

WORK IN PROGRESS

Government is working on another round of amendments to the IBC after a Parliamentary panel said the government must set a benchmark comparable to global standards. But whether the new framework works or not remains to be seen. **BY MARI IWATA**

WHAT IN YOUR OPINION ARE THE MAIN SHORTCOMINGS OF THE CURRENT IBC FRAMEWORK, AND HOW CAN THE GOVERNMENT RECTIFY THEM?



Manisha Chaudhary,
managing partner,
UKCA and Partners

The IBC Code in many public spheres is now being looked at like legislation for defaulters to wash off their debts and for financial institutions to clean their books by taking haircuts as low as 5-10 percent of the total debt, thereby causing severe loss to the public exchequer. The main reason behind this is the lack of checks and balances on the powers of the Committee of Creditors (CoC). This issue is worsened by judgments of the Supreme Court that CoC is supreme and its decisions non-justiciable, which judgments were of course passed to prevent delays in the process.

This can, however, be easily rectified by incorporating a code of conduct for the CoC which will cover all aspects of decision making by the CoC during the resolution process including a cap on haircuts that can be offered to or accepted by the CoC. Word is that such a code of conduct will be brought in very soon. ^{ALB}



Divyanshu Pandey,
partner, **S&R Associates**

Legislation achieves its objectives if its implementation is not hindered by systemic issues and there is timely filling of the gaps in its implementation. Long-drawn court proceedings have impacted the efficacy of the Insolvency and Bankruptcy Code of India. To address this issue, the government needs to ensure that there is adequate bench strength of judges. Additionally, the government needs

to enhance the infrastructure of the insolvency courts and take initiatives for capacity building of the judges so that fundamental objectives of IBC, timely resolution, and value maximization for all stakeholders, are not diluted.

To reduce the burden on courts, the government should also consider introducing a pre-pack insolvency resolution process for all corporate debtors. The use of ADR mechanisms in insolvency matters, such as mediation, can serve as an effective alternative to formal insolvency procedure. ^{ALB}



Aniruddha Sen and
Karishma Dodeja,
partners, **Trilegal**



The primary shortcomings of the IBC have been in its implementation: Lack of judicial infrastructure, few fully operational benches of the National Company Law Tribunal (NCLT), shortage of

judges and related courtroom staff, appropriate judicial training, prolonged litigation proceedings and non-adherence with any of the prescribed timelines under the IBC, lack of strict application of legislative provisions, entertainment of back-door bids (especially by defaulting promoters), absence of coordination between regulators to promote swift implementation of approved resolution plans and lack of teeth in the IBC for the imposition of fines and penalties on defaulting stakeholders are some of the key challenges plaguing the implementation of the IBC. Legislative amendments accompanied with necessary infrastructural changes are the need of the hour. ^{ALB}

\$40 BLN

HDFC merger with HDFC Bank

Deal Type: M&A

Firms: Argus Partners;

AZB & Partners;

Cravath Swaine & Moore;

Singhi & Co; Wadia Ghandy & Co

Jurisdiction: India

\$3.34 BLN

Biocon Biologics' acquisition of Viatrix

Deal Type: M&A

Firms: Cravath Swaine & Moore;

Goodwin Procter; Saraf and Partners;

Shardul Amarchand Mangaldas & Co

Jurisdictions: India, U.S.

\$1.6 BLN

Axis Bank's acquisition of Citibank's consumer business

Deal Type: M&A

Firms: AZB & Partners;

Clifford Chance; Khaitan & Co;

Linklaters

Jurisdictions: India, U.S.

\$700 MLN

Mohalla Tech's acquisition of MX Takatak

Deal Type: M&A

Firms: Induslaw;

Shardul Amarchand Mangaldas & Co;

Touchstone Partners

Jurisdiction: India

\$660 MLN

Mitsui & Co's investment in RTC renewable energy JV with ReNew Power

Deal Type: M&A

Firms: DSK Legal; Trilegal

Jurisdiction: India

\$525 MLN

BlackRock, Mubadala's investment in Tata Power Renewable Energy

Deal Type: M&A

Firms: AZB & Partners;

Cyril Amarchand Mangaldas;

Slaughter and May

Jurisdictions: India, U.S.