferring powers upon this Bench to exempt levying stamp duty, this Bench cannot give any exemption in respect to levy of stamp duty on the reconstruction and amalgamation proposed in the scheme. .. The Resolution Applicant is bound to pay all taxes and other government duties from the date this plan has come into effect. This plan will not become an exemption to the company from paying taxes to the government."

As regards the rights of shareholders, the AA observed: "As to consolidation of the face value of these shares of Rs.3.3 per equity share into equity shares of face value of Rs.10 each, when this Bench has raised objection for consolidation, resulting into elimination of retail shareholders who hold 1, 2 or 3 shares, the resolution applicant has filed an affidavit agreeing that they will not eliminate any of the existing shareholders, i.e, other than the promoter shareholders. This Bench accordingly modified the consolidation sought by the Resolution Applicant holding that the Resolution Applicant shall not eliminate any of the retail shareholder, who are holding even 1, 2 shares in the Corporate Debtor company."

As regards approvals, the AA observed: "As to the exemption sought by the Resolution Applicant in respect to approvals from SEBI, it is hereby clarified that whatever approvals are required to be taken as per law by the Corporate Debtor, the same shall be taken by the company, no blanket exemption can be given by this Bench in respect to compliance of law."

J. R. Agro Industries P Ltd. Vs. Swadisht Oils Pvt. Ltd. [C.A. No. 59 of 2018 in C. P. No. (IB) 13/ALD/2018]

The AA, in its order dated 24th July, 2018, flagged the following issues from the perspective of equity and fairness inter se creditors and to ensure that the related party of the corporate debtor cannot misuse provision of section 53 of the Code to defraud the creditors:

- a. All unsecured creditors stand contractually on the same footing. However, the waterfall under section 53 puts unsecured financial creditors two steps ahead of unsecured operational creditors. This is inequitable and needs to be corrected. Consequently, the resolution plan should treat unsecured financial creditors and unsecured operational creditors uniformly.
- b. All operational creditors are rank equal. Therefore, the resolution plan should not create classes of operational creditors and treat them differently.
- c. A related party, by definition, is an interested party. Hence a related financial creditor does not enjoy the same treatment as an unrelated financial creditor at the stage of resolution. The same differential should continue at the stage of liquidation. Further, credit extended by a related party is in substance an equity contribution. It should rank subordinate to the claims of operational creditors and may, therefore, be bracketed with equity in the waterfall under section 53.

As regards liability arising in respect of income-tax, the AA observed: *"The resolution plan provides for not only writing off Operational creditors but also for writing off the Income Tax dues which is inconceivable. The amalgamation and the IT Relief without hearing Income Tax Authorities is illegal and is barred under Section 30(2)(e)." It held: "By approving the Resolution Plan, we cannot allow exemption of any liability arising in respect of income tax. By approved resolution plan, the corporate debtor SOPL is merging with RLL. Therefore, any statutory liabilities of the transferor company shall be liability of the transferee company. Since income tax department is not party at this stage, therefore without hearing the department on this point, we cannot approve such resolution for granting exemption in respect of income tax liability that may crystalize in future."*

Mandhana Industries Ltd. Vs. Instyle Exports Pvt. Ltd. [C.P.No. (IB)-301(ND)/2018]

In this matter, the RP of the CD (Mandhana), which is undergoing CIRP, filed an application under section 9 of the Code as an OC to initiate CIRP of another CD (Instyle). However, the application was opposed on the ground that a person undergoing CIRP is debarred from filing an application for CIRP under section 11 of the Code. In its order dated 30th August, 2018, the AA observed: *"... although there is a clear debt and default in payment of debt which is due and payable under the Code, 2016 but due to literal interpretation of section 11 of the Code, 2016, the Applicant herein is treated as Corporate Applicant as per the proviso to section 11 of the Code, 2016, and there is much needed clarification required as to whether corporate debtor undergoing insolvency resolution process filing Application under section 9 of the Code, 2016 can file it in the capacity of "Operational Creditor" or "Corporate Debtor" against the same or another corporate debtor. From the wordings of the Code it is not manifested whether the intent of legislature was to debar the company who is undergoing CIRP from enforcing its right to recover legal debt which is indispensable for the survival and revival of the company."*

State Bank of India Vs. Su Kam Power Systems Ltd. [(IB)-540(PB)/2017]

Regulation 36A of the CIRP Regulations provides for invitation for expression of interest. In the matter, the AA, vide order dated 5th September, 2018, struck down regulation 36A with the observation: *"We are further of the view that Section 25 (2) (h) added on 23.11.2017 by way of amendment does not contemplate floating of any expression of interest. It is beyond our understanding as to how the IBBI has taken upon itself the task of framing Regulation 36A of IBBI (Insolvency Resolution Process for Corporate*

Persons), Regulations, 2016 using the expression 'invitation of expression of interest' along with Form 'G'. Such an assumption of power would be beyond the competence of IBBI as the source of power to frame Regulation under the IBC is drawn from Section 240 of IBC, 2016. In the case of Innovative Industries Ltd. v. ICICI Bank Ltd. (2018) 1 SCC 407 passed by Hon'ble Supreme Court has highlighted that the speed is one of the salient features of the IBC, 2016. By use of the words 'expression of interest' the speed is retarded and time is wasted. therefore, we have no other option except to declare Regulation 36A as ultra-vires of Section 240(1) of IBC, 2016." (since stayed by the Hon'ble High Court vide order dated 6th October, 2018)

Prism Infracon Ltd. [CP(IB) No. 762/KB/2017]

The CD contested the application under section 7 of the Code on the grounds that an alternative and specific remedy is available to the FC under section 71(10) of the Companies Act, 2013 and that the assets of the CD are much higher than the debt. While admitting the application, the AA observed that it is required to admit an application if it is satisfied that the default has occurred, the application is complete, and no disciplinary proceeding is pending against the proposed IRP.

Mr. Pankaj Agarwal Vs. Partha Kamal Sen (IRP of Prism Infracon Ltd.) [IA (IB) No. 724/KB/2018 in CP (IB) No. 762/KB/2017]

An application under section 60(5) of the Code was filed seeking a direction to the IRP to accept the applicant as one of the members of the CoC as a representative of 86 debenture holders of the CD. The AA noted that where the terms of financial debt provide for appointment of a trustee or agent to act as authorised representative for all FCs, such trustee or agent shall act on behalf of such FCs. However, trustees to manage the affairs of debenture holders are debarred by SEBI from acting as intermediary of the trust in this matter. Therefore, each debenture holder has to submit his claim to the IRP. However, section 21(6A) of the Code allows the class of creditors to appoint their representative to attend the CoC meeting. Accordingly, the AA directed the IRP to allow the applicant to act as representative of creditors.

In the matter of Ramsarup Industries Ltd. [CA (IB) No. 116/2018 in CP(IB) No. 349/KB/2017]

Certain assets imported from abroad were lying at Durgapur as customs duty was not paid. The respondents issued e-auction notice for sale of those assets. The RP as well as the CD requested the respondents not to go ahead with the e-auction. However, the respondents proceeded as per e-auction notice. The RP filed an application under section 14 of the Code praying for directions to respondents not to proceed with the e-auction of the machineries. The AA observed that the sale is in violation of section 14 of the Code and the RP is entitled to take possession of the assets of the CD. The remedy available to respondents is to submit claim for the amount due with the RP. It also observed that the sale proceeding being void ab initio as per section 14 of the Code, the sale becomes null and void and the buyer is entitled to get back the money.

Precision Fasteners Ltd. Vs. Employees Provident Fund Organisation [MA 576 & 752/2018 in C.P. (IB) 1339 (MB)/2017]

The liquidator sought a declaration regarding attachment of movable and immovable properties of the CD (under liquidation) under Employees' Provident Funds and Miscellaneous Provisions Act, 1952 as null and void to enable him to dispose of these properties alongside other assets of the CD. The AA noted that in terms of section 36(4)(a)(iii) of the Code, the dues in respect to Provident Fund/Pension Fund/Gratuity Fund are not part of the liquidation estate. The AA vacated the attachment with a direction to the liquidator to sell the assets and pay off the provident fund dues in priority to all claims payable by the CD in liquidation.

In the matter of Central Inland Water Transport Corporation Ltd. [CA (IB) 791/KB/2018]

The liquidator filed an application under regulation 40(2) of the IBBI (Voluntary Liquidation Process) Regulations, 2017 praying for suspension of the voluntary liquidation process initiated by the company as the pre-

requisite for voluntary liquidation that the company is solvent is absent in the instant case. On being satisfied, the AA suspended the voluntary liquidation process. It, however, refused to convert it to a compulsory liquidation under section 271 of the Companies Act, 2013.

Subburaj Cotspin Mills Pvt. Ltd. Vs. Tharuvai Ramachandran Ravichandran [CP/120/IB/2018]

In the first meeting of the CoC conducted on 27th April, 2018, it was resolved to appoint Mr. G. Ganesh Babu as RP in the matter. However, the CoC did not file an application with the AA under section 22(3)(b) of the Code promptly for appointment of the proposed RP. The application was filed on 27th July, 2018 with a delay of three months. Therefore, the AA issued a show cause notice to the CoC as to why an appropriate action would not be taken for non-compliance with the provisions of section 22(3)(b) of the Code.

Punjab National Bank Vs. James Hotels Ltd. [CP(IB) No. 15/Chd/CHD/2017]

In this matter, the RP made a prayer seeking eviction of two respondents from the premises of the hotel. The respondents opposed it claiming that it was not maintainable before the AA and remedy lies elsewhere. The AA observed that the RP performs duties and exercises powers under the Code and he cannot be relegated to remedy before the Civil Court to seek possession of hotel premises, which is unauthorisedly occupied by any person. Accordingly, it directed the respondents to vacate the hotel accommodation within a period of three weeks, failing which the RP shall have the right to eject them with the police help by moving appropriate application before the District Police Chief as well as to the District Administration, Chandigarh, who would provide the necessary assistance.

The AA observed: “we can visualize the volume of work, which the resolution professional has to perform in a hotel business and despite all the odds, he has been able to make huge deposits in the name of the corporate debtor with the Bank. Such an effort by the resolution professional cannot be left un-noticed and rather deserves appreciation.”

Nikhil Mehta & sons (HUF) & Ors. Vs. M/s. AMR Infrastructure Ltd. [CA No. 81 I (PB)/2018 in (IB)-02(PB)/2017]

In the matter, the application filed under section 60(5) of the Code raised a question of law concerning the deadlock created by the low percentage of votes cast by a new category of FCs- Real Estate (Commercial and Residential). The AA held: “Therefore we are of the view that in the case of Real Estate (Commercial & Residential) comprising 100% voting share in CoC the aforesaid provision must be read to mean that a resolution would be deemed to be passed if it is voted by highest number of financial creditors in the class of Real Estate (Commercial and Residential). It would make the code workable and would also advance the object of this progressive legislation rather than defeating it.”

Vijay Kumar Jain Vs. Resolution Professional and Ors. [MA 518/2018 in CP (IB) 1371 (MB)/2017]

A member of the suspended Board of Directors of the CD filed an application seeking confidential information as stated in regulation 35 of the CIRP Regulations, which requires the RP to provide fair value and liquidation value to every member of the CoC. The AA disposed of the application with liberty to the applicant to attend CoC meetings but not to insist upon the CoC or the RP to provide information which is considered confidential.

Anil Goel, Liquidator Vs. Dy. Director, Directorate of Enforcement in the matter of REI Agro Limited [CA (IB) No. 453/KB/2018 in CP (IB) No. 73/KB/ 2017]

The liquidator filed an application under section 35(1)(n) of Code seeking orders against the Directorate of Enforcement to release the attachment of assets of the CD. The AA observed: “In any case, the Court established under PMLA Act being a criminal Court can only decide whether the properties

attached during investigation from possession of the Corporate Debtor could be said to be the properties acquired by them using proceeds of the crime. It is for this Tribunal to decide as to how the properties and assets of the Corporate Debtor under liquidation can be appropriated. The Liquidator must get possession of those properties attached by the Enforcement Director, New Delhi.”

Mr. Sumit Binani, RP Vs. Excello Fin Lea Ltd. and others. [MA 310/2018 in CP (IB) 1139 (MB)-2017]

The CD had taken loan from the first respondent (Excello Fin Lea Ltd.) and second respondent (Tirumala Balaji Alloys Pvt. Ltd.). The promoters of the CD hold 99.9% shares of the first respondent and 50% of shares of second respondent. Though it has been in losses since long, it repaid the loans to them. The RP filed an application under section 43 and 44 of the Code for refund of Rs.23.48 crore and Rs.5.68 crore respectively to the CD along with interest @ 18% per annum on the ground that the payments made to them fall within the ambit of preferential transactions.

The AA observed: “Most fundamental doctrine underlying the field of insolvency/bankruptcy is equality of distribution of the debtor's assets among his creditors. This objective cannot be achieved if the debtor is free to prefer favourite creditors by distributing assets unequally shortly before onset of insolvency, if such conduct is allowed, liquidations/bankruptcy distributions would become largely meaningless. A preference occurs when a company pays specific creditor or group of creditors and by doing so makes the creditor “better off” than the majority of other creditors before the company going into insolvency.” It discussed comparative provisions in the US, UK and India in respect of preference. It directed that the first respondent shall restore entire transferred amount and the second respondent shall restore transfers made on 28th October, 2016 and 31st March, 2017 aggregating to Rs.2.84 crore along with 12% interest till the date of realisation to the CD, within 30 days of the date of order.

Trans Asian Shipping Services Vs. M/s. Era Shipping Pvt. Ltd. [CP No. (IB) 170/ALD/2018]

The IRP has submitted the application of the OC for withdrawing the petition after admission. The CoC with a 100% voting share approved the application of OC for withdrawing the application under Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. The AA dismissed the petition as withdrawn.

Insolvency and Bankruptcy Board of India

In the matter of Mr. Mukesh Mohan, IP (Order dated 23rd August, 2018)

The Disciplinary Committee found that by his conduct and action, Mr. Mukesh Mohan has caused serious irreparable damage to the fledgling insolvency profession. It observed that Mr. Mohan:

- a. has displayed absolute contempt for professional propriety;
- b. has either abdicated it, failed to invoke it or abused it, wherever he has authority under the law. He came across irregular transactions in two CIRPs. Instead of dealing with them, he allowed the CoC to deliberate about irregular transactions over several meetings for months together to decide what should be done with such transactions;
- c. has demonstrated utter disdain for the authorities as well as the laws of the land. He disregarded the direction of the NCLAT in the matter of JEKPL Private Limited as well as the directions of the Board in the matter of Carnation Auto India Private Limited. He engaged in private communication with a financial creditor for finalising the eligibility criteria in invitation for EoI, while the law required him to have approval of the CoC. He did not file applications in respect of irregular transactions even after having complete information and direction from the CoC to do so, ignoring statutory obligation;
- d. has been changing his stance from time to time conveniently and effortlessly;
- e. has been making false statements. He enclosed several invitations for EoI and stated that these EoIs carried the requirement of CA certificate for eligibility of resolution applicants, which was the best practice. However, not a single invitation carried such a requirement;

- f. often acted beyond his authority. The CoC authorised him to file an application to seek directions in respect of fresh invitation for EoI and decisions on certain questions of law. However, Mr. Mohan filed an application seeking a direction whether RP should issue a corrigendum or a fresh invitation. He added certain prayers which were not authorised by the CoC, claiming that those were approved by the CoC;
- g. made several attempts to mislead the authorities and the CoC. He stated that the invitation was approved by the CoC, while it was approved by a financial creditor. He stated that requirement of CA certificate for eligibility of resolution applicants was the best practice, while not a single invitation had this requirement; and
- h. abandoned sinking ships before reaching destination by resigning from all four CIRPs jeopardising the life of four corporate debtors and interests of related stakeholders.

The Disciplinary Committee highlighted the following principles:

- a. No single creditor, whether secured or unsecured, irrespective of its voting power or share, can substitute the CoC. An RP must not engage in private communication with a creditor irrespective of his voting power.
- b. The RP must have approval of CoC for laying down the eligibility criteria under section 25(2)(h) of the Code. This cannot be a post facto approval.
- c. The RP is the sole authority for taking a view on irregular transactions and filing applications before the AA seeking appropriate relief. The CoC has no authority to decide the merits of such transactions and whether to file and when to file the application before the AA. It can, however, raise a concern if the RP does not discharge his duties, including his duties in respect of irregular transactions, in accordance with Code.
- d. The work of a forensic auditor and a registered valuer have substantial bearing on outcome of a CIRP, particularly on maximization of value of the assets of the corporate debtor. The IP must ensure that the professionals, including forensic auditors and registered valuers, engaged by him to assist him in CIRP must not have any conflict of interest.
- e. An IP must perform his defined role under the Code and must not usurp other's role and must not allow others to usurp his role.

In view of the above, the Disciplinary Committee cancelled the registration of Mr. Mukesh Mohan as IP and debarred him from seeking fresh registration as an IP or providing any services under the Code for ten years.

In the matter of Mr. Dinkar T. Venkata Subramanian, IP (Order dated 23rd August, 2018)

The Disciplinary Committee found that Mr. Venkata Subramanian authorised and allowed Ernst & Young LLP to raise invoices for his fees and other out of pocket expenses for work undertaken by him as an IRP and RP in connection with CIRP of JEKPL, in contravention of provisions of the Code and regulations made thereunder. Accordingly, it imposed a monetary penalty of one lakh rupees on Mr. Venkata Subramanian.

In the matter of Mr. Kapil Goel, IP (Order dated 6th September, 2018)

The Disciplinary Committee found that Mr. Goel misled the stakeholders of the insolvency and bankruptcy by incorporating an LLP by name, 'IBBI Insolvency Practitioners LLP'. It also misled the Board stating that the name change has been approved. He has been procrastinating for the preceding eight months to change the name despite continuous follow up, including a show cause notice, from the IBBI. Accordingly, it directed that Mr. Goel shall not take up any new assignment till 'IBBI Insolvency Practitioners LLP' is removed from the Company/LLP Master Data of the Ministry of Corporate Affairs. It also suspended registration of Mr. Goel as an IP for three months.

Corporate Processes

GRR Award

India won the prestigious Global Restructuring Review (GRR) Award for the 'Most Improved Jurisdiction' for the year 2018 in a glittering ceremony held in Banking Hall, London on 26th June, 2018.

The awards were handed over by Mr. Benjamin Clarke, Senior Reporter, Global Restructuring Review, to the three main constituents of the insolvency regime, namely, Adjudicating Authority, Ministry of Corporate Affairs and IBBI at a function in New Delhi on 20th July, 2018.



GRR Award Ceremony at New Delhi on 20th July, 2018

Insolvency Resolution

As at the end of 30th September, 2018, 1198 corporates were undergoing insolvency resolution process, as indicated in Table 1.

Table 1: Corporate Insolvency Resolution Process

Quarter	No. of Corporates undergoing Resolution at the beginning of the Quarter	Admitted during the quarter	Closure by			No. of Corporates undergoing Resolution at the end of the Quarter
			Appeal/ Review	Approval of Resolution Plan	Commencement of Liquidation	
Jan-Mar, 2017	0	37	1	-	-	36
Apr-Jun, 2017	36	129	8	-	-	157
Jul-Sep, 2017	157	231	15	2	8	363
Oct-Dec, 2017	363	147	33	8	24	445
Jan-Mar, 2018	445	194	14	13	57	555
Apr-Jun, 2018	555	244	18	11	47	723
Jul-Sep, 2018	723	216	29	18	76	816
Total	NA	1198	118	52	212	816

Note: The figures for previous quarters have been modified marginally as the CIRPs admitted / closed earlier are closed / revived on appeal / review subsequently.
Source: Compilation from website of the NCLT

The Status of CIRP is presented in Table 2.

Table 2: Status of CIRPs

Status of CIRPs	Number of CIRPs
Admitted	1198
Closed on Appeal / Review	118
Closed by Resolution	52
Closed by Liquidation	212
Ongoing CIRP	816
> 270 days	238
> 180 days ≤ 270 days	158
> 90 days ≤ 180 days	211
≤ 90 days	209

Note: 1. The number of days pending is from the date of admission.
2. The number of days pending includes time excluded by the Tribunals.

The distribution of stakeholders who triggered resolution processes is given in Table 3. The number of CIRPs triggered by OCs is relatively more.

Table 3: Initiation of Corporate Insolvency Resolution Process

Quarter	No. of Resolutions Processes Initiated by			Total
	Financial Creditor	Operational Creditor	Corporate Debtor	
Jan-Mar, 2017	8	7	22	37
Apr-Jun, 2017	37	58	34	129
July-Sep, 2017	92	100	39	231
Oct-Dec, 2017	62	69	14	147
Jan-Mar, 2018	84	88	22	194
Apr-Jun, 2018	98	125	18	241
Jul-Sep, 2018	77	126	13	216
Total	460	576	162	1198

Of the 1198 corporates admitted into the resolution process as on 30th September, 2018, 118 were closed on appeal or review, 52 yielded resolution, while 212 resulted in liquidation. The distribution of 212 CDs resulting into liquidation is given in Table 5.

Table 5: Distribution of Corporate Debtors Ending up with Liquidation

State of the Corporate Debtor at the Commencement of CIRP	No. of CIRPs initiated by			
	FC	OC	CD	Total
Either in BIFR or Non-functional or both	49	61	53	163
Resolution Value ≤ Liquidation Value	57	71	54	182
Resolution Value > Liquidation Value	11	4	15	30

* Note: There were 30 CIRPs, where CDs were in BIFR or non-functional but had resolution value higher than liquidation value.

Sector-wise distribution of CDs admitted into CIRP is presented in Table 4.

Table 4: Sector wise Distribution of CIRPs as on 30th September, 2018

Sector	No. of CIRPs		
	Closed	Ongoing	Total
Manufacturing	172	350	522
Food, Beverages & tobacco products	14	47	61
Chemicals & chemical products	14	40	54
Electrical machinery & apparatus	15	40	55
Fabricated metal products, except machinery & equipment	12	25	37
Machinery & equipment	32	38	70
Textiles, leather & apparel products	30	52	82
Wood, rubber, plastic & paper products	13	26	39
Basic metals	33	66	99
Others	09	16	25
Real Estate, Renting & Business Activities	68	141	209
Construction	27	97	124
Wholesale & Retail Trade	52	71	123
Hotels & Restaurants	12	21	33
Electricity & Others	10	19	29
Transport, Storage & Communications	10	19	29
Others	31	98	129
Total	382	816	1198

Till June, 2018, a total of 34 CIRPs had yielded resolution. During the quarter July-September 2018, 18 CIRPs yielded resolutions with different degrees of recovery in comparison to the liquidation value as given in Table 6. Realisation by FCs in comparison to liquidation value in respect of corporate debtors is 114.80%, while the realisation by them in comparison to their claims is 26.28%.

Table 6: CIRPs Yielding Resolution, July - September, 2018

(Amount in ₹ crore)

Sl. No.	Name of CD	Not Going Concern/Erstwhile BIFR (Yes/No)	Date of Commencement of CIRP	Date of Approval of Resolution Plan	CIRP initiated by	Total Admitted Claims of FCs	Liquidation Value	Realisation by FCs	Realisation by FCs as % of their Claims Admitted	Realisation by FCs as % of Liquidation Value
1	Marmagao Steel Ltd.	Yes	20-03-2017	02-07-2018	CD	120.58	34.54	31.05	25.75	89.90
2	A Power Himalayas Ltd.	No	03-11-2017	05-07-2018	FC	55.60	6.31	23.13	41.60	366.56
3	Keti Highway Developers Private Ltd.	No	17-08-2017	10-07-2018	FC	76.57	10.28	18.50	24.16	179.96
4	Zion Steel Ltd.	No	03-08-2017	10-07-2018	FC	5367.02	14.55	15.00	0.28	103.09
5	Adhunik Metaliks Ltd.	No	03-08-2017	17-07-2018	FC	5371.23	431.50	410.00	7.63	95.02
6	The Sirpur Paper Mills Ltd.	Yes	18-09-2017	19-07-2018	OC	533.38	202.76	340.00	63.74	167.69
7	Stesalit Ltd.	No	20-11-2017	20-07-2018	OC	49.73	15.06	19.28	38.77	128.02
8	Monnet Ispat & Energy Ltd.	No	18-07-2017	24-07-2018	FC	11014.91	2365.00	2892.12	26.26	122.29
9	Concord Hospitality Pvt. Ltd.	No	04-08-2017	25-07-2018	FC	47.86	107.72	47.86	100.00	44.43
10	Amtek Auto Ltd.	No	24-07-2017	25-07-2018	FC	12605.00	4129.00	4334.00	34.38	104.96
11	Amit Spinning Industries Ltd.	Yes	01-08-2017	31-07-2018	FC	85.95	25.96	22.04	25.64	84.90
12	Jalan Intercontinental Hotels Pvt. Ltd.	No	29-08-2017	24-08-2018	FC	167.10	103.00	108.82	65.12	105.65
13	Arcee Ispat Udyog Ltd.	Yes	30-08-2017	30-08-2018	FC	64.03	6.99	15.10	23.58	216.02
14	Malabar Hotels Pvt. Ltd.	No	16-08-2017	17-09-2018	OC	33.76	89.93	138.86	411.32	154.41
15	Orchid Pharma Ltd.	No	17-08-2017	17-09-2018	OC	3341.55	1309.49	1292.22	38.67	98.68
16	Assam Company India Ltd.	No	26-10-2017	20-09-2018	FC	1379.17	359.91	884	64.10	245.62
17	Dooteriaiah & Kalej Valley Tea Estate Pvt. Ltd.	Yes	12-12-2017	26-09-2018	OC	15.89	4.228	15.89	100.00	375.83
18	Rajpur Hydro Power Pvt. Ltd.	No	11-07-2017	27-09-2018	FC	75.23	31.95	9.45	12.56	29.58
Total						40404.56	9248.18	10617.32	26.28	114.80

Twelve Large Accounts

Resolution of twelve large accounts were initiated by the banks as directed by the RBI. Together they had an outstanding claim of ₹ 3.45 lakh crore as against liquidation value of ₹ 73,220.23 crore. Of these, resolution plan in respect of two CDs (Electrosteel Steels Ltd. and Bhushan Steel Ltd.) were approved earlier. The resolution plans of two more CDs (Monnet Ispat and Energy Ltd. and Amtek Auto Ltd.) were approved in the quarter July-September, 2018. As against the liquidation value of ₹ 2,365 crore, the claimants of Monnet Ispat and Energy Ltd., realized ₹ 2,917.12 crore,

accounting for 25.41% of their admitted claims. As against the liquidation value of ₹ 4,129 crore, the claimants of Amtek Auto Ltd. realized ₹ 4,385.30 crore, accounting for 34.23% of their admitted claims. M/s. Jyoti Structures Ltd. underwent liquidation as per the orders of NCLT. However, the order has since been stayed by NCLAT. In respect of Lanco Infratech Ltd., order for liquidation of corporate debtor has been passed. The others are at different stages of the process. The outcome of four large accounts that completed resolutions is as given in Table 7.

Table 7: Four Large Accounts

(Amount in ₹ crore)

Name of Corporate Debtor	Claims of Financial Creditors Dealt under Resolution			Realisation by all Claimants as a Percentage of Liquidation Value	Resolution Applicant
	Amount Admitted	Amount Realised	Realisation as Percentage of Claims		
Electrosteel Steels Ltd.	13175	5320	40.38	183.45	Vedanta Ltd.
Bhushan Steel Ltd.	56022	35571	63.50	252.88	Barnipal Steel Ltd.
Monnet Ispat & Energy Ltd.	11015	2892	26.26	123.35	Consortium of JSW and AION Investments Pvt. Ltd.
Amtek Auto Ltd	12605	4334	34.38	106.20	Liberty House PTE

Table 8: CIRPs Ending with Orders for Liquidation

Sl. No.	Name of Corporate Debtor	Not Going Concern / Erstwhile BIFR	Initiated by	Date of Commencement of CIRP	Date of Liquidation Order
1	Apex Engineering Solution & Services Pvt. Ltd.	Yes	OC	19-07-2017	19-06-2018
2	ABXL Retail Pvt. Ltd.	Yes	FC	19-09-2017	02-07-2018
3	HDO Technologies Ltd.	No	FC	28-04-2017	02-07-2018
4	Hindustan Dorr-Oliver Ltd.	No	FC	21-04-2017	02-07-2018
5	Sanjay Strips Pvt. Ltd.	No	OC	13-11-2017	02-07-2018
6	Arrow Resources Pvt. Ltd.	No	FC	07-08-2017	04-07-2018
7	Confident Solar Pvt. Ltd.	No	FC	05-01-2018	04-07-2018
8	Emmanuel Engineering Pvt. Ltd.	Yes	OC	31-08-2017	04-07-2018
9	Mayfair Capital Pvt. Ltd.	Yes	FC	27-06-2017	04-07-2018
10	Pier One Constructions Pvt. Ltd.	Yes	OC	21-11-2017	04-07-2018
11	Samtel Color Ltd.	Yes	FC	07-09-2017	04-07-2018
12	Karuturi Foods Pvt. Ltd.	Yes	OC	10-10-2017	05-07-2018
13	Aegan Batteries Ltd.	Yes	FC	18-08-2017	06-07-2018
14	Aegan Industries Pvt. Ltd.	Yes	FC	18-08-2017	06-07-2018
15	BM Jain Metallik Pvt. Ltd.	Yes	CD	18-10-2017	09-07-2018
16	Getit Grocery Pvt. Ltd.	Yes	OC	08-01-2018	09-07-2018
17	Moka Technologies Pvt. Ltd.	Yes	OC	21-07-2017	10-07-2018
18	BCC Estate Pvt. Ltd.	No	CD	06-09-2017	13-07-2018
19	Inland Facilities Management Pvt. Ltd.	Yes	OC	05-12-2017	13-07-2018
20	Associated Cylinders & Accessories Pvt. Ltd.	Yes	OC	10-01-2018	16-07-2018
21	Auromira Bio Power India Pvt. Ltd.	Yes	OC	01-09-2017	16-07-2018
22	Free Culture Apparels Pvt. Ltd.	Yes	OC	01-09-2017	16-07-2018
23	Virtual Logic Systems Pvt. Ltd.	Yes	OC	22-01-2018	17-07-2018
24	Oasis Agro Infra Ltd.	Yes	CD	22-09-2017	18-07-2018
25	Kandla Steel Pvt. Ltd.	Yes	OC	10-07-2017	19-07-2018
26	Kutch Engineering Pvt. Ltd.	Yes	OC	20-07-2017	19-07-2018
27	Sanaa Syntex Pvt. Ltd.	No	FC	22-08-2017	19-07-2018
28	Linkson International Ltd.	Yes	FC	06-10-2017	20-07-2018
29	Shree Coke Manufacturing Co. Pvt. Ltd.	Yes	FC	22-12-2017	20-07-2018
30	YMS Mobitech Pvt. Ltd.	No	OC	23-10-2017	20-07-2018
31	SECL Industries Pvt. Ltd.	Yes	CD	25-10-2017	24-07-2018
32	Western India Shipyard Ltd.	Yes	FC	12-12-2017	26-07-2018
33	Kakatiya Engineering Equipment Pvt. Ltd.	Yes	FC	23-02-2018	27-07-2018
34	VNM Components Pvt. Ltd.	Yes	FC	07-02-2018	27-07-2018
35	P&S Jewellery Ltd.	Yes	CD	29-05-2017	30-07-2018
36	Carnation Auto India Ltd.	No	FC	25-09-2017	01-08-2018
37	Parehat Gas Industries Ltd.	No	FC	03-11-2017	02-08-2018
38	G B Engineering Enterprises Pvt. Ltd.	No	CD	25-01-2018	06-08-2018
39	Akshaya Imaging Systems Pvt. Ltd.	Yes	FC	31-05-2018	07-08-2018
40	Vasavi Housing Infrastructure Ltd.	Yes	FC	29-09-2017	07-08-2018
41	Alipurduar Enterprises Ltd.	Yes	OC	07-02-2018	08-08-2018
42	LCS City Makers Pvt. Ltd.	No	CD	20-04-2018	08-08-2018
43	Supreme Tex Mart Ltd.	No	FC	29-09-2017	08-08-2018
44	Pandit Automotive Pvt. Ltd.	Yes	FC	12-03-2018	09-08-2018
45	Prag Distillery Pvt. Ltd.	No	FC	27-06-2017	09-08-2018
46	Bluplast Industries Ltd.	No	FC	15-10-2017	10-08-2018
47	Lukup Media Pvt. Ltd.	Yes	FC	17-01-2018	10-08-2018
48	Rathna Stores Pvt. Ltd.	No	FC	03-11-2017	14-08-2018
49	Anil Tradecom Ltd.	Yes	OC	22-12-2017	17-08-2018
50	Hallmark Living Space Pvt. Ltd.	Yes	OC	26-09-2017	17-08-2018
51	Conros Steels Pvt. Ltd.	Yes	FC	19-12-2017	21-08-2018
52	Eastern Gases Ltd.	No	FC	08-11-2017	21-08-2018
53	Energo Engineering Projects Ltd.	No	CD	05-09-2017	21-08-2018
54	Brown Kraft Industries Ltd.	Yes	CD	07-08-2017	27-08-2018
55	Lanco Infratech Ltd.	Yes	FC	07-08-2017	27-08-2018
56	Bairangbali Alloys Pvt. Ltd.	Yes	FC	15-02-2018	28-08-2018
57	Gupta Global Resources Pvt. Ltd.	Yes	FC	04-10-2017	28-08-2018
58	Global Proserv Ltd.	Yes	OC	23-02-2018	29-08-2018
59	Abhijeet MADC Nagpur Energy Pvt. Ltd.	No	FC	06-10-2017	31-08-2018
60	Ghotaranga Minerals Ltd.	Yes	FC	16-02-2018	31-08-2018
61	Techno Fab Manufacturing Ltd.	Yes	FC	16-02-2018	05-09-2018
62	JDS Apparels Pvt. Ltd.	Yes	OC	18-05-2017	12-09-2018
63	Tirupati Inks Ltd.	Yes	FC	02-11-2017	12-09-2018
64	Dream Land Realtor Pvt. Ltd.	Yes	CD	21-11-2017	13-09-2018
65	P.K. Sales Company Pvt. Ltd.	No	CD	21-11-2017	13-09-2018
66	Sandeep Axles Pvt. Ltd.	Yes	OC	17-10-2017	13-09-2018
67	Shree Ganesh Jewellery House (I) Ltd.	Yes	FC	12-02-2018	14-09-2018
68	Bookawheel Technologies Pvt. Ltd.	Yes	OC	05-03-2018	18-09-2018
69	Meka Dredging Company Pvt. Ltd.	No	OC	09-02-2018	20-09-2018
70	Moser Baer India Ltd.	Yes	FC	14-11-2017	20-09-2018
71	KKK Cotspin Pvt. Ltd.	Yes	FC	25-01-2018	25-09-2018
72	Annamalai Foods Pvt. Ltd.	Yes	OC	25-01-2018	26-09-2018
73	Concast Steel & Power Ltd.	No	OC	07-11-2017	26-09-2018
74	Inasra Technologies Pvt Ltd	Yes	OC	15-09-2017	26-09-2018
75	Nandkishore Steel Industries Pvt. Ltd.	Yes	CD	03-04-2018	26-09-2018
76	Snowblue Trexim Pvt. Ltd.	No	OC	11-12-2017	26-09-2018

Liquidation

Till 30th June, 2018, a total of 136 CIRPs had yielded liquidation as presented in the last newsletter. One more process which had yielded liquidation during the quarter ended 30th June, 2018 was reported subsequently. During the quarter July-September, 2018, another 75 CIRPs ended in liquidation, taking the total number of CIRPs resulting into liquidation to 212. The details of CIRPs ending with orders of liquidations are given in Table 8.

Voluntary Liquidation

A corporate person may initiate a voluntary liquidation proceeding if majority of the directors or designated partners of the corporate person make a declaration to the effect that (i) the corporate person has no debt or it will be able to pay its debts in full from the proceeds of the assets to be sold under the proposed liquidation, and (ii) the corporate person is not being liquidated to defraud any person. At the end of 30th September, 2018, a total of 269 corporate persons initiated voluntary liquidation, the details of which are given in Table 9.

Table 9: Voluntary Liquidations as on 30th September, 2018 (Amount in ₹ crore)

Quarter	No. of Corporate Persons	Paid up Capital	Assets	Outstanding Credit	No. of Final Reports Submitted	No. of Dissolution Orders Passed
Apr-Jun, 2017	13	179	40	9		
Jul-Sep, 2017	38	195	340	8		
Oct-Dec, 2017	56	67	180	14	4	1
Jan-Mar, 2018	66	354	220	8	6	1
Apr-Jun, 2018	41	992	333	39	21	3
Jul-Sep, 2018	55	31	36	9	2	1
Total	269	1818*	1149*	87*	33	06

* Admitted during the quarter is 55. However, details of 22 liquidations, for which data have been received, are included here.

Table 10: Reasons for Voluntary Liquidation

Sl. No.	Reason for Voluntary Liquidation	No. of Corporate Persons
1	Not carrying business operations	146
2	Commercially unviable	34
3	Running into losses	8
4	No revenue	10
5	Promoters unable to manage affairs	2
6	Purpose for which company was formed accomplished	1
7	Contract termination	3
8	Miscellaneous	42
	Total	246

Admitted till 30th September, 2018, is 269. However, details of 246 liquidations, for which data have been received, are presented here.

Table 11: Phasing of voluntary liquidation process

Status of Liquidations	Number of Liquidations
Initiated	269
Final Reports Submitted	33
Closed by Dissolutions	06
Ongoing	236
> 360 days	36
> 270 days ≤ 360 days	42
> 180 days ≤ 270 days	63
> 90 days ≤ 180 days	41
≤ 90 days	54

Service Providers

Insolvency Professionals

Insolvency Professional Agencies (IPAs) are frontline regulators and responsible for developing and regulating the profession of IPs. There are three IPAs registered in accordance with the provisions of the IBBI (Insolvency Professional Agencies) Regulations, 2016. An individual, who is enrolled with an IPA as a professional member and has the required qualification and experience and passed the Limited Insolvency Valuation Examination, is registered as an IP. An IP is authorized to provide services as an insolvency professional under the Code. The details of IPA-wise, IPs registered as on 30th September 2018 is presented in Table 12.

Table 12: Registered Insolvency Professionals as on 30th September, 2018 (Number)

City / Region	Indian Institute of Insolvency professional of ICAI	ICSI Institute of Insolvency Professionals	Insolvency Professional Agency of Institute of Cost Accountants of India	Total
New Delhi	250	172	42	464
Rest of Northern Region	171	107	27	305
Mumbai	232	76	20	328
Rest of Western Region	163	74	21	258
Chennai	79	46	7	132
Rest of Southern Region	193	119	31	343
Kolkata	116	26	10	152
Rest of Eastern Region	39	11	5	55
All India	1243	631	163	2037

The IBBI meets MDs / CEOs of IPAs on monthly basis to discuss various issues arising in the IP profession and to energise them to build capacity of the IPs. The IPAs are conducting pre-registration educational course for prospective IPs. They are monitoring disclosures by IPs in respect of relationship and fee and expenses of CIRPs and disseminating the same on their respective websites. They also disclose their Annual Compliance Certificate on their web sites in compliance with the IBBI Circular dated 19th April 2018.

Replacement of IRP with RP

Section 22 (2) of the Code states that the CoC may, in its first meeting, by a majority vote of not less than 66% of the voting share of the FCs, either resolve to appoint the IRP as the RP or to replace the IRP by another IP to function as the RP. Under section 22 (4) of the Code, the AA shall forward the name of the RP, proposed by the CoC, under section 22 (3) (b) of the Code, to the IBBI for its confirmation and shall make such appointment after confirmation by it. However, to avoid such reference by AA to the IBBI and save time, a database of all the IPs registered with the IBBI has been shared with the AA, disclosing whether any disciplinary proceeding is pending against the IPs. While the database is currently being used by various benches of AA, in few cases, the IBBI has received references from AA, which have been timely complied with. Till 30th September, 2018, a total of 206 IRPs have been replaced with RPs, as shown in Table 13.

Table 13: Replacement of IRP with RP as on 30th September, 2018

CIRP initiated by	No. of CIRPs where IRP is replaced by another IP as the RP
Corporate Applicant	66
Operational Creditor	87
Financial Creditor	53
Total	206

Insolvency Professional Entities

During the quarter under reference, three IPEs were recognised and four were derecognised. As on 30th September, 2018, there are 73 IPEs. The details of recognised IPEs are given in Table 14.

Table 14. Recognised IPEs as on 30th September, 2018

Quarter	No. of IPEs		
	Recognized during the Quarter	Derecognised during the Quarter	At the End of the Quarter
Jan-Mar, 2017	3	0	3
Apr-Jun, 2017	14	0	17
Jul-Sep, 2017	22	1	38
Oct-Dec, 2017	18	0	56
Jan-Mar, 2018	19	0	75
Apr-Jun, 2018	1	3	73
July-Sep, 2018	4	4	73
Total	81	8	73

Information Utility

IBBI has registered one information utility (IU), namely, the National e-Governance Service limited on 25th September, 2017. Table 15 gives details of the registered users and information with the IU.

Table 15: Financial Information with the IU (Number)

At the end of Quarter	Creditors having Agreement		Creditors who have Submitted information		Debtors whom information is Submitted		Loan records on-boarded		User Registrations by Debtors		Loan records Authenticated by Debtors	
	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs
June, 2018	66	NA	21	105	69184	52	191247	105	1024	10	1364	05
September, 2018	85	NA	40	144	2016709	530	1222737	207	5111	10	6079	32

Registered Valuers

Registered Valuers Organisations (RVOs) are frontline regulators and responsible for developing and regulating the profession of registered valuers (RVs). There are eight RVOs recognised in accordance with the provisions of the Companies (Registered Valuers and Valuation) Rules, 2017. An individual, who is enrolled with a RVO as valuer member and has the required qualification and experience and has passed the Valuation Examination, is registered as valuers. At present, RVs are registered under 3 asset classes, namely, (i) Land & Building, (ii) Plant & Machinery and (iii) Securities or Financial Assets. The RVs are authorised to undertake valuations under the Code. The details of RVO wise, Registered Valuers as on 30th September, 2018 is given in Table 16.

Table 16: Number of Registered Valuers as on 30th September, 2018

Registered Valuers Organisation	Asset Class		
	Land & Building	Plant & Machinery	Securities or Financial Assets
Institution of Estate Managers and Appraisers	4	0	0
IOV Registered Valuers Foundation	20	9	4
ICSI Registered Valuers Organisation	0	0	2
ICAI Registered Valuers Organisation	NA	NA	8
The Indian Institution of Valuers	3	1	0
ICMAI Registered Valuers Organisation	0	0	7
PVAI Valuation Professional Organisation	7	0	0
CVRSTA Registered Valuers Association	5	5	NA
Total	39	15	21

Distribution of Certificates to Registered Valuers

The Hon'ble Minister of State for Law & Justice and Corporate Affairs, Shri P. P. Chaudhary gave away registration certificates to the first set of 16 registered valuers at an event on 19th July, 2018 at New Delhi. In his address, the Hon'ble Minister stressed that resolution of stressed assets must take cognisance of their intrinsic value, which needs to be determined by a competent and accountable professional. He complimented the Ministry of Corporate Affairs and the IBBI for providing an institutional framework for development and regulation of the profession of registered valuers. The formal birth of the valuation profession is one more reason for the nation to be proud of. He urged the registered valuers to focus on behaviour, conduct and reputation from day one so that they earn the trust of the society at large and inspire confidence of the stakeholders. He congratulated the 16 valuers who have been granted registration.

Dr. M. S. Sahoo, Chairperson, IBBI, in his address emphasized that the initial constituents of the valuation profession have a higher responsibility as they would be watched very closely by the stakeholders and their action and conduct would determine the future of the profession.



Distribution of Certificates to registered valuers on 19th July, 2018.

Complaints and Grievances

The IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 enable a stakeholder to file a grievance or a complaint against a service provider. Apart from this, the grievances and complaints are received from the Centralized Public Grievance Redress and Monitoring System (CPGRAMS), Prime Minister's Office (PMO), Ministry of Corporate Affairs and other authorities. The receipt and disposal of grievances and complaints as on 30th September, 2018 is given in Table 17.

Table 17: Receipt and Disposal of Grievances and Complaints as on 30th September, 2018

Complaints and Grievances received	Received	Disposed	Under Examination
Under the Regulations	66	6	60
Through other modes (CPGRAM/PMO/MCA/Other Authorities)	307	165	142
Total	373	171	202

Examinations

Limited Insolvency Examination

The IBBI was conducting the Limited Insolvency Examination since 31st December, 2016 through the National Institute of Securities Markets. The test administration of the Examination has been assigned to NSEIT Limited with effect from 1st July, 2018. The Examination is available on daily basis from various locations across the country. It is reviewed continuously to keep it relevant. IBBI published the syllabus, format etc. of the Examination under regulation 3(3) of the IBBI (Insolvency Professionals) Regulations, 2016 for the Examinations to be conducted from 1st November, 2018. The details of the examination are given in Table 18.

Table 18: Limited Insolvency Examination

Phase	Number of Attempts (some candidates made more than one attempt)	Number of Successful Attempts
First Phase (January - June, 2017)	5329	1202
Second Phase (July - December, 2017)	6237	1112
Third Phase (January - September, 2018)	5665	892
Total	17231	3206

Valuation Examinations

The IBBI, being the authority, under the Companies (Registered Valuers and Valuation) Rules, 2017, commenced the valuation examinations for the asset classes of (a) Land and Building, (b) Plant and Machinery and (c) Securities or Financial assets on 31st March, 2018. These examinations are computer based online examinations and are available from several locations across India. A candidate may register and schedule the examination on IBBI's website viz, www.ibbi.gov.in The test administration of valuation examinations has been assigned to BSE Institute Limited. The details of the examinations are given in Table 19.

Table 19: Valuation Examinations

Phase / Quarter	Number of Attempts (some candidates made more than one attempt) in Asset Class			Number of Successful Attempts in Asset Class		
	Land & Building	Plant & Machinery	Securities or Financial Assets	Land & Building	Plant & Machinery	Securities or Financial Assets
First Phase (Mar - Sep, 2018)	2991	436	1120	479	89	144

Capacity Building

IBBI has been organising two-day workshop for newly registered IPs with a view to build their capacity. During the quarter, IBBI organised one workshop, 10th in the series, on 7th-8th September, 2018 at Hyderabad. 34 IPs attended the workshop.



10th IP Workshop at Hyderabad on 7th-8th September, 2018

Refresher Programme

The BFSI Sector Skill Council under the guidance of Ministry of Skill Development and Entrepreneurship (MSDE) and the IBBI, in partnership with the three IPAs, namely, Indian Institute of Insolvency Professionals (ICAI), ICSI Institute of Insolvency Professionals and Insolvency Professional Agency of Institute of Cost Accountants of India, and with the Society of Insolvency Practitioners of India as knowledge partner, launched a one-day refresher programme for IPs on 24th August, 2018 in Delhi. Dr. M. S. Sahoo, Chairperson, IBBI inaugurated the programme. This marks the beginning of a series of one-day class room programmes to be delivered from various locations across the country over the next three months. The programme focusses on ethics and conduct for IPs and recent developments in the insolvency and bankruptcy regime in India. It is expected that all IPs

registered with the IBBI will participate in and benefit from this programme. There is no enrolment or course fee for participation in the programme. It is one of its kind in the country funded under Pradhan Mantri Kaushal Vikas Yojana (PMKVY).

Webinars

With a view to provide clarity on the provisions of the regulations and circulars to IPs and other stakeholders, IBBI participated in two webinars. A webinar was organised by ICSI IIP on 21st August, 2018 on the circulars relating to disclosure of costs and relationships, which was viewed by about 2000 participants. Another webinar was organised by the three IPAs jointly on 14th September, 2018 on various circulars and role of IPs vis-à-vis CoC, which was viewed by about 12,000 participants.

Advocacy and Awareness

The Chairperson, Whole Time Members and other senior officers of IBBI participated in several programmes (conferences, seminars, round tables, workshops, etc.) on insolvency and bankruptcy across the country as guest speakers. These include programmes organised by the Ministry of Skill Development and Entrepreneurship, CII, FICCI, ASSOCHAM, PHDCII, IIBF, IPAs, and RVOs.

IBBI-IGIDR Conference

The Hon'ble Minister of State for Law and Justice & Corporate Affairs, Mr. P. P. Chaudhary inaugurated the two-day 'Insolvency and Bankruptcy Reforms Conference' on 3rd August, 2018 at New Delhi, jointly organized by the IBBI and the Indira Gandhi Institute of Development Research (IGIDR). The Conference took stock of the progress in the implementation of the Code and deliberated upon the emerging issues and challenges. It featured a number of panel discussions as well as presentations of research papers covering various dimensions of the Indian insolvency and bankruptcy reform.

While inaugurating the Conference, the Hon'ble Minister expressed satisfaction with the speed of implementation of the Code as well as the outcome so far. He stated that in less than two years, the Code has proved to be a game changer and has brought in deep behavioural changes among the key stakeholders, particularly debtors and creditors. He further stated that the Government has promulgated two Ordinances to amend the Code in the last one year to ensure sustainable resolution through resolution applicants having credible track record, to promote resolution over liquidation and balance the interests of stakeholders. The Government has also taken several other measures through amendments in the Companies Act, 2013; the Income-tax Act, 1961, etc., and remains committed to take further measures as may be required to address the emerging challenges and issues expeditiously. The Hon'ble Minister further stated that deep institutional reforms initiated by the Government have improved ease of doing business considerably. The country has made several economic leaps over the last four years. India has overtaken France to become the 6th largest economy this year and is sure to make it to the top five economies in the coming year.

While speaking on the occasion, Mr. Injeti Srinivas, Secretary, Ministry of Corporate Affairs stated that the Code is one of the most impactful economic reforms initiated in the recent years and yet there is no law which has been enacted and implemented so swiftly. The Government is closely

monitoring the working of the Code and refining it expeditiously based on the learnings. Mr. Srinivas allayed certain misgivings surrounding the working of the Code. A relatively larger number of firms ending up in liquidation is natural in the initial days of the implementation of the Code as the firms which were under the erstwhile BIFR or not going concerns for years came up for resolution as soon as the Code was enacted. This also explains relatively low realisations by creditors from insolvency process. The realisation is low as compared to outstanding claims while it is attractive as compared to liquidation value. He further stated that Government is augmenting capacity of NCLT for quicker disposal of matters.

Mr. Justice M. M. Kumar, President, National Company Law Tribunal; Mr. Justice Kannan Ramesh, Judge, Supreme Court of Singapore; Mr. Subhash Chandra Garg, Secretary, Department of Economic Affairs; Dr. M. S. Sahoo, Chairperson, IBBI; Mr. Rajnish Kumar, Chairman, State Bank of India; Mr. Gyaneshwar Singh, Joint Secretary, Ministry of Corporate Affairs; Dr. Shashank Saxena, Economic Adviser, Department of Economic Affairs; Mr. Montek Singh Ahluwalia, Former Deputy Chairman, Planning Commission; Mr. A. S. Chandio, Senior Advocate; Dr. Ajay Shah, Professor, National Institute for Public Finance and Policy; Dr. Susan Thomas, Professor, IGIDR; Mr. Sumant Batra, President, SIPI; Mr. P. R. Ramesh, Chairman, Deloitte India; Mr. Somasekhar Sundaresan, Advocate; Mr. Shuva Mandal, General Counsel, Tata sons; Mr. Anurag Das, Balcstone Group and many other eminent policy makers, economists, researchers, professionals and other stakeholders shared their thoughts at the Conference.



IBBI-IGIDR Conference held at New Delhi on 3rd- 4th September, 2018

Distressed Assets Market in India

A two-member delegation comprising of Secretary, Ministry of Corporate Affairs, Mr. Injeti Srinivas and Chairperson, IBBI, Dr. M. S. Sahoo participated in the seminar on 'Distressed Assets Market in India', held at London on 24th - 25th September, 2018, organised by the High Commission of India in London and Indian Professionals Forum, with Khaitan & Co and EY as knowledge partners. The audience comprised senior executives and investment professionals of leading international investors. Dr. Sahoo addressed the audience on 'Development of Bankruptcy Ecosystem in India, the Challenges, Progress Made and the Road Ahead' at the seminar

and participated in a panel discussion on 'regulatory framework relating to insolvency, distressed assets and foreign investments'.



Seminar on 'Distressed Assets Market in India' at London on 24th September, 2018

Singapore Insolvency Conference, 2018

Dr. M. S. Sahoo, Chairperson participated in the Singapore Insolvency Conference held in Singapore on 23rd - 24th July, 2018 organised by the Law Society of Singapore. He shared his thoughts as panelist in the 'Regulators' Session: The Role of Administrators and Regulators in Cross-Border Insolvency'.



Singapore Insolvency Conference held at Singapore on 23rd July, 2018

Forum for Asian Insolvency Regulators

Dr. Navrang Saini, Whole Time Member participated in the Forum for Asian Insolvency Reform (FAIR), co-hosted by the Ministry of Justice and the Court of Justice of Thailand and in partnership with INSOL International and the World Bank Group on 17th- 18th September, 2018. He shared the progress in implementation of insolvency reforms in the country. The FAIR provides a platform for high level dialogue and peer to peer learning for public policy makers, international experts and private practitioners on insolvency reform in the Asia Pacific Region.



Forum for Asian Insolvency Reform held at Bangkok on 17th September, 2018

A moot competition was organised in the University of Petroleum and Energy Studies, Dehradun on 28th - 30th September, 2018. Dr. Mamta Suri, Executive Director was in the judging panel and was the guest of honour in the valedictory session.



Moot competition by University of Petroleum and Energy Studies, Dehradun on 30th September, 2018

Essay Competition

IBBI, in its endeavour to create awareness about the insolvency and bankruptcy regime amongst the students of higher education, is promoting essay competitions through Institutes of Learning. The ICFAI Law School Hyderabad organised the essay competition on the subject "Emerging Jurisprudence on Corporate Insolvency", Mr. Girjesh Patidar and Ms. Tanya Kanwar were declared winner and runner-up respectively.



New India Sankalpa on Doordarshan on 20th September, 2018

Disclaimer: This Newsletter is meant for the sole purpose of creating awareness and must not be used as a guide for taking or recommending any action or decision, commercial or otherwise. The reader must do his own research or seek professional advice if he intends to take any action or decision in any matter covered in this Newsletter.

Insolvency and Bankruptcy Board of India

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