

## INSOLVENCY AND BANKRUPTCY CODE 2016

# Debt recovery is off to a slow start

SAYAN GHOSAL

Even after six months of the Insolvency and Bankruptcy Code 2016 receiving assent of the President, India's debt recovery and restructuring framework is still a work in progress.

Stakeholders feel that issues regarding inadequate insolvency infrastructure, small pool of domain experts, inter-creditor conflicts and lack of clarity over jurisdictional issues are proving to be the weak links when it comes to the implementation of the code. India's problem of bad debts and their realisation through an effective insolvency framework has long been a blemish in the ease of doing business rankings. The paltry 25.7 per cent rate of recovery of stressed assets and a highly protracted resolution time of around 52 months (4.3 years) is representative of the long haul ahead.

The introduction of the much-awaited code in 2016 was envisaged to be the game-changer. If implemented properly, the code has the potential to release around ₹25,000 crore currently locked in non-per-

forming assets in the next five years, according to an October 2016 report by Crisil and ASSOCHAM.

The actual realisation of the scheme though, has been fraught with complications at its nascent stage. The limited number of adjudicatory authorities (National Company Law Tribunals and Debt Recovery Tribunals) and burden of pending cases in these institutions already threaten the eventual efficacy of the code. According to Ashwin Bishnoi, partner, Khaitan & Co, the most pressing practical issue is whether the NCLTs can cope with the deluge of cases and responsibilities that will befall them.

The recent transfer of pending bankruptcy cases to the NCLTs and the lack of clarity on how to deal with them is expected to cause added strain. The threshold of ₹1 lakh to initiate action under the code is considered to be low by experts, increasing caseloads even further. Even the DRTs will have a tough time in coping with the additional responsibility of dealing with insolvencies and liquidations, apart from adjudicating on regular banking matters.

## INDIA'S SLIP IS SHOWING

Recovery after insolvency/winding up

Country	Recovery Rate (cents/dollar)	Avg. Time Taken (years)
India	25.7	4.3
Brazil	22.4	4
Russia	41.7	7
China	36.2	1.7
South Africa	35.3	2

## Insolvency Resolution Rank



Source: World Bank Report - Doing Business 2016

"The segregated system of approaching the NCLTs for corporate insolvencies and DRTs for insolvencies of individuals and partnership firms could have been avoided. A comprehensive forum for all bankruptcy-related proceedings and the simultaneous introduction of all the provisions of the code would have

simplified the system and provided greater certainty," says Prem Rajani, managing partner, Rajani Associates.

There also exists the potential for overlap of jurisdiction between the high courts and the NCLTs on issues related to liquidation and winding up of companies till these matters are solely

bestowed upon the tribunals through relevant notifications to the Companies Act, 2013.

According to Satyajit Gupta, principal, Advaita Legal, the NCLTs in their present form are still broadly equivalent to the erstwhile Company Law Boards and the DRTs are also more difficult to access as compared to district courts under the earlier insolvency laws. The partial implementation of the insolvency process and liquidation regulations adds to the confusion surrounding the implementation of the code. As of now, only the regulations for corporate persons have been introduced and the framework for companies and partnerships are still in the works. Even registrations of insolvency professionals (IPs) are limited and appointments by adjudicating authorities require the approval of the Insolvency and Bankruptcy Board of India (IBBI) at each stage, leading to a highly time-intensive procedure.

The proper regulation of these intermediaries and timeliness in the activities of the IBBI are crucial for the effective functioning of the new frame-

work. Given the multifarious responsibilities entrusted upon these entities, there is need for further clarity on their roles, says Gupta.

The code also puts both secured and unsecured creditors in the same basket. It requires 75 per cent of these parties to agree upon an effective revival plan within the stipulated time period (270 days, including the extension period). Experts note that these inter-creditor conflicts could threaten automatic liquidation of the debtor entity.

In addition to these, the dearth of requisite domain knowledge and general lack of awareness about the code slows down the insolvency process under the new regime further, say experts. Most feel that it may take years to realise the code in its entirety.

"The government needs to take pro-active steps to develop the necessary skills amidst judges, lawyers, insolvency professionals, creditors and corporates through practical and concerted initiatives to make the framework successful," says Ramesh Vaidyanathan, managing partner, Advaya Legal.