

Business Standard

Insolvency proceedings' deadline problem

The Bankruptcy Law Reforms Committee had spent considerable time on the timelines to be prescribed for various steps under the insolvency/bankruptcy proceedings

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The Insolvency and Bankruptcy Code, 2016, prescribes time limits for the corporate insolvency resolution process, or CIRP, and for each task in the process, starting from initiation till closure. It facilitates, incentivises and empowers the ecosystem to close the process expeditiously. An early resolution increases the likelihood of a company being revived and, in turn, of productive assets being turned around quickly. In the words of the Supreme Court, time is the essence of the Code (*Surendra Trading Company*), indefinite delay defeats its object (*Kridhan Infrastructure Pvt Ltd*) and the time prescribed for CIRP is mandatory (*Arcelor Mittal India Pvt Ltd*).

The Code aims at time-bound resolution. CIRP envisages two options for resolution — namely, (a) revival of the company through a resolution plan, or (b) liquidation of the company. It lets the market choose the options sequentially. The market first makes an attempt to revive the company, failing which the liquidation process is initiated. The Code, however, requires the market to make the choice

within the CIRP period. It was amended in 2019 to clarify that the committee of creditors may decide to liquidate a company as soon as it is constituted. Timely liquidation is preferred over fruitless resolution proceedings (NCLAT in *Vallal RCK*).

The Code provides for consequences for not adhering to the time schedule. It requires the adjudicating authority (AA) to order liquidation of the company where the resolution plan is not received before the expiry of CIRP period. In the initial days, this message was loud and clear. Even though the market and the ecosystem were in learning mode, the first CIRP that concluded with a resolution plan took 191 days. The first CIRP that concluded with an order for liquidation took 193 days. Twenty three CIRPs, which concluded with resolution plans in 2017-18, took on an average 243 days; 91 CIRPs with orders of liquidation in 2017-18 took on an average 234 days— much less than the maximum permissible time of 270 days.

Somewhere along the way, a perception emerged that the livelihood of many is linked to the survival of a company and, therefore, every effort should be made to revive it. Revival took precedence, even at the cost of time and value.

The Code was amended in 2019, stating that CIRP shall mandatorily be completed within 330 days, including extensions and legal proceedings. This roughly meant 180 days in normal cases, with 90 days extension, wherever required, and 60 days for litigation. The word “mandatorily” was, however, struck down considering the possibility of delay in disposal of legal proceedings, for no fault of the litigants (Committee of Creditors of Essar Steel India Limited). Gradually, carve-outs for extensions and exclusions became the norm.

The 98 CIRPs that concluded with resolution plans during April-December 2021 on an average took 709 days, including excluded time, or 591 days, excluding excluded time. This roughly translates to exclusion of 118 days (709 - 591) and extension by 411 days (591 - 180) on an average. During the same period, 225 CIRPs concluded with orders for liquidation. They took on an average 615 days for closure, yet failed to revive the company. At the end of December, 2021, 73 per cent of the ongoing CIRPs are running beyond 270 days, when several legal issues are settled, and the market and ecosystem have considerably matured.

There are several factors that contribute to delays; many of them may be justified. If, however, there is a strict timeline to complete a task, one tries hard to complete it within the time, rather than seeking additional time. One prepares for examination when one is sure that the examination shall not be postponed come

what may. In fact, the Code provides for a hard stop for closing the process. It is difficult to administer the hard stop, as CIRP requires several constituents to play their respective roles, and it is possible that any of them may fail to perform its role in time, causing delay. Coupled with preference for revival, the hard stop has become a soft stop.

Subject to corrections, it appears that exclusions arise from the ecosystem such as delay in disposal legal proceedings and factors beyond the market, while extensions arise from the market. As a first step, it may be desirable to specify the time available for the market and for the AA separately to discharge their responsibilities. In fact, provisions relating to prepack insolvency resolution provide for 90 days for the market and 30 days for the AA. As soon as the timeline for the market expires, the AA must pass an order of closure of CIRP. If that happens in a dozen cases, the market would do everything in its command to complete the process in time. The AA, however, must be enabled to order closure of CIRP immediately upon expiry of the timeline.

The Bankruptcy Law Reforms Committee had spent considerable time on the timelines to be prescribed for various steps under the insolvency/bankruptcy proceedings. They explicitly understood that time is the essence of the new resolution regime as that only could reclaim the economic value of an enterprise under stress. It is an economic tragedy that such well-designed legislative intent can get diluted so easily, as is being witnessed of late.

Timelines are also relevant for the commencement of CIRP, the closure of liquidation, and the closure of voluntary liquidation, all of which are experiencing inordinate delays. We need to pull out all the stops to stop this “process slowdown”. Adherence to timelines will save more companies than otherwise. Every day is critical in the life of a distressed company. Let’s not squander time, for that is, in the words of Benjamin Franklin, the stuff life is made of.

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