

● STITCH IN TIME

THE INSOLVENCY AND BANKRUPTCY CODE ENVISAGES A COMPLEMENTARY ROLE FOR THE PARTICIPANTS, AND ADHERENCE TO TIMELINES OFTEN REQUIRES MUTUAL CO-OPERATION

Insolvency resolution must be strictly time-bound

AS STATED IN its preamble, the Insolvency and Bankruptcy Code, 2016 (Code) provides for re-organisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets. It envisages specific roles for each participant—the stakeholders comprising debtors and creditors, and the ecosystem comprising Adjudicating Authority (AA), Insolvency and Bankruptcy Board of India (IBBI), information utilities, and insolvency professionals—in different processes and specifies timelines for performance of each task in a process. The USP of the Code is time-bound completion of processes.

Consider corporate insolvency resolution process (CIRP). If a corporate becomes insolvent, a financial creditor, an operational creditor, or the corporate itself may initiate CIRP. It makes an application before the AA along with the evidence of default. If default is established, the AA admits the application and appoints an interim insolvency professional (IRP). The IRP runs the operations of corporate as a going concern up to 30 days during which he collects the claims and based on the same, forms a committee of creditors, which decides what to do with the corporate. It also appoints a resolution professional (RP) in place of IRP. If the insolvency is resolvable, it approves a resolution plan within 180 days with 75% majority.

The Code broadly specifies: (a) 14 days for the AA to admit or reject an application for initiation of CIRP; (b) seven days for an applicant to rectify defects in the application for CIRP; (c) 10 days for the IBBI to recommend, wherever required, an IRP to the AA, (d) 30 days for the IRP to discharge his duties; and (e) 180 days for creditors to complete a CIRP. The National Company Law Appellate Tribunal, while considering some of these timelines re-

cently in the matter of *JK Jute Mills Company Limited vs. Surendra Trading Company*, held that timeline of 180 days is mandatory.

The Code envisages a complementary role for the participants and adherence to timelines often requires mutual co-operation. For example, the AA takes a view on an application for CIRP with the cooperation of the applicant and the debtor. The creditors approve a resolution plan under a CIRP with the cooperation of the RP. In a sense, it is a collective responsibility to complete a task and the process in time, though one has the prime responsibility for a task.

For valid reasons, the Code enables initiation of a CIRP at the earliest and mandates its time-bound completion. While the Code permits 180 days for completion of a CIRP, it permits one time extension up to 90 days by the AA in deserving cases. However, insolvency resolution of every corporate 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 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 enablers 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 it. The stakeholders have the necessary motivation to complete a 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. Second, there are enablers. There are qualified, competent and empowered insolvency professionals, who provide assistance throughout the process. There are provisions for a calm period when nobody disturbs the corporate under CIRP. There would be information utilities which would expeditiously provide relevant information required for CIRP. Third, as a number of CIRPs goes through, the processes would get streamlined, and standardised and often automated. Probably, standard resolution plans would be available off the shelf. There is a practice called 'prepack' in some jurisdictions, where a stakeholder initi-

ates 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 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 on 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 Eighty Days* could circumnavigate planet Earth in 79 days when transport and communication facilities were rudimentary

(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 and not only preserve the USP of the Code, but also better it. Let's not squander time, for that is, in the words of Benjamin Franklin, 'the stuff life is made of'.

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