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Insolvency Reforms
A Road Under Construction

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The life of a company is as precious as that of a human. The Insolvency and Bankruptcy Code, 2016 provides a new lifeline to rescue a company when it experiences a serious threat to its life. It has an added responsibility to complement every endeavour to rescue the companies who are victims of the COVID-19 pandemic.

JOURNEY SO FAR

Insolvency reforms in India took a concrete shape with the enactment of the Insolvency and Bankruptcy Code, 2016 (Code) on May 28, 2016. In no time, it became a reform by the stakeholders, of the stakeholders and for the stakeholders. Four years into the reforms, the outcomes speak for themselves.

(a) India did not have any prior experience of a modern insolvency regime that is proactive, incentive-compliant, market-led, and time-bound. The Code and the underlying reform, in many ways, was a journey into unchartered territory - a leap into the unknown and a leap of faith. Many institutions required for implementation of a modern insolvency regime did not exist. The law had to be laid down; infrastructure had to be created; capacity had to be built; professions had to be developed, the markets and practices had to develop; and stakeholders had to be aware of the Code, accept the change and learn how to use it. Yet, the entire regulatory framework in respect of service providers and corporate insolvency, and the entire ecosystem for corporate insolvency was put in place to enable commencement of corporate insolvency proceedings by December 1, 2016.

(b) Implementation of a law of such significance usually throws up several challenges. All concerned took the challenges head on and resolved them expeditiously. The Code and regulatory framework underwent several amendments and refinements in sync with the emerging market realities. The Central Government made several changes in laws relating to banking, revenue, companies, etc., to facilitate the smooth implementation of the processes under the Code. It referred large corporates with high non-performing assets (NPAs) into insolvency resolution process in the early days of distress. The Adjudicating Authority (AA), the Appellate Authority, High Courts, and the Supreme Court delivered numerous landmark orders to explain several conceptual issues and settle contentious issues and resolve grey areas, with alacrity. The Code passed the constitutional muster. A standing committee, the Insolvency Law Committee (ILC) continuously reviews the implementation of the Code to identify issues and make recommendations to address them.

(c) At the end of June, 2020, the AA has presence in 15 cities. The Appellate Authority, the Insolvency and Bankruptcy Board of India (IBBI), 3122 Insolvency Professionals (IPs), three Insolvency Professional Agencies (IPAs), 73 Insolvency Professional Entities, one Information Utility (IU), 3130 registered valuers and 14 registered valuer organisations are in place. Debtors and creditors alike are undertaking corporate insolvency processes. About 4000 firms, some of them having large NPAs, have been admitted into corporate insolvency resolution process (CIRP). 45 per cent of them have exited the process with resolution plans, withdrawals, or orders for liquidation, while the rest are under process. Another 700 firms have commenced voluntary liquidation and one third of them have concluded the process.

(d) The primary objective of the Code is rescuing lives of firms in distress. Till June, 2020, the Code has rescued about 250 such firms through resolution plans, one third of which were in deep distress. However, it has referred 955 firms for liquidation. The firms rescued had assets valued at Rs. 1.01 lakh crore, while the firms referred for liquidation had assets valued at Rs. 0.38 lakh crore when they were admitted to CIRP. Thus, in value terms, around three fourth of distressed assets were rescued. Of the firms sent for liquidation, three-fourth were either sick or defunct and of the firms rescued, one-third were either sick or defunct.

(e) The realisable value of the assets available with the firms rescued, when they entered the CIRP, was only Rs.1.01 lakh crore. The resolution plans recovered Rs. 1.94 lakh crore, which is about 192 per cent of the realisable value of these firms. Any other option of recovery or liquidation would have recovered at best Rs. 100 minus the cost of recovery/liquidation, while the creditors recovered Rs. 192 under the Code. The excess recovery of Rs. 92 is a bonus because of the Code. Though recovery is incidental under the Code, the financial creditors (FCs) recovered 45 per cent of their claims, which is the highest among all options available to creditors for recovery.

(f) Beyond revival of firms and realisations for creditors, the credible threat of the Code, that a firm may change hands, redefined debtor-creditor relationship prompting resolutions in the shadow of the Code and substantial recoveries for creditors outside the Code, while improving performance of firms. It seems that defaulters' paradise is lost. Many debtors today prefer to resolve stress at early stages and making best effort to avoid consequences of CIRP. Most firms are rescued at these stages. Only a few firms, who fail to address the distress in any of the earlier stages, pass through the entire resolution process. At this stage, the value of the firm is substantially eroded, and hence some of them are rescued, and others liquidated.

(g) The Code has established the supremacy of markets, while balancing the powers of suppliers of capital - debt and equity. It enables the stakeholders themselves to decide the matters for them instead of accepting a solution worked out by the State. Where the equity suppliers have failed to address the distress of a firm, the Code gives an opportunity to creditors to do so. The right of the promoters to cling on to the firm, irrespective of its conduct, is no more divine with several firms changing hands, despite valiant battles by some of them up to the Supreme Court.

(h) The 250 CIRPs, which have yielded resolution plans by the end of June, 2020, took, on average 380 days (after excluding the time excluded by the AA), for conclusion. Similarly, the 955 CIRPs, which ended in orders for liquidation, took, on average 312 days, for conclusion. Further, 88 liquidation processes, which have closed by submission of final reports till June 30, 2020, took on average 296 days for closure. Similarly, 250 voluntary liquidation processes, which have closed by submission of final reports, took on average 336 days for closure. The cost of a CIRP yielding resolution plan works out on average 0.75 per cent of liquidation value and 0.38 per cent of resolution value.

(i) The implementation of the Code got reflected in Ease of Doing Business. In the World Bank Group's Doing Business Reports, India's rank moved up from 136 to 52 in terms of 'resolving insolvency' in the last three years. In terms of the World Bank's data, the overall recovery rate for creditors jumped from 26.0 to 71.6 cents on the dollar and the time taken for resolving insolvency also came down significantly from 4.3 years to 1.6 years. India is now, by far, the best performer in South Asia on the resolving insolvency component and does better than the average for Organisation for Economic Co-operation and Development (OECD) high-income economies in terms of recovery rate, time taken and cost of a CIRP. In the Global Innovation Index, India's rank improved from 111 in 2017 to 47 in 2020 in 'Ease of Resolving Insolvency'.

LIVES OF COMPANIES

Life is precious. While preserving and rescuing our lives, we created artificial persons, namely companies, which would live forever. *Kongo Gumi*, a Japanese construction company, lived 1,428 years before it succumbed to debt in 2006. Though there are a few thousand-year young companies around, the life of a company is in danger today than any time before. The average life of S&P 500 companies has reportedly reduced from 90 years to 18 years over the last century. A research conducted in 2015 reveals that the average life of a publicly traded company, considering acquisitions, mergers, and bankruptcy, is about 10 years. A company having indefinite life now lives shorter than a human!

The life of a company has three enemies. First is the enemy within. A company is an amalgam of many stakeholders. Each stakeholder has a unique objective function, with a distinct set of rights, interests, and level of engagement with the company. The interests of one stakeholder may conflict with those of another and/or of the company. Stakeholders may work at cross-purposes, and even against the interest of the company. Some leave the company at the earliest sign of distress. Departure of a major shareholder may orphan the company. In their drive to maximise the upside for them while enjoying limited liability, shareholders may expose the company and other stakeholders to unlimited liabilities. The society bears the brunt of unlimited liability such as those arising from Bhopal gas tragedy, Satyam fiasco, etc.

Such conduct of stakeholders benefits a set of stakeholders, often at the cost of another, the company, and the society. Persistent uneven sharing of losses and gains endangers the life of the company. Independent directors, key managerial personnel, regulation of related-party transactions, protection of minority interest, financial and secretarial audit, timely and accurate disclosures about material matters, taxes and subsidies, corporate social responsibility - collectively referred to as corporate governance - endeavour to synchronise and balance the interests of stakeholders, subordinate the interests of immediate stakeholders to those of the company, and balance the interests of the society *vis-à-vis* those of the company. Many jurisdictions have consolidated these norms through codes for corporate governance to protect companies.

The second enemy is unfair battles at the marketplace. For example, a company that does not have financial muscle to sell its product below cost, cannot survive in a market where a dominant company sells its product below cost. The competition law prohibits predatory pricing. A company cannot survive if its cost of capital is high as compared to another company that manipulates market for its securities. Securities laws regulate the capital market to prevent any kind of manipulation. A company that dutifully pays corporate tax on its profits, cannot survive if another company in the same business dodges taxes. The rule of law ensures that all companies get a similar tax treatment. Generally, the State protects a company from such unfair battles.

The third and the most fatal enemy is competition and innovation. This is a fair battle because it is the State policy to stimulate competition and innovation, and eliminate anticompetitive conduct at marketplace, for higher growth. A company loses life when it fails to compete with its peers in the industry for reasons such as poor organisation, inefficient management, malfeasance, etc. It also loses life when its business becomes unviable for reasons such as innovation. Creative destruction often destroys more companies than it creates! Resilience and adaptation, research and development, risk management, sustainable business model, visionary leadership, preparedness for unknowns, etc., minimise threat to life. There is, however, no governance norm to have such strategies, though many companies have these on their own volition. To add salt to injury, with demand dwindling and supply chains hit around the globe in the wake of the COVID-19 pandemic, many companies, which were doing well earlier, are reeling under stress. Some of them are at the brink of default, not because of market pressures, but because of *force majeure* circumstances.

Companies are modern engines of growth. They are the hope of prosperity for posterity. They often have organisational capital over and above their liquidation values. Closure of a company destroys the hope and the organisational capital. It takes years of efforts to bring up a company, which can replace an existing one. The law provides for layers of security to protect the life of a company. A board of directors appoints and supervises the executive management and replaces it in accordance with contractual arrangements, in case of failure. Shareholders elect directors to the board, monitor their performance and replace them in accordance with the provisions of the Companies Act, 2013, if they fail to perform. A promising set of shareholders may even replace the existing set through the market for corporate control. The creditors step in to rescue the company in accordance with the provisions of the Code when shareholders fail to protect its life.

The Code recognises that insolvency is an outcome of market forces. It incentivises, facilitates, enables, and empowers market participants to resolve insolvency. The first order objective of the Code is resolution. The second order objective is maximisation of value of assets of the firm and the third order objectives are promoting entrepreneurship, availability of credit and balancing the interests of stakeholders. This order of objectives is sacrosanct. In sync with these objectives, the Code enables the stakeholders to rescue the life of a company in distress, and while doing so, they maximise value and share the value equitably.

Rescuing life

The Code empowers creditors, represented by a committee of creditors (CoC), to rescue a company, when it experiences a serious threat to its life. For this, the CoC has a *trishul*: (a) it can take or cause a haircut of any amount to any or all stakeholders for rescuing the company; (b) it seeks the best resolution from the market (unlike earlier mechanisms that allowed creditors to find a resolution only from existing promoters); and (c) the resolution plan can provide for any measure that rescues the company. It may entail a change of management, technology, or product portfolio; acquisition or disposal of assets, businesses or undertakings; restructuring of organisation, business model, ownership, or balance sheet; strategies of turn-around, buy-out, merger, amalgamation, acquisition, or takeover; etc. The Code provides a competitive, transparent market process, which identifies the person, who is best placed to rescue the company and selects the resolution plan, which is the most sustainable under the circumstances.

Maximising value

The Code safeguards and maximises the value of the company and consequently, value for all its stakeholders. It enables initiation of resolution process at the earliest to preserve the value. It mandates resolution in a time-bound manner to prevent decline in the value.

The Code facilitates resolution as a going concern to capture going concern surplus. It makes an IP run the company as a going concern, prohibits suspension or termination of supply of critical services, mandates continuation of licences, permits and grants; stays execution of individual claims, enables raising interim finances for running the company, insulates the resolution applicants (RAs) from the misdeeds of the company under the erstwhile management, etc. It provides for a market mechanism where the world at large competes to give the best value for the company through a resolution plan.

Where value has been lost on account of avoidance transactions, the Code enables claw back of such value. It even mandates retrieval of value lost due to the failure of directors to exercise due diligence. There is a twilight zone which begins from the time when a director knew or ought to have known that there was no reasonable prospect of avoiding the commencement of CIRP and actual commencement. During this period, a director has an additional responsibility to exercise due diligence to minimise the potential loss to the creditors and he is liable to make good such loss. There is thus strong deterrence to prevent directors and promoters from causing loss of value to the company in the run-up to insolvency.

Balancing interests

The Code endeavours to balance the rights of debtors and creditors. It believes that a company has two main sets of immediate stakeholders: shareholders and creditors. If debt is serviced, shareholders have complete control of the company. When the company fails to service the debt, the Code shifts control of the company to the creditors for resolving insolvency. By moving from *debtor-in-possession* to *creditor-in-control*, the Code balances the rights and powers of shareholders and creditors *vis-à-vis* a company. Further, the Code balances the interests of all stakeholders, including Government. It does not envisage recovery, which maximises the value of the creditors on first-cum-first-serve basis. It does not allow direct liquidation, which maximises the value for stakeholders who rank higher in the waterfall, while destroying going concern value. Liquidation process commences only on failure of resolution process to revive the company. The Code provides for a waterfall which specifies the priority of various stakeholders for payment from the liquidation proceeds. Stakeholders placed higher in priority get paid first, and the claims of stakeholders placed next in priority are considered only if there is any surplus after fully satisfying the claims of the prior set of stakeholders. It also provides minimum entitlements for operational creditors and dissenting FCs in resolution plan.

DYNAMIC CODE

An economic law is essentially empiric and it evolves continuously through experimentation. The Code is no exception; it has been a road under construction for good reasons. It envisaged standard, plain vanilla processes to start with, but anticipated prompt course corrections to continue to remain in the service of the business and economy. Such corrections arose from difficulties encountered while implementing the provisions of the Code and from the changes in the economic environment. The Code has witnessed five legislative interventions since its enactment to strengthen the processes and further its objectives, in sync with the emerging market realities. Each of the five amendment Acts are milestones on the road of insolvency reforms, reinforcing the primary objective of the Code, namely, rescuing lives of companies. They aim at preventing danger to life of a company, rescuing the company when it is in danger, and ensuring sustained life, post rescue.

The Code provides for resolution of stress of a company through a resolution plan. It, however, did not anticipate that a company may, through a resolution plan, land up in the hands of undesirable persons, risking its life, post resolution. The first amendment to the Code, which came through an Ordinance on November 23, 2017, mandates consideration of only feasible and viable resolution plans, that too, from capable and credible persons, to ensure sustained life of the company. It inserted section 29A that prohibits persons, who do not have credible antecedents, from submitting resolution plans or taking over companies in stress. This prevents certain persons, including promoters, having specified ineligibilities from submitting resolution plans. Even if one is eligible, it may not submit the most competitive plan or the CoC may opt for liquidation. In such cases, existing promoters and management may loose the company forever. The credible threat of a resolution process that may shift control and management of the company away from existing promoters and managers, most probably, forever, deters them from operating below the optimum potential and motivates them to make the best efforts to avoid stress.

The second amendment to the Code, which came through an Ordinance on June 6, 2018, provides a lower voting threshold of 66 per cent down from 75 per cent for approval of resolution plan to encourage resolution as against liquidation. It also provides the voting threshold of 51 per cent for routine decisions to facilitate the CD to continue as a going concern during the CIRP. It allows closure of CIRP with the approval of 90 per cent of voting share of the CoC. It streamlines section 29A to avoid unintended exclusions and thereby enlarges the universe of RAs. It provides for one-year grace period for the successful RA to fulfil various statutory obligations required under different laws.

The third amendment to the Code, which came into force on August 16, 2019, clarifies that a resolution plan may provide for restructuring of the CD, including by way of merger, amalgamation, and demerger to enable the market to come up with innovative resolution plans for rescuing the lives of companies. To deal with voting impasse in case of creditors in a class, the amendment provides that the decision by the creditors in a class shall be taken with the approval of more than 50 per cent voting share of FCs, who have cast their votes and the authorised representative of the class shall vote for the class of FCs he represents in accordance with the decisions taken by the class. To avoid disputes, it clarifies that the CoC may approve a resolution plan after considering its feasibility and viability, and the manner of distribution of realisation under the plan, keeping in view priority of the creditors and their security interests as laid down in the waterfall. In the interest of certainty, it provides that resolution plan shall be binding on Central Government, any State Government, and any local authority to whom the CD owes debt under any law. In cases where running the entire CIRP is an empty formality, it clarifies that CoC may decide to liquidate a CD at any time during CIRP, even before preparation of the information memorandum (IM).

The fourth amendment came through an Ordinance on December 28, 2019. In order to facilitate continuation of a CD as a going concern during CIRP, which is essential for its rescue, the amendment Act clarifies that a license, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law, shall not be suspended or terminated on the grounds of insolvency. Further, it provides for continuation of supply of goods and services which the IP considers 'critical' to protect and preserve the value of the CD and manage its operations as a going concern. It provides that the liability of a CD for an offence committed prior to the commencement of the CIRP shall cease, and the CD shall not be prosecuted for such an offence from the date the resolution plan is approved by the AA, if the resolution plan results in the change in the management or control of the CD. Similarly, no action shall be taken against the property of the CD in relation to an offence committed prior to the commencement of the CIRP of the CD, where such property is covered under a resolution plan approved by the AA, which results in change in control of the CD. These would encourage prospective RAs applicants to submit resolution plans undeterred by uncertainties surrounding the offence committed by the CD prior to CIRP.

The fifth amendment to the Code came through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020, which is discussed in the next section.

Every amendment to the Code, including the fifth one, and almost every provision in the Code in respect of corporate insolvency has been challenged on grounds of constitutional validity. While upholding various provisions in the Code, the Supreme Court accorded certain degree of deference to the legislative judgment in economic choices, apart from the presumption of constitutionality in economic legislations. Every order and judgement delivered by the AA and other Courts of law, has paved the road of insolvency reforms.

COVID-19 PANDEMIC

The world is in the grip of the coronavirus disease (COVID-19). What makes it a rare of the rarest event is the great amount of uncertainty surrounding it, making it almost impossible to think ahead. It is fast snowballing into an economic crisis of dimensions being compared to those of the Great Depression. With many countries having passed through long periods of lockdown to contain the spread of the virus, the economic activity across the world had come to a standstill till about end of May, 2020 and is now limping back to a 'new normal', albeit at a snail's pace. According to the IMF's World Economic Outlook of June, 2020, the global economy is projected to contract sharply by 4.9 per cent in 2020. Similar shocks of a comparatively lower intensity in the past witnessed a sharp increase in corporate and personal insolvencies all over the world. For example, the number of corporate bankruptcies increased in the United States by 40 per cent in the wake of the 2008 global financial crisis.

The unprecedented misery required a matching response to save 'lives', that required saving 'livelihood', which in turn required saving lives of firms. Governments around the world adopted an accommodative stance and acted swiftly to prevent corporates and individuals from being forced into insolvency and bankruptcy. Many bought time to prepare a comprehensive plan to rescue the economy by suspending some provisions of their insolvency legislations. New Zealand placed all the debts of businesses in hibernation till the market starts to function normally. Germany deferred all payments due between April 1, 2020 and June 30, 2020, for three months. France extended performing of insolvency test by three months while Italy provided six months extension to debt restructuring agreements and composition of creditor's proceedings. Some countries, such as Australia and France conferred temporary power on the Government to amend the provisions of relevant insolvency laws to provide relief from specific obligations or to modify obligations to enable compliance with legal requirements, as required, to deal with the economic and financial impact of the COVID-19.

The World Bank and IMF have listed out the challenges and key responses required to meet those challenges to prevent the economies from facing a fate like the Great Depression. They suggest the implementation of those responses in a three-phased approach to help the economy transition smoothly towards the positive side of the graph. In the first phase, copious interim measures need to be taken to halt insolvency and debt enforcement activities. In the second phase, when a huge wave of insolvencies is anticipated, it may be addressed by transitional measures, such as special out-of-court workouts, to 'flatten the curve' of insolvencies. The third phase calls for regular debt resolution tools to address the remaining debt overhang and support economic growth in the medium term. Governments have responded with measures such as moratorium on loan repayments, sector specific forbearance, infusion of liquidity into the banking system to provide credit to financially distressed firms, relief in asset classification banking norms, flexibility in director's obligations to initiate insolvency proceeding, relief from compliance with specific legal obligations, etc. The table below presents the key challenges and responses in three phases by select jurisdictions in the wake of COVID-19 outbreak.

As around the world, in India as well, the impact of COVID-19 on the economy has been severe. In its June 2020 report, the ADB estimates that India is expected to contract by 4.0 per cent in fiscal 2020. According to IMF's World Economic Outlook, June 2020, India's economy is projected to contract by 4.5 per cent following a longer period of lockdown and slower recovery than anticipated in April. RBI's Financial Stability Report released in July 2020 highlights that nominal sales and net profits of 1,640 listed private non-financial companies declined (y-o-y) by 3.4 per cent (10.2 per cent in Q4:2019-20) and 19.3 per cent (65.4 per cent in Q4:2019-20), respectively. As per provisional data released by Government, GDP at constant (2011-12) prices in Q1 of 2020-21 shows a contraction of 23.9 per cent as compared to 5.2 per cent growth in Q1 2019-20. Several measurers have been taken to ameliorate the pains emanating from COVID-19. For example, Government increased the threshold of default for filing of an insolvency application from Rs. 1 lakh to Rs. 1 crore to prevent MSMEs from being pushed into insolvency proceedings. RBI permitted lending institutions to extend the moratorium on term loan instalments by six months and time for resolution under prudential framework by 180 days.

INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ORDINANCE, 2020

In normal times, the Code enables market forces to pursue twin complementary remedies in respect of failing firms: (a) rescue a viable firm, and (b) liquidate an unviable one. It searches for a white knight, who rescues a failing firm. When every firm, every industry and every economy is reeling under stress, the likelihood of finding a white knight to rescue a failing firm is remote. If all failing firms were to undergo insolvency proceeding, most of them may end up with liquidation for want of saviours to rescue them. Upon such liquidation, the firms would have a premature death, while the assets would have distress sale, realising abysmally little. Rescuing lives of firms being the prime objective of the Code, it could not be used to take away their lives prematurely at these unusual times.

The unprecedented situation called for another experimentation requiring a choice between two competing policy options, namely, suspend the operations of the Code or continue its operations as usual. If the first option is exercised, the market would fail to liquidate an unviable firm. This is not good for an economy, but this can be rectified in the following quarter or the following year. If the second option is exercised, the market would liquidate a viable firm forever, which can never be undone. Rescuing a viable firm is, therefore, far more important than failing to liquidate an unviable one. Further, firms, which are failing solely on account of COVID-19, may bounce back on their own as soon as normalcy restores. Alternatively, they would at least recalibrate their operations and businesses to an 'all-new normal'. The choice, therefore, fell on the first option, which provides breathing time for firms, in furtherance of the objectives of the Code.

The first option has two sub-options, namely, suspend the Code in its entirety or suspend some elements, as may be warranted. The first sub-option would not allow liquidation of a failing firm, whether it was unviable before COVID-19 or became unviable on account of it. It would also not allow rescue of a failing firm even if it were viable before the COVID-19 or remains viable despite it. A delay in rescue of a viable firm may make its rescue impossible. The policy should, therefore, protect those firms which are victims of pandemic, and not protect the undeserving. The choice, therefore, fell on the second sub-

Table: Key challenges and critical response in the insolvency space

Key Challenges	Critical Responses	Examples of action taken by various countries
Phase 1 Preventing viable firms from prematurely being pushed into insolvency	**Implementing one or more extraordinary measures for a limited period**	
	Increasing the barriers to creditor-initiated insolvency filings	• Australia increased Statutory demand on a company for an unpaid debt from AUD 2,000 to AUD 20,000. • USA increased debt threshold to trigger insolvency proceedings for a small business to USD 7.5 million for cases filed on or before March 27, 2021, from earlier threshold of USD 2,725,625.
	Suspending the director's duty to file and associated liability	• Australia amended law to make directors not liable for incurring debts while insolvent (insolvent trading) in relation to any debt incurred by the company in the initial six-month period commencing on March 25, 2020. • Germany suspended the duty to file and to limit the directors' and managers' liability in case of an insolvency caused by the COVID-19 pandemic for the period March 1, 2020 to September 30, 2020 with a possibility of further extension until March 31, 2021. • Italy provided that the directors would not be obliged to immediately start pre-insolvency or insolvency proceedings with a view to avoid personal (and criminal) liabilities.
	Ensuring complementarities with debt repayment emergency measures	• New Zealand provided safe harbour to directors facing liquidity problems from insolvency duties. • Australia extended time for a company to respond to a statutory demand from 21 days to six months. • USA provided that a resolution plan may be approved without complying with the absolute priority rule – the owner of the debtor may retain its equity without paying all creditors in full or contributing 'new value' – and administrative claims may be paid over time, rather than on the confirmation date as is required to confirm a plan in Chapter 11.
Phase 2 Responding to the increased number of firms that will not survive this crisis without going through insolvency	**Ensuring the smooth functioning of workouts and debt restructuring mechanisms**	
	Establishing informal out-of-court or hybrid workout frameworks	• Spain granted the debtor a three-month term to agree to a refinancing agreement with its creditors. • Italy provided a flexible approach to insolvency initiation in favour of out-of-court solutions. • Brazil is encouraging parties to renegotiate their obligations in COVID situations.
	Facilitating business rescue through bridge financing	• New Zealand put all the existing debts into hibernation till COVID prevails. • France simplified liquidation procedure and extended payment of employees' claims by the Employees' Claims Payment Guarantee Institution; businesses may apply for loans from banks during COVID situation.
	Extending procedural deadlines for a limited period	• Banks in USA are providing 90 days forbearance to debtors. • New Zealand extended deadlines for companies, incorporated societies, charitable trusts, and other entities under the legislation. • Germany extended the deadline for three months. • France extended insolvency test for three months.

Key Challenges	Critical Responses	Examples of action taken by various countries
	Suspending the requirement to proceed to liquidation if the business activity of the debtor has stopped while undergoing reorganisation	• Spain suspended directors' duty to convene a shareholders' meeting to wind up a company. • Brazil suspended all in-court and out-of-court foreclosure measures, pending hearings, trials, and all deadlines. • USA suspended commencement of eviction or foreclosure proceedings for 90 days. • Australia restricted the use of bankruptcy notices by creditors. • Italy postponed all hearings and judicial proceedings except for those proceedings unaffected by the emergency legislation, after April 15, 2020.
	Encouraging e-filings, virtual court hearings and out-of-court solutions in insolvency cases	• Most countries are promoting virtual hearings and e-filings. Courts in Australia, Canada, USA, France, and Italy have devised e-filing procedure and are promoting hearing over video calls. • France implemented conciliation procedures under its Insolvency Act.
Phase 3 Addressing individual financial distress resulting from the crisis	Implementing modern consumer bankruptcy frameworks	• Hong Kong announced its intention to implement insolvency proceedings on the lines of 'Chapter 11' proceedings in the USA by early 2021.
	Ensuring there are flexible options for debt rescheduling and repayment plans	• Australia allowed businesses with total business loans of up to USD10 million to defer their loan repayments for up to six months. • Italy suspended pending debt-restructuring agreements and composition with creditors for a six-month period. • New Zealand reduced the period of vulnerability from two years to six months for voidable transaction regime. • Brazil allowed payment of debts in up to 60 monthly instalments for reorganisation plans for small and micro companies.
	Enabling a debt forgiveness mechanism or discharge is important for facilitating a fresh start	• Germany provided that for natural persons, both consumers and entrepreneurs, a discharge of residual debt is not to be denied for delaying the commencement of the insolvency proceedings, despite lack of prospect of an improvement in their economic situation because of a delay between March 1, 2020 and September 30, 2020.

Source: (a) World Bank (2020), Antonia Menezes and Sergio Muro, "COVID-19 Outbreak: Implications on Corporate and Individual Insolvency", Equitable Growth, Finance, and Institutions - COVID-19 Notes, Finance Series, April 13; (b) INSOL International and World Bank (2020), "Global Guide: Measures Adopted to Support Distressed Businesses through the COVID-19 Crisis"; and (c) Dentons (2020), "Changes in Bankruptcy Law : An overview of (temporary) measures in response to COVID-19", April.

option which suspends only such provisions of the Code, for such purposes and for such period, as are necessary under the circumstances, avoiding any unintended consequences.

Contrary to general belief that the Code has been suspended for a year, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 is a keyhole surgery that suspends a minute part of the Code. It suspends filing of applications for initiation of insolvency proceeding against a company for any default arising during COVID-19 period, which is six months commencing on March 25, 2020 to start with, but can be extended up to a year, if warranted. It insulates a company, which did not have a default as on March 25, 2020, but commits a default during the COVID-19 period, from being pushed into an insolvency proceeding.

The Ordinance does not absolve the company of COVID-19 default. It does not even exclude such default from the ambit of default under the Code. Such default remains a default for all purposes under the Code, except for the purpose of initiating insolvency proceeding against the company. For example, such default can be the basis for submission of claim in an insolvency proceeding or initiation of insolvency proceeding against a personal guarantor.

The Ordinance clarifies that an application can be filed for initiating insolvency proceeding against a company for defaults committed before March 25, 2020. It does not suspend the applications already filed before the AA for initiation of insolvency proceeding and pending for admission, and ongoing corporate insolvency proceedings - resolution and liquidation, including voluntary liquidation. Nor does it suspend provisions relating to and ongoing insolvency proceedings against personal guarantors and financial service providers (FSPs).

Though the broad rationale of the Ordinance is well understood, the rationale for some of its finer aspects are not obvious. Since the objective is to insulate companies which are victims of the pandemic, why should a company, which defaults during COVID-19 period, but not on account of COVID-19, have protection? There is hardly any company which is not impacted by the pandemic. There may be a handful of companies which did not default earlier but defaults during COVID-19 period for reasons other than COVID-19. Identification of such handful of companies would require determination in each case whether the default during the COVID-19 period is on account of COVID-19, or for any other reason, or for a mix of COVID-19 and other reasons. From practical considerations, it makes sense to allow such rare cases have the protection rather than be theoretically correct and waste years in legal battles.

A question arises, if the objective of the Ordinance is not to push certain companies into insolvency proceedings, why should such a company not have option to commence insolvency proceedings on its own volition? A key design feature of the Code is that it balances the rights and interests of all stakeholders, particularly of the equity and debt suppliers. It creates imbalance if only debtor has the right to initiate insolvency proceeding, while a creditor does not have, and vice versa. Further, irrespective of whether the debtor initiates or a creditor initiates the proceeding, the outcome is the same, which is not acceptable in present times when saving economically viable companies is of paramount importance. In any case, the data indicates that only 2 per cent of the insolvency proceedings that commenced during 2019-20 were self-initiated.

The non-availability of RAs is the basis for suspension. Should it not apply to all companies whether they defaulted before or during COVID-19 period? The Ordinance distinguishes failures on account of the COVID-19 and for market pressures (competition and innovation). It is only fair that they are treated differently. The Ordinance prohibits resort to insolvency proceeding where a company, which withstands market pressures, but defaults on account of COVID-19. It enables resort to insolvency proceeding where a company defaults on account of market pressures, should the stakeholders wish, as in such cases, the stress is unlikely to disappear on the other side of the pandemic.

Why should COVID-19 default be kept out of insolvency proceedings forever? A company, which was viable before the onset of COVID-19, may earn normal profits from current operations and become viable again, after the impact of pandemic subsides. It would, however, take years to wipe off the deep stress that arose during COVID-19 period. Depending on the nature of the industry and specific strength of a company, one may recoup the loss in one year while another may take years, or even decades. If the company is pushed into insolvency when it is recouping the loss, the objective of the

Ordinance would be frustrated.

A fear has been expressed that a company may deliberately default taking undue advantage of the Ordinance. This is very unlikely because the Ordinance has not suspended the liabilities in respect of COVID-19 default under various other laws. It has not even suspended COVID-19 default for all purposes under the Code. There are several checks and balances to discourage wilful default, including liability under section 29A. Further, it may not be fair to assume that a company would default even when it can repay. A slim possibility of misuse should not deter a policy which benefits everyone.

With the Ordinance in place, have the stakeholders lost an effective avenue for resolution of stress? It is important to note that the Code is available for resolution for all defaults, except default arising during COVID-19 period. Further, there are several credible options for resolutions outside the Code. The stakeholders may use statutory, Court supervised compromise or an arrangement under the Companies Act, 2013. They may use the RBI's prudential framework for resolution of stressed assets. They may sit across a table and work out a resolution without the involvement of Court or outside any formal framework. The concern that the Ordinance has taken away an effective avenue for recovery of dues has no basis as recovery of dues is not an objective of the Code. The menu available for creditors for recovery of dues is quite long.

There is an apprehension that there will be a surge of insolvency proceedings on the other side of the pandemic. This is very unlikely given that the stakeholders have many options during the COVID-19 period for recovery of loan as well as for resolution of stress. They may even explore innovative options for resolution in these challenging times. The number could be less as the companies have normal business operations after the pandemic subsides, higher threshold of default for initiation of insolvency proceedings keeps many smaller default out of the reach, and COVID-19 period defaults remain outside insolvency proceedings.

Some have misconstrued insertion of sub-section (3) to section 66 to mean that it provides undue protection to the directors of a company for any fraudulent transaction during the COVID-19 period. It provides protection to directors in respect of liability under sub-section (2), which deals with exercise of due diligence to minimise the potential loss to creditors. It is necessary to limit the liability before the insolvency commencement date, as insolvency process cannot commence in respect of COVID-19 defaults. It has not touched sub-section (1), which deals with fraud. Further, section 166 of the Companies Act, 2013, which requires a director to discharge his duties with due and reasonable care, skill, and diligence, remains intact. Thus, there is no protection from fraud.

There is a misgiving in some circles that the suspension of the Code is a setback to insolvency reforms. As mentioned earlier, only a tiny part of the Code has been suspended, that too, for a short period. This suspension not only reinforces the prime objective of the Code, that is, to rescue the lives of companies from market pressures, but also endeavours to rescue companies having stress from *force majeure* circumstances. A study of our 30-year history of economic reforms indicates that some reforms have, at times, changed gears, moved one step back and two steps ahead, moved sideways, and even stood still, yet ultimately reached the destination.

There have been concerns about work opportunities for professionals. There are thousands of applications for CIRPs at the admission stage, thousands of ongoing CIRPs, and thousands of ongoing corporate liquidations and voluntary liquidations. Fresh applications in respect of defaults that have occurred before March 25, 2020 would continue to be filed. Applications for insolvency proceedings against personal guarantors and financial service providers can be filed. Special insolvency resolution framework for MSMEs is on the way. Work has begun on development of a prepack insolvency framework. Thus, what professionals have on table is much more than what they can take.

ROAD AHEAD

While the journey of insolvency reforms passes through COVID-19, construction of the road must continue unabated. The following three sets of developments are likely to pave the road in short and medium term matching the increasing traffic.

Building institutions

Institutions do matter and make a difference. Given their role in insolvency processes, the institutions of insolvency and bankruptcy will get strengthened further.

(a) *Insolvency profession*: Insolvency proceedings require high-end, sophisticated professional services. The Code casts, unlike many advanced jurisdictions, strenuous responsibilities on an IP to run the affairs of the firm in distress as a going concern, protect and preserve the value of its property, comply with all applicable laws on its behalf, conduct the entire resolution process with fairness and equity, retrieve value lost through avoidance transactions, etc. The promising professionals from disciplines of law, management, accountancy, etc., with ten years of experience have joined the insolvency profession after undergoing pre-registration training and passing the Limited Insolvency Examination. They have performed admirably well. To take the insolvency profession to the next level, the IBBI has conceived a two-year Graduate Insolvency Programme (GIP) for young and bright minds having a professional qualification or a degree in a relevant discipline but with no experience. GIP aims to groom tailor-made IPs and inculcate all that an IP needs, including the soft skills such as people management, entrepreneurship, emotional quotient, and deep-rooted ethics and integrity. On completion of GIP, one would be eligible for registration as an IP. GIP is the first of its kind in the world and is an endeavour to create insolvency as a discipline of knowledge. The first batch of GIP with 37 students had commenced on July 1, 2019 at the Indian Institute of Corporate Affairs (IICA). After completing coursework at campus, the students have proceeded for one year of internship. They should be ready for registration as IPs in July, 2021. The next batch of GIP with 41 students commenced on July 1, 2020. In addition, several measures, such as advanced training in niche areas, continuing professional education, are being undertaken to build the capacity of insolvency profession.

(b) *Valuation profession*: A key objective of the Code is maximisation of the value of assets of the persons in distress. One needs transparent and credible determination of value of the assets to facilitate comparison and informed decision making. The valuations serve as reference for evaluation of choices, including liquidation, and selection of the choices that decides the fate of a firm undergoing CIRP. If valuation is not right, a viable firm could be liquidated and an unviable one could be rehabilitated, which could be unfortunate for an economy. The decisions arising from use of inappropriate values, in addition to causing unfair gain or loss to parties, has the potential to distort market and misallocate resources which may impinge upon economic growth in a market economy. An interim framework has been put in place under the Companies Act, 2013. A Committee of Experts has recently recommended enactment of an exclusive statute to provide for the establishment of the National Institute of Valuers to protect the interests of users of valuation services in India and to promote the development of, and to regulate the valuation profession and market for valuation services. This should ensure that valuers enjoy an enviable reputation of the stakeholders while being accountable for their services. Here also, the endeavour is novel and aims to create the subject of valuation as an independent discipline of knowledge.

(c) *Information Utility*: The resolution process is information intensive. Value depends on availability of quality information with the stakeholders. The Code provides for a competitive industry of interoperable IUs to store financial information that helps to establish defaults, verify claims, constitute CoC based on claims, and generate IM expeditiously and thereby facilitates completion of insolvency processes in a time bound manner. To ensure that IUs capture the information necessary for the resolution of insolvency and bankruptcy, the Code makes data submission mandatory for FCs and imposes an obligation on IUs to accept such data. To ensure accuracy and preclude disputes, the Code mandates that such records be co-verified with all concerned parties. An IU has come up and is gathering a critical mass of information for use by the concerned stakeholders. This is also first of its kind in the world to address information asymmetry in the insolvency space. It will get a push if creditors extending credit above a threshold to any person are mandated to submit financial information to an IU and borrowers taking a credit above a threshold from any person are mandated to authenticate financial information with an IU.

(d) *Committee of creditors*: The CoC, which comprises FCs, has responsibility to decide the fate of the firm in distress, whether to rescue or liquidate it. The decisions of the CoC are not generally open to any analysis, evaluation, or judicial review by the AA. The stakeholders, including the Government, are bound by the resolution plan, which is a commercial decision of the CoC. A wrong decision can destroy an otherwise viable firm or place the firm in the hands of wrong people. The CoC deciphers whether the firm is in economic distress and if so, it may release the resources of the firm to other competing uses and the entrepreneur to pursue emerging opportunities. If the firm is in financial distress, the CoC rescues the firm from the clutches of current management and puts it in the hands of a credible and capable management to avoid liquidation. It creates the visibility of the underlying value of the firm and a market for competing, feasible and viable resolution plans from capable and credible people. It assesses feasibility and viability of resolution plans and capability and credibility of RAs. These decisions are not amenable to a mathematical equation and require tremendous business acumen. Given the consequences of such decisions are grave, all round efforts are being made to strengthen the institution of the CoC to match its responsibilities.

(e) *Adjudicating Authority*: The National Company Law Tribunal was created under the Companies Act, 2013 to discharge the responsibilities under the said Act. However, it has been entrusted with the responsibilities of the AA under the Code. The bench capacity needs to increase commensurate with the responsibilities under both the enactments. The capacity of a member to dispose of matters can be enhanced by provision of a quality research support. The AA should have strong administrative support that scrutinises the applications / filings for accuracy, completeness, and compliance with the requirements, and manages information technology to manage the cases and scheduling, that releases members to focus on adjudication.

In the long run, a separate AA may be created under the Code to deal with all kinds of insolvency, liquidation and bankruptcy processes of corporates and individuals. Since market participants take commercial decisions, and insolvency proceedings are not adversarial, one member of the AA, instead of two, may dispose of matters. The members of the AA may have similar terms as Judges of the High Court, which would attract right talent and build institutional capacity. Simultaneously efforts need to be made to resolve stress by mediation and conciliation or through processes such as pre-pack, which do not use or make minimum use of the AA.

Process improvements

The second set of developments relates to process improvements for certainty, efficiency, and efficacy.

(a) *Responsive regulation*: As a regulator, IBBI has no parallel elsewhere in the world. It makes, among others, regulations for corporate and individual insolvency, liquidation, and bankruptcy processes. Regulation, however, is not an unmixed blessing. Nor is there a regulation for every market failure. A responsive regulator designs and modifies regulations, proactively with changing needs of the market, without unduly restricting freedom of the participants and with the least unintended consequences. IBBI has standardised the regulation making process to ensure that the regulations are effective as well as responsive, and not excessive. The IBBI (Mechanism for Issuing Regulations) Regulations, 2018 govern the process of making regulations, which includes cost benefit analysis and consulting the public. It is imparting training to its employees on regulatory impact assessment to ensure that the regulations factor in ground reality, secures ownership of regulations and makes regulations robust and precise, relevant to the time and for the purpose.

(b) *Resolvability*: The Code has shifted the focus of creditors from the possibility of recovery to the possibility of resolution, in case of default. The market now prefers to deal with a company which is resolvable. A resolvable company obtains a competitive advantage *vis-á-vis* non-resolvable companies through reduced cost of debt. Where the value of a company lies in informal, off-the record arrangements or personal relationships among promoters or their family members, prospective RAs may find it hard to trace and harness the value, making resolution of the company remote. A company would focus on creating and maintaining value, which is visible and readily transferable to RAs. Similarly, a company would keep an updated IM ready to enable expeditious conclusion of the resolution process, if initiated. It would be the endeavour of every company to keep itself resolvable all the time, should a need arise, along with a restoration plan. In a sense, it would be having a sort of 'living will' for the benefit of the firm as well as the society at large.

(c) *Market for distressed assets*: India is the fastest-growing, trillion-dollar economy and the fifth largest in the world. The average growth rate over the last three decades has been about seven per cent. All vital statistics such as index for competitiveness and index for innovation have been improving over the years. In the face of competition and innovation, it is natural that some firms will have distress. Given the size of the economy and its growth potential, there will be a continuous flow of distressed assets into market. They would need to be resolved, not necessarily through a CIRP. They could be bought even in early days of distress. Regulations could facilitate the development of a secondary market for corporate loans. Several platforms provide the details of such distress assets. As the participation increases, there would be electronic platforms which would provide every detail of every company undergoing CIRP and enable prospective RAs to submit resolution plans, making the market liquid in the days ahead.

(d) *Automation of contracts*: It often takes time and effort for an IU to receive the information from one of the parties to a loan agreement and then seek verification from the other party before the information is usable. Automation of loan contracts (standardisation of loan agreements, dematerialisation of loan agreements and their online execution) will make the process of contracting efficient and obviate the need for explicit authentication. This will facilitate seamless insolvency proceedings, like such automation has revolutionalised the securities markets. An IU or some other repository could facilitate automation of loan contracts and serve as a 'one stop shop' for all the information about the loans and required for insolvency proceedings. The National e-Governance Services Limited, an IU registered with IBBI, has set up a digital document execution platform to facilitate documentation remotely through e-signing and digital e-stamping.

(e) *Best practices*: The law does not and cannot provide solutions to every problem. Best practices evolve to provide solutions to many problems. Such best practices acquire full force of law over time and become customs. For example, regulations require an IM in respect of a distressed firm to provide details of assets and liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values. 'Description' includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details. The market would figure out the relevant details in respect of different kinds of assets, which would serve as the best practice for description of an asset. The IPAs are working to develop best practices for avoidance transactions.

Missing elements

The third set is implementation of the missing elements of insolvency regime.

(a) *Individual insolvency*: After having passed several milestones in corporate insolvency, it is time now to focus on the next big thing, viz. individual insolvency. The Code classifies individuals into three classes, namely, personal guarantors (PGs) to CDs, partnership firms and proprietorship firms and other individuals, to enable implementation of individual insolvency in a phased manner considering the wider impact of these provisions. The learning from the implementation of the earlier phases would help facilitate a smoother roll out of the later phases. Individual insolvency in respect of PGs to CDs is in operation. Insolvency and bankruptcy in respect of other individuals should commence as the ecosystem for the same is put in place.

(b) *Fresh Start Process*: Part III of the Code provides for a fresh start process (FS Process) that allows debtors, who have an annual income ≤ Rs.60,000, assets ≤ Rs.20,000, debts ≤ Rs.35,000 and do not have a dwelling unit, to seek discharge of debt and thereby protects them from coercive actions of creditors. The chances of recovery in such cases is so low that the cost of resolving insolvency becomes an additional burden to the debtor, creditor, or the State. Implementation of these provisions, which use Tribunals and IPs, may pose difficulty for such debtors. The ILC has recommended redesigning the FS process to make it accessible, simple, quicker and cost effective. It has recommended three major changes: (a) shift from quasi-judicial process to an administrative one, whereby dedicated debt relief officers oversee the process and issue debt relief orders at low-cost, (b) shift from IPs to less costly insolvency advisers to assist and guide eligible debtors, and (c) implementation of the FS Process on an online platform accessible from anywhere. This will require changes in the Code along with development of a dedicated administrative mechanism, a cadre of insolvency advisers and a technology enabled platform.

(c) *Financial Service Providers*: Presently, India does not have a specialised comprehensive legal framework for resolution of FSPs. However, financial distress and liquidity crunch in certain FSPs recently called for an insolvency framework for them. Using the powers under section 227 of the Code, Government has notified a generic framework for resolution of FSPs as an interim arrangement pending introduction of an enactment to deal with financial resolution of banks and other systemically important FSPs. Following the notification, RBI has initiated CIRP against Dewan Housing Finance Ltd. Subsequently, by an amendment, section 227 has been modified to enable the Government to apply insolvency processes under the Code with modifications for insolvency resolution of FSPs. This fills up a vacuum and would enable resolution of FSPs till a specialised framework is put in place.

(d) *Cross border insolvency*: The Code enables the Government to enter into bilateral agreements with foreign countries for applying the provisions of the Code. There are obvious limitations of such a bilateral approach. The ILC has proposed to add a Chapter to the Code to introduce a globally accepted and well recognised cross border insolvency framework, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency, considering the fact that some corporates transact businesses in more than one jurisdiction and have assets across many jurisdictions. It has also recommended a few carve outs to ensure that there is no inconsistency between the domestic insolvency framework and the proposed cross border insolvency framework. A committee constituted by the Government to propose the rules and regulatory framework that would enable the implementation of provisions relating to cross border insolvency submitted its report recently. It is now working on rules for cross border group insolvency.

(e) *Group insolvency*: There is an increasing preference to organise business in a group of companies to harness synergies among them. It may be useful to deal with the insolvency of a group of companies together, in certain circumstances, to preserve synergies among the group companies for value maximisation. It may be advisable to provide for an optional framework to enable some degree of synchronisation of insolvency proceedings of group companies where it promotes the objective of value maximisation. It may start with procedural coordination, while cross-border group insolvency and substantive consolidation could be considered at a later stage, depending on the experience of implementing the earlier phases of the framework, and the felt need at the relevant time.

(f) *Special framework for MSMEs*: MSMEs are unique in many ways and the typical CIRP style resolution is not conducive for resolution of their insolvencies. Most MSMEs are entrepreneurial ventures, where value often lies in informal arrangements, which a third party may not be able to harness through a resolution plan. The market for resolution plans for them is local, while the entire globe is the market for bigger firms. Most of them have loans from informal sources and have no access to frameworks for resolution as available for banks. In recognition of their uniqueness, most countries have a special dispensation for their resolution.

Based on recommendation of the ILC, the Code was amended in 2018 to enable the Central Government, in public interest, to provide a modified framework for resolution of insolvency of MSMEs. As part of the *'Atma Nirbhar Bharat*, Part V: Government Reforms and Enablers' announced on May 17, 2020, it has been proposed to notify a special insolvency resolution framework for MSMEs. The framework is likely to be a blend of CIRP and individual insolvency as some MSMES are corporates while others are individuals.

(g) *Pre-pack*: The market has been advocating and anticipating a resolution framework which is a hybrid between the court supervised insolvency framework and out-of-court restructuring schemes that harnesses the best of both the worlds *sans* their demerits and provides a formal framework for resolutions that are happening today in the shadow or on account of the Code. Most pre-packs across the globe start with an informal understanding, engage the stakeholders in between, and end with a judicial blessing of its outcome, though the nuances differ from one jurisdiction to another. Sometimes even within a jurisdiction, there may exist more than one variant of a pre-pack. Government has constituted a sub-committee of the ILC recently to recommend the regulatory framework for pre-pack insolvency resolution process. Likely, this would, require an amendment to the Code.

CELEBRATE FAILURE

Though the Code endeavours to rescue lives of companies, rescue may be neither desirable nor feasible where creative destruction is driving out failing, unviable firms from the market. The Code, therefore, provides a mechanism whereby a failing, unviable firm exits with the least disruption and cost and liberates the entrepreneur from failure and releases idle resources in an orderly manner for fresh allocation to efficient uses. Growth needs entrepreneurs. The Code aims to promote entrepreneurship by providing an effective mechanism to liberate entrepreneurs from honest failure instead of penalising them. Hon'ble Prime Minister of India in his address at the Centenary Celebrations of Kirloskar Group on January 6, 2020, underscored its importance:

> **"साथियों, आजकल *Insolvency Bankruptcy Code (IBC)* की इतनी चर्चा होती है, लेकिन यह सिर्फ इतना पैसा वापस आया उतना पैसा वापस आया वहां तक ही सीमित रहती है। लेकिन वह उससे भी आगे है। आप सभी यह बेहतर जानते हैं कि कुछ स्थितियों में धंधे से बाहर निकलना ही कई बार समझदारी माना जाता है। ये जरूरी नहीं कि जो कंपनी सफल ना हो रही हो, उसके पीछे कोई साजिश ही हो, कोई गलत इरादा हो, कोई लालच हो; यह जरूरी नहीं है। देश में ऐसे उद्यमियों के लिए एक रास्ता तैयार करना आवश्यक था और *IBC* ने इसका आधार तैयार किया। आज नहीं तो कल, इस बात पर अध्ययन जरूरी होगा कि *IBC* ने कितने भारतीय आदमियों का भविष्य बचाया, उन्हें हमेशा हमेशा के लिए बर्बाद होने से रोका।"**

The insolvency journey must continue till it reaches ultimate destination when India celebrates honest business failures.