

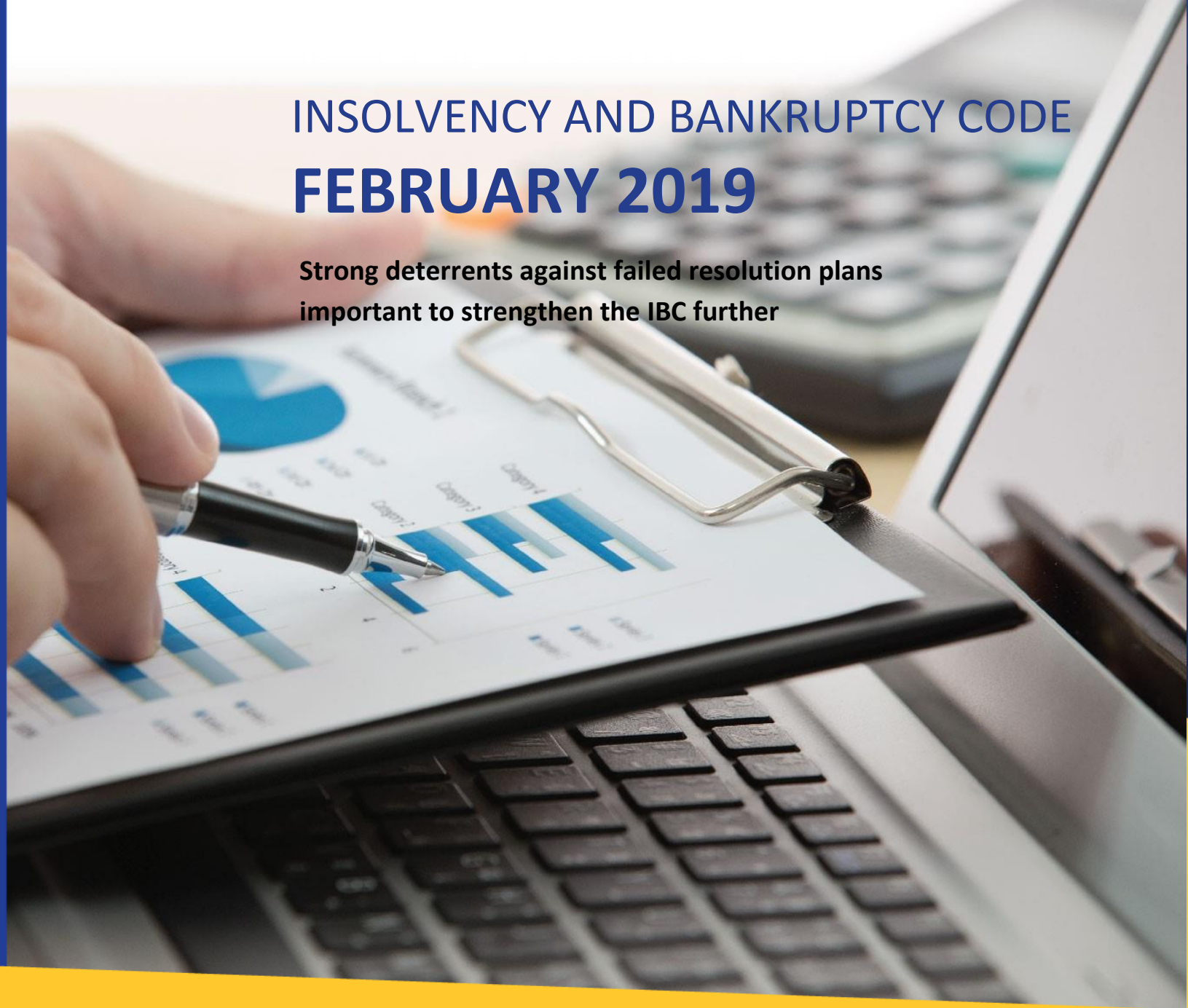


ICRA

A MOODY'S INVESTORS
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**Strong deterrents against failed resolution plans
important to strengthen the IBC further**



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Background

The Insolvency and Bankruptcy Code (IBC) has been around for more than two years but still needs regular monitoring and suitable alterations from time-to-time to ensure that the Code is on track to achieve its vision. The Insolvency and Bankruptcy Board of India (IBBI), in consultation with the Government of India (GoI), has proactively brought in regular amendments to strengthen the IBC, which it would be further required to do until the Code invites absolute confidence from all stakeholders. ICRA believes that the need of the hour is to strengthen the mechanism to ensure that the resolution plans approved by the National Company Law Tribunal (NCLT) are firmly implemented so that the sanctity of the process is maintained. Till date, about 600 cases have been closed under IBC by the various NCLT benches, though only 82 corporate insolvency resolution processes (CIRPs) yielded a resolution plan. The completion of a CIRP with acceptance of a resolution plan approved by the Committee of Creditors has turned out to be a time-consuming affair with certain corporate debtors requiring even more than 500 days to close the CIRP. The delay in the process clogs the system and negatively impacts the creditors as it delays the receipt of the cash flows. Thus, it becomes imperative that post the approval of the resolution plan by the NCLT, the resolution applicant puts the plan in action within the prescribed timelines so that there is a fruitful outcome of the entire process.

Till December 31, 2018, it was observed that three CIRPs that had yielded a resolution plan were brought back to the NCLT and were subsequently ordered into liquidation. Details of these CIRPs are mentioned in Exhibit 1.

EXHIBIT 1. CIRPs that yielded a resolution plan but later ordered into liquidation

Corporate Debtor	Date of NCLT approval for resolution plan	Period taken to close CIRP	Date of NCLT order for liquidation	Additional delay
Forward Shoes (India) Limited	March 27, 2018	281 days	December 11, 2018	259 days
Kamineni Steel & Power India Private Limited	November 27, 2017	290 days	October 26, 2018	333 days
Precision Engineers & Fabricators Private Limited	February 1, 2018	303 days	October 22, 2018	263 days

Source: IBBI, ICRA research

As seen from the cases listed in Exhibit 1, the inability of the resolution applicant to proceed with the resolution application elongated the CIRP beyond its reasonable time frame, effectively almost doubling the time required for the entire process. Further, as each of these corporate debtors were subsequently ordered to be liquidated, the recovery for the creditors is most likely to be lower than the amount that would have been envisaged if the resolution application would have materialized.

On similar lines, a large corporate debtor, viz. Amtek Auto Limited, that was part of the Reserve Bank of India's list of large defaulting accounts announced in June 2017, was deemed to have completed its CIRP with recovery of Rs 43.3 billion expected to the financial creditors. The resolution plan had been approved in July 2018 after a period of 366 days since the company had been admitted by the NCLT. Subsequently, the resolution applicant (Liberty Group) has not fulfilled the initial terms of the resolution plan, as a result of which, the matter will once again be discussed in the NCLT.

Strong deterrents against failed resolution plans required to strengthen the IBC further

Given the high economic costs that are to be borne in case of a failed resolution plan, ICRA believes that there is merit in the GoI setting up strong deterrents to ensure that the resolution applicants do not default on their proposed plans. The deterrents could range from a penalty amount (linked to the realisation promised to the creditors under the resolution plan) to debarring the resolution applicant from participating in any future CIRPs. Such a deterrent would make resolution applicants more cautious as well as sincere at time of submission of their resolution plans. It would also reduce the instances of completed CIRPs being brought back to the NCLT benches which are already over-burdened with cases. Nonetheless, any such amendment would also have to ensure that the culpability of the resolution applicant is established before being penalized, for there could be instances where the resolution applicant has reasonable grounds to justify its actions, such as inaccuracy of information provided during the CIRP etc. ICRA foresees further legal wrangles emerging from such failed resolution plans, though that should not discourage the GoI from bringing in the required amendments which would only strengthen the IBC in the long run. Introducing such amendments in a timely manner is also critical, as the number of on-going CIRPs is increasing each quarter, and thus would lend some support to timely closure of the process.

ABOUT ICRA

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- Assist the regulators in promoting transparency in the financial markets;
- Provide intermediaries with a tool to improve efficiency in the funds raising process.

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