

Settlement will always remain the first resort, but we also need Pre-Pack and CIRP as options on the table: Swaminathan J., MD, SBI

A transparent, amicable, and bilateral settlement is what we pursue in the first go, but there are cases where people are not cooperative enough. There, we need Pre-Pack and CIRP because in certain cases it may be necessary for us to have a legal process carried out so that we can demonstrate to the rest of the world that the settlement that has been reached is fair, that there is no moral hazard and no haircut agreed on beyond a point.



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Shri Swaminathan is presently serving as Managing Director (Risk, Compliance and Stressed Assets Resolution Group - SARG), State Bank of India, from January 27, 2021. Prior to this appointment, he served as Deputy MD (Finance) and Dy. MD (Strategy & Chief Digital Officer) in the SBI. His over 30 years of banking carrier, includes five years of overseas experience in SBI, New York Branch. As a carrier Banker, his experience spans across the domains of Retail and Corporate Banking, Digital Banking, International Banking, Trade Finance, Correspondent Banking & FI products, and Transaction Banking products. He has also been a nominee Director of SBI on the Boards of Yes Bank and SBI Payments. He has also served on the Board of NPCI.

In an Exclusive Interview with IIIPI for *The Resolution Professional*, in his interaction with by **Dr. Ashok Haldia**, Chairman, IIIPI-Board, **Shri Swaminathan** shared his experiences and views as a banker on a wide range of issues related to IBC regime. *Read on to know more....*

Dr. Haldia: As you know, we are going to celebrate the fifth anniversary of the IBC, 2016. While everyone claims the successes of IBC, there are certain grey areas as well. What is your perspective as the largest lender of country and how SBI sees its role in shaping the IBC?

Shri Swaminathan: Thanks for this opportunity. It is proud privilege for me to be interacting with you and through this forum. It is always a pleasure for me to interact with professionals and learn from them. As a large market participant and as a bank, having the relevant experience across sectors, I think, it is our duty to be part of any such development and play the role we are required to do. However, such a system is possible only if everyone in the ecosystem works together. We are very thankful to the professionals who have been working with us closely. It is not just one or two players but the entire ecosystem that came together and worked in a coordinated manner – whether it is government, professionals, or judiciary.

Undoubtedly these past five years have been quite defining in terms of the way in which the stress of the Indian corporate sector has been addressed. I think IBC came at the right time and more importantly the stake holders rallied around the opportunity and converted it into a success story. Though more work is needed, but I think we should be proud of the success that we have achieved. This is because legislations take decades to evolve and produce success. The 4-5 years' period is a very small-time frame for the IBC to produce results. Yet, it has done tremendously well for three reasons - *firstly*, the way the legislation has been brought about by taking all the stakeholders' inputs into account and creating a solution-oriented process. *Secondly*, all the stakeholders have worked in a collaborative manner. The Government has responded to every single feedback. The number of amendments carried out so far indicate the intention of the Government in making the IBC a success. Furthermore, the way the judiciary has come forward to interpret some of the tricky issues and provide timely judgements, is also

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a testimony of this cooperative approach. *Thirdly*, it is the resolution-oriented approach of the IBC. All the past attempts focused more on recovery than resolution. Even we as a lender were interested only in recovery. We were unifocal on that because options before us were limited.

Today, IBC being a resolution-oriented process is helping in maximizing value of business, preserving jobs, and helping in continuity of business in many cases, if not in all, with a better realization possible to all the stakeholders. In my view, if not a resounding, IBC has been a reasonably success model.

Dr. Haldia: How do you recall SBI's initial experiences in dealing with the IBC in terms of resistance by the promoters going to the Appellate Authority and the Supreme Court, etc. Have the hiccups of initial days reduced in terms of numbers and intensity or they remain, and new set of hiccups are emerging?

Shri Swaminathan: Very good question. See, this is the evolving legislation. Therefore, a complete mindset change is required on part of everyone – the Lenders, Corporate Debtors, Resolution Professionals and Resolution Applicants. They all come with different mindsets and at times balancing them is not easy. In the first couple of years, we have seen maximum challenges what we can call as teething troubles.

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While all possible scenarios were emerging, inputs were taken and legislation was put in place, to be tested and matured with time. So, the process related challenges that we experienced in the first couple of years included the corporate debtors trying to retain control through various means by resorting to appeals to different forums. In some of the 'celebrity cases', the promoters made all out efforts to thwart the process of IBC. But finally, the IBC prevailed through the collective efforts of all the stakeholders.

Regarding the question, whether the intensity has come down, yes, definitely! I believe so because now borrowers have understood that owning businesses is not a birthright. In case they do not run their business efficiently, they stand to lose control of it. The mindset has been changed for the better now. The challenges that come from the corporate borrowers are now limited. On the other side, with the kind of amendments and pronouncements of the judiciary as

well over last 2 -3 years, like who all can bid as resolution applicant, whether defaulters must be given a chance, whether owners and related entities should be given a chance, or whether criminal proceedings should impact the new owners which came in December 2020, etc. I think, the law has evolved step by step and most of the sections

are now matured enough to be interpreted by court in a particular way. Besides, many ambiguities have been removed through amendments as well as judicial pronouncements. Therefore, the intensity has come down.

Yet, new challenges are also visible. Currently we have another celebrity case in front of the Hon'ble Supreme Court. We will get to hear the ruling very soon. I think, though the law will evolve more in next few years, the way it has moved so far, is quite encouraging.

Dr. Haldia: You mentioned change of mindset. Whether this change of mindset is appropriate for Pre-Pack framework? Should we launch the Pre-Pack for high value cases? Besides, I always believe that CIRP should be the last resort and before that there should be Pre-Pack. The voices are now being raised that before the Pre-Pack, there should be preference to amicable, trustworthy, and transparent settlement between the lender(s) and borrower(s). Your thoughts?

Shri Swaminathan: On Pre-Pack, it is indeed a welcome addition in the toolkit that we have for resolving the stress. As we know it has come after industry-wide consultations. The Ordinance has come, and the rules and regulations have also been notified. We will now start making use of this, though we will take two to three quarters to assess its efficacy. Even before lenders start making use of this, the Corporate Debtors need to see value in it so that they can



come with a viable Base Resolution Plan.

Regarding your question, whether it could resolve several cases and whether it will be the most preferred option? I do not think so. As you rightly said the first option must be settlement especially in the MSME sector, to which Pre-Packaged Insolvency Resolution Process (PPIRP) is targeted. This is because in case of MSMEs, there are not many multiple banking arrangements in place. Mostly they have sole banking arrangement or may be a couple of banks. So bilateral discussions in the form of one-time settlement, are undertaken if relationship with borrower is sought to be terminated. However, in case of continuing such relationship, the borrowers are normally offered financial restructuring or regulation-driven restructuring like COVID induced one or under MSME scheme, etc. I think that is what we would prefer as a first option. This is also because, CIRP or PPIRP, howsoever the cost or time effective it may be, is still an external process.

How many of MSMEs are ready to go through the pre-pack process is not yet known. We expect a small segment of borrowers will be able to make use of it. But having said that and based on our experience, I still believe that a bilateral discussion, settlement, or restructuring is the first preference. I do not think there will be any change in that.

Coming to the choice between CIRP and Pre-Pack, let me tell you how we handle the process within the bank. We have segmented the customers into three parts: small borrowers, mid-size borrowers and large borrowers. We typically go for a Board approved non-discretionary and non-discriminatory settlement scheme for first category. For mid-Size borrowers, we have an internal committee to scrutinize the cases in a fair manner. In case of large borrowers, we have an external expert committee deciding upon the restructuring of the debts, as the first preference. However, we need CIRP and pre-pack mechanisms as it may be necessary to have a legal sanctity, in all its fairness and to ensure that there is no moral hazard and there is no haircut agreed on beyond a point. Also, in the case of multiple banking arrangements, reaching consensus becomes difficult unless you have a formal forum in place. In such cases as well, we prefer to make use of CIRP or Pre-Pack.

On whether Pre-Pack should be applied to large-value cases, it is certainly possible. Presently, the target group is MSME with default threshold at Rs 10 lakhs. This being a new initiative, we needed to start somewhere. Based on experience, we can finetune the legislation, before

expanding it to larger cases at the second stage, say, in a year or two. Besides, we would like to keep CIRP as an option on our table where borrowers are not cooperative, due to complexities or where there are multiple stakeholders involved. In such cases it is better to go in for a transparent price discovery under a formal legal framework.

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Dr. Haldia: In one of the research studies conducted by IIIPI, we found that each CIRP takes on an average about 113 days in litigation, costing about Rs 18 lakh. For 3000 cases, the amount works out to about Rs 540 crores. We also conducted studies on best practices of CoC members and one on Group Insolvency. The bankers are integral and an important stakeholder in a CIRP, as CoC member or otherwise. What has been your experience regarding CoCs? How have the CoC systems matured over time and what were the challenges so far? Sharing some responses of IPs, they feel the CoC systems and interface needs to be more streamlined. What more can be done to make the CoC-IPs engagement more fruitful?

Shri Swaminathan: CoC is a like a fulcrum around which the whole process revolves. Hence the need for CoC to be efficient because every stakeholder that is part of the resolution process is impacted by the decision-making of the CoC. Regarding our experience in handling CoC matters, it has been a mixed bag. There have been some great moments in terms of mutual understanding and coordination that helped us in resolving some of the trickiest issues. Yet there have been moments of frustration when we felt that the things were not moving as they should have.

Our expectations were also not different. This is because CoC is a kind of lenders' forum, not a regulated body and it should not be so. It is a kind of the self-regulatory forum, requiring self-discipline or best practices. IBBI is working on this and we also have a group of bankers engaged in developing and drafting a kind of Standard Operating Procedure (SOP) that could govern or cover FAQs for the members of CoC. But from SBI's perspective, we have put a clearly laid down methodology for the SBI nominees. Depending on the complexity and size of the debt, we have laid down the criteria of internal engagement on CoC matters. Besides, we endeavor to bring industry experience to the forum of CoC and our stakeholders.

Most importantly, and something our present Chairman Mr Dinesh Khara is very keen on, as an industry leader we are working with a group of COC members, under the umbrella of Indian Banks Association (IBA), through multiple webinars, etc. where stakeholders like IBBI, IIPPI, IPs, lenders, and others can come and share their expectations and what the COC can do to make the process efficient. I think it is our duty to strengthen the CoC forum by providing the right skill sets. Few lenders do not understand some of the intricacies that can delay the decision-making. Moreover, IPs need to deliver through this forum. We look up to industry experts like you and other stakeholders to debate and deliberate on how CoC can mature over time.

Dr. Haldia: Well said Mr. Swaminathan. We are also conscious about these challenges and have taken several initiatives. We wrote to all the banks about a capacity building programs for all the bankers particularly smaller banking institutions and we were able to organize one program attended by several bankers/FIs. We also approached IBA to jointly hold webinars for the bankers at different levels – the senior management, COC members, and others to create awareness and capacity building. We will be happy to work with you in this endeavor to empower the COC. This will also be helpful in addressing several doubts and misconceptions about the lenders in the minds of debtors.

Shri Swaminathan: We will be very happy to work with you and IBA to support this kind of skill-building initiative. Any investment we make on this, in terms of time and money will be worthwhile, resulting in the benefits from a mature CoC forum.

Dr. Haldia: Tell us about your expectations from IPs. As per one extreme view, IPs lack transparency and requisite competence to manage the CIRP as a CEO of the Corporate Debtor (CD) and balance the interests of the stakeholders, as often argued by the promoters of CD. On the other side, the IPs feel that they are considered akin to an employee of the CoC, the lenders not understanding their issues and not communicating their decisions in time, lenders not paying them reasonably and not releasing payments on time, etc. The bankers, at times, ask them to get temporary borrowings from the market for the professional fee to be reimbursed later. Sometimes IPs are even asked to arrange funds from their own sources to the fund cost of CIRP and liquidation. In what perspective do



you see these two extremes? And, what as a banker you can do to resolve some of these issues?

Shri Swaminathan: I think you have articulated the feedback of both the sides very well. I want to say, the truth lies somewhere in between. There are points in both the sides i.e., Bankers' feeling towards IPs and vice versa. Experience says, we need to bridge this gap. As senior management, when these feedbacks reach us, we try to sensitize our officials about the role of IP as a professional engaged by the ecosystem to ensure resolution. And that, though replacement of IP is an option, but there is no guarantee that the next IP will be any different.

Our guidance to our officials participating in COCs, is to segregate issues in terms of intent or integrity on one hand and lack of skill sets in resolution because of inadequate understanding of the process etc., on the other. In case of latter, we engage with concerned IP and equip him to understand those issues better. However, if it is the matter of integrity, we make a small group of COC to examine and make an impartial decision. About 90-95% of the issues are on account of inadequate understanding and experience. Of course, we have some of the excellent IPs with a lot of positive feedback. We must acknowledge the industry's efforts in terms of training IPs and giving them a professional touch.

We have some seen some of the most complex cases being handled by IPs. Though as a professional IPs have a responsibility to undertake, we have seen IPs going beyond their call of duty, wanting to work with us, and keep trying different solutions to an issue. The last 5% of the issues could be on account of the inadequate conduct of the IP. In that case we try and take quick action and if required, replace the IP. The inadequate conduct constitutes a small portion and I think in any system you have a few members who may not be competent enough

for their role. This is something we will have to live with.

Regarding the perception of IPs, I would like to advise the IPs that being a resolution professional you need to live up to the expectation of facilitating an orderly resolution. As an IP, you have enormous responsibilities while assuming role of managing CD. That calls for deeper engagement, complete understanding of the whole process, clarity of thoughts in terms of various options, and a solution-oriented approach rather than getting demoralized by the challenges. Finally, we expect and would like IPs to be completely transparent, honest, and committed to their cause. And only then they are cut out for this job. Inadequate capacity is not a problem as we can handle that by building the skills through sharing our experience and allowing them time to mature.

Dr. Haldia: Well. You have rightly said. That is why our focus in our Webinars for IPs is always on ethics – ethical conduct and ethical spirit. Because if they are not ethical from within then the ethical conduct will be superficial. We are also working on a Code of Ethics in which we will also address to the grey areas so that there is a consistency and transparency across the profession in those matters.

Now, let me come to another area i.e., Bad Bank. Based on over 20 years of my experience while working with various Development Financial Institutions (DFIs), and as expressed through some of my published articles on Bad Banks and Development Banks, theoretically, the Bad Bank is considered helpful in resolution of stressed assets. Do you think so? If yes, what essential ingredients a Bad Bank should have to make it happen so that it really serves to the purpose?

Shri Swaminathan: At the outset, the Bad Bank in our view is a good idea. Its time has come which we must pursue. We feel that it will improve the dispensation as compared to the past. This is because of setting up of NARC (National Asset Reconstruction Company) and AMC (Asset Management Company) presupposes an aggregation of debts as an essential ingredient. The lenders join and agree to transfer the entire or majority of debt to NARC. So far, the ARCs were facing the challenge that in most cases they used to acquire a part of the debt not



giving them a majority and say in the decision making, among diverse set of participants. So, getting a consensus and value realization has been a challenge.

Now, the lenders shall come forward and there shall be a designated and targeted transfer to NARC. So, the aggregation is going to be a key differentiator compared to the earlier ARC process. That is what gives us confidence that with this, a resolution could be superior and faster. The second aspect is this will have an AMC (Asset Management Company) structure which can engage with stakeholders better to maximize the value. Currently, the ARCs have limitations in terms of business model. In fact, SBI's former chairman Sh. Rajnish Kumar has been a big exponent of this idea, having articulated this at various forums. So, the aggregation and better management structure is going to make the key difference and as a game changer.

Dr. Haldia: What next you think IBC should address? Do you think IBC mechanism is still not comprehensive in terms of Group Insolvency, Cross-Border Insolvency, and Individual Insolvency? What hurdles do you face in efficient handling the stress of large groups? What changes do you want in Group Insolvency and Cross Border Insolvency and how fast would you like that to happen?

I would like to advise the IPs that being a resolution professional you need to live up to the expectation of facilitating an orderly resolution.

Shri Swaminathan: The issue has two aspects – legislative and then implementation including judiciary. On legislation as pointed out by you, we need to expand the scope of IBC to handle the Group and Cross Border Insolvency. A group has been working on that and my predecessor, Mr. Setty has been part of that process. We look forward to getting the same formalized soon so that we can pursue group level and cross-border cases effectively.

Another challenge that we face, pertains to post-CIRP Cash flows and up to implementation. There are divergent views – some lenders hold the view that Post-CIRP cash flows should belong to the lenders whereas the other view is that it belongs to the Corporate Debtor (CD) that is to be taken over by the Resolution Applicant. Since the matter is sub judice at this point of time, I would not give any

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recommendation. However, legislative clarification could remove the ambiguity around post-CIRP cash accruals considering the time lapse between the approval and implementation of plan in certain cases.

Coming to implementation part, I would like a lot of improvements to take place. Over last one year, we all have been seriously impacted by the COVID-19 pandemic and that includes various judicial forums. We expect Covid pandemic to ease out soon with normalcy restored. However, even after normalcy is restored, there is an urgent requirement to augment bench strength to handle the large number of admitted cases and cases pending for admission.

This is important to carry the momentum of first phase of IBC forward, which has been reasonably successful with some big-ticket resolutions. Of course, capacity building is needed here too, but that is not something I want to highlight now. Rather, the manpower issue in the courts should be addressed first, for faster disposal of the applications pending at various stages.

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In nutshell, I would expect more done on legislative side with augmentation of capabilities on implementation side to unlock the value at stake, faster.

Dr. Haldia: How do you visualize the IBC or distress resolution in next 3 to 5 years taking the shape in terms of law, systems, and processes?

Shri Swaminathan: Taking a time frame of 3 to 5 years, I would imagine, and I am reasonably confident that IBC will evolve into a comprehensive legislative framework covering all forms of insolvencies whether it is corporate or individual or group or cross border, encompassing all possible facets. On the other hand, we expect a better delivery and response mechanism to ensure value maximization for all the stakeholders. We expect that the lenders' nightmare of pursuing lengthy and complex legal process goes away sooner.

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In next five years, I imagine a comprehensive IBC legislative process with adequate support structure and a well-developed ecosystem of Information Utilities (IUs) as well as Resolution Professionals, all coming together. I visualize a situation, for example, they meet over the weekend, take a proposal to NCLT which is approved in a week before getting implemented. Thus, value maximization of businesses can be achieved while preserving jobs.

Dr. Haldia: I at times get baffled by the fact that the same banker deals with the liquidation, pre-pack, CIRP and settlement. Now, all of them require different mindsets, different ecosystem, and culture. How as a banker, you expect them to switch on and switch off moving from one mindset to another? Is that not very difficult?

Shri Swaminathan: You said it right. That is what segregates men from the boys (in lighter mode). Every day, we need to wear different hats. We get to work across different verticals like marketing, under-writing, resolution, recovery, and rest of the ecosystems within a financial institution. Officials require maturity while playing different roles and doing so effectively determines the success or failure of an initiative. An individual's skill sets play a crucial role, which are acquired over a period. Not just resolution but in the context of any initiative, it is only when stakeholders can understand their role and play it effectively, success is achieved. And wearing different hats come naturally to us as bankers. At the end, it is the attitude that matters. If one has the commitment and attitude, it is not very difficult to realize one's goals.

Dr. Haldia: Thank you Mr. Swaminathan, for your comprehensive coverage of the subject and sharing your vision as a professional banker. This could not have been better.