

IBBI draft papers to improve insolvency resolution likely out this month

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The Insolvency and Bankruptcy Board (IBBI) is working on two discussion papers on improving efficiency of the insolvency process. These are expected to be issued this month, according to a government official.

One suggests entities act as insolvency professionals for better resolution. The other one focuses on liquidation of companies. These draft papers will suggest ways to speed up the resolution process under the Insolvency and Bankruptcy Code (IBC) — which is currently facing low recoveries.

Defending the insolvency process, regulatory sources said that low recoveries are not attributable to the IBC process. Instead, it is the lenders and the banking practices that are responsible for it. “Significant delay is seen in banks seeking corporate insolvency, thus hurting recoveries under IBC,” a government official said. According to him, average banks move to National Company Law Tribunal (NCLT) after 700 days of default, which is impacting valuation.

He added that even the steep haircut of 50-60 per cent is inevitable due to the banking practices. The official said that by the time lenders move to tribunals, the value of the assets go down, resulting in more liquidation outcomes.

“The liquidation haircuts realised by the creditors were also huge. Usually it should take 300 days,” he added.

Latest IBBI data suggests that financial creditors’ realisation as a percentage of admitted claims between January and March hit a record low of 10.21 per cent. In the December quarter of 2021, it was 13.41 per cent.

The pandemic-induced slowdown has caused inordinate delays in the resolution process, which also impacted the potential investors’ plan to acquire stressed assets in India. Taking cues from industry, earlier in April, IBBI had proposed tweaks to the corporate insolvency resolution process (CIRP) and suggested measures to reduce delays in the IBC process. Work on the proposal is still in progress.

The code lays down 180 days to move courts in insolvency cases. However, since there are multiple financial lenders associated with a borrower, it takes time to compile data and evaluate the debt amount, according to banking experts.

“To curb the delay, lenders should start putting advertisements about a borrower account as soon as it starts showing signs of stress or when it becomes a non-performing asset (NPA),” said Ashvin Parekh, managing partner, Ashvin Parekh Advisory Services. He added that banks usually hope the borrower will regularise their account or pay back the debt. Hence, the process gets delayed more. Some experts do not agree with the regulator’s point of view. “Banks have been diligently pursuing the insolvency process. They have no form of recovery other than the IBC and the SARFAESI Act. So, delays are not that significant, said Abhishek Swaroor, partner at Saraf and Partners

Cross-border insolvency

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The much-awaited framework on cross-border insolvency may see light of the day soon.

According to a government official, the Cabinet note has been prepared on cross-border insolvency legislation. It is expected to be introduced in the upcoming monsoon session of Parliament. The move will pave the way for lenders to include foreign assets of a bankrupt entity in their recovery proceedings.

These include offshore personal assets of promoters where they have offered personal guarantees.

“Earlier, there would be conflicting orders of the same case due to the absence of a cross-border framework. We saw it in the Videocon case.

If the framework comes to life, then the company law tribunals will be able to consult international courts and green light their orders,” the official said.