

Four Pillars on which the IBC 2016 rests—

Now that the Law is two years old, it is time to take a review of what happened since its birth and what more can be done to achieve the desired the goals.

The four pillars on which the entire edifice stands are:

1. Insolvency and Bankruptcy Board of India
2. National Company Law Tribunal
3. Information Utility
4. Insolvency Professional

When the law was enacted, it was feared that the support systems are not yet in its place and that at some point of time there would be either clogging and/or some serious problems which will undermine the utility of this law. Against this backdrop, let us deal with each of the pillar.

Insolvency and Bankruptcy Board of India

Of the four pillars, IBBI has come out with flying colours, if one is go by their record and responses so far.

Probably there is not a single case where IBBI has breached the time lines set for itself. If anything, IBBI has been proactive in anticipating certain problems and dealt with those problems / issues remarkably well. It has ---to my mind ---following additional achievements to its credit.

1. Giving guidance to various stakeholders by holding seminars and also organizing press conferences for giving clarifications on the issues confronting at that point of time.
2. The Regulator's effort to bring out a quarterly giving different kind of relevant information to all the stakeholders—has been simply commendable. The quarterly gives information about various

developments as regards cases filed and various judgments pronounced by NCLT, NCLAT, High Courts and the Supreme Court.

3. It has been constantly pursuing the three Insolvency Professional Agencies ---who are first level regulator to Insolvency Professionals ---to train the Insolvency Professionals.
4. By all accounts, it has responded to NCLT within the deadline as regards appointment of Insolvency Professionals.

NCLT

There was a dominant view that the first roadblock will be at NCLT. Considering the expected number of cases, it was apprehended that NCLT benches just would not be sufficient. It was also feared that the strict time lines—prescribed in the law, particularly for NCLT—may not be kept because of the feared clogging. Though the response from NCLTs is encouraging, it is feared that sooner or later there will be serious issues-- --as regards various time lines---unless bench strength is increased and infrastructure wise NCLTs are strengthened.

Insolvency Professionals

Some experts ---at the relevant time ---opined that India does not possess requisite number of trained Insolvency Professionals to handle the expected workload and it would be wrong to depend on such untrained professionals to handle the onerous tasks. To my mind, the fears had some basis. Going by the number of disciplinary actions ---initiated by IBBI/Insolvency Professional Agencies ---against insolvency professionals, it is felt that calibre wise Insolvency Professionals leave much to be desired. This is not to cast aspersions on their ability and desire to do what is expected. But one must also think about the losses inflicted on the economic assets because of inefficient handling of the

cases by Insolvency Professionals. The problem is ---once the enterprise goes the liquidation way, there is no way the loss can be made good.

Information Utilities

It is expected that Information Utilities will store financial data like borrowings, default and security interests among others of firms. It is expected to provide high quality, authenticated information about debts and defaults. What is of essence is the fact that information available with the utility can be used as evidence in bankruptcy cases before NCLT. Great reliance had been placed on Information Utilities with a view to facilitate implementation of the law. The Information Utilities were expected to be in place when the law came into force in December, 2016. National e-Governance Services Ltd [NeSL] ---the first [Information Utility](#) --- came to be established sometime in September, 2017. It has aided the intention of speedier disposal of cases.

In my view, following suggestions be considered to ensure speedier and effective implementation of the law.

1. Insolvency Resolution Professionals

- a) The present system allows registration with the IBBI after the new entrants pass the Limited Insolvency Examination and enrol themselves with any one of the Insolvency Professional Agencies and after they go through training sessions organized by Insolvency Professional Agencies. If we go by the onerous tasks that IPs are supposed to handle---whether in CIRP or in Liquidation process---preference be given to those who are aware about banking business / practices.
- b) Insolvency Professionals are not required to give any bond / guarantee and in case they commit some deliberate mistakes

which results into irreparable loss to stakeholders, he gets away with comparatively minor penalties. Hence it is suggested that NCLT should approve the appointments of IP subject to suitable bond. It would be worthwhile to study the system as it obtains in UK.

- c) There should be incentive to the IPs for trying their best to ensure that the enterprise comes out of the insolvency. It is known that the Committee of Creditors approves the resolution plan but IP can be made more proactive enough to get good resolution plans. I, however, admit that this is a grey area.

2. Insolvency Professional Agencies

- a) It is felt that IPAs should be in continuous touch with the concerned enrolled IPs. The continuous communication with the IPs can be used to know their difficulties in handling a particular case. Holding seminars are useful but at the same time there could be a need to establish one to one contact with the IPs on continuous basis to make them aware about the various developments with regard to Code as also developments in financial and legal areas which may have a bearing on their capacity to handle the task. IPAs can charge additional fees for this kind of additional work.
- b) IPAs should continuously monitor the knowledge level of the IPs enrolled with them. One must remember that the IPs are working in dynamic and complex environment. So it will always help them to update themselves with the latest knowledge particularly in the field of banking and legal area. IPAs can think of holding examination and / or interviews every two years.

