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## THE ROLE OF THE IBBI IN RESOLVING FINANCIAL DISTRESS IN THE INDIAN BANKING SECTOR

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### ABSTRACT

This research paper critically examines the role of the Insolvency and Bankruptcy Board of India (IBBI) in resolving financial distress within the Indian banking sector through the effective implementation of the Insolvency and Bankruptcy Code (IBC), 2016. It highlights how the introduction of the IBC marked a paradigm shift from earlier fragmented and inefficient insolvency frameworks, offering a time-bound, creditor-driven process that addresses the challenges of mounting non-performing assets (NPAs) and sluggish debt recovery. The paper explores the regulatory, supervisory, and developmental functions of the IBBI, emphasizing its contribution to strengthening creditor rights, enhancing transparency, and fostering financial discipline among corporate borrowers. It also assesses the impact of the IBC on improving recovery rates, expediting resolution timelines, and bolstering investor confidence. Furthermore, the study identifies key challenges such as judicial delays, stakeholder conflicts, and concerns of operational creditors, while analyzing the IBBI's ongoing efforts to refine regulations and adopt international best practices. The research underscores the significance of coordinated institutional efforts, particularly between the IBBI, RBI, SEBI, and NCLT, in ensuring the success of the insolvency resolution framework. Ultimately, the paper argues that the IBBI's role is central to shaping a dynamic, efficient, and equitable insolvency regime that supports the stability and resilience of the Indian banking sector.

### INTRODUCTION

The Insolvency and Bankruptcy Board of India (IBBI) plays a pivotal role in addressing financial distress in the Indian banking sector by overseeing and implementing the Insolvency and Bankruptcy Code (IBC), 2016. The introduction of the IBC marked a transformative shift in India's approach to resolving financial distress, offering a time-bound mechanism to handle corporate insolvency while balancing the interests of creditors, debtors, and other stakeholders. The need for such a framework became evident as the Indian banking sector struggled with mounting non-performing assets (NPAs), sluggish resolution processes, and inadequate legal mechanisms for insolvency.<sup>503</sup>

The IBBI, as the regulatory authority under the IBC, was tasked with ensuring the efficient implementation of insolvency proceedings, regulating insolvency professionals, and establishing a structured framework for corporate debt resolution. Its role extends to fostering transparency, expediting resolution timelines, and enhancing creditor confidence in the financial ecosystem.<sup>504</sup> Financial distress in the Indian banking sector has been a long-standing challenge, exacerbated by the increasing burden of NPAs and the inefficacy of previous recovery mechanisms. Before the enactment of the IBC, laws such as the Sick Industrial Companies Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and the Securitisation and

<sup>503</sup> Dr Parineeta Goswami and Dr Manoj Sharma, "The Insolvency and Bankruptcy Code, 2016: Uncovering the Implementation Challenges" available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4963395](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4963395) (last visited March 17, 2025).

<sup>504</sup> IndiaLaw, "IBBI Issues New Guidelines for Insolvency Professionals" IndiaLaw LLP, 2025 available At: <https://www.indialaw.in/blog/civil/ibbi-guideline-insolvency-professionals/> (last visited March 17, 2025).

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, failed to provide a comprehensive and time-bound resolution mechanism. These frameworks suffered from overlapping jurisdictions, delays, and lack of creditor empowerment, resulting in prolonged insolvency processes that further weakened the financial sector. The IBC sought to replace this fragmented legal framework with a unified and systematic insolvency resolution process, placing creditors at the center of decision-making and ensuring faster resolution or liquidation of distressed entities.

The banking sector serves as the backbone of any economy, and its stability is crucial for sustained economic growth. The accumulation of NPAs and bad loans has led to significant financial distress, restricting credit availability and impacting economic productivity. The primary contributors to financial distress include mismanagement, economic downturns, willful defaults, and inefficiencies in debt recovery mechanisms. A robust insolvency resolution framework becomes essential in mitigating systemic risks and maintaining financial discipline among corporate borrowers. The IBC, with its provisions for time-bound resolution, aimed to instill confidence among lenders and investors by ensuring that distressed assets are either restructured efficiently or liquidated in a manner that maximizes value. The IBBI, as the supervisory body, plays a crucial role in overseeing compliance, developing regulatory frameworks, and ensuring that the insolvency process operates in a fair and transparent manner.<sup>505</sup> One of the significant challenges in addressing financial distress before the implementation of the IBC was the lack of a defined hierarchy of creditors and the absence of a structured mechanism to prioritize claims. The IBC introduced the concept of the Committee of Creditors (CoC), empowering financial creditors to drive the resolution

process. This was a departure from the earlier frameworks that often favored promoters and defaulting businesses over lenders. The IBBI has been instrumental in strengthening creditor rights, ensuring that the resolution process is conducted within a strict timeline, and preventing undue delays that could erode asset value. By laying down clear regulations and guidelines, the IBBI has facilitated a more predictable and structured insolvency resolution framework that enhances the overall efficiency of the financial system.

The impact of the IBC and the IBBI's regulatory role is evident in the improved recovery rates and reduced resolution timelines. Since the enactment of the IBC, India has witnessed a significant improvement in its Ease of Doing Business rankings, particularly in the "Resolving Insolvency" parameter. The time taken for insolvency proceedings, which earlier spanned several years, has now been streamlined into a 180-day framework, extendable by 90 days in exceptional cases. The effectiveness of the

IBC in resolving distressed assets has been a key factor in enhancing creditor confidence and attracting investment in stressed assets. However, the insolvency resolution process is not without its challenges. Delays in resolution, judicial bottlenecks, conflicts among stakeholders, and the complex nature of financial distress pose significant hurdles in the effective implementation of the framework. The IBBI continues to refine regulations and introduce amendments to address emerging challenges, ensuring that the insolvency ecosystem remains dynamic and responsive to market needs. Despite its successes, the IBC and the IBBI's role in financial distress resolution have faced criticism, particularly regarding delays in insolvency resolution, liquidation versus resolution concerns, and the challenges faced by operational creditors. While the IBC prioritizes financial creditors in the resolution process, operational creditors often find themselves at a disadvantage in terms of claim recoveries. This has led to debates on the fairness of the insolvency resolution framework

<sup>505</sup> "Public Sector Banks: A Resurgent Force," available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=2084546> (last visited March 17, 2025).

and the need for a more balanced approach that protects the interests of all stakeholders. Additionally, while the IBC emphasizes resolution over liquidation, the increasing number of cases ending in liquidation rather than successful resolution raises concerns about the effectiveness of the process. The IBBI has been actively working on addressing these concerns through regulatory reforms and policy interventions. A critical aspect of the IBBI's role is its coordination with other regulatory authorities such as the Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI), and the National Company Law Tribunal (NCLT). Effective insolvency resolution requires seamless coordination among these entities to ensure smooth implementation of the IBC. The RBI, in particular, plays a significant role in identifying stressed assets and directing banks to take appropriate measures for resolution. The interplay between the IBBI and the RBI in managing banking sector distress is crucial in maintaining financial stability and ensuring that insolvency resolutions align with broader economic policies. Additionally, the NCLT and the National Company Law Appellate Tribunal (NCLAT) serve as adjudicating authorities under the IBC, and their role in handling insolvency cases is integral to the success of the framework. However, judicial delays and backlogs in these tribunals often hinder the timely resolution of cases, highlighting the need for structural reforms in the adjudication process. Comparing India's insolvency resolution framework with global best practices provides valuable insights into potential improvements. Countries like the United States, with its bankruptcy process, and the United Kingdom, with its well-established insolvency regulations, offer lessons on creditor rights, restructuring mechanisms, and resolution timelines. The adaptability of international models to the Indian context is an area of ongoing policy deliberation. The IBBI, in its regulatory capacity, continues to analyze global trends and incorporate best practices that can enhance the effectiveness of the insolvency

framework in India. The emphasis on balancing creditor and debtor interests, ensuring swift resolution, and maintaining economic stability remains central to the evolution of insolvency laws.

## ROLE OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

### ESTABLISHMENT AND OBJECTIVES OF THE IBBI

The Insolvency and Bankruptcy Board of India (IBBI) was established under Section 188 of the Insolvency and Bankruptcy Code, 2016 (IBC) as the primary regulatory authority responsible for overseeing insolvency and bankruptcy proceedings in India. The IBBI plays a crucial role in ensuring the effective implementation of the IBC by regulating insolvency professionals, insolvency professional agencies, and information utilities. The board is a statutory body that functions under the Ministry of Corporate Affairs (MCA) and operates as an independent regulator to oversee the insolvency resolution process in a transparent and efficient manner.<sup>506</sup> The main objective of the IBBI is to implement a structured and time-bound insolvency resolution framework that enhances creditor confidence and promotes financial stability in the economy. One of the fundamental objectives of the IBBI is to ensure fair and efficient insolvency resolution while balancing the interests of all stakeholders, including creditors, debtors, employees, and the broader financial market. By regulating insolvency professionals and information utilities, the IBBI ensures that insolvency proceedings are conducted in a transparent and accountable manner. Another key objective of the IBBI is to promote market-driven insolvency practices that encourage timely debt resolution and corporate restructuring rather than liquidation. The IBBI is responsible for developing regulations and guidelines that facilitate the corporate insolvency resolution process (CIRP) under

<sup>506</sup> "Insolvency and Bankruptcy Board of India (IBBI)," LawBhoomi, 2023 available at: <https://lawbhoomi.com/insolvency-and-bankruptcy-board-of-india-ibbi/> (last visited March 17, 2025).

Sections 6-32 of the IBC, ensuring that distressed companies have a structured mechanism for revival before facing liquidation. This approach aligns with the overall goal of maximizing the value of assets while minimizing the loss to creditors and other stakeholders. The IBBI also focuses on capacity building and awareness to strengthen India's insolvency ecosystem. Through training programs, research initiatives, and regulatory guidelines, the IBBI ensures that insolvency professionals and stakeholders remain well-informed about evolving insolvency laws and best practices. The IBBI collaborates with domestic and international institutions to enhance the efficiency of India's insolvency framework.<sup>507</sup> The establishment of the IBBI has significantly contributed to India's economic reforms by ensuring a structured insolvency resolution process, reducing delays in debt recovery, and improving India's ease of doing

business rankings. The board's regulatory role is critical in ensuring that insolvency professionals act with integrity and that the insolvency resolution process remains fair, efficient, and in line with the objectives of the IBC.<sup>33</sup>

### 3.2 POWERS AND FUNCTIONS OF THE IBBI

The IBBI derives its powers and functions from Section 196 of the IBC, which outlines its regulatory, supervisory, and policy-making responsibilities in the insolvency ecosystem. The board exercises both regulatory and quasi-judicial powers to ensure the smooth functioning of insolvency and bankruptcy proceedings across different sectors, including corporate entities, individuals, and partnership firms.

#### POWERS AND FUNCTIONS OF THE IBBI

The IBBI derives its powers and functions from Section 196 of the IBC, which outlines its regulatory, supervisory, and policy-making responsibilities in the insolvency ecosystem. The

board exercises both regulatory and quasi-judicial powers to ensure the smooth functioning of insolvency and bankruptcy proceedings across different sectors, including corporate entities, individuals, and partnership firms. One of the primary functions of the IBBI is to regulate insolvency professionals (IPs), insolvency professional agencies (IPAs), and information utilities (IUs). Under Section 196(1)(a) of the IBC, the IBBI is responsible for laying down regulations governing the registration, licensing, and conduct of insolvency professionals. These professionals play a crucial role in managing the affairs of corporate debtors during the insolvency resolution process. The IBBI ensures that insolvency professionals comply with ethical standards and operate in a manner that is fair, transparent, and accountable.

Another significant function of the IBBI is to develop and implement a comprehensive regulatory framework for the insolvency resolution process. Under Section 196(1)(b) of the IBC, the IBBI is authorized to specify the eligibility criteria, qualifications, and conduct rules for insolvency professionals. By setting high professional standards, the IBBI ensures that insolvency resolution is handled by qualified experts who can effectively manage the process and protect stakeholder interests. The IBBI also has the power to monitor and supervise the performance of insolvency professionals and insolvency professional agencies. Under Section 196(1)(c) of the IBC, the board can conduct inspections, investigations, and disciplinary proceedings against insolvency professionals in cases of misconduct or non-compliance with regulatory guidelines. This ensures that insolvency proceedings are conducted with integrity and in accordance with the law. In addition to regulating professionals, the IBBI is responsible for regulating information utilities under Section 196(1)(d) of the IBC. Information utilities play a crucial role in maintaining records of financial transactions and providing accurate data on corporate debtors. By regulating information

<sup>507</sup> "IBBI organises Training of Trainers (ToT) programme for Insolvency Professionals," available at: <https://pib.gov.in/Pressreleashere.aspx?PRID=1766043> (last visited March 17, 2025).

utilities, the IBBI ensures that the insolvency resolution process is supported by reliable financial data, reducing disputes and enhancing efficiency. The IBBI also has quasi-judicial powers to issue orders, pass penalties, and enforce compliance. Under Section 220 of the IBC, the IBBI has the authority to impose penalties on regulated entities that violate the provisions of the Code. The board has the power to take enforcement actions, suspend or cancel the licenses of erring professionals, and take necessary measures to ensure compliance with insolvency laws. The board also plays an advisory role by providing recommendations to the central government on policy matters related to insolvency and bankruptcy. Under Section 196(1)(f) of the IBC, the IBBI advises on amendments to insolvency laws, emerging challenges in the insolvency process, and measures to improve the effectiveness of the insolvency resolution framework.

#### FINANCIAL DISTRESS IN THE INDIAN BANKING SECTOR

##### • UNDERSTANDING FINANCIAL DISTRESS IN BANKS

Financial distress in the banking sector refers to a situation where banks face severe financial difficulties, resulting in their inability to meet obligations towards depositors, creditors, and other stakeholders. This distress can manifest in various forms, including liquidity crises, solvency issues, rising non-performing assets (NPAs), and deterioration in the overall asset quality of banks. Financial distress in banks can lead to systemic risks, affecting the stability of the financial system and the economy. The primary indicator of financial distress is the erosion of capital adequacy, which is governed by the Reserve Bank of India (RBI) under the Banking Regulation Act, 1949, and the Basel III norms, which set capital requirements for banks.<sup>508</sup>

The Reserve Bank of India Act, 1934, along with the Insolvency and Bankruptcy Code, 2016 (IBC), plays a crucial role in managing financial distress in banks by providing regulatory and

resolution frameworks. Section 35A of the Banking Regulation Act, 1949, empowers the RBI to issue directions to banks in public interest or to protect depositors. Further, Section 45 of the RBI Act allows the central bank to take over the management of a bank in case of severe distress. The IBC, under its provisions, allows for the resolution of corporate debtors, including banks and financial institutions, through a structured insolvency framework.<sup>509</sup> A key aspect of financial distress in banks is liquidity risk, which arises when banks are unable to meet their short-term financial obligations due to asset-liability mismatches. The Liquidity Coverage Ratio (LCR) norms introduced by the RBI as part of Basel III compliance ensure that banks maintain sufficient high-quality liquid assets to meet cash outflows for a 30-day period. Banks also face solvency risks, where capital adequacy levels fall below the regulatory requirements, leading to erosion of depositor and investor confidence. The Capital to Risk (Weighted) Assets Ratio (CRAR), as

mandated under the Basel III framework and enforced by the RBI, ensures that banks maintain a minimum level of capital to absorb losses.<sup>510</sup> Financial distress in banks is also reflected in the rise of NPAs, which represent loans and advances that have stopped generating income for the bank. The classification of NPAs is governed by the Master Circular of the RBI on Prudential Norms on Income Recognition, Asset Classification, and Provisioning. Loans that remain overdue for 90 days or more are classified as NPAs under these guidelines. Further, stressed assets are classified into three categories: Substandard Assets, Doubtful Assets, and Loss Assets, depending on the duration of default and the probability of recovery.<sup>511</sup>

<sup>509</sup> Rajeshwar Rao, "Rajeshwar Rao: Strengthening the Insolvency and Bankruptcy Code (IBC) Framework for effective resolution," 2024 available at: <https://www.bis.org/review/r241218g.htm> (last Visited March 17, 2025).

<sup>510</sup> Basel Committee on Banking Supervision, "Basel III: The Liquidity Coverage Ratio and liquidity Risk monitoring tools."

<sup>511</sup> "Reserve Bank of India," available at: <https://www.rbi.org.in/commonman/english/Scripts/Notification.aspx?Id=1459> (last visited March 17, 2025).

<sup>508</sup> Adam Hayes, "Financial Distress: Definition, Signs, and Remedies" Investopedia, 14 May 2007.

Another critical element in understanding financial distress in banks is the Prompt Corrective Action (PCA) framework introduced by the RBI under the Banking Regulation Act, 1949. The PCA framework places restrictions on banks with weak financial metrics, such as low capital adequacy, high NPAs, or negative return on assets (ROA). The objective of the PCA framework is to ensure that banks take corrective measures before their financial condition worsens further. Banks under PCA face restrictions on dividend distribution, branch expansion, and management compensation, thereby compelling them to improve financial discipline. Apart from regulatory interventions, the government has also played a role in managing financial distress in banks through bank recapitalization schemes, wherein capital is infused into distressed public sector banks (PSBs) to strengthen their balance sheets.

The Banking Companies (Acquisition and Transfer of Undertakings) Acts of 1970 and 1980 empower the government to take measures for the restructuring and recapitalization of banks. The Financial Stability and Development Council (FSDC), an apex-level body under the Ministry of Finance, also monitors financial distress in banks and recommends corrective policy measures. The financial distress of banks has wider economic implications, affecting credit growth, investor confidence, and financial stability. The failure of banks to address financial distress in a timely manner can lead to a loss of depositor trust, bank runs, and, in extreme cases, bank failures. The Deposit Insurance and Credit Guarantee Corporation Act, 1961 (DICGC Act) provides limited protection to depositors by insuring bank deposits up to a specified limit. The Financial Resolution and Deposit Insurance (FRDI) Bill, which was proposed to create a framework for resolving bank failures, aimed to provide a structured mechanism to handle distressed banks, though it has not yet been enacted into law.<sup>512</sup>

The role of Asset Reconstruction Companies (ARCs), governed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, is also critical in addressing financial distress. ARCs acquire bad loans from banks and attempt to recover them through asset reconstruction or restructuring. The effectiveness of ARCs in resolving stressed assets depends on the regulatory framework, market conditions, and investor participation in distressed asset markets.

#### 4.2 CAUSES OF FINANCIAL DISTRESS IN INDIAN BANKS

The causes of financial distress in Indian banks are multifaceted and can be attributed to economic, regulatory, operational, and governance-related factors. One of the primary causes of distress is the high level of non-performing assets (NPAs), which

significantly impact bank profitability and liquidity. NPAs arise due to defaults by borrowers who are

unable to repay loans due to financial difficulties. The classification of NPAs is governed by the RBI's Prudential Norms on Income Recognition, Asset

Classification, and Provisioning. Under these guidelines, banks are required to make provisions for bad loans, affecting their capital reserves and overall financial health. Another major cause of financial distress is poor credit risk management and weak due diligence in lending practices. Many banks, especially public sector banks, have faced issues due to aggressive lending without proper assessment of borrower creditworthiness. Inadequate risk assessment, overreliance on collateral rather than cash

flows, and political pressures to lend to certain sectors have contributed to rising bad debts. The RBI's Risk-Based Supervision (RBS)

<sup>512</sup> "How the last financial crisis has driven improved resilience of banks," MIT OpenCourseWare

Available at: [https://www.ey.com/en\\_ec/insights/restructuring- turnaround/how-the-last-financial-crisis- Has-driven-improved-banking-resilience](https://www.ey.com/en_ec/insights/restructuring- turnaround/how-the-last-financial-crisis- Has-driven-improved-banking-resilience) (last visited March 17, 2025).

framework, introduced under the Banking Regulation Act, aims to strengthen risk management in banks, but challenges remain in its effective implementation. Liquidity mismatches and asset-liability mismatches (ALMs) also contribute to financial distress. Banks primarily function on short-term deposits while lending for long-term projects. This creates a mismatch between asset and liability tenures, leading to liquidity crises when depositors withdraw funds suddenly. The Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR), as mandated by the RBI under the Basel III framework, aim to mitigate such risks, but compliance challenges persist.<sup>513</sup> Another significant cause of financial distress is corporate governance failures and frauds in the banking sector. Instances of mismanagement, fraudulent transactions, and unethical practices have resulted in financial losses for banks. The Prevention of Money Laundering Act, 2002 (PMLA) and the Companies Act, 2013, along with RBI's Fit and Proper Criteria for Bank Directors, establish governance standards for banks, but enforcement gaps have allowed financial irregularities to persist.<sup>513</sup> Macroeconomic factors such as economic slowdowns, global financial crises, and fluctuations in interest rates also contribute to financial distress in banks. During economic downturns, businesses face revenue losses, leading to defaults on bank loans. Similarly, external factors like fluctuations in commodity prices, exchange rates, and global trade policies impact the financial stability of Indian banks, especially those with high exposure to international markets. Regulatory and legal challenges also play a role in financial distress. Delays in insolvency resolution, complex judicial procedures, and inefficiencies in the debt recovery system affect the ability of banks to recover bad loans. The Debt Recovery Tribunals (DRTs), established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act), and the

National Company Law Tribunal (NCLT), under the IBC, are responsible for adjudicating debt recovery and insolvency cases. However, the backlog of cases and prolonged litigation processes have made it difficult for banks to recover dues efficiently.

#### IMPACT OF NON-PERFORMING ASSETS (NPAs) AND BAD LOANS

Non-Performing Assets (NPAs) and bad loans have a profound impact on the financial health and

stability of the banking sector in India. NPAs represent loans that have ceased to generate income for banks due to prolonged default by borrowers. The Reserve Bank of India (RBI) classifies NPAs based on the duration of overdue payments, and under its Prudential Norms on Income Recognition, Asset Classification, and Provisioning, loans that remain overdue for more than 90 days are categorized as NPAs. The classification is further divided into Substandard Assets, Doubtful Assets, and Loss Assets, based on the likelihood of recovery.<sup>514</sup> One of the most immediate impacts of NPAs is the deterioration of bank profitability. Since NPAs do not generate interest income, banks experience a decline in revenue, affecting their ability to maintain operational efficiency. Furthermore, under the RBI's Asset Classification and Provisioning Norms, banks are required to set aside a portion of their capital as provisioning for NPAs. This provisioning requirement erodes the capital base of banks, reducing their ability to extend further credit to productive sectors of the economy. This decline in credit availability can lead to slower economic growth, as businesses face difficulties in obtaining financing for expansion and investment. Another major impact of NPAs is the erosion of depositor and investor confidence in the banking system. A high level of NPAs signals financial instability, leading to concerns about the safety of

<sup>513</sup> Editorial Team, "ASSET LIABILITY MISMATCH - (DEVIL AND THE DEEP SEA) SITUATION FOR BANKS: By Prasoon Mukherjee" Finextra, 5 April 2023.

<sup>514</sup> Dia Reddy Ganjikunta and Neharika Shrivastava, "Non-Performing Assets (NPA's) – Impact on Financial Stability of Indian Commercial Banks," 10 International Journal of Finance and Banking Research 92–103 (2024).

deposits and investments. The Deposit Insurance and Credit Guarantee Corporation Act, 1961 (DICGC Act) provides limited protection to depositors by insuring bank deposits up to a specified limit, but persistent NPA issues can still lead to bank runs and capital flight. This lack of confidence affects the stock prices of banks, making it difficult for them to raise capital through equity markets. NPAs also affect the overall liquidity and solvency of the banking sector. The Capital to Risk (Weighted) Assets Ratio (CRAR), as prescribed under the Basel III norms, requires banks to maintain a minimum capital adequacy ratio to absorb financial shocks. A rise in NPAs reduces the capital adequacy levels of banks, making them more vulnerable to financial crises. The Prompt Corrective Action (PCA) framework, introduced by the RBI under the Banking Regulation Act, 1949, places restrictions on banks with deteriorating financial conditions, limiting their lending capacity and operational flexibility.<sup>47</sup> From a

macroeconomic perspective, high NPAs lead to inefficiencies in resource allocation. When banks accumulate a large number of bad loans, they become risk-averse and reluctant to lend, even to creditworthy borrowers. This credit contraction affects economic growth, leading to a slowdown in investment, job creation, and industrial productivity. The Financial Stability and Development Council (FSDC), an apex body under the Ministry of Finance, monitors systemic risks in the financial sector, including the impact of NPAs on economic growth. The government and regulatory bodies have undertaken several measures to tackle the issue of NPAs. The introduction of the Insolvency and Bankruptcy Code (IBC), 2016, has provided a structured mechanism for resolving corporate defaults, reducing the burden of bad loans on banks. Under the IBC, financial creditors can initiate insolvency

proceedings against defaulting borrowers, enabling time-bound resolution or liquidation. The SARFAESI Act, 2002 (Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act) also empowers banks to recover NPAs by auctioning off collateral assets. The effectiveness of these mechanisms depends on the efficiency of adjudicating bodies such as the National Company Law Tribunal (NCLT) and the Debt Recovery Tribunals (DRTs), which oversee insolvency and loan recovery cases. NPAs also impact the fiscal burden on the government, as public sector banks (PSBs) often require capital infusion to maintain stability. The government has undertaken bank recapitalization programs under the Banking Companies (Acquisition and Transfer of Undertakings) Acts of 1970 and 1980, infusing capital into distressed PSBs to maintain public confidence. However, such interventions increase fiscal deficits, putting pressure on public finances. To address the problem of NPAs, banks have also been encouraged to explore Asset

Reconstruction Companies (ARCs), governed by the SARFAESI Act. ARCs acquire stressed assets from banks and attempt to recover them through asset restructuring and debt resolution mechanisms. The role of bad banks, such as the National Asset Reconstruction Company Limited (NARCL), has also been emphasized to take over large NPAs from banks and manage their resolution efficiently.

#### ROLE OF THE RESERVE BANK OF INDIA (RBI) IN MANAGING

##### BANKING SECTOR DISTRESS

The Reserve Bank of India (RBI) plays a crucial role in managing financial distress in the banking sector through regulatory oversight, monetary policy interventions, and crisis management strategies. As the apex monetary authority under the Reserve Bank of India Act, 1934, the RBI is responsible for ensuring the stability, liquidity, and solvency of the banking system. The Banking Regulation Act, 1949, further empowers the RBI to regulate and

supervise banking institutions to prevent financial crises.<sup>515</sup>

One of the primary ways the RBI manages banking sector distress is through its Prudential Regulatory Framework, which includes capital adequacy requirements, asset classification norms, and risk management guidelines. The Basel III norms, implemented under the Banking Regulation Act, require banks to maintain a minimum Capital to Risk

(Weighted) Assets Ratio (CRAR) to absorb financial shocks. The RBI ensures compliance with these norms to maintain financial stability. The Prompt Corrective Action (PCA) framework, introduced by the RBI, is a key tool for managing distressed banks. Under the PCA framework, banks that fail to meet capital adequacy, asset quality, or profitability thresholds are subject to regulatory restrictions, such as limitations on lending, branch expansion, and dividend distribution. The objective is to ensure that weak banks take corrective measures before their financial position deteriorates further.

The RBI also plays a vital role in liquidity management through its monetary policy tools. The Cash Reserve Ratio (CRR) and Statutory Liquidity Ratio (SLR) requirements, mandated under the RBI Act, ensure that banks maintain sufficient reserves to meet liquidity needs. In times of financial distress, the RBI provides liquidity support through Open Market Operations (OMOs), the Liquidity Adjustment Facility (LAF), and the Marginal Standing Facility (MSF). These measures help banks manage liquidity shortages and maintain stability. To address the issue of NPAs and stressed

assets, the RBI has implemented various debt restructuring schemes. The Corporate Debt Restructuring (CDR) mechanism, the Strategic Debt Restructuring (SDR) scheme, and the Sustainable Structuring of Stressed Assets (S4A) framework were introduced to provide banks with mechanisms to restructure bad loans. However, these schemes faced challenges due

to delays in implementation and lack of cooperation from borrowers. The introduction of the Insolvency and Bankruptcy Code (IBC), 2016, provided a more comprehensive framework for resolving stressed assets. The RBI, under Section 35AA of the Banking Regulation Act, has directed banks to refer large defaulters for insolvency resolution under the IBC, improving the effectiveness of the resolution process.<sup>516</sup>

The RBI also plays a role in crisis management and resolution of failing banks. Under Section 45 of the RBI Act, the central bank has the authority to take over the management of distressed banks to prevent systemic risks. The DICGC Act, 1961, ensures deposit protection by insuring bank deposits up to a specified limit. In extreme cases, the RBI facilitates the merger of weak banks with stronger institutions to protect depositors and maintain stability, as seen in various bank consolidation efforts. In conclusion, the RBI's role in managing banking sector distress is multi-faceted,

involving regulatory supervision, liquidity management, debt resolution, and crisis intervention. By enforcing prudential norms, restructuring bad loans, and implementing monetary policy tools, the RBI ensures the stability and resilience of the Indian banking system. However, continuous reforms and enhanced regulatory mechanisms are necessary to address evolving challenges in the financial sector.

## EFFECTIVENESS OF IBBI IN RESOLVING FINANCIAL DISTRESS

### CASE STUDIES OF MAJOR INSOLVENCY RESOLUTIONS UNDER IBC

**Swiss Ribbons Pvt. Ltd. v. Union of India**<sup>517</sup> This landmark judgment upheld the constitutional validity of the Insolvency and Bankruptcy Code, 2016 (IBC) and clarified key aspects of the

<sup>515</sup> James Chen, "The Reserve Bank of India (RBI): What It Is and How It Works" Investopedia, 15 July 2007.

<sup>516</sup> Swaminathan J, "Swaminathan J: Resolution of stressed assets and IBC – the future road map," 2024 Available at: <https://www.bis.org/review/r240117g.htm> (last visited March 17, 2025).

<sup>517</sup> Swiss Ribbons Pvt. Ltd. V. Union of India (2019) 4 SCC 17

insolvency resolution framework. The Supreme Court ruled that the differentiation between financial and operational creditors under the IBC is reasonable and necessary for an efficient insolvency resolution process. It also emphasized the creditor-driven nature of the Code, stating that financial creditors, being institutional lenders, are better suited to assess the viability of a distressed company. Furthermore, the judgment reinforced Section 29A, which bars defaulting promoters from bidding for their own companies, thereby preventing misuse of the insolvency process. The court highlighted the time-bound nature of the resolution process and stressed the importance of maximizing value for creditors while balancing the interests of all stakeholders.

***Innoventive Industries Ltd. v. ICICI Bank***<sup>518</sup> This was the first major case under the IBC, 2016, where the Supreme Court clarified the supremacy of the Code over all other debt recovery laws, including the Sick Industrial Companies Act, 1985 (SICA) and the Maharashtra Relief Undertakings (Special Provisions) Act, 1958. The court ruled that once insolvency proceedings are initiated under Section 7 of the IBC, moratorium under Section 14 applies, preventing other recovery actions against the corporate debtor. The judgment underscored the time-bound resolution process under the IBC, ensuring that insolvency proceedings are not prolonged indefinitely. It also reinforced the importance of the National Company Law Tribunal (NCLT) as the sole adjudicating authority for insolvency matters.

***Essar Steel India Ltd. v. Satish Kumar Gupta & Ors***<sup>519</sup>. [This case was a defining moment for the IBC's resolution process. The Supreme Court ruled in favor of ArcelorMittal's resolution plan for Essar Steel, emphasizing that the Committee of Creditors (CoC) has the exclusive authority to decide on the distribution of proceeds among creditors. The court clarified that financial creditors take precedence over operational

creditors under Section 53 (waterfall mechanism) of the IBC. It also upheld the principle of maximizing value for creditors, ensuring that the resolution plan meets the best interests of all stakeholders. The judgment reaffirmed the IBC's objective of facilitating a fair and efficient resolution while maintaining the rights of secured creditors.

***ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors***<sup>520</sup> This case played a crucial role in the interpretation of Section 29A of the IBC, which prevents defaulting promoters from bidding for their own distressed companies. The Supreme Court ruled that ArcelorMittal and Numetal were ineligible to bid for Essar Steel due to past defaults but later allowed ArcelorMittal after it cleared its outstanding NPAs. The judgment reinforced the IBC's objective of preventing errant promoters from misusing the insolvency process while ensuring that the highest bidder with a viable resolution plan takes control of the distressed asset. It also highlighted the importance of transparency and due diligence in insolvency resolution.

***Committee of Creditors of Amtek Auto Ltd. v. Dinkar T. Venkatasubramanian***<sup>521</sup> This case clarified the roles and responsibilities of resolution professionals (RPs) under Section 18 of the IBC. The Supreme Court ruled that RPs act as facilitators rather than decision-makers and must ensure transparency, neutrality, and due diligence in managing insolvency proceedings. The judgment emphasized the importance of creditor committees (CoC) in deciding the fate of a distressed company and reinforced the principles of corporate governance and fair resolution. It also highlighted the significance of strict adherence to timelines under Section 12 of the IBC, ensuring that resolution processes do not face unnecessary delays.

***Jaypee Infratech Ltd. v. IDBI Bank Ltd.***<sup>522</sup> This case had significant implications for real estate

<sup>520</sup> ArcelorMittal India Pvt. Ltd. V. Satish Kumar Gupta & Ors. (2019) 2 SCC 1

<sup>521</sup> Committee of Creditors of Amtek Auto Ltd. V. Dinkar T. Venkatasubramanian (2021) SCC OnLine SC 409

<sup>522</sup> Jaypee Infratech Ltd. V. IDBI Bank Ltd. (2020) 8 SCC 825

<sup>518</sup> Innoventive Industries Ltd. V. ICICI Bank (2018) 1 SCC 407

<sup>519</sup> Essar Steel India Ltd. V. Satish Kumar Gupta & Ors. (2020) 8 SCC 531

insolvency resolutions. The Supreme Court ruled that homebuyers should be treated as financial creditors under Section 5(8)(f) of the IBC, granting them voting rights in the CoC. The decision was instrumental in protecting homebuyers' interests, ensuring that they have a say in the resolution process when real estate companies go bankrupt. The judgment also discussed the withdrawal of insolvency proceedings under Section 12A, allowing settlements between debtors and creditors before the resolution process concludes. It established a balance between corporate viability and stakeholder interests.

**Reliance Infratel Ltd. v. Bharti Airtel Ltd. & Ors.**<sup>523</sup> This case dealt with the sale of distressed assets during the insolvency resolution process. The Supreme Court ruled that once a resolution plan is approved by the CoC and NCLT, it cannot be withdrawn by the resolution applicant, ensuring certainty and stability in the insolvency resolution process. This ruling prevented bidders from backing out after winning bids, safeguarding the interests of creditors and maintaining investor confidence in the IBC framework. The case reinforced the principle of finality in insolvency proceedings and ensured adherence to strict resolution timelines.

**Vodafone Idea Ltd. v. Union of India**<sup>524</sup> While this was not a direct insolvency case, it significantly impacted how statutory dues owed to the government are treated under the IBC. The Supreme Court clarified that government dues are operational debts under Section 5(21) of the IBC, placing them below financial creditors in the recovery hierarchy. This ruling set a precedent for cases involving tax liabilities, license fees, and regulatory dues, determining their treatment in corporate insolvency

resolution processes. It reaffirmed the IBC's objective of prioritizing secured and institutional

creditors over unsecured operational creditors, including the government.

**State Bank of India v. Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd**<sup>525</sup> This case addressed the concept of preferential transactions under Sections 43 and 44 of the IBC. The Supreme Court ruled that certain mortgage transactions made before the insolvency proceedings were preferential, meaning they unfairly favored specific creditors over others. The court voided these transactions, ensuring equitable treatment of creditors. This ruling strengthened the clawback provisions under the IBC, preventing distressed companies from diverting assets before insolvency proceedings. It reinforced corporate accountability and transparency, ensuring that asset stripping does not occur before insolvency.

**Ruchi Soya Industries Ltd. v. Patanjali Ayurved Ltd** This case demonstrated the successful resolution of a distressed company under the IBC. Patanjali Ayurved's acquisition of Ruchi Soya

through an approved resolution plan highlighted the efficiency of the IBC framework in reviving distressed businesses. The resolution plan maximized creditor recoveries while preserving business continuity, setting a positive example for future insolvency cases. The judgment reinforced the importance of fair bidding, transparency, and due diligence in selecting the best resolution plan. It also emphasized the critical role of the CoC in approving restructuring plans that ensure the sustainability of the company.

**Binani Industries Ltd. v. Bank of Baroda & Ors** This case reinforced the principle of maximizing value for creditors under the Insolvency and Bankruptcy Code, 2016 (IBC). The National Company Law Appellate Tribunal (NCLAT) ruled that resolution plans must not discriminate

<sup>523</sup> Reliance Infratel Ltd. V. Bharti Airtel Ltd. & Ors. (2022) SCC OnLine SC 378

<sup>524</sup> Vodafone Idea Ltd. V. Union of India (2021) SCC OnLine SC 124

<sup>525</sup> State Bank of India v. Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. (2020) 8 SCC 401

between similarly situated creditors and emphasized the primacy of fair value distribution among financial creditors and operational creditors. The decision ensured that the highest bidder with a viable plan should be preferred to maximize recoveries for creditors. It also highlighted that the Committee of Creditors (CoC) must evaluate resolution plans

based on feasibility and financial viability, avoiding undue preference to any bidder.

**UltraTech Cement Ltd. v. Rajputana Properties Pvt. Ltd** This case clarified bidding procedures in insolvency resolution and upheld the importance of transparency in the resolution process. The NCLAT ruled in favor of UltraTech Cement, stating that its resolution plan was superior to the previous highest bid due to higher value realization for creditors. The judgment emphasized that the primary objective of the IBC is value maximization, and CoC should consider revised offers if they benefit stakeholders. It reinforced the role of the CoC in selecting the best resolution plan while maintaining procedural integrity and fairness.

**Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh & Ors** This case clarified the issue of haircuts (reductions in debt recovery) taken by creditors in insolvency resolution. The Supreme Court ruled that resolution plans offering significantly lower recovery to creditors can still be approved if they meet the criteria under the IBC. It upheld the commercial wisdom of the CoC,

affirming that courts should not interfere in their decision-making. The judgment established that the objective of the IBC is resolution, not liquidation, and a lower recovery is preferable to complete business failure.

**K. Sashidhar v. Indian Overseas Bank & Ors** This case dealt with the scope of judicial review over CoC decisions. The Supreme Court ruled that courts and tribunals cannot interfere with the commercial decisions of the CoC regarding resolution plans unless there is a clear violation

of legal provisions. The judgment reinforced the supremacy of the CoC in the resolution process, stating that courts should not second-guess financial decisions made by creditors. It upheld the principle that resolution must be creditor-driven, allowing financial institutions to decide the fate of a distressed company.

**Kridhan Infrastructure Pvt. Ltd. v. Venkatesan Sankaranarayan** This case addressed fraudulent transactions under Sections 66 and 67 of the IBC, which deal with the avoidance of preferential and undervalued transactions. The Supreme Court ruled

that transactions aimed at defrauding creditors can be reversed during insolvency proceedings. It emphasized the importance of forensic audits and due diligence in preventing asset diversion. The case reinforced corporate accountability and transparency, ensuring that promoters do not engage in fraudulent activities before or during insolvency resolution.

**Ashapura Minechem Ltd. v. Gujarat Mineral Development Corporation** This case clarified the treatment of contingent liabilities under the IBC. The Supreme Court ruled that future claims, including damages from pending litigation, must be accounted for in the resolution process. It highlighted the importance of a comprehensive assessment of liabilities to ensure that the resolution plan is fair and sustainable. The judgment reinforced the principle of equitable treatment of creditors, ensuring that all liabilities—present and future—are considered before approving a resolution plan.

**Edelweiss Asset Reconstruction Company Ltd. v. Sai Regency Power Corporation Pvt. Ltd** This

case emphasized the role of asset reconstruction companies (ARCs) in insolvency resolution. The NCLAT ruled that ARCs, as financial creditors, have the right to initiate insolvency proceedings under Section 7 of the IBC. It clarified the rights of ARCs in CoC decision-making, ensuring that institutions purchasing distressed assets can participate

fully in the insolvency process. The judgment reinforced the importance of secondary debt markets in ensuring effective recovery mechanisms under the IBC.

***Union Bank of India v. Era Infra Engineering Ltd.***

This case addressed delays in insolvency resolution and their impact on creditors. The NCLAT ruled that prolonged delays in the insolvency process defeat the purpose of the IBC, which mandates a time-bound resolution under Section 12. It emphasized the need for strict adherence to timelines, stating that courts should not entertain unnecessary appeals and delays. The judgment reinforced the IBC's objective of expediting the resolution process to maximize value for creditors and ensure business continuity.

***Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd***

This case dealt with the classification of related party transactions under Section 5(24) of the IBC. The Supreme Court ruled that creditors with a conflict of interest or connections with the corporate debtor should not have decision-making power in the CoC. It reinforced the principle of impartiality in insolvency proceedings, ensuring that the CoC remains free from conflicts of interest. The judgment clarified that related-party creditors cannot manipulate resolution proceedings to their advantage, thereby protecting the integrity of the insolvency process.

***SREI Infrastructure Finance Ltd. v. Canara Bank[20]***

This case examined the role of financial institutions in debt restructuring under the IBC. The Supreme Court ruled that banks and financial creditors cannot unilaterally withdraw from a resolution process once insolvency proceedings have begun. It emphasized that all financial creditors must adhere to the CoC's decisions, ensuring that the resolution process remains collective and unified. The judgment reinforced the stability of the insolvency framework, preventing arbitrary withdrawals by creditors that could disrupt resolution plans.

## COMPARATIVE ANALYSIS OF PRE-IBC AND POST-IBC INSOLVENCY RESOLUTIONS

The insolvency resolution framework in India has undergone a significant transformation with the enactment of the Insolvency and Bankruptcy Code (IBC), 2016, replacing the earlier fragmented and ineffective mechanisms for dealing with corporate insolvency. Before the introduction of the IBC, insolvency resolution in India was governed by multiple laws, including the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act), the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), and provisions under the Companies Act, 1956/2013. These laws lacked a unified approach and suffered from inefficiencies, delays, and poor recovery rates.<sup>526</sup>

Under the pre-IBC framework, the process of insolvency resolution was primarily driven by creditor-led enforcement actions under various statutes. The BIFR (Board for Industrial and Financial Reconstruction) under SICA was responsible for reviving sick industries, but it often led to prolonged delays in resolution. The SARFAESI Act empowered secured creditors to recover outstanding dues by seizing and auctioning collateral without court intervention. However, its scope was limited to secured creditors, leaving unsecured creditors without an effective remedy. The Debt Recovery Tribunals (DRTs), established under the RDDBFI Act, faced severe backlogs, leading to delays in loan recovery.

The Companies Act, 2013, also provided mechanisms for winding up companies under various grounds, but the process was highly inefficient. Liquidation proceedings under the Companies Act often extended over several years, with little recovery for creditors. Additionally, the absence of a structured framework for insolvency professionals,

<sup>526</sup> Abhiman Das et al., "Insolvency and Bankruptcy Reforms: The Way Forward," 45 *Vikalpa: The Journal for Decision Makers* 115–31 (2020)

information utilities, and time-bound resolution made the entire system ineffective.<sup>527</sup>

The enactment of the Insolvency and Bankruptcy Code (IBC), 2016 marked a paradigm shift in the insolvency resolution process by introducing a unified, time-bound, and creditor-driven framework. The IBC provides a structured mechanism for resolving corporate insolvency through the Corporate Insolvency Resolution Process (CIRP), overseen by the National Company Law Tribunal (NCLT). Under Section 7 of the IBC, financial creditors can initiate insolvency proceedings against defaulting companies, while Section 9 allows operational creditors to do the same. The IBC prescribes a strict timeline of 330 days (including litigation) for completing the resolution process, ensuring faster disposal of cases.

One of the key differences between the pre-IBC and post-IBC regimes is the introduction of the Committee of Creditors (CoC), which has the power to approve resolution plans. The CoC, comprising financial creditors, plays a crucial role in deciding whether a defaulting entity should be revived or liquidated. Under Section 30(4), the resolution plan must be approved by 66% of the voting share of the CoC. The emphasis on financial creditors ensures that insolvency proceedings are not misused by operational creditors to harass companies.

The post-IBC regime has also witnessed the rise of a professionalized insolvency ecosystem with the establishment of the Insolvency and Bankruptcy Board of India (IBBI), which regulates insolvency professionals, insolvency professional agencies, and information utilities under the provisions of the IBC. The role of insolvency professionals (IPs) under Sections 16, 17, and 18 of the IBC ensures that the management of the distressed entity is taken over by a neutral party, avoiding conflicts of

interest that were prevalent in the pre-IBC regime.

Additionally, the introduction of the pre-packaged insolvency resolution process (Pre-Pack IBC) under Chapter III-A of the IBC has further strengthened the resolution mechanism, especially for Micro, Small, and Medium Enterprises (MSMEs). Pre-Pack IBC allows a faster and more cost-effective resolution process by enabling debtors and creditors to negotiate and finalize a resolution plan before formally filing for insolvency. The shift from a debtor-friendly framework to a creditor-driven approach under the IBC has significantly improved the recovery rate. Data from the Reserve Bank of India (RBI) and IBBI indicate that the recovery rate under IBC is significantly higher than that under the SARFAESI Act, DRTs, and BIFR proceedings. The reduction in the average resolution time from several years under the pre-IBC framework to an average of 1.5 to 2 years under the IBC demonstrates the efficiency of the new mechanism.

### 5.3 SUCCESS RATE AND CHALLENGES IN IMPLEMENTATION

The success rate of the IBC in resolving financial distress is measured by key indicators such as the percentage of cases leading to successful resolution, the time taken for resolution, and the recovery rate for creditors. The Insolvency and Bankruptcy Board of India (IBBI), in its periodic reports, has highlighted significant improvements in insolvency resolution efficiency under the IBC framework. The implementation of the IBC has led to an increase in recoveries for financial creditors compared to the earlier mechanisms, with recovery rates averaging around 40% of the admitted claims in successful resolution cases.

One of the key factors contributing to the success of the IBC is the strict timeline prescribed under Section 12 of the Code, which mandates that the resolution process be completed within 330 days. This has led to faster resolution of large corporate defaults and prevented prolonged litigation, which was a

<sup>527</sup> Monika, "Winding up of a company" iPleaders, 2024 available at: <https://blog.iplayers.in/winding-up-of-a-company/> (last visited March 17, 2025).

common issue in the pre-IBC framework. Additionally, the moratorium provision under Section 14 provides a breathing space for distressed companies by preventing legal actions during the insolvency process.

However, several challenges have hindered the full effectiveness of the IBC. One of the primary challenges is the high pendency of cases before the NCLT and NCLAT, leading to delays in the resolution process. Although the IBC mandates time-bound resolution, practical constraints such as the limited capacity of adjudicating authorities have resulted in extensions beyond the prescribed period. This backlog has undermined the speed and efficiency of insolvency proceedings.[24]

Another significant challenge is the issue of haircuts taken by financial creditors, wherein creditors have had to settle for significantly lower recoveries than their initial claims. In some cases, the resolution plans approved by the CoC have resulted in recoveries as low as 5-10%, raising concerns about the effectiveness of the resolution process. The lack of serious bidders for distressed assets has further contributed to lower recoveries.

The classification of creditors and voting rights under Section 21 of the IBC has also been a contentious issue. The dominance of financial creditors in the CoC often leads to the marginalization of operational creditors, who may receive little to no recovery under resolution plans. This has led to disputes and legal challenges, affecting the smooth implementation of the Code.

The implementation of cross-border insolvency remains a challenge due to the absence of a dedicated framework in the IBC. The proposed adoption of the UNCITRAL Model Law on Cross-Border Insolvency aims to address this issue, but its integration with existing laws and international cooperation mechanisms remains an area of concern.

#### **5.4 ROLE OF ADJUDICATING AUTHORITIES (NCLT & NCLAT)**

The adjudicating authorities under the Insolvency and Bankruptcy Code, 2016 (IBC) play a crucial role in the insolvency resolution process by ensuring legal compliance, safeguarding the rights of creditors and debtors, and facilitating the timely resolution of distressed companies. The National Company Law Tribunal (NCLT) is the primary adjudicating authority for corporate insolvency cases, while appeals against NCLT orders are heard by the National Company Law Appellate Tribunal (NCLAT). These authorities have been entrusted with the responsibility of overseeing insolvency proceedings, approving resolution plans, adjudicating disputes, and ensuring that the objectives of the IBC are met effectively. Under Section 5(1) of the IBC, the NCLT is designated as the adjudicating authority for the Corporate Insolvency Resolution Process (CIRP), and it has the power to admit or reject applications filed by financial creditors (Section 7), operational creditors (Section 9), and corporate debtors (Section 10). Once an application is admitted, the NCLT initiates a moratorium under Section 14, which halts all legal proceedings against the debtor, prevents asset alienation, and ensures a fair resolution process. The NCLT also appoints an Interim Resolution Professional (IRP) under Section 16, who takes control of the corporate debtor's operations during the resolution process.

One of the critical roles of the NCLT is to oversee the functioning of the Committee of Creditors (CoC) under Section 21 and ensure that the resolution plan submitted by potential bidders complies with the provisions of the IBC. Under Section 31, the NCLT has the authority to approve a resolution plan if it meets the requirements of the Code and provides a fair and viable resolution to creditors. In cases where no viable resolution plan is submitted, the NCLT can order the liquidation of the corporate debtor under Section 33, following the recommendation of the CoC.

The National Company Law Appellate Tribunal (NCLAT), established under Section 61 of the IBC, serves as the appellate body for orders passed

by the NCLT. If a party is dissatisfied with an order of the NCLT, they can file an appeal before the NCLAT within 30 days of the order. The NCLAT has the authority to set aside, modify, or uphold NCLT orders based on legal and procedural considerations. Under Section 62, further appeals against NCLAT decisions can be made before the Supreme Court of India, but only on questions of law.

The role of adjudicating authorities has been instrumental in streamlining insolvency resolution, but several challenges persist. The huge pendency of cases before the NCLT and NCLAT has led to delays in insolvency resolution, undermining the objective of a time-bound process under the IBC. Despite the 330-day resolution timeline under Section 12, many cases have extended beyond this period due to legal disputes and procedural bottlenecks. Additionally, the interpretation of

Section 29A, which bars defaulting promoters from bidding for their own assets, has led to prolonged litigation and uncertainty in resolution proceedings.

### 5.5 COORDINATION BETWEEN IBBI, RBI, AND OTHER STAKEHOLDERS

The effective implementation of the Insolvency and Bankruptcy Code, 2016 (IBC) requires strong coordination between key regulatory institutions, including the Insolvency and Bankruptcy Board of India (IBBI), the Reserve Bank of India (RBI), and other financial and governmental stakeholders. Each of these institutions plays a distinct role in ensuring that insolvency proceedings are conducted smoothly, financial stability is maintained, and distressed entities are resolved in an efficient manner. The IBBI, as the regulatory body for insolvency resolution, ensures compliance with the IBC framework, while the RBI, as the banking sector regulator, oversees the financial health of lenders and borrowers involved in insolvency proceedings.

The IBBI, established under Section 188 of the IBC, is responsible for regulating insolvency

professionals, insolvency professional agencies, and information utilities. It ensures that insolvency proceedings are conducted in a transparent and efficient manner and that stakeholders adhere to the provisions of the Code. The IBBI has also introduced several amendments and guidelines to strengthen the resolution process, including changes to the Insolvency Resolution Process for Corporate Persons (IRPCP) Regulations and the Liquidation Process Regulations.

The Reserve Bank of India (RBI) plays a crucial role in managing banking sector distress and ensuring that the insolvency framework effectively addresses the issue of Non-Performing Assets (NPAs). The RBI has issued several circulars to banks and financial institutions, directing them to refer large defaulters to insolvency proceedings under the IBC. The RBI's June 7, 2019, Prudential Framework for Resolution of Stressed Assets provides guidelines on how banks should handle stressed assets and take early action to resolve financial distress. Under this framework, banks are required to classify stressed assets, undertake resolution planning, and, where necessary, refer defaulting borrowers to insolvency proceedings.

One of the key aspects of coordination between the IBBI and RBI is the identification of stressed borrowers and ensuring that they are referred to the NCLT for resolution in a timely manner. The RBI has played an active role in initiating insolvency proceedings against large defaulters, particularly in cases where banks have failed to recover dues through traditional mechanisms such as the SARFAESI Act, 2002 or the RDDBFI Act, 1993. The IBBI, in turn, ensures that the insolvency resolution process is conducted in compliance with the IBC framework and that creditors and debtors follow the prescribed procedures.

Other stakeholders, including the Securities and Exchange Board of India (SEBI), the Ministry of Corporate Affairs (MCA), and the National Company Law Tribunal (NCLT), also play a

critical role in ensuring the smooth functioning of the insolvency resolution process. The SEBI regulates listed companies undergoing insolvency proceedings and ensures that shareholders and investors are

informed about material developments. The MCA oversees compliance with corporate governance norms and ensures that companies undergoing insolvency resolution adhere to statutory requirements. The NCLT, as the adjudicating authority, plays a pivotal role in approving resolution plans and adjudicating disputes related to insolvency proceedings.

Despite the strong coordination between these institutions, several challenges remain. The delay in resolution proceedings due to high case pendency before the NCLT has affected the efficiency of the IBC framework. Additionally, conflicts between the RBI's prudential norms and the IBC framework have led to legal challenges, particularly in cases where banks have been required to undertake dual compliance under both regulatory frameworks. For instance, while the RBI mandates early identification and resolution of stressed assets, the IBC follows a structured resolution process that involves creditor approval and tribunal oversight.

Another challenge is the limited role of operational creditors in the insolvency resolution process.

Under Section 21 of the IBC, only financial creditors have voting rights in the Committee of Creditors (CoC), which often results in operational creditors receiving lower recoveries. The lack of a structured framework for cross-border insolvency is also a significant limitation, as Indian companies with international operations face challenges in resolving insolvency cases involving foreign creditors and jurisdictions.

To improve coordination between the IBBI, RBI, and other stakeholders, several measures can be undertaken. Strengthening the information-sharing framework between banks, insolvency

professionals, and regulatory authorities can improve early detection and resolution of distressed entities. Increasing the capacity of the Information Utilities (IUs) under the IBC can help creditors access reliable financial data on distressed companies, thereby reducing disputes in insolvency proceedings. Further, streamlining the regulatory overlap between the IBC and RBI's prudential norms can ensure that insolvency proceedings are conducted in a manner that balances the interests of all stakeholders.

The coordination between IBBI, RBI, and other stakeholders is essential for the success of the IBC framework. While significant progress has been made in strengthening insolvency resolution in India, continuous reforms are necessary to address existing challenges, improve creditor recoveries, and ensure that insolvency proceedings contribute to the overall stability of the financial system.

## CONCLUSION AND RECOMMENDATIONS

### 8.1 SUMMARY OF FINDINGS

The Insolvency and Bankruptcy Code, 2016 (IBC), has played a transformative role in reshaping India's insolvency framework and addressing financial distress in the banking sector. The introduction of a time-bound, creditor-driven resolution process has significantly improved the efficiency of insolvency proceedings, reduced the burden on the judiciary, and provided a structured mechanism for corporate debt resolution. The establishment of the Insolvency and Bankruptcy Board of India (IBBI) as the key regulatory authority has further enhanced the implementation of the IBC by ensuring transparency, accountability, and professional oversight in insolvency proceedings. However, despite these advancements, several challenges continue to impact the effectiveness of the insolvency framework, including procedural delays, regulatory overlaps, and issues concerning creditor participation and enforcement.

The role of IBBI in strengthening the insolvency regime cannot be understated. As the primary regulator overseeing insolvency professionals, information utilities, and the overall implementation of the IBC, the IBBI has introduced critical reforms to streamline the resolution process. These include the development of a robust regulatory framework, continuous amendments to address emerging issues, and mechanisms to ensure compliance among stakeholders. However, one of the major criticisms of the IBBI has been the delays in insolvency resolution, often due to prolonged litigation at the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). The time-bound resolution process envisaged under Section 12 of the IBC has not been strictly followed in practice, leading to prolonged proceedings that impact the recovery rates of financial creditors and increase uncertainty in the market. Strengthening institutional capacity, reducing procedural inefficiencies, and ensuring strict adherence to the prescribed timelines can significantly enhance the effectiveness of the insolvency process.

Another key area of concern is the treatment of different classes of creditors under the IBC framework. While financial creditors hold primary decision-making authority through the Committee of Creditors (CoC) as per Section 21 of the IBC, operational creditors often find themselves in a weaker negotiating position. The lack of voting rights for operational creditors in the resolution process has led to concerns regarding equitable treatment and fairness. Addressing this issue by introducing structured negotiation mechanisms or ensuring proportional representation in the CoC could improve the inclusivity of the resolution process. Additionally, the concerns of unsecured creditors and small enterprises must also be taken into account, as their financial interests are often compromised in large-scale corporate insolvencies.

The impact of non-performing assets (NPAs) on the banking sector has been one of the driving

forces behind the implementation of the IBC. Before its enactment, financial institutions struggled with ineffective recovery mechanisms under laws such as the Recovery of Debts and Bankruptcy Act, 1993, and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. The IBC has provided a comprehensive and structured approach to dealing with corporate insolvency, ensuring that distressed assets are either revived through resolution plans or liquidated in a time-bound manner. However, the increasing rate of liquidation in insolvency cases suggests that the resolution framework may require further strengthening. Encouraging pre-packaged insolvency resolution mechanisms under Section 54A of the IBC and improving access to interim financing could enhance the success rate of corporate restructuring.

The role of adjudicating authorities in insolvency proceedings has been another major area of discussion. The burden on NCLT and NCLAT has resulted in delays, affecting the efficiency of the resolution process. The establishment of specialized insolvency benches and the introduction of alternative dispute resolution mechanisms could significantly reduce litigation backlogs and improve the speed of resolutions. Additionally, the role of the Supreme Court and High Courts in interpreting insolvency laws has been critical in shaping the evolving jurisprudence of the IBC. Ensuring consistency in judicial decisions and avoiding excessive intervention in commercial matters can help maintain the integrity of the insolvency framework.

The introduction of cross-border insolvency provisions remains a crucial area for further development. While Sections 234 and 235 of the IBC provide for international cooperation in insolvency matters, India has yet to adopt the UNCITRAL Model Law on Cross-Border Insolvency. In an increasingly globalized economy, multinational corporations operating in India require a structured mechanism for dealing with cross-border insolvencies.

Implementing a robust legal framework for cross-border insolvency that aligns with international best practices would improve investor confidence and facilitate smoother resolution of multinational financial distress cases.

Comparative analysis with global insolvency frameworks highlights key lessons for India. The Chapter 11 bankruptcy model in the United States provides greater flexibility for corporate restructuring through debtor-in-possession (DIP) financing, allowing financially distressed companies to continue operations while negotiating debt repayment. In contrast, India's insolvency resolution framework primarily follows a creditor-driven approach, with limited access to interim financing. Strengthening DIP financing provisions under the IBC and incentivizing financial institutions to participate in restructuring efforts can enhance business continuity and improve recovery rates. Similarly, the UK's pre-packaged administration model has demonstrated the advantages of faster resolution processes with minimal disruption to business operations. Expanding India's pre-packaged insolvency framework beyond MSMEs could improve efficiency in larger corporate insolvencies.

The coordination between IBBI, the Reserve Bank of India (RBI), and other stakeholders is essential for ensuring a stable financial ecosystem. The RBI plays a critical role in regulating financial institutions and addressing systemic risks associated with banking sector distress. While the IBC has empowered financial creditors to take proactive measures in insolvency resolution, closer coordination between the banking regulator and insolvency authorities can enhance early detection of financial distress and improve preventive measures. Strengthening asset reconstruction mechanisms and exploring alternative models of debt restructuring could complement the existing insolvency framework and provide more comprehensive solutions for banking sector challenges.

Despite its achievements, the insolvency resolution process in India requires continuous reform to address emerging challenges and improve efficiency. The IBBI must focus on capacity building, professional training for insolvency professionals, and enhancing the role of information utilities in streamlining creditor-debtor interactions. Additionally, simplifying procedural requirements, reducing litigation bottlenecks, and ensuring strict adherence to resolution timelines can improve the overall effectiveness of the IBC framework.

The need for further legislative reforms in insolvency laws remains critical to addressing the evolving economic landscape. As corporate insolvency becomes increasingly complex, new challenges such as digital asset insolvencies, financial technology (fintech) disruptions, and environmental, social, and governance (ESG)-related risks require a more dynamic legal framework. Adopting a forward-looking approach and integrating modern financial principles into insolvency laws can help India maintain its position as a globally competitive business environment.

The Insolvency and Bankruptcy Code, 2016, has been a landmark reform in India's financial and legal landscape. Its implementation has significantly improved the resolution of financial distress, enhanced creditor confidence, and contributed to the overall stability of the banking sector. However, challenges such as delays in resolution, the high rate of liquidation, regulatory overlaps, and creditor concerns require continuous improvements. Strengthening institutional capacity, refining the legal framework, and adopting global best practices tailored to the Indian context can ensure that the IBC remains a dynamic and effective insolvency resolution mechanism. With sustained efforts in regulatory oversight, judicial efficiency, and stakeholder cooperation, India can build a more resilient insolvency framework that fosters economic growth, promotes financial stability, and protects the interests of all stakeholders involved in insolvency proceedings.

## 8.2 EVALUATION OF IBBI'S ROLE IN BANKING SECTOR RECOVERY

The Insolvency and Bankruptcy Board of India (IBBI) has played a crucial role in driving the resolution of financial distress within the banking sector through its regulatory oversight and policy initiatives. As the key regulatory body under the Insolvency and Bankruptcy Code, 2016 (IBC), the IBBI has been instrumental in ensuring a structured and efficient insolvency resolution process. The IBBI has facilitated the resolution of non-performing assets (NPAs), enabling banks to recover bad loans and strengthen their balance sheets. By promoting a time-bound process, the IBBI has ensured that financial creditors receive a higher percentage of recoveries compared to earlier mechanisms, thereby enhancing banking sector stability. The implementation of a creditor-driven resolution approach has empowered financial institutions to take control of stressed assets and decide on the best course of action for their resolution.

Despite its achievements, the IBBI faces challenges in fully realizing its objectives. The delays in the insolvency resolution process due to litigation and procedural inefficiencies have hindered the swift recovery of financial institutions. Although the IBC prescribes a 330-day timeline for corporate

insolvency resolution under Section 12, many cases extend beyond this timeframe, affecting financial stability. Additionally, the high rate of liquidations compared to successful resolutions indicates the need for further refinement in insolvency practices. The lack of a robust framework for cross-border insolvency also limits the IBBI's effectiveness in handling multinational insolvency cases, impacting foreign investments and financial integration.

The IBBI has introduced key reforms, such as pre-packaged insolvency resolution for micro, small, and medium enterprises (MSMEs) under Section 54A of the IBC, which has expedited resolution for smaller businesses. However, extending similar provisions to large corporations could further enhance efficiency in

the banking sector. The IBBI has also played a crucial role in regulating insolvency professionals and improving professional standards, ensuring that resolution professionals act in a transparent and accountable manner. Strengthening the independence and expertise of insolvency professionals remains an area of focus for improving banking sector recovery. The introduction of information utilities under the IBC has enhanced transparency in credit transactions, reducing information asymmetry between creditors and borrowers. Expanding the role of information utilities and ensuring wider participation from financial institutions can further improve decision-making and enhance banking sector resilience.

The role of IBBI in fostering coordination between banks, financial creditors, and regulators such as the Reserve Bank of India (RBI) has been significant. By streamlining communication and aligning regulatory practices, the IBBI has contributed to a more structured approach to financial distress resolution. However, improving coordination between different regulatory bodies and addressing jurisdictional conflicts can further enhance the efficiency of insolvency resolutions. The IBBI's regulatory interventions have led to better corporate governance practices, ensuring that financially distressed companies adhere to compliance norms before insolvency proceedings. Strengthening early warning mechanisms and introducing preventive measures can help in reducing the number of insolvencies in the banking sector.

### POLICY RECOMMENDATIONS FOR STRENGTHENING THE IBC FRAMEWORK

To further strengthen the insolvency resolution process and enhance the role of IBBI in banking sector recovery, several policy recommendations can be considered.

1. Reducing delays in insolvency proceedings should be a priority. This can be achieved by expanding the capacity of the National Company Law Tribunal (NCLT) and the National

Company Law Appellate Tribunal (NCLAT), appointing more judges, and introducing alternative dispute resolution mechanisms for resolving insolvency disputes outside of the formal judicial process. Ensuring that the timelines prescribed under Section 12 of the IBC are strictly adhered to can enhance the efficiency of insolvency proceedings.

2. Improving creditor participation and balancing the rights of financial and operational creditors can strengthen the resolution process. Currently, the Committee of Creditors (CoC), as established under Section 21 of the IBC, is dominated by financial creditors, often leaving operational creditors with limited influence in decision-making. Introducing mechanisms that provide a more inclusive representation for operational creditors can ensure a fairer resolution process. Additionally, strengthening the priority of secured creditors in distribution mechanisms under Section 53 can improve financial institutions' willingness to participate in resolutions.

3. Encouraging the adoption of pre-packaged insolvency resolution for larger corporations can provide an efficient alternative to formal insolvency proceedings. While pre-packs have been introduced for MSMEs, expanding this mechanism to larger entities could reduce litigation and expedite the resolution process. Providing tax incentives and financial benefits for companies opting for pre-packaged insolvency resolution can encourage voluntary restructuring before reaching insolvency.

4. Strengthening cross-border insolvency provisions under Sections 234 and 235 of the IBC is essential for managing international insolvency cases effectively. Adopting the UNCITRAL Model Law on Cross-Border Insolvency can facilitate cooperation with foreign courts and regulators, ensuring a more structured approach to resolving multinational financial distress. Strengthening international cooperation in insolvency proceedings can also

enhance foreign investor confidence and attract greater global investments into the Indian economy.

5. Improving access to interim financing can ensure the continued operation of distressed businesses during the resolution process. Section 5(15) of the IBC provides for interim finance, but financial institutions remain hesitant to extend credit due to repayment uncertainties. Introducing government-backed guarantees or incentives for interim financing can improve access to liquidity for distressed businesses, increasing the chances of successful resolution rather than liquidation.