

180 Days for Resolution Process: Too Long or too Short?

Insolvency process needs to be completed fast to capture value and promote growth.

A firm may fail to deliver as planned for a variety of reasons. Most often it is due to competition and innovation where efficient firms drive out inefficient ones or new order drives out old one. It is also due to faulty design of the business model, inefficient execution, economic downturn, or in rare cases, *mala fide* design. Regardless of the reason, failure impacts the macro economy in multiple ways and, therefore, needs to be addressed expeditiously. If it cannot be addressed, the firm needs to exit the space with minimum cost and disruptions. The Insolvency and Bankruptcy Code, 2016 (Code) provides a mechanism to address honest failures and also the ultimate economic freedom, the freedom to exit, and thereby promotes inclusive growth. Undoubtedly, it constitutes a giant stride in economic reforms.

A failure usually manifests as default in repayment obligations, though there can be occasions when a firm may default without failure and vice versa. Default is a state of insolvency. The failure and consequent insolvency needs to be prevented. Where prevention is not possible, it needs to be resolved: (a) preferably within the firm as a going concern, as closure of the firm destroys organisational capital; (b) at the earliest, preferably at the very first default, to prevent it ballooning to un-resolvable proportions; (c) in a time bound manner as undue delay reduces organizational capital of the firm making resolution difficult; (d) by stakeholders who have a claim against the firm; and (e) in a calm environment when nobody disturbs the firm. Where resolution is neither possible nor desirable, the firm needs to exit seamlessly. The Code addresses all these – endeavours to prevent insolvency, provides a market determined and time bound mechanism for resolution of insolvency, wherever possible, along with facilitators for quick and effective resolution, and promotes ease of exit, wherever required.

The Code has laudable objectives. Its preamble states: “An Act to consolidate and amend the

law relating to re-organisation and insolvency resolution of corporate persons.....in a time bound manner for maximisation of value of assets..... to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.....”. These objectives can be achieved only if the insolvency resolution and other transactions under the Code are accomplished in a time bound manner. In fact, the ‘time bound’ feature of the Code distinguishes it from the erstwhile legislations in the matter. The Code permits 180 days for completion of corporate insolvency resolution process (CIRP). It permits one time extension up to 90 days by the NCLT in deserving cases. However, insolvency resolutions of all corporate persons may not entail the same level of complexity and some could be resolved earlier. The Code accordingly provides for a fast track process for certain categories of corporate persons where the resolution process needs to be completed within 90 days, with provision for one time extension up to 45 days.

Whenever a timeline is laid down for a transaction, some find it short while others find it long. In fact, it depends on the context such as persons carrying out the transaction and resources at their disposal, the facilitators available, and the complexity of the transaction. Further, a timeline that appears short to start with may prove long as time passes with emergence of supporting institutions, technologies and skills. Every transaction takes less time today than it was taking yesterday. For example, while a period of two months was short for transfer of securities at one time, one minute is long today after dematerialisation.

The timeline for CIRP needs to be seen from three perspectives. First, there is enough incentive for adherence to time line. The stakeholders have the necessary motivation to complete the CIRP early as they stand to gain from the resolution and they would suffer grave consequences of liquidation if they fail to complete the process within the given time. Further, the entire process is under their

control, so also implementation of the resolution plan. Second, there are facilitators for quick CIRP. There are qualified, competent and empowered professionals, called insolvency professionals, who provide assistance throughout the process. There are provisions for calm period when nobody disturbs the corporate under CIRP and also interim finance. There would be information utilities which would expeditiously provide relevant information required for CIRP. Third, as number of CIRPs goes through, the processes would get streamlined, and standardized and often automated. There is a practice called pre-pack in some jurisdictions, where a stakeholder triggers the process only when it is reasonably ready with a resolution plan and closes it soon thereafter.

It is, however, important to appreciate the significance of timeline. The corporate debtor was not in pink of its health when it defaulted and hence required resolution. During the CIRP period, an insolvency professional exercises the powers of the Board of Directors and manages the

operations of the corporate as a going concern and there is uncertainty about ownership and control of the corporate, post resolution. If such a state of affairs continues too long, it is likely that organisational capital will diminish making resolution difficult. A very long CIRP period is likely to push the corporate towards liquidation, while reducing its liquidation value. Further, a longer CIRP period means a larger number of firms under resolution process at a given point of time, which would impinge economic growth. The CIRP, therefore, needs to be completed as quickly as possible, not later than 180 days.

If the hero in the novel *Around the world in 80 days* could circumnavigate planet Earth in 79 days when transport and communication facilities were rudimentary during the late 19th Century, 180 days is a long period now with all the advantages of modern technology and well-informed brains. Going forward, a CIRP could possibly be completed in a few days or even hours, particularly with use of artificial intelligence. We should strive to reach there sooner than later.

(Dr. M. S. Sahoo)



▲ Hon'ble Justice S. J. Mukhopadhya, Chairperson, NCLAT, Hon'ble Justice M. M. Kumar, President, NCLT and Dr. M. S. Sahoo, Chairperson, IBBI at the NCLT colloquium on the IBC Procedure for the Hon'ble Members of NCLT and NCLAT held on 26th-27th March, 2017.



▲ The Insolvency Professionals at the first workshop organised by the IBBI on 27th March, 2017.



▲ Chairperson, Whole Time Members and Senior Officers of IBBI as on 31st March, 2017.



▲ Meeting of Advisory Committee on Service Providers held on 21st February, 2017.