

## It's the Responsibility of all Stakeholders to Make Collaborative Effort to Reduce the Time Taken for Completion of Resolution Process of Stressed Assets and Prevent Significant Erosion of Value of the Assets: Shri Ashwini Kumar Tewari, MD, SBI

*For Insolvency Professionals, it is required to maintain transparency in the process, ensuring that all stakeholders are appropriately informed. S/he also has to perform a balancing act of conducting the resolution process while taking care of the interests of all stakeholders of the CD.*



**Shri Ashwini Kumar Tewari**

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*Shri Ashwini Kumar Tewari is presently the MD and Whole Time Director of SBI, handling the portfolio of Risk, Compliance and SARG from June 2022. In his role, he is focusing on early recognition of corporate stress and action thereon, establishing a Climate Risk Framework for the Bank including identification, funding etc. and activating stressed assets sale platform. Under his leadership, the Bank's rating in the RBI Audit has improved from High to Medium Risk. Earlier, he was handling the portfolio of MD-International Banking, Technology & Subsidiaries at SBI. In his banking career of about three decades, Shri Tewari has handled several assignments for SBI in India and abroad.*

*Trained as an Electrical Engineer, he is also a Certified Associate of Indian Institute of Bankers (CAIIB), and Certified Financial Planner (CFP). He has served on the Board of International Institute of Bankers, New York, and the Board of University of Washington Global Bankers Program.*

*In an Exclusive Interview with IIIPI for The Resolution Professional, Shri Tewari expressed his views on various aspects of the IBC Ecosystem. Read on to know more....*

**IIIPI: IBC, 2016 has recently completed first six years of operation. How do you assess evolution of IBC so far towards resolution of stressed business in India and promoting ease of doing business?**

**Shri Tewari:** Insolvency and Bankruptcy Code, 2016 (IBC/Code) aimed at providing a time-bound process for resolving insolvency in businesses and individuals and to improve the ease of doing business in India and boost investor confidence by providing a more predictable and transparent framework for resolving bankruptcy. IBC has pushed a lot of promoters into negotiating with the banks, which they did not do earlier.

It has been a mixed result in the last six years of the IBC. On the one hand, the code has been successful in resolving the insolvency of several large companies, such as Essar Steel, Bhushan Power and Steel, and Alok Industries, among others. The successful resolution of these cases has led to the injection of fresh capital and the revival of these companies, which has had a positive impact on the economy in terms of employment and other economic parameters.

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Another key objective of the IBC was to improve the recovery rate for creditors. Prior to the IBC, the recovery rate for creditors in insolvency cases was relatively low, with creditors often receiving only a small fraction of their outstanding claims. The average recovery rate was just around 26%. But, since the introduction of the IBC, recovery rates have varied from approximately 33% in 2021-2022 to as high as 49.6% in 2017-2018. This is a significant improvement and is a testament to the effectiveness of the IBC in improving the recovery rate for creditors.

On the other hand, the IBC has also faced several challenges mainly on account of slow pace of resolution.

Ministry of Corporate Affairs' initiative to bring substantive changes in IBC, 2016 is a welcome move. Inviting comments from the public on proposed changes will provide perspective of all segments and stakeholders. Five years of IBC and experience of more than six thousand admitted cases are quite a lot to understand and identify the areas of improvement, viz. adhering to the timeline, large haircuts taken by financial creditors, increase in number of litigations hampering resolution process. In many cases submitted resolution plans are even lower than liquidation value, which is also an area of concern and needs attention.

**IIPI: While undertaking processes under IBC, wisdom of CoC is considered paramount. How has been SBI's experience on ground as a CoC member in addressing critical issues during IBC process?**

**Shri Tewari:** The Insolvency and Bankruptcy Code, 2016, envisages a “creditor in control” regime where creditors shall exercise a control through insolvency professionals in the event of default in payments of loans or interest.

Committee of Creditors (CoC) is the tool to have that “control” over the functioning of the debtor in default against which Corporate Insolvency Resolution Process (CIRP) is initiated. Insolvency Resolution Professional (IRP) recommended by CoC and appointed by Adjudicating Authority takes over administrative control of the management of the corporate and takes decisions for the going concerns based on recommendations of CoC.

As all the members of the CoC have identical goal of maximizing the recovery in best possible period within given timeline under the Code. So, generally members are on same page and take collaborative decision benefitting Resolution Process.

The Code and the courts have left a wide ambit of commercial and business decisions to the CoC. The Resolution Professional (RP) chairing the meetings of the CoC serves as a means to address coordination issues in the CoC and ensures adherence to objective and timelines of the CIRP. CoC's decision with requisite voting share in relation to the Resolution Plan is sacrosanct. The approved

plan as stamped by the court is binding on all stakeholders including the dissenting creditors. The choice of Resolution Plan has been placed under the ambit of the 'commercial wisdom' of the CoC and is unchallenged.

Considering the importance of the role to be played by the nominated representative of the Financial Creditor (FC) in CoC, SBI has well laid down guidelines for its officials representing the Bank in CoC. Our Bank has been nominating officials of sufficient seniority to CoC. Internal approval processes involve senior functionaries/committees in decision making. Expertise and experience of our representatives and directions from senior functionaries, besides a robust legal department help in handling critical issues, assessment of resolution plans, handling litigations affecting the CIRP.

As such we are well placed as regards addressing critical issues during IBC process.

**IIPI: The framework for Insolvency of Personal Guarantors to CD has been in vogue for over 3 years now. The experience, however, has been mixed bag. What is your assessment of the same?**

**Shri Tewari:** Although Insolvency of Personal Guarantor to Corporate Debtor (PG to CD) is in vogue for more than 3 years now, and almost 1,612 cases have been filed for Insolvency of personal guarantors, traction in this area requires much improvement. As per IBBI data as on December 31, 2022, although 1,612 cases have been filed with aggregate debt amount of ₹1.41 lakh crores, only 154 applications have so far been admitted and only 2 have yielded approval of repayment plan resulting in realization of ₹12 crores.

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SBI has filed more than 300 Personal Insolvency cases and none of the cases have reached repayment plan stage.

Evidently this area needs urgent attention of the stakeholders and the improvement in Adjudicating infrastructure is the need of the hour for faster disposal of the cases.

**IIPI:** Prepack Insolvency Framework was introduced as a pre-emptive measure for resolving MSME stress especially in the backdrop of Covid pandemic. Usage/outcome thereof has been sub-optimal. What would be your views on the efficacy of PPIRP and on its viability getting extended?

**Shri Tewari:** Pre-Pack Insolvency Resolution Process (PPIRP) is a restructuring methodology that enables creditors and debtors to come to an informal agreement before submitting it for approval. It's a fact that PPIRP has not gained required traction in the market as very few cases were admitted under this mechanism.

Inherently this scheme has many benefits, viz. completion of initial steps of resolution process before approaching Adjudicating Authority, management control remains with the Corporate Debtor, Base Resolution Plan and availability of 'Swiss Challenge method' to make the best possible Resolution Plan. Additionally, CoC is also provided for under the scheme to resolve at any time after the Pre-Pack Insolvency commencement date to initiate CIRP.

However, PPIRP is only limited to MSME. The poor response may be attributed to the limited scope as promoters of the defaulting MSME may not be comfortable initiating PPIRP as it will involve monitoring of management of the affairs of CD by the appointed Resolution Professional, examination of avoidance transactions, power to CoC to resolve to vest the management of the Corporate Debtor with the Resolution Professional.

There can be hesitancy on the part of financial creditors also as haircut involved is a last resort in the case of CIRP, against a voluntary one in case of PPIRP. There might be fear among operating officials of Financial Creditors that such a decision might be subject to scrutiny by various authority at a later date.

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**IIPI:** The need has been felt for having a framework of “Code of Conduct for CoC members” under IBC. Though efforts seem to afoot in this regard, how do you visualize the need for and emerging scenario on this front?

**Shri Tewari:** Financial Creditors play a very significant role as they have larger stakes involved. FCs are equipped with the ability to decide on matters relating to commercial viability of the CD and display their willingness to take the risk of restructuring their debts in order to keep the CD a going concern. It may also be argued successfully that the FCs are better placed to assess the feasibility and viability of a Resolution Plan for the successful continuance of a CD as a going concern. And if a CD revives successfully, it can as well be reasonably assumed that other stakeholders like Operational Creditors would also equally benefit from the revival.

**While at a micro level, say on an individual bank level, we do not feel the need for a formal “Code of conduct for CoC”... However, on a larger scale, say at industry level, Code of Conduct for CoC may set out the guiding principles for the conduct of the CoC.**

While at a micro level, say on an individual bank level, we do not feel the need for a formal “Code of conduct for CoC”, as at SBI, we have a robust system of nominating representatives, internal approval system through designated senior functionaries/Committees, robust legal department to support the CoC as and when required and a structured NCLT Department which acts as a Nodal Point to oversee the process, empanel Advocates and IRPs, appoint IRPs and acts as a conduit to suggest changes/modifications in IBC/ Regulation as and when required to IBBI/ IBA.

However, on a larger scale, say at industry level, Code of Conduct for CoC may set out the guiding principles for the conduct of the CoC and ensure that its commercial wisdom is largely confined to within the four walls of these guiding principles.

Some of the guiding principles may include intent statements on the following areas:

- (a) demonstrable transparency in the conduct of the CoC especially regarding conflict-of-interest issues.
- (b) requirement for better due diligence of the RA as well as the CD;

- (c) mechanism for resolution of deadlocks on matters where the CoC is unable to take decisions due to lack of requisite majority.

**IIPI: In the direction of resolving non-performing banking credit portfolio, a combination of NARCL (Bad Bank) and IDRCL is being touted as a major step. How do you see the development on this front emerging and inter-linkages, if any, with IBC regime?**

**Shri Tewari:** NARCL is basically a Bad Bank created by the Central Government in the mould of an Asset Reconstruction Company (ARC). The ARC has been tasked with picking up bad loans worth ₹2 lakh crores. The organisation pays 15% of the value of the bad loan in cash, and the remaining 85% will be paid via Security Receipts (SR). The Government approved a ₹15,300 crore blanket guarantee for National Asset Reconstruction Company Ltd. (NARCL) during January 2023, clearing roadblocks for the keenly awaited transfer of doubtful advances. Government guaranteed securities receipts issued by NARCL, which will buy the bad loans from banks will be valid for five years, and condition precedent for invocation of guarantee will be resolution or liquidation.

The IDRCL is a service company or an operational entity, which will manage assets and loop in market professionals and turnaround experts. It is the IDRCL that will put a value on the NPA.

Last fiscal year, NARCL acquired outstanding loans worth ₹10,378 crores which included Jaypee Infratech, SSA International, and Helios Photo Voltaic Ltd. NARCL has also participated in resolution of SREI group accounts and declared as successful bidder.

However, there are some challenges also like low offer value and time taken in due diligence and negotiation which is higher as compared to time taken by other ARCs though it should improve over time.

Again, as 85% of the asset value is paid through security receipts guaranteed by Government, secondary market for SRs needs to be developed, so that lenders could trade their holdings, if desired.

**IIPI: What sort of guidance, would you like to share with Insolvency Professional, Creditors and other**

**stakeholders to make IBC more robust in near future?**

**Shri Tewari:** Principal objective of the IBC is revival of Corporate Debtor and to make it a going concern and every attempt should be made to revive it in a timebound manner with liquidation being the last resort.

However, out of more than four thousand CIRP cases closed up to December 2022, 45% is through commencement of liquidation. This is obviously a higher number but when compared to same data as up to December 2021, out of about three thousand accounts closed, 75% was through commencement of liquidation. Figures show improvement in line with the objective of the code, but more has to be achieved.

Average time taken for resolution is also quite high as compared to the maximum permitted limit. The higher time taken for resolution is mainly on account of associated litigation as with time, the average number of interlocutory applications (IAs) has increased, which is considered to impact realisable value of assets.

It's the responsibility of all stakeholders to make collaborative effort to reduce the time taken for completion of resolution process of stressed assets and prevent significant erosion of value of the assets.

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For Insolvency Professionals, it is required to maintain transparency in the process, ensuring that all stakeholders are appropriately informed. S/he also has to perform a balancing act of conducting the resolution process while taking care of the interests of all stakeholders of the CD. For this reason, the need for specialized professionals to conduct CIRPs is critical.

Financial Creditors need to increase focus on improving recovery rate, keep advance preparation for expected litigations, make all efforts to support Insolvency Professional in completing the process within given timeframe and iron out differences as regards distribution of offer amount.