

ACQUISITION UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016

SEMINAR ON IBC

JUNE, 2019

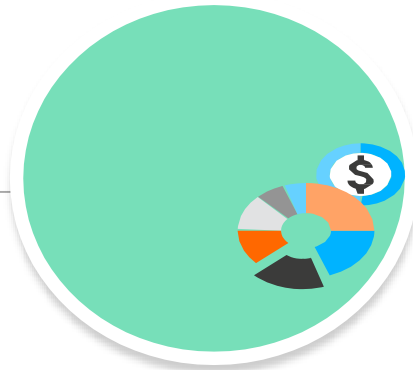
IBC- AN OVERVIEW

BACKGROUND



- Enacted when financial institutions in India were helpless chasing their overstressed accounts in largely protracted legal battles
- The law proposed to lay down a robust framework and time-bound road map to deal with distressed or failed businesses
- Reorganisation and winding up were dealt with under separate laws; no surety of debt recovery and limited success stories of resolution

GAPS



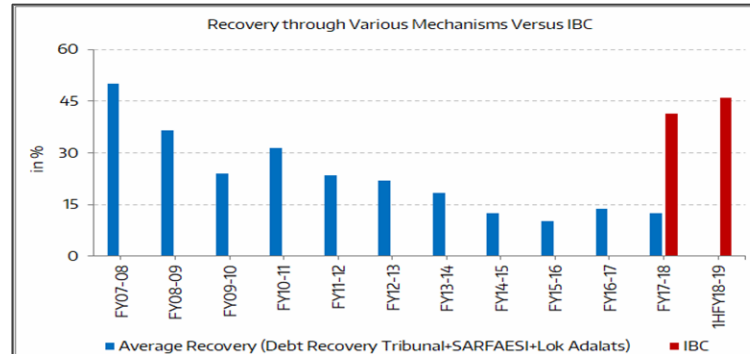
- Rivals can buy stressed assets for a song, in the absence of sufficient competition. Banks need capital to cover for haircut
- Plethora of reliefs sought by applicants during proposition of resolution, some maybe outside jurisdiction of authorities
- Not enough time for investor to complete due diligence
- High costs on a financially strained company
- Multiple stay orders, delaying the process further

ACHIEVEMENTS



- One-stop shop. Laws relating to insolvency consolidated into a single legislation; time-bound resolution of insolvency via new framework
- Genuine business failures are expected to get a second chance
- Control shifted from shareholders/promoters to a committee of creditors.

KEY PERFORMANCE METRICS



Outcomes of petitions admitted under the IBC (Jan, 2017- Jan, 2019)	
Outcome	No. of companies
Admitted	1322
Resolution	88*
Liquidation	260
Ongoing CIRP	974

Time taken from admission for completion for cases admitted till Sep '2018	
Outcome	Mean no. of days
Resolution	260
Liquidation	242

*Realization by creditors- ~INR 70,000 crore

- Overall recovery for Financial Creditors through resolution as a percentage of claims was around 48.24%
- The recovery has ranged from a low of 0.28% to greater than 100% in some cases, with max% for steel sector
- The numbers currently indicate a bias towards liquidation, despite the push for value maximization, possibly owing to numerous factors, including
 - Currently, IBC is on a “price discovery” mode, with lenders deeming the floor price as liquidation value
 - Lenders appear to favour one-time settlements for resolution, at a lesser NPV, which may not be acceptable to investors
 - Lenders run out of time during the decision making process, post which, liquidation is accepted as “fait accompli”

*Total sample set of 169 cases

RESOLUTION PLAN UNDER IBC

RESOLUTION APPLICANT (RA)

- The Resolution Applicant is usually a financial investor (ARC/ PE/Fund house etc), or a strategic investor (Company in the same or adjacent business space as the Corporate Debtor), or a consortium with a mix of these
- Expressions of Interest are invited from applicants who are able to demonstrate their ability to resolve the asset (eg- networth, AUM, committed funds)
- Post acceptance of the interest of the RA, due diligence of the asset is carried out, enabled by process advisors of the RP/ COC
- During submission of the resolution plan, various parameters of the RA are assessed, such as
 - Credit-worthiness
 - Financial strength
 - Experience of Key Management and promoters
 - Experience in the same/ adjacent sectors to evidence synergies, if any
 - Ability to turn around distressed assets

BUSINESS PLAN

- Financial contours to be included including payment to all creditors and stakeholders, including CIRP costs, against their dues, with timing and instrument of payment
- Source of funds to make payments
- Capital and liquidity actions required to maintain or restore the viability and financial position of the CD.
- Detailed financial projections, with key assumptions of the CD, post acquisition
- The risks associated with recovery options, and the mitigants
- Reliefs, concessions and support needed from all statutory authorities for effective implementation of the plan
- Steps to monitor business performance on a regular basis
- Key management proposed to be deployed

RESOLUTION PLAN UNDER IBC- LEGAL COMPLIANCE

Section of the IBC	Requirement with respect to Resolution Plan
Section 25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the Committee of Creditors ("COC") having regard to the complexity and scale of operations of business of the Corporate Debtor
Section 29A	Whether the RA is eligible to submit resolution plan as per the conditions stipulated under Section 29A of the IBC
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible as per the conditions stipulated under Section 29A of the IBC
Section 30(2)	Whether the Resolution Plan provides for: <ul style="list-style-type: none"> (a) payment of insolvency resolution process costs in priority to the payment of other debts of the Corporate Debtor (b) payment of the debts of operational creditors which shall not be less than the amount to be paid to the operational creditors in the event of liquidation of the Corporate Debtor under Section 53 of the IBC (c) Management of the affairs of the Corporate Debtor (d) provides for the implementation and supervision of the Resolution Plan (e) contravenes any of the provisions of the law for the time being in force
Section 30(4)	Whether the Resolution Plan: <ul style="list-style-type: none"> (a) is feasible and viable, according to the COC (b) has been approved by the COC with 66% voting share
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board

RESOLUTION PLAN UNDER IBC- LEGAL COMPLIANCE

Regulation 38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.
Regulation 38(1A)	Whether the Resolution Plan includes a statement as to how it has dealt with the interests of all stakeholders including financial creditors and operational creditors of the Corporate Debtor
Regulation 38(1B) read with Regulation 39 (1)(c)	Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the IBC. As per Regulation 39(1)(c) of CIRP Regulations: An undertaking by the Resolution Applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit and attract penal action under the provisions of IBC.
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule (b) for the management and control of the business of the corporate debtor during its term (c) adequate means for supervising its implementation
Regulation 38(3)	The Resolution Plan should demonstrate that - (a) it addresses the cause of default (b) it is feasible and viable (c) it has provisions for its effective implementation (d) it has provisions for approvals required and the timelines for the same (e) the Resolution Applicant has the capability to implement the Resolution Plan
Regulation 39(2)	Whether the Resolution Professional has filed applications in respect of transactions observed, found or determined by him

PROCESS ADVISOR- INTEGRAL TO VALUE MAXIMIZATION IN RESOLUTION

PROCESS ADVISOR ACTS AS AN INTERFACE BETWEEN COC, RP AND INVESTORS

Understanding the Strengths of the Business which could be key to prospective investors

BUSINESS OPPORTUNITY

Identify the Value Drivers and possible forward and backward integration opportunities with clients

IDENTIFYING

Leverage their M&A expertise and business network to communicate with prospective investors regularly

M&A EXPERTISE

Market the opportunity extensively through collateral including Teasers, Information dockets, etc

MARKETING

Efficiency in running a fair, transparent and clear process with all participants to avoid litigations

PROCESS

CASE STUDY - EPC COMPANY RESOLUTION UNDER IBC

Transaction Closure

Being an EPC company, recovery to lenders will be different for different lenders. 100% protection to non fund based lenders along with reasonable value to fund based lenders enticed the lenders to vote for the resolution plan.

Sector challenges

EPC Company faces many challenges under IBC and there are reasons why resolution of an EPC company has seen tough times. However with proper planning and addressing sectoral challenges, EPC company can be resolved under IBC

Role of Process Advisor

Process advisor plays an extremely important role in finding a balance between investor and CoC. Amongst many things, Process advisor negotiates on behalf of lenders for best possible recovery, provides assistance to lenders in taking an informed decision.

Marketing effort

BDO reached out to prospective investors who showed interest in PQs, existing order book, niche segments which the Company operated. Marriage of strategic and financial investors was also an option to generate best possible interest



Injunction Order

Most EPC projects agreements provide for clauses which enable clients to invoke bank guarantee in case of any insolvency / bankruptcy. Seeking timely injunction order for applying section 14 moratorium on project principals, is step in right direction for salvaging the Company

Completion of Ongoing projects

Completing ongoing projects in a timely manner generated allimportant cashflows and provides assurance to the beneficiaries / project principals of possible resolution . The team conducted meetings with Beneficiaries visited various project location, allocated limited cash balance to Defense and Transmission tower segment which were profitable.



THANK YOU