



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 5 AND ISSUE 6 OF 2025

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 5 and Issue 6 of 2025 (Access Full Issue on – <https://ijlr.iledu.in/volume-5-and-issue-6-of-2025/>)

Publisher

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ROLE OF IBC IN RESOLUTION OF NPAS

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BEST CITATION – TEJAN SINGH, ROLE OF IBC IN RESOLUTION OF NPAS, *INDIAN JOURNAL OF LEGAL REVIEW* (IJLR), 5 (6) OF 2025, PG. 922-929, APIS – 3920 – 0001 & ISSN – 2583-2344

1. SHIFT FROM RECOVERY TO RESOLUTION

The introduction of the Insolvency and Bankruptcy Code (IBC), 2016, marked a fundamental shift in how non-performing assets (NPAs) are managed in India. Prior to the implementation of the IBC, the focus was largely on the recovery of dues, primarily through legal remedies such as the SARFAESI Act, 2002, and the Debt Recovery Tribunals (DRTs). These frameworks aimed at asset recovery but faced challenges due to slow processes, fragmented legal remedies, and insufficient mechanisms to deal with the complex financial distress faced by businesses.

The shift from recovery to resolution under the IBC represents a more comprehensive approach to tackling NPAs. The key difference lies in the focus on resolving the financial distress of businesses, rather than simply recovering the dues of creditors.¹³²⁴

¹³²⁴ S. D. Singhania, *Insolvency and Bankruptcy Code 2016: A Comprehensive Guide* (3rd edn, LexisNexis 2021).

1.1 Key Features of the Shift:

- A. Corporate Insolvency Resolution Process (CIRP): The IBC introduced the Corporate Insolvency Resolution Process (CIRP), which allows for the reorganization and restructuring of distressed businesses, rather than just the liquidation of their assets. This enables companies facing insolvency to remain operational, protecting jobs and maintaining business continuity while creditors negotiate to recover their dues.
- B. Debtor-in-Possession Model: Under the IBC, the company continues to be managed by its existing management during the moratorium period, under the supervision of a resolution professional. This contrasts with the earlier practice where recovery measures could often result in the sale or seizure of assets by creditors, irrespective of the long-term viability of the business.
- C. Collective Creditor Approach: The IBC promotes a collective approach where creditors come together to arrive at a resolution plan. In contrast to the pre-IBC era, where banks or creditors would independently pursue recovery actions, the IBC mandates a Committee of Creditors (CoC) to vote on resolution plans. This ensures a more democratic and coordinated approach to resolving insolvency, balancing the interests of all stakeholders.
- D. Resolution vs. Liquidation: The focus on resolution under the IBC means that creditors are incentivized to consider plans that involve the revival of the company, rather than opting for liquidation. Liquidation under the IBC, although an available option when resolution fails, is seen as a last resort. This is a significant change from the pre-IBC regime, where liquidation was a more common outcome of insolvency cases.
- E. Enhanced Role of Professionals: The IBC has introduced a strong regulatory framework for resolution professionals, who take charge of the management of the insolvent

company during the resolution process. This professional involvement ensures that the company is run efficiently during the insolvency resolution period and that the process is conducted in a structured manner.

1.2 Impact of the Shift:

- A. Faster Recovery and Resolution: The IBC's emphasis on resolution over recovery ensures that businesses can be rehabilitated, which in turn leads to higher recovery rates for creditors. This contrasts with the previous framework, where businesses often languished in insolvency, and recovery rates were low.
- B. Financial Stability: By focusing on the resolution of stressed companies, the IBC aims to prevent large-scale defaults and systemic risks. It encourages the restructuring of viable businesses, thus supporting the overall stability of the financial system.
- C. Creditor Confidence: The shift has instilled greater confidence in creditors, as the IBC ensures a more systematic, transparent, and time-bound process. The creation of a moratorium on all legal proceedings during the resolution period provides a level of security to creditors and other stakeholders.¹³²⁵

2. TIME-BOUND RESOLUTION PROCESS

One of the most significant innovations of the Insolvency and Bankruptcy Code (IBC), 2016, is its time-bound resolution process, which is designed to address the long-standing issue of delayed insolvency proceedings in India. Prior to the introduction of the IBC, debt recovery and insolvency resolution in India were slow and cumbersome, often taking years to resolve. This delay resulted in the accumulation of NPAs and hindered economic growth.

The IBC mandates a strict timeline for the resolution of insolvency cases, with the aim to resolve corporate insolvency within a defined

¹³²⁵ Pradeep Agarwal, *Insolvency and Bankruptcy Code in India: Law, Practice, and Procedure* (1st edn, Eastern Book Company 2019).

period, thereby improving the efficiency of the process.

2.1 Key Aspects of the Time-bound Resolution Process:

- A. Duration of the Corporate Insolvency Resolution Process (CIRP):** The CIRP must be completed within a period of 180 days from the date of the commencement of the insolvency proceedings, with a possible extension of 90 days if necessary. This ensures that the process does not drag on indefinitely, which was a common problem in the pre-IBC regime. The total time for resolution, including extensions, cannot exceed 330 days.
- B. Moratorium Period:** During the CIRP, a moratorium is imposed on the insolvent company, which prevents any legal actions, such as asset seizures or debt recovery proceedings, by creditors. This gives the company some breathing space to negotiate a resolution plan with its creditors and attempt to revive its operations.
- C. Resolution Plans and Creditor Approval:** Once the insolvency process begins, a resolution professional is appointed to manage the affairs of the company and prepare a resolution plan. The Committee of Creditors (CoC), consisting of all financial creditors, must review the resolution plan and approve it within a specified time frame. A plan that is approved by 75% of the CoC is submitted to the National Company Law Tribunal (NCLT) for final approval.
- D. The IBC establishes a priority of claims,** ensuring that creditors are paid in a systematic order. The liquidation value is distributed in a manner that provides transparency and clarity to all stakeholders. This is a critical aspect of ensuring that all creditors, including operational creditors, have a fair chance of recovering their dues.¹³²⁶

- E. Clearance for Liquidation:** If no resolution plan is approved within the time frame, or if the plan is not viable, the company is then moved into liquidation. The decision to move to liquidation must be made by the NCLT, ensuring that all possible avenues for resolution are exhausted before the company is wound up.

2.3 Benefits of a Time-bound Process:

- A. Efficiency:** The time-bound nature of the process ensures that cases do not drag on for years, which was the case under the pre-IBC framework. The defined timelines promote quicker resolution, benefiting both the creditors and the debtors.
- B. Creditor Confidence:** The IBC's fixed timelines reassure creditors that their claims will be addressed in a prompt and efficient manner. This builds trust and facilitates a better response from creditors, especially in distressed situations.
- C. Market Discipline:** A time-bound resolution process creates a sense of urgency for stakeholders to negotiate and resolve insolvency issues quickly. This reduces the possibility of prolonged financial distress for businesses, thereby mitigating the risks posed to the economy and financial institutions.
- D. Reduced Delays:** The strict deadlines associated with the IBC's resolution process minimize the opportunities for delays and judicial backlog that characterized earlier insolvency processes.

2.4 Challenges of Time-bound Process:

- A. Implementation Delays:** While the IBC has set time limits for the completion of the resolution process, in practice, the process sometimes faces delays due to the complex nature of some cases, particularly where there is difficulty in finding resolution professionals or a lack of cooperation from creditors.
- B. Stakeholder Conflicts:** The approval of resolution plans by the CoC, particularly with the 75% majority requirement, can sometimes result in conflicts, leading to

¹³²⁶ P. V. Subramaniam, *The IBC and Resolution of NPAs: Challenges and Prospects* (1st edn, Wolters Kluwer 2018).

delays in finalizing a resolution plan. Smaller creditors may also feel marginalized in the process, leading to complications.

- C. Quality of Resolution Plans:** The time-bound nature of the process can sometimes result in hastily prepared resolution plans, which may not fully address the underlying issues of the distressed business. This could potentially affect the long-term viability of the company post-resolution.

The shift from recovery to resolution under the IBC has fundamentally altered the landscape of insolvency and bankruptcy in India. By prioritizing the restructuring and rehabilitation of distressed companies, the IBC aims to reduce the number of NPAs, promote business continuity, and improve creditor recovery rates. Furthermore, the introduction of a time-bound resolution process has significantly improved the efficiency of insolvency proceedings, ensuring that financial distress is addressed swiftly and systematically. Despite some challenges in implementation, the IBC has provided a much-needed framework for the resolution of NPAs, offering a more holistic approach to insolvency that balances the interests of both creditors and debtors.¹³²⁷

3. **ROLE OF COMMITTEE OF CREDITORS (COC)**

The Committee of Creditors (CoC) is a central element in the insolvency resolution process under the Insolvency and Bankruptcy Code (IBC), 2016. The CoC plays a critical role in determining the course of action during the Corporate Insolvency Resolution Process (CIRP), acting as the primary decision-making body that drives the resolution of distressed companies. Its role is to ensure that the interests of all creditors, especially financial creditors, are properly represented and addressed during the insolvency proceedings.

3.1 Formation of the CoC:

The CoC is formed as soon as the insolvency resolution process is initiated. It consists of the financial creditors of the company, who are

usually banks, financial institutions, bondholders, and other lenders who hold the company's debt. The resolution professional (RP) is responsible for convening the CoC, and it is the RP who also facilitates the meetings and voting procedures during the resolution process.

3.2 Powers and Functions of the CoC:

- A. Approval of the Resolution Plan:** One of the most important roles of the CoC is to approve or reject the resolution plan put forth by the resolution applicant. The resolution plan must be submitted within 180 days (extendable by 90 days) from the start of the CIRP. Once the plan is received, the CoC votes on the plan, and for it to be approved, a 75% majority of the CoC members (by value of claims) must give their consent. If the CoC rejects a plan, the company can proceed to liquidation.
- B. Monitoring and Supervision:** The CoC is responsible for overseeing the progress of the CIRP and ensuring that it is being carried out in accordance with the IBC framework. It works closely with the resolution professional to monitor the company's operations and its financial condition. The CoC has the authority to take corrective actions if there are delays or inefficiencies in the resolution process.
- C. Debt Recovery and Distribution:** The CoC has a significant role in negotiating with creditors and determining how the resolution proceeds will be distributed. The committee determines the claims that are to be accepted, evaluates the proposed settlement amounts, and ensures that the plan is equitable. The priority of claims is considered in this process, and creditors vote on how the resolution proceeds will be allocated.
- D. Negotiation with Stakeholders:** The CoC is empowered to enter into negotiations with stakeholders, such as operational creditors, to arrive at a mutually beneficial solution. This collaboration is key to ensuring a resolution that balances the interests of all

¹³²⁷ R. K. Suri, Corporate Insolvency Resolution: A Critical Review (1st edn, Universal Law Publishing 2020).

involved parties. It can suggest modifications to the resolution plan if necessary.

- E. Ensuring Compliance with Legal Requirements:** Throughout the process, the CoC must ensure that the resolution plan complies with all legal provisions, particularly those that are related to the interests of minority creditors and the statutory requirements under the IBC.¹³²⁸

3.3 Challenges Faced by the CoC:

- A. Disagreements Among Creditors:** There are often conflicts between different types of creditors (such as secured and unsecured creditors) about the allocation of proceeds from the resolution process.
- B. Delay in Decision Making:** The CoC's decision-making process can sometimes be slow, as creditors may be unwilling to agree on a resolution plan due to differing interests.
- C. Minority Creditors' Interests:** A major issue is ensuring that the interests of minority creditors are not overlooked in favor of large creditors with a controlling interest in the CoC.

4. KEY CASE STUDIES

The Insolvency and Bankruptcy Code (IBC) has been a transformative framework for resolving corporate insolvencies in India, and several landmark cases have highlighted its efficacy and challenges. Key case studies such as Essar Steel, Bhushan Power & Steel, and others have provided valuable insights into the functioning of the IBC, particularly with regard to the resolution process, creditor negotiations, and the role of the Committee of Creditors (CoC). Below, we explore these cases to understand their significance in the IBC's application.

ESSAR STEEL INDIA LTD. (ESIL)

Essar Steel was one of the most high-profile cases under the IBC, marking a crucial moment in India's insolvency resolution history. The company had defaulted on loans amounting to

nearly ₹50,000 crore, leading to the initiation of the Corporate Insolvency Resolution Process (CIRP) in 2017.

Resolution Process: The resolution process for Essar Steel saw a protracted battle between the two leading bidders: ArcelorMittal and the Ruias of Essar. The Committee of Creditors (CoC) played a pivotal role in selecting the resolution applicant. The case was particularly significant due to the long-standing litigation between ArcelorMittal and the Ruias, with the former having to clear dues of its own group companies to participate in the bidding.¹³²⁹

Challenges: The case was notable for the involvement of multiple stakeholders, including the RBI, the Resolution Professional, and several creditors, and the significant disputes over the resolution plan. One of the key challenges was the legal complexity of the bid and the inclusion of old defaults that caused prolonged delays.

Outcome: After the intervention of the Supreme Court, the resolution plan by ArcelorMittal was finally approved by the NCLT in 2019. This case was significant for demonstrating the IBC's ability to resolve insolvencies, despite the challenges posed by aggressive litigation and legal hurdles.

BHUSHAN POWER & STEEL LTD. (BPSL)

Bhushan Power & Steel Ltd. was another major insolvency case where the resolution process under the IBC played a central role in resolving significant NPAs. The company owed over ₹47,000 crore to its creditors, which included major banks like Punjab National Bank and others.

Resolution Process: The CIRP for Bhushan Power and Steel also witnessed fierce competition between bidders, with the Committee of Creditors weighing options and selecting the JSW Steel bid, which was found to offer the best recovery for creditors. The CoC's role in this case was critical in evaluating the resolution

¹³²⁸ R. K. Suri, Corporate Insolvency and Bankruptcy in India (3rd edn, Eastern Book Company 2020).

¹³²⁹ Pradeep Agarwal, Insolvency and Bankruptcy Code in India: Law, Practice, and Procedure (1st edn, Eastern Book Company 2019).

plans submitted and ensuring that the creditors' interests were safeguarded.

Challenges: Bhushan Power's resolution was complicated by issues relating to ownership disputes and legal claims over the assets of the company. The CoC had to navigate these complexities while ensuring that the final resolution provided the maximum recovery for creditors.

Outcome: In the end, JSW Steel's resolution plan was approved by the NCLT, marking one of the first large-scale steel industry resolutions under the IBC. This case reinforced the importance of a well-structured bidding process and the CoC's role in facilitating a competitive resolution process.

4.1 OTHER SIGNIFICANT CASES:

JET AIRWAYS

The insolvency of Jet Airways highlighted the challenges faced by the aviation sector under the IBC. The case remains unresolved due to the complexities involved in the aviation industry and the bankruptcy of an airline with significant assets.

AMTEK AUTO

This case saw a protracted legal battle and multiple rounds of bidding, with the resolution plan finally being approved by the NCLT. The CoC's decision-making process was tested under these circumstances, and the case highlighted the challenges of resolving automotive sector NPAs.

KSS PETRON

The CIRP for KSS Petron was another case demonstrating the importance of the CoC in deciding the fate of distressed assets, with significant delays in the resolution process.

The IBC's role in resolving NPAs has been proven in landmark cases like Essar Steel and Bhushan Power & Steel. These cases demonstrate the importance of the Committee of Creditors (CoC) in ensuring a timely and efficient resolution process. However, challenges persist,

including litigation, conflicting interests among creditors, and the complexity of certain sectors. The CoC's ability to coordinate, negotiate, and make decisions swiftly is crucial to the success of the IBC in resolving NPAs. These case studies provide important lessons for improving the implementation of the IBC framework and addressing the complexities involved in corporate insolvency resolution.¹³³⁰

5. IMPACT ON RECOVERY RATES AND BANK HEALTH

The Insolvency and Bankruptcy Code (IBC), 2016, has been hailed as a transformative piece of legislation aimed at addressing the growing Non-Performing Assets (NPAs) in India. One of the key outcomes of the implementation of the IBC has been its impact on recovery rates for financial institutions and the overall health of banks.

5.1 Improvement in Recovery Rates

Before the IBC, India had a slow and ineffective process for recovering NPAs. The absence of a clear, time-bound framework led to long delays in the resolution of stressed assets, adversely affecting the recovery rates. However, the introduction of the IBC has brought about a significant improvement in these rates.

Under the IBC, the Committee of Creditors (CoC) plays a crucial role in deciding the recovery route, whether through liquidation or resolution. The time-bound nature of the process (180 days with an extension of 90 days) has resulted in quicker resolution, leading to better recovery outcomes. The recovery rate for resolved NPAs has improved, with some sectors like steel and power witnessing recoveries as high as 40-45% of the outstanding dues.

One of the primary reasons behind this improvement is the priority given to creditors' claims in the resolution process. The IBC framework ensures that financial creditors (primarily banks and financial institutions) are given priority over operational creditors, thus

¹³³⁰ Pradeep Agarwal, *Insolvency and Bankruptcy Code in India: Law, Practice, and Procedure* (1st edn, Eastern Book Company 2019).

enhancing the chances of higher recovery rates.

5.2 Resolution versus Liquidation

A significant aspect of the IBC's impact on recovery rates is its focus on corporate resolution, rather than liquidation. The aim of the IBC is to revive a distressed company and ensure that its value is preserved. Liquidation under the IBC is seen as a last resort, with the code encouraging bidders to come forward with viable resolution plans. As a result, more assets are successfully revived, leading to a higher recovery rate for banks compared to the previous Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act.

5.3 Impact on Bank Health

The improvement in recovery rates has had a direct positive impact on the health of Indian banks. Banks, particularly public sector banks, which had been burdened by high levels of NPAs, have seen a reduction in their stressed assets because of the IBC's successful resolution of these debts. This has improved the overall capital adequacy of banks and enhanced their ability to lend to the economy, contributing to the overall economic recovery.

The boost to the banking sector's health also comes from the transparency and efficiency of the IBC. With a clearer process for resolving bad loans and recovering dues, banks have been able to report more accurate and realistic financial positions. This has also led to increased confidence among investors in the stability of Indian financial institutions.

5.4 Challenges in Recovery

Despite the improvements, challenges remain in maximizing recovery under the IBC. Issues such as the lack of adequate bidder interest for certain sectors, the slow pace of resolution in some cases, and the difficulty of recovering dues from large, complex entities can still impede recovery rates. Moreover, the legal challenges and delayed approvals from courts

can sometimes drag the resolution process and reduce recovery amounts.

6. STATISTICAL OVERVIEW OF RESOLVED NPAS UNDER IBC

The Insolvency and Bankruptcy Code (IBC) has been instrumental in resolving NPAs in India, though the exact figures and statistics can vary based on the period of analysis. The success of the IBC in resolving NPAs is reflected in the number of cases resolved, the total value of NPAs resolved, and the recovery percentages achieved. This statistical overview provides a comprehensive analysis of the success and challenges in the IBC's implementation.¹³³¹

6.1 Total Cases Resolved Under the IBC

As of 2023, over 1,000 cases of corporate insolvency have been resolved under the IBC framework. Of these, a significant portion has seen successful resolutions either through corporate reorganization or asset sales to new owners. The success rate of resolution plans approved by the National Company Law Tribunal (NCLT) has been steadily increasing.

The NCLT's approval of resolution plans and the involvement of Committee of Creditors (CoC) in the process have made it easier to arrive at a resolution that benefits the creditors and ensures the survival of businesses, where possible.

6.2 Amount of NPAs Resolved

The value of NPAs resolved under the IBC framework is substantial. Over ₹4 lakh crore worth of bad loans have been resolved as of 2023. This includes cases where assets have been sold or restructured, and the outstanding dues cleared.

The top sectors contributing to NPAs resolved include:

- Steel industry (notably Essar Steel and Bhushan Power and Steel)
- Power sector (including cases like Lanco Infratech and Amtek Auto)

¹³³¹ Shubho Roy, *Insolvency and Bankruptcy Code: The Journey So Far* (3rd edn, Oxford University Press 2021).

- Telecom sector (with significant cases like Reliance Communications)
- Infrastructure and construction sectors have also seen resolution activity.

6.3 Recovery Rates

Recovery rates have varied across sectors, but on average, the recovery rate under IBC has been around 40-45% of the total claims made by creditors. In some high-profile cases, such as Essar Steel, the recovery rate reached 70-80%. The recovery rate is typically higher for companies with better assets and more viable operations.

Essar Steel: The recovery rate for Essar Steel was among the highest, with creditors recovering around ₹42,000 crore, nearly 85% of the total claims.

Bhushan Power & Steel: The recovery rate was approximately 50-60%, reflecting a relatively successful resolution process.

6.4 Time Taken for Resolution

Under the IBC framework, the time-bound process has significantly improved the speed of resolving NPAs compared to the previous regime. The maximum period for resolving a case is 330 days, including extensions, which is far quicker than the previous methods of resolution, such as the Debt Recovery Tribunals (DRTs).

However, the timeline has been stretched in certain cases, primarily due to legal challenges, multiple rounds of bidding, and disputes over the resolution plans.

6.5 Impact on Financial Institutions

The resolution of NPAs under IBC has had a positive impact on the balance sheets of banks, particularly public sector banks. The reduction of NPAs has improved the capital adequacy ratio (CAR) of banks and boosted their lending capacity. Furthermore, the higher recovery rates have made banks more confident in their ability to recover from defaults, thus increasing their overall stability.

6.6 Challenges in Statistical Outcomes

Increased legal complexities: Some cases have faced significant legal hurdles, delaying the resolution process and reducing recovery percentages.

Slow resolution in certain sectors: Some sectors, such as aviation, telecom, and infrastructure, have faced slower resolution rates due to the complexity and size of the assets involved.

The IBC's statistical impact on NPAs is undeniable. The recovery rates have significantly improved, with more than ₹4 lakh crore worth of NPAs successfully resolved. However, there are still challenges in ensuring timely resolutions and maximizing recoveries, especially in sectors facing distress. With continued reforms, better legal frameworks, and streamlined processes, the IBC can continue to be a powerful tool in addressing India's NPA crisis and strengthening the financial health of Indian banks.

7. CONCLUSION

The introduction of the Insolvency and Bankruptcy Code (IBC) marked a paradigm shift in India's approach to dealing with non-performing assets (NPAs), transforming the focus from mere debt recovery to holistic resolution. This transition has fundamentally redefined the credit landscape, aiming to restore financial discipline, preserve asset value, and ensure the continuity of viable businesses.

The time-bound resolution framework introduced by the IBC has been instrumental in addressing delays that plagued previous recovery mechanisms. By imposing strict timelines for completion of the insolvency resolution process, the Code has brought greater predictability and efficiency to the system. Although challenges remain in terms of judicial capacity and procedural bottlenecks, the framework has undeniably improved turnaround times for stressed asset resolution.

Central to the IBC is the empowered role of the **Committee of Creditors (CoC)**, which has shifted decision-making power to financial

creditors. This creditor-in-control model has helped align resolution outcomes with economic value maximization, as evidenced in landmark cases such as **Essar Steel, Bhushan Power & Steel**, and **Jet Airways**. These case studies underscore both the successes and the evolving jurisprudence under the Code, offering critical insights into how various stakeholders—banks, insolvency professionals, and courts—interact within the IBC ecosystem.

Empirical data supports the positive impact of IBC on recovery rates and the health of the banking sector. Banks have reported improved asset quality and a reduction in gross NPAs, contributing to enhanced financial stability. Moreover, the credible threat of insolvency proceedings has prompted numerous out-of-court settlements, thereby promoting early resolution and reducing litigation.

The statistical overview of resolved NPAs under IBC shows a rising trend in successful resolutions and recovery amounts, albeit with room for improvement in maximizing realization value. The data also highlights sector-specific outcomes, indicating the need for further capacity-building and policy fine-tuning to ensure consistency and fairness across resolutions.

In conclusion, while the IBC is not a panacea, it represents a significant leap forward in India's insolvency framework. Its impact on NPA resolution has been transformative, not just in numbers but also in fostering a culture of accountability and timely financial restructuring. Continued efforts to strengthen institutional capacities, reduce delays, and balance the interests of all stakeholders will be vital to unlocking the full potential of the IBC in revitalizing the Indian credit and banking system.