

Making the IBC work

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The aim

... reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets ... to promote entrepreneurship, availability of credit and balance the interest of all stakeholders ...

Outcomes

*... reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a **time bound** manner for **maximisation of value** of assets ... to promote entrepreneurship, **availability of credit** and balance the interest of all stakeholders ...*

1. Time bound insolvency resolution
2. Maximisation of value
3. Availability of credit

Of these, time bound resolution is measurable in real-time. The others need a longer time for realisation and measurement.

How is the IBC working?

Keeping a time bound manner

Felman et al, 2018:

| Month | Others (avg time (days)) | | | RBI-12 (avg time (days)) | | | |
|---------|--------------------------|--------------------------|-------------------------|--------------------------|-------|-------------------------|----------------------|
| | Cases | Liquidation ¹ | Resolution ² | Ongoing ³ | Cases | Resolution ⁴ | Ongoing ⁵ |
| Jan-17 | 7 | 4 (282) | 2 (235) | 1 (546) | - | - | - |
| Feb-17 | 10 | 5 (219) | 2 (251) | 3 (519) | - | - | - |
| Mar-17 | 14 | 9 (314) | 1 (273) | 4 (489) | - | - | - |
| Apr-17 | 24 | 10 (314) | 4 (261) | 10 (465) | - | - | - |
| May-17 | 30 | 15 (283) | 4 (230) | 11 (438) | - | - | - |
| Jun-17 | 36 | 16 (263) | 3 (250) | 17 (401) | - | - | - |
| Jul-17 | 38 | 12 (233) | 2 (245) | 19 (372) | 5 | 2 (312) | 3 (367) |
| Aug-17 | 83 | 20 (221) | 3 (170) | 54 (344) | 6 | 2 (321) | 4 (349) |
| Sept-17 | 94 | 19 (220) | 1 (160) | 74 (310) | - | - | - |
| Oct-17 | 41 | 10 (181) | | 31 (283) | - | - | - |
| Nov-17 | 49 | 6 (199) | | 43 (251) | - | - | - |
| Dec-17 | 57 | 8 (181) | | 49 (223) | - | - | - |
| Total | 472 | 134 (242) | 22 (233) | 316 (314) | 11 | 4 (316) | 7 (358) |

Source: IBBI

This evidence is incomplete, and based only on the cases that we are able to observe data for from the IBBI website.

Keeping a time bound manner at NCLT: from filing to disposal

Zaveri et al, 2018:

| Stages | First 6 months | | First 1 year | |
|-----------------------------------|-----------------|--------------------|-----------------|--------------------|
| | Number of cases | Median time (days) | Number of cases | Median time (days) |
| From filing to first hearing | 12 | 18 | 211 | 16 |
| From first hearing to final order | 43 | 16 | 115 | 34 |

This evidence is incomplete, and based only on the where the relevant data is reported in the NCLT orders on admission / dismissal, during this period.

Next steps?

Keeping the reforms moving

Shah Thomas, 2017: Nine handles on insolvency and bankruptcy reforms

1. Law
2. Regulations
3. IBBI
4. IUs
5. IPs and support (insurance, valuers)
6. IPAs
7. The adjudicating authority
8. Creditors
9. The resolvers

Keeping the reforms moving

1. Law

- ▶ Need a more principle based approach to change. For example, '29 A'
- ▶ What should go into regulation vs. the law? For example, freedom to trade debt during IRP, freedom to sell business units for financing, freedom to resolve conglomerates.

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9. The resolvers: assess barriers to entry

Few big ideas

Insolvency resolution, not revival

- ▶ The IBC rationale focusses on rapid insolvency resolution:
 - ▶ Retain the enterprise if there is commercial rationale.
 - ▶ Get capital out if there are alternative investment opportunities.

Not revival. Not restructuring.

- ▶ IRP is solely a commercial decision.
There is a lot more judicial intervention that comes in liquidation.
- ▶ Liquidation is of the existing business entity. Not necessarily of the business.

How can the IBC be used to support this?

- ▶ Market participants need certainty and freedom to manoeuvre at various stages of the process: during IRP, in liquidation.

How can the IBC ecosystem support this?

- ▶ Information asymmetry reduction:
A combination of Information Utilities and markets – IUs for validation of claims and assets; Markets for validation of value.

- ▶ Strengthening judicial support.

Even for a fixed size of the adjudicators, better court administration can enhance judicial output.

Breaking the barrier of the lack of knowledge and certainty

- ▶ When data is weak, anecdotes rule and outliers rule.
- ▶ Absent data, the research is very expensive.
Absent research, practitioners and policy makers make sub-optimal decisions.
- ▶ Practical intuition will inevitably follow a slow and error-correcting path on how to do things.
It is faster to get to the same place by looking at the evidence.
- ▶ BLRC vision for the bankruptcy process was a data rich environment.
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- ▶ Building a data rich environment:
 1. Release of comprehensive facts from NCLT and IBBI
 2. Release as .csv files
 3. Design data release for researchers, not practitioners
 4. SEBI, LODR, listed companies: A strong justification to release everything: from date of default to resolution plan to facts after.

Being prepared

- ▶ A data rich environment is the first step.
- ▶ Build a research community that is already familiar with this data.
- ▶ When the push comes is not the right time to start scrambling for evidence or analysis.

This groundwork needs to be laid before hand.

- ▶ Eg., the knowledge required for the BLRC reforms started in 2010 by a team of legal and economic researchers at the Finance Research Group.

Eg., the drafting expertise deployed in creating the first draft insolvency and bankruptcy bill was gained in the work of the FSLRC drafting work in 2011-2013.

And we have only begun

The story so far

- ▶ IBBI began operationalised in October 2016, and IBC was open for business in January 2017.
- ▶ RBI pushed 12 large cases in March 2018. Shah Thomas 2017 warned these would burden the nascent IBC ecosystem unduly.
- ▶ Since then, we count 160 out of 483 and 4 out of the RBI 12 as resolved (censored estimate).
- ▶ The system has survived - thus far.
- ▶ But the story has just started.

A common opinion on the Indian balance sheet crisis

- ▶ We think we know the worst:
First, there was the RBI-12. Then came the 48.
- ▶ But these are not the big bad problems,
and
after this the problem is not largely solved.

Problems of the private non-financial firms: 2015-16 evidence

A firm is “Stressed” if $ICR < 1.5$ in 2014-15 and in 2015-16.

| Parameter | All firms | Stressed firms |
|----------------------------------|-----------|----------------|
| Number | 8,275 | 3,296 |
| Total borrowing (Rs. T) | 30.04 | 16.89 |
| Bank borrowing (Rs. T) | 16.28 | 9.50 |
| Share in India's non-food credit | 20.91 | 12.2 |

- ▶ \exists 8,275 private non-fin firms in CMIE data in both years.
- ▶ Of these, 3,296 are stressed and they add up to 12.2% of the total non-food credit of India.
- ▶ Given the difficulties of the overall economy, it is likely that things could be worse today.
- ▶ The firm in the focus of the RBI problem add up to a subset of this bank borrowing or total borrowing.

The need to be prepare

- ▶ There is a lot waiting to be done in bringing bad assets into IBC.
- ▶ The IBC ecosystem is slowly but surely finding it's feet. But the pace is slower than the likely pace of the problems to break going forward.
- ▶ In addition to the work listed on the nine reforms handles, we need to prioritise building the knowledge environment: For eg, there is a Dept on Statistics and Knowledge Partnerships described in the MCA working group report on the organisational structure of IBBI, that needs to be sufficient staffed to carry out the tasks visualised there.

Thank you.

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