

INSTITUTE OF INSOLVENCY PROFESSIONALS

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IBC KNOWLEDGE CAPSULE

Report of the Working Group on Tracking Outcomes under the Insolvency and Bankruptcy Code, 2016: Key Highlights

Summary:

On 10th November 2021, the Insolvency and Bankruptcy Board of India (IBBI) released the report of the Working Group (WG) on Tracking Outcomes of Insolvency and Bankruptcy Code, 2016 constituted on 24th May 2019 headed by Mr. G N Bajpai (Former Chairman, SEBI). The report proposes a comprehensive framework for developing a metrics for measuring the outcomes of IBC to objectively evaluate the achievements under IBC. The Report suggests that it is important to design a framework for assessment of performance of insolvency regime in the country in terms of effectiveness, efficiency and efficacy. This framework would include identification of qualitative and quantitative parameters, institutional arrangements for capturing parameters, manner of using identified parameters as per mandate given to working group.

The Working Group Report was made with the following objectives:

- (a) identification of quantitative and qualitative parameters;
- (b) institutional arrangement (s) for capturing the parameters;
- (c) manner of using the identified parameters.

The Report of the Working Group on "Tracking Outcomes under the IBC" among others suggests the creation of National Dashboard for Insolvency Data for recording of real time data on insolvency filings, recovery amount, duration of the insolvency

process across CDs for all creditors. The Report also suggests the measurement of qualitative indicators for costs including court/bankruptcy, RPs fees, asset storage, preservation costs etc. apart from tracking the non-quantifiable outcomes using quantifiable proxy indicators. The excellent framework suggested for measuring the outcomes of IBC against three Es i.e. Effectiveness, Efficiency and Efficacy need to be conceptualized with practical metrics as the fragmented sources pose danger to data collation. It would be really interesting to see as to how the regulator IBBI is going to implement these suggestions and bring out the best.

KEY HIGHLIGHTS:

The following succinctly summarizes the report:

POSSIBLE INDICATORS FOR THE OUTCOMES OF IBC:

The table below summarizes the layers of outcomes and possible indicators for tracking them as recommended by the WG. The suggested framework for capturing outcomes of IBC by the WG is for the markets and the stakeholders to use and develop further.

| Layers of Outcome | Objectives | Indicators |
|----------------------------------|--|---|
| Strength of insolvency ecosystem | To aid the processes in pursuit of objectives of the Code | -Strength of each of the elements of the ecosystem -Performance of each of these elements |
| Strength of insolvency processes | To aid stakeholders to pursue the objectives of the Code | -Use of the processes under the Code by creditors and debtors as compared to other available options -Efficiency of the processes in terms of cost-time-recovery framework |
| Strength of insolvency markets | To aid the insolvency processes to arrive at competitive market outcomes | -Availability of interim finance -Availability of competitive resolution plans -Cost and information efficiency of the market |
| Impact on businesses | Enhance availability of credit, promote entrepreneurship, drive competition and innovation | -Impact on cost of capital -Change in the capital structure of companies -Impact on availability of credit -Entrepreneurship culture in the economy |

| | | |
|---------------------|--|---|
| Behavioural changes | Desired behaviour through incentives and disincentives | <ul style="list-style-type: none"> -Proactive/preventive resolutions -Resolutions in the shadow of or on account of the Code -Settlement during the resolution process -Meritocratic lending/cleaner lending |
| Overall impact | Improvement in corporate governance, resource allocation and economic growth | <ul style="list-style-type: none"> -Employment saved because of resolution of distressed companies -Amount of recoveries by creditors being ploughed back into the credit cycle -Capacity utilisation and resource allocation -Impact on the economic growth of the country |

RECOMMENDATIONS OF WORKING GROUP:

The WG has emphasised the following considerations to meet its mandate:

- (a) **National Dashboard for Insolvency Data:** Reliable real time data is essential to assess the performance of the insolvency process. IBBI has made commendable efforts in publishing quarterly data on the insolvency resolution process in detail. This includes data on insolvency filings, recovery amount and duration of the insolvency process across CDs for all creditors.

In terms of the next step, IBBI can also consider including quantitative data on cost indicators such as court/bankruptcy authority fees, RP's fees, asset storage and preservation costs etc. in its quarterly updates in line with international best practices. Apart from these, gathering the exact cost of the insolvency procedure is challenging given fragmented sources. The WG recommends a survey-based method to estimate costs, like the World Bank's Ease of Doing Business' approach, based on the responses from IPs for the time being.

- (b) **Time, Cost and Recovery:** Data on time, cost and recovery rates will allow a reliable evaluation of the insolvency process with respect to parameters of 'Effectiveness' and 'Efficiency'.

- (c) **Macro-Economic Indicators:** It is also important to track the performance of related economic indicators to assess the performance of the insolvency process with respect to other objectives such as 'promoting entrepreneurship' or enhancing credit availability'. Such an assessment would measure the performance of the system with respect to the efficacy parameter. The WG recommends a range of indicators such as number of new companies registered, credit supply to stressed sector like real estate, construction, metals etc, change in the cost of capital (particularly for stressed sectors), the status of non-performing loans, employment trends, size of the corporate bond market and investment ratio for the related sectors.
- (d) **Non-Quantifiable Outcomes:** The WG emphasises that it is imperative to measure and track both quantifiable and non-quantifiable outcomes of the Code. Non-quantifiable outcomes such as behavioural changes in the debtors and creditors, ushered in by the Code needs to be corroborated by research and quantifiable proxy indicators. As the Code matures, other behavioural changes are likely to emerge and it is desirable to acknowledge the interface between behavioural science and economic legislations.
- (e) **Data Challenge:** The WG recommends the design of a national dashboard of insolvency data by using the existing data sources to the extent possible along with specific insolvency indicators which the IBBI reports on quarterly basis.

Notes:

Abbreviations used:

IBBI: Insolvency and Bankruptcy Board of India
IPA: Insolvency Professional Agency
ICSI IIP: ICSI Institute of Insolvency Professionals
IP: Insolvency Professional
CIRP: Corporate insolvency resolution process
IRP: Interim Resolution Professional
AR: Authorised Representative
COC: Committee of Creditors
CD: Corporate Debtor
FC: Financial Creditor
OC: Operational Creditor
Code: Insolvency and Bankruptcy Code, 2016
PPIRP: Pre Packaged Insolvency Resolution Process

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