BRINGING EASE IN RESTRUCTURING: IMPLEMENTING THE INSOLVENCY AND BANKRUPTCY CODE, 2016

Key financial reporting, tax and regulatory considerations arising out of the Corporate Insolvency Resolution Process

The Insolvency and Bankruptcy Code, 2016 is one of the biggest reforms that we have seen in recent years, and it has come on the back of several other corporate reporting and governance reforms that have been implemented over the past three years. This new law overhauls the entire insolvency and bankruptcy framework and is expected to help both the corporates and lenders in achieving speedy resolution to the mounting non-performing asset problem plaguing the Indian economy.

The CFO Board is India's pre-eminent body of financial leaders and includes foremost CFOs in the country as members. The CFO Board observed the process of implementation of the Insolvency and Bankruptcy Code and the potential issues thereon, and studied these from a financial reporting, tax and regulatory perspective with support from KPMG in India.

This whitepaper is meant to serve as a high level analysis of some of the key issues that are relevant from the viewpoint of some of the key stakeholders, i.e., the distressed corporate debtor, the lenders and potential acquirers of these stressed assets.

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Introduction

The Insolvency and Bankruptcy Code, 2016 (the '**Code**' or '**IBC**') has been enacted at a very critical time with the Indian banking sector struggling to cope up with mounting bad debts. The Code overhauls the current highly fragmented insolvency resolution regime and provides a unified framework, harmonising insolvency and bankruptcy related matters for corporate persons, partnership firms and individuals.

Early identification of incipient stress, creditor focused resolution process, crucial role of an Insolvency Professional ('**IP**'), timely and effective resolution and automatic trigger of liquidation on failure to arrive at a resolution strategy makes the law an indispensable reform to provide a solution to the problem plaguing the Indian economy. It has been drafted for a quick, efficient and equitable resolution process and is expected to have far-reaching implications for restructuring and formal insolvency in India. The speed at which the Code has been enacted and operationalised reflects that it is a key policy priority for the government.

In context of the Indian economy, large amounts of stressed assets are classified as Non-Performing Assets (**'NPA'**) with low recovery rates. The Reserve Bank of India (**'RBI'**) expects the average Gross NPA ('**GNPA**') ratio (including restructured standard advances) to increase from 9.6% as of 31 March 2017 to 10.2% as of 31 March 2018 (Source: Financial Stability Report, June 2017 as published by RBI).

Some of the key sectors with corporate debtors having large level of stressed assets (referred to as '**corporate debtor**' or '**stressed asset**') include steel, real estate, infrastructure etc. The likelihood of these sectors getting impacted by the IBC is significant.

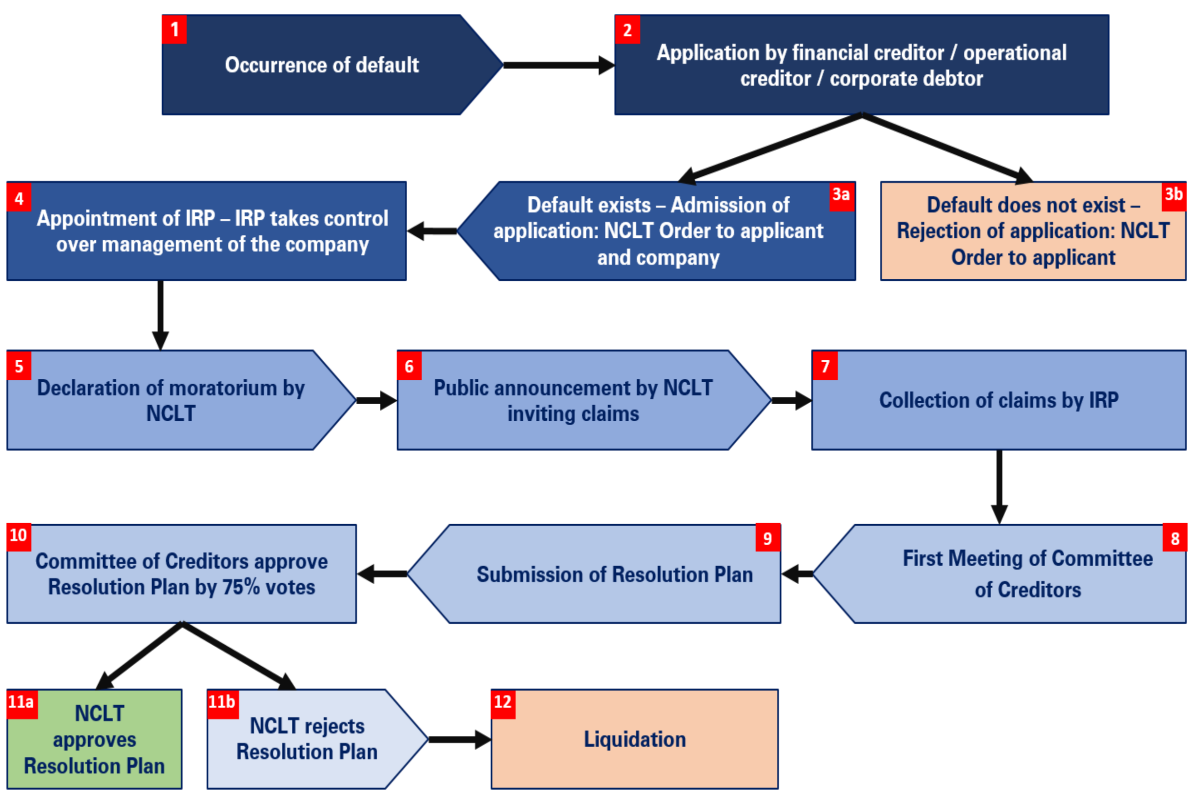
The erstwhile legal and institutional framework did not aid lenders in effective and timely recovery or restructuring of defaulted assets and caused undue strain on the Indian credit system. Recognizing that reforms in the bankruptcy and insolvency regime are critical for improving the business environment and alleviating distressed credit markets, the Government introduced the Insolvency and Bankruptcy Code Bill in November 2015, which was finally approved by the Parliament on 28 May 2016.

The IBC overhauls the existing framework dealing with insolvency of corporates, individuals and partnership firms and brings forward a fresh approach to insolvency resolution. Some of the key features of the IBC are as follows:

- The IBC provides for a specialized forum to oversee insolvency and liquidation proceedings for individuals, partnership firms and corporates.
- It empowers all classes of creditors to trigger the insolvency resolution process in case of non-payment of a valid claim.

- It enables a 'stand still period' which provides stakeholders (viz. the concerned creditors, promoters etc.) time to facilitate discussions and arrive at a common resolution rather than running independent processes.
- The IBC requires appointment of an Interim Resolution Professional (**'IRP'**) for a period of thirty days, post which the Resolution Professional (**'RP'**) is appointed.
- The IRP prepares the Information Memorandum (**'IM'**), on the basis of which, resolution plans are received by the RP.
- The resolution plan is required to be approved by a creditors committee with 75% majority (by value).
- The IBC provides for compulsory liquidation in case a resolution plan is not approved within 180 days from the date of admission of application by the National Company Law Tribunal (**'NCLT'**), or such extended period, not exceeding 90 days.

Figure 1: Outline of the process for corporate insolvency resolution



Insolvency Code in the Indian scenario

A common feature for most companies covered presently by IBC is that the insolvency proceedings have been initiated by lending banks. Alternatively, the corporate debtor himself may be able to restructure the terms of the arrangements with the lenders and reach a viable resolution plan.

The IBC provides for a process of resolution after insolvency proceedings are initiated by a creditor / corporate debtor primarily with an intention to provide an opportunity to corporate debtors to come out of insolvency and start their business and operations with a renewed approach. In many situations, the resolution for such assets may involve another entity (either in the same sector or otherwise) choosing to acquire the stressed asset, thus resulting either in a change of control of that legal entity or transfer of business / assets of the entity.

It is pertinent to note that income tax, financial reporting requirements and other regulatory requirements are generally drafted in context of the companies which generally are considered to be going concerns. Therefore, the steps under the resolution plan may have implications under the existing laws and regulations in India.

The Ministry of Corporate Affairs (**'MCA'**) has been receiving suggestions and recommendations from various stakeholders for further improvement in the processes prescribed in the IBC. With a view to examining these suggestions and related matters, the MCA has recently constituted the Insolvency Law Committee (**'ILC'**) to take stock of the functioning and implementation of the IBC, identify issues that may impact the efficiency of the corporate insolvency resolution and liquidation framework and make suitable recommendations to address such issues to enhance the efficiency of the processes prescribed and for effective implementation of the IBC.

The timely action by the MCA to set up the ILC will certainly help address some of the key issues that are impacting the implementation of the IBC.

Some of the key issues that require due consideration, and which may apply in context of a typical resolution plan have been discussed in the ensuing sections.

Key concerns arising out of the IBC for corporate insolvency resolution

The rules and regulations around some of the statutes, for example, the Income-tax Act (**'IT Act'**), Companies Act, Securities and Exchange Board of India (**'SEBI'**) Regulations, Competition Commission of India (**'CCI'**) Regulations, etc. have evolved over a period of time and are generally well accepted and understood by all the stakeholders concerned.

The introduction of IBC, however, poses a fresh challenge to the regulators in terms of keeping all these regulations contextual and relevant.

The application of the current financial reporting requirements, including the recently implemented Companies (Indian Accounting Standards) Rules, 2015 (**'Ind**

AS') together with the direct tax laws, indirect tax laws and other regulations, as they stand today, to the insolvency resolution scenarios may entail significant disincentives or impediments for potential acquirers looking to take over the corporate debtors / stressed assets and turning them around.

Further, in the current scenario, a resolution plan may require various approvals based on the existing laws. Examples of situations where such approvals may be required are as follows:

- Acquirer's shareholders' approval in case of mergers, demergers, slump sale, share sale, etc.
- Sectoral regulatory approvals
- Foreign Exchange Management Act (**'FEMA'**) Regulations in case of foreign acquirer, settlement of foreign creditors with capital assets, etc.
- CCI approval in case of breach of the asset / turnover limits

The ease of achieving a resolution plan may significantly increase if the same could be conceived under a comprehensive framework, wherein all the requisite approvals are deemed to be in place on approval of the resolution plan by NCLT. For example, the MCA has, in October 2017, clarified that if a resolution plan has been approved by the NCLT, then the approval of all the stakeholders under the Companies Act would be deemed to have been accorded.

The need of the hour is for the MCA and the respective regulators to work together and make requisite amendments to the Code so as to effect changes to specific provisions and/or to provide relaxations / exemptions within the existing legal and regulatory framework to deal with situations where companies covered by IBC come out of insolvency through the resolution mechanism. This is extremely important as companies, that are going through the resolution process as well as those looking to acquire stressed assets under the IBC process continue to grapple with these regulations in context of their proposed resolution plans.

Similarly, a regulatory and legal fresh start (i.e. waiver from past litigations, past non-compliances, including environmental issues, EPCG issues, etc.) may make the resolution process transparent and more acceptable for potential acquirers.

Few industrial bodies have sent representations to the government seeking a slew of tax reliefs for companies against whom insolvency proceedings have been initiated.

The ILC should take into account all of these matters while firming up their recommendations to the MCA for making amendments to the IBC.

Accordingly, the subsequent paragraphs attempt to highlight key potential challenges typical in the insolvency resolution process.

Financial reporting implications

The financial reporting framework as applicable to Indian companies, i.e., Accounting Standards ('**AS**') applicable to smaller companies and Indian Accounting Standards (Ind AS) applicable to larger companies, does not provide any specific guidance for companies which go through a successful resolution process under the IBC.

Accordingly, till such time the regulators issue specific accounting guidelines (e.g. fresh start accounting - discussed subsequently in this document), the accounting treatment may be determined with reference to the general principles outlined in the accounting standards. Apart from the impact on manner in which the financial position of the corporate debtor or its acquirer is depicted post the resolution process, this assumes great significance given that the Minimum Alternate Tax ('**MAT**') liability is determined based on the financial statements of the respective entities. The liability under the normal provisions of the IT Act is also often influenced by the treatment in the financial statements.

Implications in the financial statements of the distressed corporate debtor

Any benefit received by the corporate debtor as part of the resolution process in the form of principal waiver is required to be credited to the income statement under both AS and Ind AS. Further, under Ind AS, the benefit accruing to the corporate debtor in form of concessional interest etc. is computed under certain circumstances by computing the present value of the revised contractual cash flows with reference to the original interest as applicable to the borrowings of the corporate debtor immediately before the resolution process. This may mean that the traditional approach of restructuring debt to zero or low coupon instruments having back-ended cash flows may result in a large credit in the income statement in the financial statements of the corporate debtor, when assessed under the new requirements.

Implications in the financial statements of the lender

The area for provisioning for the exposures to distressed corporate debtors is evolving with the RBI recently prescribing that at least 50% of the exposure be provided by the banks by March 2018. In case the situation with a distressed corporate debtor fails to get resolved, the banks have been mandated to provide for the entire exposure with that corporate debtor.

On successful resolution, the actual loss on the exposure as determined through a competitive process will be reflected in the financial statements of the banks.

Further, banks and other financial institutions in India are likely to start reporting under the Ind AS framework from next year, which will also bring in significant additional complexity on how these entities account for their exposures to corporate debtors in the insolvency process, especially in light of the specific rules around areas such as loan loss provisioning using the expected credit loss model and accounting for purchased and originated credit impaired assets.

Implications in the financial statements of the acquirer

On successful resolution, the acquirer of the distressed corporate debtor / stressed asset would typically recognise the assets and liabilities of the distressed corporate debtor / stressed asset at their respective fair values.

The difference between the consideration paid and the fair value of the net assets is to be recognised as goodwill or capital reserve (in case of a bargain purchase). The accounting implications may however vary depending on the mode of acquisition, the level of stake acquired and the assessment of transfer of control to the acquirer.

Direct tax implications – IT Act

1. **Waiver / haircut in relation to liabilities / unsustainable component of debt and One-Time Settlement ('OTS')**

Excessive and unsustainable debt is the root cause of insolvency. Therefore, an entity intending to acquire a corporate debtor would negotiate a haircut of the existing debt, i.e. enter into an OTS with the lenders.

In case of waiver of loans obtained for working capital purposes, recognition of such gain in the statement of profit and loss may result in MAT liability in the hands of the corporate debtor. This may also be required to be evaluated under normal provisions of the IT Act.

Sick Industrial Companies Act ('**SICA**') earlier had a provision which provided relief from various sections of the IT Act in order to facilitate smooth recovery. However, the Code currently does not envisage similar relief under the IT Act; granting relief or providing clarity on the treatment of such gains may provide a significant boost to the resolution process.

2. **Purchase of shares of distressed corporate debtors at prices lower than that determined under IT Act**

On sale of shares of distressed corporate debtors, the negotiated price or bid price (based on the fair value of assets, liabilities and business potential) may be lower than the price determined as per Rule 11UA of the Income Tax Rules.

Any difference between the value of shares as computed in terms of the Income Tax Rules and the actual consideration may be taxed in the hands of the purchaser as income under section 56(2)(x) of the IT Act, having a significant impact on the return on investment of the purchaser. Section 56(2)(x) currently provides certain exemptions from its applicability. There is a need to consider acquisitions pursuant to a resolution plan approved under IBC to be included in the list of exemptions.

3. **Restructuring of distressed corporates (mergers, acquisitions, etc.)**

A resolution plan may involve M&A activities involving the distressed corporate debtor, such as merger of the corporate debtor with another profitable company.

Further, there is a high likelihood that the distressed corporate debtor will have accumulated tax losses. Allowance for carry forward of unabsorbed losses in case of takeovers pursuant to a resolution plan may be provided, which will help the purchaser recover certain part of their dues through set off of the tax benefits of the corporate debtor from its taxable income.

In certain cases, such as merger of companies not carrying on industrial activity, the benefit of section 72A of the IT Act for carry forward of losses to the transferee entity is not available.

4. Liquidation

In case the corporate debtor undergoes liquidation, any distribution to shareholders will be taxed as deemed dividend under section 2(22)(c), to the extent the corporate debtor possessed accumulated profits, whether capitalized or not, immediately before its liquidation.

In case of distressed corporate debtors, the likelihood of having accumulated profits is low. Accordingly, based on existing requirements of the IT Act, the entire distribution, if any, made to the shareholders may be taxable in their hands as capital gains.

5. Minimum Alternate Tax ('MAT') implications

The proposed amendment to Section 115JB (2A) of the Income Tax Act provides that in case of a company whose financial statements are drawn up in compliance with the Indian Accounting Standards, the book profit shall be further increased by 'all amounts or aggregate of the amounts credited during the previous year to any item of other equity'. Relevant extract of the amendment as proposed is reproduced hereunder:

"(e) increased by all amounts or aggregate of the amounts credited during the previous year to any item of other equity, or decreased by all amounts or aggregate of the amounts debited during the previous year to any item of other equity, as the case may be, but not including –

i. Profit/(loss) for the period as per statement of profit and loss transferred to other equity
ii. items relating to Other comprehensive income;
iii. share application money pending allotment;
iv. money received against share warrants;
v. capital reserve in respect of Business combinations of entities under common control as per Appendix C of Ind AS 103; and
vi. securities premium reserve collected in cash and cash equivalent."

Based on the proposed amendment, following arrangements / transactions normally entered in context of the resolution process may be subject to MAT either for the corporate debtor itself or for the company acquiring the stressed asset:

- Capital reduction undertaken by the corporate debtor;
- Recording of any gain arising from such bargain purchase as a result of acquisition of a stressed asset or a corporate debtor;

- Issue of any convertible instrument by the corporate debtor may also result in additional MAT liability based on the accounting treatment of such convertible instrument (amount credited to other equity on issuance of convertible will be required to be considered for computation of book profit for MAT).

In case the Central Board of Direct Taxes ('**CBDT**') decides to issue the amendment without any changes to the above draft of the proposed amendment, the situations discussed above would be subject to MAT, unless specific exemptions are provided to such corporate debtors or the acquirers of stressed assets under the resolution process.

6. General Anti-Avoidance Rules ('GAAR') applicability

GAAR empowers the revenue authorities to deny tax benefits if there is no commercial substance or consideration of the transactions or arrangements and the main purpose is to obtain a tax benefit.

The commercial rationale of a resolution plan is to provide an opportunity to the creditors to recover their dues, to enable the corporate debtors to come out of insolvency and start their business and operations with a renewed approach. Therefore it can be construed that the steps undertaken pursuant to a resolution plan are with a commercial intent and not solely for achieving tax benefits.

Further, CBDT's clarifications on implementation of GAAR provisions, dated 27 January 2017, provide that GAAR provisions will not apply in case of a Court / NCLT approved arrangement where the Court / NCLT has explicitly and adequately considered the tax implications while sanctioning the arrangement.

Therefore, if the tax and regulatory implications of a resolution plan are clearly spelt out therein, it may assist the interested parties (to determine a resolution plan which maximises the return to the various creditors) if the NCLT approved resolution plan is explicitly kept outside the ambit of GAAR.

Indirect tax – Goods and services-tax ('GST')

Transfer of a business as a going concern has been exempted from the applicability of GST. However, in case of distressed corporate assets, in case the condition of going concern is not satisfied, transfer will lead to adverse indirect tax implications which may be significant in certain circumstances.

Stamp duty

Merger of one company with another or purchase of business of one company by another through a slump sale arrangement or transfer / issue of shares may require the acquirer to pay stamp duty.

Given that most resolution plans may involve any one or more of the approaches discussed above, stamp duty may prove to be a significant disincentive for potential acquirers of the distressed corporate debtor and may eventually lead to the liquidation of the distressed corporate debtor.

SEBI Regulations

1. Minimum public shareholding requirements

SEBI guidelines normally require that when an acquirer acquires a listed company, the requirement of minimum public shareholding of 25% is to be achieved within a period of one year. In many situations, where an acquirer takes control of the corporate debtor, they may end up acquiring a significant majority stake in the corporate debtor, due to the low equity valuation of these companies. However, due to the norms relating to minimum public shareholding requirements, the existing promoter's stake will not be classified as 'public shareholding' although he may no longer be in control of the corporate debtor. Further, under these norms, reclassifying a promoter as a public shareholder may not be a viable option for meeting the minimum public shareholding requirements. Accordingly, this indirectly puts a cap on the extent of stake that the acquirer can hold in the corporate debtor.

2. Takeover code requirements

SEBI, vide amendment dated August 14, 2017, exempted the acquisitions pursuant to a resolution plan approved under the IBC from the requirement of making an open offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations (**'Takeover Code'**).

However, the acquisition of control over the target company by the IRP has not been specifically excluded and therefore, the same may trigger an open offer.

3. Preferential issue norms

The amendment to Regulation 70 of SEBI (Issue of Capital and Disclosure Requirements) Regulations (**'ICDR'**), dated 14 August 2017, provides exemption from provisions relating to preferential issue of equity shares. However, no such exemption has been provided in case other convertible instruments, for example, CCPS / CCDs are issued.

4. SEBI approvals for mergers or other reorganisations

Current regulations envisage a listed company to get comments from SEBI on the draft scheme before the scheme is filed with NCLT. Further, in mergers involving an unlisted entity, it also envisages information pertaining to the unlisted entity to be provided in the format prescribed for an abridged prospectus. In situations where the resolution plan envisages a merger involving listed companies, compliance with these requirements may not be feasible within the overall resolution timelines that are acceptable to the creditors / lenders.

Therefore, in context of the corporate insolvency resolution process, there is further scope and need for specific relaxations / exemptions.

5. Other SEBI requirements

A listed corporate debtor against whom insolvency proceedings have been initiated and is undergoing the resolution process is also required to comply with several other requirements mandated by SEBI, including those of the SEBI (Listing Obligations and Disclosure Requirements) Regulations (**'SEBI LODR'**) and SEBI (Delisting of Equity Shares) Regulations (**'Delisting Regulations'**). These requirements may have been prescribed in a general context, which may need to be modified to make them relevant and applicable to a distressed corporate debtor.

CCI Regulations

In case the acquisition involved in the resolution exercise breaches the asset / turnover limit prescribed by the CCI, prior approval of CCI is required for undertaking the transaction.

As per the present CCI Regulations, certain transactions fall in the exempt category. Considering the need for speedy resolution of insolvency cases, there is merit in considering whether certain transactions being affected as per the resolution plan may also be included in the exempt category or alternatively a fast-track approval mechanism be put in place by the CCI for such cases, which fits into the overall timelines and framework of the IBC.

FEMA Regulations

Any issue / transfer of shares involving non-residents requires compliance with the pricing guidelines as provided under FEMA (Transfer or Issue of Security by a Person Resident Outside India) Regulations.

Practically, an issue or transfer of shares outside India under the insolvency process is likely to happen at a bargain price. Accordingly, certain relaxation / reduction in the floor price may need to be considered.

RBI guidelines

In case of waiver / haircut of foreign loans or liabilities, approval of the RBI will be required, which will require additional time, efforts and cost for the corporate debtor.

Accordingly, certain relaxations / waivers / modifications in the approval process may need to be considered where such liabilities exist.

IBC requirements

While the specific challenges relating to regulations have been highlighted above, the implementation of IBC itself may pose certain practical challenges.

Certain examples of such challenges are as follows:

- For implementing the insolvency plan and other decision making during the insolvency proceedings, approval of 75% of voting share of creditors will be required. Obtaining such an approval is practically difficult and therefore, default plan would be to liquidate the company.
- Recently, the NCLT has held that after admission of a petition, it acquires the character of representative suit and through publication in the newspapers, other creditors get a right to participate in the insolvency resolution process and claim before IRP, therefore the petition cannot be dismissed on the basis of compromise between the operational creditor and corporate debtor. Therefore, once a petition is filed with the NCLT, it may not be possible to withdraw the same for an out of court settlement.
- Section 30(2)(e) of the IBC provides that the resolution plan should not contravene any provisions of the law

for the time being in force. On the other hand, section 238 provides that "the provisions of IBC shall have effect, notwithstanding anything inconsistent contained in any other law for the time being in force".

In addition to the need of rectifying this contradiction through an appropriate modification in the Code, to avoid the possibility of any regulatory non compliances and for successful achievement of the objective of the Code, a suitable mechanism of relaxations / exemptions needs to be incorporated in various laws.

Accordingly, some of the above may be addressed by the regulators based on the experience in the initial few cases where companies go through the resolution process.

Other considerations

The IBC guidelines may also evolve over a period of time based on the experience of initial few cases of resolution. Further, based on the initial experience, there is also a need to identify factors that may be making some of these assets less attractive for potential acquirers. For instance, the business of the distressed corporate debtors may often have potential financial, regulatory and criminal liabilities associated with it. Waiver of all or some of these liabilities may provide significant incentive to potential bidders, who otherwise may hesitate to go through with the acquisition.

It will therefore be important to draw from the experience of the various stakeholders during the resolution process and at the end of the first round of resolutions and introduce necessary amendments to improve the efficiency of the process.

The MCA should consider making suitable amendments to the IBC, to take into account the interplay between the Code and other laws and regulations; through this process, the MCA should seek to remove any inconsistencies between the Code and other legal and regulatory requirements and also seek to avoid any outcomes as a result of this interplay, which is inconsistent with the overall objective of the Code.

Further, as highlighted in the above sections, if the approval of resolution plan under the IBC can be made into a more comprehensive approval, i.e., covering all other regulatory approvals which are required, the ease of implementing the resolution plan may significantly increase.

Need for fresh start accounting and related tax rules under IBC

As discussed earlier, from a financial reporting perspective, waiver of the principal amount outstanding is recognised as a credit to the income statement under both the AS applicable to smaller companies and Ind AS applicable to the larger companies. Further, under Ind AS, any benefit passed on in the form of reduction of interest rates may also result in a credit to the income statement.

While the accounting treatment described above may be appropriate for companies undergoing restructuring of the debt, the same may not be appropriate for corporate debtors emerging from bankruptcy the resolution process. As discussed in the earlier sections, this also gives rise to issues from a tax perspective.

These issues relating to taxation and financial reporting have resulted in other jurisdictions such as United States of America adopting a specific approach to financial reporting for companies emerging out of bankruptcy – referred to as Fresh Start Accounting.

The concept of fresh start accounting allows the company that has undergone legal reorganization, subject to certain conditions, to essentially delink from its prior accounting records and start anew, by establishing a new basis of accounting for all (or most) individual assets and liabilities and new accounting policies appropriate for a new company.

The whole idea is based on the notion that the reporting entity that emerges from a reorganization is a brand new company wholly separate from its predecessor, even though it may survive in legal name and form.

In simple terms, the balance sheet of the entity emerging out of bankruptcy is restated at the fair value (based on a valuation report by an external valuer) including discounting of liabilities existing at the time of resolution with reference to the applicable interest rates at that point in time.

Specific rules under the tax laws addressing the tax implications for companies emerging out of bankruptcy (in context of fresh start accounting) also supplement these rules.

With introduction of IBC and an expectation of increasing GNPAs, it is expected that several creditors may use the IBC to get resolution of their debts thereby necessitating specific accounting rules (and consequently rules for taxation) in line with fresh start accounting.

In particular, this will allow companies and their acquirers to start with a clean slate, rather than carry forward potential legacy issues relating to their capital structure, liabilities, etc.

Conclusion and way ahead

The introduction of IBC is a step in the right direction and overhauls the archaic approach to insolvency resolution in India.

With the creditors now having the right to initiate liquidation proceedings against corporate debtors, general approach of India Inc. to dealing with creditors is likely to undergo a drastic change – arguably for the better.

The need of the hour however is to supplement this with necessary changes to the IBC to take into account the various laws and regulations which apply to Indian companies, ranging from financial reporting, direct tax, indirect tax, listing regulations etc.

As a practical measure, the changes should be made through the IBC itself rather than by seeking to amend multiple laws and regulations. As a result, an approved resolution plan will override the requirements of other laws unequivocally once the resolution plan is approved by NCLT with such clauses. It is also important to note that schemes approved by Board for Industrial & Financial Reconstruction ('BIFR') under SICA had similar overarching powers.

This is extremely important as the success of the IBC initiative is likely to be measured by number of successful turnarounds of companies in distress rather than liquidations.

Companies undergoing the resolution process as well as potential acquirers are grappling with some of the challenges highlighted in this whitepaper. The stringent timelines imposed by the IBC also do not permit companies the luxury of engaging with the respective regulators for clarifications. It is also important for the regulators to be proactive and learn from the experience of the initial few cases especially in relation to the practical challenges of the IBC regulations itself.

With the objective of making the IBC more effective and successful, the CFO Board recommends that the following key matters be considered by the ILC and MCA on priority, in relation to the various issues highlighted in this whitepaper:

1 Relief from any MAT liability arising from the resolution process, as applicable to both the corporate debtor as well as acquirers of stressed assets.
2 Provide a legal and regulatory fresh start, i.e., waiver from past litigations, past non-compliances, and so on, to companies emerging from the resolution process, in particular, where there is a change in control.
3 Provide fresh start accounting rules to enable companies emerging from the resolution process to essentially delink its past accounting and start anew, by establishing a new basis of accounting as appropriate for a new company.
4 Provide relief under tax laws for both purchase of shares of corporate debtor at prices lower than as determined under IT Act and for carry forward of losses of the corporate debtor.
5 Approvals required from various regulators, such as CCI, RBI, and SEBI and the related process to be followed need to be streamlined with the overall timelines of the IBC process and related NCLT approval. A fast track approval mechanism by the respective regulators that precedes the NCLT approval, but fits within the overall timelines prescribed under the IBC, may be an approach to consider.

As we begin this new chapter in the history of Indian regulations, we hope the introduction of IBC eventually ensures efficient deployment of capital and a sustainable environment for the creditors of India Inc.

This report has been prepared by the CFO Board, under the guidance of Mr. S Mahalingam, Mr. Manoj Naik and Mr. Seshagiri Rao, members of the CFO Board, with support from Sai Venkateshwaran, Vivek Gupta, Karan Marwah, Prashant Kapoor and Ajit Viswanath of KPMG in India.

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