



Progress of Insolvency and Bankruptcy Code

June 2020





Introduction

Dealing with stressed and Non-Performing Assets (NPAs) has been an area of focus for the Government and the Reserve Bank of India (RBI). From time to time, they have come up with various initiatives to deal with the stress in the financial system. Some of the past measures include corporate debt restructuring (CDR), implementation of 5/25 scheme for infrastructure projects, Strategic Debt Restructuring (SDR) etc. Sale of NPAs to Asset Reconstruction Companies (ARCs) has helped in tackling the NPA problem to a certain extent. However, some of these measures lagged behind in changing commercial practices and did not provide the much-needed financial sector reforms, leading to slow recovery of defaulted loans and mounting NPAs of banks and financial institutions. The Insolvency and Bankruptcy Code (IBC), introduced in 2016, has replaced existing bankruptcy laws in India and is now the overarching resolution framework for resolution of stressed assets. The government has been proactive and has amended the IBC from time to time to address any concerns regarding its implementation, making it more effective and efficient.

The Insolvency and Bankruptcy Code, 2016 (IBC) has made material progress in addressing the logjams it was supposed to – a better recovery of stressed assets and quicker resolution timelines. IBC turned out to be a key economic reform, which helped in correcting the balance of power between the borrower and lender. This has helped to instil a sense of credit discipline among the borrowers. Also, as some large and influential promoters have lost control of their companies to lenders through the resolution process, it has helped to change the credit culture in India.

IBC has created a new class of insolvency professionals that specialised in conducting the insolvency resolution processes in accordance with the Insolvency Code. The National Company Law Tribunals (NCLTs) and Debt Recovery Tribunals (DRTs) are the adjudicating authorities under the IBC for addressing corporate insolvency and individual and partnership insolvency, respectively.

IBC brought about the following improvements over the earlier resolution process:

- Consolidation of existing laws into one single law
- Shift of power to the creditor from the borrower
- Defined distribution waterfall
- Defined time period of 330 days for the resolution process
- Barring the existing promoters from participating in the process
- Role of Insolvency professionals in liquidating the assets of the entity and other settlement processes



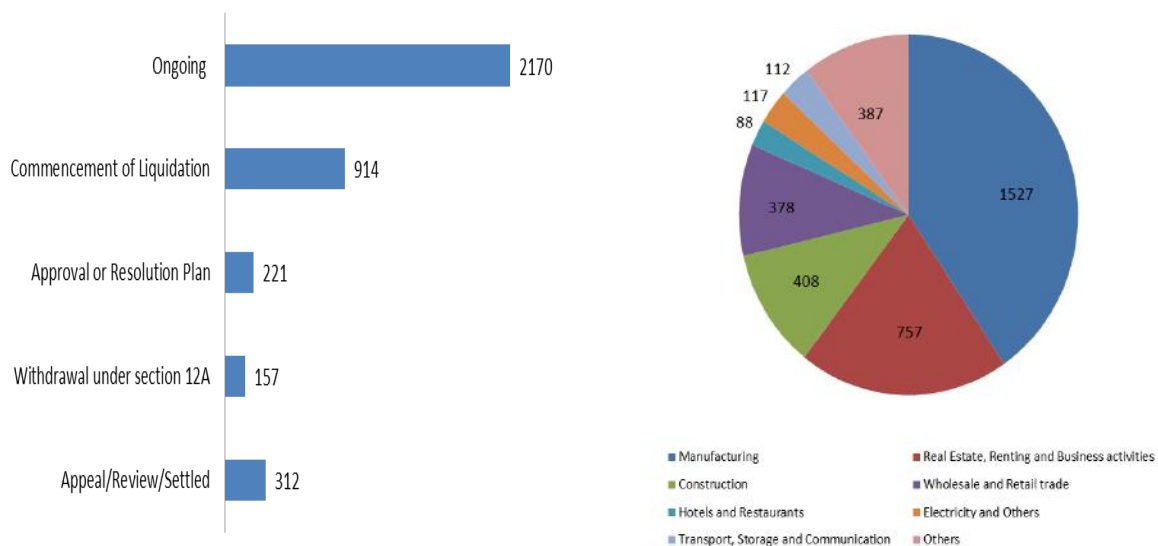
Status of Corporate Insolvency Resolution Process (CIRPs) admitted under IBC

The IBC has set up a framework for the insolvency resolution process of companies in India. Apart from providing for the resolution process itself, the IBC also provides for and regulates the liquidation of companies.

Under the IBC, a committee of creditors (“CoC”) is constituted to vote on significant decisions relating to the day-to-day operations and on the resolution process of the company. The meeting of the CoC is presided over by an Insolvency Professional (IP). The IP plays a significant role of cementing together the interests of corporate debtors and creditors.

The IBC has helped in setting up the necessary infrastructure for resolution of stressed assets in India. The total number of Insolvency Professionals (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) has increased from 1,812 in March 2018 to 3,009 in March 2020.

NCLT acts as the adjudicating authority in the IBC process. There are sixteen benches of NCLT across India currently and two new benches (Indore and Amaravathi) have been approved to be set up. The number of NCLT benches is likely to go up further with the increase in number of insolvency cases being admitted.



As of 31st March 2020, the total number of cases admitted under CIRPs stood at 3,774. Of these, 1,604 CIRPs have been closed whereas 2,170 cases are ongoing. 914 of the closed cases ended up in liquidation, 157 cases were withdrawn under section 12A, 312 cases reviewed or settled and 221 cases were resolved through a resolution plan.

The deadline to complete the insolvency resolution process (including the legal proceedings) is 330 days. In some cases, the resolution process exceeds the limit mainly due to delay in judicial proceedings. If the Adjudicating Authority (AA) is convinced that the timeline needs to be extended to complete the resolution process which will be in the interest of the creditors, then the 330 day deadline can be relaxed. However, despite the delays due to judiciary, the process has been broadly

¹ IBBI Quarterly Newsletter March 2020

² IBBI Quarterly Newsletter March 2020

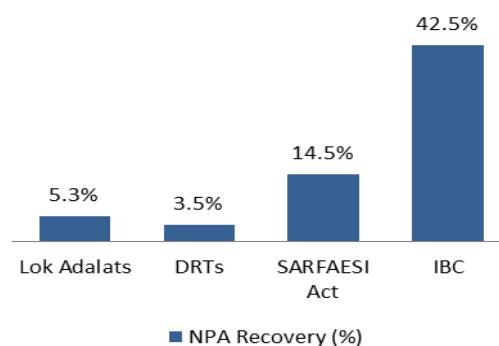


time-bound and the resolution time has significantly improved from the previous insolvency resolution regimes.

The average time taken for completion of the 221 CIRPs yielding resolution is 415 days. Though the resolution time taken exceeds 330 days, it is a remarkable improvement compared to pre-IBC era when the average time taken was ~4.3 years (~1,600 days).³

The companies rescued through resolution owed INR 4.13 tn (USD 55.07 bn) to its creditors. The value of assets when these companies entered the IBC process was INR 960 bn (USD 12.8 bn). Under the IBC, the creditors managed to recover INR 1.84 tn (USD 24.53 bn) which is about 191% of the liquidation value and about 44% of the amounts owed by these companies.⁴

Recovery of stressed assets of banks improved in FY19 due to resolutions under the IBC. Recovery through IBC contributed more than half the total amount recovered by banks through various resolution mechanisms. As a percentage of the claim amount admitted, banks on an average recovered 5.3%, 3.5% and 14.5% through Lok Adalat, Debt Recovery Tribunals (DRTs), and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI) respectively, whereas the amount recovered through IBC was substantially higher at more than 40%.⁵



NPAs recovered by SCBs through various channels (FY19)⁶

The reason for the large number of liquidation cases was due to the fact that ~62% of the CIRPs ending in liquidation were earlier with Board of Industrial and Financial Reconstruction (BIFR) or defunct. Hence, the economic value in most of these corporate debtors (CDs) had already eroded before they were admitted into the CIRP.

The companies rescued under IBC had assets valued at close to INR 960 bn (USD 12.8 bn)⁷ while the assets sent for liquidation were valued at only INR 360 bn (USD 4.8 bn) when they entered the IBC process. Thus, in terms of value, the assets rescued are ~3 times the size of the assets sent for liquidation. Also, it is important to note that of the companies rescued via resolution, one third of the companies were earlier under BIFR or defunct.⁸

³ IBBI Quarterly Newsletter March 2020

⁴ IBBI Quarterly Newsletter March 2020

⁵ RBI Report on Trends and Progress of Banking in India

⁶ RBI Report on Trends and Progress of Banking in India

⁷ Exchange rate considered throughout the report USD/INR = 75

⁸ IBBI Quarterly Newsletter March 2020



Update on the Twelve Large Accounts referred to the IBC – Ten of these have been Closed

At the time of implementation of IBC in 2016, the RBI had identified twelve large accounts with fund and non-fund based exposure of INR 50 bn (~USD 667 mn) and above each and where more than 60% of the loans had turned bad. These twelve accounts represented about 25% of the banking system's gross NPA as of March 2016.⁹

The resolution of these twelve large stressed accounts was initiated by banks, on the direction of the RBI. The total outstanding claim of these twelve accounts was INR 3.45 tn (USD 46 bn) as against a liquidation value of INR 73.22 bn (~USD 0.98 bn). Of these, resolution plan has been approved for 8 accounts whereas for 2 accounts, orders for liquidation have been passed.

Essar Steel which had a debt of ~INR 490 bn (~USD 6.53 bn) was the most high profile case to be admitted under the IBC. The case was taken to the Supreme Court of India when the NCLAT gave a judgement saying all creditors (financial, operational and unsecured) should be treated as equal in the financial recovery process.

In November 2019, the Supreme Court of India passed a landmark judgement upholding the primacy of financial creditors over operational creditors in the IBC distribution waterfall.

The Supreme Court also clarified that the Committee of Creditors (CoC) will make the final decision about the merits and demerits of the resolution plan and the repayment waterfall. It also stated that the ultimate objective of the IBC is value maximisation for the creditors and that the creditors will not be forced to agree to a below par deal due to time limits.

Name of Corporate Debtor	Amount Admitted (USD mn)	Amount Realised (USD mn)	Realisation as % of Claims	Successful Bidder
Completed				
Electrosteel Steels Ltd.	1,757	709	40.4	Vedanta Ltd.
Bhushan Steel Ltd.	7,470	4,743	63.5	Bamnipal Steel Ltd. (Tata Steel)
Monnet Ispat & Energy Ltd.	1,469	386	26.3	Consortium of JSW and AION Investments Pvt. Ltd.
Essar Steel India Ltd.	6,596	5,469	82.9	Arcelor Mittal India Pvt. Ltd.
Alok Industries Ltd.	3,936	674	17.1	Reliance Industries Ltd., JM Financial Asset Reconstruction Company Ltd., JMFARC - March 2018 – Trust
Jyoti Structures Ltd.	982	492	50.1	Group of HNIs led by Mr. Sharad Sanghi
Bhushan Power & Steel Ltd.	6,288	2,580	41.0	JSW Ltd.
Jaypee Infratech Ltd.	3,090	3,096	100.2	NBCC (India) Limited
Under Process				
Amtek Auto Ltd.	CIRP re-commenced			
Era Infra Engineering Ltd.	Under CIRP			
Lanco Infratech Ltd.	Under Liquidation			
ABG Shipyard Ltd.	Under Liquidation			

⁹ [Economic Times article](#)



Notes:

1. Due to failure of implementation of approved resolution plan in Amtek Auto Ltd., which was earlier included in the completed list, the process has restarted.
2. The Resolution Plan approved in Jaypee Infratech Limited is under challenge before the Hon'ble NCLAT

Status of the Twelve Large Accounts referred to IBC by the RBI ¹⁰

The implementation of IBC has been one of the factors which helped India jump 14 places to 63rd position on the 'Ease of Doing Business' rankings in 2020.

Parameter	India	South Asia	OECD High Income
Resolving Insolvency Rank	52	104	28
Resolving Insolvency Score (0-100)	62	40.8	74.9
Cost (% of Estate)	9	9.9	9.3
Strength of Insolvency Framework Index (0-16)	7.5	6.5	11.9

Ease of Doing Business Report 2020 ¹¹

IBC and COVID-19¹² - Impact Assessment

The COVID-19 pandemic continues to take toll on global and domestic activities and economy. The COVID-19 pandemic has affected the performance of businesses mainly affecting the disruptions in payments. The Central Government has taken timely measures and dealt with these problems in a structured way. Given the scale of the problem, the government has provided extensions, relaxations and amendments to the existing legal frameworks in the country.

The government has announced the following IBC related measures:

- i. Minimum threshold to initiate insolvency proceeding raised to INR 10 mn (~USD 0.13 mn)
- ii. Special insolvency resolution framework will be introduced for MSMEs
- iii. Union Cabinet has approved a proposal to suspend IBC proceedings for defaults post-March 25, 2020 for a period of six months with a provision to extend the period up to 1 year.
- iv. Empowering central government to exclude COVID-19 related debts from the definition of default under the IBC

This move comes as a big relief to companies which have defaulted due to pandemic and were staring at a risk of being dragged into insolvency proceedings. This gives an opportunity to these companies to recover, once the situation normalises. Also, as MSMEs are critical to the economy, the measure of providing special insolvency resolution framework would provide a fillip to the struggling industries, as there is contraction in demand and disruptions in supply chain due to the two month+ nationwide COVID-19 lockdown. Moreover, the increase in the minimum threshold to initiate insolvency proceeding from INR 0.1 mn to INR 10 mn would prevent the small and medium enterprises that are currently facing the heat of COVID-19 pandemic from being taken to the IBC.

The above measures under the IBC to provide relief to companies already struggling on account of COVID-19 are only temporary. However, in cases where an application has been admitted prior to the date of commencement of the nationwide lockdown, the insolvency proceedings would continue till it reaches conclusion as they do not relate to defaults arising from COVID-19.

¹⁰ IBBI Quarterly Newsletter March 2020

¹¹ World's bank Doing Business Report 2020 (Data as on May 2019)

¹² CARE ratings report



Thus, the current changes in IBC will not affect the stressed assets investment opportunities in India. The cases that have already been admitted into the IBC are insulated from the above-mentioned changes. For cases that are currently under stress / default, investors would price in such delays and risks while underwriting the deals. Also, the opportunities for buying out debt from banks / financial institutions and providing primary capital to stressed companies should largely be unaffected by the recent, temporary changes announced in the IBC. Thus, the stressed / distressed assets space in India continues to be a very attractive segment for investing in the current scenario and long-term investors with capital available will benefit from the opportunity.



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