Watching the Insolvency and Bankruptcy Code work

Finance Research Group
IGIDR

December 5, 2017
Re-cap: Why IBC?

Circa 2015:

Insolvency and recovery of debt in India: Ease of Doing Business (2015)

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Intended outcomes of IBC:

1. Increase recovery rates in insolvency.
2. Reduce the time to recovery.
3. Change credit market landscape.
Re-cap: Why IBC?
Outputs necessary to get the outcomes

1. Access to recovery mechanisms for a wide variety of creditors
2. Commercial decisions in resolution
3. Strong institutional machinery:
   - Competitive industry of IPs, IPAs and IUs.
   - Well functioning NCLTs and the NCLAT.
   - Well functioning regulator.
4. Integrity of the law:
   - Minimal judicial and state intervention.
   - Consistent decision making.
What do we know from publicly available data?

1. A new data-set of insolvency cases (FRG Insolvency Cases dataset):
   1.1 Every final order passed by each 10 bench of NCLT and the NCLAT
   1.2 Study period: December 1, 2016 - August 31, 2017
      ▶ 515 final orders
      ▶ Does not include petitions filed before the HCs and transferred to the NCLT for disposal under IBC.
   1.3 Pre-identified fields of information are captured to answer questions on the functioning of the IBC.

2. Data on the IBBI website.

3. Data from media reports.
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Output 1: Access to recovery mechanisms

Who is using the IBC?

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<tr>
<th>Type of Petition</th>
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<td>No. of petitions filed by creditors</td>
<td>436</td>
</tr>
<tr>
<td>No. of petitions filed by operational creditors</td>
<td>267</td>
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<td>No. of petitions filed by financial creditors</td>
<td>123</td>
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<td>No. of petitions where type of creditor is unknown</td>
<td>46</td>
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<td>No. of petitions filed by debtors</td>
<td>73</td>
</tr>
<tr>
<td>No. of unknown applicants</td>
<td>6</td>
</tr>
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<td>Total</td>
<td>515</td>
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Types of operational creditors

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<tr>
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<tr>
<td>Vendors</td>
<td>133</td>
</tr>
<tr>
<td>Employees</td>
<td>15</td>
</tr>
<tr>
<td>Others</td>
<td>19</td>
</tr>
<tr>
<td>Unknown</td>
<td>100</td>
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Output 1: Access to credit recovery mechanisms

What is happening to the cases filed?

Total number of cases admitted and dismissed

<table>
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<th>Cases admitted</th>
<th>223</th>
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<td>Cases dismissed</td>
<td>289</td>
</tr>
<tr>
<td>Unknown</td>
<td>3</td>
</tr>
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Output 1: Access to credit recovery mechanisms

What is happening to the cases filed?
Output 1: Access to credit recovery mechanisms
What kind of cases are being dismissed?

- Defective Petition
- Existing dispute
- Non-prosecution
- Settlement
- Time barred
- Withdrawn
- Not Available
- Other

% of cases
So far, we have seen two instances of state and judicial intervention in commercial decision-making by the creditors’ committee:

1. Jaypee homebuyers case: Judicial intervention:
   ▶ Parent of debtor (Jaypee Associates) asked to deposit Rs. 2,000 crores with the court within a given timeframe.
   ▶ Time for arriving at resolution plan condensed to 45 days.
   ▶ Appointment of amicus to participate in meetings of CoC.

2. Ordinance to disqualify certain categories of bidders:
   2.1 Wilful defaulters
   2.2 Guarantors of debtors in insolvency
   2.3 Persons whose account is classified as NPA for more than a year.
   2.4 Persons barred by SEBI from the securities markets.
   2.5 Persons connected to any of the above.
Output 2: Commercial decision-making in resolution

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3. Does IBC have a liquidation bias?
   - By May 25, 2017, 75 debtors went into resolution.
   - 13 have made public announcements for liquidation.
   - Remaining 62?

4. Disclosures during insolvency process.
Output 3: Strong institutional machinery
Insolvency Professionals and Institutional Professional Agencies

▶ Fledgling industry

No. of insolvency professionals registered since the enactment of the IBC

| No. of IPs having temporary registration | 897 |
| No. of IPs having permanent registration | 1242 |
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- IPAs - conventional players: ICSI, ICAI and the Institute of Cost Accountants of India.
Output 3: Information Utilities

1. One Information Utility, National E-Governance Services Ltd., has been set up.
2. Conventional players have not shown interest.
   - Entry barriers of net-worth, restriction on foreign control and capping individual shareholding limits to 10%.
Output 3: NCLT functioning

- Time for disposal of cases:

  Average duration for disposal of cases

<table>
<thead>
<tr>
<th>Stages</th>
<th>No. of cases for which data is available</th>
<th>Average time taken (in calendar days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of filing-Date of date of first hearing</td>
<td>56</td>
<td>19</td>
</tr>
<tr>
<td>Date of first hearing-Date of final order</td>
<td>156</td>
<td>20</td>
</tr>
<tr>
<td>Date of filing-Date of final order</td>
<td>82</td>
<td>37</td>
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- Quality of rulings.

- Data gaps.
Output 4: Integrity of the law

1. Minimal judicial intervention
   - Cases where the NCLT has taken a view on the solvency of the debtor. Cases have been dismissed because:
     - Debtor could demand receivables from other counter-parties and fix the financial health of the company.
     - Debtor’s balance sheet is healthy enough.
   - SC, NCLT and NCLAT allowed settlement post admission.
   - Jaypee Homebuyers case

2. Ordinance to placate concerns relating to bidding by promoters.
Thank you.