

MARCH 19, 2018
ISSUE NO: 79, FY18**MODERN DAY DAVID (NCLT) VS.
GOLIATH (ACTIVE COMPANIES) SAGA**

The Central Government has constituted National Company Law Tribunal (NCLT) w.e.f. 01st June 2016. The code intends to overcome the systemic delays and complexities in the judicial process and thereby aims to reduce the burden on the courts. The most important point of the code is that it seeks to separate commercial aspects of the insolvency proceedings from judicial aspects. While Insolvency Professionals will deal with commercial aspects, judicial issues are being handled by NCLT.

The NCLT mechanism would ensure time-bound settlement of insolvency, faster turnaround of businesses with commercial viability and creation of a database of serial defaulters.

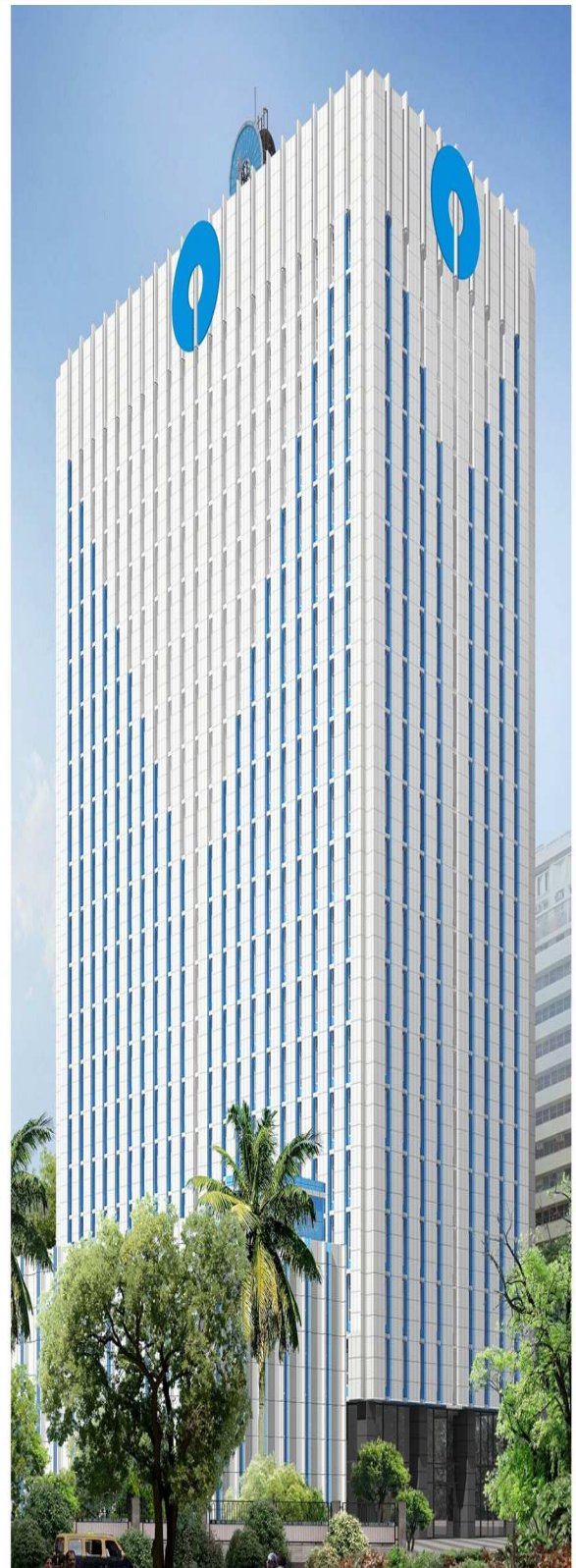
However, we believe the NCLT infrastructure should be ramped up significantly.

Firstly, the Central Government has constituted 11 (eleven) benches of the NCLT. Of the said 11 benches, two are situated in New Delhi including one Principal bench, and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. We suggest that the number of NCLT benches be set up in proportion to state wise active companies operating in the region.

There are currently about 11 lakh active companies and 11 NCLTs. Areas with high concentration of active companies, viz., Mumbai, Delhi, Kolkata etc. require commensurate bench strength for efficient disposal of cases. The need is more acute since it is now easier even for operational creditors to drag defaulter to NCLT. Currently, 9073 cases are under consideration in NCLT, of which 2511 relate to insolvency.

Secondly, leveraging technology is a must for NCLT for efficient discharge of its role and success of IBC. The platform should be digitalized for online submission of applications and uploading of documents for which a strong back office can be established at a centralized place for providing better bandwidth at bench level.

Thirdly, at present NCLT fee is Rs 25000/- from financial creditors which can be reviewed, if required, and a minimal fee of say, 0.1% on the resolution amount could imply significant monetary resources, taking care of infrastructure funding requirement for NCLT and making it self sufficient.



11 NCLTS FOR 11 LAKH ACTIVE REGISTERED COMPANIES! TIME TO PONDER

- ◆ The Central Government has constituted National Company Law Tribunal (NCLT) under section 408 of the Companies Act, 2013 (18 of 2013) w.e.f. 01st June 2016. Earlier, the High Courts, the Company Law Board (CLB), the Board for Industrial and Financial Reconstruction (BIFR) and Debt Recovery Tribunal (DRT) were having overlapping jurisdiction in the matter of debt recovery and restructuring. This gave rise to systemic delays and complexities in the process. The code intends to overcome these challenges and aims to reduce the burden on the courts as all litigation will be filed under the Code.
- ◆ Under Part II, Chapter VI of the Code, NCLT would be the adjudicating authority for Insolvency resolution and liquidation of Companies, Limited Liability Partnerships (LLPs), any entity with limited liability under any law and bankruptcy of personal guarantors thereof.
- ◆ The most important point of the code is that it seeks to separate commercial aspects of the insolvency proceedings from judicial aspects. While Insolvency Professionals will deal with commercial aspects such as management of the affairs of the corporate debtor, facilitating formation of committee of creditors, organising their meetings, examination of the resolution plan, etc., judicial issues will be handled by NCLT. This would reduce the burden on judiciary and would eliminate delays.
- ◆ There would be a time-bound settlement of insolvency, faster turnaround of businesses with commercial viability and creation of a database of serial defaulters. Further, the code will make it easier for financial institutions and banks to deal with non-performing assets (NPAs) and have a faster and non-invasive resolution process.

SECTOR-WISE RBI DEFAULT LIST & ADMITTED CASES

- ◆ Last year RBI issued directives to Banks to resolve or refer large stressed assets to NCLT through 1st list and 2nd list before December 2017. Sector wise details of RBI list is in table-1 and admitted cases under IBC till Dec 2017 are stated in table 2.

Sector	No of Cos.	Amount (Rs. cr)	Share (%)
Metals	13	167460	40.64
EPC	8	108290	26.28
Electronics	1	47550	11.54
Textile	2	25220	6.12
Power	4	18170	4.41
Auto Ancillary	1	14080	3.42
Oil	1	8000	1.94
Shipping	1	6950	1.69
Consumer	1	5330	1.29
Food Processing	1	4000	0.97
Pharma	1	3760	0.91
Telecom	1	3210	0.78
Grand Total	35	412020	100.00

Source: Compiled by SBI Research

Sl. No.	Sector	Amount in default (Rs in cr)	Number of Corporates				Total
			CIRP In Progress	Resolution Plan Approved	Liquidation Order Passed	Closed By Appeal/ Review	
1	Steel	57001	39	2	3	1	45
2	Retail	12719	12	-	-	-	12
3	Electrical Equipment	4785	14	-	2	1	17
4	Textiles	4679	29	-	3	1	33
5	Trading	4560	30	3	4	2	39
6	Chemicals	4433	18	-	-	1	19
7	Ship Building	4292	2	-	-	-	2
8	Construction	4004	35	-	1	4	40
9	Computer Education	2909	1	-	-	-	1
10	Mining & Mineral Products	2700	10	1	1	1	13
11	Others	26727	261	4	16	23	304
	Total	1,28,810	451	10	30	34	525

Source: IBBI; details are from the orders uploaded on the NCLT website on or before 6th Jan 2018 for petition till 31 Dec 2017; this data is tentative and might change as and when new orders would be uploaded

- ◆ It is observed that while RBI's list (Table 1) amounts to Rs 412020 cr., the IBBI admitted list only aggregates Rs128810 cr. This leads us to believe that some of the large accounts (RBI List) in Table 1 do not appear to have been uploaded by NCLT. A cursory glance of IBC code also states cases referred to NCLT have to be admitted or rejected within 14 days and need to have resolution within 180 day (+90days extension) for quick disposal of cases. However, this 14 days timeline seems advisory and not mandatory on the part of NCLT and taking a much longer time, possibly due to non matching infrastructure support.

STATUS OF 12 LARGE CASES IN RBI 1ST LIST

- ◆ It is pertinent to mention here that the claim admitted is higher than the lenders default as it also includes other creditors including operational ones. This can be seen from table 3 that the total lenders default is around Rs 253760 cr but claim admitted is Rs 312947 cr. Few of these cases are expected to be resolved shortly.

Table 3: Status report: First twelve cases as notified by RBI

Sl. No	Company	Sector	Lenders Default	Claims Admitted incl. lenders (Rs. in Crores)	180 Day Period Ends on	Current Status of CIRP
1	Alok Industries Ltd	Textiles	22,080	29,912	14-Jan-18	Applied for extension of 90 days
2	Amtek Auto Ltd	Auto Component	14,080	12,586	20-Jan-18	Applied for extension of 90 days
3	ABG Shipyard Ltd	Ship Building	6,950	18,539	28-Jan-18	CoC approved extension of 90 days
4	Bhushan Steel Ltd	Steel	44,480	55,989	22-Jan-18	In Process
5	Bhushan Power and Steel Ltd	Steel & Power Generation	37,250	48,524	22-Jan-18	Extension upto 22 April, 2018
6	Electrosteel Steel Ltd	Steel	10,270	13,302	16-Jan-18	Extension upto 17 April, 2018
7	Essar Steel Ltd	Steel	37,280	50,778	29-Jan-18	Applied for extension of 90 days
8	Jyoti Structures Ltd	Power Transmission	5,170	8,078	31-Dec-18	Extension upto 31st March, 2018
9	Jaypee Infratech Ltd	Infrastructure Development	9,640	13,322	4-Feb-18	Applied for extension of 90 days
10	Lanco Infratech Ltd	Power Generation	44,370	51,505	3-Feb-18	Applied for extension of 90 days
11	Monnet Ispat and Energy Ltd	Steel	12,120	10,412	13-Jan-18	Applied for extension of 90 days
12	Era Infra Engineering Ltd.	Infrastructure Development	10,070	-		Not yet been admitted to CIRP
Total			253760	312,947		

Source: IBBI; SBI Research

INFRASTRUCTURE GAP

- ◆ The Central Government has constituted 11 benches of the NCLT in exercise of its powers under sub-section (1) of section 419 of the new Companies Act, 2013. Of the said 11 benches, two are situated in New Delhi including one Principal bench, and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. We suggest that the number of NCLT benches be set up in proportion to state wise active companies operating in the region. This can fill the much required infrastructure gap and significantly aid the intended aim i.e. faster disposal of cases. We have mapped the state-wise active companies to NCLT benches to judge the huge gap.
- ◆ As could be seen from the table there are about 11 lakh active companies. Areas with high concentration of active companies, viz., Mumbai, Delhi, Kolkata etc. require supportive bench strength for efficient disposal of cases. Though additional courts have been started in Mumbai and Delhi they are not always concurrent in working.
- ◆ The need is more acute since it is now easier even for operational creditors to drag defaulters (entity/company) to NCLT. We can see from the table 5 (next page), from the 540 admitted cases in NCLT, 43% are initiated by operational creditors.

Table 4: State of Existing Infra

Place	State	No. of Active Companies	Total	No of NCLT Bench
New Delhi	Delhi	210,831	247,204	2
	Rajasthan	36,373		
Ahmedabad	Gujarat	61,597	84,101	1
	Daman and Diu	229		
	Madhya Pradesh	21,888		
	Dadra & Nagar Haveli	387		
Allahabad	Uttar Pradesh	68,489	73,118	1
	Uttarakhand	4,629		
Bengaluru	Karnataka	65,519	65,519	1
Chandigarh	Himachal Pradesh	3,434	60,375	1
	Jammu and Kashmir	2,595		
	Punjab	16,636		
	Chandigarh	7,860		
	Haryana	29,850		
Chennai	Tamil Nadu	75,143	106,677	1
	Puducherry	1,235		
	Kerala	30,289		
	Lakshadweep	10		
Guwahati	Assam	6,253	8,047	1
	Manipur	407		
	Nagaland	233		
	Tripura	294		
	Arunachal Pradesh	230		
	Meghalaya	567		
	Mizoram	61		
Sikkim	2			
Hyderabad	Telangana	67,955	88,855	1
	Andhra Pradesh	20,900		
Kolkata	West Bengal	134,655	179,227	1
	A & N Islands	309		
	Bihar	20,025		
	Jharkhand	9,355		
	Odisha	14,883		
Mumbai	Goa	4,111	238,030	1
	Maharashtra	226,993		
	Chhattisgarh	6,926		
Total		1,151,153	1,151,153	11

Source: NCLT; MCA; SBI Research

- ◆ Further as far as Insolvency Professionals (IPs) are concerned we have currently 1324 registered IPs as on 31st December, 2017 and their number is increasing by the day. So we may not have issues on IP front in future.

OTHER SUGGESTIONS

- ◆ IBC is an excellent tool at the hand of creditors whether financial or operational and the strength of NCLT is pivotal not only in the resolution of NPAs but also for proactive resolution of probable stressed accounts in a quicker way.

Quarter	No. of Resolutions Processes Initiated By			
	Financial Creditor	Operational Creditor	Corporate Debtor	Total
Jan-Mar, 2017	9	7	22	38
Apr-Jun, 2017	32	59	37	128
July-Sept, 2017	97	102	35	234
Oct-Dec, 2017	60	66	14	140
Total	198	234	108	540
Share	37%	43%	20%	100%

Source: IBBI; SBI Research

- ◆ We already know what happened to one of the important recovery instruments called SARFAESI due to low bandwidth in DRTs resulting in prolonged pendency of cases. Minister of State for Corporate Affairs and Law & Justice PP Chaudhary recently stated in Rajya Sabha that a total of 9,073 cases were under consideration in NCLT as on January 31, 2018, including 1,630 cases of merger and amalgamation, 2,511 cases of insolvency and 4,932 cases under various sections of the Companies Act.
- ◆ With the latest RBI guidelines on Resolution of Stressed Assets Revised Framework dt.12th February 2018 scrapping all the existing resolution framework (such as CDR, SDR, S4A) and pitching for a time bound resolution plan, we now need to establish commensurate Bench strength of the NCLT may be one in every State/UT with adequate support for infrastructure to handle the existing/ perceived load.
- ◆ Additionally, leveraging technology is a must for NCLT for efficient discharge of its role and success of IBC. The platform should be digitalized for online submission of applications and uploading of documents for which a strong back office can be established at a centralized place for providing better bandwidth at bench level.
- ◆ At present NCLT fee is Rs 25000/- from financial creditors which can be reviewed, if required, and a minimal fee of even 0.1% on the resolution amount could imply significant monetary resources taking care of infrastructure funding requirement for NCLT and make it self sufficient. This amount could also be levied to the prospective buyer, who would not mind paying small fee for a faster resolution.

ABOUT US

The Economic Research Department (ERD) in SBI Corporate Centre is the successor to the Economic and Statistical Research Department (E&SRD). The latter came into being in 1956, immediately after the State Bank of India was formed, with the objective of “tendering technical advice to the management on economic and financial problems in which the Bank has interest and which required expert analysis”.

After the first reorganization of the Bank, when specialized departments like Management Science, Management Information Systems, Planning and Market Segment Departments took over the statistical work of E&SRD, the Department was renamed as ERD.

However, with the ERD team now taking on multidimensional functionalities in the area of risk management , corporate analytics, strategy and so on, who knows, the time may have come to rename it again!

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