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Moving up in ‘ease of resolving insolvency’

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Prime Minister etc. Be that as it may, let’s consider the developments in the insolvency space since the last examination.

**Insolvency framework**
The World Bank measures the perception of stakeholders in respect of ‘resolving insolvency’ on two sets of indicators, namely, the strength of insolvency framework and the recovery rate. The strength of insolvency framework is a function of four indices relating to commencement of proceedings, management of firm’s assets, reorganisation proceedings and creditor participation. There have been improvements in all these indices since the last examination.

As regards commencement of proceedings, the World Bank considers it positive if an insolvency framework enables direct liquidation of a corporate debtor (CD). The IBC enabled the committee of creditors (CoC) to decide to liquidate a CD at any time. An amendment to the IBC in August 2019 has clarified that the CoC may decide to liquidate the CD at any time during the corporate insolvency resolution process (CIRP), even before preparation of information memorandum.

The Supreme Court has reiterated in November 2019 that it is for the CoC to decide as to whether to rehabilitate or liquidate the CD. As a matter of practice, the adjudicating authority (AA) allows for liquidation as and when the CoC decides so. Even at the stage of application, the AA puts the CD (eg M/s GNB Technologies (India) Private Ltd in November 2019) under liquidation process, obviating the CIRP in the first instance. This is besides provision for direct voluntary liquidation under the IBC and liquidation under the company law.

With regard to the management of the firm’s assets, the IBC facilitates continued operations of the CD during CIRP. The December 2019 amendment to the IBC mandates that a license, permit, registration, quota, concession, clearance or a similar grant or right given by the Central government, the State government, a local authority, sectoral regulator or any other authority constituted under any other law to a CD shall not be suspended or terminated on the grounds of insolvency. It also requires continuation of supply of goods and services which are critical to protect and preserve the value of the CD and manage the operations of such CD as a going concern. An amendment to the IBC in August 2019 mandates that a resolution plan approved by the AA is binding on the Central government, any State government and any local authority.

The IBC envisages a resolution plan for reorganisation of a CD as a going concern. This gave the impression that the CD must continue to exist, post-resolution, limiting the possibilities of resolution. Though the contours of a resolution plan are left to the imagination of the market, the amendment of August 2019 makes it explicit that a resolution plan may provide for restructuring of the CD, including by way of merger, amalgamation and demerger.

The recovery rate, as per the World Bank methodology, is a function of time, cost and outcome of insolvency proceedings.

While reviving ailing firms, the resolution process has returned about 200 per cent of liquidation value for creditors. This means that the creditors got 200 while they could have got at best 100 minus cost of liquidation, if these CDs were liquidated. The outcome should improve with the amendment in December 2019 that releases the CD from the liability arising from an offence committed under the erstwhile management prior to the commencement of the CIRP.

**Speed of process**
The Supreme Court attributed some delay in the law’s functioning in November 2019. However, several contentious issues have been settled by the Supreme Court in the last year, bringing in certainty in the process and predictability of outcomes.

In July 2019, the Bench strength of the AA has been substantially enhanced. An amendment to the IBC in August 2019 requires closure of CIRP in 330 days, including time spent on litigation. These have improved disposal by the AA significantly in the last two quarters.

There has been considerable learning by every element of the ecosystem in the last three years. The resolution process is now institutionalised, standardised and professionalised, which should translate to reduced cost of process. The Graduate Insolvency Programme launched in July 2019 should take the insolvency profession to the next level. Given the efficacy of the IBC, it has become the preferred mode for the insolvency resolution of a CD. This explains huge rush of applications for insolvency resolution in the last three years, even though the stakeholders are being advised to use the Code as the last resort.

The work has begun in right earnest to add several value-added features to insolvency framework. These include cross-border insolvency, group insolvency, individual insolvency, valuation profession, market for distressed assets, automation of loan contracts, resolvability of companies etc. The authorities remain committed to address deficien- cies arising from implementa- tion of the IBC, in sync with the emerging market realities. India’s performance in resolving insolvency should improve further, though the road to success will always remain under construction.

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