

## INSOLVENCY PROFESSIONALS–NEW ERA IN INSOLVENCY RESOLUTION PROCESS

*Ravi Kumar Jasti*

*Associate Professor of Commerce, Osmania University, India*

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### **ABSTRACT**

*Insolvency and Bankruptcy code 2016 is the code, which consolidated various legislations dealt with Insolvency and Bankruptcy in India and it provides for insolvency resolution process for corporates, individuals, Limited liability Partnerships and Partnership Firms. IBC 2016 was notified on 28<sup>th</sup> May 2016. At present scenario in the financial system, most of the corporates are having huge NPAs and most of the firms are not repaying their debts to the creditors because of loopholes in the existing laws enforced even though they have capability of paying. To avoid the delay in process of insolvency resolution Government of India enacted IBC 2016.*

*This paper is focused to study the Conceptual framework of Insolvency Professionals (IPs), Insolvency Professional Agencies (IPAs) and Information Utilities (IUs), to understand the trend of registered Insolvency Professionals, to understand the IPA and Gender wise registered Insolvency Professionals, and to analyze the details of information with Information Utility (NeSL). The period of the study is covered for three years i.e January 2017 to March 2019. IBC, 2016 was come into force from December 2016 and first case was filed under IBC on 17 January 2017. Data is available up to March 2019 only. Hence, select period is appropriate to analyse the events occurred between January 2017 to march 2019.*

*As on March 2019 there were 2456 IPs registered with IBBI after fulfilling requirements. Some of these members are already members of professional bodies like ICAI, ICSI, ICAI (ICMAI) and Bar council. Majority members are from ICAI, it is around 56 percent of total members. NeSL is the only institution registered as Information Utility organization with IBBI. As on March 2019, the worth of amount underlying debt is Rs. 4114988 crores submitted by Financial Creditors and Rs. 16224 crores worth of debt submitted by Operational Creditors.*

**KEYWORDS:** *IBBI, Insolvency Professionals, Insolvency Professional Agencies, Information Utilities, Insolvency and Bankruptcy Code*

### **INTRODUCTION**

Due to the existence of various legislations to deal with insolvency of companies, partnerships and individuals. Several institutions/laws have had jurisdiction over the insolvency and bankruptcy process. The Company Law Board eye cards the debt recovery tribunals and the “Board of Industrial and Financial Reconstruction” dealt with the insolvency of the institution they governed. The entire framework India’s insolvency and bankruptcy structure overlapping, intricate and very complicated, which in turn lead to the problem of systematic dealings, it took companies 4 to 5 years to resolve their operations, not only that the Sick Industrial Companies Act, The Debt Recovery Act, and SARFAESI Act which enacted to improve the debt recovery process but not produce the desired result, it is widely known fact that Indian Banking Industry is possessed with huge Non Performing Assets, thus the

need was felt to derive, efficient and consolidated insolvency law, that can bring stability in Indian finance system. The Provincial Insolvency Act 1920 which dealt with individuals as really a century old and that been revamped which suit to the present needs. All these necessitated the need for consolidated legal framework to deal with insolvency and bankruptcy to improve the debt management in the country. This leads to the introduction of IBC, 2016. The code has been introduced with an objective to address the structural problems which were hampering the efficient recycle of the capital, it also seek the rebalance the rights of creditors by giving them much needed remedy to take timely and effective action against defaulters borrowers.

### **Roles and Responsibilities of IPs**

Insolvency Professionals are paying vital role in Insolvency and Bankruptcy resolution process. The entire Insolvency and Bankruptcy process under IBC is managed by regulated and licensed professionals. This code provides time bound insolvency resolution process, which is to be completed 180 days after the process is initiated plus 90 days extension may be given for resolving insolvency.

### **Role of Insolvency Professionals in Individual Insolvency Process**

- Insolvency Professional may make an application on behalf of debtor to NCLT for Insolvency Resolution Process.
- Insolvency Professional shall register the creditors and prepare a list of creditors.
- Insolvency Professional shall submit the repayment plan along with his report within 21 days to NCLT.
- Insolvency Professional shall supervise the implementation of the repayment plan.

### **Role of Insolvency Professionals in Liquidation**

Sometimes NCLT may appoint Insolvency Professionals liquidator to oversee the liquidation process. He perform the following functions as liquidator.

- Custody and control all the assets
- To evaluate the assets and property of the corporate debtor
- To carry on the business of the corporate debtor for its beneficial liquidation
- To draw, accept, make and endorse any negotiable instrument
- To initiate or defend any suit, prosecution or other legal proceedings
- Insolvency Professional should maintain registers and books.
- He shall appoint at least 2 registered valuers to value the assets and with permission of NCLT distribute amongst the stakeholder.

The important features of IBC, 2016 are consolidated law, Time bound, Creditors driven insolvency process, Maximization of value of assets and Revival of corporate entities.

## REVIEW OF LITERATURE

The literature obtained by Researcher in the form of articles, reports of various committees, newsletters of IBBI is reviewed in this part.

J K Budhiraja<sup>1</sup>(2017) has analyzed the role of Insolvency Professionals and Insolvency Professional Agencies and Information Utilities Many of Insolvency Professionals have entered into the field of Insolvency and Bankruptcy and working as Interim Resolution Professionals or Resolution Professionals. The Code, Rules and Regulations framed under the Code cast onerous responsibilities on them. They have to be very careful while taking up the assignments and prepare well before they enter into the premises of corporate debtors as IRP or RP. They should build the capacity and develop the skill as given in the article. The Insolvency and Bankruptcy Board of India, Insolvency Professional Agencies registered with IBBI, and Trade Associations are also holding various seminars and conferences to educate and build the capacity of professionals to perform well in their assignments. Also, the Insolvency Professional Agencies are conducting Round Tables discussions, Study Circles' meetings and also conducting the training programs for the Insolvency Professionals. Many such programs have already been held and there shall be many programs on the said topics.

D K Prahalda Rao<sup>2</sup> (2017) has made analysis on Role & Responsibility of Insolvency Professionals Under The CODE. The insolvency profession offers a challenging opportunity to the CS members. The grant of certificate of registration to “ICSI Insolvency Professional Agency” augurs well for the CS members and provides an ease of opportunity to become insolvency professionals.

Alka Kapoor & Lakshmi Arun<sup>3</sup>(2017) has made an attempt to compare the Indian with International Perspective. The effective role of insolvency professionals calls for multiple skills in the field of finance, people management, court procedures, stakeholder management, business dynamics, strategic foresight, business valuation and so on. This requires a right team with combination of experts under the overall supervision of insolvency professional. More over the insolvency resolution process is tightly time bound and the herculean task of completing the same with the team of experts and with the co-operation of debtor and creditor is going to leave a very positive impact on the overall Economy in times to come. The Regulators, adjudicating authorities and the insolvency professionals are still in the learning stage as the law is at infancy stage now, there are going to be challenges to all of them in making the regulations more effective and stakeholder friendly, in manner of dealing and disposal of cases and in acquiring the skill sets that is desired for successful insolvency resolution process.

MS Sahoo (2017)<sup>4</sup> Chairman Insolvency Bankruptcy board of India, has analysed that, the IBC envisages a complementary role for the participants and adherence to timeliness often requires mutual cooperation. A very long insolvency resolution period is likely to push the corporate towards liquidation while reducing its liquidation value. As more resolutions go through, the process would get standardized. The CIRP, therefore needs to be completed as quickly as possible, not later than 180 days.

Rajesh Ojha (2019)<sup>5</sup>has been analyzed the journey of IBC. It has been over two years since the IBC, 2016 was implemented in India. The Code has brought about a dramatic change in the manner in which the insolvency and bankruptcy proceedings in the country would be handled in a time bound manner. The Code is expected to resolve the non-performing asset (NPA) crisis and the resultant slowdown in the availability of credit in the economy. An entirely new ecosystem has come into being as a result of which a host of opportunities have opened up for finance and legal

professionals. The CIRP's cases admitted, the number of resolution professionals registered, amount of recoveries made by the financial creditors in the cases resolved so far have been progressively increasing over the years whereas in certain cases the banks have had to take a sizeable haircut also. In order to understand the journey of the IBC, 2016 thus far a questionnaire based survey was carried out amongst the registered insolvency professionals in the country to ascertain their views on the various facets of the Code and the difficulties faced in its implementation.

After reviewing the above literature, researcher found that, there are no comprehensive studies covered the role of IPs. Therefore, this study is relevant at the present context and presented on the following objectives.

### **OBJECTIVES OF THE STUDY**

This paper is focused on the following objectives:

- To study the Conceptual framework of Insolvency Professionals (IPs), Insolvency Professional Agencies (IPAs) and Information Utilities (IUs).
- To understand the trend of registered Insolvency Professionals
- To understand the IPA and Gender wise registered Insolvency Professionals
- To analyze the details of information with Information Utility (NeSL)

### **METHODOLOGY**

This study is based on secondary data, which has been collected from reports of Insolvency and Bankruptcy Board of India, Reserve Bank of India, Ministry of Corporate Affairs, National Company Law Tribunal etc..and also collected the information from the quarterly bulletins of IBBI. Simple statistical tools like ratios, correlation are used to analyse the trend of the Insolvency Professionals, Insolvency Professional Agencies and Information Utilities.

#### **Period of the Study**

The period of the study is covered for three years i.e January 2017 to March 2019. IBC, 2016 was came into force from December 2016 and first case was filed under IBC on 17 January 2017. Data is available upto March 2019 only. Hence, select period is appropriate to analyse the events occurred between January 2017 to march 2019.

The Insolvency and Bankruptcy Board of India was established on Oct 1, 2016 in accordance with the provisions of the Insolvency and Bankruptcy Code 2016. IBBI is a regulator of IPs, IPAs and IUs.

#### **Institutional Framework under the IBC**

Institutional framework is the main pillar for effective implementation of any act. For the IBC there four pillars to support the Insolvency and Bankruptcy process effectively.

#### **The “Insolvency and Bankruptcy Board of India” (IBBI)**

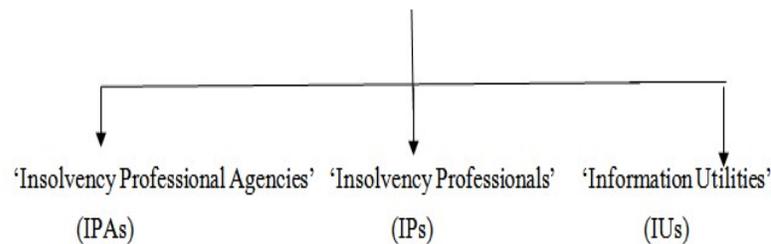
IBBI was established on 1<sup>st</sup> October, 2016. The functioning of Insolvency Professional Agencies (IPAs), Insolvency Professionals (IPs), and Information Utilities (IUs) are regulated by The Insolvency and Bankruptcy Board of India. It is also entrusted with the task of overseeing the insolvency proceedings in the country. It is the apex body in the area of insolvency and bankruptcy like RBI in the area of Banks, SEBI in the area of Securities market. The board has 10 members

and is headed by chairman and other members are representing from Reserve Bank of India, Ministry of Finance (MOF) and Ministry of Corporate Affairs (MCA) and Law.

Insolvency Professional Agencies are comes under the next level of hierarchy. The Insolvency Professionals have to be registered with IPAs. IPAs will conduct the examinations and certify the IPs. Institute of Chartered Accountants of India (ICAI), and Institute of Cost Accountants of India (ICAI) (formerly known as ICWAI), Institute of Company Secretaries of India (ICSI) are the three IPAs are registered with IBBI.

The certified professionals (IPs) are the heart of the entire insolvency process. The Insolvency Professionals will conduct the insolvency resolution process, by taking over the management of the company, controls the assets of the company, assist creditors in the collection of relevant information, they will become liquidators and manage the liquidation process, if the company fails to revive. These insolvency professionals have to be registered with IPAs. Advocates, Chartered Accountants, Cost Accountants, Company Secretaries, those who are having 10 years of experience in their respective fields and having passed the insolvency examination can act as IPs. Even graduates, who are having 15 years of experience, are also eligible to become IPs. Entities like LLPs, partnership firms or even a company can also be registered as IPs provided majority of their partners or whole time directors are registered as IPs.

Information Utilities (IUs) are the key innovation of IBC framework. IUs are meant to collect, collate and disseminate financial information related to debtors. National e- Governance is the only Information Utility is registered till now.



**Figure 1**

### **Insolvency Professionals (IPs)**

This IPs conduct the insolvency resolution process, take over the management of a company, assist in the collection of relevant information, collate preparation of necessary data information for resolution process and manage the liquidation process.

First schedule of “Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016” provides for such other powers and duties upon the insolvency professionals to enable them to carry and insolvency process, voluntary liquidation, liquidation and bankruptcy process efficiently.

### **Eligibility Criteria**

As per regulation 7 of the IP regulations, Chartered Accountants, Company Secretaries, Cost Accountants and Advocates with 10 years of post-membership experience and graduated with 15 years of post-qualification managerial experience in addition to passing the limited Insolvency Examination are eligible for registration of IPs. As per the amended Insolvency Professionals regulations on 28<sup>th</sup> March 2018, if IBBI approved, any individual with little or no experience shall also be eligible for registration as an IP on successful completion of the GIP.

- An IP shall not outsource any of his duties and responsibilities under the code.
- An IP shall disclose the details like fee payable to him, to the Insolvency Professionals Entity and to professionals engaged by him.

### **Insolvency Professional Agencies**

The second level monitoring authority on IPs is Insolvency Professionals Agencies. The IBBI (Insolvency Professional Agencies) Regulations 2016 provided the following eligibility norms for IPA to be registered with the IBBI.

- A company registered under section 8 of the Companies Act 2013 with a minimum net worth of Rs. 10 crore.
- A paid up capital of Rs. 5 crore.
- Not more than 49 percent of its share capital is held directly or indirectly by persons resident outside India.
- It is not a subsidiary of a body corporate through more than one layer.

The Insolvency Bankruptcy Board of India (Model Bye Laws and General body of Insolvency professional agencies) Regulations 2016 provide for eligibility norms to be a professional member of an IPA and make it mandatory for an IPA to adopt bye laws that are consistent with the model laws issued by the IBBI.

IBBI was issued guidelines for composition of Governing Board. The Governing Body shall consist of Managing Director, Independent Directors and shareholder disruptors. More than 50 percent of the directors shall be residing in India. The number of Independent Directors shall not be less than the number of shareholder directors.

### **Information Utilities (IUs)**

An Information Utility is a professional organization, which is registered with IBBI under section 210 of IBC 2016 that provides high quality authenticated information about debts and defaults. This information is made available to the Resolution Professionals, Creditors and other stakeholders in the insolvency resolution process. So that all stakeholders can make decisions based on the same information. IUs store only credit information that has been verified by all the concerned parties. A set of technical standards apply to submission of information, authentication of information data integrity etc.. This ensures that the information with IUs are undisputed and irrefutable and can be used as evidence. National E – Governance Services Limited (NeSL) is the only organization registered as IU as on 25<sup>th</sup> September 2017, and it was promoted by State Bank of India, Canara Bank, bank of Baroda and others.

A public company with a minimum net worth of 50 cr. is eligible for registration as Information Utilities.

The code envisages an Information Utilities to provide core services in respect of financial information, such as

- Records of the debt of a person
- Records of liabilities when the person is insolvent
- Records of assets of person over which security interest has been created.
- Records if any, of instances of default by the person against any debt.
- Records of the balance sheet and cash flow statements of the person.

Table 1 shows the number of Insolvency Professionals registered with the Insolvency Professional Agencies to deal with insolvency aspects of corporate. In the first quarter after IBC i.e Oct – Dec 2016, there were 977 IPs registered with three IPAs, but their registration was valid only for six months as per the Regulation 9 of the IBBI (Insolvency Professionals) Regulations 2016. After Dec 31, 2016, IBBI has put restrictions as to pass the Limited Insolvency Examination to become the IPs. Therefore, Researcher has not considered IPs registered during Oct – Dec 2016 as they were permitted for limited period. After keeping this restriction during Jan – April 2017, only 96 Insolvency Professionals were registered with IPAs.

At the end of the quarter Apr–June 2017, there were 546 IPs registered, out of these 299 from Institute of Chartered Accountants of India, 187 from Institute of Company Secretaries of India and 60 from Institute of Cost Accountants of India. At the end of the Jan–March 2019, 1520 IPs are registered with ICAI, 733 are registered with ICSI and 203 are from Institute of Cost Accountants of India. The aggregate number of IPs from all IPAs is 2460, but registrations of 4 IPs were cancelled due to disciplinary action and effective IPs are 2456 on March 31, 2019.

Table 2 represents the status of Insolvency Professionals registered with various IPAs. As per the IP regulations, Advocates, Chartered Accountants, Company Secretaries, Cost Accountants and Graduates with managerial experience are eligible to register as IPs. Total IPs registered with 3 IPAs is 2911. Out of these, 2646 are male and 265 are female IPs. There are 1606 IPs are members of ICAI out of these, 1472 are male members, and 134 are female. ICAI members are representing for 55 percent. 527 members are qualified Company secretaries, which is representing for 18 percent. 159 members are qualified Cost Accountants, it represents the 5.46 percent. Practicing Advocates are 195 members, represent for 6.74 percent and graduates from managerial experience are 424, which represent for 14.57 percent.

Table 3 shows the details of information shared with NeSL, which is registered Information Utility organization with IBBI. This was registered on 27<sup>th</sup> September 2017. At the end of the June 2018, 66 financial creditors have made agreement with NeSL, 21 financial creditors and 105 Operational Creditors have submitted information about their Debtors. 21 Financial Creditors have submitted 69184 Debtors information and 105 Operational Creditors have submitted 52 Debtors information to the NeSL. At the end of the March 2019, there are 173 Financial Creditors have made agreement with NeSL, 1266445 Debtors information submitted by Financial Creditors and 169 Operational Creditors have submitted 230 Debtors information to NeSL. The worth of amount underlying debt is Rs. 4114988 crores submitted by

Financial Creditors and Rs. 16224 crores Worth of debt submitted by Operational Creditors.

**Table 1: Registered Insolvency Professionals During Study Period**

	ICA I	% of Change	ICS I	% of Change	ICAI (ICMAI)	% of Change	Tota I	% of Change
Oct 16-Dec 16*	713	NA	221	NA	43	NA	977	NA
Jan-March 17	33		51		12		96	
Apr-June 17	299	806.06	187	266.67	60	400	546	468.75
Jul-Sep 17	639	113.71	371	98.39	97	61.67	1107	102.74
Oct-Dec 17	764	19.56	443	19.40	117	20.62	1324	19.60
Jan-Mar 18	1104	44.50	561	26.63	147	25.64	1812	36.85
Apr-Jun 18	1147	3.89	583	3.92	153	4.08	1883	3.91
Jul-Sep 18	1243	8.36	631	8.23	163	6.53	2037	8.17
Oct-Dec 18	1425	14.64	683	8.24	182	11.65	2290	12.42
Jan-Mar 19	1520	6.67	733	7.32	203	11.53	2456	7.24

**Source:** Compiled from data of [www.ibbi.org](http://www.ibbi.org)

**Table 2: Gender wise Analysis of Insolvency Professionals**

Eligibility	No. of IPs					
	Male	% of Total	Female	% of Total	Total	% of Total
Member of ICAI	1257	56.14	114	51.58	1371	55.73
Member of ICSI	398	17.79	66	29.86	464	18.86
Member of ICAI (ICMAI)	136	6.07	11	4.99	147	5.97
Member of Bar Council	147	6.56	17	7.69	164	6.67
Managerial Experience	301	13.44	13	5.88	314	12.77
<b>Total</b>	<b>2239</b>	<b>100.00</b>	<b>221</b>	<b>100.00</b>	<b>2460</b>	<b>100.00</b>

Source: Compiled from data of www.ibbi.org

**Table 4: Analysis of Information Utilities**

At the End of Quarter	Creditors Having Agreement with NeSL		Creditors Who Have Submitted Information		Debtors Whose Information is Submitted By		Amount of Underlying Debt (Rs. Crore)	
	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs
	Jun, 2018	66	NA	21	105	69184	52	NA
Sept, 2018	85	NA	40	144	836302	135	2016708	530
Dec, 2018	108	NA	68	140	980724	202	2732805	1094
Mar, 2019	173	NA	114	169	1266445	230	4114988	16224

Source: Compiled from www.ibbi.org

## CONCLUSIONS

Insolvency and Bankruptcy code 2016 is the code, which consolidated various legislations dealt with Insolvency and Bankruptcy in India and it provides for insolvency resolution process for corporates, individuals, Limited liability Partnerships and Partnership Firms. IBC 2016 was notified on 28<sup>th</sup> May 2016. At present scenario in the financial system, most of the corporates are having huge NPAs and most of the firms are not repaying their debts to the creditors because of loopholes in the existing laws enforced even though they have capability of paying. To avoid the delay in process of insolvency resolution Government of India enacted IBC 2016.

After implementation of IBC 2016, in the first quarter i.e Oct – Dec 2016, IBBI has given limited period registration to 977 Insolvency Professionals without any examination. As on March 2019 there were 2456 IPs registered with IBBI after fulfilling requirements. Some of these members are already members of professional bodies like ICAI, ICSI, and ICAI (ICMAI) and Bar council. Majority members are from ICAI, it is around 56 percent of total members. NeSL is the only institution registered as Information Utility organization with IBBI. As on March 2019, the worth of amount underlying debt is Rs. 4114988 crores submitted by Financial Creditors and Rs. 16224 crores worth of debt submitted by Operational Creditors.

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