DEFAULTER'S PARADISE LOST

Demystifying the Insolvency and Bankruptcy Code, 2016

ANANT MERATHIA

FOREWORD BY
P. H. ARVINDH PANDIAN
SENIOR ADVOCATE

EXPERT INSIGHTS BY
DR. M. S. SAHOO
FORMER CHAIRPERSON, IBBI

THOMSON REUTERS

AN INTERVIEW WITH DR. M. S. SAHOO

(Distinguished Professor, National Law University Delhi and Former Chairperson, Insolvency and Bankruptcy Board of India)

1. How do you view the evolution and functioning of the Insolvency and Bankruptcy Code, 2016 (IBC/Code) over the last six years and how has it changed the insolvency and bankruptcy regime in terms of effectiveness compared to earlier regimes of resolving distressed companies?

The Code is a noble law since it endeavours to address the stress of a person, be it a company, a limited liability partnership, a proprietorship, a partnership firm, or an individual. This law is being implemented in phases. My response here is limited to corporate insolvency as provisions of the IBC relating to companies and LLPs, and guarantors (personal and corporate) only are in force today.

India did not have any experience of a modern insolvency regime that is proactive, incentive compliant, market-led, and time-bound. The Code and the underlying reforms, in many ways, was a journey into an unchartered territory - a leap into the unknown and a leap of faith. The amazing Indian journey of insolvency reminds me of a dialogue in the novel, 'The Sun also Rises' by Ernest Hemingway. The dialogue is: *"How did you go bankrupt?"; "Gradually and then suddenly"*. Most bankruptcies happen that way. Interestingly, the insolvency reforms in India too happened that way. While in the works for many years, the insolvency reforms suddenly took shape with the enactment of the

Code on 28th May, 2016. In no time, it became a reform by the stakeholders, of the stakeholders and for the stakeholders.

The implementation of a law of such significance usually throws up several challenges. All concerned took the challenges head on and resolved them expeditiously. The Code and regulatory framework underwent several amendments and refinements in sync with the emerging market realities. The Adjudicating Authority (AA), the Appellate Authority, High Courts, and the Supreme Court delivered numerous landmark orders to explain several conceptual issues and settle contentious issues and resolve grey areas with alacrity. A standing committee, the Insolvency Law Committee (ILC) continuously reviews the implementation of the Code to identify issues and make recommendations to address them.

An economic law is essentially empiric. It evolves continuously through experimentation. The Code is no exception; it has been a road under construction and I believe, it would remain for decades. The very first resolution plan approved under the Code yielded a haircut of 94% for financial creditors (FCs), while promoters wrested control of the company. This was considered rewarding unscrupulous persons at the expense of creditors, which was not acceptable. The Code made prompt course correction through an Ordinance that prohibited persons with specified ineligibilities from submitting resolution plans in a corporate insolvency resolution process (CIRP) to ensure sustained resolution of stress. The Code has so far witnessed six legislative interventions, five of which are by way of Ordinances in view of urgencies which demonstrate the keenness of the Government to continuously improve the resolution framework. Each of these six amendments have strengthened the processes in sync with the emerging market realities and reinforced the primary objective of the Code, namely, revival of companies.

The primary objective of the Code is rescuing lives of companies in distress. Till March, 2022, the Code has rescued about 480 such companies through resolution plans, one third of which were in deep

distress. However, it has referred 1609 companies for liquidation. The companies rescued had assets valued at Rs.1.31 lakh crore, while the companies referred for liquidation had assets valued at Rs.0.56 lakh crore when they were admitted to CIRP. Thus, in value terms, around 70% of distressed assets were rescued. Of the companies sent for liquidation, three-fourths were either sick or defunct and of the companies rescued, one-thirds was either sick or defunct.

The realisable value of the assets available with the companies rescued, when they entered the CIRP, was only Rs.1.31 lakh crore. The resolution plans recovered Rs.2.34 lakh crore, which is about 178% of the liquidation value of these companies. Any other option of recovery or liquidation would have recovered at best Rs.100 minus the cost of recovery/liquidation, while the creditors recovered Rs.178 under the Code. The excess recovery of Rs.78 is a bonus because of the Code.

Beyond revival of companies and realisations for creditors, the credible threat of the Code, that a company may change hands, redefined debtor-creditor relationship prompting resolutions in the shadow of the Code and substantial recoveries for creditors outside the Code, while the improving performance of companies. The Apex Court noted the success of the Code with the words: *'defaulters' paradise is lost'*, while upholding the it's constitutional validity. Many debtors today beg, borrow or steal to resolve stress at early stages to avoid the consequences of CIRP.

The Code has established the supremacy of markets and the rule of law in insolvency resolution, and professionalised the process of resolution while balancing the powers of suppliers of capital - debt and equity. It enables the stakeholders themselves to decide the matters for them instead of accepting a solution worked out by the State. Where the equity suppliers have failed to address the stress of a firm, the Code gives an opportunity to creditors to do so. The right of the promoters to cling on to the firm, irrespective of its conduct, is no more divine with several firms changing hands, despite valiant battles by some of them up to the Supreme Court.

The improvement in India's rank in World Bank's resolving insolvency parameter from 136th to 52nd position in three years, is testimony of the remarkable journey. The overall recovery rate for creditors jumped from 26.0 to 71.6 cents on the dollar and the time taken for resolving insolvency came down significantly from 4.3 years to 1.6 years. India is now, by far, the best performer in South Asia on the resolving insolvency component and does better than the average for Organisation for Economic Cooperation and Development high-income economies in terms of recovery rate, time taken and cost of a CIRP. The performance of the insolvency ecosystem has earned due recognition. India won the prestigious Global Restructuring Review Award for the 'Most Improved Jurisdiction' in 2018.

From providing freedom of exit to rescuing companies in financial stress to releasing entrepreneurs and idle resources stuck up in inefficient uses to helping creditors realise their dues and, most importantly, bringing about a behavioural change amongst the debtors and creditors alike, the list of achievements is a long one.

2. As the founder Chairperson of the IBBI, what do you believe has been the most important part of your role towards the insolvency and bankruptcy regime in India? What have been the biggest challenges and also your biggest support systems in dealing with these?

As the first Chairperson, my task was cutout. I was appointed as Chairperson of the IBBI on 1st October, 2016 to set up the IBBI which would groom the ecosystem and lay down the regulatory framework required for the implementation of the corporate insolvency provisions by 1st December, 2016. This required nothing short of a miracle. The immediate tasks included: market volunteering to set up Insolvency Professional Agencies (IPAs); individuals with right calibre to enrol with IPAs and seek registration with the IBBI as insolvency professionals (IPs); regulations relating to IPs, IPAs, CIRP and Liquidation Process to be in place; advocacy to spread the message of the Code and make the stakeholders aware of their role, and the IBBI to have the capacity to work on these. The law was

to be laid down; infrastructure to be created; capacity to be built; professions to be developed; the markets and practices to emerge; and stakeholders to understand the change in the offing, accept it and learn to use it to their advantage. I did not have any resource whatsoever in hand - no place to sit, not a single paisa, not even a peon or a computer; the institutions required for the implementation of a modern and robust insolvency regime did not exist; and there was some resistance from some quarters to accept the change. Yet, the entire regulatory framework in respect of service providers and corporate insolvency, and the entire ecosystem for corporate insolvency was put in place, which made the commencement of corporate insolvency proceedings possible by 1st December, 2016.

The IBBI is a novel experiment, having no parallel either in the Indian regulatory milieu or in the insolvency space elsewhere. Its authority over the registered entities and relationship with the AA was often misunderstood. For example, in the early years, some regulations were struck down by the AA and some others were challenged in Courts on the ground of the competence of IBBI. However, on appeals, these regulations have been restored. It is now settled that legality and propriety of any regulation cannot be considered by tribunals, and competence of IBBI has been upheld by the High Courts and Supreme Court. Now-a-days, the AA or the NCLAT calls upon the IBBI to make regulations/ guidelines to address the gaps noticed by them and the IBBI makes the best effort to address them, expeditiously.

The IBBI was, however, blessed with incredible good will and tremendous appetite of the stakeholders for the much-awaited insolvency reform in the country. The reforms very quickly attracted talented and aspirational employees to the IBBI, the best professionals to insolvency and valuation professions, and capable and empowered market participants to undertake transactions. Many eminent citizens joined the Working Groups and Advisory Committees of the IBBI and provided their precious time to guide the IBBI in laying down an appropriate regulatory framework in a virgin area. The Governing Board of the IBBI moved away from playing the traditional role. They motivated

out-of-box thinking, lent their expertise, and extended firm support for the successful implementation of the IBC. These people together ensured that the IBC was up and running in the shortest time, unprecedented in the history of any economic legislation in the country, and that of the insolvency laws around the world.

The kind of pro-active engagement IBBI had with stakeholders, including through hundreds of roundtables every year, has been unprecedented in many ways. The active role stakeholders have played has been commendable, turning out to be the most valuable resource of the IBC ecosystem. Many believe that IBC has been a reform by the stakeholders, for the stakeholders and of the stakeholders.

3. **While the Code is successfully providing a second life to several CDs, it is coming at a cost of huge debts being written off by the financial institutions and other creditors, leading to creation of a bubble of bad debts and Non-Performing Loans. What are your views on the effect of this bubble (or its bursting) on the financial markets and economy at the macro-level? Can the model of this Code be sustainable in the long run?**

It is axiomatic that a company coming to IBC does not have adequate assets to fully repay all its creditors. The companies, which have been rescued by resolution plans till March 2021, had assets valued, on average, at 17% of the amount due to creditors when they entered the IBC. This means that the creditors were staring at a haircut of 83% to start with. One third of these were defunct. The IBC not only rescued these companies, but also reduced the haircut to 70% for creditors.

About two years ago, *Ghotaringa Minerals Limited, and Orchid Healthcare Private Limited* caught media attention. They together owed ₹ 8,163 crore to creditors, while they had absolutely no assets when they entered the IBC process. Obviously, creditors had to take 100% haircut. On the contrary, Binani Cements and MBL Infrastructure have yielded zero haircut, in addition to rescuing the companies. The question arises why does IBC yield zero haircut in one case and

100% in another? It depends on several factors, including the nature of business, business cycles, market sentiments, and marketing effort. It, however, critically depends on at what stage of stress the company enters the IBC, as much as at what stage a patient arrives in the hospital. The best hospital can do little if the patient reaches with substantial haircut to his health. Similarly, if the company has been sick for years, and the assets have depleted significantly, the IBC may yield huge *haircut* or even liquidation.

Haircut is typically total claims minus the amount of realisation divided by amount of claims. This formulation does not tell the complete story. The amount of realisation often does not include the amount that would be realised from equity holding post-resolution, and through reversal of avoidance transactions and insolvency resolution of guarantors. The amount of claim often includes NPA, which may be completely written off, and interest on such NPA. It may include loans as well as the guarantee against such loans. These project a higher haircut than it is. That is why the World Bank finds realisation of 71.6 cents on the dollar.

It is appropriate to see haircut in relation to the assets available on the ground and not the claims of the creditors. Because market offers a value in relation to what a company brings on the table, and not what it owes to creditors. IBC maximises the value of the assets at the commencement of the process, not of the assets which probably existed earlier. Since it redeems a part of the going concern surplus, rescue is realising, on average, 178% of liquidation value of the existing assets, generating 78% bonus, instead of haircut. In addition to rescuing the company, IBC realises, of the available options for creditors, the highest in percentage terms. Post disposal of pre-IBC legacy matters, as relatively 'recent' stress cases are dealt, haircut may look decent.

Now let us move to the perception of write off. Most of the debt and defaults that came to IBC were written off years ago. Whatever the IBC realized for the creditors went straight to their profit-and-loss account. There is no

write off on account of resolution through IBC. As regards bad debts bubble, I mentioned earlier about the change in debtor-creditor relationship. There is no bubble as the NPA is down to the lowest ever level.

As regards sustainability, let me emphasize here the object of the Code. It's sole object is reorganisation, as stated in its long title. Such reorganisation has several benefits, namely, it promotes entrepreneurship, improves credit availability, maximises the value of assets of the company, etc. These are not objectives; the objective is only one and it is reorganisation. More importantly, recovery has no place in reorganisation; the word 'recovery' does not appear anywhere in the Code.

It is useful to recall the Tinbergen Rule. This rule, named after the first Nobel laureate in economic sciences, Jan Tinbergen, prescribes a basic principle of policy efficacy that the policy makers should have at least one policy tool for each policy target. There can be more than one policy to achieve one target but having one policy to achieve more than one target is troublesome. It is not easy to kill more than one bird with one stone, particularly when the birds are flying in different directions.

There can be many tools for reorganisation. In fact, there are. One may reorganise under the RBI's prudential framework, the Companies Act, 2016 and even outside any formal framework. I am labouring to emphasise the only objective of the Code and it is not the panacea for all ills.

The Code provides for reorganisation in two ways, first by rescue of the company through a resolution plan, failing which, by closure of the company through liquidation. It enables the market to make the choice. Market usually chooses to rescue a company if its business is viable or close it if it's unviable.

4. **It is seen that the Operational Creditors (OCs) are using the Code more as a tool/weapon for recovery of debts than revival of the Corporate Debtor, while the same is not in line with the intent of the Code, one may also say that the Operational Creditors have no greater incentive/**

role vested with them by the Code. What are your views on the same and how you do think the Code can be modelled to fix this challenge?

I do not have the data to conclude that the OCs are using the Code for recovery and that the FCs are using it for purpose of resolution. We have, however, seen several matters where the AA and NCLAT have penalised the applicants for initiating CIRP for purposes other than resolution.

The realisation for OCs through resolution plans has been relatively low. After the amendment to the IBC to include distribution of proceeds within the commercial wisdom, the realisation for OCs has been 2.2% as against that of 22.31% for FCs. This has taken away the incentive for OCs to invoke IBC as a means of recovery.

The Code entitles the both FCs and OCs to initiate CIRP. The universe of OCs is far more than that of FCs. It is natural that the OCs initiate more CIRPs. Nevertheless, the number is not very high; till March, 2022, the CIRPs initiated by OCs are slighter higher with OCs initiating 2699 and FCs 2236.

5. **How in your opinion can the existing position of the Operational Creditors be bettered in the Code, especially given that the haircuts they receive and little to no benefits they mostly receive vide resolution plans, can in turn cause a domino effect of corporate insolvency resolution processes? Can there be an improvement to this cycle?**

It is important to note that the OCs have been major beneficiaries of the Code. The credible threat of the Code, that a CD may change hands, has changed the behaviour of debtors. Thousands of debtors are resolving distress in the early stages. They are resolving when default is imminent, on receipt of a notice for repayment but before filing an application, after filing application but before its admission, and even after admission of the application, and making best effort to avoid consequences of resolution process. Most companies are rescued at these stages. Till March, 2022, 21,100 applications for initiation of CIRPs

of CDs having underlying default of Rs. 6,09,482 crore were resolved before their admission. Most of these were initiated by OCs.

With the COVID setting in, the threshold for initiation of CIRP was increased to Rs. 1 crore. This has deprived OCs having amount due between Rs.1 lakh and Rs.1 crore from using IBC. This threshold needs to be brought down to Rs.1 lakh to make IBC accessible to a larger number of OCs.

Though resolution plans are capturing almost the entire going concern surplus, over and above the liquidation value (LV), it does not seem to benefit OCs at all. They are realising as little from resolution plans as from liquidations. If resolution process yields liquidation, both FCs and OCs would receive only LV as per waterfall. Let the LV be distributed vertically among FCs and OCs, as per waterfall. Any excess of resolution proceeds over the LV belongs to all creditors and must be equitably shared. Let it be distributed horizontally among all creditors in proportion to their claims. Let us assume, LV is 100, while the company owes 900 and 100 respectively to FCs and OCs and resolution Plan offers 190 for creditors. Let FCs get LV of 100, and the excess 90 be distributed to FCs and OCs in the ratio of their remaining claims of 800:100, whereby FCs get 80 and OCs get 10.

There are several other concerns in relation to rights of OCs. For example, an OC does not have right to sit in the meetings of the CoC, while promoters and directors of the company, who were probably responsible for stress, have, albeit without voting rights. Further, performance of FCs in the last five years has cast doubts on their abilities based on which BLRC distinguished them from OCs. Balancing the interests of FCs and OCs is fundamental to the harmony and success of IBC. Any deviation needs to be corrected fast. The outcome of this realisation should end like the happy ending of the story of Cinderella.

6. **In your opinion, should India be looking at notifying and giving effect to the provisions pertaining to individual and partnership insolvency regimes under the Code in the near future given the fact**

that the pandemic has caused a lot of disruptions and also considering that there are numerous judicial pronouncements shaping the law in a dynamic manner?

The Code envisages insolvency resolution of three categories of unincorporated entities, namely, personal guarantors to Corporate Debtors, partnership firms and proprietorship firms, and other individuals. Each category is unique and needs a separate dispensation. In the first phase, the provisions of the Code dealing with insolvency and bankruptcy of personal guarantors to corporates have been implemented.

Partnership and proprietorship firms are the breeding ground for entrepreneurship. A key benefit of the Code is promoting entrepreneurship through reorganisation of these firms. This benefit would accrue only if the Code is implemented in respect of these firms. It is absolutely essential that the provisions relating to these firms are implemented immediately.

The Code provides for a fresh start process for individuals which is available only to those debtors who have an annual income ≤ Rs.60,000, assets ≤ Rs.20,000 and debts ≤ Rs.35,000 and do not have a dwelling unit. Only the debtor can file an application for fresh start for discharge of his debt. On conclusion of the process, the AA passes an order for the discharge of the debtor or revokes the admission of the application. The discharge order writes off the unsecured debts, allowing the debtor to start afresh, subject to an entry in the credit history. This provision, if implemented, would give relief to crores of people.

As regards other individuals, two enactments, namely, the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, are in force today, though not really in use. The Code makes several improvements over these two enactments. The provisions in the Code will potentially benefit the entire population of the country and therefore should be brought into force.

7. Sir, while there appears to be a model Code of Conduct for Committee of Creditors, there is nothing statutorily mandated as on date. Therefore, what in your opinion could be the possible parameters for ensuring that the decision-making process of the Committee of Creditors is extremely transparent and in line with the Code favouring resolution over recovery?

Ideally, a code for the CoC is a misnomer. FCs should have been driven by their self-interests; in concluding the resolution process fast, efficiently and by maximizing their return. Yet, a code for them to travel on the track of norms has become a necessity.

Successful implementation of the insolvency law requires (a) all players play by the rule book and they are subject to regulatory discipline, with quick consequences for contraventions, and (b) regulatory jurisdiction must rest with only one regulator.

Several proceedings have witnessed a variety of contraventions of provisions of the insolvency law by market players. Since the players are not within its regulatory domain, IBBI has tried three options, to deal with such contraventions, namely, directions to insolvency professionals to secure good conduct from players, filing of complaints in special court against the erring players, and filing of appeals to undo any irregularity. These have met with only limited success.

It is necessary to assign the administration of the Code to only one regulator, who would specify a code of conduct or any other regulatory tool and monitor compliance and adjudicate contraventions against all market players, including CoC. A sound regulatory design avoids any kind of regulatory overlap and gap. Since CoC is not regulated, there exists a regulatory gap.

8. Please provide us with a few insights about the nature and obstacles faced with implementation of PUFE transactions laws under the current regime and what changes, if any, will have to be brought in. Also, please share your views on the judicial pronouncements diluting the role of the RP to pursue these post approval of resolution plans? What would be the effectiveness of

the Special Courts constituted and established under the Code going forward?

Till March, 2022, avoidance applications involving amount of Rs.15106 crore have been disposed of. This has clawed back an amount of Rs.49 crore only. This gives an impression that the work done by RP in unearthing avoidance transactions have not stood the scrutiny of the AA.

To ensure that IP discharges his responsibility in respect of avoidance transactions, CIRP Regulations require the RP to form an opinion whether the CD has been subjected to any avoidance transaction on or before the 75th day of the insolvency commencement date, make a determination, on or before the 115th day of the insolvency commencement date (ICD), and apply to the AA for appropriate relief on or before the 135th day of the ICD. There are instances where some IPs have failed to discharge this responsibility.

Section 66(2) of the Code makes the directors liable for the loss to the creditors that arise during twilight zone. The twilight zone begins from the time when a director knew or ought to have known that there was no reasonable prospect of avoiding the commencement of resolution process till the company enters resolution process. During this period, a director has an additional responsibility to exercise due diligence to minimise the potential loss to the creditors and he is liable to make good such loss, on an application by the RP. This incentivises the corporate as well as its promoters and managers to seek resolution in early days of stress when possibility of resolution is higher. This provision, to my mind, has been rarely used. If used, no company would resist initiation of CIRP and in the process, the admission will be much faster. IP friends to assess the loss to creditors in twilight period and file applications under section 66(2). This will take away incentive of promoters to resist admission and enable commencement of resolution process when chances of resolution are high.

In view of the above, I do not feel concerned that the role of RP, post resolution plan, has been diluted. It is of utmost importance to develop capability among IPs or other professionals who can do a thorough job

relating to avoidance transaction which would stand the scrutiny of the Court. Avoidance applications involving an amount of RS. 2+ lakh crore are pending with AA for disposal. These need to be disposed of first and on time. If that is done, the judicial pronouncement you have referred to will have no consequences. Several actions can be taken to improve the outcome in relation to avoidance transactions, but performance of the RP and the AA are key.

9. How in your opinion would the pre-pack insolvency regime bloom in the near future, especially given the continuing effects of the pandemic even as on date?

CIRP has a set process and, therefore, some amount of inflexibility, which may limit its use in certain circumstances. Market, however, prefers flexibility to work out a tailor-made resolution best suited to the unique circumstances. It, however, does not like complete flexibility; it appreciates a guided path and wishes to avail benefits and sanctity of a formal process. In other words, the market prefers a semi-formal process which sidesteps the difficulties of a formal process but retains its benefits and sanctity. In a sense, the formal process and informal process are two ends of a spectrum and a variety of semi-formal processes, that blend elements from both, may exist to suit the convenience of the stakeholders. The most popular semi-formal option is prepack, which starts with an informal understanding among stakeholders, engages with them formally in between, and ends with a judicial blessing of the outcome. The insolvency laws around the world provide a variant of prepack, though the nuances differ across jurisdictions.

The market has been advocating and anticipating prepack resolution process for some time. In recognition of the need, law was amended to provide for prepack within the basic structure of the Code. It has not been in great use so far for three reasons: (a) It is available only in respect of a small set of persons, namely, corporate MSMEs, (b) formal part of the process exceeds the informal part, and (c) market needs to understand the nuances of a new process and hence some lead time is required for take-off. Nevertheless, the demand

by market to expand its reach to large companies even before experiencing the framework, in practice, in the context of MSMEs, lays bare its huge potential

10. What in your opinion are the prospective changes that would likely have to be brought into the Code and corresponding regulations? Can you give us an insight on any of the future discussions and developments which can be expected?

A law is a living institution that evolves with time. Legislative provisions are fundamental principles around which case laws get built up to provide clarity as may be required in specific contexts. Frequent legislative change limits natural process of institutional maturity, unsettles jurisprudence, undermines the evolution of market solutions, and provides a convenient cover-up for sub-optimal outcomes. It instils a false sense of confidence that every issue has a legislative fix. It is possible to greatly enhance the performance of IBC, with non-legislative fixes while limiting legislative fixes to essentials.

IBC has only one objective, that is, time-bound insolvency resolution. Except for exceptions, the experience has been anything but resolution or time bound. On priority, we should remove the rigidities and impediments in the way of resolutions and timeliness. Many of them do not require any legislative fix.

CIRP envisages resolution either by revival of the firm through a resolution plan, or its liquidation. A resolution plan resolves insolvency of a firm as a going concern. The plan should bring the firm back on its feet and improve its earnings, increasing valuation of the firm year after year, post resolution. That should improve the prospect of realisation for creditors, as compared to pre-resolution, where creditors have a skin in the game. However, most resolution plans resemble a mechanism for recovery for creditors, with immediate payouts for them, often at deep haircuts. The creditors must switch from recovery to resolution mode to rescue viable firms, which, in all likelihood, would reduce haircuts.

IBC envisages closure of unviable firms and rescue of viable ones. It allows a decision, as soon as CoC is constituted, to liquidate an unviable firm. The rescue of viable firms requires the CoC to consider feasible and viable resolution plans from credible and capable resolution applicants. Identifying viable and unviable firms, specifying eligibility for resolution applicants, and considering feasibility and viability of resolution plans require considerable business dexterity. IBC entrusts these tasks to CoC on the premise that it has such dexterity, keeps its decisions outside judicial scrutiny, and makes its decisions binding on everyone. Majority of unviable firms could be identified for liquidation, by the 30th day of the CIRP, by a CoC having commercial wisdom. If CoC finds a firm viable, it should make best efforts to generate resolution plans. Majority of CIRPs running the full course should rescue the firms. This necessitates massive capacity building to elevate the CoC to a higher orbit of commercial wisdom.

IBC provides for resolution, in case of default. This should encourage firms to be resolvable to have access to credit. Where the value of a firm lies in informal, off-the record arrangements or personal relationships among promoters, prospective resolution applicants may find it hard to trace and harness the value, making resolution of the firm remote. A firm should, therefore, create and maintain value, which is visible and readily transferable to resolution applicants. Having a sort of 'living will' would make resolution easier and faster. Creditors should prefer to extend credit to a firm which is resolvable and require it to remain so. Stakeholders should notice stress early and initiate resolution early for better outcomes.

There are issues of conduct on the part of professionals, debtors, creditors and resolution applicants. They at times deviate from their mandated role, engage in futile protracted litigation, renege on contracts on flimsy excuses and occasionally act *mala fide*. They must strictly play by the rule of the game and do everything in their command to facilitate time bound resolution. Quick and predictable consequences must follow in case of aberration.

The AA must dispose of matters in time - dispose of applications for commencement of CIRP in two weeks, pass liquidation orders promptly if no resolution plan is received within the CIRP period, approve resolution plan in about a month of its receipt, issue order for dissolution in about a month of receipt of final report of liquidation, dispose of applications for avoidance transactions before the closure of CIRP, etc., by following a non-adversarial procedure, without getting into the commercials of decisions. While strengthening and enabling the AA commensurate with the workload, Government should avoid litigation in relation to its claims and dues, permits and licenses, and enforcement actions.

Advocacy is required to promote evaluation of outcomes in terms of resolution, whether it resolved insolvency- rescued all viable firms and closed all unviable ones, and quality, cost and time of such resolution. The tendency to evaluate in terms of incidence of liquidations or extent of haircut must be eschewed to ensure that IBC remains on track. A stable law is necessary to help develop and mature the structures necessary to address these issues.