

STATEMENT OF BEST PRACTICES IN INSOLVENCY RESOLUTION - BALANCING THE INTERESTS OF STAKEHOLDERS

Types of stakeholders in an Insolvency process

Based on the arrangement for Distribution of Assets prescribed in Sec.53(1) of IBC and requirements for maintaining/enhancing the enterprise value, Stake holders could be categorised as follows, for better understanding:

Primary Stakeholders – These are direct participants in the Insolvency Resolution process, eg., CoC, CD, OC, IP/IRP/Liquidator, etc.

Secondary Stakeholders - Those with pre-determined priority for payment out of the receipts from liquidation of assets, eg., IP/IRP/Liquidator, Workmen and other Employees as specified, Secured & Unsecured Creditors, Central/State Government, CD incl. Shareholders, etc.

Extended Stakeholders - Those who may not be engaged in direct economic exchange with the business but can affect its actions, eg., Regulatory and Adjudicating agencies, associated Markets, Related specialists and service providers, etc.

Once the National Company Law Board (NCLT) initiates the process of insolvency resolution against a company, the stakeholders have 180 days — extendable by another 90 days — to finalise a turnaround resolution plan that is acceptable to all creditors and shareholders. Otherwise, the business heads for liquidation, with assets being sold to pay off creditors' dues. For these 270 days the promoters cede control of the business to a court-appointed resolution professional (IRP/RP) who runs the day-to-day operations with measures to turn the business around. The IRP/RP obtains approval on the areas listed in the Code from CoC before proceeding.

Apart from facing reluctant and non-cooperating promoters, resolution professionals also deal with challenges of raising interim finance to keep a business going. However, it is not easy for resolution professionals to find lenders for such distressed assets. However, credit is essential to maintain critical supplies, such as electricity and raw material, to keep a business going. Given the stringent timelines under the code, the CoC plays a crucial role in taking timely decisions in running a company. And for that, banks that sit on the creditors' table have to be quick on their feet while taking decisions.

Many resolution professionals feel the CoC attendees should be adequately empowered to take sound commercial decisions in a timely manner. Also, regulator and courts should permit one-year clearance for maintenance of essential supplies that are critical to keep a business running. The awareness, speed of delivery and essential directions to and on behalf of the IRP/RP by the Adjudicating Authority are critical for a successful resolution.

Stakeholders generally feel that few resolution professionals have experience in managing companies. This can be crucial when RP/IRPs should be like chief restructuring officers. The sector regulator, the Insolvency and Bankruptcy Board of India (IBBI), too has been on a learning curve, though it has been open to valid suggestions with periodic notifications and clarifications to deal

with various aspects of the code. Activation of information utilities and enactment of cross-border insolvency laws are high among the priorities.

From an investor perspective, a key concern has been the tax implications while selling any stressed asset. Exemption is suggested for income tax on book profits due to write-off of liabilities under the resolution plan.

Some Speed Bumps On The Way

- Lack of awareness of the law among stakeholders
- Challenges in raising interim working capital
- Need for greater support from operational creditors and committee of creditors (CoC) to keep the business going
- The Code needs to be aligned with the existing laws, such as the Companies Act, Sebi regulations, the Income Tax Act, to speed up resolution plan approval
- Resolution professionals need legal protection and insurance cover
- Absence of cross-border insolvency laws could lessen the Code's effectiveness