



IMPACT OF INSOLVENCY AND BANKRUPTCY CODE ON INDIA'S MACRO ECONOMY FOCUSING ON INDIAN COMMERCIAL BANKS

By Nimit Gupta, Nishma Desai and Evanshi Garg

From SVKM's NMIMS Kirit P. Mehta School of Law, Mumbai

ABSTRACT

There have been several changes in the Indian banking sector over the last few years. A tremendous rise in the amount of non-performing assets ("NPA") was a major cause for concern and also put banks, organisations and individuals under extreme pressure which in turn rose several issues amongst the abovementioned parties. To tackle the issue of rising NPA, the government of India ("GOI") introduced the Insolvency and Bankruptcy Code ("IBC" or "the Code") in the year 2016. This step by the GOI has proved to be one of the most effective reforms that has been glorified not only by Indians but also by global prestigious institutions including the International Monetary Fund ("IMF") and the World Bank. However, there is a long way to go for a full recovery of the Indian banking sector. IBC, despite significantly decreasing the amount of NPA still poses certain challenges to the industry. This paper attempts to highlight the background of IBC in light of the regimes followed before its implementation along with the transitional

challenges that were faced in the beginning. The paper also analyses the impact of IBC on the macro economy of our country with a detailed focus on its effectiveness as a medium to reduce NPA.

INTRODUCTION

The Indian economy is an example of a mixed economy and has emerged as one of the fastest growing economies in the world. The financial system of a country helps in the overall growth and development and thus financial stability plays a crucial role.¹ The financial sector in India over the last decade was suffering immensely from the damages caused by ailing NPA year after year and the scattered legislations to recover the same. The corporate insolvency resolution process ("CIRP") in India before the implementation of IBC involved simultaneous operation of several legislative instruments like the Sick Industrial Companies Act, 1985, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, etc.²

The Insolvency and Bankruptcy Code was thus implemented in December, 2016 with the aim of reducing NPA and ensuring speedy resolution process by merging these scattered laws and bringing them under the scope of a single adjudicating authority. The IBC unified the law with regards to insolvency by amending 11 laws and repealing centuries-old laws namely, the Presidency Towns Insolvency Act, 1909 and

¹ Dr. Suresha B. Esther Tensingh, A Study On The Impact Of Insolvency And Bankruptcy Code, 2016 On Indian Commercial Banks- A Pre And Post Event Analysis International Journal of Emerging Technologies and Innovative Research JETIR,

<http://www.jetir.org/view?paper=JETIRCK06009> (last visited Sep 14, 2020).

² Shreya Reddy, Understanding of the IBC, 2016, Symbiosis International University, SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3425370 (last visited Sep 17, 2020)



Provincial Insolvency Act, 1920 and also the Sick Industrial Companies Act, 1985.³

The following were the preliminary objectives of IBC-⁴

- combining multiple laws with regards to insolvency and bringing them under one adjudicating authority.
- facilitating no security-lending.
- providing a forum for speedier settlement of dues by corporate debtors.

The paper is divided into two broad parts wherein, the first part discusses the inception of IBC in light of the pre-existing insolvency laws and the challenges that posed a threat to smooth implementation of the code at the beginning as well as the present-day challenges. The authors then analyse the impact of IBC on our country (both economic and non-economic effects) and study the effectiveness of the same in solving the problem of NPA over the course of last three years.

INCEPTION OF IBC AND PRECEDING REGIMES

Before the existence of the IBC, the following laws were in place for insolvency, revival of sick industries as well as debt restructuring⁵-

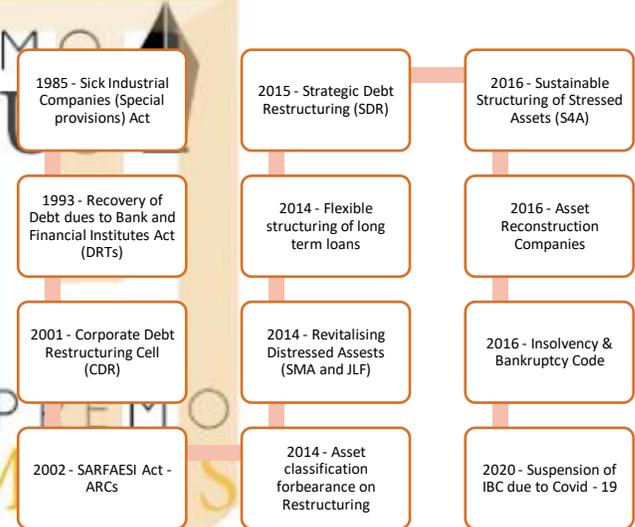
- Individual Insolvency –

³ Anu Sura, PSL Advocates & Solicitors, IBC and its interplay with other statutes, <https://lexisnexusindia.wordpress.com/2020/01/20/ibc-and-its-interplay-with-other-statutes/> (last visited Sep 17, 2020)

⁴ CA Naveen Sood, Issues in Insolvency and Bankruptcy Code, 2016, ICAI Journal on IBC, ed. April 2018, <https://ibclaw.in/issues-in-insolvency-and-bankruptcy-code-2016-apr18/> (last visited Sep 18, 2020)

The Presidency Towns Insolvency Act, 1909 for the residents of Mumbai, Kolkata and Chennai and Provincial Insolvency Act, 1920 for the residents of other cities were implemented to administrate and regulate individual insolvencies. These laws are now more than a century old and were not suitable for modern-day insolvencies that have complicated debts and liabilities.

- Corporate and Firm Insolvency – Our country had multiple and sometimes overlapping laws to deal with corporate insolvencies which are shown in the flowchart below.⁶



These well intended laws had various contradictory provisions, several loopholes and did not have the desired results on our economy. They lacked in provisions that

⁵ Srijan Anant, Aayushi Mishra, A Study OF Insolvency And Bankruptcy Code And Its Impact On Macro Environment Of India, IJEDR 2019, Vol. 7 Issue 3, ISSN: 2321-9939 <https://www.ijedr.org/papers/IJEDR1903007.pdf> (last visited Sep 18, 2020)

⁶ PwC, Decoding the Code: Survey on Twenty One Months of IBC in India, CII <https://www.pwc.in/assets/pdfs/publications/2018/decoding-the-code-survey-on-twenty-one-months-of-ibc-in-india.pdf> (last visited Sep 17, 2020)



were needed to ensure a faster resolution process and were also unable to empower the creditors. Furthermore, these regulations failed to tackle the problem of growing NPA.

CHALLENGES IN IMPLEMENTATION OF IBC

Since its inception the code has faced several challenges that have hindered the fulfilment of the objectives for which the code was enacted. Several of these issues have been dealt with by the governing authorities either by amending the laws or setting judicial precedents. However, there exists certain issues that need to be addressed and remedied to ensure better implementation of the code and to achieve its objectives. These issues are discussed hereunder.

- Transitional Challenges faced in 2016
Before the introduction of IBC, multiple overlapping laws existed for debt collection and restructuring. In order to make the code work, several of these laws needed to be amended while several others were repealed. Furthermore, the pre-existing cases under other laws were now being adjudicated by National Company Law Tribunal (“NCLT”) which posed a great deal of burden on the tribunal that did not have adequate resources to hear as many cases.
- Present-Day Challenges

The lack of adequate NCLT infrastructure to deal with mountains of cases along with the lack of legal precedents are causing the resolution process to be elaborate, costly and time consuming. As a consequence, the proposed timeline of 180-270 days is not being adhered to.

The cause for such a high number of cases being filed under the code’s regime is two-fold⁷ –

1. Rising financial stress in the economy
2. A low threshold of the default of Rs. 1 lakh for the IBC process to set in⁸.

Secondly, IBC was meant to act as a deterrent, incentivizing debtors to pay up the debts or make a deal with the creditors. Instead, they ended up at NCLT with an increased risk of losing their companies.⁹ A lack of differentiation between a “financially distressed company” and a “economically distressed company” is leading to dismantling of economically viable businesses that could have contributed to the country’s growth and development.¹⁰

FEATURES OF IBC –

- Inclusive / Comprehensive Law: IBC is an inclusive legal framework which overlooks along with regulating the procedure of insolvency and bankruptcy of LLP’s and individuals along with corporate bodies and

⁷ Prasanna Mohanty, Reality Check: Challenges notwithstanding, IBC promises positive changes in bankruptcy law of India, Business Today, December 11, 2019, <https://www.businesstoday.in/current/economy-politics/ibc-insolvency-and-bankruptcy-code-india-promises-positive-changes-credit-default-resolution-professionals-nclt-cases-corporates-liquidation-process/story/391873.html> (last visited Sep 18, 2020)

⁸ This limit has now been increased to Rs. 1 Crore as of March, 2020

⁹ Suman Layak, Why resolution process is virtually impossible under the Insolvency and Bankruptcy

Code, the Economic Times, July 09, 2019 <https://economictimes.indiatimes.com/industry/banking/finance/banking/the-challenges-facing-the-insolvency-and-bankruptcy-code/articleshow/70108989.cms?from=mdr> (last visited Sep 18, 2020)

¹⁰ Nikita Kwatra, The IBC has an incentive problem, mint, January 02, 2019 <https://www.livemint.com/Industry/nYs7QsAfNqtgGoQHZw2zBJ/The-IBC-has-an-incentive-problem.html> (last visited Sep 18, 2020)



partnerships. Prior to IBC, LLPs corporate, partnership, and other bodies which are not under the purview of the abundance laws which govern the insolvency and bankruptcy procedure.

- No multiplicity of law: IBC has reduced the ambit under which a corporate body taking away from the various laws which cover the recovery of debt and insolvency and liquidation process.¹¹ The current present law includes all the procedures and reliefs related to debts and insolvency and liquidation.¹² There were several laws governing NPAs before the IBC was enacted, namely –

1. Sick Industrial Companies (Special provisions), Act, 1985
2. The Provincial Insolvency Act, 1920,
3. The Presidency Towns Insolvency Act, 1909,
4. The Code of Civil Procedure, 1908,
5. the SARFAESI Act, 2002 (to name a few)

- Timely Resolution: IBC provides for a stipulated period of time for several procedures which result in speedy recovery and decisions which is a novelty when it comes to the Indian legal framework¹³. A time span of 180 days has been provided in the Code which can be extended up to 90 days, resulting in a maximum period of 270 days but not further than that within which CIRP needs to be completed. Further, there are provisions for fast track resolutions for the corporate insolvency for a speedier process, which is to be completed with the said period. The assets of the borrowers may or may not

be sold auctioned to fulfil the debts taken from the creditors.

- One window clearance¹⁴: Since the procedure of insolvency and bankruptcy fall under one Code, it gives the applicant a window of clearance giving a suitable relief by the same authority during a period of contention, unlike the prior position where the company was governed by several interlaying laws making it next to impossible to avail sufficient relief - resulting in a delay in procedure. The IBC has been drafted in order to ensure there is a window of clearance the applicant whereby he can get the mandated relief from the relevant authorities. This was not the case earlier, when there were a plethora of laws governing the insolvency and bankruptcy procedure resulting in the company being unable to complete the procedure of liquidation due to separate requirements under those laws.
- Transparency in the process: IBC provides for a clear procedure with respect to the insolvency and bankruptcy. The structure is very specific and it is mandated the complete insolvency resolution procedure within 180 days.¹⁵
- One chain authority: There is one chain of authority established under the code. Civil courts are restrained from interfering with the application pending before the adjudicating authority, resulting in immense reduction of multiplicity of suits and burden of courts. Insolvency resolution for Companies are adjudicated by the NCLT and insolvency

¹¹ Ibid

¹² Sharma, H.K. "Insolvency and Bankruptcy Code, 2016 - Fast Track Corporate Insolvency Resolution Process", ICSI 2016. (https://www.icsi.edu/WebModules/LinksOfWeeks/ICI_CSI_CS_SEP2016.pdf) (last visited Sep 18, 2020)

¹³ Ibid

¹⁴ Athavale, M.A. & Anasingaraju Anagha. "Opportunities for Company Secretaries under the Insolvency and Bankruptcy Code, 2016", The Journal of Corporate Professionals (ICSI), Vol-46, Issue-9, ISSN 0972-1983, September 2016.

¹⁵ Supra note 10



resolutions for individuals are adjudicated by the Debt Recovery Tribunal (“DRT”).

- Introduction of a new regulatory authority: It provides for constitution of a new regulatory authority “insolvency and bankruptcy board of India” to regulate professionals, agencies and information utilities engaged in the resolution of insolvencies of companies, partnership firms and individuals. The board has already been established and has started functioning.¹⁶

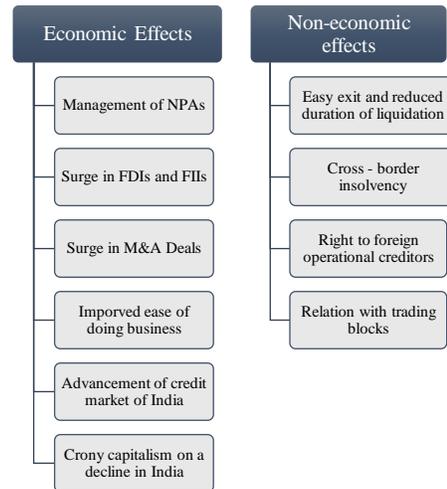
Analysis: When the features are analysed in context of the Indian commercial banks, it can be determined that due to streamlining of recovery process of the NPAs, it is easier for Indian commercial banks to recover money from such institutions. Not only is it easier, it is faster due to the given framework which emphasises on a strict time line. Since most NPAs belong to commercial banks where the Government of India holds large stakes, it can be deduced that public trust can be restored in the banking system. The IBC has been a boon in terms of recovering money for banks through a legal charter.

IMPACT OF IBC ON MACRO ENVIRONMENT OF INDIA:

The Indian banking system had numerous losses of the NPAs which needed to be mitigated. Therefore, to alleviate the situation, IBC was introduced. Although, there was uncertainty with regards to the quantum of stressed assets stuck with NPAs – which could be recovered, but to be fair, it

was enough to avoid an economic crisis. Other than the legal effect, IBC plays a pivotal role in achieving the macroeconomic benchmarks thereby putting India on the global market as a safe country to invest in. Following mentioned are some of the broader impacts of The Insolvency and Bankruptcy Code (IBC) of India, 2016:¹⁷

Impact of IBC on Macro Environment of India



- Economic Effects:
 1. Management of NPA's- The management of NPAs is pivotal for a sound banking system. The rising burden of NPAs if a major challenge for the Indian Banking System and the introduction of IBC has been done to curb that problem.¹⁸ IBC has helped the Indian Banking system to recover more than

¹⁶ Balasubramanian, N. “Insolvency and Bankruptcy Code – A look from a common man’s perspective”, The Journal of Corporate Professionals (ICSI), Vol-46, Issue-9, ISSN 0972-1983, September 2016.

¹⁷ Valecha, Javish & Xalxo, Ankita Anupriya. “Overview of the Insolvency and Bankruptcy Code,

2016 & the Accompanying Regulations”, Journal on Contemporary Issues of Law, Vol-3, Issue-4, ISSN 2455-4782, 2017.

¹⁸ www.rbi.org.in/scripS/PublicationView.aspx?id=1806



stressed assets worth INR lack crores and dispose a plethora of cases off which were related to insolvency and bankruptcy, including the transferred cases from Board for Industrial and Financial Reconstruction (BIFR).

2. Surge in FDI- It is clear that after the implementation of the IBC, the FDI has significantly increased. It can be noticed that the FDI of India in the years of 2012-13 and 2013-14 averaged to US \$35000 million (approx.) and after the enactment of IBC, the average FDI in the years, 2016-17 and 2017-18 was US \$ 61000 million (approx.). It can be observed that there was an increase of investments by 75% (approx.) due to the enactment of the IBC since it provides the investors with transparency with respect to insolvency and bankruptcy procedure by providing a strong legal framework.

Year	Total FDI Flows (Amount US\$ Million)	% Growth over the previous year (in US\$ terms)	Investment by FII's (Amount US\$ Million)
2012-13	34,289	(-)26%	27,582
2013-14	36,046	(+)5%	5,009
2014-15	45,148	(+)25%	40,923
2015-16	55,559	(+)23%	(-) 4,016
2016-17	60,220	(+)8%	7,735
2017-18	61,963	(+)3%	22,165

Source: RBI's Bulletin August 2018 dt.10.08.2018 (Table No. 34 – FOREIGN INVESTMENT INFLOWS)

3. Surge in M & A Deals- It can be recorded that the M & A activities have significantly increased after the enactment of IBC – within 2 years of the enactment, India closed deals

¹⁹ Swaraj Singh Dhanjal, IBC impact: M&A deals worth \$14.3 billion signed in 2 years, <https://www.livemint.com/Companies/c17rNOIV4h5i1zTnlUfEVN/IBC-impact-MA-deals-worth-143-billion-signed-in-2-years.html> (Last visited 18 September 2020)

²⁰ Chaudhary, V.K. & Kapoor, Alka. “Corporate Insolvency Resolution Process – Brief analysis and

worth US \$ 14.3 billion, according to the government.¹⁹ M & A like Bhushan Steels, Fortis Healthcare, Reliance Communications, etc. acted as a catalyst to the existing business talks. It also gave a significant rise to the concept of distressed debts along with distressed M & A.

4. Improved ‘Ease of Doing Business’ Ranking²⁰- Along with the introduction of Goods and Service Tax (“GST”), IBC was also a big step concerning the economy of India. Both of the legislations have resulted in the jump in India’s “World Bank’s Ease of Doing Business (“EODB”)” rank which moved up 23 notches (prior rank was 100) after two years of enactment of IBC and now ranks 63 among 190 global economies as of May 2019. India has been a part of the “top 10 improvers” for the third straight year – this list is determined by the World Bank.²¹
5. Advancement of Credit Market of India- IBC establishes a centralised repository which provides with authentic data on the financial and credit rating and / or information of the borrower – resulting in giving security to the creditors while lending money. These repositories are referred as Information Utilities (“IUs”). These IUs give a concrete base for financial creditors, thereby increasing the reliability resulting in the growth and development of the credit market of India.
6. Crony Capitalism on a Decline in India- “IBC will ensure that the world of crony capitalism comes to an end. Earlier, you could borrow and not repay. Now if you don’t pay, you lose

challenges”, The Journal of Corporate Professionals (ICSI), Vol-46, Issue-9, ISSN 0972-1983, September 2016.

²¹ Statistics regarding ease of doing business in India determined by The World Bank, <https://www.doingbusiness.org/en/data/exploreconomies/india> (last visited Sep 18, 2020)



your business.” Amitabh Kant, the CEO of Niti Aayog believes that crony capitalism can be defined as an economy which survives on the return of money through affiliation between large political parties and businesses and because of the sheer ability to take risks and / or capacity to take risks of the said business. This results in lack of control money which has been lent to businesses. With the introduction of IBC, more stringent laws have been introduced resulting in a reduction of such crony capitalism and making it difficult for the promoters to regain control of the business after declaring insolvency or bankruptcy. The IBC makes it clear that the company either survives or perishes, there is no middle ground for a failing company to survive merely on contacts.²²

- Non-economic Effects:

1. Easy Exit and Reduced Duration of Liquidation -As per statistics provided by World Bank, before the introduction of IBC, an average insolvency procedure in India would take up to 4 years but, after the enactment of the IBC there is a stipulated period of time (180+90 days to resolve and / or liquidate measure). This makes the exit of market players easier. Thus promoting more people to enter the Indian market..²³ This would be favourable in drawing foreign investors to establish newer businesses in India. Thus resulting in an increase in innovations in the country.
2. Cross-Border Insolvency - Cross-Border Issues deals with Indian firms having claims

over default committing global firms, or vice-versa. Given the complex nature of the issue the IBC has been trying to blend in some of the best efforts taken for Cross-Border Insolvency in the world but these are not adequate to effectively deal with the default cases.²⁴ But in such a scenario where domestic insolvency laws have seen recently reformed daylight, it is prudent to take one step at a time. A draft bill is in progress and hopefully, it will soon be enacted after due diligence.²⁵

3. Right to the Operational Creditors – Prior to the IBC, there were no laws governing or preserving the right of the operational creditors. But under this code, there are provisions which give the right to file for the CIRP the group. These creditors may be domestic or international. Both of the parties have the right to file for a suit in front of the relevant authority. Thus, there is a security provided to international operational creditors as well ensuring a surge in cross border economic transactions.
4. Relation with Trading Blocks – It is suitable for the economy of any country to have a strong legal framework to enhance economic relations with foreign countries. Such legal framework is further profitable if it is in tandem with the policies set by various trade blocks namely – ASEAN, EU, NAFTA, SAARC, etc. the enactment of the IBC has satisfied the basics prescribed by the said trade blocks thereby enhancing cross border trading relations shared by India.²⁶

²² Supra note 14

²³ Wadhwa, Rakesh. “Insolvency and Bankruptcy Code”, 2016” The Journal of Corporate Professionals (ICSI), Vol-46, Issue-9, ISSN 0972-1983, September 2016.

²⁴ Ibid

²⁵ Ibid

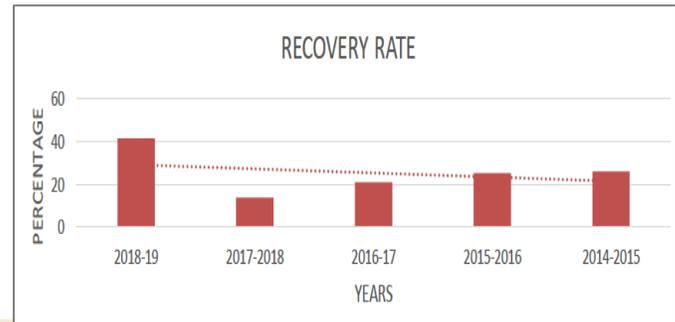
²⁶ Ibid



EFFECTIVENESS OF IBC AS A SOLUTION TO NON-PERFORMING ASSETS

An asset that no longer produces profits and income is classified as a non-performing asset if the interest on loan, loan or advance extended to it for its revival is not repaid in 90 days. NPA's were the unfortunate by-product of the credit boom in India between 2006 and 2011. During this period, lending grew at an astounding rate of over 20%²⁷. Apart from this, laxness of credit rating agencies, project delays and the absence of an exploitable law were some of the reasons that caused the piling up of NPA's. The introduction of the IBC has been a blessing in disguise for the burgeoning NPA's that were burdening not only their sister concerns but also the economy as a whole. In fact, it is the increase in the number of NPA's and laws regulating insolvency that prompted the legislature to enact one law that can facilitate the alleviation of stressed assets by corporate restructuring and reconstruction by asset reconstruction companies. The IBC has caused a shift of power from the hands of the recalcitrant borrower who would ordinarily exploit the loopholes in the law and escape liability, to the hands of the creditor. Post the implementation of IBC in 2016, there has only been a year-on-year growth in the amount of recoveries made by debt authorities. In fact, over the years, India has reinvented its policies and legislation such

that it has moved from rank 108 to 63 in World Bank's Doing Business report in "Resolving Insolvency"²⁸.



As can be seen from the graph above²⁹, despite the fall in recoveries from NPA's in the fiscal year 2017-18, there has been a positive trend in the recovery rate since the implementation of the IBC.

As per CRISIL ratings, the enforcement of the IBC has led to recoveries to the tune of Rs. 70,000 crores in fiscal year 2019, which is twice as much as those from laws and bodies like the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act, Debt Recovery Tribunal and Lok Adalat. Hence, the IBC has shown a higher recovery rate of 43% as compared to the 26.5% that the earlier debt recovery mechanisms produced³⁰. The average time taken for resolution has also reduced from 4.3

²⁷ Anup Roy, Banks' recovery improves after insolvency code, changes in Sarfaesi: Report Business Standard (2018), https://www.business-standard.com/article/economy-policy/insolvency-and-bankruptcy-code-improved-recovery-for-banks-says-rbi-report-118122801074_1.html (last visited Sep 14, 2020).

²⁸ Yogima Sharma, Ease of Doing Business India rank: India jumps to 63rd position in World Bank's Ease of Doing Business 2020 report The Economic Times (2019),

<https://economictimes.indiatimes.com/news/economy/indicators/india-jumps-to-63rd-position-in-world-banks-doing-business-2020-report/articleshow/71731589.cms?from=mdr> (last visited Sep 14, 2020).

²⁹ Supra Note 1

³⁰In three years of IBC, more hits than misses, CRISIL, <https://www.crisil.com/en/home/newsroom/press-releases/2019/05/in-three-years-of-ibc-more-hits-than-misses.html> (last visited Sep 14, 2020).



years to 330 days since the enactment of the code³¹.

While these facts and statistics point to an economically stronger India, there still remains major scope for improvement. A larger part of the debts recovered through the adoption of the IBC has only been roped in through sectors like that of steel and iron and even when such money is recovered, it is nowhere near the total debt owed to various financial and operational creditors. Additionally, as per Insolvency and Bankruptcy Board of India (“IBBI”) data over 50% of the cases closed under the IBC have ended in liquidation and only 14.93 per cent ended with an approved resolution plan, discounting creditors the opportunity to recover their debts³².

The onset of the IBC and its strict implementation has created a robust ecosystem for debt recovery in India. However, with respect to scheduled commercial banks, NPA’s were increasing continuously and RBI reports indicated the same have increased from 3.23 lakh crores to 10.36 lakh crores between 2015 and 2018³³. There has been some decline in the gross NPA’s for such banks in 2019, but the same efficiency and time bound resolution processes must be continued to ensure major decline in scheduled bank NPA rates.

PROJECT SASHAKT

Project Sashakt is a 5-pronged approach that was formulated by the Sunil Mehta Committee that received union finance

ministry approval on July 2, 2018³⁴. This strategy highlights the guiding principles that initiate operational turnaround and create jobs at the same time, thereby enhancing the value of commercial banks. Sashakt aims to fortify credit portfolio and credit capacity of public sector banks. It involves the categorization of NPA’s based on amount of debt owed and then applying different approaches to revive the same.

The various categories under which NPA’s are classified are:

- NPA’s under Rs. 50 crores: The committee suggests that such NPA’s must be tackled by “A Focus Vertical” within the bank that is dedicated to assessing bad assets. Additionally, a steering committee is to be formulated by the bank for the resolution of such NPA’s within 90 days.
- NPA’s between Rs. 50-500 crores: A bank led consortium has been suggested by the committee where the bank will enter into an inter-creditor agreement that authorizes the leading bank to implement the resolution plan in 180 days. This is done by forming an Independent Screening Committee that examines and implements the resolution of such loans. If the resolution is not achieved within the 180-day stipulation, the matter is then raised before the NCLT.
- NPA’s over Rs. 500 crores: For NPA’s of value over Rs. 500 crores, the setting up of Asset Management Companies (“AMC”) was suggested. This AMC would be setup under an existing Asset Reconstruction

³¹ Manish Aryan & Mini Raman, Effectiveness of Insolvency and Bankruptcy Code as a solution to NPAs Lexology (2020), <https://www.lexology.com/library/detail.aspx?g=c1f21f1c-3853-4bd1-9731-592cfca4bc12> (last visited Sep 14, 2020).

³² Ibid

³³ Ibid

³⁴ Gopika Gopakumar, Mint Primer: What is Project Sashakt and how it will workmint (2018), <https://www.livemint.com/Industry/xx5DASBD0xB9fgEPzKGwUO/Mint-Primer-What-is-Project-Sashakt-and-how-it-will-work.html> (last visited Sep 14, 2020).



Company (ARC) like Arcil Ltd which is already promoted by banks³⁵. This AMC would be funded by banks, foreign investment funds and alternative investment funds and would further invest in stressed assets owned by pre-existing ARC's. The AMC is then responsible for the operational turnaround of the NPA.

THE LONG TERM IMPACT OF COVID-19 ON NPA REVIVAL RATE

The inevitability of economic downfall on account of a global pandemic such as the Coronavirus has led to a lack in investor confidence globally. This effect combined with constant market uncertainty has trickled down to and magnified when it comes to NPA revival in India. Unless there is some relaxation to the provisions of Section 29A of the IBC that restricts certain entities from reviving NPA's undergoing Corporate Insolvency Resolution Process, the rate of recovery from NPA status will definitely drop. It is believed by various dignitaries in financial and legal roles that other than steel, the power and telecom sector are likely to be affected by the aftermath of COVID-19 due to market conditions and their already pending debts. COVID-19 is also believed to rekindle insolvency talks for companies that recently came out of insolvency. Although the RBI has announced a 90-day moratorium on retail and working capital loans³⁶, based on recent trends and the incessant decline in the national GDP, banks must look to recuperate all funds from its borrowers to

maintain liquidity and avoid bad debts from NPA's by implementing project Sashakt at the earliest.

CONCLUSION

The Insolvency and Bankruptcy Code, 2016 has established an effective framework for speedy resolution of debts and has managed to improve India's rank in World Bank's Doing Business report in "Resolving Insolvency". Not only this, the code also enabled the shift in power from the debtors to the creditors which prohibits the debtors from escaping liability. This historic umbrella legislation has consolidated several independent legislations which has resulted in low NPA, increased Mergers and Acquisitions and has also made India an attractive destination for foreign investments. The law is still evolving and requires a few changes in order to make it a truly effective legislation. Provisions with respect to the timeline of the resolution process are often not adhered to, hence defeating the primary objective of the code which was to provide a mechanism for faster disposal of financial debts/stress. The debtors and finance lenders need to be educated about the true purpose of the law and to use this mechanism in an appropriate manner rather than using it as a means to exploit the opposite party for personal gains. As previously highlighted, a distinction between "financially stressed" companies and "economically stressed" companies need to be made in order to

³⁵ Rupali Pruthi, Project Sashakt: Sunil Mehta Committee's 5-pronged strategy to tackle NPAs approved Jagranjosh.com (2018), <https://www.jagranjosh.com/current-affairs/sunil-mehta-committees-5pronged-strategy-to-tackle-npas-approved-1530604992-1> (last visited Sep 14, 2020).

³⁶ ET Online, RBI extends EMI moratorium for another three months on term loans. Here's what it

means for borrowers The Economic Times (2020), <https://economictimes.indiatimes.com/wealth/borrow/rbi-extends-emi-moratorium-for-another-three-months-on-term-loans-heres-what-it-means-for-borrowers/articleshow/75883777.cms?from=mdr> (last visited Sep 14, 2020).



strengthen the inefficient businesses rather than dismantling them which is causing a great harm to the country's GDP.

Smooth functioning of the financial and credit market is a way to ensure stakeholders' trust and their collective contribution to the growth and development of any economy, and this code with its present and future incorporations will be a step forward to achieve the same.

