



Incentivising Insolvency Resolution under IBC

At the time of penning, 511 cases are under Insolvency Resolution, 114 companies are under Voluntary Liquidation whereas 35 companies are under Liquidation in absence of a viable resolution plan for revival of business. The assets under consideration are anywhere between USD 30 & 50 billion, depending upon whether you are a buyer or a seller or a lender. Even for a layman, the numbers, by no means, are small.

Inspite of more than a year in existence and continuous, rather rapid, evolution, an almost perfect example of Agile, not a single case has been actually resolved (business revived) and potential loss to exchequer, via lenders – secured & unsecured, including other stakeholders, is to the tune of USD 30 billion.

Given that government, through various arms, is committed to clean up & encourage entrepreneurship and debtors realizing that unfairness, unreasonability and unethical practices can no longer be the business as usual, here's what I believe stakeholders can (should) do to expedite the process ensuring win-win, even at the cost of short term pain, for all involved:

- Government c/should:
 - Offer incentives to acquirer(s) like those available in SEZ, e.g. tax deferment or exemption for a limited period, thus improving cash flow in initial phase – a critical imperative for business revival. For the sake of fairness & equitability, this option could come at a rate of return earned by the business over the moratorium period.
 - Introduce financing schemes where cost of capital is linked to coupon rate or T-Bills or some other similar benchmark thereby augmenting the serviceability of the debt inherited.
 - Establish a panel of experts attached with MCA / NCLT / DRT / IBBI that oversees the ongoing cases, builds repository of knowledge gained and leverages lessons learnt & best practices.
- Lenders c/should:
 - Put their skin deeper in the game by connecting / expanding / facilitating larger Investors' Pool to Resolution Professional for Resolution Plan leveraging their vast network and experience in dealing with the community, across the sectors & geographies. This would minimize haircut, expand competition & enhance the probability of realizing higher value.
 - Proactively engage with Insolvency Resolution Professionals having hands on experience in turning around the businesses rather than solely relying on appointed / designated Insolvency Professional, many of whom are excellent accountants and lawyers but lack real understanding of the business and sector.
 - Rely on external expertise for representation in Committee of Creditors. This not only shall help bring more objectivity in entire decision making but also ensure that common benchmarks are quickly established across the otherwise independent institutions that often operate in isolation.
- Promoters c/should:
 - Consider this as an opportunity to come clean and relieved rather than fear of losing business or reputation. Entrepreneurship is more about building & scaling and less about retaining.
 - Establish early warning systems / checks by conducting periodic stress tests. These should be conducted by external experts to avoid any conflict of interest / fear of reprimand / witch hunting.
 - Voluntarily highlight external factors that stressed the business, like policy change, sectoral shift etc., that were out of their reasonable control. This should also include the assumptions that might have gone wrong or risks either not identified or not considered material & therefore not sufficiently provided for.
- Resolution Professional c/should:
 - Go beyond compliance with the code, that is given & mandatory, and wear the hats of Business Leader & Entrepreneur.
 - Measure her / his success on quick revival, early liquidation – if inevitable and maximization of Asset Value rather than mere meeting the timelines and process compliance.
 - Be remunerated handsomely to ensure her / his full attention & devotion. It is a full time Chief Executive's role, with little prior understanding of conglomerate's structure, culture, systems and processes and there is no luxury of training / grooming. Resolution Process is T20 with Test Match rules – Deliver from the day one with little understanding or preparation or support system – that is suspicious by definition and often could be hostile.

IBC has brought in a paradigm shift, not only in the business viability / sustainability analysis but also in the attitude of community of stakeholders, particularly promoters and lenders. Expectedly, it is facing obstacles that are procedural, as well as driven by vested interests. While the government is quite keen to address the former challenges, it is the obligation & duty & in the self-interest of the professionals engaged in the sector that later group does not succeed in jeopardizing an otherwise great initiative. Those following up the developments / murmurs in the sector would endorse that fears are not imaginary, and forces are out to frustrate the entire exercise. Let the sense prevail over sensation.

As always, look forward hearing your comments. Do let me have!