

Insolvency and Bankruptcy Code

Reduction in timelines for completion of the resolution process should be of utmost priority to strengthen IBC

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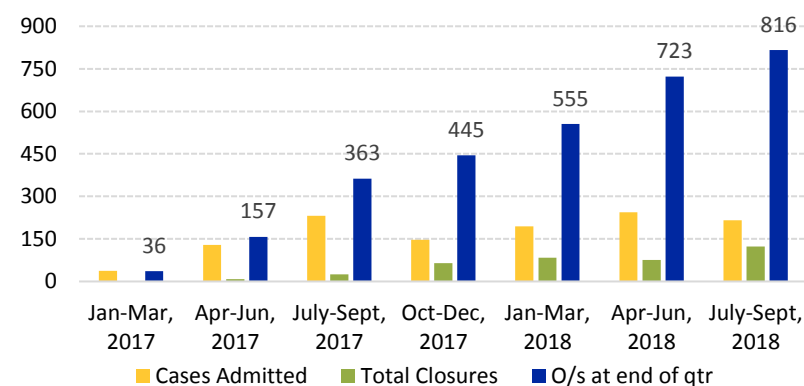
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The confidence in the Insolvency and Bankruptcy Code (IBC) has gradually grown, since its introduction in December 2016, amongst the creditors to ensure the recovery of their dues from defaulting corporate debtors. What started as a trickle has grown into a tide as the number of applications to the National Company Law Tribunal (NCLT) has steadily increased. If the IBBI's vision of the code is to be followed, wherein defaulting entities are brought to the NCLT at the earliest, then the number of such applications would only increase manifold. In such a scenario, it would be imperative to ensure that the NCLT is in a position to take timely action to address the grievance of the creditor and admit a rightful application in a reasonable amount of time. However, the growing number of applications has already challenged the infrastructure of the NCLT, thereby raising concerns on the effectiveness of the resolution process if it continues to face significant delays.

Exhibit 1 highlights the increase in the number of cases over the quarters that are yet to be resolved through the corporate insolvency resolution process (CIRP). The number of such corporate debtors increased to 816 as on September 30, 2018 from 723 as on June 30, 2018, despite the quarter having the highest closure of cases seen so far at 123. ICRA notes that the number of cases admitted by the NCLT also witnessed a decline to 216 in the September 2018-ending quarter compared to the previous quarter (244) even though the petitions to NCLT remain significantly high, thereby highlighting the infrastructure issues and the over-burdening of the NCLT benches.

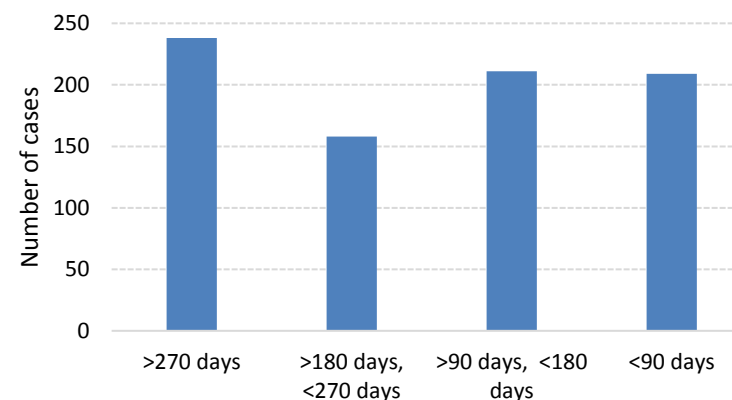
Of the 816 on-going CIRPs as on September 30, 2018, about 30% of them have already exceeded the 270-day timeline which was supposed to be the maximum timeframe allowed for the resolution process to be completed as per the IBC. Another 20% of the cases have crossed the 180-day timeline, as seen from Exhibit 2. ICRA observes that one of the key reasons for the delays in the completion of the resolution process has been the litigations filed by the different parties, viz. existing promoters, dissenting creditors or resolution applicants, with the NCLT or the NCLAT, and in some cases, even the Honourable Supreme Court, thereby elongating the entire process. In certain instances, the final approval by the NCLT on the proposed resolution plan has also gotten delayed due to the shortfall in the requisite bench strength to take up the matter in a timely manner. Apart from the delays in closing the resolution process, there have been challenges in timely admission of a corporate debtor by the NCLT. As per the IBC, the NCLT is required to admit or reject an application against a corporate debtor within 14 days of its submission; however, given the significant number of applications pending, the cases are taking significantly much longer time to be admitted by the NCLT.

EXHIBIT 1: Number of cases undergoing CIRP



Source: IBBI, ICRA Research

EXHIBIT 2: Timelines for on-going CIRPs as on September 30, 2018



Source: IBBI, ICRA Research

EXHIBIT 3 Duration for CIRP for RBI's first 12 companies

The delays in the CIRP are further exemplified by Exhibit 3 which lists the 12 large defaulting accounts identified by the Reserve Bank of India (RBI) in June 2017. Of the same, only four cases have been successfully resolved whereas the other cases still remain unresolved even after more than 450 days have surpassed since being admitted by the NCLT (except for Era Infra Engineering Limited). Some of these entities have been entangled in litigations emerging out of new areas such as factoring in late bids by resolution applicants, interpretation of Section 26A on eligibility of applicants etc. ICRA, nonetheless, expects that the judgements on these litigations would set a precedent for future resolution processes and thus help in easing the entire resolution process and ensuring timely completion of the same in the future. The commitment of the various stakeholders to achieve this objective would remain important, going forward.

Corporate Debtor	Date of admission by NCLT	Duration for CIRP (as on Nov 3, 2018) (in days)
Bhushan Steel Limited	26-Jul-17	293 (resolved)
Essar Steel India Limited	2-Aug-17	457 (on-going)
Bhushan Power and Steel Limited	26-Jul-17	464 (on-going)
Alok Industries Limited	18-Jul-17	472 (on-going)
ABG Shipyard Limited	1-Aug-17	458 (on-going)
Electrosteel Steels Limited	21-Jul-17	270 (resolved)
Amtek Auto Limited	24-Jul-17	366 (resolved)
Monnet Ispat & Energy Limited	18-Jul-17	371 (resolved)
Jyoti Structures Limited	4-Jul-17	486 (on-going)
Lanco Infratech Limited	7-Aug-17	452 (on-going)
Jaypee Infratech Limited	9-Aug-17	450 (on-going)
Era Infra Engineering Limited	8-May-18	178 (on-going)

Source: ICRA Research

ICRA believes that reducing the timelines for completion of the resolution process remains of utmost importance to strengthen the IBC. To achieve the same, the unclogging of NCLTs should be a matter of priority. The number of NCLT benches has remained at eleven since the IBC was introduced, whereas the number of cases being referred to the NCLT has been gaining momentum. The judicial strength thus has to be increased in a manner proportionate to the increase in the number of applications being filed to the NCLT under IBC. In a step in the right direction, the GoI has recently empowered the Registrar of Companies (RoC) to impose penalties for certain violations of the Companies Act, thus removing the need to go to the NCLT which in turn would reduce the burdens on the latter. On a similar note, the current minimum threshold limit of one lakh rupees for approaching the NCLT could be relooked at. Given the current situation, the current NCLT benches could be restricted to deal with corporate debtors defaulting on a higher amount, say more than a crore rupees. With subsequent expansion of the NCLT benches, the threshold limit could be suitably reduced.

Also, while the IBC aims to introduce liquidation as a last resort for resolution, one cannot ignore the high proportion of corporate debtors entering into liquidation out of the total resolved cases. As on September 30, 2018, 212 cases had been resolved through liquidation as compared to only 52 cases where a resolution plan was approved. As per ICRA's analysis, the average duration from the date of admission to the date of approval of the resolution plan to move the company to liquidation by the NCLT has been about 260 days for the cases completed till now which could be shortened. Some of these entities were already non-operational when being reported to the NCLT, and the delays in the process only further deteriorates the asset value. In fact, for about 60 companies, the entire resolution process after the admission of the application by the NCLT took more than 300 days. Thus, based on the judgement of the resolution professional, there could be a case for hastening the pace of resolution for cases where there has been no interest shown by potential bidders.

The introduction of the IBC was a definitive step taken towards allowing for a resolution of defaulting corporate debtors in a time-bound manner which otherwise can drag on for years. Till September 30, 2018, there have been 52 resolution plans approved by the NCLT which has led to the financial creditors realising (upfront or in staggered manner) a cumulative amount of about Rs. 58,400 crore. Nevertheless, the prolonged period of completing the resolution process results in delays in the cash inflows for the creditors which in turn hampers their ability to deploy the same in other return-generating avenues. As per ICRA's analysis, the lenders for the initial 12 companies in RBI's list of June 2017 (provided in Exhibit 3) are estimated to have lost out on about Rs. 4,000 crore in additional income due to the delays in the resolution process beyond the 270-day period. Further, the presence of an effective insolvency code also acts as a deterrent for corporate debtors from defaulting to their operational or financial creditors in case they have the required liquidity or are in a position to raise additional finances. Thus, ensuring that the resolution process is completed in a time-bound manner would strengthen the confidence in the code, encourage the creditors to file applications at an earlier date, protect the assets of the corporate debtors from deteriorating further, and also enable the lenders to enhance their earnings by redeploying the cash flows received through the resolution process.

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