

Effective Utilisation of Capital and Promotion of Entrepreneurship Key Drivers of IBC

Government focused on discouraging Frivolous Bids

Future of IBC Dependent on Timely Resolution and Better Management by Parties

Mr Injeti Srinivas, Secretary, Ministry of Corporate Affairs highlighted that effective utilisation of capital and promotion of entrepreneurship are key drivers of IBC. Naming IBC as one of the most reformative economic legislations that the country has ever experienced, he highlighted the high recovery rates and drastic reduction in time of resolution as evidence of IBC started showing results. Tracking the success of the Code, Mr Srinivas mentioned that approx. 300,000 crores have been recovered under the Code over the period of 2 years. He was addressing the CII Conference titled **Insolvency and Bankruptcy Code – Roadmap to Effective Resolutions organised by Confederation of Indian Industry (CII) in New Delhi on today.**

Mr Srinivas further mentioned that the government is working proactively towards making the Code more effective by introducing much needed provisions for Group Insolvency, Cross Border Insolvency and Pre-Packaged arrangement. Citing global practices, he deliberated the pre-package arrangement of UK which allows for out of court settlement of cases if 90% of the creditors provide consent. He mentioned that the Government is focused on discouraging frivolous bids to ensure that post admission of resolution plans and consequent spend of time and resources, the bids do not fall apart. Performance security and proposed punitive action against frivolous bids are some of the ways the Government is approaching to streamline the implementations.

Ms. Pallavi Shroff, Managing Partner and National Practice Head Dispute Resolution, Shardul Amarchand Mangaldas & Co. deliberated on how the insolvency law framework is fast evolving, and has undergone multiple revisions to remedy various hurdles that stakeholders have been facing. Ms Shroff highlighted that while the introduction of Section 29A has sought to inculcate a sense of discipline amongst the promoters, reforms have also been brought about to enable settlement post initiation of CIR process in deserving instances with sufficient checks and balances. She mentioned that the new regime has enabled India at the global level. India has made a leap in ranks in both the World Bank's Ease of Doing Business and the World Economic Forum's competitiveness index by more than 30 places in the period between 2015 and 2017.

Mr Sumit Khanna, Partner, Deloitte India elucidated the continued learnings from the Insolvency and Bankruptcy Code. Few learnings that stand out include the government, bureaucracy and court's efforts at a lightning speed to formulate and implement and then adjudicate on this important piece of legislation; the baseline has changed with the new realisation that borrower's need to repay. He mentioned few critical areas of concerns such as clarity of purpose, absolute commitment, cost of closure, performance guarantees and need to inculcate commercial diligence to facilitate effective implementation of proposed resolution plans.

Mr. Ranjeet Pandey, President, **The Institute of Company Secretaries of India** identified strengthening adjudication authority, developing mechanism to avoid frivolous bidders, monitoring mechanism for effective implementation of resolution plan as some of key recommendations going forward.

Earlier delivering the Welcome remarks, **Mr Subodh Bhargava**, Past President, Confederation of Indian Industry (CII) acknowledged the fundamental and psychological change the IBC Code

has brought about into business. He further emphasised that the basic premise of IBC is to first explore the resolution possibilities for running the business, and if it fails then only liquidation process is started. He was hopeful that this premise will promote entrepreneurship and improve availability of credit in the long run. Mr Bhargava also highlighted few of the need to attention and to be resolved; viz., 'while Section 31 of the Code makes the resolution plan binding on stakeholders, there is no guidance provided on third party approvals, particularly from other regulators'; 'homebuyers have been identified as financial creditors, but their status as secured or unsecured is not clear'; 'Code does not clarify how differential charges held over assets are to be dealt with, which becomes significant in the waterfall mechanism under Section 54. There are issues pertaining to fairness of resolution plans giving liquidation value to operational creditors which remain unaddressed'; and 'non-adherence to timelines and inordinate delay in admission of cases are major concerns, especially where debt is well established and one does not have to determine the quantum of debt'.

Sessions during the day focused on how stakeholder value can be maximized; group insolvency; balancing multiple creditors interest against the backdrop of more power to operational creditors; cross border resolutions; and the Government's intent to introduce pre-packaged resolutions. The Conference very well attended by over 200 delegates.

New Delhi

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