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● IMPLEMENTING IBC

# A collective stakeholder responsibility

The success of the Insolvency and Bankruptcy Code can make the country an attractive choice of jurisdiction for resolving insolvency

**T**HE ENACTMENT OF the Insolvency and Bankruptcy Code (IBC), 2016, is an important reform for India and its implementation has to be meticulously done. India does not have a great track record on the implementation of laws. IBC presents an opportunity to alter that image and exhibit that India can deliver prompt and effective implementation. While the government has chartered the course of its implementation with great zeal, the onus to make IBC successful now rests with other key stakeholders—the judiciary, adjudicating authority, insolvency

professionals, lenders and borrowers. Each stakeholder must play an enthusiastic and constructive role in potent implementation of IBC and ensure that IBC matures commensurately with economic developments in the country.

**Government of India**

The scale and pace of insolvency reforms undertaken by the Narendra Modi government prove that political will is critical to drive reforms. As General Elections approach, the attention of the government might be taken over by policies involving populist agenda. The government must en-

sure the current momentum is not disrupted. In the world of insolvency, developments are rapid and many. The government will have to stay constantly on its toes and plug the gaps in insolvency law as they become visible. One of these is the absence of cross-border insolvency framework for fair and efficient administration of issues. India should adopt the UNCITRAL Model Law on Cross-Border Insolvency. Otherwise, courts and insolvency professionals will struggle to deal with insolvency cases involving cross-border issues.

**Judiciary and the National Company Law Tribunal**

The approach of higher judiciary and NCLT will have a far-reaching bearing on the outcome of IBC. The exigencies of IBC and its economic goals require the adjudication of issues by judiciary and NCLT not on the basis of technical questions of law, but based on the policy intentions and unique principles of insolvency law. The recent decisions of the Supreme Court with respect to the *Lokhandwala Kataria Construction Pvt Ltd* case allowing withdrawal of insolvency application after its admission, in exercise of powers under Article 142 of the Constitution, has sent shock waves amongst insolvency experts. IBC does not permit withdrawal of insolvency application after admission. Such restriction is based on the recognised principle that insolvency proceeding is a collective mechanism to pool together an insolvent debtor's assets for the benefit of all creditors.

Once insolvency proceedings commence, the creditor or debtor, which has filed the application, becomes *functus officio*. Insolvency proceedings are thereafter driven by a committee of creditors for the benefit of the entire body of creditors. Even if the Supreme Court were to allow settlement between the parties, insolvency proceedings in respect of the debtor should have been allowed to continue. For insolvency law to work, it is important that players in the judicial arena appreciate the fundamental principles of insolvency.

**The Insolvency and Bankruptcy Board of India**

IBBI has been at the forefront of creat-

ing the architecture of the new insolvency law. It has set the bar high right from the start and must constantly raise the standards so that the market is vying to match its pace rather than the reverse of it. Global standards demand that the insolvency regulatory body should be independent from the government. IBBI should have expert independent directors on its board. The advisory committee cannot be a substitute for the role independent directors play.

As a regulator operating in the financial sector, IBBI should be rubbing shoulders with other financial sector regulators and work closely with institutions under the domain of the ministry of finance. The regulator will need to have a robust surveillance system. There are already murmurs in the market about the incompetence of a few insolvency professionals in performing their duties.

**Insolvency professionals**

Such professionals sit at the heart of the insolvency system. Non-availability of adequate number of skilled and trained insolvency professionals is fast becoming a matter of concern. The complexity of insolvency demands that insolvency professionals are appropriately qualified and possess skills to balance commercial reality with legal requirements to preserve the entitlements of stakeholders. Equally important are personal qualities, such as integrity, impartiality and independence. It is important that insolvency professionals are able to operate independently, free from the threats and pressures of frivolous complaints, constant nagging by creditors or debtors, and uncertainties around payments of legitimate fee and expense.

It is critical that IBBI evolves a strong mechanism for licensing insolvency professionals. In fact, insolvency professionals working on high-profile cases should transfer knowledge and experience to other professionals in the market by participating in seminars and workshops.

**Debtors**

Businessmen will need to swiftly reconcile with the new "credit in control" insolvency system. The promoters of the 12 big accounts in respect of insolvency proceedings that have been commenced lately, and of other companies, should offer full cooperation in handing over the management, control of affairs and assets to resolution professionals. The promoters sincerely interested in revival of enterprises should not see their displacement as a threat, but as an opportunity to focus on putting together a resolution plan free from distraction of managing the business. The debtors commencing insolvency process should take creditors in confidence before filing insolvency proceedings. The directors and officers have to be mindful of liabilities arising from wrongful, fraudulent and preferential transactions in the pre-insolvency period.

**Lenders**

IBC envisages a "creditor in control regime," with the creditor committee comprising of financial creditors being an important stakeholder, in a way the most important one. Since each decision of the committee is carried through 70% vote in the value of its members, responsibility rests on secured and unsecured financial creditors to ensure, together with resolution profession-

**For insolvency law to work, it is important that players in judicial arena appreciate the fundamental principles of insolvency. The approach of the NCLT will also have a far-reaching bearing on the outcome of IBC**

**InfraTweets**

**VINAYAK CHATTERJEE**



Chairman, Feedback Infra  
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## UP-ending power theft

**Finally after decades: Powered by "Vidyt Chori Roko Abhiyan" & allied measures, UP's electricity bill collections rises by 28.5% in Q1**

● **UP curbs power theft**  
UP govt's steps to curb power theft saw collection in Apr-June rise to ₹7,822 crore. UP had announced an amnesty scheme for consumers to subscribe to legal connections, waived off interest on power dues & introduced EMI for payment of dues.

**Retrograde: Another unnecessary challenge to Renewables: MP Elec Regulator suggests amendment withdrawing "Must Run" status**

● **MP trips up renewable generation**  
Withdrawal of 'must run' status means the state can unplug renewable projects from grid at whim. 'Must run' status was granted to give certainty to renewables, though backing down thermal capacity involves cumbersome rebooting.

**Half a PPA better than no PPA: Govt mulling waving carrot of "no fixed charges" before Discoms to motivate purchases from stressed plants**

● **Relief for stressed power generation plants**  
The proposal will require state-owned discoms to offtake a minimum capacity of power from the plants. Plants with a total generation of capacity of 14,000MW don't have purchase agreements that are essential to getting from Coal India.

**Wind Power Trends: (1) With competitive bidding, set to achieve grid parity with coal (2) Non-wind States keen to buy from Windy States**

● **Wind challenging coal-based power**  
Wind power now priced just 2% above coal, as per a Morgan Stanley report. With tariffs dropping because of competitive bidding, state utilities are likely to prefer wind or solar power over coal-based power with short- and medium-term PPAs.

**Professional Approach: UP asks IIT Kanpur to devise strategy for a long term state power procurement policy with 10 year perspective**

● **IIT to power UP electricity solutions**  
UP's daytime demand is 12,000MW and peak is 19,000MW (demand gap is 7,000MW). UPPCL is backing down during the day, but it has to pay fixed charges. The IIT study is expected to suggest how UPPCL can flatten demand curve.

**Idling capital: Thermal power plants notched up only 48.9% PLF in June. Renewables + stepped up hydro + onset of monsoon + muted Discom demand**

● **Coal power faces reduced demand**  
Generation in Q1-FY18 is up by 5.3%; that for renewables rose 26%. About 33,000MW of coal-based power plants don't have long-term PPAs, affecting their ability to service debts.

**Cement: Degrowth in May (-0.4%) & June (-5.8%) puzzling. Reasons—Demonetisation trailing effect, destocking before GST, genl constr ▼ ???**

● **Cement output trails**  
Cement output has contracted over the last several months. However, demand may recover this fiscal, on the back of a focus on the housing sector and infra segments like roads, etc.

**Appropriate: NHAI has 2/3 of staff either on contract or on deputation. Parliament Comm on Pub Undertakings recommends a permanent cadre**

● **NHAI needs permanent cadre**  
Such hiring practices ensure NHAI remains lean and agile. But increased reliance on contractual labour means NHAI, by and large, doesn't have an institutional memory.

**Regional air connectivity to Local air connectivity: Helicopter service from Bengaluru Airport to Electronics City. 15 minutes vs 2 hours**

● **Chopper taxi to beat Bengaluru jams**  
Kerala-based Thumbay Aviation is likely to start chopper taxi service in three months. Service will help fly over Bengaluru's jammed roads, a problem flagged by industry captains.

A weekly selection of the author's tweets

**W**ITH US PRESIDENT DONALD Trump's pulling out of the Paris climate accord, the world now thinks that a leadership void has been created for climate governance at the global level. The moot question that now arises as to what extent it could adversely impact the progress of implementation of the accord. To evaluate this, we have to consider the following facts.

# Managing Paris without Trump

The fear that some nations may follow suit the US action is now receding

**PP SANGAL**



Former ISS and a UN consultant

vironment Programme (UNEP), stated in an interview in India that the Paris agreement is unstoppable and the US President's action has given a new sense of urgency, and like all leadership vacuum, it will also be filled.

Third, the US is a natural leader by virtue of its economic, political and technological power, otherwise some nations, as earlier mentioned, have worked closely with the US in bringing about the Paris accord. They all command respect and influence among other nations. The fear that some nations may follow suit the US action is now receding.

In view of the above, the world may see much reduced adverse impact of Washington's withdrawal. Of course, US President will no longer provide funds to poorer nations for mitigating climate change, which is a disap-

pointment, but funds like the Green Climate Fund will continue to operate to support these countries.

Despite all this, the leadership issue continues to weigh on our minds, and so there is a talk in some quarters about China or India assuming leadership. It would be worth examining the feasibility of the role for both.

Regarding China, although the country has a praiseworthy plan and action on mitigating climate change, it continues to have a hands-off approach in regional and global matters. Further, it also remains the world's largest emitter of greenhouse gas (GHG) emissions, contributing 30% of the world's total GHG emissions, while the US and India contribute 15% (second) and 7% (third), respectively. Thus, China may not be the universally accepted leader to cope with



climate issues.

Talking about India, it may have the right credentials to play the leadership role. German Chancellor Angela Merkel also sees a 'trump card' in Narendra Modi to tackle climate change. French President Emmanuel Macron and some world leaders express the same sentiment.

While the above thinking makes India

feel proud, here one must not forget the big challenge for India in this task. It is because India, in the past few years, has sufficiently progressed to improve its relationship with the US politically at the international level. We not only need to preserve it, but also need to make it more sound in the future. It is feared that the climate governance leadership role of India may disrupt the ex-

isting strategy in our relations with Washington, which India can ill-afford at the present juncture. Besides, India, because of its financial constraints, would not be able to help poorer nations to execute their climate action plans.

So, in the existing scenario, what could be the suggestions for successful implementation of the Paris accord?

● Evolve some kind of a joint leadership of some of the countries mentioned above. This group may also take some steps to convince President Trump to revisit the climate issue. There are already some encouraging indications from the US when he recently said, during his official trip to France, that "something could happen with respect to the Paris accord. We'll see what happens."

● All rich nations should enhance their contribution to climate fund and provide clean technologies to poorer nations at affordable prices to fill the gap created by the US pull-out. This would not make them any poor, as feared. Rather, the green push would enable them to create more jobs and add to their overall economy.

● India, on its part, should play the solar energy leadership role by quick action on the activities of the International Solar Alliance, which is PM Modi's initiative, and promoting other forms of clean energy like wind power, etc.

To conclude, the world's poorer nations, who are worst sufferers of climate change, are waiting to see a positive outcome of COP 23—to be held in Bonn, Germany, in November this year—on the Paris accord.