

# Caught in the quicksand

Suspension of the IBC can affect resolution efforts and shift focus to recovery, report **Raghu Mohan** and **Abhijit Lele**

“A lot can change in a year. The progress under the Insolvency and Bankruptcy Code (IBC), in terms of credit discipline and resolution, could be at risk of being compromised,” says Divyanshu Pandey, Partner at J Sagar Associates.

On Wednesday, the Union Cabinet gave approval to the suspension of the IBC for Covid-19-related stress. It was decided to hold in abeyance Sections 7, 9 and 10 of the IBC by introducing Section 10A for six months which could be extended up to a year. While only pandemic-related cases will get the benefit of this reprieve, it will be tough to pinpoint this as the reason for the non-servicing of loans, and worse, borrowers can take lenders to court over this point.

The Insolvency and Bankruptcy Board of India's data shows that 3,774 cases had been admitted for corporate insolvency resolution processes amounting to ₹3.84 trillion in FY20. The Reserve Bank of India's (RBI) Financial Stability Report (FSR: December 2019) had noted that banks' gross non-performing assets may increase to 9.9 per cent by September 2020 from 9.3 per cent in September 2019. And, all this was before Covid-19 came into the frame; a new edition of the FSR is due next month.

The fact that the IBC's suspension had not been notified had added to the confusion. Senior bankers are tightlipped ahead of a crucial meeting of the Indian Banks' Association, but informal consultations involving lawyers to craft new-look inter-creditor agreements (ICAs) and specific restructuring provisions under the Companies Act have started.

## The hunt for options

A way out is to segregate bad-loan cases. Says R K Bansal, managing director, Edelweiss Asset Restructuring Company: “Defaults due to the lockdown can get reprieve from IBC reference. Then, you have bad loans, which are three to four years old, but



**DEBT**

**THE OPTIONS GAME**

- **Restructuring** under Section 230-232 of the Companies Act
- **Moving against directors** or promoters who have provided personal guarantees to lenders
- **Recourse under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI) and the Negotiable Instruments**

Act. The past record is far from impressive though

- **Giving priority** in inter-creditor agreements to pay-out to additional finance providers
- **Longer timelines** of up to a year for additional provisioning under the June 7 circular. This includes a reduction in the same by 10 per cent – from the 20 per cent after 180 days from the end of the review period; and 15 per cent after a year

banks did not take them to the bankruptcy court and cases where lenders have filed references, but the tribunal is yet to admit them.” He feels voluntary reference by borrowers to the IBC process should be allowed, and this may need some easing of rules, under Section 29, on promoters. These aspects will still have to be fleshed out and all eyes are on the central bank on the operational parts of it.

“As the ICA cannot be binding on every creditor, an alternative approach which is consensual and parties may consider is the restructuring under Section 230-232 of the Companies Act. While used for business restructuring, this route will now become popular even for restructuring initiated purely on account on debt defaults,” says Veena Sivaramakrishnan, Partner at Shardul Amarchand Mangaldas & Co. As for the ICA, it has been a non-starter to begin with.

The RBI's December FSR says

## THE IBC SNAPSHOT

Particulars	For Q4FY20	Upto March 2020
Total admitted claims of financial creditors (₹cr)	39,102	3,84,437
Liquidation value (₹cr)	19,568	96,349.5
Realisable by FCs (₹cr)	25,064	1,76,674
Realisable by FCs as a % of their claims admitted	64.1	45.9
Realisable by FCs as a % of their liquidation value	128.1	183.4

Source: IBBI

as of June 30, 2019, an ICA is yet to be signed for exposures amounting to ₹33,610 crore while the same has been signed with respect to aggregate exposures of ₹96,075 crore. However, a resolution plan has been implemented only with respect to one borrower with a reported exposure of ₹1,617 crore. It remains to be seen how the ICA is to be customised, but the suspension of Sections 7, 9, and 10 of the IBC, has led to financial and operational creditors scrambling to recover monies and keep themselves afloat during the pandemic

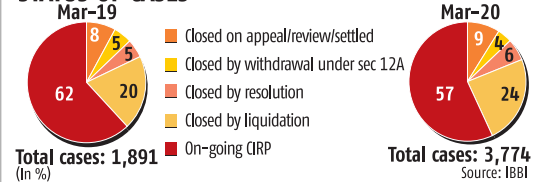
Another grey area is there has

## OPERATIONAL CREDITORS ARE BIG MOVERS

■ Operational creditors ■ Financial creditors ■ Corporate debtors In absolute numbers

	7	8	22
Q4FY17			
Q1FY18	58		37
Q2FY18	89		99
Q3FY18	65		65
Q4FY18	89		85
Q1FY19	129		102
Q2FY19	126		100
Q3FY19	146		114
Q4FY19	164		196
Q1FY20	154		130
Q2FY20	294		279
Q3FY20	329		267
Q4FY20	215		163

## STATUS OF CASES



“And so, creditors can take possession and sell immovable properties under SARFAESI or file a criminal complaint for dishonoured cheques for recovery of outstanding money”, she adds.

The RBI June 7 circular also has to take into account the new ground realities.

Pandey feels there is a case for giving priority in pay-out to additional finance providers, and for temporarily suspending the applicability of 29A to acquirers where there is a change in ownership or management stipulated. Also, granting longer timelines of up to a year before additional provisioning becomes applicable, and reducing the provisioning by 10 per cent in both cases — at 20 per cent after 180 days from the end of review period; and 15 per cent after a year; or a total additional provisioning of 35 per cent.

It's now or never for banks on the bad-loan front — all the gains from the clean-up work of the past few years run the risk of being lost.