

Transcript of Speech delivered by Shri Rajesh Verma, Secretary, Ministry of Corporate Affairs, at International Research Conference on Insolvency & Bankruptcy held at IIM Ahmedabad on April 30, 2022.

Hon'ble Minister of State for Corporate Affairs, Shri Rao Inderjit Singh ji; Shri Rajeshwar Rao, Deputy Governor, RBI; Shri Ravi Mital, Chairperson of IBBI; Prof. Errol D'Souza, Director, IIM Ahmedabad; Members of the Governing Board of IBBI; Members of NCLT; Researchers; Professionals; Officials of IBBI and Ministry of Corporate Affairs; Faculty of IIM Ahmedabad; Ladies and Gentlemen!

It gives me immense pleasure to be addressing this research conference on a very topical subject of insolvency and bankruptcy. An economy prospers when its limited resources are optimally utilised. This happens when businesses have maximum possible freedom to reshuffle resources among alternative uses, continuously and seamlessly. Freedom unleashes and aids in realisation of the full potential of every business and every resource in the economy. With this understanding, among the primary duties of the State, therefore, is to provide right institutional milieu that provides, promotes, and protects economic freedom, and regulates such freedom only to address market failures.

According to Noble Laureate, Prof. Joseph Stiglitz, *'Anybody who knows about capitalism knows that bankruptcy is an essential part of capitalism'*. Hence, one of the important economic freedoms that is required for businesses to flourish and vacate the space when they are not doing well for reasons beyond their control, is the freedom to exit the businesses in a dignified manner. The journey of reforming the existing institutional structure to address this issue of providing freedom of exit to the firms started with the enactment of the Insolvency and Bankruptcy Code in 2016.

Government has been proactively responding to further strengthen the insolvency framework and make the processes under the Code more efficient and effective by resolving issues encountered during its implementation.

As the former President of India, Dr. A. P. J. Abdul Kalam put it, *'Excellent is a continuous process and not an accident'*. The Code has been amended six times till now. Major amendments included preventing undesirable persons from taking over the corporate debtor (section 29A which was alluded to), recognising homebuyers as financial creditors, requiring completion of corporate insolvency process in a time bound manner which is very important key feature of this whole law, ensuring going concern status of the corporate debtor by providing that the licenses and permits shall continue during the insolvency process, granting immunity to successful resolution applicants from previous misdeeds (section 32A), and most recently, providing a simplified pre-packaged insolvency resolution framework for the MSMEs, now of course the demand is to extend it to other corporate debtors.

The Code is hailed as one of the most important economic reforms of recent times which has been guided by Government's vision of making doing business easy in the country. I am sure this august audience is well aware about the outcomes of the Code. However, at the risk of being sounding repetitive, I would still like to draw your attention to certain key takeaways from the implementation of this Code.

As a progressive economic legislation, the Code has shifted the balance of power from the debtor to the creditors. It has inculcated a sense of financial discipline and brought about greater certainty of outcomes of the process of insolvency resolution. The law being preventive in nature is bringing about a cultural shift in the dynamics between lenders and borrowers and promoters and creditors. The first signs of distress are now perceived as an early warning for management to take corrective action to avoid defaults. The Code is emerging as a behavioural law. Drawing various stakeholders of the entity in the stress work together in the non-adversarial manner towards the laid down objectives of the law. This is also proven by the fact, also mentioned by Mr. Rajeshwar Rao, that more than 20,000 applications for initiation of the CIRP under the Code involving an amount of more than Rs.6 lakh crore have been withdrawn before admission. By providing a clean and dignified exit, the Code is aiming to inculcate an entrepreneurial culture which recognises failures rather than condemning it. Till March, 2022, 1219 corporate debtors have opted to exit their businesses efforts voluntarily, so the Code provides for voluntary liquidation, 317 of them have successfully exited and till March, 2022, 5253 applications which were admitted for CIRP, 731 applications were closed either on review or settlement, 586 applications were withdrawn under section 12A, one of the speakers were mentioning about that. 480 corporate debtors have/are on their way of revival with the approved resolution plans while liquidation has been ordered for 1608 entities after due process.

Many of these cases, in fact liquidation cases were long pending in the erstwhile BIFR process or were defunct so that the economic value had already immensely deteriorated before they came under the hold of IBC. The 480 CDs (corporate debtors) which have revived, they owed about Rs.7.5 lakh crore to the creditors, the assets of these debtors were valued at only Rs.1.3 lakh crore, when they came into the IBC, the realisable value for creditors through the resolution plans, was Rs.2.33 lakh crore so as said the liquidation value was Rs.1.31 lakh crore, the realisable value was Rs.2.3 lakh crore so it is almost 178% of the liquidation value, though of the admitted claims, the realisable amount was 31% only. The creditors made a considered choice of reviving these companies keeping in mind the long term benefits in rescuing them rather than short term recovery of the loans. With these numbers and quantitative outcomes at the back of our mind, I wish to dwell upon the course that the law can take in future, guided by research and analysis by the scholars and experts such as all of you present here.

However, before I do that, let me recognise that research efforts that have been undertaken and are ongoing in the area of insolvency law in India. Several initiatives have been taken by the Government and the IBBI for promoting research in the area of insolvency law and these are leading to the policy discourse. The Ministry of Corporate Affairs has been releasing discussion papers proposing reforms in the insolvency laws from time to time. We seek to steer the policy discourse in the area of insolvency and crowdsource ideas to make the reform inclusive, dynamic, and grounded.

Most recently, the discussion papers to certain amendments in the Code and introducing provisions relating to cross-border insolvency resolution were floated eliciting comments from the general public. Since data is one of the essential ingredients to any research, IBBI has been collating a dynamic data set relating to processes and outcomes under the IBC to encourage evidence-based research in the insolvency space.

It has also been promoting research and publication through Insolvency Professional Agencies and academics. The IBBI has also been encouraging the submission of research papers and working papers on various issues and processes through its various research initiatives such as the IBBI Research Initiative and Working Paper Series. The envisaged IBC-21 electronic platform would improve data management and data dissemination on insolvency. It would essentially support easier access and use of data that facilitates meaningful policy-oriented research.

Legal research on the emerging jurisprudence from Code is being undertaken by the stakeholders. There is now a growing body of literature that aims to address the gaps between theoretical aspects of insolvency law and its practice and impact on the ground. Evidence from the qualitative and the quantitative research can be used by the experts for designing, improving, and testing government policy. Empirical research will aid policy makers in applying theory to practice and achieving real world outcomes.

Let me now turn to what I think should be the direction of research and analysis in the area of insolvency law in India. The Government and the regulator IBBI have been constantly course-correcting and responding to any areas of gap in the Code and associated rules and regulations to ensure that it works towards meeting the objectives enshrined in the Preamble itself.

While we are working with agility, as regards implementation of the provisions of the Code, based on the stakeholder consultation, consultation with the subject experts, going forward, it is important that we have a rigorous and evidence based research to public policy. Policies that are not backed by appropriate evidence research analysis may not yield the desired outcomes. The IBC is one such economic legislation whose origins lay in the sound research and evidence as put together by the Bankruptcy Law Reforms Committee in its Report. The IBC has since then evolved through various amendments that responded to the evidence from the ground.

As I mentioned earlier, Ministry of Corporate Affairs comes out with the discussion papers before taking a policy decision, our experience shows that we get inputs mostly from law experts and practitioners in this area. We would like to encourage researchers, academicians, and economic experts to provide inputs for further policy directions to the Code to make it more vibrant and inclusive.

The first area which I feel requires in-depth research is to document and peer review the journey of IBC till now in terms of where we are as compared to where other jurisdictions were at this relatively early stage of the enactment of the modern insolvency law in their respective jurisdictions. It was not that in the early days the country did not face difficulties and challenges and had not course-corrected it. Policy observers often end up comparing our five year old regime with the regimes of mature economies where the modern insolvency laws have been in place for a very long time. Some critics have observed that the IBC has led to more liquidations than resolutions and large haircuts are being taken by the creditors in a resolution process. It would be instructive to examine outcomes of Indian law with those of other jurisdictions at this early stages of implementation of reforms in those countries.

There is presently no standard framework to track outcomes of insolvency and bankruptcy regimes in various jurisdictions, other than the World Bank Doing Business Report indicators which too has been also discontinued recently. One of the IBBI Working Groups has dwelt precisely on this issue and is providing a starting point for framework to evaluate the outcomes of IBC. I would encourage researchers to take this forward and publish work on the salient features and results of IBC so that the Indian regime becomes a model for other countries to learn from. Topics of relevance in this regard may be how the admission and disposal processes are handled by the courts, how are avoidance transactions dealt with in time bound manner, what should be the monitoring framework for insolvency and bankruptcy professionals assisting in the insolvency resolution and bankruptcy framework, how the whole process monitored, what kind of granular data is available to major the outcomes of the processes. The list can be practically endless as we can have learnings from each and every aspect of the process from other countries.

It is crucial to continue to study the impact of insolvency framework created by the IBC and conduct a SWOT analysis, investigate its strengths, weaknesses, opportunities, and threats on regular basis. Research can provide pointers on how the legislative framework we need to adopt to meet future goals and challenges.

COVID-19 pandemic led counties around the globe to tweak their insolvency laws to save businesses from closing down due to fall out of the unprecedented crisis. Government of India too amended the Code by suspending the initiation of the corporate insolvency resolution process for a period of one year to prevent viable companies from being pushed into insolvency proceedings for their failure to service debt obligations on account of pandemic induced stress. The threshold of default for initiation of CIRP was also revised from Rs. 1 lakh to Rs. 1 crore. The number of other measures were taken as part of *Atmanirbhar Bharat* package to help businesses and

individuals in distress due to a once in a lifetime event of global pandemic. Preparing the ground now for the post-pandemic world, requires focus on saving businesses which provide bread and butter to survive. This is also essential for long term economic resilience and growth. How should insolvency law respond to the new realities emerging in the post COVID-19 economic environment, how can the law be further streamlined to ensure efficient and effective resolution of financial stress of the corporates, what more can be done for the MSMEs, are some of the questions that research can help answer and provide policy guidance.

Let me conclude by suggesting that there is a need to develop research culture within the regulator such as IBBI, with a critical mass of in-house research strengthened by establishing links with academic and research bodies such as IIM Ahmedabad. I am pleased to see these links here today at this conference and hope to see many more such collaborations. I am confident that this research conference spread over two days and with presentation of about 40 multi-disciplinary research papers, will ask the right questions and presents answers backed by evidence that will enhance our understanding of the IBC, its impact on the economy and society and most importantly, the way forward for this law.

I note that the papers being presented in this conference are on varied topics around the insolvency and bankruptcy framework in the country such as the behavioural aspects of the law, application of mediation in corporate insolvency situations, cross-border insolvency law for the country, predicting bankruptcy for MSMEs, interim finance ecosystem of the country. These are all topics of interest and will help mould the future of the modern insolvency law.

I wish the conference the very best! Thank You!
