

'NPAs: challenge is to avoid delays'

On June 13, the Reserve Bank of India (RBI) came up with an advisory asking banks to file insolvency and bankruptcy proceedings for 12 loan accounts, in which banks had an exposure of more than Rs. 5,000 crore each. This constituted about 25% of the system's bad loans whose total is estimated at Rs. 7 lakh crore.

The central bank had asked banks to file bankruptcy cases with the National Companies Law Tribunal (NCLT) within June 30. The RBI had also advised banks to make higher provisions for these accounts to be referred to the Tribunal under the Insolvency and Bankruptcy Code (IBC). According to RBI deputy governor Viral Acharya, the move was intended to improve bank provision coverage ratios and to ensure that banks are fully protected against likely losses in the resolution process.

In the last week of August, RBI sent banks another list comprising 26 accounts, which they must resolve by December 31, failing which those cases have to be taken up for bankruptcy as well.

NCLT is expected to admit or reject a case within 14 days of a case being filed. However, bankers said the time taken by NCLT in some of the cases was beyond 14 days.

"It is still early days, but the number of bankruptcy cases which have been filed by operational as well as financial creditors is encouraging. Many cases have been admitted and the 180-day clock (extensible by a further 90 days) for these cases to resolve has already started," Mr. Acharya said in a speech last week.

The bell tolls

The clock starts ticking once a case is admitted. After a case is admitted, insolvency resolution professionals (IRP) are put on the job to find a resolution process. In case no resolution is possible within six months, another three months' extension can be given. However, if no resolution is reached even in extended period, the company goes for liquidation.

"Swift, time-bound resolution or liquidation of stressed assets will be critical for de-clogging bank balance sheets and for efficient reallocation of capital," RBI governor Urjit Patel had said recently at seminar on insolvency and bankruptcy.

The IBC, 2016 — which Mr. Patel describes as a watershed towards improving the credit culture of the country — was aimed at time bound resolution (or liquidation) of stressed assets.

The NCLT was constituted on June 1, 2016 with 10 benches and one principal bench. More than 1,000 cases have already been filed with the NCLT, of which more than 220 cases have been admitted. Over 900 insolvency professionals (IPs) have registered with the Insolvency and Bankruptcy Board of India (IBBI).

One of the key aspects of time-bound resolution is the infrastructure of the NCLT. Bankers and insolvency professionals said there is a need to beef up the infrastructure of NCLT as many cases apart from bankruptcy are also being filed at NCLT.

"The staff in NCLT is very limited," said Ankur Srivastava, insolvency professional, Ezy Laws.

Separate bench needed

“Bench is under pressure because there are not enough number of Judges. The same bench will be hearing IBC matters, other company law matters, other merger matters, conversion of private limited company to public limited company — all issues are going to the same bench,” he said.

According to Mr. Srivastava, a separate bench for for insolvency and bankruptcy cases is the need of the hour.

“We need to have a separate bench for IBC matters. If... [we do], then this could solve the problem,” he said.

A recent report by Assocham and EY, titled ‘Experiencing the Code — Corporate Insolvency in India’, said that more than 200 proceedings are now ongoing with the National Company Law Tribunal and more than 900 insolvency professionals (IPs) have registered.

Among sectors, metals and mining is at the top with over 50 cases, followed by engineering and construction (35), food, beverage and hospitality (27), power and electricity (20) and healthcare (7).

Observing that ‘a major challenge foreseen for the Code was the tidal flow of cases to the NCLT’, the report said, “In addition to new cases filed for resolution under IBC, there was a significant backlog of cases that were transferred from the CLB. Also, winding up cases with high courts, corporate recovery cases with the debt recovery tribunals (DRTs) and rehabilitation cases with the BIFR [Board for Industrial & Financial Reconstruction] were transferred to the NCLT.”

There are discussions currently to increase the number of benches and change single-member benches to double-member benches.

‘Clock should not stop’

There could be other issues that add to the delays. Essar Steel filing a plea in the Gujarat High Court challenging the initiation of bankruptcy proceedings against the company, is an example.

“There is no provision under the code for going to the high court, but under the constitution of India the high court has the inherent power to accept the writ. But the good thing that happened in the Essar case is that the Gujarat High Court has not touched upon the provisions of the insolvency code. They just touched upon the issue as to whether the RBI is right in targeting just 12 accounts..., which should not lead to discrimination. The high court has not commented on insolvency *per se*,” Mr. Srivastava pointed out.

The recent Supreme Court order which stayed the insolvency proceedings against real estate firm Jaypee Infratech is also worrying bankers.

“The fact that the NCLT proceedings are stalled..., anything that stops the time clock is not a good thing,” said Abizer Diwanji, partner & national Leader, Financial Services, Restructuring & Turnaround Services, EY.

According to Mr. Diwanji, one of the key challenges in insolvency proceedings is dealing with the insecurity of all the stakeholders.

“The challenge is the level of insecurity of all the stakeholders — financiers, promoters, banks and even IPs,” he said.

“To deal with it, we need to develop a different set of capabilities. What is lacking is capability and

not quantity.

“This is applicable for everyone — IPs, courts, NCLT judges — who need to be more pragmatic about decision-making. It will come with time. The quality that is required is not industry knowledge but managing all these people facing insecurity,” Mr. Diwanji said.

The road ahead

The important question is whether the stakeholders will find a resolution within the required time frame, that is within six months plus another three months after the case has been admitted. If time-bound resolution does not happen, companies will go for liquidation. Most companies going into liquidation is a scenario that no one wants.

“Till now the timeline that was put out has been maintained. The tougher piece is ahead of us,” Arundhati Bhattacharya, chairman, State Bank of India, the country’s largest lender, told *The Hindu* .

“Because that is when we have to ask for bids and then the bids have to be evaluated and put up. The major piece is ahead of us,” she said.

When asked if cases could be resolved in six months, Ms. Bhattacharya said, “Very difficult to say. At this point, we will keep our fingers crossed.”

The Assocham-EY report also said the real test for IBC timelines would be to get cases resolved within a period of 180/270 days with all necessary approvals.

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Arundhati Bhattacharya

Chairman, SBI

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