

Adherence to IBC timelines still a challenge, says Crisil report

K.R. Srivats New Delhi | Updated on May 06, 2019 Published on May 06, 2019

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Limited number of information utilities, clarity on priority of claims need to be addressed

Adherence to the IBC timeline, burden on NCLT to resolve the large number of cases, clarity on priority of claims, limited number of information utilities and creation of secondary asset market are some of the main challenges that need to be addressed under the Insolvency and Bankruptcy Code (IBC), an industry report said.

The report — titled ‘Strengthening the Code’ — has been put together by global analytics company Crisil and industry body Assocham.

Stating that it has not been smooth sailing for the IBC, which has completed three years, the report highlighted that the average resolution timeline for the resolved 94 cases was 324 days vis-à-vis the stipulated 270 days. Also, there are a few big-ticket accounts for which resolution has not been finalised for

over 400 days. As of end March, there were 1,143 cases outstanding under CIRP, of which resolution in 32 per cent of the cases was pending for more than 270 days, which is substantial in number.

Of the first dozen cases in the IBC referred by the RBI, the majority have crossed the maximum 270 days of resolution timeline, the report said.

However, if a comparison is being drawn, this is considerably faster than the recovery time taken by asset reconstruction companies, which is 3.5-4 years. Also, as per the World Bank's 'Doing Business 2019' report, the recovery timeline for stressed assets in India is 4.3 years.

NCLAT chief's view

National Company Law Appellate Tribunal (NCLAT) Chairman Justice SJ Mukhopadhya had a different take on the IBC timeline issue. At an industry event last week, he took a position that none of the cases have proceeded beyond 270 days if one were to exclude the "objection period" to the parties allowed under the procedures.

He compared the situation to a football game where although the playing time is 90 minutes, it is normal to provide extra time of about 3-5 minutes to compensate for injury time during the 90 minutes period.

Rise in cases

Post enactment of IBC in 2016, there has been a significant rise in number of cases referred to the National Company Law Tribunal (NCLT). From 37 cases till March 2017, as many as 1,858 cases have been admitted through CIRP to NCLT till March 2019.

As of March 2019, NCLT benches had approved resolution plans and liquidation orders in 94 and 378 CIRP transactions. Further, 91 cases were withdrawn under section 12A of the IBC.

The Crisil report has highlighted the limited number of Information Utilities in the ecosystem. As on date, there is only one information utility— National eGovernance Services Ltd — which was registered with Insolvency and

Bankruptcy Board of India (IBBI) in September 2017.

The IUs provide access to credible and transparent evidence of default, which helps in expediting the process of ascertaining a default for initiating the resolution process. They also facilitate quick formation of CoC, as all information regarding creditors' claims required to form the committee can be easily collected from them.

The Crisil report has also called for more clarity on creditor classification on the basis of their charge details, stating that there is limited clarity on this front.

For example, within secured financial creditors, there is limited clarity on how to prioritise the claims amongst the first charge/exclusive charge and second charge holders, and, subsequently how the distribution of proceeds needs to be done.

Published on May 06, 2019



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