

An overview of Resolution Process under Insolvency and Bankruptcy Code

Dr. Vani Vasakarla

Professor, Institute of Innovation in Technology and Management,
Janakpuri, New Delhi
vanivasakarla@gmail.com

Abstract:

In the background of season of company defaults once public sector banks and money establishments area unit unable to help chasing their dues in for the most part prolonged legal battles, the Parliament of India within the 1st week of could fleetly passed economic condition and Bankruptcy Code 2016 (New Code). This Code is crucial as a result of no single umbrella legislation has ruled economic condition and bankruptcy proceedings in India until currently. Instead, there was a slew of legislation governing the legal framework. The code, a landmark legislation consolidating the regulatory framework governing the restructuring and liquidation of persons (including incorporated and unincorporated entities) was enacted into law by the Parliament on eleven could 2016. As within the case of companies Act 2013, completely different provisions of the Code area unit being notified and operationalised during a phased manner. The Code provides for the setting of economic condition regulator and Insolvency and Bankruptcy Board of India. The Board is authorized to border laws on matters concerning economic condition and bankruptcy.

Key words: *Insolvency, Bankruptcy, resolution process, NCLT, DRT*

1. Introduction

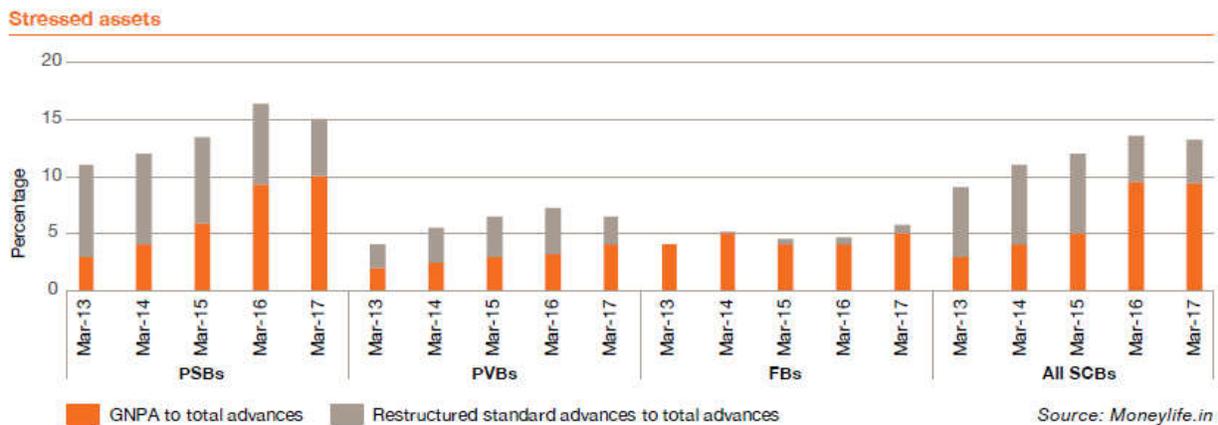
The financial institutions both public and private sector banks has a tremendous increase in the non performing assets and these banks have no proper mechanism for chasing their defaulters for their dues and banks are considering it as prolonged legal conflicts. The government intervened and formed a proper mechanism for insolvency and bankruptcy in the form of new code in the form of Insolvency and Bankruptcy code. The formation of this code is really essential to all the financial institutions because till now there is no proper regulatory and legal frame work for insolvency and bankruptcy. The prevailing numerous laws and legal forums dealing with financial distress and insolvency of corporate and individuals does not help the financial institutions and lenders for effective and prompt recovery of their defaulted payments and restructuring of their non performing assets loses faith on the Indian credit system. With this background for creating a transparent and most constructed system for alleviating these credit markets and bankruptcy regime the government introduced insolvency and bankruptcy code 2016 to safe guard the interests of Banking and financial Institutions. The regulatory framework

that governs the process of restructuring and liquidation of incorporated and unincorporated entities was endorsed in the form of a legislation law by the parliament on 11 May 2016. The introduction this new regulation has become a major economic reforms in the institutional infrastructure of banking sector. The provisions of this code notify to set up of an insolvency regulator, the insolvency and Bankruptcy Board of India. This board is authorized to form regulations and provisions relation to insolvency and bankruptcy.

	Gross NPAs (in lakh crore INR)															
	Dec-13	Mar-14	Jun-14	Sep-14	Dec-14	Mar-15	Jun-15	Sep-15	Dec-15	Mar-16	Jun-16	Sep-16	Dec-16	Mar-17	Jun-17	Sep-17
Public sector banks	2.28	2.27	2.35	2.51	2.73	2.78	2.96	3.14	4.95	5.40	5.92	6.30	6.46	6.19	7.33	7.34
Private banks	0.24	0.23	0.26	0.27	0.30	0.32	0.35	0.37	0.46	0.56	0.62	0.75	0.87	0.92	0.96	1.06
Total	2.52	2.51	2.61	2.78	3.03	3.11	3.31	3.51	5.41	5.96	6.54	7.06	7.33	7.11	8.29	8.40

Source: RBI stability report

There is a tremendous increase in gross NPA's as on July 2017 in both public and private sector so there is need to bring some stringent reforms in the field of banking sector. there is also increase in the stressed assets the ratio of gross NPA to total advances in Public sector Banks have increased to such an extent that they may damage the financial health of the country.



Source: RBI stability report 2017

2. Mechanisms to deal with stressed assets before IBC 2016

- a) **Corporate Debt Restructuring (CDR)** came into force on 2001 by the guidelines of Reserve Bank of India to be implemented by banks. This mechanism was widely followed by all the financial institutions. The main aim of this mechanism is to cover

multiple bank accounts, syndication or consortium accounts his is a voluntary based non statutory mechanism where the decision will be taken on the Debtor-Creditor agreement and Inter-Creditor agreement. All the participants through the membership of CDR mechanism should abide by the rules, policies and regulations framed by the CDR cell. This cell can enforce or penalize the lenders and other borrowers who violate the rules that are framed in the agreement. This mechanism covers the outstanding over and above Rs.100 million. The lenders and the third parties who are not a part of this mechanism can join this mechanism by signing transaction to transaction ICA. this mechanism served the purpose temporarily but to revive the business this mechanism proved ineffective. The reason for this ineffectiveness may be due to poor feasibility analysis and ineffective monitoring of stressed assets.

- b) **The Joint Lender's forum:** This forum was consists of group lender bank which is formed to improve the decisions when a loan of Rs. 100 becomes a stressed asset. this was an outcome of the RBI guideline entitle 'Framework for Revitalizing Distressed Economy' in the year 2014. the main aim of this forum is the revival of stressed assets. According to the guidelines of RBI the banks are instructed to form JLF empowered group to support the restructuring package of stressed assets. This forum also takes an initiation to get a corrective action plan to get a quick solution for stressed asset problem.
- c) **Strategic debt restructuring:** This scheme was introduced by RBI in June 2015, according to this scheme the a proper mechanism was evolved that enabled the financial institutions or the lenders to play a crucial role in turning around stressed borrowers. SDR is a major tool that facilitates lenders to convert their outstanding borrowings including the outstanding interest in to equity and aims them to transfer the control in to a new promoter. RBI gives regulatory guidelines for classifying their assets and income recognition. SDR took the initiation to take the control of reviving the borrowers by associating with more capable promoter; tough the hesitation is there on the part of financial institution to take charge in maintain the companies by following this method. Though trepidation is there in the current legal system restricting the smooth transformation of management, banks were also unconvinced with this kind of imminent litigations. SDR was not so successful tool in deciding the appropriate capital structure to turn around the capital structure.
- d) **Scheme for Sustainable Structuring of Stressed Assets (S4A):** In the year June 2016 RBI formulated another measure S4A, as there was no positive response for SDR. Under this scheme, the control of the companies will be with the existing promoter as long as 50% of the debt is revived and proper evaluation will be done on structuring the stressed assets. The emphasis is more on timely comprehensive turnaround strategy before mitigating the problem. This strategy also proved to be ineffective in converting the stressed assets into the unstressed, judicial system acts as a bottle neck to follow this scheme.

3. The present system for handling defaults

Earlier there are no specific judicial systems which guide the lenders and creditors to recover their outstanding assets. Their recovery was limited only to the value of the assets that are pledged. With this backdrop the RBI has introduced bankruptcy law reforms committee; under this law has a several complex laws which will give a possible solution for corporate bankruptcy and insolvency. The evolution of IBC 2016 is to protect the interest of financial creditors. The main objective of this code is to amend the prevailing laws of insolvency and Bankruptcy and to promote the proper usage and availability of credit facilities, Insolvency and Bankruptcy is to create the proper mechanism wherein the defaulters of government may be altered.

4. Resolution process

The Insolvency Resolution provisions are clearly stated in Part II of the Code and procedure to follow for Liquidation process for Corporate are covered in IBC -2016. Corporate Insolvency Resolution is a process where in the financial creditors are assessed whether the debtor's business is feasible to continue if not are there any options for its financial reengineering for its turnaround and revitalization. In case of failure of the insolvency resolution process, if the financial creditors think that the business cannot revive then they can decide to wound up and the debtor can proceed for liquidation process.

In this process the assets will be valued and net realizable value of the assets will be calculated by the authorized liquidator and distribution will be done to the creditors. The insolvency resolution process is such a mechanism which will provide a solution to the financial creditor to make proper arrangements for dealing with the stressed assets of a corporate debtor. This process of existing legal framework will facilitate the corporate debtors to have a quick reconstruction of their financial distress and it will give a distinct right to the lenders to have quick recovery of their debts.

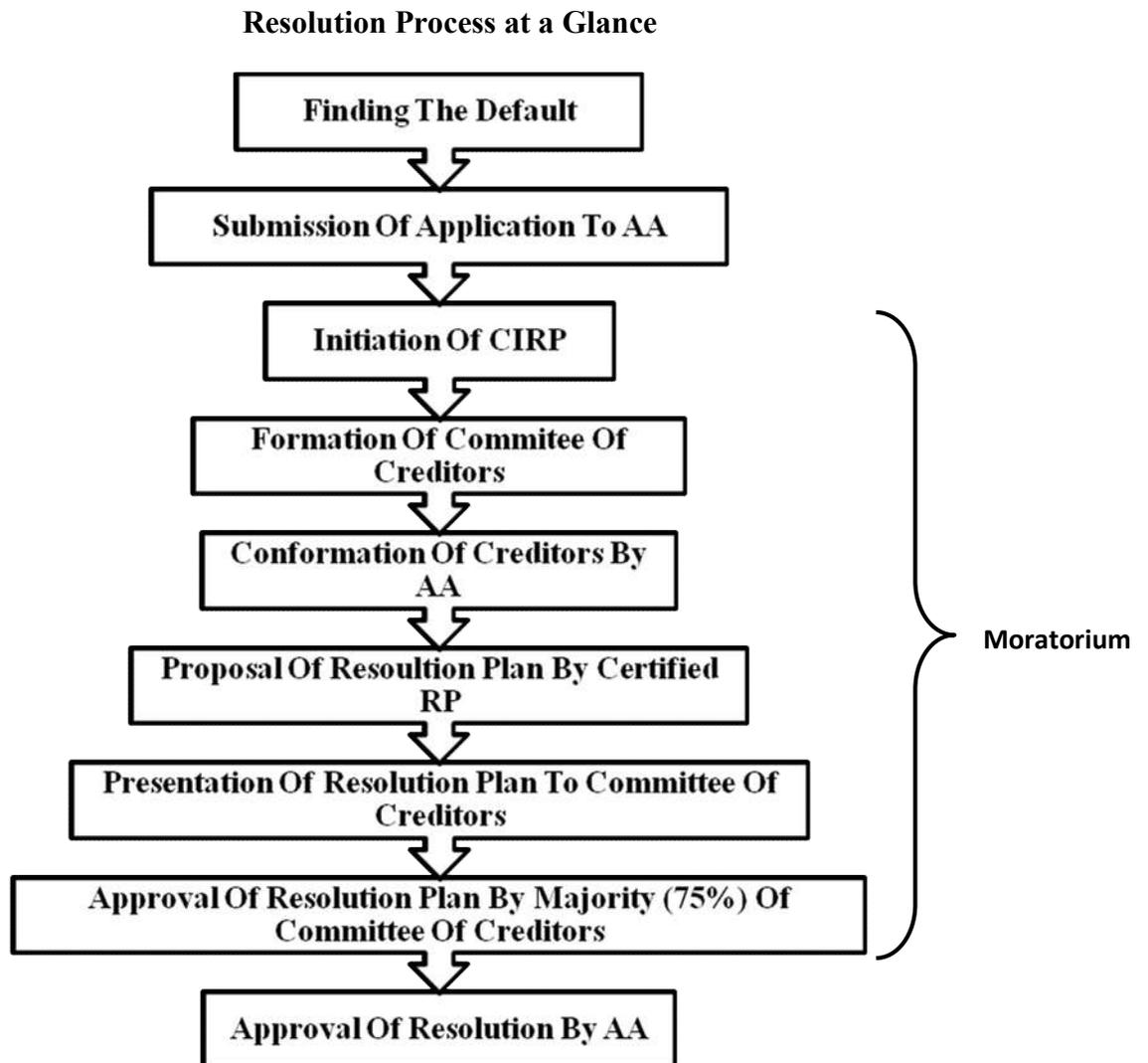
5. The commitment of default

The above discussed process of insolvency is activated when there is an occurrence of default in the payment of debts. Under Section 3 (12) of the Code says that, "default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor". It was also stated in the present provisions of insolvency and liquidation process that the process will be applicable only when the default of the payments is more than one lakh of rupees or more. However, the central

government has the veto power to increase the minimum amount with a prior notification and it can be increased to but it should not be more than one crore rupees.

6. Initiation of corporate insolvency resolution process

After analyzing the defaulter's situation, by the creditors, the financial / operational creditor or the corporate debtor may raise the initiate the process of corporate insolvency resolution process.



Adjudicating authority has the privilege to deal with insolvency related matters with an exclusive jurisdiction. The financial creditors independently or jointly may appeal to Adjudicating Authority for initiation of the process against the corporate debtor. in case of occurrence of the default of payment the creditors with the help of Adjudicating authority appeals to the NCLT which deals with corporate insolvency matters and debt recovery tribunal deals with individual

insolvency and partnership. NCLT and DRT have the authority to decide about the action to be taken against the petition.

Along with the application proper information is to be furnished which will be used as an evidence of default. The creditors have to furnish the information and present a proposal to approve Resolution Professional. Apart of the above information if any information is specifically asked by the board to be given the Adjudicating Authority will take 14 days after the receipt of approval to ascertain whether the default is there or the information which was provided in the records or any other information furnished by financial creditors as evidence.

After the AA is satisfied with the information provided as complete and ascertains default then the application is processed if is said to be complete no disciplinary processing is done on proposed resolution plan and AA admits the application. In the contrary if AA rejected the application for rectification a notice will be issued to the applicant and the applicant has to resubmit the application form within 7 days. Then, the resolution process will commence from the date of acceptance of application.

After the submission of application the appointment of the committee of creditors will be formed. After the appointment of committee, it will get the conformation and the Resolution professional should prepare the information memorandum for the resolution plan will be proposed by committee of creditors and there should be 75% of majority then on it will be considered as approved.

8. Moratorium

Within a period of 180 days the entire above discussed plan will be process should be completed. Then it resolution plan will be proposed to AA and resolution plan is approved by AA. After receiving the application of CIRP the NCLT will declare a moratorium to corporate debtor. In such a period the corporate debtor will give some time period to prove its status. During this period the company debtor will be abeyance by other legal proceedings and issues.

9. Recovery of claims from creditors

Since the introduction of insolvency and Bankruptcy code (IBC) 2016 till December 2017, the first ten cases were filed and approved the resolution plans and the financial creditors can able to get the claims which are 33.53% from their outstanding debts. The report also says that the total outstanding claims of 5,530.30 crores out of these outstanding debts 1,854.40 crores from the first ten insolvency cases registered.

The details of recovery of claims from first ten company under IBC

Name Of The Company	Total Claims (Rs. Cr)	Resolution Amount (Rs. Cr)	% Recovery
Synerges Doorey Automotive Ltd	972.2	54.7	6%
Shree Metalik Ltd	1287.2	607.3	47%
Kamineni Steel &Power India PVT. Ltd.	1508.9	600	40%
Chhapatia Industries Pvt. Ltd	49.8	20.6	41%
Jekpl Private Ltd.	599	162	27%
Hotel Gaudavan Pvt. Ltd.	76.7	44.2	5%
Prowess International Pvt. Ltd	3.4	3.4	100%
West Bengal Essential Commodities Supply Corp.	359.2	185.8	5.20%
Shirdi Industries Ltd.	673.9	175	26%
Nandan Hotels Ltd	NA	1.4	NA

Source: Economic times

The data above depicts the top ten companies' claims with the resolution plans. The rate of recovery of the big companies is not available because the resolution plans which were proposed to the committee of creditors are still yet to approve. The rate of recovery in the above ten cases is far better and financial institution can able to get recovery faster, though this is an initial stage of introduction of Insolvency and Bankruptcy Law.

The present framework of IBC is restricted to change during the stipulated period of time. As soon as admitting the cases are to be resolved within the time frame of 270 days otherwise they are forced to go for process of liquidation.

Till November 2017, National Company Law Tribunal has registered nearly 2434 fresh cases under IBC and nearly 2,304 cases are seeking help from various high courts for winding-up. . Till December 2017 of these, 2,750 cases have been disposed and others are still in process. The

above fig depicts the information regarding top companies and their financial and operational creditors who filed a case against them with the amount of claims.

10. Conclusion

The Code is a major reform of legislation providing a tremendous change to the existing regime relating to restructuring and insolvency and bankruptcy in India. It promises to provide the one big missing piece in the existing jigsaw of laws in the form of establishing a framework for time bound resolution for delinquent debts. India now has a bankruptcy and insolvency framework which is comparable with international standards and while this will go a long way in bringing an element of certainty and predictability to commercial transactions in the country and facilitating the ease of doing business, the litmus test for its success will be in how it is implemented. In particular, various practical, logistical and legal hurdles will need to be overcome and the coming months will be crucial with a lot resting on the nuts and bolts of the rules which are now expected to be notified under the Code.

References:

1. Aghion, P., Hart, O., & Moore, J. (1992). The economics of bankruptcy reform, *NBER Working Paper* (No. 4097).
2. Antoniou, A., Guney, Y. & Paudyal, K. (2008). The determinants of corporate debt ownership structure: evidence from market-based and bank-based economies, *Managerial Finance*, 34, 12.
3. Claessens, S. & Klapper, L. (2002). Bankruptcy around the World: Explanations of its relative use, *World Bank Policy Research Working Papers*.
4. Eckbo, B. & Thorburn, K. (2009). Economic effects of auction bankruptcy, *Tuck School of Business Working Paper* (No. 2009-63).
5. Eradi, et al., (2000). Report of the high level committee on law relating to insolvency and winding up companies. Ministry of Law, Justice and Company Affairs, Government of India.
6. Graham, J., Kim, H., Li, S. & Qiu J. (2013). Human capital loss in corporate bankruptcy, *Center for Economic Studies* (WP 13-37).
7. Goldberg, I., (1927). Constitutional Law: State bankruptcy or insolvency laws; Statutes dealing with the voluntary assignment for the benefit of creditors and the federal bankruptcy act, *Marquette Law Review*, 11(2).
8. Goswami, et al., (1993). Report of the committee on industrial sickness and corporate restructuring, *Ministry of Finance, Government of India* (July 1993).
9. Harner, M. & Griffin, J. (2011). Committee Capture? An empirical analysis of the role of creditors' committees in business reorganization, *Vanderbilt Law Review*, 64.
10. Kang, N. & Nayar, N. (2004). The evolution of corporate bankruptcy law in I *Money & Finance*, (Oct 03-Mar 04).
11. Kohli, A. (2012). Growth, inequality and social development in India - Is inclusive growth possible? Edited by R Nagaraj, *Palgrave Macmillan*, (pp 194-226).
12. Mehta, V. (1964). Economic implications of democratic socialism some reflections on the Indian economic conference, *The Economic Weekly*, (January 25, 1964).

- Patwari, S. (2014). Voluntary winding up in India -A comparative analysis, available at SSRN: <http://ssrn.com/abstract=2377165>.
13. Ponoroff, L. (2015). Constitutional limitations on state enacted bankruptcy exemption legislation and the long overdue case for uniformity, *Arizona Legal Studies, Discussion Paper* (No. 14-11).
 14. Ravi, A. (2015). The Indian insolvency regime in practice: An analysis of insolvency and debt recovery proceedings, *IGIDR* (WP-2015-027).
 15. Sachar, et al., (1978). Report of the high powered expert committee on companies and MRTP acts, Ministry of Law, Justice and Company affairs, *Government of India*,(August 1978).
 16. Samuel, C. (1996). The stock market as a source of finance- A comparison of U.S. and Indian firms, *World Bank Policy Research Working Paper* (1592).
 17. Sarkaria, R., Sivaraman, B. & Sen, S. (1988). ISCS report, ministry of home affairs, *Union Government of India*.
 18. The report of the bankruptcy law reforms committee, Volume I: Rationale and design. Ministry of Finance, *Government of India*, (November 2015).
 19. Unny, M. (2011). A study on the effectiveness of remedies available for banks in a debt recovery tribunal - A case study on Ernakulam DRT, *Centre for Public Policy Research Working Paper Series*.