

**Annual Lecture**  
by  
**Shri Girish Chandra Murmu, Comptroller and Auditor General of India**  
**1<sup>st</sup> October 2020**

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1. I would like to thank Chairperson, IBBI for inviting me on this occasion and to share my thoughts on the progress made in the implementation of one of the most important economic legislations of recent times, namely, the Insolvency and Bankruptcy Code, 2016 and its adaptability to the present times of COVID-19 pandemic.
2. This day not only marks the Annual Day of the IBBI but also an important landmark for all those behind bringing this institution to its present rank and glory. Annual Day celebration is an appropriate time to reflect on the trail of the past and chart out the journey for the future. The impact of the Code is quite palpable in just four years of its enactment with its justice-oriented behavioural outcomes. Before I discuss about these outcomes it may be worthwhile to say a few words on the effect of pandemic and its impact across the World.
3. These are unprecedented times when the whole humanity is reeling under the impact of the coronavirus pandemic. It has affected almost every country in the world and every human being on the planet, directly or indirectly. It is not the first time that humanity has seen such a health crisis. There have been several notable epidemics and pandemics in the past centuries wherein each of them brought about immense sufferings and economic and social upheavals. What is different this time is that the coronavirus pandemic is truly global, and its trajectory and impact are highly uncertain. It has not only caused immense human suffering, but also a new, almost dystopian reality is emerging, where lives are being dictated by a virus for which humans are yet to find a remedy.
4. Governments across the world have stepped into action implementing mitigating measures while assessing the situation both in their countries and elsewhere around the world. India has very successfully contained initial spike in COVID-19 cases with strict implementation of the lockdown. This time was also effectively utilized to upgrade health infrastructure and for augmentation of supplies, etc. It is heartening to mention that India has successfully contained the death rate due to the coronavirus - proportional mortality, i.e., deaths arising from COVID-19 as a percentage of all deaths, in India, is probably the least.
5. However, the intensity of the pandemic has caused disruptions in the global economy of proportions and dimensions almost comparable to the Great Depression of 1929 and sub-prime crisis of 2008. According to the IMF's World Economic Outlook of June, 2020, as a result of the pandemic, the global economy is projected to contract sharply by 4.9% in 2020, experiencing the worst recession since the Great Depression, and far worse than the Global Financial Crisis. Cumulative loss to global GDP over 2020-21 is estimated at around USD 9 trillion. The United Nations Conference on Trade and Development (UNCTAD) estimates that the pandemic will likely cost the global economy between USD 1 to 2 trillion in 2020. As the virus spreads, the economic impact of the crisis will test the resilience of our economic and financial structures.
6. There are divergent views among economists, experts, and policy makers on the pace of economic recovery going forward. While some predict 'V' shaped recovery in the economy and some others are not so optimistic. We may need to wait and watch how various measures taken by the Government to ensure economic recovery pan out in the near future.

7. Coming back to the topic, we can take pride that the Indian Parliament has taken a historic step by enacting the Insolvency and Bankruptcy Code as a stepping-stone to kindle reform in the economic interest of the country. It is a response to the receptivity of the legal apparatus to the changing needs of the times.

8. As you are aware when a firm remains under stress for long, its balance sheet gets stretched. Such failure by many firms, particularly large ones, impacts the balance sheets of creditors, particularly banks. This reduces the availability of funds with the creditors, limiting their ability to lend for even genuinely viable projects, thus restricting credit growth. The impact is pronounced where some firms deliberately fail to repay loans. Thus, what emerged in India, popularly referred to as the *Twin Balance Sheet* problem, was a situation where both the banks and firms were reeling under the stress of bad loans, thereby, hindering overall economic growth.

9. In the absence of an exit mechanism, either for the firm or the entrepreneur even when it is in deep distress, the Indian economy suffered the inefficiencies of several zombie entities in the system for a long time. Given that the resources are scarce, and failures are routine in a dynamic market economy, India needed a codified and structured market mechanism to put the underutilized resources to more efficient uses continuously and free entrepreneurs from failure. The insolvency reforms, through the Code, provide a market mechanism for (a) rescuing a failing, but viable firm; and (b) liquidating an unviable one and releasing its resources, including entrepreneur(s), for competing uses, and thereby provides the freedom to exit, the ultimate freedom. It provides a market mechanism, for time-bound resolution of insolvency, wherever possible, and ease of exit, wherever required.

10. Hon'ble Prime Minister of India beautifully underscored the role of the Code in provision of freedom of exit. He stated that the Code has prepared a route of exit for honest entrepreneurs whose business ventures have failed and, in doing so, saved their future.

11. Thus, the objectives of an insolvency regime are multi-pronged. The first-order objective of the Code is resolution. The second-order objective is the maximization of value of assets of the firm, and the third-order objective is promoting entrepreneurship, availability of credit and balancing the interests. This order of objectives is sacrosanct.

12. The Code effectively consolidated multiple legislations spread across different fora into one comprehensive 'one-stop-shop' for insolvency resolution. The Supreme Court also upheld the very constitutionality of the Code in the renowned *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors.* judgment. All in all, the Code has blended well with the country's legal and commercial systems.

13. The Code strives to maximise the value of the corporate debtor's assets. It does so by ensuring that all efforts are made to facilitate continued operation of the corporate debtor as a going concern during corporate insolvency resolution process. To this effect, it ensures a calm period for the firm when nobody disturbs the firm undergoing resolution. It prohibits suspension or termination of supply of critical and essential services to the corporate debtor to keep it going. It mandates continuation of licences, permits and grants; stays execution of individual claims, enables raising interim finances for running the company, insulates the resolution applicants 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 firm through a

resolution plan. It enables claw back of value lost on account of avoidance transactions like preferential, undervalued, fraudulent and extortionate transactions. This deters the management from indulging in such transactions and enables cleansing of corporate governance and improves the confidence of stakeholders.

14. The Code has created a cohesive and comprehensive ecosystem that cements the processes and the service providers together towards the achievement of its objectives. With the enactment of the Code, India has witnessed the birth of two professions, namely, insolvency profession and valuation profession, that have professionalised insolvency services. The Code has opened unlimited possibilities of resolution, including merger, amalgamation and restructuring of any kind, which often requires professional help. This has created markets for services of insolvency professionals, insolvency professional agencies (IPAs), registered valuers (RVs), registered valuer Organisations (RVOs), insolvency professional entities (IPEs), and Information Utilities, and expanded the scope of services of Advocates, Accountants and other professionals. There are presently around 3100 IPs, 3 IPAs, 70 IPEs, 3100 RVs and 14 RVOs. The Code has also created markets for education and capacity building of these professionals.

15. It is heartening to note that debtors and creditors alike are utilising the provisions of the Code. Till June, 2020, about 3900 corporates, including some with very large NPAs, have been admitted into CIRP. About 1205 CIRPs have completed the process either yielding resolution plans or ending up with orders for liquidation. 380 processes have been closed on appeal or review or settled and 218 have been withdrawn. Another 692 firms have commenced voluntary liquidation. Rich jurisprudence has developed. The government has been proactively addressing the issues that come up in the implementation of the reform.

16. Swift implementation of the Code got reflected in Ease of Doing Business. The World Bank's Ease of Doing Business Report (DBR) has recognised India's efforts at making resolving insolvency easier. India's ranking in resolving insolvency improved from 136<sup>th</sup> in the DBR for 2017 to the 52<sup>nd</sup> position in the report released in October 2019.

17. One of the most remarkable achievements of the Code has been the significant behavioural changes that it has effectuated or 'nudged' among the debtors and creditors alike. This behavioural shift has resulted in substantial recoveries for creditors outside the Code and improved the performance of firms. It is further motivating them to make the best efforts to avoid default. It encourages the debtor to settle default with the creditor(s) at the earliest, preferably outside the Code. With the Code in place, non-repayment of loan is no more an option and ownership of the firm is no more a divine right and equity is no more the only route to own a firm. The Code has had an impact on the credit market. Through provision for resolution and liquidation, the Code reduces incidence of default, and enables creditors to recover their dues through revival of the firm or sale of liquidation assets. It incentivises creditors - secured and unsecured, bank and non-bank, financial and operational, foreign and domestic - to extend credit at a lower cost for projects and thereby enhances availability of credit. The Code is also helping in resolving the NPA problem of the banking system.

18. The importance of an insolvency regime cannot be stressed enough, now more than ever, as the world battles the COVID-19 pandemic. I am of the view that this pandemic has adversely affected both real and artificial persons of our society and economy. In the form of a health emergency, it has affected the health of real people and in the form of an economic crisis it has affected the life of artificial persons, i.e., corporate entities. In today's dynamic

market economy, the lives of both have come to become intertwined and interlinked. The health of a corporate entity has a direct bearing on the lives and livelihood of the people it employs and its suppliers. The collective health of companies in an industry and ensuing collective health of industries across the board have a bearing on the health of the economy. Varied elements of a market economy like credit market, entrepreneurial spirit, competition, innovation, etc. are adversely affected when the economy deteriorates.

19. Report by Asian Development Bank and International Labour Organisation highlight that employment prospects of the young in Asia and the Pacific have been severely challenged due to the pandemic, and that the youth (15–24 years) will be hit harder than adults (25 and older) in the immediate crisis. Thus, provision of adequate unemployment insurance and social protection remains necessary.

20. As such, the year 2020 is proving to be an extremely challenging year worldwide. Businesses worldwide are struggling to exist as their functioning has been temporarily terminated.

21. Developing economies need support to finance critical spending, making all countries safer. Advance planning is needed as the global financial safety net could be further tested.

22. As you are aware, Government of India took lead very early to contain the spread of COVID-19. The need to take appropriate step to safeguard the businesses was timely realised and the Government of India took multiple steps to cope up with the worst pandemic in recent human history. Hon'ble Prime Minister announced comprehensive packages under “*PM Garib Kalyan*” and “*Atma Nirbhar Bharat Abhiyan*”, which comprised relief for individuals and packages for revival of economy considering various sectors of the economy.

23. In the arena of insolvency resolution, in keeping with the situation, certain steps were taken to provide relief for corporate insolvency resolution process. Under the Code, the threshold limit of default by a corporate debtor for initiating an insolvency process under the Code was fixed at Rs. 1 lakh. However, in view of the COVID-19 outbreak and its consequential economic impact, the above threshold has been increased to Rs. 1 crore. The said amendment has been made through Notification dated 24<sup>th</sup> March 2020. This has proved to be a relief measure to protect the interest of MSME debtors from being pushed into insolvency due to pandemic induced financial stress as the earlier threshold limit for triggering insolvency could have been easily met in the present situation.

24. Thereafter, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 was promulgated on 5<sup>th</sup> June, 2020, suspending sections 7, 9 and 10 of the Code to bar initiation of insolvency proceedings for any default arising on or after 25<sup>th</sup> March, 2020 for a period of six months, extendable up to one year. These measures have been taken to avert a rapid increase of insolvencies of companies due to the pandemic and to make sure that companies can survive as a going concern during the crisis.

25. *Charles Darwin* said: “*It is not the strongest or the most intelligent who will survive but those who can best manage change.*” It is in this spirit of managing ‘change’ that such measures such as suspending certain provisions of the Code have been taken. These recent amendments in the Code are not a setback for insolvency reforms. It is only a temporary measure taken to keep economically viable companies from being dragged into insolvency due to a *force majeure* condition.

26. As the Government prepares the insolvency landscape of the country for the post COVID-19 phase in the longer term, one is hopeful that the measures taken in the short and medium term will be successful in preserving the life of companies and livelihood of persons in distress. Rescuing lives of firms being the prime objective of the Code, it must not be used to take away their lives prematurely.

27. Going forward, once the pandemic is behind us, a few issues that would need to be handled through the IBC would be making provisions for resolving group insolvencies and cross border insolvencies. Implementing various provisions relating to individual insolvency and bankruptcy under the Code is also an agenda to examine based on emerging economic situation. Further strengthening the judicial infrastructure to deal with insolvency and bankruptcy matters in the country would also need to be given priority.

28. The IBC has, till now, evolved and attuned to every emerging market requirement. I am sure it will continue to do so and remain pertinent for all times to come.

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