

Expediting Approval of Resolution Plan- Need of the Hour



*Completing the insolvency process with the prescribed time limit, has been a major concern on IBC across stakeholders. The delays cause deterioration in the value of assets due to pilferage, obsolescence, diversion of funds, poor maintenance, low-capacity utilisation, and operational losses. In this backdrop, the author has presented a step-by-step analysis of delays at various levels of the insolvency process along with recommendations to save time wherever possible thereby completing the entire CIRP process within the prescribed limit i.e., 180 days. Some of the major suggestions include doing away with the two-stage process of inviting EOI and resolution plans, giving more time to investors and design a format for submission of the resolution plans. **Read on to know more...***



Ashok Kumar Gulla

The author is an Insolvency Professional (IP). He can be reached at akgulla@yahoo.com

1. Introduction

One of the objectives of the Insolvency and Bankruptcy Code, 2016 (Code) is to ensure insolvency resolution of the Corporate Debtors (CD) in a time bound manner. In over past five years, the Code has been instrumental in achieving resolution in many cases and thus unlocking funds of banks/ Financial Institutions that can be utilized for availability of credit. However, resolution within the prescribed time limit has not been fully achieved which is one of the major concerns of various stakeholders of the IBC. It is apprehended that in case this issue of achieving timely resolution is not resolved, the Code may not fully achieve its objectives and may somewhat meet the same fate as previous measures introduced to deal with stressed assets. The resolution of the large number of insolvent companies has a major ramification on the financial Sector and the economy as a whole as it helps in unlocking the funds and achieving overall economic growth.

Hence, the moot question in the mind of various stakeholders is whether this problem of delays occurring in the Insolvency Resolution can be addressed by reducing the duration of various processes for having an

implementable resolution plan in place within the time limit fixed by the Code. It is desirable that necessary changes in the policy and procedures are made, and process efficiency improved at various levels to achieve this objective. An attempt has been made in this article to elaborate on various issues that need to be dealt with to achieve the desired objectives of the Code.

2. Prescribed Time Limit for Completion of CIRP

As per Section 12 (1) of the Code, the Corporate Insolvency Resolution Process (CIRP) shall be completed within a period of 180 days from the date of admission of the application to initiate such process. Further, as per Section 12 (2) of the Code, the same can be extended up to 270 days with the approval of resolution passed at a meeting of the committee of creditors (CoC) by a vote of sixty-six per cent of the voting shares.

The Section 12 (3) of the Code mandates that if the Adjudicating Authority (AA) is satisfied that CIRP cannot be completed within 180 days, it may by order extend the duration of such process beyond 180 days by such further period as it thinks fit, but not exceeding 90 days. Further as per Section 12 (4) of the Code, the CIRP shall mandatorily be completed within a period of 330 days from the insolvency commencement date, including any extension of the period of CIRP granted under this Section and the time taken in legal proceedings in relation to such resolution process of the CD.

3. Average Time Taken in Completion of CIRP

While the maximum time limit for completion of the CIRP is 330 days, but in actual the average time taken in completion of CIRP resulting in approval of resolution plan as per the IBBI Newsletter¹ (July-September) is more than 408 days as of March 31, 2021, and 584 days as of September 30, 2021. This time is exclusive of the time taken from the date of submission of the application to AA to the order of the AA for commencement of CIRP.

There are several factors resulting in such delays, starting from the time taken by Financial Creditors to take the CD into CIRP, time taken by the AA to admit the application

for initiating CIRP, time taken in getting Prospective Resolution Applicants (PRAs) to submit Expression of Interest (EOI) and thereafter submission of Resolution Plan leading to seeking several extension from AA; long time taken by CoC to negotiate with PRAs on the Resolution Plan and these negotiations stretch to several meetings, legal issues challenging the process on account of eligibility of PRAs, non-admission of claims of creditors by RP, dispensation provided to various stakeholders and finally time taken by the AA to approve the Plan.

The entire process so far has been time consuming, and, on an average, it may take around 4 to 5 years from the time the account is in default till implementation of the Resolution Plan

The entire process so far has been time consuming, and, on an average, it may take around 4 to 5 years from the time the account is in default till implementation of the Plan to deal with the insolvency resolution.

4. Time taken from Filing Application to order by AA for initiating CIRP: The duration involved at various stages are as follows:

- a) As per Section 7 (4), Section 7 (5), Section 9 (5) and Section 10(4) of the Code, the AA shall within a period of 14 days of the receipt of the application by an order, admit the application if it is in order. The CIRP shall commence from the date of admission of the application by AA. However, in practice, the application takes much longer time to get admitted for commencement of CIRP.
- b) The Supreme Court in its order on September 19, 2017, in the matter of *M/s Surendra Trading Company vs M/s Juggilal Kamalapat Jute Mills Company Limited & Ors*², upheld that the timeline fixed in the Code is not mandatory but directive in nature.
- c) There are instances where the application submitted under Section 7 of the Code by the

¹ The Quarterly Newsletter of the Insolvency and Bankruptcy Board of India (July –September 2021) Vol.20 available in IBBI Web Portal

² Supreme Court, *Civil Appeal No. 8400 of 2017 & Anr., M/s Surendra Trading Company v/s M/s Juggilal Kamalapat Jute Mills Company Limited and Others*, Order dated 19.09.2017.

Financial Creditor is not admitted even for more than a year. The reason for such delays could be many and one main factor is that promoters try to delay the admission of the CD in CIRP for frivolous reasons. Similarly, for the applications filed under Section 9 of the Code, dispute with the Operational Creditor remains main hurdle in admission of the application for initiation of CIRP.

- d) The CD remains in default in payment to the Financial Creditor (FC) before it is turned Non-Performing Asset (NPA). Even, after the account is turned NPA, the efforts are made by lenders to arrive at some restructuring package under various schemes of Reserve Bank of India (RBI). Thus, time is taken before the FCs decide on filing an application for initiation of CIRP.
- e) The time taken in admission of the application for initiation of CIRP is the period when maximum deterioration in the value of assets takes place due to pilferage, obsolescence, diversion of funds, poor maintenance, low-capacity utilisation and operational losses. This leads to a situation where so many cases admitted into CIRP do not achieve revival through insolvency resolution and are ultimately dealt under liquidation. If a timely action is taken for admission of these CDs into CIRPs, it can help in revival of these corporates.
- f) In order to preserve the value of the CD, it is of utmost importance to make necessary changes in the policies of the FCs to submit application for initiation of CIRP within a maximum period of six months from the date of account classified as NPA and changes desirable in the Code to fix maximum time of 30 days for AA to admit the application into CIRP.

5. Time Involved in inviting Expression of Interest (EOI)

- a) Inviting EOI from all the eligible parties is the first step for resolution of the Corporate Debtor

(CD). The Section 25 (2) (h) of the Code directs the RP to invite resolution plans from PRAs that fulfil such criteria as may be laid down by him with the approval of CoC having regard to the complexity and scale of operations of the business of the CD and such other conditions as may be specified by the Insolvency and Bankruptcy Board of India (IBBI) to submit resolution plan/s.

- b) Regulation 36A of the IBBI (Insolvency Resolution for corporate persons) Regulations, 2016, 'Form G' for invitation of EOI is to be issued within 75 days of commencement of CIRP. The invitation of EOI provides at least 15 days from the issue of EOI, Provisional List of PRA to be issued by RP within 10 days from the last day of receipt of EOI and submission of objections to Provisional List within another 5 days from the date of Provisional List. The Final List of PRAs to be issued within 10 days of the receipt of the objections. Hence entire process from publishing of 'Form G' to Release of Final List of PRAs is expected to be completed by 115th day from the commencement of CIRP.

In fact, the 15 days time provided for inviting EOI is too short as not many PRAs become aware of such invitation in most cases. This requires reissuance of Form G by the RP.

- c) In fact, the 15 days time provided for inviting EOI is too short as not many PRAs become aware of such invitation in most cases. Therefore, the RP with the approval of the CoC is required to re-issue 'Form G' to get more PRAs to submit EOI so that to ensure large participation for maximization of the value of the CD. Thus, entire process of inviting of EOI and finalization of Final List of PRAs takes more than prescribed time limit of 115th Day from Commencement of CIRP.
- d) As in practice, more than four months are consumed in completing the process for inviting



of EOI and Release of Final list of PRAs, it leaves little time for the PRAs to complete due diligence and submit a Resolution Plan. Thus, RP with the approval of the CoC seeks extension of time from AA to complete the process.

6. Proposed Modification in inviting EOI and submission of Resolution Plan

- a) The existing two stage procedure for inviting EOI and then Resolution Plan creates delay and opportunity is lost to bring all the PRAs to participate in the process. A time limit of around 20-25 days given to the PRAs to submit the EOI without carrying full due diligence does not attract sufficient number of PRAs. At the initial stage, without getting full information like IM, access to Virtual Data Room (VDR) and physical inspection, not many PRAs decide in favour of submitting EOI.

In most cases, finally not more than 10 to 20 EOIs are received. Hence, there is no need to have two step approach – inviting EOI followed by inviting resolution plans.

- b) This preliminary scrutiny of eligibility criteria could have been useful where large number of PRAs submit EOI. In most cases, finally not more than 10 to 20 EOIs are received. Hence, there is no need to have two step approach.
- c) Hence, 'Form G' be released directly to invite submission of the Resolution Plan by PRAs till the last date of such submission i.e., RP releases

'Form G' latest by the 60th day of commencement of CIRP and provides 75 days to submit a Resolution Plan and gives another 30 days for negotiation and discussion of the Plan with the CoC. Accordingly, CoC can approve the Resolution Plan within 165th day from the commencement of CIRP and the Plan can be submitted within 180 days of the Commencement of CIRP to AA. These timelines may need to be mandatorily adhered by PRAs and CoC.

- d) The advantages of this modification in the process for submission of the Resolution Plan and doing away with the inviting of EOI will be as under:
 - i. It will give enough time for PRAs to carry due diligence and to submit Resolution Plan. PRA within this period can arrange for tie up of funds to meet Resolution Amount and can deal with the issues more appropriately.
 - ii. There will be lesser chances that any potential and deserving PRA has been left out even after such timelines and may not need to approach AA for not including in the list for submission of the Resolution Plan.
 - iii. It is expected that higher number of Plans may be received as there is no time limit separately for submission of EOI and Resolution Plan.

7. Model Draft for Submission of Resolution Plan

- a) The Resolution Plan submitted has to meet the conditions and requirements as stipulated in Section 30 (2) of the Code and Regulations 37, 38 and 39 of IBBI (insolvency Resolution for Corporate Persons) Regulations, 2016. These contents in the Resolution Plan be captured in the Model Format at appropriate places. This modification can save a lot of time at the stage of negotiation of the Resolution Plan with members of CoC and scrutiny at AA.

- b) There is no standardized format for submission of the Resolution Plans by PRA and hence in most cases, these Plans do not contain relevant information/ declarations at one point.

There is no standardized format for submission of the Resolution Plans by PRAs. Therefore, the scrutiny of plans becomes a time-consuming process.

- c) Hence, lot of time is involved by RP and his legal counsel to examine that the Plan is in compliance of the Code. This time can be saved in scrutiny of the Resolution Plan by RP, Legal Counsel to RP, members of CoC, and at AA, if there is a standardized Format to submit a Resolution Plan. A team of experts from existing IPs and IBBI can design such Model Format.
- d) The Model Format may have following Chapters:
- i. Chapter 1: Particulars of the Resolution Applicant giving Name address, Type of Business, Name of Directors/ Promoters, Financial Position, reason for submission of the Resolution Plan, source for meeting the Resolution Amount along with documentary proof regarding eligibility.
 - ii. Chapter 2: Particulars of the CD giving Name, Registered office, CIN, claim admitted, particulars of asset, business, reason for default and how the resolution Applicant propose to revive the Company.
 - iii. Chapter 3: Financial offer to meet Insolvency Resolution Process Cost, Payment to both assenting and dissenting Financial Creditors, Payment to Operational creditors, Payment to other creditors, Treatment to shareholders, Treatment to workmen and employees and other liabilities, if any.
 - iv. Chapter 4: Term of the Plan and Monitoring and supervision of the Plan



- v. Chapter 5: Various Waivers and Concession and Prayers
- vi. Chapter 6: Other content if any

8. Limit on time taken in negotiation of Resolution Plan by CoC

- a) After the Resolution Plan (s) are submitted by the PRAs, the next step is to seek approval of the Plan from CoC. The meetings of the CoC prolong and at times it takes more than 10 to 15 meetings to decide on the Resolution Plan.
- b) The representatives of the FCs attending the CoC meeting do not have the requisite power to decide on the amount expected to be in the Resolution Plan. The FCs have such deciding powers vested in the higher authorities/ sanctioning Committees or Board. The members of CoC keep on bargaining till the last and this process stretches over a series of meetings. There are number of instances where RP with the approval of CoC had requested for extension of time to AA so that CoC decide on the Resolution Plan.
- c) It may be preferable if such meetings are restricted to be held within a maximum period of 30 days. Hence, a maximum time of 30 days may be given to members of CoC to negotiate with the Resolution Applicant to decide and approve/ reject the Plan.

9. Approval of the Plan by NCLT

- a) As per Section 31 (1) of the Code; if the AA is satisfied that the resolution plan as approved by the CoC under Section 30 (4) meets the requirements as referred to in sub-Section (2) of Section 30, it shall by order approve the resolution plan.
- b) Hence, role of the AA is to examine whether the Plan is in compliance of Section 30 (2) of the Code. However, in number of instances, AA has taken a broader role on itself to raise a point - whether the financial offer is reasonable for various stakeholders - and referring the same to CoC for reconsideration. This has resulted in the delay on approval of the Plan.
- c) Further, there are number of legal issues that are to be dealt by AA before approval of the Plan including attachment by various authorities on assets of CD during CIRP such as by Enforcement Directorate (ED) under PMLA. Despite having clarity in law, the authorities still continue to attach the assets of CD in CIRP which delays the process.
- d) There is a scope for improvement in the process by making necessary changes in the Code, regulations and other laws prevailing currently.

10. Way Forward

There's a scope to reduce the delays and achieve the objective of completing the CIRP in the prescribed time limit under the Code. This can be possible with certain changes in the Code, Regulations, and other laws and to improve efficiency of the process at each level. Some of the suggestions are as follows:

- a) Lenders to decide within six months of the account turning NPA to initiate CIRP. Within this period, Lenders should examine all possible options of restructuring outside IBC. RBI may consider issuing detailed guidelines to meet these timelines.



There is a scope to reduce the delays and achieve the objective of completing the CIRP in the prescribed time limit under the Code.

- b) The AA based on the available documents may decide on the application for initiating CIRP within a period of 30 days after giving one opportunity to the CD to represent the case if found necessary.
- c) The RP to issue invitation for submission of Resolution Plan directly by PRAs without need for first submission of EOI.
- d) Model Form for submission of the Resolution Plan be decided by IBBI to bring uniformity in approach and reduce the time taken in scrutiny of the Plan at various levels.
- e) CoC to decide on the Resolution Plan within a period of maximum 1 month.
- f) Necessary changes in the Code, Regulations and other laws to take care of various issues regarding attachment on assets of Corporate Debtor during CIRP by statutory, regulatory authorities and ED. internationally.