

Taking Insolvency & Bankruptcy Domain in Stride

“**B**ankruptcy is about financial death and financial rebirth...” go the words of wisdom by American academician Elizabeth Warren. US politician David Dinkins too has rightly said that “Today, certain people file for bankruptcy....and it no longer has the stigma it once had. Now it’s almost considered wise, a way to regroup and come back again...” NASA astronaut Frank Borman adds: “Capitalism without bankruptcy is like Christianity without hell.” Indeed, Insolvency and Bankruptcy are stark realities of today’s business world without which policy making of doing businesses cannot be imagined. India is no exception to this phenomenon, and in fact has recently put a renewed focus on this crucial aspect of bettering the Ease of Doing Business—one of the avowed objectives of the Government. And the result has been a well-thought-out ‘Insolvency and Bankruptcy Code 2016’, the biggest economic reform next only to GST, which has also opened a new vista of professional opportunity for Chartered Accountants.

The Code is a comprehensive and systemic reform, which would take India from among relatively weak insolvency regimes to becoming one of the world’s best insolvency regimes. Once fully operational, it would cure many ills of the banking/financial sector and facilitate early, transparent and fair resolution of liquidity problems of businesses. It is also expected to help India climb many notches on the *Ease of Doing Business Index* from its current rank of 130. On the parameter of resolving insolvency, India is ranked 136 among 189 countries. According to the World Bank, at present it takes more than four years to resolve a case of bankruptcy in India. The code seeks to reduce this time to less than a year.

Some business ventures will always fail, but now entrepreneurs and lenders will be able to move on, instead of being stuck in labyrinthine systems and regulations, as the history shows. In India, the legal and institutional machinery for dealing with debt default had not been in line with global standards. The recovery action by creditors, either through the Contract Act or through special laws such as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, has not had desired outcomes. Similarly, action through the Sick Industrial Companies (Special Provisions) Act, 1985 and the winding up provisions of the Companies Act, 1956 have neither been able to aid recovery for lenders nor aid restructuring of firms. Laws dealing with individual insolvency, the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 were almost a century old. All this had hampered the confidence of the lender, hindering the access to credit at national level. In this backdrop, the Government must be given credit for developing the new unified Code after taking into account

all the shortcomings of the past as well as the prevailing bad debt problem that has crippled bank lending.

The preamble to the Code says it is “An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues...” The Code unifies and streamlines the laws relating to recovery of debts and insolvency for both corporate and non-corporate persons, while focusing on creditor-driven insolvency resolution. Based on four pillars of institutional Infrastructure—insolvency professionals, information utilities, bankruptcy regulator and adjudicatory mechanisms, the Code will ensure time-bound settlement of insolvency, enable faster turnaround of businesses and create a database of serial defaulters.

However, the key to success of this Code is its effective implementation. The Chartered Accountants, being inseparable from business world, can play a crucial role in this regard. It is highly welcome that Chartered Accountants are among the professionals notified to be Insolvency Professionals by the regulator Insolvency and Bankruptcy Board of India (IBBI) effective from 29th November 2016.

The ‘Insolvency Professionals’ have been given a key role in the efficient working of the bankruptcy process who would be regulated by ‘Insolvency Professional Agencies’. The Institute of Chartered Accountants of India (ICAI) is very much alive to this new domain for Chartered Accountants. As such, an Indian Institute of Insolvency Professionals of ICAI (IIPI), a Section 8 Company has been formed to enrol and regulate insolvency professionals. The IIPI of ICAI (www.iiipicai.in) had been awarded Certificate of Registration by Union Finance and Corporate Affairs Minister Shri Arun Jaitley as the first Insolvency Professional Agency in India. In an encouraging response, about 800 CAs as first set of insolvency professionals (enrolled with IIPI of ICAI) have been awarded Certificates of Registration as Insolvency Professionals.

The role of the Insolvency Professional encompasses a wide range of functions, which include adhering to procedure of the law, as well as accounting and finance related functions. If we take a detailed look into the roles of Insolvency Professional vis-a-vis the technical-professional knowledge and training of CAs, it convinces one and all that the Chartered Accountants are best suited to be Insolvency Professionals and proactively help in effective implementation of the Code. Let’s add a new dimension to our role as Partner in Nation Building. ■

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