

## CORPORATE INSOLVENCY AND DISTRESSED ASSETS: A LEGAL PERSPECTIVE

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### ABSTRACT

*The Insolvency and Bankruptcy Code (IBC) has emerged as a paradigm shift in India's approach to distressed asset management, significantly redefining the insolvency landscape. Before the passing of the law, the process of corporations' distress was accompanied by judicial fragmentation, long periods of time, and low rates of recovery which affected the confidence of the creditors and the economy. The IBC provided a unified and structured approach to address the NPAs in a time-sensitive manner, thereby strengthening the creditor rights. This article delves into the impact that the IBC has had on distressed assets, examining how it has improved recovery rates, supported creditors, and attracted foreign investment in India's distressed asset market. It also explores the critical role of the National Company Law Tribunal (NCLT) in shaping the insolvency resolution landscape. However, despite its successes, the Code faces several challenges, including procedural delays, judicial uncertainty, and asset valuation. This article suggests strategic improvements and reforms with a view to enhance India's insolvency framework to ensure that the insolvency code is implemented in a manner to address the core problems faced by firms.*

**KEYWORDS:** Distressed Assets, Financial Distress, IBC, Asset recovery, NCLT, ARCs.

### INTRODUCTION

In the dynamic realm of commercial business, where fortunes can shift overnight and corporate titans can fall from grace, the **Insolvency and Bankruptcy Code (IBC)**<sup>2086</sup> stands as a pivotal instrument designed to restore balance in a tumultuous marketplace. Enacted in 2016, the IBC was heralded as a game changer, promising to streamline the process of insolvency resolution and breathe new life into distressed assets. In the case of companies experiencing financial difficulties and nearing insolvency, assets and liabilities become crucial factors in decision-making, including the strategies of creditors and managers and potential investors as they try to steer the company through the troubled waters of restructuring or dissolution.

Distressed assets are the financial or physical assets that have eroded their value to an alarming level. This can often happen when the company misses payments on its debts or other obligations to other parties. When these assets are no longer able to generate income and require help to get back on track, they become non-performing assets (NPAs).<sup>2087</sup> These assets might include loans, bonds, real estate, or even entire enterprises. An economy's build-up of distressed assets is a serious cause for concern since it indicates the financial instability of companies and can have a cascading effect on the larger financial system, affecting investors, banks, and the general state of the economy.<sup>2088</sup> NPAs of just 37 listed banks in India were as high as \$217 billion (USD), up

<sup>2086</sup> Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

<sup>2087</sup> Causes Of Distressed Assets, FASTERCAPITAL, <https://fastercapital.com/keyword/causes-of-distressedassets.html> (last visited September 18, 2024).

<sup>2088</sup> Habib, A., Costa, M. D., Huang, H. J., Bhuiyan, M., Uddin, B., & Sun, L. (2020). Determinants and consequences of distress: Review of the empirical literature. *Accounting and Finance*, 60(S1), 1023–1075. <https://doi.org/10.1111/acf.12400>

from \$175 billion the previous year. This situation degraded to the extent that stressed assets contributed to 15% of total loan by March 2018 especially to the sectors of infrastructure that heavily relied on project finance bank loans. This growing problem led to the Indian government's announcement of a bank recapitalization plan amounting to \$33 billion to manage these distressed assets and stabilize the financial sector.<sup>2089</sup>

The Insolvency and Bankruptcy Code (IBC), which was implemented by the Indian government in 2016 to address this expanding problem, revolutionised the field of insolvency and bankruptcy legislation. The main objective of the IBC was thus to make the process of dealing with insolvent and bankrupt companies faster and less complicated so that distressed assets could be recovered more quickly. The IBC was expected to protect the interests of all stakeholders, attract investors, and foster corporate reincarnation through a robust legal framework. The code claimed to promote openness, efficiency, and a timely conclusion to insolvency procedures, replacing an antiquated and disjointed set of regulations.<sup>2090</sup>

Prior to the implementation of the IBC, India lacked adequate instruments for the recovery and turnaround of distressed debt. The irrational exuberance and high tolerance for leverage among bankers and promoters before the financial crisis exacerbated the issue, further complicated by the fragmented legal framework that failed to provide effective solutions for resolving these distressed assets.<sup>2091</sup> The IBC emerged as a landmark development to consolidate and amend existing insolvency laws, creating a unified framework aimed at accelerating turnaround and resolution processes for distressed

assets.<sup>2092</sup> The distressed assets market still faces obstacles, including as regulatory delays, valuation problems, and low investor confidence, despite the advancements since the IBC was passed. Examining the IBC's achievements as well as the areas where it still needs improvement is necessary to determine the full effect it will have on the distressed assets market.

## OVERVIEW OF THE INSOLVENCY AND BANKRUPTCY CODE (IBC)

The Insolvency and Bankruptcy Code (IBC), introduced in 2016, was a transformative shift in India's approach to dealing with financial distress and insolvency. Prior to the IBC's enactment, the country's insolvency process was disjointed, relying on a collection of outdated laws like the **Sick Industrial Companies Act (SICA)**<sup>2093</sup>, the **Recovery of Debts Due to Banks and Financial Institutions Act (RDBFI)**<sup>2094</sup>, and the **Companies Act**.<sup>2095</sup>

These legal provisions operated independently, which often led to inconsistencies, delays in resolution, and poor recovery rates. This undermined creditor rights and confidence of investors in the financial market.

The essential aim of the IBC was to unify all the laws relating to insolvency in one enactment and to make the procedures of corporate as well as individual insolvency smooth and simplified. The Code, with a structured, time-bound mechanism, aimed at giving equal treatment to creditors while protecting the value of distressed assets.

## Key Features of the IBC

1. **Integrated Legal Framework:** The IBC comes as consolidation of several insolvency legislations into one single comprehensive code. As such, the Indian legal system canceled the complexities of multiple systems that had to be tackled. This

<sup>2089</sup> Srivastava, V., & Dashottar, S. (2018). Turning around distressed project finance assets in India: What more needs to be done? *Journal of Structured Finance*, 24(3), 52-64. doi:<https://doi.org/10.3905/jsf.2018.1.068>

<sup>2090</sup> Katoch, R. (2017). Insolvency and Bankruptcy Code, 2016: Features, Mechanism and Challenges in implementation. *International Journal of Management, IT and Engineering*, 7(9), 77-89.

<sup>2091</sup> Goel, S. (2017). The Insolvency and Bankruptcy Code, 2016: Problems & Challenges. *Imperial Journal of Interdisciplinary Research (IJIR)*, 3, 2454-1362.

<sup>2092</sup> Id.

<sup>2093</sup> Sick Industrial Companies (Special Provisions) Act, 1985, No. 1 of 1986, Acts of Parliament, 1985 (India).

<sup>2094</sup> Recovery of Debts Due to Banks and Financial Institutions Act, 1993, No. 51 of 1993, Acts of Parliament, 1993 (India).

<sup>2095</sup> Companies Act, 2013. Act No. 18 Of 2013

integrated concept, apart from simplifying and making the process easier to handle, increased transparency and efficiency in the management of insolvency cases. This makes it easy for both creditors and debtors to engage in the resolution process.<sup>2096</sup>

2. **Time-bound Resolution:** One of the major characteristics of IBC is its absolute time scale for completing the insolvency process. Under the code, the CIRP has to be completed within 180 days, which can be extended by a further additional 90 days if so required. Hence, this time-bound process is thus an attempt towards avoiding the lengthy delays where the asset value had previously degraded.<sup>2097</sup>
3. **Role of the National Company Law Tribunal (NCLT)** Under IBC, the NCLT is the main body that deals with and decides corporate insolvency matters. It ensures that the process of insolvency resolution is carried out within the timeframes and standards stipulated. In cases where a dispute emerges, it is the appellate body called the National Company Law Appellate Tribunal that steps in and brings much-needed structure in case of appeals as well as dispute resolution.<sup>2098</sup>
4. **Insolvency Professionals (IPs) and Regulatory Bodies:** The Code provides an introduction to the concept of Insolvency Professionals, who take on a very important role in administering the resolution process. These professionals are made responsible for taking over control of the management of the debtor's enterprise, managing his assets, and conducting negotiation with creditors and debtors. The IPs are regulated by the Insolvency Professional Agencies, which regulate the conduct of such professionals and ensure that such

professionals maintain a very high standard of professional conduct.<sup>2099</sup> The Code introduced the concept of Insolvency Professionals (IPs) who play a pivotal role in managing the resolution process. These professionals are tasked with taking control of the debtor's operations, overseeing asset management, and facilitating negotiations between creditors and debtors.

5. **Committee of Creditors (CoC):** The Committee of Creditors, comprising largely the financial creditors, enjoys crucial decision-making authority under the IBC. The committee makes strategic decisions to review and assess the resolution plans with the aim of not only protecting the interests of the creditors but also endeavoring to protect the value of the distressed enterprise. This model of creditor-centricism simplifies decisions by efficiency and transparency.<sup>2100</sup>
6. **Corporate Insolvency Resolution Process (CIRP):** The IBC is based on corporate insolvency resolution process. This is a structured procedure for addressing the insolvency process at a system level. It begins from the initiation of insolvency proceedings and includes appointment of IP regarding the management of debtor's assets and operations. The CoC considers the resolution plans submitted by the applicants in order to achieve the outcome which also provides the highest value of the assets to creditors. However, if a resolution plan cannot be achieved before time, the company can move towards liquidation. Two high-profile cases like Essar Steel, Bhushan Steel, and Jet Airways have very well put across the idea of IBC making possible the efficient timeframe-bound resolutions on large-scale corporate insolvency. Such cases have further enhanced investor trust, both domestically

<sup>2096</sup> Arora, P., & Saurabh, S. (2022). Predicting distress: A post insolvency and bankruptcy code 2016 analysis. *Journal of Economics and Finance*, 46(3), 604-622.

<sup>2097</sup> Valecha, J., & Xalko, A. A. (2017). Overview of the Insolvency and Bankruptcy Code, 2016 & the Accompanying Regulations. *Journal on Contemporary issues of Law*, 3.

<sup>2098</sup> Kaushik, S. (2020). National Company Law Tribunal (NCLT) under the Indian Company Law Regime. *Supremo Amicus*, 22, 93.

<sup>2099</sup> Mittapally, A., & Jayaram, K. (2020). A study of insolvency professionals in India. *Insolvency and Bankruptcy Regime in India: A Narrative, Insolvency and Bankruptcy Board of India, New Delhi*, 199-206.

<sup>2100</sup> DeNatale, A. (1981). The Creditors' Committee under the Bankruptcy Code--A Primer. *Am. Bankr. LJ*, 55, 43.



and internationally, while having it showcased in front of the world the Indian government's serious consideration for adherence to transparent and strong processes of bankruptcy resolution.

## **IMPACT OF IBC ON THE DISTRESSED ASSETS MARKET**

The Introduction of the Insolvency and Bankruptcy Code (IBC) of 2016 marked a new dawn in the distressed asset landscape of India. Before this introduction, the Indian distressed asset market was in immense distress. Long judicial procedures, lower recovery rates, and reduced interest in investment characterized the Indian distressed asset market before the implementation of IBC. However, this situation has significantly changed with the introduction of the IBC resulting into a systematic and time-conscious approach of handling distressed assets has brought a drastic change on how such assets are to be managed, sold and recovered.

### **1. Regulation of the Distressed Assets Market**

The IBC has been nothing short of spectacular in helping to reactivate the distressed assets market in India. With the legal framework stratified it has allowed the best possible resolution of NPAs. It has attracted investment of a wider range of investors in assets reconstruction companies, private equity firms, and institutions—be it local or international—in terms of the general guidelines adopted by the insolvency board. Those investors have been motivated into becoming more actively involved in the distressed assets space following newfound certainty and transparency brought by the IBC. The launch of the Insolvency and Bankruptcy Code (IBC) in 2016 has been a turning point for India's distressed assets landscape. Before the IBC's implementation, the market for distressed assets in India faced numerous obstacles, such as prolonged legal proceedings, minimal recovery rates, and a lack of interest from investors.<sup>2101</sup> This has now been

altered by the introduction of IBC, which approaches the resolution of distressed assets in a systematic and time-sensitive manner and transform how such assets are managed, sold and recovered.

From an analysis, it is clear that with the help of IBC, the M&A has become one of the key tools for dealing with distressed assets. In its present form, the Code facilitates effective and efficient M&A transactions through which investors are able to acquire distressed assets at lower valuations and open up for strategic growth. Still, these dealings are tricky to implement in relation to some wavering markets and could be cost-efficient in maintaining such an asset.<sup>2102</sup>

Because of the streamlined resolution process introduced by the IBC, the turnaround time for bad loans' resolutions has been quicker, hence more competitive for restructuring distress assets. Such shorter timelines have assisted in protecting the value of assets from decaying over time and hence making them more attractive to investors seeking risk-free, high returns within a given period.

### **2. Improving the Recovery Rates and Creditor Rights**

Perhaps one of the most significant areas where the IBC has made a difference has been in relation to the recovery rates of distressed assets. According to reports from the Insolvency and Bankruptcy Board of India (IBBI), recovery rates have increased in scale since the Code has been introduced; as of now, creditors are able to recover nearly 45% of their claims, compared with under 25% before the IBC came into effect. A large part of the improvement over litigation is, of course, owing to the IBC's focus on a formal resolution process that has to be completed within a given period.<sup>2103</sup>

<sup>2101</sup> Altman, E. I., & Benhenni, R. (2019). The anatomy of distressed debt markets. *Annual Review of Financial Economics*, 11(1), 21-37.

<sup>2102</sup> Raj, Rishabh, Navigating the Nexus: Unravelling Distressed Assets, Mergers & Acquisitions, and the IBC (August 27, 2024). Available at SSRN: <http://dx.doi.org/10.2139/ssrn.4809605>

<sup>2103</sup> Gupta, M. S., & Singh, J. B. (2020). Insolvency and Bankruptcy Code (IBC) in India: Impact on Recovery of NPAs by banks. *BIHAR JOURNAL OF*, 606.

A classic example of the success of the IBC is the **Bhushan Steel case**<sup>2104</sup>, in which the resolution process resulted in a recovery of more than ₹35,200 crores—more than 63% of the total debt of the company. It clearly shows that there is better potential of IBC while rescuing distressed assets. To ensure such right time interventions, the IBC has ensured that the economic value built up in the distressed assets is preserved for the creditors so that financial market stability is maintained.

The shift to a creditor-friendly IBC regime has also changed the insolvency practice landscape in India. With more powers bestowed on creditors to act expeditiously against defaulting borrowers and with less manipulation by debtors, the process has become more conducive to out-of-court settlements. More people are willing to settle simply so as not to go through the stringent measures they may face under the IBC, thus making the resolution process even faster and boosting investor confidence.

### 3. Emergence of Asset Reconstruction Companies (ARCs) and Stressed Asset Funds

The IBC has been a vital catalyst for more asset reconstruction companies (ARCs) and specialized stressed asset funds to grow into leaders in the distressed assets ecosystem, since ARCs purchase distressed assets from banks at a reduced cost and then engage in the process of restructuring for higher value realization of that asset.<sup>2105</sup> The rise in interest of the indigenous as well as overseas investors has given birth to thousands of stressed asset funds that have contributed only to the reinvigoration of the market for distressed assets in India. A variety of factors usually affects recoveries in this market including availability of collateral, broader economic conditions as well as soundness of the insolvency framework itself. Generally, secured

loans typically have higher recovery rates due to their ability to seize particular collateral that backs such loans while unsecured loans are typically associated with lower recoveries. In this regard, sound legal and regulatory frameworks support this process which underscores imperative role of institutionally sound mechanisms.

The still rising participation of global investors in India's distressed assets market reveals an ever-increasing level of confidence in the effectiveness of the IBC in driving smooth and efficient resolution. Motivated by the potential of high returns, such investment helps the debts of the company get revived, which can add value to the economy as a whole.<sup>2106</sup>

### 4. Strengthened Market for Mergers and Acquisitions (M&A)

In the presence of the IBC, there has been a dramatic shift to the mergers and acquisitions particularly concerning the firms under financial strain. The same financial stressors that had made these firms unattractive for investment and strategic acquirers earlier are now driving investors and strategic acquirers to throw in some intense competitive bids, and the structure and transparency of which is provided by the IBC has given the creditors even better outcomes and resulted in more market liquidity.<sup>2107</sup> High profile acquisitions, such as the ArcelorMittal acquisition of Essar Steel or Tata Steel acquiring Bhushan Steel, demonstrate this potential to rehab distressed companies under the IBC.<sup>2108</sup> These also go beyond mere examples of the success of the Code in value-driven transactions but also establish that global investors find Indian distressed assets attractive.

<sup>2104</sup> Committee of Creditors of Bhushan Power and Steel Limited v. Mahendra Kumar Khandelwal, 2019 SCC OnLine NCLAT 201

<sup>2105</sup> Kaveri, V. S. (2015). Sale of Non Performing Assets (NPAs) to Asset Reconstruction Companies in India: An Overview. *Journal of Commerce and Management Thought*, 6(2), 226-234

<sup>2106</sup> Khaitan, S. (2023). The Case of Asset Acquisition: Are IBC-Led M&A Activities the Way Forward?. *Available at SSRN 4406014*.

<sup>2107</sup> Khaitan, S. (2023). The Case of Asset Acquisition: Are IBC-Led M&A Activities the Way Forward?. *Available at SSRN 4406014*

<sup>2108</sup> Priyadarshani, P., & Ayyalusamy, K. (2024). ArcelorMittal Steel's Essar Acquisition: A Long Legal Battle with Ramifications. *Asian Journal of Management Cases*, 09728201241232207

## 5. Challenges and Bottlenecks in the Distressed Assets Market

Despite the IBC's achievements, many challenges still exist for the market of distressed assets, including the following: procedural delays; bad cases pending at NCLT; proper valuation of distressed assets; lack of skilled insolvency professionals and slow approval processes for resolution plans.<sup>2109</sup> Moreover, judicial interpretations of the IBC and regulatory confusion and changes have made the environment ambiguous enough to deter potential investors. Such an environment would require resolution as a basis for the full potential unfolding of the IBC and transforming the market for distressed assets.

## 6. Future Outlook and Potential for Growth

The future prospects of the market for distressed assets in India are promising, with IBC pushing the process for insolvency resolution to be more efficient. Reforms that aim at making NCLT more operationally efficient, in addition to clarity for the legal framework, are likely to increase investor confidence further. Continued refinements and enhancements by the Indian government towards strengthening the IBC would support stressed asset funds growth and attract higher foreign investment.<sup>2110</sup> The market is set up for its next round of development as the size of specialized funds for purchasing distressed assets increases and interest from overseas rises. This would then lead to opportunities for repositioning and resuscitation of many companies that are facing financial challenges thus creating a positive impact on the economy of India.

## CHALLENGES AND LIMITATIONS OF THE IBC IN THE DISTRESSED ASSETS MARKET

While the IBC has heavily reformed India's process of insolvency resolution and resulted positively on the distressed assets market, it is not without its share of challenges and

limitations. Many problems have cropped up during the implementation of the IBC, which have considerably affected the speed and efficacy of the resolution process. The IBC needs to tackle these issues so that it can achieve its proper potential for transforming the distressed assets sector. Its major weakness is the way the distressed project finance assets are handled compared to corporate finance assets. Project finance often involves specific kinds of financing solutions, particularly for infrastructure-related companies, which often demand customized contractual arrangements. In doing so, it unfortunately fails to capture the nuances of these cases and thus does not serve well in such situations.<sup>2111</sup> Yet, many companies operating infrastructure are financially stressed due to excessive leverage, and asset reconstruction companies (ARCs) are unable to invest outside of their existing portfolios, which further adds to the complexity of the problem.

### 1. Delays in the Resolution Process

Delay is perhaps the most glaring challenge that the IBC faces: The Code prescribes that the resolution process must be completed within a period of 180 days, extended up to 90 days more if possible. However, most cases take more than that. Contributing factors to these delays are procedurally inefficiencies or weaknesses; the norm of 'adjournments on adjusted adjournments,' and the staggering scale and continuations in the National Company Law Tribunal (NCLT). Further slowing the resolution pace was the few number of judges and benches at the NCLT.<sup>2112</sup> To overcome early detection of financial distress and to usher in proactive resolutions, it has been suggested that the following financial indicators be used: return on capital employed,

<sup>2109</sup> Khan, H. R. (2015). Financing for infrastructure: current issues & emerging challenges. *RBI Bulletin*.

<sup>2110</sup> Laryea, T. (2010). *Approaches to corporate debt restructuring in the wake of financial crises* (No. 2010/002). International Monetary Fund

<sup>2111</sup> Jilani, W. M. (2018). The Insolvency and Bankruptcy Code: Challenges and reforms. *RGNUL Fin. & Mercantile L. Rev.*, 5, 345.

<sup>2112</sup> Sehgal, S., Mishra, R.K., Deisting, F. and Vashisht, R. (2021), "On the determinants and prediction of corporate financial distress in India", *Managerial Finance*, Vol. 47 No. 10, pp. 1428-1447. <https://doi.org/10.1108/MF-06-2020-0332>



cash flow to total liabilities, and the asset turnover ratio.<sup>2113</sup>

However, more sophisticated techniques have emerged like SVM and ANN which promises a much better chance of gauging the probability of financial distress. Such technologies could be appropriately incorporated to enhance the foresight of the IBC alongside the future insolvencies and sector-specific responses. Delays often lead to a loss of value in distressed assets and reduce investor and creditor certainty.<sup>2114</sup> Another consequence of an extended recovery process is that there would be a lower rate of recovery of debts for creditors. This even reduces the capability of the IBC further in preserving the asset value.

## 2. Challenges in Asset Valuation

Another concern of applying the IBC framework is the correct valuation of distressed assets at the time of restructuring. Valuation becomes an important factor in the fixation of the right market price for those assets available for sale in the course of the insolvency resolution process, but the variance in different valuation methods has led to undervaluation or overvaluation of assets that gives birth to unnecessary disputes among stakeholders.<sup>2115</sup>

Agrawal and Chatterjee (2015) argue that insolvent firms engage in earnings manipulation if they think they will go under.<sup>2116</sup> Such practices make it difficult for the IBC to live up to the connotations of words like transparency and time-bound dispositions. In fact, this difference in estimates only complicates the issue among creditors and prospective investors even further and depresses the credibility of the distressed assets market. This change in the IBC valuation would make it establish investor confidence

and make asset transactions to portray their true market value for enhancing the transparency in the resolution process.

## 3. Judicial Interpretations and Legal Uncertainty

The nature of the IBC has been evolving over the years and hence it has faced judicial interpretations and amendment processes in a number of ways, and often because of the apparent in legal affairs. These, combined with the ever increasing variety of different rulings from various benches of NCLT and the supreme court, have led to uncertainty as to which law applies.<sup>2117</sup>

Research studies have shown that successful resolution firms of IBC tend to be more profitable, have lesser leverage, and have a much longer restructured period.<sup>2118</sup> This severely restricts the amount of equity that can be reinvested in these reorganised organisations, though, and it calls into serious question the firm's long-term survival. The necessity for significant equity infusion to support post-restructuring growth is further shown by incidents of promoter equity stripping in control-oriented businesses. This informational asymmetry might discourage potential investors to enter the competitively unconcerted and legally and structurally indeterminately structured distressed assets market due to the existence of the unpredictable and varied case laws.

## 4. Lack of Infrastructure and Scarce Availability of Insolvency Professionals

The competency of IPs, and the structure of the judicial bodies such as NCLT are pertinent to the effectiveness of the IBC. Although, this is a major problem because there is currently a critical shortage of highly qualified and experienced IP's, which results in an escalation of complex situations. The NCLT is facing a serious problem

<sup>2113</sup> Rajoria, K. (2018). Insolvency and bankruptcy code of India: the past, the present and the future. *Int'l Bus. LJ*, 61.

<sup>2114</sup> Gadgil, S., Ronald, B., & Vyakaranam, L. (2019). Timely resolution of cases under the insolvency and bankruptcy code. *Journal of Critical Reviews*, 6(6), 156-167

<sup>2115</sup> Mehra, D., & Ranjan, A. (2024). Analysis of the Stressed Asset Market Under IBC. *Available at SSRN 4871234*.

<sup>2116</sup> Agrawal, K., & Chatterjee, C. (2015). Earnings Management and Financial Distress: Evidence from India. *Global Business Review*, 16(5\_suppl), 140S-154S. <https://doi.org/10.1177/0972150915601928>

<sup>2117</sup> Ghosh, S. (2019), "Corporate distress, troubled debt restructurings and equity stripping: Analyzing corporate debt restructurings in India", *South Asian Journal of Business Studies*, Vol. 8 No. 1, pp. 105-126. <https://doi.org/10.1108/SAJBS-05-2018-0059>

<sup>2118</sup> Vikas, J. (2023). Judicial Pragmatism by the Supreme Court of India in Adjudicating Insolvency and Bankruptcy Issues.

in its infrastructure development both in terms of human resource and financial strength, including the scarcity of judges and staff.<sup>2119</sup> The first measures towards improving the effectiveness of the insolvency resolution process under the IBC would be to expand the pool of qualified insolvency practitioners and modernise the NCLT's infrastructure.

### 5. Resistance from Promoters and Exploitation of Legal Loopholes

One of the primary reasons that has hindered the smooth process of IBC is the resistance from the promoters of companies that are undergoing insolvency proceedings has also proven to be a major hurdle. Many promoters try to maintain control over their businesses through legal manoeuvres to delay or halt the resolution process altogether. Some even take advantages of loopholes in IBC to start frivolous and elongated litigation proceedings which only puts a halt to the process. In cases like Bhushan Power and Steel, in which promoters have repeatedly seen litigation as a means to regain control over their companies has resulted in huge delays in implementation of resolution plans. Closing these loopholes through regulatory change and stricter measures are in order so that these obstructions do not recur and the goals of IBC are not compromised.<sup>2120</sup>

### 6. Limited Success in Individual Insolvency and Bankruptcy

While the IBC has widely contributed to corporate insolvency, its contributions to individual and bankruptcy issues are still limited.<sup>2121</sup> Personal insolvency remains in a developing stage because the structure guiding the application and extent of personal insolvency remains obscure. The essence of this

makes it so that the IBC's provisions do not reach out to the entire constituency comprising individuals and SMEs, constraining the overall impact the Code may have on the country's financial stability. Individual insolvency would then have to be developed in a comprehensive and all-inclusive way to make IBC work well in all sectors of the economy.

### 7. Need for Legislative and Regulatory Improvements

Continuous legislative and regulatory improvements are necessary to address the challenges the IBC faces in the distressed assets market. Despite it, several amendments have been made to solve these problems, but there is a possibility for the further targeted reforms. The future amendments should focus on improvement of the accelerated resolution of the insolvency cases, exclusion of possible legal obstacles, and the improvement of the certain and clear provisions of the Code of Insolvency. Enhancing these aspects will further solidify the IBC's role in reviving distressed assets and restoring confidence in the Indian financial system.

### FUTURE POTENTIAL OF INDIA'S DISTRESSED ASSETS MARKET UNDER THE IBC

Distressed assets are fundamentally changed by the IBC in India. The future is very promising if the significant impact of the insolvency framework and the revitalization of distressed assets can be assessed and worked upon. The IBC remains an evolving statute such that various elements will further enhance its effectiveness and the scale of expansion in the distressed assets sector in India.

#### 1. Growing Global Investor Engagement

Resolution processes that are clear and well-structured due to IBC are attractive to international investors, private equity firms, hedge funds, and Asset Reconstruction Companies (ARCs). Though critical in the resolution of distressed assets, they usually suffer from capital constraints and regulatory oppression. The opportunities lie in offering high

<sup>2119</sup> Burman, A., & Roy, S. (2019). Building an institution of insolvency practitioners in India. *Bus. & Bankr. LJ*, 5, 118.

<sup>2120</sup> Mistry, J. (2024). The Knight in Shining Armour: JSW Steel Ltd's Acquisition of Bhushan Power and Steel Ltd. *Asian Journal of Management Cases*, 09728201231211724.

<sup>2121</sup> Azmi, R., Razak, A. A., Ahmad, S. N. S., Abd Razak, A., & Nur Samawati Ahmad, S. (2018). The theories underpinning personal insolvency or bankruptcy law: a legal overview. *European Proceedings of Social and Behavioural Sciences*, 52.



returns and reviving languishing companies. While ARC's have managed to recover only 19.15% distressed assets in the year of 2022 and suffer funding difficulties and regulatory issues, nearly ₹9.6 lakh crores waiting as non-performing assets seems to be a great investing opportunity. Banks are required to make strategic moves and ARCs should also pursue sector-specific strategies along with a push for regulatory reforms to make more headway.

From this point of view, with a range of investors and supportive policies, the new face of ARCs promises great opportunities to policymakers and investors worldwide.<sup>2122</sup> The entry of international players is likely to bring in more funds, expertise, and competition into the Indian market and contribute toward better valuations of assets, quicker resolution, and innovative techniques for restructuring. Promotion of the amalgamation of smaller ARCs into larger financially sustainable entities will improve their operational capacities and make the market more competitive and solid.<sup>2123</sup>

## 2. Enhancement of the Insolvency Framework

With growth comes scrutiny regarding support infrastructure, such as strengthening the NCLT, training a skilled pool of insolvency professionals, and so on; it would involve an increase in judges and benches and efforts to enhance the efficiency of NCLT, along with the in situ setting up of specialist insolvency courts. These would help reduce the pendency and extend the resolution timeline. A well-rounded curriculum for IP training will then ensure a robust workforce able to contend with the complex intricacies of insolvency issues, which could easily lead towards quicker asset resolutions and better handling of distressed cases altogether.

## 3. Adoption of Digital Solutions and Technological Innovation

Digital solutions will most certainly transform the process of dealing with distressed assets as insolvency changes face through digital tools and analytics. Technology will streamline processes, cut down paperwork, provide transparency, and improve the means of communication with all stakeholders.<sup>2124</sup> Data analytics will enhance asset evaluation, risk assessment, and formulating resolution plans. Technologies will be designed with real-time bidding, tracking, and monitoring in the platform to help simplify the process of insolvency. This way, investors will easily make proper well-informed decisions when they want to.

## 4. Rise of Stressed Asset Funds and Online Resolution Platforms

Stressed-asset funds form an increasingly significant portion of the Indian market, thus channeling funds to companies in need of revamping.<sup>2125</sup> International capital-backed stressed-asset funds have already been an important aspect and will only increase further in the future. Besides, the use of transparent competitive bidding resolution platforms for the resolution of the recovered assets would improve investor engagement. This will be because these platforms will eliminate the current information asymmetry in the potential buyers' market hence enabling them to communicate directly in the distressed assets market.

## 5. Integration of Cross-Border Insolvency Protocols

Standardizing Indian insolvency laws vis-à-vis international standards, such as the UNCITRAL Model Law on Cross-Border Insolvency, is a big

<sup>2122</sup> Jaiwani, M. and Gopalkrishnan, S. (2024), "Global resurgence: private asset reconstruction companies as legal catalysts for financial stability in India and beyond", *International Journal of Law and Management*, Vol. ahead-of-print No. ahead-of-print. <https://doi.org/10.1108/IJLMA-02-2024-0046>

<sup>2123</sup> Swenddal, H. J., Nkhoma, M., & Gumbley, S. J. (2022). Global integration barriers at international branch campuses: the IBC Othring Loop. *International Journal of Educational Management*, 36(4), 593-605.

<sup>2124</sup> Kamalnath, A. (2024). The future of corporate insolvency law: A review of technology and AI-powered changes. *International Insolvency Review*, 33(1), 40-54.

<sup>2125</sup> Menezes, A., Mocheva, N., & Shankar, S. S. (2020). 'Under pressure': integrating online dispute resolution platforms into preinsolvency processes and early warning tools to save distressed small businesses. *Vikalpa*, 45(2), 79-92.

step forward.<sup>2126</sup> Better handling of cross-border creditors and assets would make India an even more attractive destination for foreign investments in distressed assets.

#### 6. Focus on MSMEs and Personal Insolvency

Much more importance will be accorded to the MSMEs in the framework of IBC, thus ensuring their interests are secured and grievances resolved very quickly. Its extension to personal insolvency will also facilitate small entrepreneurs to resolve their individual problems of debt more effectively.<sup>2127</sup>

#### CONCLUSION

Therefore, the paper presents that insolvency laws on distressed assets have a significant impact on the Indian economy. Such a system promotes economic stability. An excellent legal framework is one that helps in faster resolution of financial problems, achieves maximum recovery value of distressed assets, and increases investor's and creditor's confidence. The IBC has undoubtedly prompted a paradigm shift in the general India strategy for dealing with balance sheet problems. The code has gone ahead further to simplify the process of handling cases of corporate insolvency through the setting of checklist on how the matter should be handled. However, some issues which are linked to the procedural delays, which stakeholders can apply, and the lack of definite rules concerning cross-border insolvency remain a problem and suggest considerable potential for development. While arguing for such quicker and more fair ways of solving through the legislature must also ensure that effectivity in the management of the distressed assets in the years to come will also improve.

<sup>2126</sup> Mohan, S. C. (2012). Cross-border Insolvency Problems: Is the UNCITRAL Model Law the Answer? *International Insolvency Review*, 21(3), 199-223.

<sup>2127</sup> Kaneko, Y. (2022). Insolvency Law Reforms in the Asian Emerging Economies. In *Insolvency Law Reforms in Asian Developing Countries: An Epitome of Legal Transplants* (pp. 21-44). Singapore: Springer Nature Singapore.