Building wherewithal in institutions under the Insolvency and Bankruptcy Code, 2016

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March 24, 2018

Recap: Why IBC?

Circa 2015:

Insolvency and recovery of debt in India: Ease of Doing Business (2015)

	India	OECD
Time for recovery (in years)	4.3	1.7
Recovery rate	25.7%	71.9%
Outcome	Piecemeal sale	Going concern
Strength of insolvency framework (on a scale of 16)	6	12.2

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Intended outcomes of IBC:

1. Increase recovery rates in insolvency.

2. Reduce the time to recovery.

3. Change credit market landscape.

Recap: Why IBC?

Means to get outcomes

1. Access to recovery mechanisms for a wide variety of creditors
2. Commercial decisions in resolution
3. Intergrity of the law:
    - Minimal judicial and state intervention.
    - Consistent decision making.
4. Strong institutional machinery:
    - Well functioning regulator.
    - Competitive industry of IPs, IPAs and IUs.
    - Well functioning NCLTs and the NCLAT.

Is the IBBI a well functioning regulator?

- Defining constraint in Indian policymaking is State capacity.

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- The best run regulator is different from the best run private organisation.
  - Profit motive creates natural incentives for re-organisation and feedback loops for private organisations.[1]

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    - Profit motive creates natural incentives for re-organisation and feedback loops for private organisations.[1]
    - Implication: Organisation design of a regulator is important on Day 1.

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The IBBI (contd.)

Parameters for evaluation

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Capacity building with respect to market development	?
Capacity building with respect to research	?

Insolvency Professional Associations

IPAs modelled as competitive self regulatory organisations. Three advantages:

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- ► Restrictive regulatory framework. Example:
    - ► Cannot engage in any business other than that of an IPA.
    - ► Section 8 company.
    - ► Cap on foreign ownership and management.

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    - ▶ Cap on foreign ownership and management.
- ▶ Weak capacity building.

Adjudicating Authority

Two questions:

1. Does the NCLT function within the timelines set in law?
2. Is the role played by the NCLT as visualised within the IBC?

[2]Chatterjee et al, Watching India's insolvency reforms: a new data-set of insolvency cases IGIDR Working Paper (2017)

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Empirical approach towards these two questions[2]:

- ▶ Sample period: 1st December, 2016 to 31st August, 2017
- ▶ 488 final orders
- ▶ 23 fields - binary values, numerical values, qualitative categories
- ▶ Hand collected data.

An empirical approach towards studying peformance of the NCLT

Who triggered the IBC?

Creditors	436
Operational creditors	267
Financial creditors	123
Unkown	46
Debtors	73
Unknown applicants	6
Total	515

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Types of operational creditors

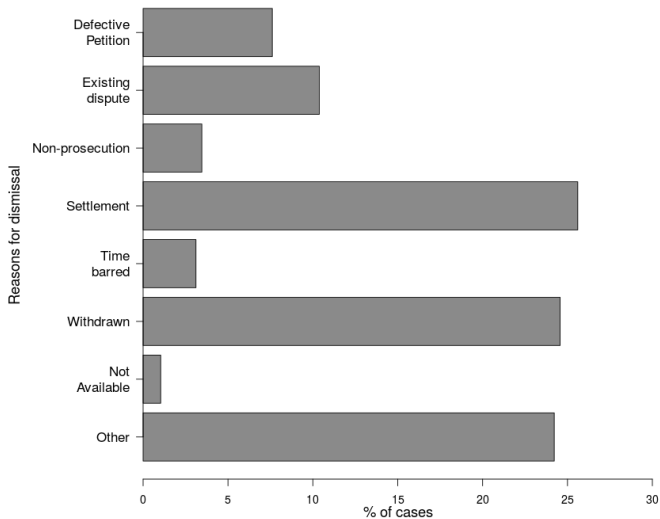|	
Vendors	133
Employees	15
Others	19
Unkown	100
Total	267

Outcomes of petitions disposed of

Admission and dismissal rates (in %)

	Total	Operational creditors	Financial creditors	Corporate debtors
Cases admitted	43	32	65	79
Cases dismissed	56	68	33	20

What kind of cases are being dismissed?

Duration of cases

T0: Date of filing
T1: Date of first hearing
T2: Date of final disposal

Average time for disposal of insolvency petitions

Stage	Obs.	Average time (in days)
T0 to T1	56	19
T1 to T2	156	20
T0 to T2	82	37

What kind of cases are being dismissed? (contd.)
Judicial interventions

- Cases where the NCLT has taken a view on the solvency of the debtor. Cases have been dismissed because:
    - Debtor could demand receivables from other counter-parties and fix the financial health of the company.
    - Debtor's balance sheet is healthy enough.
- SC, NCLT and NCLAT allowed settlement post admission.
- Jaypee Homebuyers case

Takeaways from the data

- We know (or can get) some answers:
  1. Kinds of creditors and debtors.
  2. Admission and dismissal rates.
  3. Reasons for dismissal.

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- We know (or can get) some answers:
  1. Kinds of creditors and debtors.
  2. Admission and dismissal rates.
  3. Reasons for dismissal.
- What do we not know?
  1. Whether and to what extent does the debtor get a hearing?
  2. Time taken to dispose off petitions.
  3. Number of interim orders.
  4. Data from appellate tribunal.

Observations for improvement of data from NCLT

1. Orders not standardised - results in several gaps.
   - Date on which debt was due or default occured.
   - Date on which application was filed.
   - Date of first hearing.
   - Number of interim orders passed.
   - Evidence of default.
   - Whether debtor given a chance to be heard?
2. NCLAT does not upload the orders passed by each of its benches.

Other data for empirical analysis

1. Recovery rates after implementation of resolution plan.
2. Decision making at the level of the creditors' committee.
3. Costs of insolvency proceedings.

Thank you.