Insolvency & Bankruptcy Code, 2016

Looking Back to Advance Forward

December 2022

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Foreword

Deepak Sood
Secretary General, ASSOCHAM

The Insolvency & Bankruptcy Code (IBC) is a landmark legislation amongst the various pathbreaking reforms brought in by the current government. This single piece of legislation has allowed India to jump several places in the world ranking on the ease of doing business. IBC had been implemented to facilitate quick reporting of default by any corporate and collective resolution of the same in a time-bound manner. The implementation of IBC was also aimed at addressing NPA issues affecting the economy.

Having gained traction since then, it has brought about a paradigm shift in the recovery and resolution process by empowering creditors. It has also brought about a time-bound resolution process through a transparent mechanism for creditors to resolve the financial stress of any corporate. While investors also gain from available opportunities, the tendency of borrowers to default has been curbed. The resulting increase in M&A activity also has been driven by the lure of valuable assets being made available at attractive prices and the takeover of companies on a clean slate basis.

The IBBI has been proactive in addressing market concerns and challenges and has endeavored to make relevant changes in the regulations to address concerns. The recent amendments in the regulations regarding the facilitating resolution of different assets in a different manner during CIRP, modification in timelines and overhaul of the functions and powers of the Stakeholders Consultation Committee during liquidation along with procedural changes such as allowing success fee linked to early resolution and recovery for insolvency professionals evidences its proactive nature.

On this occasion, ASSOCHAM & EY have jointly prepared a comprehensive knowledge paper. We hope this report, along with the discussions during the summit, will help the regulators, market participants, government departments and research scholars for the further development of the sector.

I thank the Knowledge Partner for their valuable contribution and convey my best wishes for the success of the summit.

Foreword

Shailendra Ajmera
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The Insolvency & Bankruptcy Code, 2016 (Code) has been a critical pillar of the India reform story. Since its implementation in 2016, it has effectively revolutionized the way insolvency resolution happens in India – a transparent and effective instrument to deal with bad credit.

The Code, with its initial teething troubles – and proactive changes – has come a long way in laying a robust institutional framework to ensure insolvency resolution, ease of exit and maximization of value. The Code has had substantial macro-economic implications on the country. In an otherwise recessive global economic situation, which the IMF in its October 2022 report states is headed for stormy waters, the India GDP growth projection stands at 6.8% for 2022 and 6.1% for 2023. A vibrant and active distressed asset market is critical for India as an economic destination.

The RBI Financial Stability Report (June 2022) states that till March 31, 2022, 480 insolvencies have ended in resolution and the realization by financial Creditors (FCs) under resolution plans in comparison to Liquidation Value was ~171% while their realization in comparison to claims was 33%. The report further notes that the asset quality of Scheduled Commercial Banks (SCBs) continued to improve steadily through the year, with gross non-performing assets (GNPA) ratio declining from 7.4% in March 2021 to a six-year low of 5.9% in March 2022.

The Code has been instrumental in the development of the stressed asset market in India, with several private credit funds entering and launching in India. The estimated structured financing deals done by Private Credit funds in 2022 was ~US$2.7b which was deployed across a range of sectors such as airports, e-commerce and real estate. The legislature has provided a much-needed impetus in its development by providing a dedicated framework for insolvency resolution (Code and Regulations), development of the institutional framework (Insolvency Regulator, NCLTs, Information Utilities, Insolvency Professionals), which together can ensure resolution of stressed entities by investment in the stressed asset market in India. The recent developments such as formation of National Asset Reconstruction Company Limited (NARCL), introduction of the Special Situation Funds (SSFs) as a distinct sub-category of Category I Alternative Investment Funds (AIFs) and the RBI's revised ARC framework are all promising reform measures, which will provide a boost to investment in the stressed market.

However, recently, it is being observed that the initial confidence, which was being reposed in the Code as an avenue of effective insolvency resolution by various financial and strategic investors, is beginning to plateau. The primary reason for this is that the Code has not met the expectations of a time-bound insolvency process in all cases. The delays in admission of a Corporate Insolvency Resolution Process (CIRP) application and in-approval or rejection of a resolution plan has adverse effects on the value of an already ailing company, impacting stakeholder confidence in the Code's efficacy. An insolvency professional, whose primary responsibility is to maintain going concern and enable the company's insolvency resolution, is compelled to manage various ancillary issues which arise during the CIRP such as non-cooperation by the suspended management, asymmetry of information, litigations by various stakeholders and managing non-compliances which had taken place prior to the insolvency commencement.

In light of the above, the need of the hour is to ensure that there is greater acceptance and awareness regarding the provisions of the Code amongst the stakeholders to address such concerns on a priority basis. If this is achieved while also ensuring that the timelines are maintained and value is maximized, the Code will remain the preferred mode of resolution for stressed credit. The hallmark of an effective resolution for distresses situation is time bound process coupled with certainty of outcomes.

This Knowledge Report prepared in association with ASSOCHAM endeavors to bring out the impact of the Code, issues faced and market expectations of the stressed asset investors and the various measures which have been taken by authorities to ensure the development of the stressed asset market.

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01

Code
in numbers

The provisions of the Insolvency & Bankruptcy Code came into effect in 2016 and since then, the Code evolved with various milestone amendments.

The adjoining chart captures the journey of the Code since its inception and the breakthroughs achieved by it over the years.

2017

Introduction of Section 29A wherein certain persons were made ineligible to become a resolution applicant.

2018

Introduction of provision for withdrawal of application and settlement between parties at any stage before approval of resolution plan.

2018

Manner, timeline and contents of RFRP.

2019

Immunity to the Successful Resolution Applicant from past offences by CD.

2019

Maximum time for CIRP limited it to 330 days including time spent in litigation.

2019

Payment of minimum of LV to dissenting FCs and priority payment to OCs.

2019

Plan approved by AA binding on Central & State Government & other Local Authorities.

2021

CoC to evaluate and vote on all the resolution plans received by it, resolution plan with highest number of votes (subject to statutory requirement) gets approved.

2021

Limitation on modification in IEOI - cannot be modified more than once.

2021

Limitation on modification in RFRP cannot be modified more than once.

2021

Limitation on modification of resolution plan - not more than once.

Use of Challenge Mechanism to enhance value of plan.

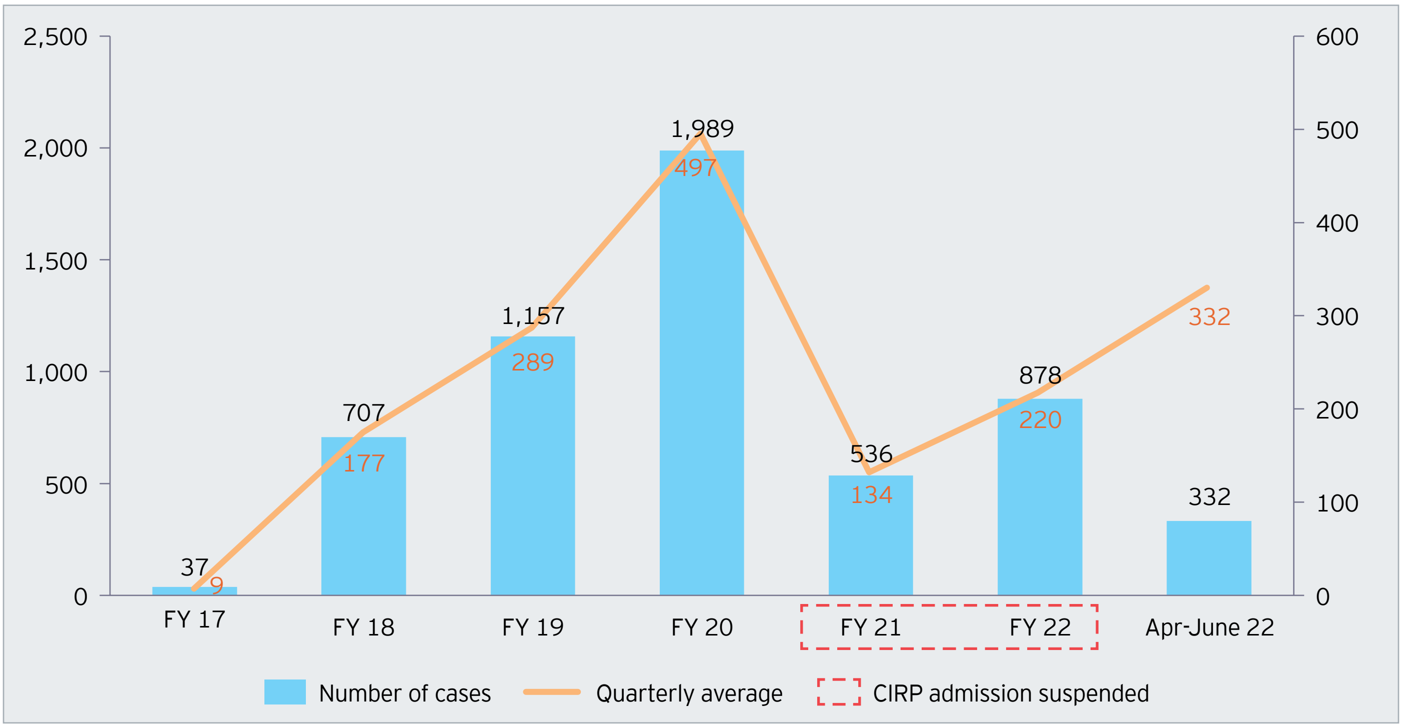
2022

Re-issuance of the RFRP for sale of part of the assets of CD where no resolution plan has been received for the CD as a whole.

2022

Preparation of Strategy for Marketing of Assets of CD.

Pace of admission is gradually increasing in FY22 after the suspension on admission of new CIRP cases lifted

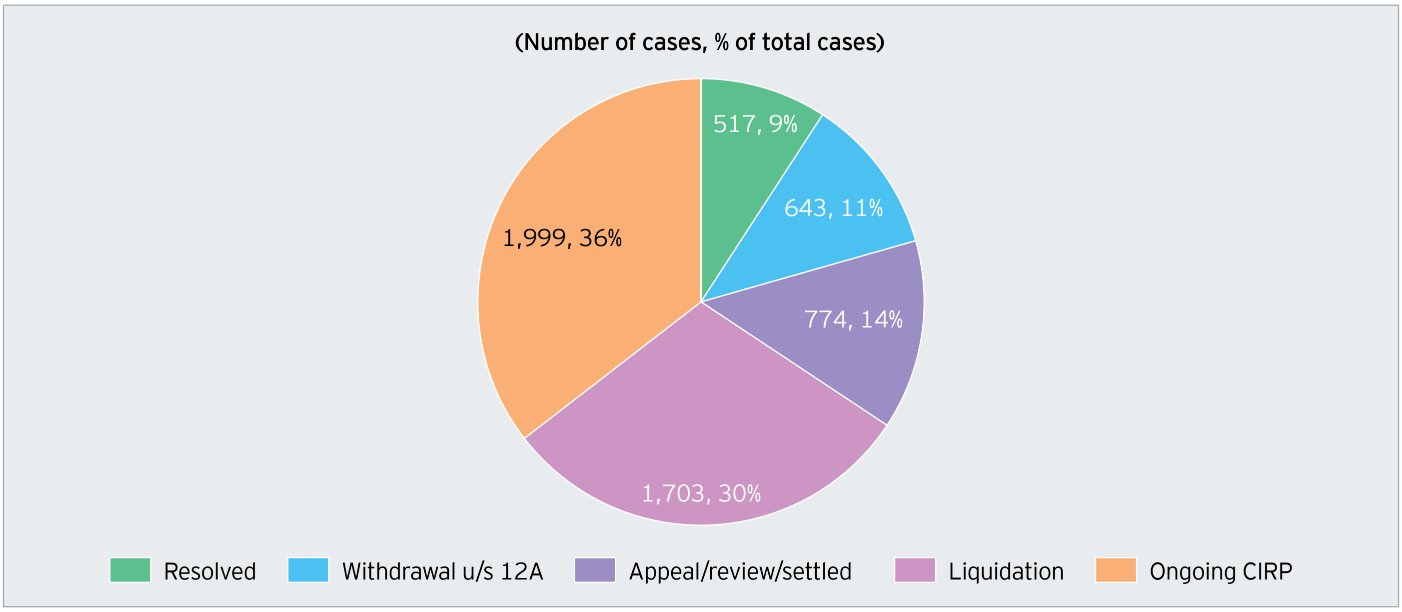


Source: IBBI Newsletter (Apr-Jun 22) and * Chapter IV of Economic Survey

22,411 applications were resolved before admission

~INR7 Lakh Cr amount of default in pre admission resolution

Of the ~5.6k total admitted cases, 9% stand resolved, 11% withdrawn u/s 12 A and 30% went into liquidation

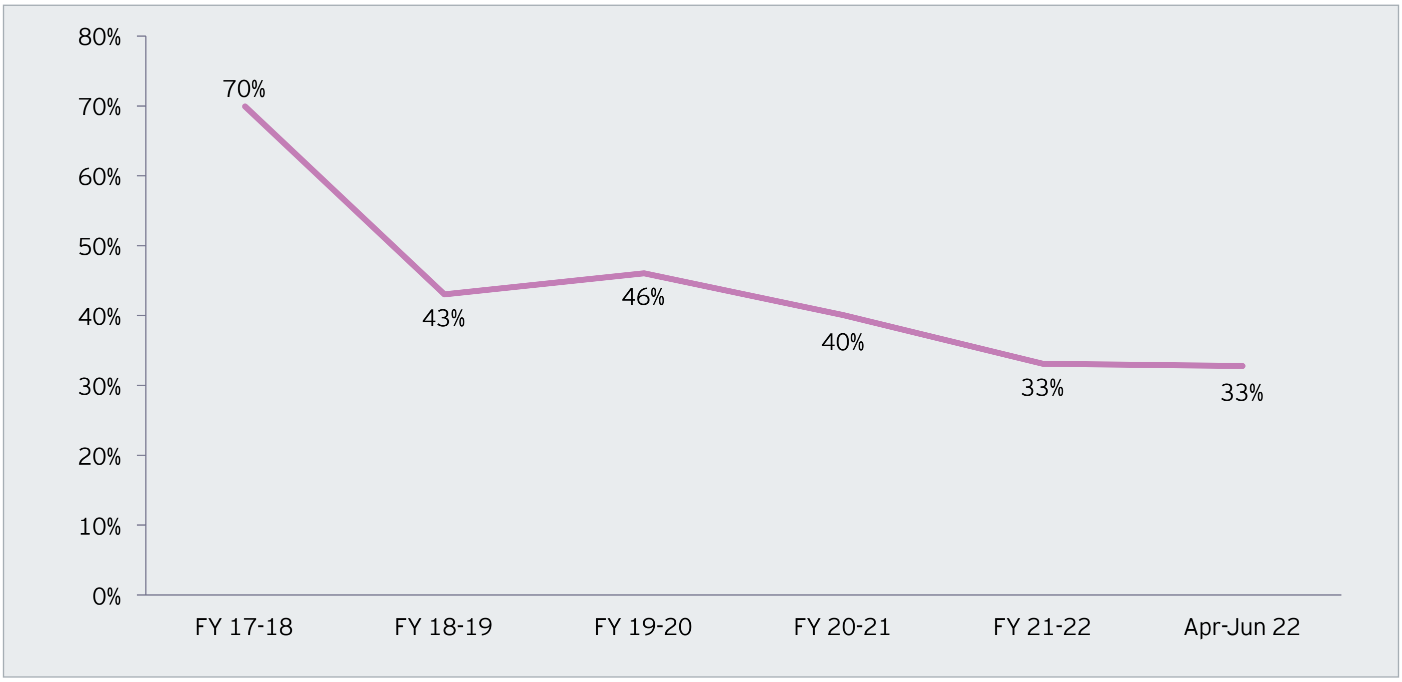


Source: IBBI Newsletter (Apr-Jun 22) and * Chapter IV of Economic Survey

517 Cases resolved over a period of ~5 years

69% assets resolved in Value Terms

Realisation to FCs in Q1 FY22 ~33% of their admitted claims in comparison to 70% realisation in FY18

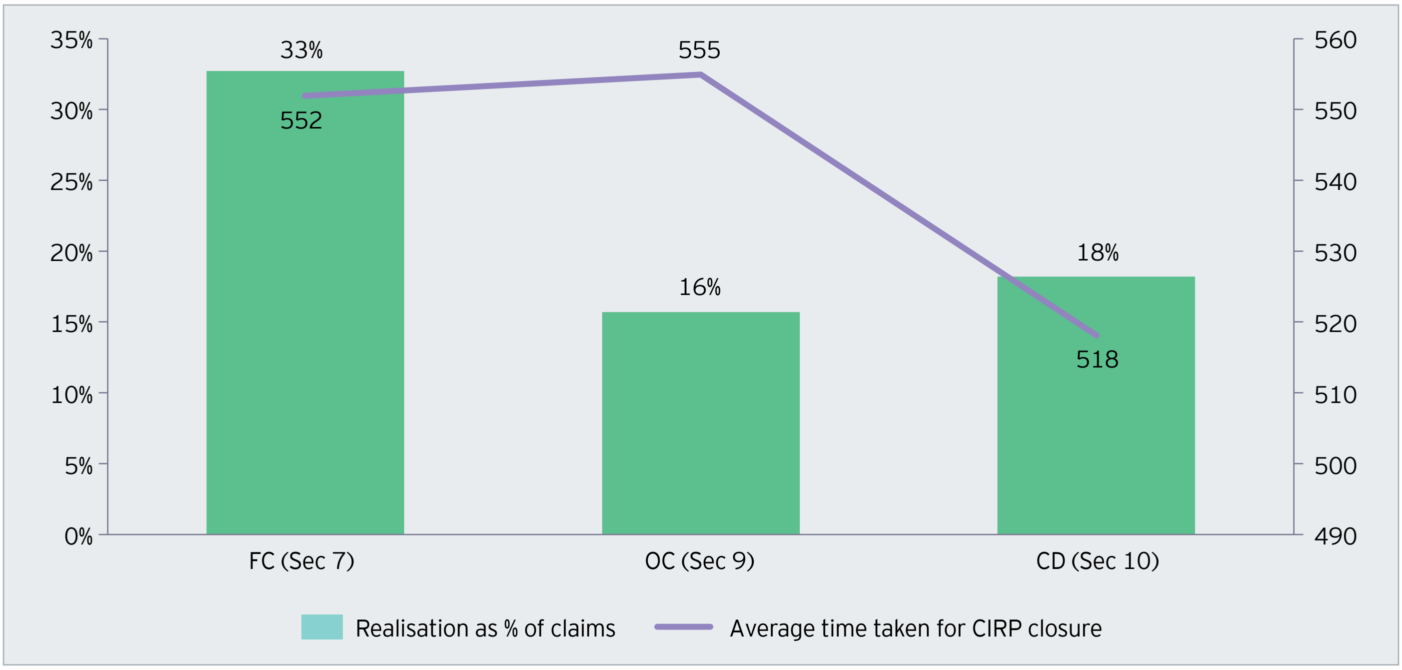


Source: IBBI Newsletter (Apr-Jun 22)

~0.63% of Resolution Value Was Cost Towards Resolution

~INR2.35 Lakh Cr Amount realised via resolution plans

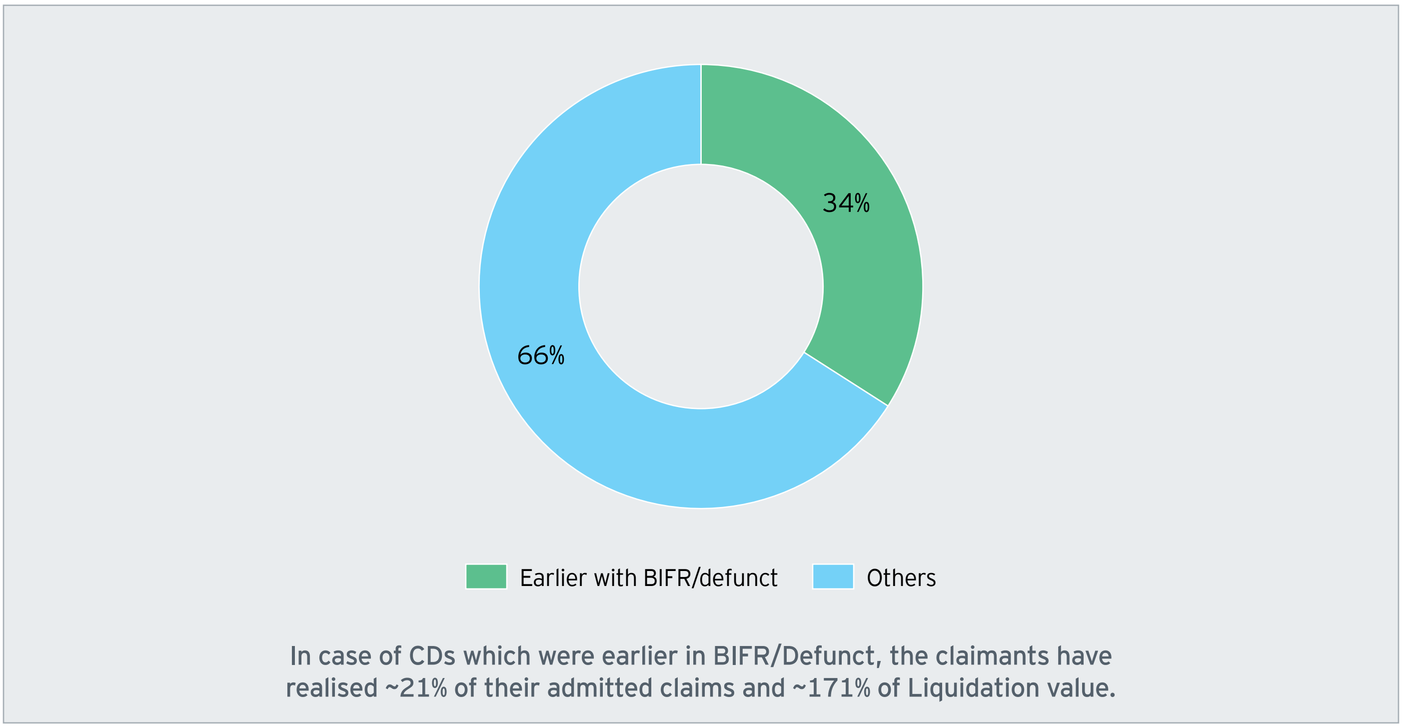
It takes ~500+ days on average to conclude CIRP's leading to resolution



Source: IBBI Newsletter (Apr:Jun 22) ; Data presented relates to all CIRP's yielding resolution since inception of IBC to June 2022

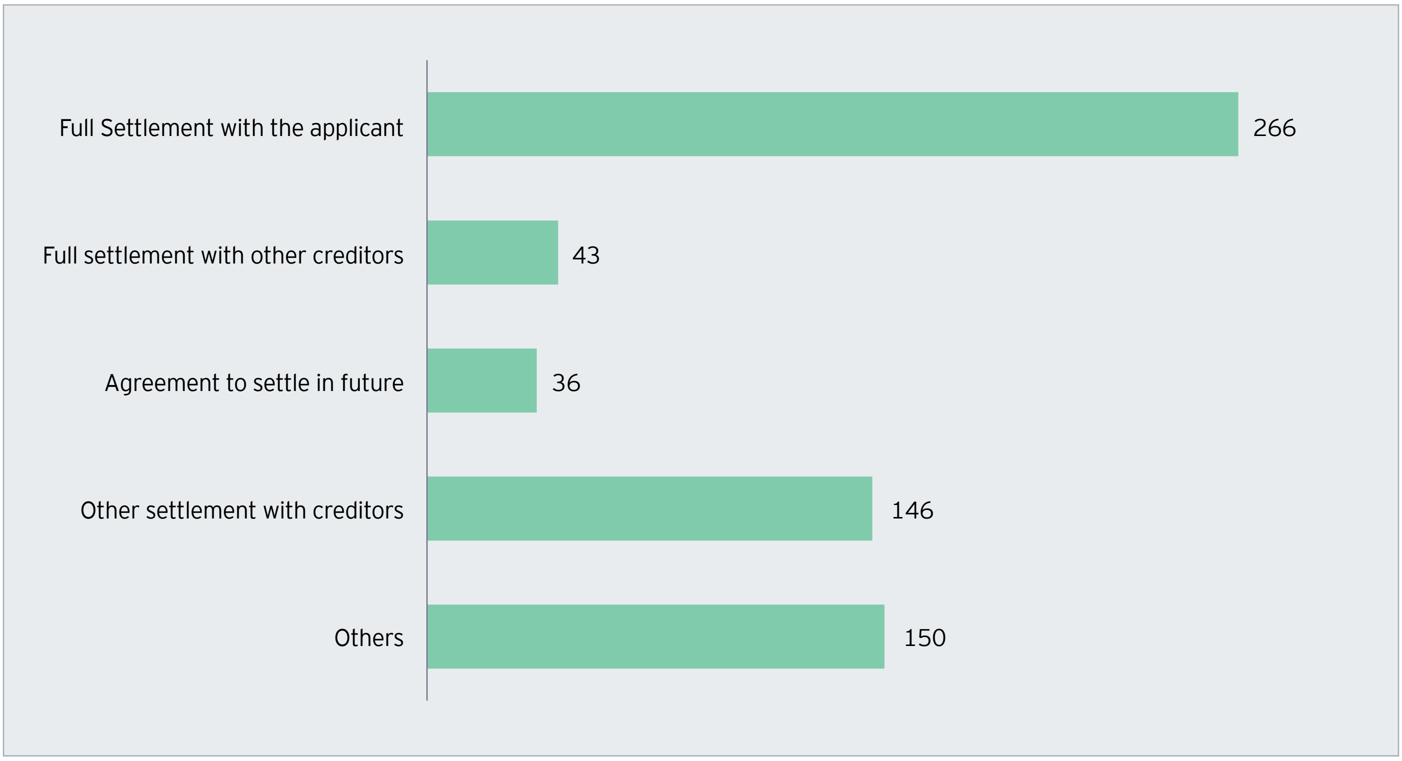
~428 days is the average time taken for conclusion of CIRP ending with Liquidation Order

Of the total 514 cases resolved, ~34% were earlier into BIFR/Defunct (175 cases)



Source: IBBI Newsletter (Apr-Jun 22)

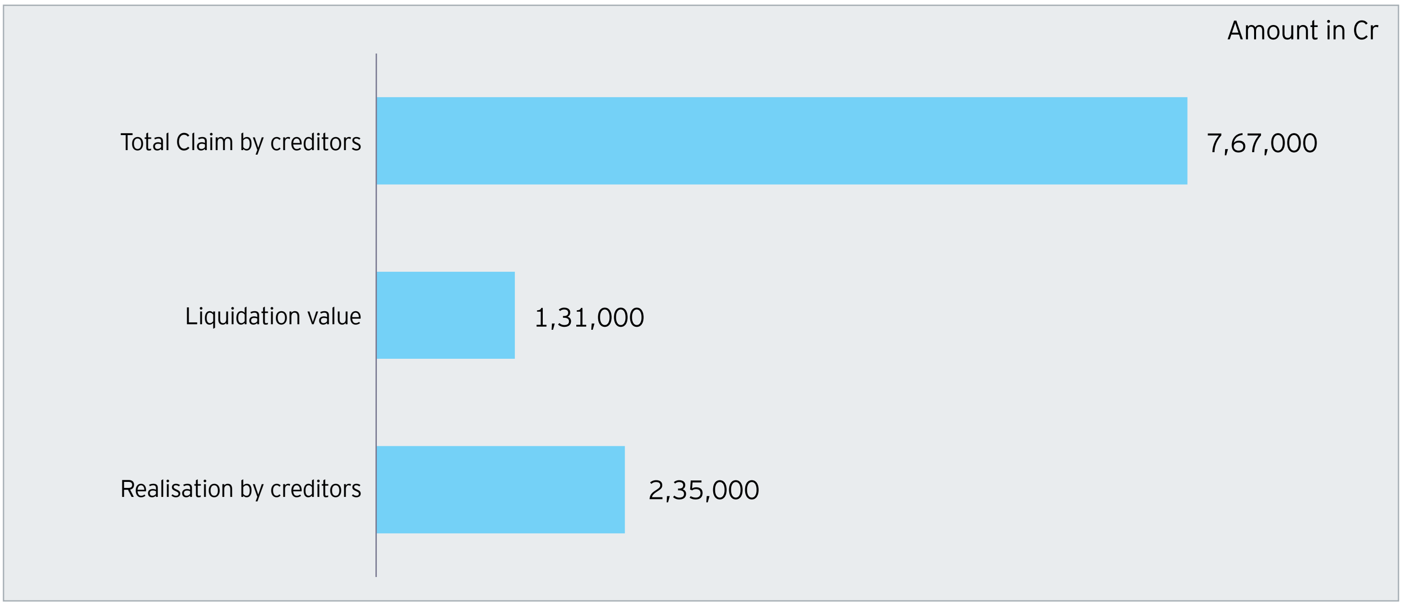
Of the 641 cases withdrawn u/s 12A, ~77% had claims <INR10 Cr*



* Data available in respect of 641 CDs.

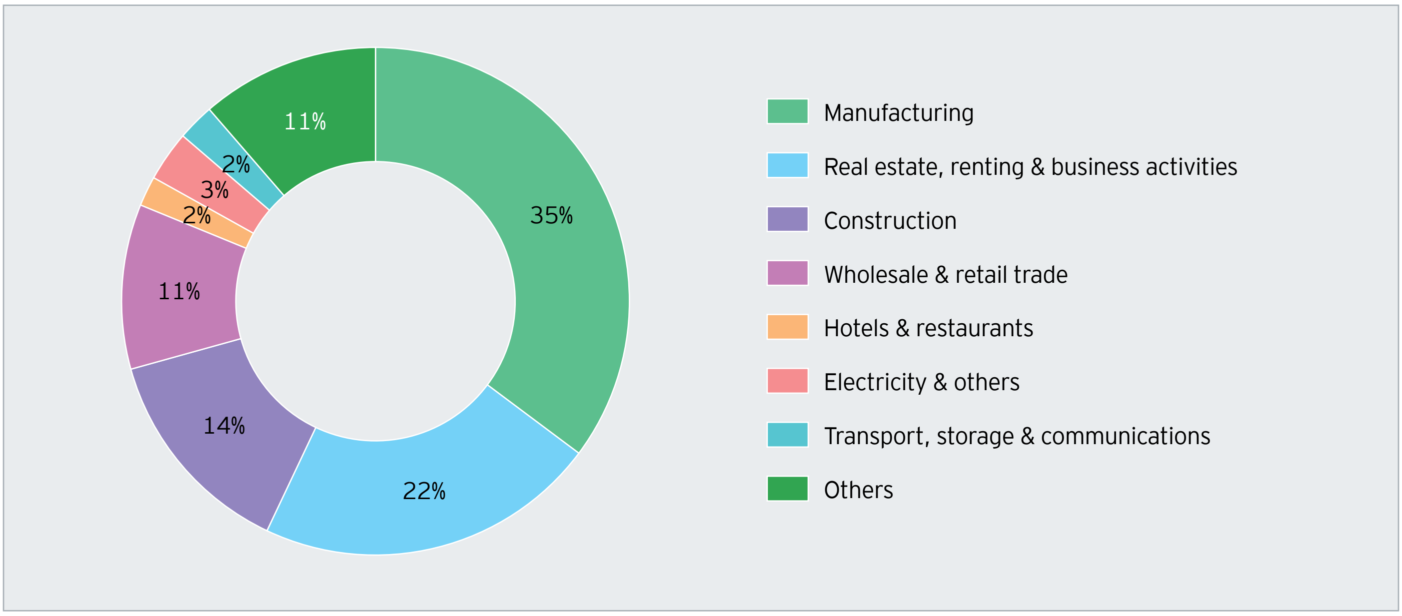
Source: IBBI Newsletter (Apr-Jun 22)

Creditors have realised ~178% of the liquidation value in the resolved cases under CIRP



~INR1.3 Lakh Cr
LV of assets in resolved cases

Ongoing CIRP cases (~2,000 cases) dominated by manufacturing & real estate (57% in all)

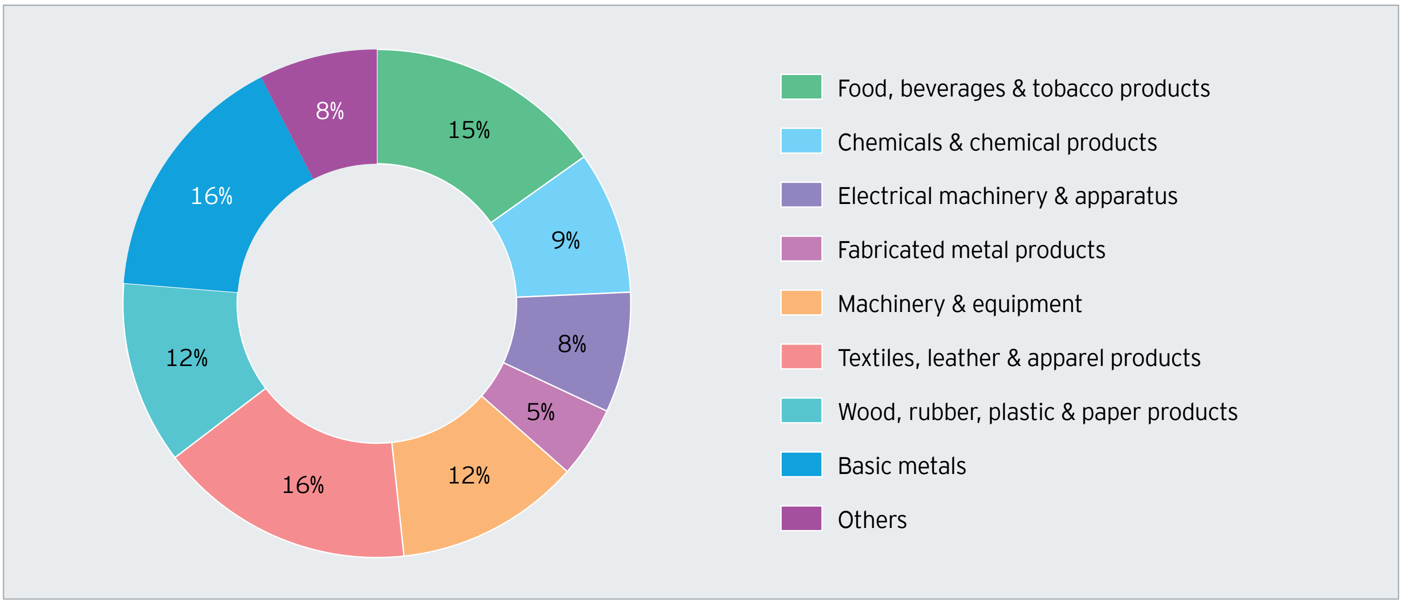


Source: IBBI Newsletter (Apr:Jun 22)

~35% of the ongoing cases are from manufacturing sector

~22% of the ongoing cases are from real estate sector

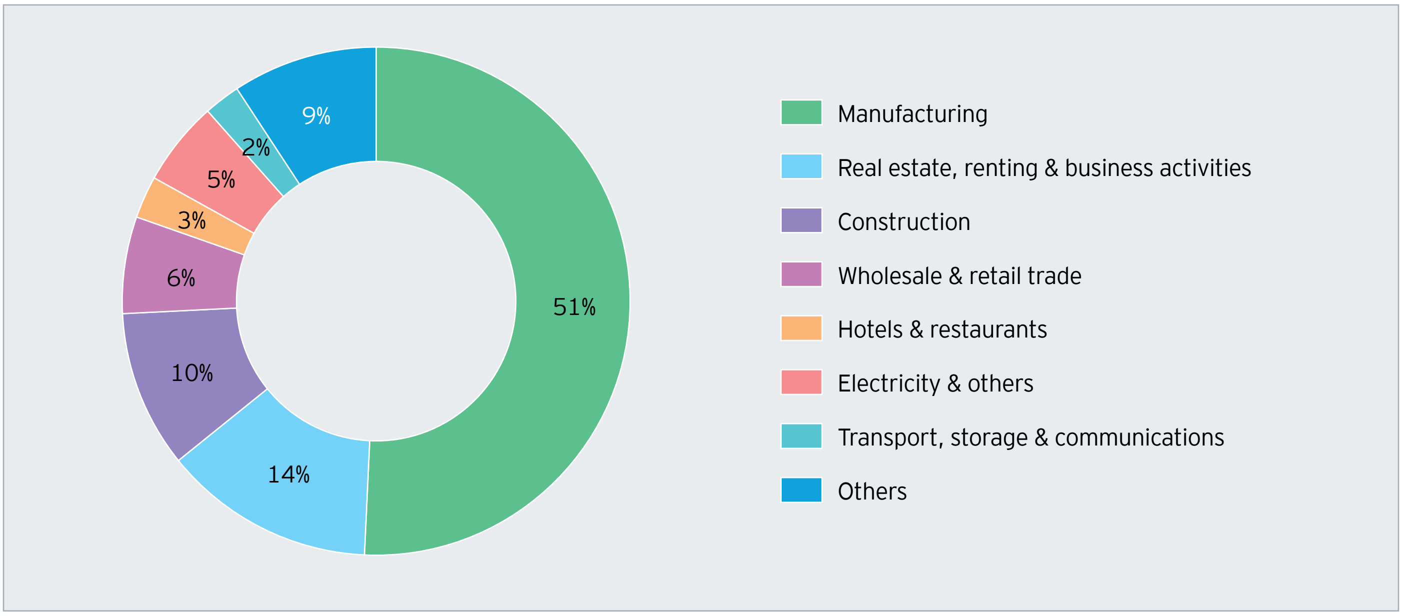
CIRP in manufacturing sector



Source: IBBI Newsletter (Apr-Jun 22)

~32% of the CIRP in manufacturing Sector relates to metal and textile industry

Sectoral distribution of resolved CIRP

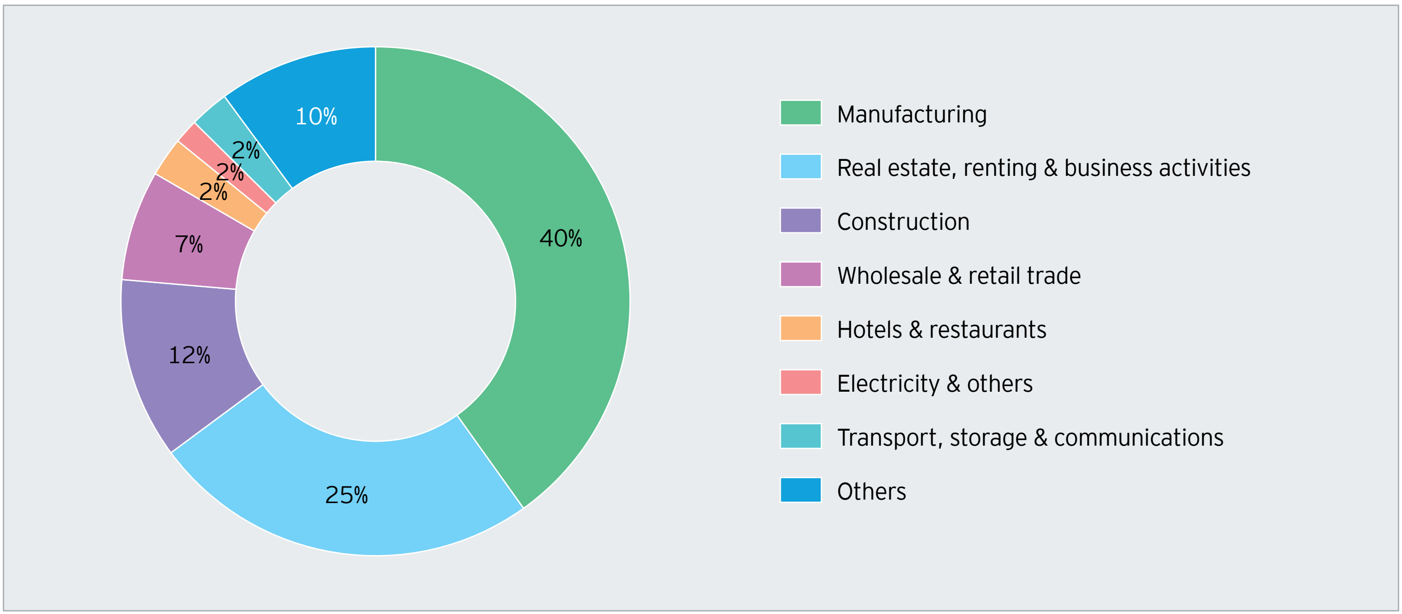


Source: IBBI Newsletter (Apr-Jun 22)

~51% of the resolved cases are from manufacturing sector

~14% of the resolved cases are from real estate sector

Sectoral distribution of withdrawn CIRP

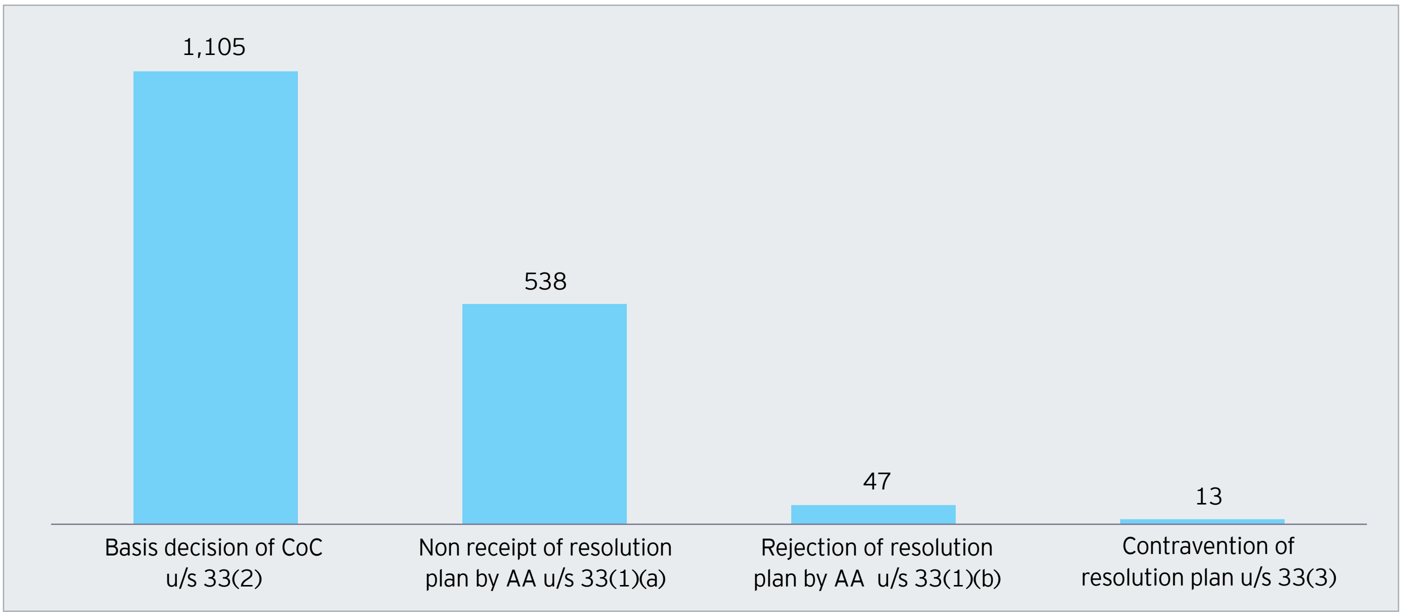


Source: IBBI Newsletter (Apr-Jun 22)

~40% of the withdrawn cases are from manufacturing sector

~25% of the withdrawn cases are from real estate sector

Majority of liquidation cases relate to decision of COC and non-receipt of resolution plans

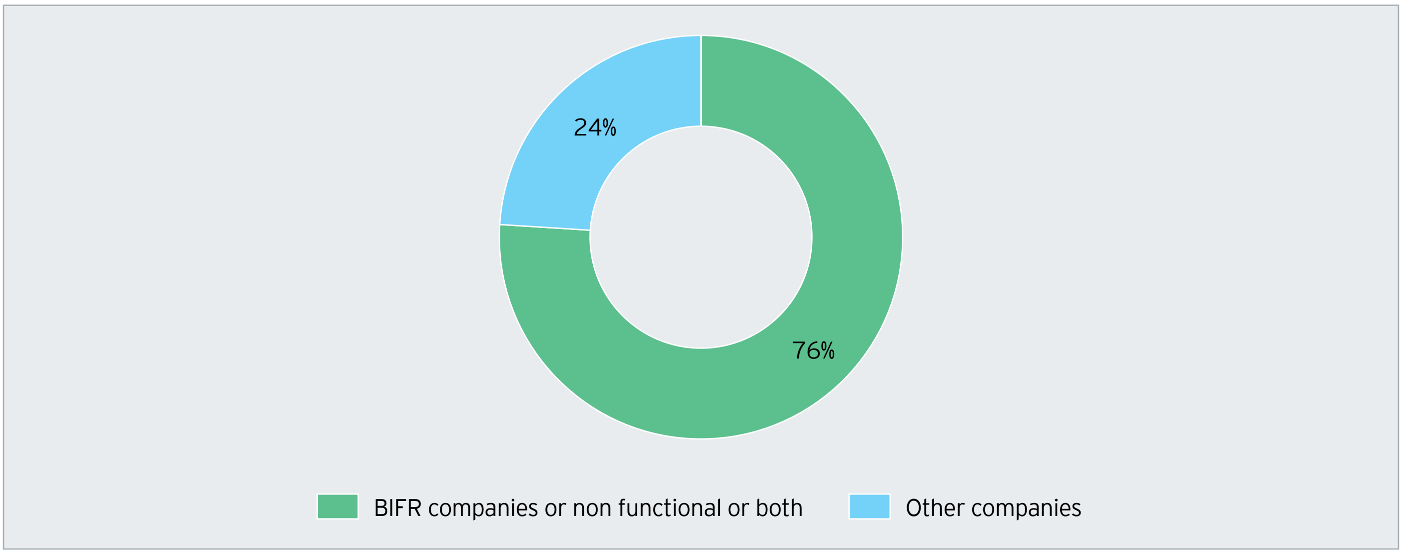


Section 33(2) - Recommendation by RP to liquidate CD on the basis of decision of CoC

Source: IBBI Newsletter (Apr:Jun 22)

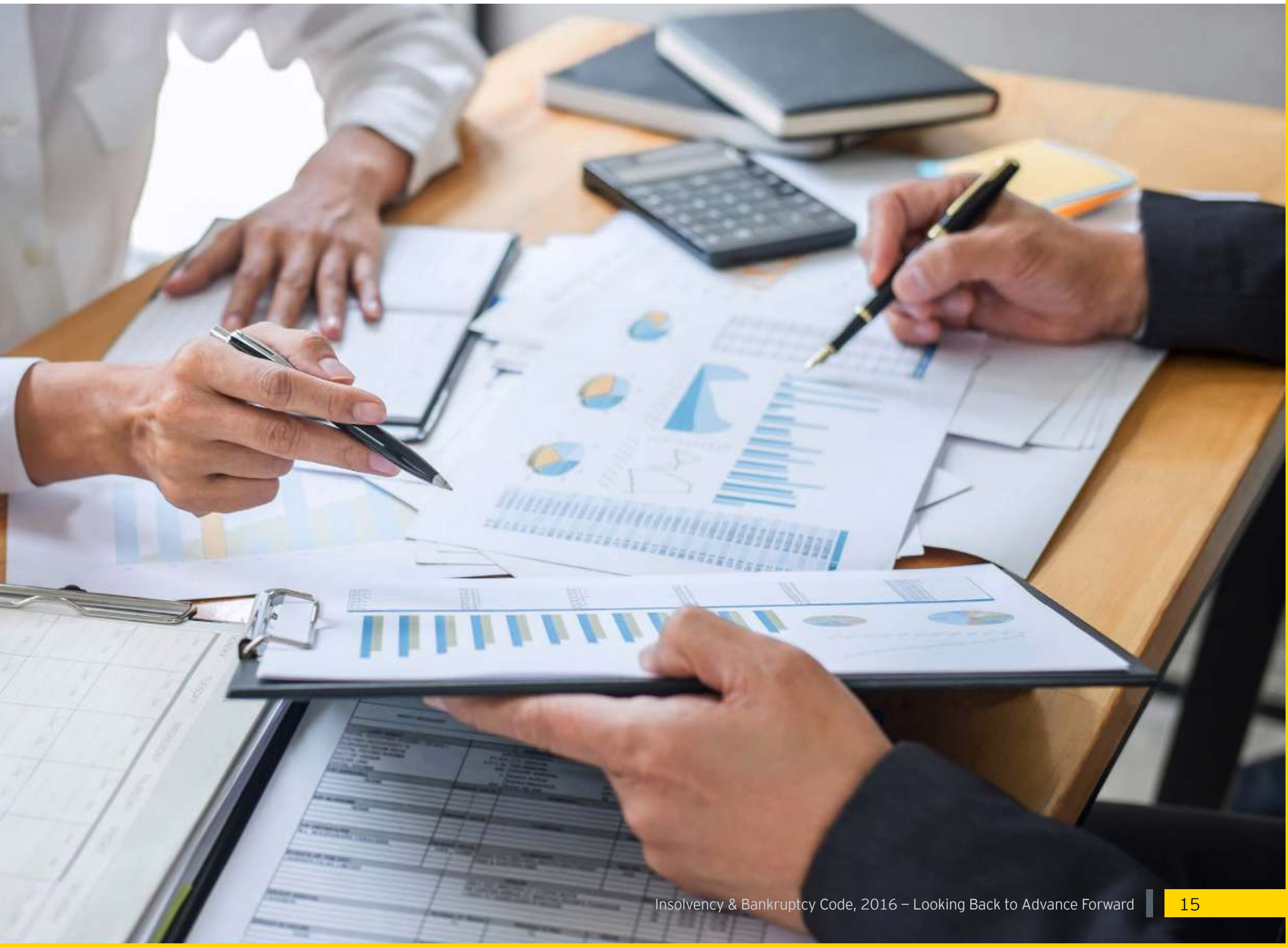
~65% of the cases were decided to be liquidated by CoC

Of the total liquidation cases, 76% of the cases were earlier into BIFR / non functional



Source: IBBI Newsletter (Apr-Jun 22)

Value of majority of CDs in liquidation had already been eroded prior to CIRP commencement. These CDs had assets valued at less than **~8%** of the outstanding debt amount.



02

Status-check

Working of the code

The Insolvency & Bankruptcy Code, 2016 has endeavored to provide for insolvency resolutions in a time- bound manner with an objective to maximize the value of the assets of the stressed entities and ensure that the management and operation of the corporate entity is an ongoing concern. Since its implementation in 2016, the Code has undergone substantial changes to adapt to the ever-evolving market conditions and stakeholder expectations.

The following section represents a review of the implementation journey of the code:

Role of the Regulator: IBBI has been pro-active in addressing market concerns, expectations and challenges in the processes.

Committee of Creditors: The CoC has evolved considerably, specifically in view of the primacy of its commercial wisdom.

Behavioral change: The code has caused for a behavioral change in debtors with respect to payment of debts in-time, so as to not risk losing control over the company.

Insolvency professionals: IPs have endeavored to discharge their functions and implement the Code effectively. While they have been instrumental in the Code's success, there is room for improvement.

Code: The code has evolved considerably, and is developing to address upcoming challenges

Implementation of resolution plans: Judicial precedents and amendments have assisted the RAs to implement resolution plans, however they still face certain constraints in implementation and achieving handover of the assets of the corporate debtor.

Judicial interpretation: Interventions in implementing the legislative intent of the code have led to evolution of the Code within a short span of time. However, areas of improvement that remain a cause of concern are consistency and timeliness.

Timelines: Sanctity of maintaining timelines has been adversely affected due to delays, litigations and non-cooperation etc.

On track

In process

Requires attention

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On track

In process

Requires attention

Concern	Remarks
Role of Regulator (IBBI)	▶ The IBBI has been pro-active in addressing market concerns, challenges in the process and has thereby made relevant changes in the Regulations to address such concerns. ▶ The recent amendments regarding the piecemeal sale of assets during CIRP, modification in timelines and overhaul of the functions and powers of the Stakeholders Consultation Committee during Liquidation along with procedural changes such as allowing success fee linked to early resolution and recovery for insolvency professionals evidences its ability to be alive to the dynamic nature of this ecosystem. ▶ The IBBI has also ensured that IPs undergo continuous professional education by hosting seminars and workshops in association with the frontline regulators i.e., the IPAs While the regulator has been pro-active in addressing market concerns on a regular basis, there have been frequent changes in the regulations and guidelines. The changes, having been made with an intent to address market concerns, requires the IPs as well as resolution applicants to update themselves proactively
Behavioural change	▶ The Code has effected for a behavioral change in Debtors with respect to payment of debts and also creditors with respect to recovery of debt. ▶ The IBBI in its quarterly newsletter has indicated that up till June 2022, ~22k applications for initiation of CIRPs of CDs having underlying default of INR7.1 lac Cr. and the same were resolved before their admission into CIRP. This evidences a behavioral change in the debtors who are making all efforts to avoid the consequences of an admission into CIRP primarily with respect to losing control over the management of the Company. Further, the Economic Survey 2021-2022 also notes, "*The fact that a CD may change hands has changed the behavior of debtors. Thousands of debtors are resolving distress in the early stages of distress, either when the default is imminent, on receipt of a notice for repayment but before filing an application, after filing the application but before its admission, and even after admission of the application, and making the best effort to avoid consequences of the resolution process*"

Concern	Remarks	
Code	▶ Since the provisions of CIRP came into force in 2016, the Code has rescued 1934 CDs (517 through resolution plans, 774 through appeal or review or settlement and 643 through withdrawal) till June 2022. The resolved CDs had assets valued at ~INR1.31 lakh crore, while the CDs referred for liquidation had assets valued at ~INR0.59 lakh crore when they were admitted to CIRP. ▶ These statistics evidence that the Code has been successful in bringing about a stark change in the way that insolvency is handled in India	The Code, being a relatively new legislation, has evolved and developed continuously. To this effect there is a need for the Code to address various issues such as delays in meeting timelines and also empower resolution professionals to take commercial decisions in the interest of maintaining the going concern of the corporate debtor. Legislative provisions for enabling Cross Border Insolvency, Group Insolvency and to further streamline the Voluntary Liquidation Process to facilitate ease of exit are also required to be inculcated. The recent amendments enabling pre-packaged insolvency resolution process are also yet to take off. A robust pre-pack insolvency framework will allow faster resolution, reduce case load of the overburdened NCLTs and allow eligible promoters / investors to submit resolution plans while avoiding the long-drawn insolvency process
Judicial interpretation	▶ The judiciary, namely the National Company Law Tribunal (NCLT), The National Company Law Appellate Tribunal (NCLAT) and the Supreme Court (SC), have had a massive influence on the development of the insolvency ecosystem in India. The proactive approach of the judiciary in interpreting the provisions of the Code by taking into consideration the legislative intent and objective of the Code has led to its evolution within a short span of time. ▶ Various issues arising as a result of appeals to the SC have been settled, such as withdrawal of CIRP has led to consequent amendments in Code and the corresponding Regulations. ▶ The various judgments of the SC and the NCLAT elucidating the primacy of the commercial wisdom of the CoC and the restrictions on withdrawal of a CoC approved resolution plan have allowed for more certainty in the process.	While the judiciary has played a critical role in evolving jurisprudence, there have also been certain rulings and judicial observations which indicate a departure from the legislative intent and the previous positions taken by the judiciary. The recent rulings namely, with respect to the trigger (default) for initiation of CIRP by a financial creditor and treatment of statutory dues (priority accorded to state tax claims at par with secured FCs) have led to ambiguity in the process.

On track

In process

Requires attention

Concern	Remarks	
Committee of Creditors	▶ The CoC has evolved considerably and matured specifically since the Supreme Court has in a plethora of rulings advocated for the primacy of the commercial wisdom of the CoC. Over time, the responsibility and functions of CoC members have begun to sink in and now they are cognizant of their role to ensure value maximization. The CoC has been instrumental in ensuring decision making and taking actions for the benefit of all stakeholders while working closely with the resolution professional to ensure successful resolutions ▶ The CoC Members are required to assist the RPs in maintaining going concern by providing them with the required support, such as extending interim finance and providing the relevant documentation regarding the corporate debtor, such as valuation, stock audit and forensic reports, etc.	Presently, the conduct and decision making of the CoC is not subject to any regulations, instructions, etc. However, many stakeholders have expressed the need for a code of conduct of the CoC. The 32nd report of the Parliamentary Standing Committee on finance has also recommended that, *"there is an urgent need to have a professional code of conduct for the CoC, which will define and circumscribe their decisions, as these have larger implications for the efficacy of the Code".*
Insolvency professionals	▶ The IBBI, in its quarterly newsletter, has indicated that up till June 2022, 4,096 IPs have been registered of which 2,512 have an authorization for assignments. ▶ Considering the nature of the powers bestowed by the Code upon an IP, it is essential that they operate with utmost integrity and are independent of stakeholders' influences. They must also strive to ensure that the insolvency processes are conducted in a time-bound manner in compliance with applicable laws. ▶ However, in cases where the insolvency professionals are not able to maintain such confidence or misuse their powers, the IBBI, by way of its disciplinary orders, has resorted to impose fines and in certain cases take measures to suspend their registrations as insolvency professionals.	Considering the ever-evolving insolvency ecosystem, there still exists a need for IPs to continuously update themselves to ensure their professional conduct is above-par in substance and form

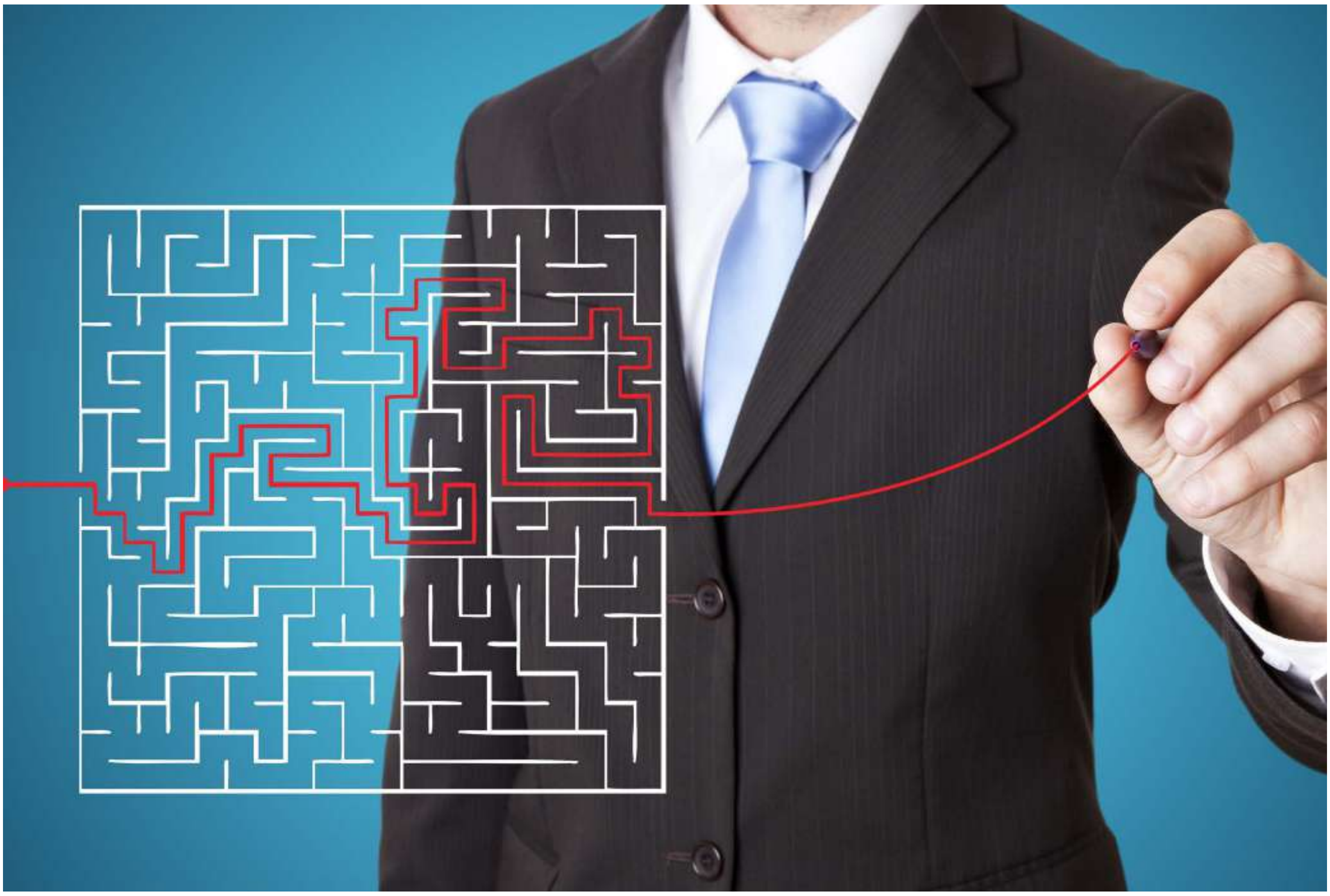
Concern	Remarks	
Implementation of resolution plans	▶ Even though the approval of a resolution plan by the court signifies the culmination of the CIRP, as such the objectives of the Code can only be achieved when the approved resolution plan is implemented with proceeds being distributed to the creditors. ▶ The judicial precedents and supporting amendments in the Code have strived to assist the Resolution Applicants to implement the resolution plans, however successful resolution applicants still face certain constraints with respect to implementation and handover of the assets of the corporate debtor. These include litigations challenging the approved resolution plan / subsequent stays, requirement of regulatory approvals and filing of applications seeking reliefs and concessions from various regulatory authorities; delays in obtaining NoCs from lenders for satisfaction of the charge.	It is imperative that hurdles regarding implementation are minimized so as to further enhance the investor confidence in the distressed investment space in India.
Timelines	▶ The distinguishing feature of the Code as compared to other insolvency resolution mechanisms was that it would ensure a time bound resolution mechanism by way of insolvency resolution or liquidation. However, the sanctity of maintaining timelines has been adversely affected by various aspects such as delays in admission or approval/rejection of resolution plans, protracted litigations, non-cooperation and information asymmetry etc. ▶ The IBBI in its quarterly newsletter has indicated that up-till June,2022 the average time taken for closure of CIRPs yielding resolution plans is ~500+ days and the average time for CIRPs yielding liquidation is ~400+ days.	The prolonged timelines for insolvency resolution has had an adverse impact on investor confidence and a perceptible deterioration in valuation of the corporate debtor. There is an urgent need to address the issue of delays and take systemic remedial measures to address such delays on priority.

On track | In process | Requires attention

Conclusion

An effective legal framework for timely resolution of insolvency and bankruptcy is essential for the development of credit markets and distressed asset. It would also improve the ease of doing business and facilitate more investments, leading to higher economic growth and development with capital flowing in. The Hon'ble SC has also observed that the Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier experiments, in terms of legislations having failed, trial having led to repeated errors, ultimately led to the enactment of the Code.

In order for the Code to remain a viable medium for time bound insolvency resolution, a collective effort is required from all the stakeholders, which includes the insolvency professionals, Committee of Creditors as well as judicial authorities.



Actions taken to accelerate distressed resolution and investment

RBI's prudential framework for resolution of stressed assets

Provides a principle-based resolution framework for addressing borrower defaults. All lenders are required to put in place policies approved by their board of directors for resolution of stressed assets, including the timelines for resolution. In cases where the lenders decide to implement a plan, the prudential framework mandates all lenders, including asset reconstruction companies, to enter into an inter-creditor agreement during the Review Period to provide for ground rules for finalization and implementation of the plan.[15]

With the introduction of the Prudential Framework, all extant instructions on resolution of stressed assets such as framework for revitalizing distressed assets, corporate debt restructuring scheme, flexible structuring of existing long term project loans, Strategic Debt Restructuring Scheme (SDR), change in ownership outside SDR and Scheme for Sustainable Structuring of Stressed Assets (S4A) stand withdrawn. Accordingly, the Joint Lenders' Forum has also been discontinued. Consequently, for the resolution of stressed assets, lenders may hereafter proceed only under the prudential framework.[16]

The prudential framework has been formulated to strengthen and improve the credit culture and to ensure promotion of a strong and resilient financial system in India.

Section 32A Immunity from prosecutions for offences prior to commencement of CIRP

Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019, introduced Section 32A, provides that the CD shall not be prosecuted for an offence committed prior to commencement of CIRP once a resolution plan has been approved by the AA. However, 32A continues to hold liable every person who was a 'designated partner' or an 'officer who is in default' or was in any manner in-charge of, or responsible to CD for conduct of its business or associated in any manner and who was directly or indirectly involved in commission of such offence.

The NCLAT in JSW Steel Ltd. vs. Mahender Kumar Khandelwal & Ors.[3] has held that once the resolution plan is approved, criminal investigations against the CD shall stand abated.

Pre-packaged Insolvency Resolution Process (PPIRP)

On 4 April 2021, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 allowed pre-packaged insolvency resolution process (PPIRP) for CDs classified as MSMEs with a minimum default of INR 10 lakh. This new regime aims to provide MSMEs quicker, more cost-effective resolution than the traditional CIRP route. The PPIRP for MSMEs is based on the 'debtor-in-possession' model, wherein the CD proposes a resolution plan to the secured creditors before the initiation of CIRP and the entity continues to be controlled by the existing management rather than coming under the control of the RP. Once the process becomes applicable to other corporates, PPIRP will become the restructuring solution needed for a company in the early stages of distress.

Establishment of the National Asset Reconstruction Company Ltd. (NARCL) & India Debt Resolution Company Ltd. (IDRCL)

NARCL is expected to acquire stressed assets of about INR 2 lakh crore in phases and these loans would be transferred by paying 15% cash to lenders, while the remaining 85% would be paid through SRs. The guarantee of up to INR 30,600 crores may be invoked to make good the shortfall between the face value of the SR and the actual realization. NARCL will acquire and consolidate stressed assets worth INR 90,000 crores in Phase I (out of total planned acquisition of INR 2 lakh crores), while the IDRCL will manage these assets by engaging market professionals and turnaround experts.

Under the proposed mechanism, NARCL is required to go for the "Swiss Challenge method", where the 28 existing ARCs in India will be invited to make a better offer for the stressed asset, which will lead to better price discovery. The acquisition of assets will help in debt consolidation, minimizing the time taken for aggregating the bad loans and avoiding the inter-lender litigations.

Special situation funds as a sub-category under category I AIFs

SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations"), have been amended and notified on 24 January 2022, to introduce Special Situation Funds (SSF), a sub-category under Category I AIF[17]. SSFS will invest only in special situation assets in accordance with its investment objectives and may act as a resolution applicant under the Code. The term special situation asset will include stressed loan available for acquisition in terms of Clause 58 of Master Direction – RBI (Transfer of Loan Exposures) Directions, 2021 or as part of a resolution plan approved under the Code and also security receipts issued by ARCs registered with the RBI.

SEBI's recent introduction of SSFs as AIF- category I to deal with the distressed assets is a step in the right direction of development of distressed asset market. The amendment will allow investors to pool their resources and participate in turning businesses in the stressed asset market.

[15] Prudential Framework for Resolution of Stressed Assets) Directions 2019, dated June 7, 2019

[16] Prudential Framework for Resolution of Stressed Assets) Directions 2019, dated June 7, 2019

Review of regulatory framework for asset reconstruction companies

The RBI vide its Circular dated 11 October 2022 on "Review of Regulatory Framework for Asset Reconstruction Companies (ARCs)"[18] has allowed ARCs to undertake those activities as a Resolution Applicant (RA) under IBC, which are not specifically allowed under the SARFAESI Act. ARCs with a minimum net owned fund of INR 1000 Crores may participate in the resolution process under the provisions of the IBC, 2016 as a resolution applicant.

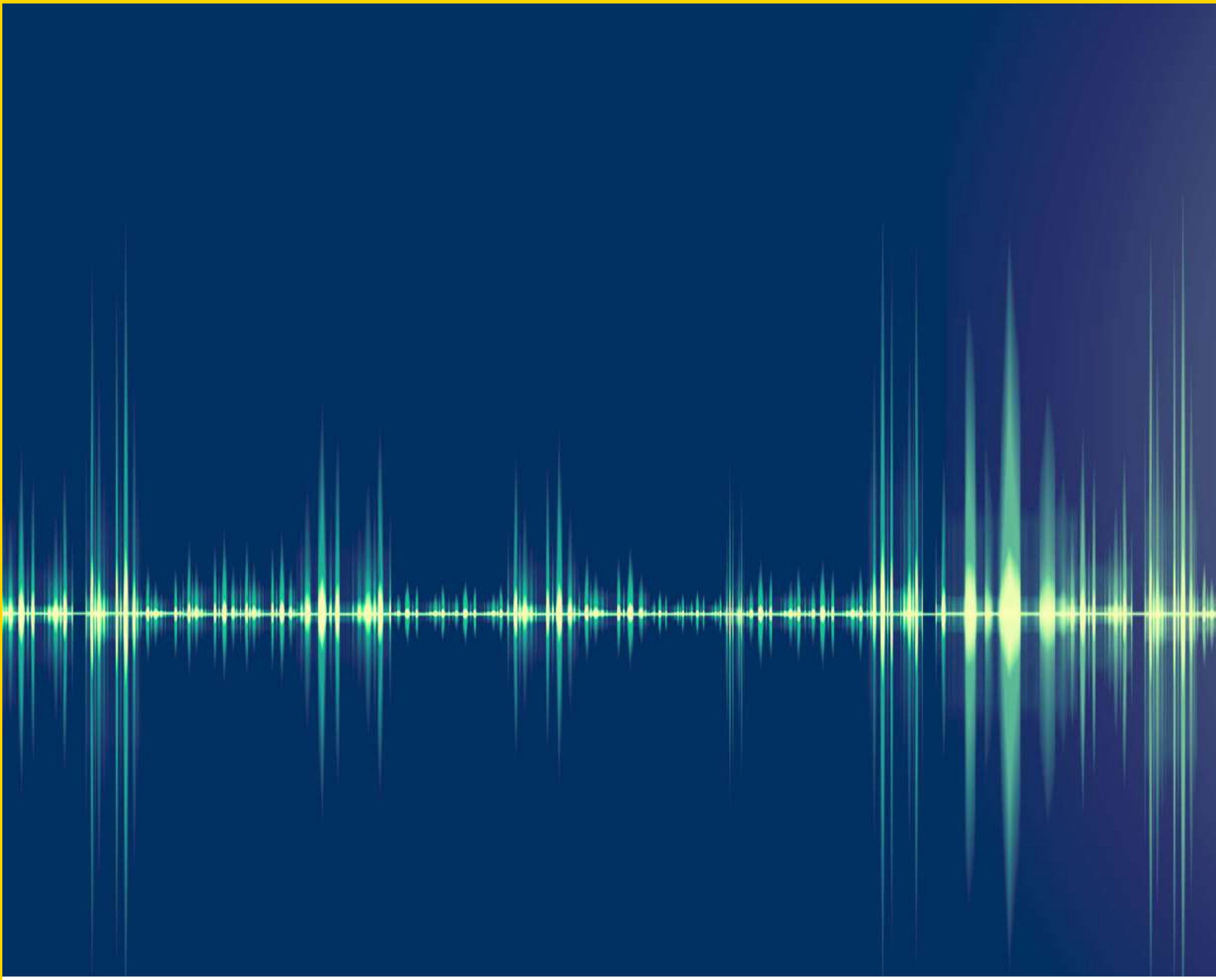
Pursuant to the notification, the ARC shall explore the possibility of preparing a panel of sector-specific management firms/ individuals having expertise in running firms/ companies, which may be considered for managing the firms/ companies. In respect of a specific CIRP, the ARCs shall not retain any significant influence or control over the CD after five years from the date of approval of the resolution plan by the AA. In case of non-compliance with this condition, the ARCs shall not be allowed to submit any fresh resolution plans under IBC either as a resolution applicant or a resolution co-applicant.

Sale of one or more assets during CIRP

The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022 issued on 16 September 2022 have brought in its fold a very crucial amendment, i.e., sale of one or more assets of CD. In the event that an RP does not receive a resolution plan for the Corporate Debtor as a whole, the RP / COC has been empowered to issue another RFRP for the sale of one or more of assets of the corporate debtor. The Standing Committee on Finance in its 32nd Report had also observed that bidders may be interested in selected business units or assets, rather than the entire business. A combination of bidders taking different business units or assets may well be far superior to one bidder acquiring the entire business.

[17] SEBI (Alternative Investment Funds) (Amendment) Regulations, 2022

[18] Reserve Bank of India – Notifications (rbi.org.in)



03

In conversation

Mr. Rakesh Grover
CGM, Punjab National Bank SASTRA Division

Q1 How do you see the stressed asset market evolve in the next three to five years?

Prior to the enactment of the IBC, the stagnation of the stressed asset market was primarily due to lack of an effective framework, which dealt with the insolvency resolution. The development of the stressed asset market got an impetus with the enactment of the Code and since then, it has been gradually evolving.

The recent reforms such as the formation of NARCL, which is charged with taking over NPAs from the banking sector, will facilitate a better and seamless interface for investors as inter creditor issues regarding priority of charge and distribution will be avoided. Further, the introduction of Special Situation Funds by SEBI to participate in the secondary market and bring capital from outside the banking sector and recent RBI Guidelines on a regulatory framework for ARCs will allow the stressed asset market to develop further with increased participation from foreign players.

Q2 What regulatory changes are required to be made in IBC to achieve more resolutions and increase investments in stressed assets?

Even though IBC has allowed for a regime change in insolvency resolution i.e., from a debtor in possession to a creditor in the control model, there are certain aspects which need to be addressed at the earliest.

Timely insolvency resolution is the distinguishing aspect of the Code when compared to various erstwhile insolvency laws. However, recent experience shows that there are inordinate delays in admission of CIRP as well as for approval / rejection of resolution plan. These delays lead to value erosion as the corporate debtor continues to remain under an interim management.

Accordingly, changes which address such delays are the need of the hour. A simplified admission process for financial creditors as well as operational creditors will be a step in the right direction. Further, the evolution of the pre-pack insolvency resolution process to larger corporates may accelerate resolutions process in a simplified cost-effective manner and will also reduce the caseload burden on the NCLTs.

There is need to separate the IBC cases and non IBC cases from the benches and introduction of fast track benches in line with the recent DRT amendments (Now separate DRT Courts are there for handling cases of Rs. 100 Crore and above, in similar line, NCLT benches may be designated for handling IBC cases beyond a certain admitted amount.)

Q3 Which route do you prefer to dispose of stressed assets – outside IBC or during insolvency proceedings under IBC and why?

At present, IBC is the preferred mode to dispose/ resolve stressed assets. The process under IBC leads to price discovery under market mechanism, allows reliefs and concessions to the buyers and has a legal sanctity attached to it considering that the same is conducted under an independent insolvency professional under the supervisions of the Committee of Creditors and ultimately the resolution plan is approved by the judicial authorities i.e., the NCLT. Further, the fact that the IBC allows it to override various other provisions of the laws allows flexibility to prospective resolution applicants while submitting a resolution plan.

However, there are certain borrowers whose cash flow impacted due to the reasons beyond the control of the borrower and borrower is neither willful defaulter nor involved in the fraudulent activities, resolution outside IBC may also be considered for such borrowers.

Q4 What are the top three (3) learnings from the last three to five years of stressed asset resolution in India?

Proper and timely monitoring is the key for the timely prevention, cure and ultimately deriving the maximum value from a stressed asset.

Value maximization can only take place if the CIRP is finished in a time bound manner after proper price discovery through an extensive marketing of the asset in question.

In the event that the corporate debtor does not have viable assets or there is reasonable apprehension that no prospective resolution applicants will make an offer, the CoC should take a conscious decision and allow early liquidation rather than wait for the CIRP to culminate which will only lead to further value erosion and increase in costs.

Regular valuations should be conducted prior to the CIRP in accordance with the well-established practices and standards and after due physical verifications. This will lead to a decrease in valuation mismatch and also allow lenders to take an informed decision regarding the manner and mode of the recovery process.

Q5 Do you see a change in behavior of the borrower with the introduction of IBC?

With the introduction of the Code, borrowers have taken steps to pay their outstanding dues. This is primarily due to the threat of CIRP initiation, which will lead to defaulting promoters' losing control of their company. Thus, over a period of time, the borrowers' behavior has undergone a change. Further, ineligibilities under section 29A, coupled with the creditor-in-possession model of the IBC, have encouraged the debtors to settle default expeditiously with the creditor at the earliest, even outside the Code.

Mr. Amit Agrawal
SVP, Edelweiss

Q1 What are the key parameters used to evaluate a stressed asset for potential investment?

The key parameters used to stresses asset are:

A. *Turnaround potential*

- Asset quality, industry prospects, scalability of business model
- Stage of stress - late stage stress means lower chances of revival
- management team and its quality - more people exit in late stage stress
- Working capital gap

B. *Debt Aggregation and resolution*

- Whether all existing lenders are on same page with respect to value and potential
- Equity holders aligned to create value vs. change of management
- Process - NCLT vs. Outside NCLT assets

C. *Valuation*

- Pricing methodology and discount rates
- Entry price for new investor should protect downside to some extent
- Time taken to close the deal and related issues

Q2 Which three (3) initiatives can help in the development of stressed asset market in India?

Some key areas of development which can help deepen the market are:

- Consistency, uniformity and clarity of law and jurisprudence under IBC will improve timelines and certainty of outcomes. A lot of work has been done by the law makers as well as regulators, but more needs to be done
- Vibrant and deeper secondary market for Corporate Bonds, including high-yield bonds, will help create a yield curve
- Ability to enforce contractual rights vis-à-vis all stakeholders, including corporate debtor, other creditors and equity holders
- Incentivize banks and FIs to resolve assets early in lifecycle and not once they are distressed, promote active decision making

Q3 In what range do you foresee the total investment in the stressed market in next five years in India?

The way we look at the market is an overlap of stressed assets investment/ special situation/ high yield credit that can be catered to by the same capital. The ingredients of exponential growth are there and it is going to be an exciting journey. We estimate that the current market size for special situation/ high yield credit is ~US$100b where annual investment of US$5billion is currently happening. This investment size can expand to almost US$10 to US$15b annually over the next five years.

Q4 Will the recent developments such as formation of NARCL, SSFs and allowing ARCs to become resolution applicants under IBC promote investment in the stressed asset market space?

NARCL is largely envisaged with the objective of handling legacy assets, and it will be interesting to see the impact it would have in the long run. Clearly, the aggregation of debt will help in creating a single point of decision making. NARCL will have to collaborate with special situation investors for raising funds to turnaround companies. This will create more opportunities in the sector.

SSFs and ARCs being allowed to become resolution applicants is a step in the right direction, however the regulation specifying a five year time frame for ARCs to exit their ownership position as a resolution applicant may limit interest and situations where it would be relevant. A situation of forced exit by ARCs which is known to consequent buyers may result in sub-optimal returns and negotiation powers with the ARCs. We hope the regulatory authorities can review this aspect.

Mr. Ram Bharath
MD, Patanjali Foods Limited

Q1 What regulatory change do you want in the insolvency framework which will lead to increased investment in stressed assets?

NCLTs should be cognizant of the facts that the delay in admission of application for insolvency as well as approving a resolution plan leads to erosion of value when CD remains under the control and management of the outgoing promoters. Regulatory changes addressing delays such as fixed timelines for admission of insolvency application and approval of resolution plan are required.

There should be a specific platform for stressed assets which is regularly updated and is openly available for the market. This may allow a larger pool of investors to participate in the resolution process, thereby leading to value maximization of CD.

Q2 What challenges do you face in investments in the stressed asset market in India?

Information Asymmetry is one of the key issues which are faced in investment in stressed assets under IBC. Conclusive and up to date financial and non-financial information is vital to enable any resolution applicant to conduct its due diligence and submit a viable resolution plan for the CD.

The approval of a resolution plan by the NCLT should allow the RA to get a clean asset. The successful RA should not be burdened with unforeseen liabilities in the form of claims, contingent liabilities, litigations, and investigations regarding the pre-CIRP period.

Q3 What are your key pre and post investment considerations?

Quality of the stressed assets is the primary pre-investment consideration along with reason of business failure, future expansion prospects and financing.

The post investment consideration is regarding the efficient and timely turnaround of the stressed asset.

Q4 What are the three most critical aspects that need to be taken care of in IBC to make it more viable for investments?

Timely resolution – The Adjudicating Authorities should endeavor to approve the resolution plan in a timely manner. The delay in approval of the resolution plan adversely affects the commercial considerations basis which an RA has submitted a resolution plan

Allowing unsolicited resolution plans for the consideration of the RP and the CoC leads to uncertainty in the process.

Quality of assets is another vital consideration for any investor seeking to invest in the stressed assets. We have observed that in a substantial number of cases, by the time the lenders approach NCLT to initiate CIRP, a large part of the asset value gets deteriorated. It is critical for lenders to timely evaluate the resolution plans and accordingly take an informed decision.

Mr. Kalyan Ghosh
CFO, Arcelor Mittal India

Q1 What regulatory change do you want in the insolvency framework which will lead to increased investment in stressed assets?

Certainty of completion of process within prescribed timelines; (2) Commercial wisdom of the Committee of Creditors to be adhered to; and (3) Delegation of power by NCLT to the IBBI in certain circumstances, e.g., where 100% of the CoC approves the resolution plan and cases where there is no challenge to the Plan

A regulatory change to ensure the foregoing could be that instead of filing an approved resolution plan with the NCLT for approval, the resolution plan could instead be filed with the IBBI (in certain specified circumstances) for a faster and more efficient approval process.

Another regulatory change could be the codification of issues decided by the courts. Several issues in relation to admission of claims, approval of resolution plans and discretionary powers of the NCLT flow from precedents and are not strictly followed, resulting in a non-uniform implementation of the Code. Investment in stressed assets will increase only upon stability and uniformity in implementation of the IBC, thereby reducing the risk borne by the potential resolution applicants.

Q2 What challenges do you face in investments in stressed asset market in India?

The key challenge remains uncertainty of completing an acquisition under the IBC due to prolonged timelines and litigations before the NCLT. Something really needs to be done on this delay.

Q3 What are your key pre and post investment considerations?

Pre investment – Assets quality, quality of Human Resources of the CD, its possible reason of bankruptcy (was it due to business reason or high debt or corruption by the promoters etc.), scope for expansion, brand name of products, red flag items, etc. Important thing is thorough due diligence is a must.

Post Investment – how fast the business can be turned around, debt level can be sustained, improved purchases of raw materials, adaptability, etc.

Q4 What are the three most critical aspects that need to be taken care of in IBC to make it more viable for investments?

Adhering to timelines (stop delays), extinguishment of past claims (no hydra headed monster), finality of plan approvals.

Mr. Sumant Batra
Insolvency lawyer, Founder of Insolvency Law Academy

What all regulatory changes are required to be made in IBC to achieve more resolutions and enable an increase in stressed assets investment?

In its brief period of operation, IBC has achieved significant milestones by enabling the credit system to relieve its stress while allowing the release of value locked up in these stressed assets for more productive use in the economy. There are significant learnings from the implementation of IBC. These factors necessitate a review of the insolvency system to improve the efficiency of law to achieve more resolutions.

Application of mediation: It is seen that CIRPs are fraught with large delays which serve as a deterrent for prospective resolution applicants who may otherwise be eager to invest in distressed debtor. A major reason for delays is the overburdened Adjudicating Authority (AA). Insolvency is not an adversarial process. Yet, disputes arise between parties which end up at the doorsteps of AA. To reduce the AA burden, alternative options to resolve disputes must be enabled. In most advanced jurisdictions, the use of mediation in insolvency is growing. Mediation offers strong incentives for parties to engage in and look for a common business solution. International experience suggests that mediation represents a valuable tool for creating a fair and effective negotiation process to resolve disputes. Bridging differences and trust divide is fundamental to a successful restructuring outcome. Mediation has not been used extensively in insolvency proceedings in India. There is immense scope for using mediation beneficially in both the pre-insolvency stage and also after the commencement of proceedings under IBC. This could reduce the burden on AA, and also further the objectives of IBC. Steps are required to employ mediation usefully in insolvency situations in India.

Pre-arranged resolution: Several jurisdictions around the world have promoted the use of pre-arranged resolution in recent years. Under IBC, pre-pack is only applicable to corporate MSMEs and requires a fairly cumbersome process. Pre-arranged resolution allows early interventions in case of an imminent default or where default has already occurred, to preserve the value of enterprises. It provides greater flexibility to negotiate the reorganization plan before invoking formal reorganization procedure for seeking protection from enforcement and quick approval of the plan. This alternative frameworks for resolution of stress must be explored to achieve more resolutions. Distressed asset funds will prefer to invest in stressed assets which do not get entangled in long-drawn process under IBC. Section 29A can be partially relaxed to allow promoter to make use of this process where no trust deficit with creditors exists.

Application of technology: Availability of quality information has a direct nexus with price discovery. There is need for establishment of a single platform where the information can flow efficiently and quickly throughout the system. If the entire ecosystem is on a single portal, it will attract other market players like interim finance provides, resolution applicants and auction purchasers. Such a platform will prevent duplication of supply of information and reduce the cost of the process.

These measures will ease up the resolution process, enabling the resolution professional and CoC to focus on the main issues without getting distracted by peripheral issues.

Will the recent amendment regarding the sale of part of the assets of the Corporate Debtor during the Corporate Insolvency Resolution Process enable increased recovery and interest in stressed assets?

The CIRP Regulations notified on 16 September 2022 are progressive. Flexibility to sell the varied assets to more than one resolution applicant will help in efforts to maximize value of assets as the corporate debtor may have varied assets/divisions/businesses, all of which may not be of interest to any one resolution applicant. Such resolution applicant may not see value in assets that do not interest it. Adding sub-regulation (6A) to regulation 36A is a commendable move. However, sub-regulation (6A) of regulation 36A should be made more flexible to allow sale of non-core assets outside the ordinary course of business or resolution plan, at any stage of the process, to obtain maximum their value, through a transparent competitive process.

What is the biggest concern / challenge in IBC which adversely affects recovery and maintenance of timelines?

Using processes under IBC for adversarial purposes is against the very fabric of the legislation. There is a need for change in mindset. All stakeholders have a responsibility to use IBC to advance the purpose of its enactment. There is a need to enhance the strength of members of AA and their capacity. We need to embrace the growing trend of pre-arranged resolution with minimum interventions of AA to provide greater flexibility to the financial creditors to find a resolution to deal with stress.

What is your view on some of the recent rulings of the Hon'ble Supreme Court, in particular the Orders regarding considerations for admission of a Section 7 application and priority of dues of statutory authorities? In your opinion, what will be their impact on the insolvency ecosystem?

The two judgments have been blown out of proportion, although it will be fair to say that certain observations, particularly in Rainbow, give rise to certain concerns about requirement of payment of statutory dues. It has opened a debate on payment of statutory dues that were for long considered settled. I hope these get corrected or clarified by the Supreme Court in another case. If not, the legislature will have to step in soon to make suitable amendments in IBC to put an end to uncertainty.

Mr. Anuj Jain
Insolvency Professional, Partner - Deal Advisory, KPMG India

Q1 What are the challenges faced while marketing stressed asset undergoing CIRP/Liquidation under the IBC?

There is an urgent need to have a single dedicated platform for distressed assets, which is updated on a real time basis and has conclusive information to enable the availability of a large pool of investors which will allow price discovery and maximization of value. The quality of assets available in the market is the primary consideration for any investor. We have seen in several cases that by the time the lenders refer the asset under IBC, the asset value and quality is severely eroded or the assets have been transferred or sold by the management.

A suggested approach could be to have a two-page template capturing critical information (similar to Form H) including business opportunity, SWOT, Addressable market, market share, etc. The templatized information on the platform can help interested parties to shortlist the asset and move ahead.

Q2 What can be done to improve the timelines under IBC?

NCLTs usually take a substantial amount of time in approving the resolution plans. This undue delay adversely affects the asset value and also the commercials of the company basis which the resolution plan was submitted and approved by the CoC, which causes the resolution applicants to seek modification in the resolution plans and then litigate.

There is a need to improve judicial infrastructure and also build capacity of the NCLTs. Routine matters such as extension of CIRP beyond 180 days, confirmation of resolution professional can be taken by the CoC instead of the NCLT. Also, special benches may need to be set up to deal exclusively with the insolvency cases. Recently, the Government of India has appointed 15 new NCLT members (judicial and technical) and now the NCLT has a total of 28 benches, with a sanctioned strength of 63 members. This is a welcome move.

Inter-creditor issues, especially w.r.t. to distribution, should be settled outside of COC/IBC either through regulation or code of conduct. It may be worthwhile to consider a section on "duties of COC" which is made part of the Code and is justiciable. Only critical items that are expected from COC, should be included on the lines of "duties of IRP/RP (section 18)"

The practice of allowing late and unsolicited resolution plans is required to be curbed. Often, unsolicited resolution plans are received from PRAs. When the same are rejected by the RP/CoC, the PRAs tend to file applications before the NCLT. In case the NCLT allows such applications, the timelines are adversely affected. This also causes uncertainty in the process.

Q3 What can be done to improve value realization under IBC?

The quality of assets is the primary consideration for any investor. The RP is obligated to ensure the going concern status of the corporate debtor. Thus, the RP should be assisted by the CoC in advancing interim finance, when required, to ensure that the corporate debtor continues to operate as a going concern.

The RP should also be empowered to take commercial decisions to ensure the corporate debtor's going concern status. Alternatively, COC should take responsibility to ensure that best managers run the business with the objective of turnaround or even blueprinting a strategy or plan for turnaround. This will enhance value and the bidders will be able to appreciate the true value potential of the asset.

In complex cases such as real estate, project under development (capex pending), power plant or similar business, the COC should consider specialized advisory from independent experts such as balance cost to complete; market assessment, micro market analysis, technical due diligence, title search report, vendor due diligence, etc. This should be shared with potential bidders who qualify a threshold. This will minimize risk and bring clarity to bidders on fundamental questions which are integral to the business proposed to be acquired.

Depending on the bids received and the type of assets, RPs should endeavor to incorporate a challenge mechanism e.g., Swiss Challenge to ensure value maximization and competition amongst the bidders.

Q4 Will the recent amendment regarding for sale of part of the assets of CD during the Corporate Insolvency Resolution Process enable increased recovery and interest in stressed assets?

The amendment is a welcome step. Many a times, a CD has various units and verticals in various stages of efficiency. In such a situation, a PRA may not want to acquire all such assets, which may cause for him to not submit a resolution plan. The amendment will allow maximization of value as the PRAs can bid for assets in which they are interested in.

However, there are some minor challenges and the code should be amended to bring further clarity, such as to allow resolution and liquidation of parts of the CD in the same resolution plan. The requirement of a "going concern" should be amended to include and facilitate liquidation of toxic part of the business which is best retained or liquidated. For e.g., A CD has real estate, consumer durables and oil and gas in the same entity needs to be sold to potentially three different buyers as globally buyers of these three businesses are separate and independent. The Code and all stakeholders should try to facilitate the same.

04

Insights:

Prevailing issues in insolvency resolution and investment in stressed assets

This section seeks to bring out various underlying issues during the insolvency resolution process. The section has been broadly divided into the following parts:

A. Delays in adjudication

- Overburdened tribunals and lack of infrastructure
- Determination of debt and default during admission

B. Sector-specific issues

- Real estate sector
- Telecommunication sector
- Non-bank financial companies

C. Prevailing issues in CIRP impacting resolution and recovery

- Information asymmetry
- Litigations and non-cooperation by the corporate debtors
- Late and unsolicited submission of resolution plans

D. Way forward

Delays in adjudication

In a brief span of time, the IBC has ushered in a new era of insolvency resolution. Until June 2022, a total of 5,636 CIRPs were admitted before various benches of NCLTs. Out of this, 774 CIRPs were appealed/reviewed/settled, 643 were withdrawn under section 12A, resolution plans for 517 were approved and 1703 CIRPs resulted in commencement of liquidation. While 30% of total CIRPs resulted in liquidation, a lot of these entities were already 'defunct, and the corporate value of corporate debtors was already eroded'.[1]

The Code provides a strict 14 days' timeline to the Adjudicating Authority ("NCLT") to make a decision regarding admission or rejection of the application in case of default by the CD.

The Standing Committee on Finance in its 32nd Report on Implementation of Insolvency & Bankruptcy Code – Pitfalls and Solutions (Standing Committee Report) noted that 71% cases pending for more than 180 days points toward a deviation from the original objectives of the Code intended by Parliament. The Committee accordingly felt that the design and implementation of the Code as it has evolved needs to be revisited, particularly in light of its original aims and objects.

Ebix Singapore Pvt Ltd v. CoC of Educomp Solutions Ltd & Anr.

It would also be sobering for us to recognize that whilst this Court has declared the position in law to not enable a withdrawal or modification to a successful Resolution Applicant after its submission to the Adjudicating Authority, long delays in approving the resolution plan by the Adjudicating Authority affect the subsequent implementation of the plan. These delays, if systemic and frequent will have an undeniable impact on the commercial assessment that the parties undertake during the negotiation.

Quarterly reports issued by IBBI indicate a substantial time lag between filing of application and its admission, and finally resolution. The Standing Committee Report notes that the NCLT takes considerable time to admit cases. During this time, the company remains under the control of the defaulting owner, enabling value shifting, funds diversion and asset transfers. NCLT should accept defaulters within 30 days and transfer control to a successful resolution applicant within this time.

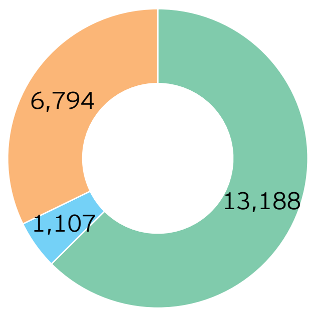
Additionally, the Insolvency Law Committee, 2022 noted that delays have been observed in the disposal of resolutions plans submitted to the AA. Such delays are often caused due to numerous objections to the proposed resolution plan, or due to a high pendency of cases. Nevertheless, delays at the stage of disposal of the resolution plan are value destructive and discourage prospective resolution applicants from submitting plans. The Committee accordingly recommended that the Adjudicating Authority should dispose of the resolution plan within 30 days of receiving it and that the Adjudicating Authorities should record reasons in writing if it fails to dispose the plan within this timeline.[2]

The Insolvency Law Committee, 2022 also notes that a resolution applicant whose resolution plan is pending approval with the AA may also attempt to seek modifications to the resolution plan or withdraw it altogether as the commercial basis underlying the resolution plans may change during the pendency of the application for approval of the resolution plan.[3]

The time lag between filing, admission and approval / rejection of a resolution plan may be as a result of the following factors:

- **Overburdened tribunals and lack of infrastructure:** Excessive caseload with NCLTs has led to the delay in the admission process within the stipulated time frame. As per the Lok Sabha record, the following number of cases are pending with NCLT, as on January 2022[4]:

21,089 cases pending with NCLT benches



The NCLT was functioning without a regular President and was short of 34 members out of the total sanctioned strength of 62 members till October 2022. Accordingly, in November 2022, the Government of India has appointed 15 new NCLT members (judicial and technical). Thereafter, the NCLT now has a total of 28 benches, with a sanctioned strength of 63 members which includes the president, who heads the principal bench in New Delhi.

[1] IBBI Quarterly Newsletter, April - June, 2022

[2] Report of the Insolvency Law Committee, May 2022, Ministry of Corporate Affairs, Government of India

[3] Report of the Insolvency Law Committee, May 2022, Ministry of Corporate Affairs, Government of India

[4] http://164.100.24.220/loksabhaquestions/annex/178/AU2835.pdf

- **Determination of debt and default during admission:** The BLRC Report (2015) recommended that the debtor can trigger the process after default using detailed disclosure about the state of the entity, accompanied by a Statement of Truth. The creditor can also trigger using evidence of a default and any misrepresentation can result in severe monetary penalties for the creditors and may also result in criminal penalties for debtors.[5]

M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr.

Hon'ble Supreme Court held that the adjudicating authority only has to determine whether a "default" has occurred, i.e., whether the "debt" (which may still be disputed) was due and remained unpaid. If the adjudicating authority is of the opinion that a "default" has occurred, it has to admit the application unless it is incomplete.

Similarly, the SC (2017 Innoventive) had observed that the scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins.[6] Further, with respect to a financial creditor triggering the process under Section 7 of the Code, the SC observed that the moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete.

Additionally, the SC (2019 Swiss Ribbons) had also made similar observations with regard to determination of default.[7]

However, recently the SC (2022 Vidarbha) has deviated from this long-settled position and has held that section 7(5)(a) of the IBC confers discretionary powers to the NCLT to not admit a CIRP application filed by a FC even if it satisfied that a debt exists and the CD is in default.

S. No.	Point of discussion	BLRC, 2015 and Code, 2016	Innoventive, 2017 (SC)	Swiss Ribbons, 2019 (SC)	Vidharbha, 2022 (SC)
1.	Existence of debt and default	✓	✓	✓	✓
2.	Merits of the case	✓	✓	✓	✓
3.	Viability and financial health of the CD	✗	✗	✗	✓

The judgment has conferred discretionary powers to the NCLTs by allowing them to assess and examine other factors, including the solvency and financial health of a corporate debtor before admitting a debtor into insolvency, even when the debt and default have been proven.

This recent order may substantially increase the time taken at the pre-admission stage for admission of a Section 7 application by financial creditor and also increase uncertainties in the process.

[5] The Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design, November 2015

[6] Innoventive Industries Limited v. ICICI Bank Limited, 2017, Civil Appeal Nos. 8337-8338 of 2017

[7] Swiss Ribbons Pvt. Ltd. v. Union of India, 2019, Writ Petition (Civil) No. 37, 99, 100, 115, 459, 598, 775, 822, 849 & 1221-2018 in Special Leave Petition (Civil) No. 28623 of 2018.

Sector-specific issues

IBC does not distinguish between sectors or the causes leading to the financial stress. Hence, to establish the importance of IBC in the current legal framework, it is necessary to have a glimpse of the challenges being faced in various sectors:

- **Real estate sector:** In FY 2021-2022, 210 applications pertaining to real estate were admitted under CIRP, of which 18 were resolved, 60 cases were settled / withdrawn, 63 cases were ordered for liquidation and for the remaining cases the process was still ongoing. Further, as on June 30 2022, total of 1,999 CIRPs were ongoing out of which 436 were in the real estate sector. The issues regarding insolvency resolution of real estate companies, specifically in cases where interest of homebuyers are involved, have caused for the judicial authorities namely the NCLAT to innovate case-specific insolvency resolution mechanisms such as project specific CIRP and reverse CIRP.

  The NCLAT has held that CIRP against a real estate company is limited to a single project of the company and not to other projects. Further, the NCLAT while observing that it is very difficult to follow the process as in normal course is followed in a corporate insolvency resolution process, evolved the concept of reverse CIRP which can be followed in the cases of real estate infrastructure companies in the interest of the allottees and survival of the real estate companies and to ensure completion of projects which provides employment to large number of unorganized workforce. The NCLAT as part of the reverse CIRP directed the Promoter to cooperate with the IRP and disburse amounts from outside as Lender (financial creditor) and not as Promoter to ensure that the project is completed with the time frame given by it.[8]

  While the order of the NCLAT may be an innovative step taken to protect and balance the interest of the all the stakeholders, nevertheless, may fall outside the boundaries of the Code.

- **Telecommunication sector:** The Indian Telecommunication Bill, 2022, has recently been released which seeks to consolidate and amend the laws governing provision, development, expansion and operation of telecommunication services, telecommunication networks telecommunication infrastructure and assignment of spectrum.[9]

  The Bill provides that a licensee or assignee undergoing insolvency proceedings can continue to operate if:

  a) it continues to provide the telecommunication service,

  b) does not default on the payment of any dues under the license or assignment, and

  c) complies with any additional or modified terms and conditions of license.

  If such licensee or assignee is unable to comply with these requirements, then the assigned spectrum will revert to the control of the central government. The RP appointed under the Code, shall have the obligation to ensure compliance with the aforesaid conditions and shall provide a notice of thirty days to the central government prior to the date on which it expects not to be able to comply with the conditions. Accordingly, upon receipt of a notice, the central government may direct that the license, or assignment, that is subject to insolvency proceedings, would be managed by such person or entity, and for such period, as may be notified.

  As such, the implications of such provisions in the envisaged Bill are difficult to ascertain; however, it is essential that the Telecommunication Bill, 2022 operates harmoniously with the Code.

  Furthermore, the NCLAT in Union of India vs. Association of Unified Telecom Service Providers of India has observed that triggering of CIRP under the Code by the CD with the object of wiping off of dues, not being for insolvency resolution, but with a malicious or fraudulent intention, would be impermissible and that spectrum cannot be utilized without payment of requisite dues which cannot be wiped off by triggering CIRP under the Code.

  It also noted that the defaulting telcos cannot be permitted to wriggle out of their liabilities by initiating CIRP under Section 10 of the Code, where there may be a malicious intent of withholding huge arrears payable to Government, and obtaining moratorium to abort Government's move to suspend, revoke or terminate the Licences. Further, in the event of a Resolution Plan being approved, subjecting the Central Government to be contended with the peanuts offered to it as 'Operational Creditor' within the ambit of distribution mechanism contemplated under Section 53 of code.[10]

- **Non-bank financial companies:** CIRPs of NBFCs entail substantially large debt with a large number of deposit holders / debenture holders. There are also nuances with respect to the specialized nature of business and regulatory clearances. Accordingly, there is a need to have in place a dedicated insolvency resolution process that caters to the requirement of the resolution of NBFCs in addition to the FSP Rules.

[8] Flat Buyers Association Winter Hills – 77, Gurgaon v. Umang Realtech Pvt. Ltd through IRP & Ors. In Company Appeal (AT) (Insolvency) No. 926 of 2019

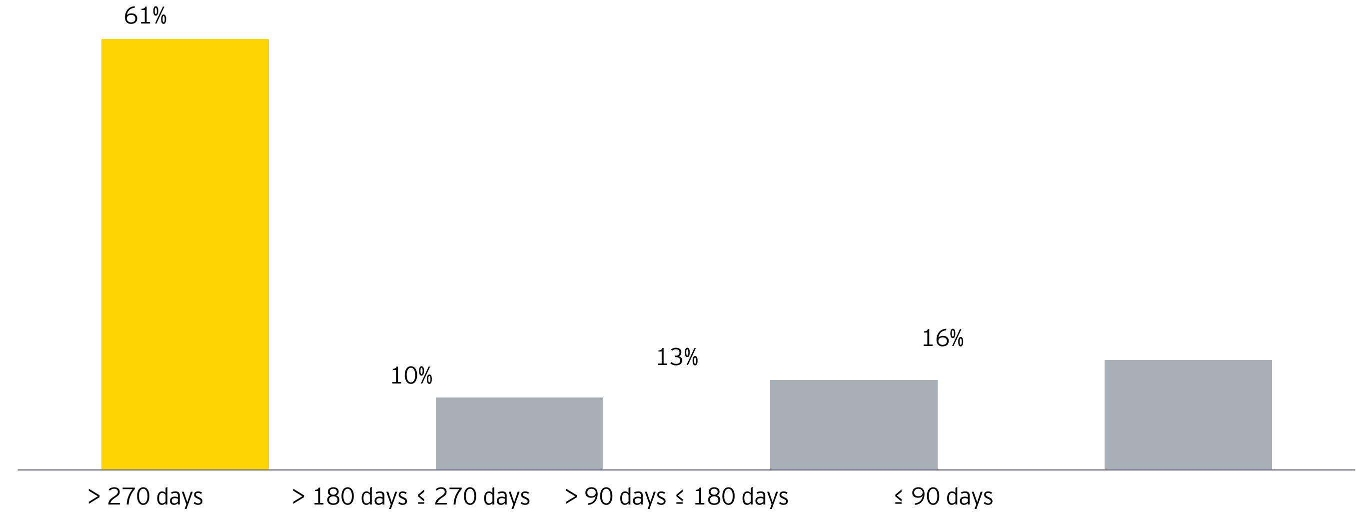
[9] Indian Telecommunication Bill, 2022-1 (dot.gov.in)

[10] Union of India v. Vijaykumar V. Iyer in Company Appeal (AT) (Insolvency) No. 733 of 2020 (available at 50ed60c24f132a051c6f16fa7735b92d.pdf (ibbi.gov.in))

Prevailing issues in CIRP impacting resolution and recovery

As on June 2022, the AA had approved resolution plans for 517 stressed assets under CIRP. The average timeline across categories i.e., FCs, OCs and CDs, was more than 500 days, which is significantly higher than prescribed timeline. Further, 61% of the outstanding cases are pending beyond 270 days. Hence, adherence to IBC's own timeline remains a challenge.

Majority of CIRP's run beyond the timelines specified under the IBC



Source: IBBI Newsletter (Apr:Jun 22) ; Data presented relates to all CIRP's yielding resolution since inception of IBC to June 2022

There are various challenges which adversely impact the adherence to timelines as prescribed under the Code. These include:

- **Information asymmetry** is one of the key challenges faced by IPs as well as RAs during an ongoing CIRP. The BLRC Report notes that the IP is required to ensure the reduction of asymmetry of information between creditors and debtor and that the law must enable access to this information to third parties who can participate in the resolution process.

  An IP is required to prepare an IM and provide operational information during a diligence to prospective resolution applicants including:

  - Assets and liabilities (including contingent liabilities),
  - Audited financial statements; details of guarantees and material litigations
  - Company overview, including a snapshot of business performance
  - Key contracts, investment highlights, etc.
  - Various business metrics and MIS relating to operations (in case of ongoing businesses)

  A prospective resolution applicant places reliance on the IM and above information while preparing a viable Resolution Plan for the CD.

  However, the lack of conclusive information regarding the finances, operations and assets of the CD often adversely affects the CIRP as it results in the IP investing substantial time and effort to obtain such information by filing non-cooperation applications before the NCLT and requesting the stakeholders and company officials to share such information

  Recently, however, the IBBI, being alive to such issues, has obligated the creditors to provide the latest financial statements and other relevant financial information as available with them.[11] Further to ensure that the IP has conclusive information regarding the transactions undertaken by the CD prior to the commencement of the CIRP, the recent amendments cast an obligation on the creditors to provide to the RP , relevant extracts from the audits of the CD, conducted by the creditors such as stock audit, transaction audit, forensic audit, etc.[12]

- **Litigations and Non-Cooperation by the Corporate Debtors:** The Promoters and persons associated with them usually tend to delay the CIRP on several grounds as they lose control over the assets of the CD. The management does not fully cooperate with the RP and that is one of the major reasons for the delay in the entire CIRP. However, it is also noted that, even though RPs have a recourse under Section 19(2) of the Code to approach the courts to compel the cooperation by the corporate debtor, only 3% of the RPs have filed such an application and approached

[11] Regulation 36(3A) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
[12] Regulation 35A(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

the courts on grounds of Non-Cooperation by the CD.[13] Additionally, it is also seen in certain cases, where such applications are filed, there is still no substantial improvement in terms of provision of information.

- **Late and unsolicited submission of resolution plans:** The ILC, 2022 has observed that there are divergent practices regarding the timeline and manner of submission of resolution plans. Although there are stage-wise timelines provided in the regulations, resolution plans are received by the RP after the stipulated deadlines. In some cases, revisions are made to submitted resolution plans in an attempt to outbid other potential resolution applicants. Such practices lead to divergent practices leading to inconsistencies, delays, and lack of procedural sanctity. The Committee noted that non-compliance of the procedure for conducting the CIRP undermines the certainty, predictability and transparency of the process, thereby making it unfair for the participants and being detrimental to the development of a market for resolution plans.

Ajay Kumar vs. Shree Sai Industries Private Limited and Another [Company Appeal (AT) (Insolvency) No. 616 of 2019]

The RP submitted to the NCLAT that he could not take effective control of the CD due to lack of cooperation from the promoters of the CD, due to which an order of liquidation had to be passed against the CD. NCLAT, while setting aside the liquidation order, held that the CIRP of the CD would proceed from the stage of preparation of the IM. The NCLAT also held that if the promoters continued to not cooperate with the RP in handing over the necessary documents and information, the AA would obtain the assistance of the superintendent of police of the concerned area to ensure that the possession of the CD and all necessary records are handed over to the RP.

In this regard, on the aspect of submission of plans after the deadline, the AA has in certain cases directed the RPs to consider the resolution plans received after the last dates by giving precedence to the principle of maximization of value.

In view of the above, the insolvency regulator has now duly amended the CIRP regulations by placing a limit on the number of modifications which can be made to a resolution plan and the RFRP. Additionally, the manner of making revisions using a challenge mechanism and preventing late and unsolicited plans from being considered by the CoC has also been provided for in the regulations.

[13] Assessment of Corporate Insolvency and Resolution Timeline, Neeti Shikha and Urvashi Shahi. IBBI Research Initiative

Way forward

Based on inputs received from various stakeholders, during the course of our discussions, we have summarised a non-exhaustive and tentative list of action points as a way forward so as to enable effective insolvency resolutions under the Code

- Include applicability of pre-pack insolvency resolution for larger corporates to de-congest NCLTs, reduce costs and ensure timely resolution without going through the entire CIRP

- Presently, the Code does not provide any provision for alternative dispute resolution mechanisms, such as mediation. Accordingly, alternate dispute resolution techniques can be suitably integrated in the CIRP framework

- Formulate guidelines providing for a standard of conduct for members of the CoC

- Provide for specific time frame for AA to dispose the resolution plan. This will enable certainty in the process.

- Routine matters such as CIRP extension (up till 270 days) and confirmation of IRP as RP, which can take up valuable judicial time, can be within the domain of the CoC. Certain NCLT Benches can be designated to exclusively take up IBC matters

- Sale of one or more assets curing CIRP is a welcome step. However, flexibility should be provided to the RP /CoC to provide the option of part sale (after identification of such assets to ensure value maximization) and resolution of the CD as a going concern at the initial stage itself (preference can be given to a Resolution Plan which proposes a resolution of the CD as a going concern as a whole).

- The recent amendment allowing success fee for Insolvency Professionals linked to time and resolution plan value should be implemented in letter and spirit. This will incentivise Insolvency Professionals to maintain timelines and take all required steps to ensure resolution of the Corporate Debtor as opposed to liquidation.

- Sensitize statutory authorities including the executive machinery/ bureaucracy on the applicability of moratorium (to reduce litigations) and the principal of clean slate (on approval of resolution plan) which will allow timely handover of the CD to the successful resolution applicant.

- Suitable deterrents on persons initiating frivolous litigations with a sole aim to delay the process. These may include fines/ penalties or even more rigorous preventive measures.

05

Dipstick analysis:

Investor expectations and experience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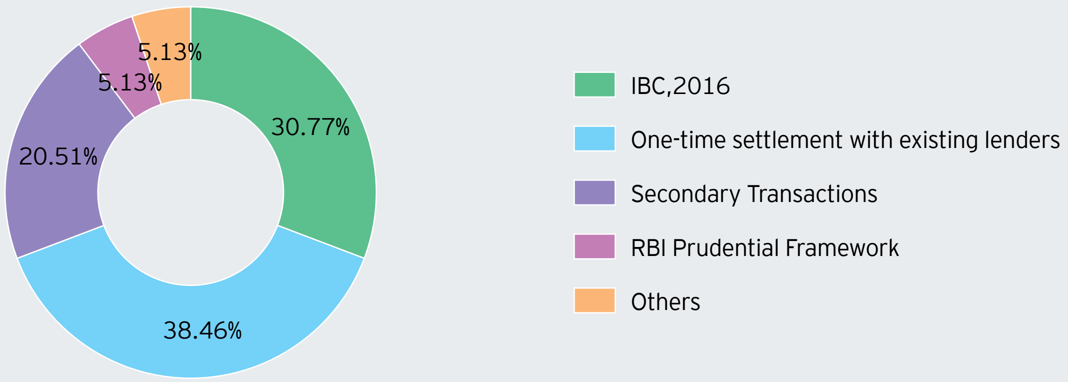
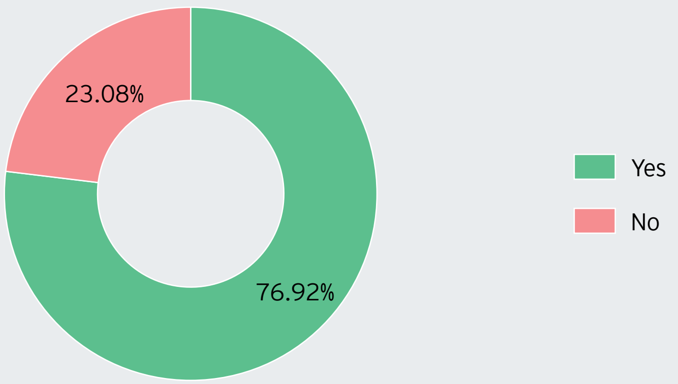
For the purposes of this report, a survey has been conducted amongst financial and strategic investors to gauge their expectations and experience of the insolvency resolution process under the Code. The results of the survey have been captured as under:

Preferred mode of investment in Indian Distressed Asset market

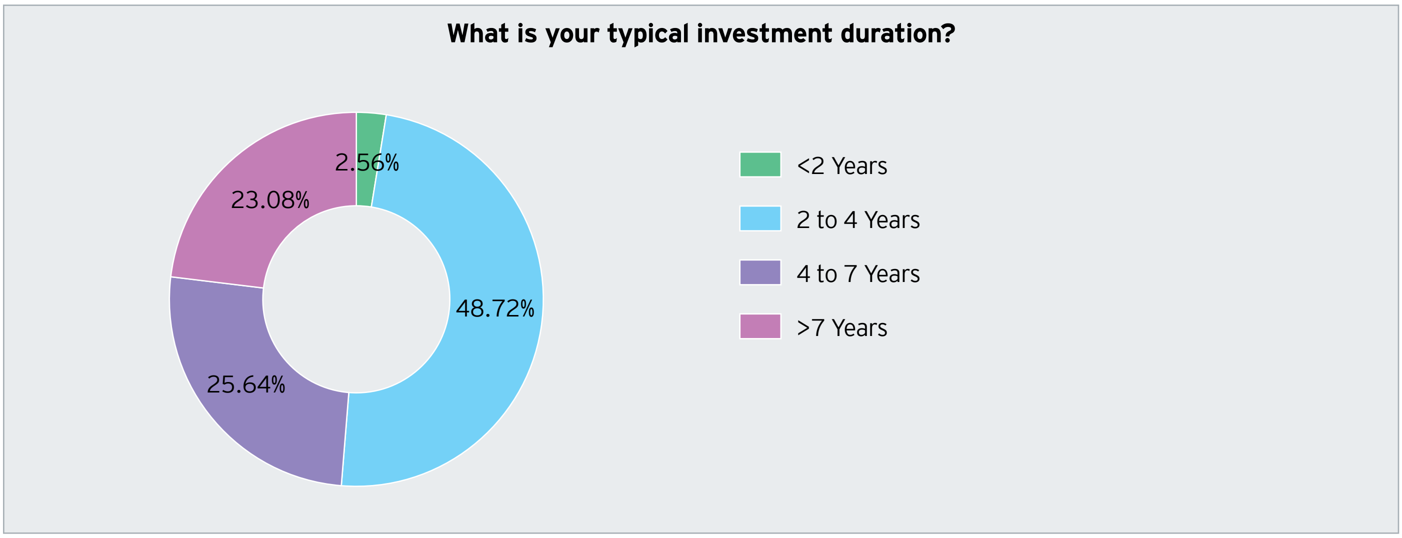


The results of the survey show that investors still prefer to invest in the stressed asset market with a one-time settlement with the existing creditors and submitting a resolution plan under the Code

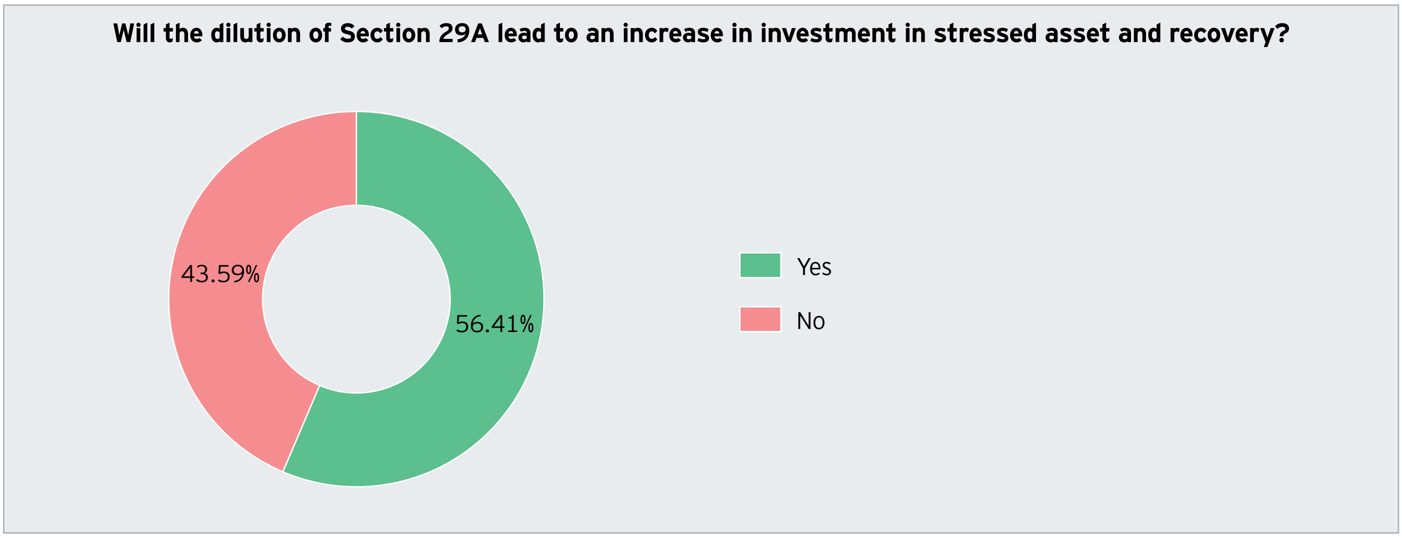
Will the applicability of the pre-pack insolvency resolution on larger corporates promote investment in stressed assets?



The respondents by an overwhelming majority (~77%) are of the view that the applicability of the pre-pack insolvency resolution process on larger corporates (presently only applicable only on MSMEs) will promote investment in the stressed assets. Such applicability may also allow faster resolution, reduce cost and reduce case load of the overburdened NCLTs and also allow eligible promoters to submit resolution plans and at the same time retain control over companies.

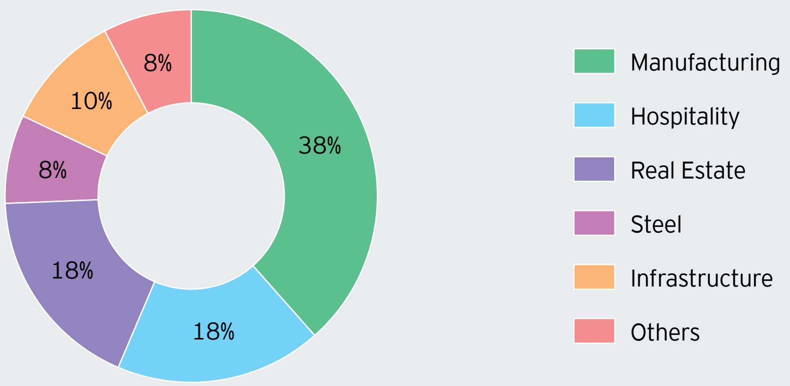


~49 % of the respondents submitted that their typical investment duration in the stresses assets is 2-4 years.



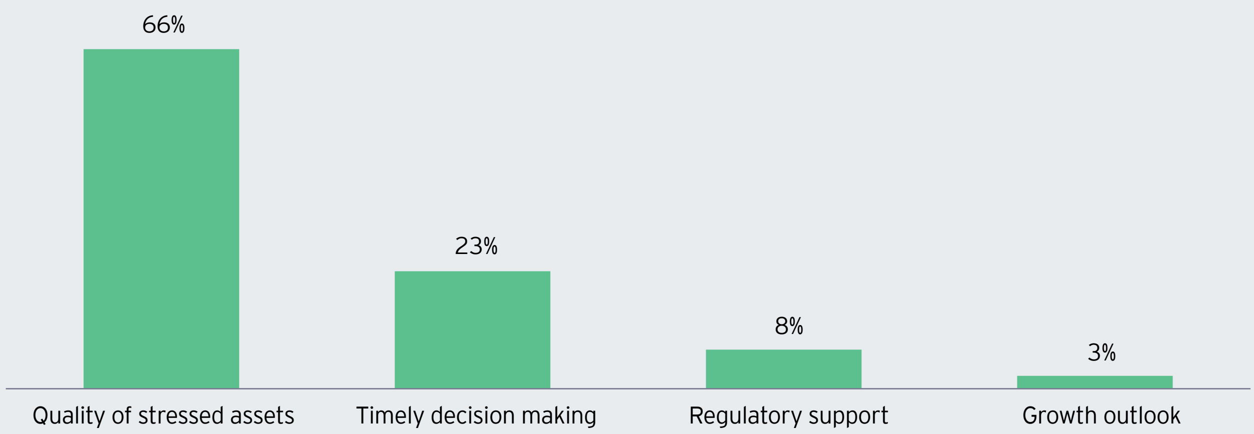
By a tinymargin, the respondents have submitted that a dilution of Section 29A will lead to an increase in investment in stressed assets. This evidences that there is still a divide on the applicability of Section 29A in its present form. Nearly 56% of the respondents still feel that Section 29A in its present form should be retained.

Most preferred sector by you for investment in distressed asset for the next 24 months



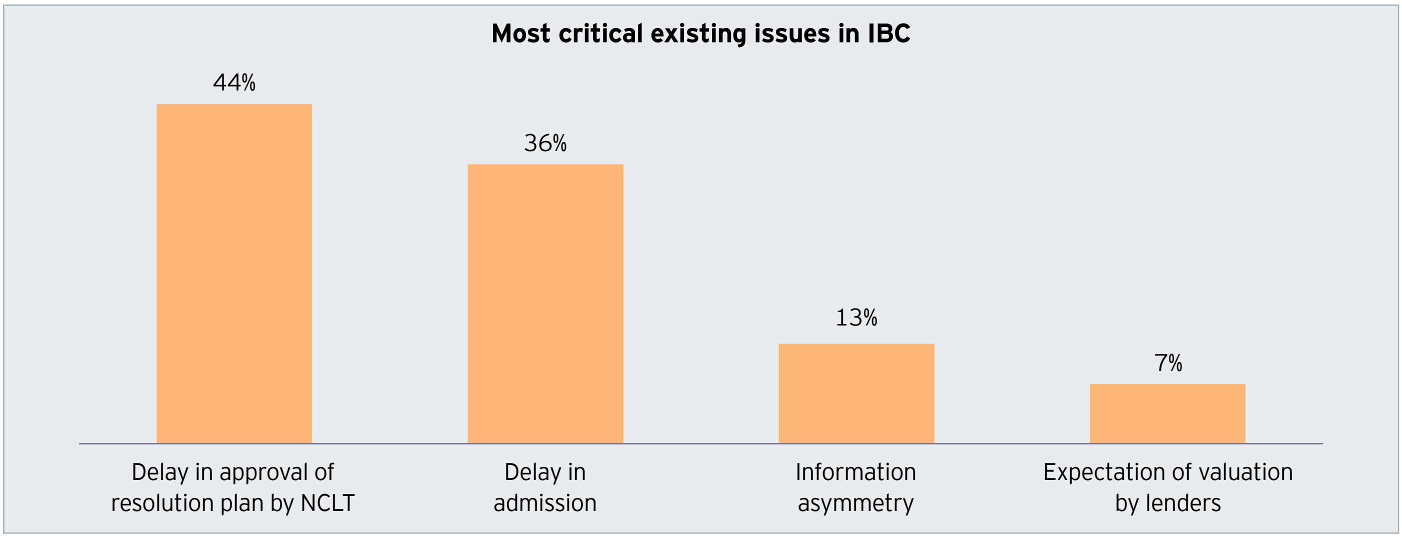
The respondents have submitted that the most preferred sector for investment in stressed assets is manufacturing (38%). If we include the steel sector in manufacturing, the total will increase to ~46%. The results are in line with the data provided by IBBI in its June 2022 newsletter, which indicates that ~35% of the CIRPs are ongoing in the manufacturing sector and that 51% of the CIRPs resolved as on June 2022 also pertain to manufacturing sector. The preferred sector for investment after manufacturing sector is followed by the real estate and hospitality sector (18% each)

Important considerations while investing in Indian stressed asset market



A majority of the respondents (66%) feel that the most important consideration while investing in the stressed asset market in India is the quality of the stressed assets. This is followed by timely decision making (23%) and Regulatory Support (8%). The survey accordingly indicates the importance of preserving the value of the assets of the Corporate Debtor which can only be done by taking timely recovery actions and in case CIRP has been initiated, the same should be conducted in a timely manner to ensure that the assets of the CD do not deteriorate further.

Issues arising as a result of Information asymmetry (33%) and regulatory landscape (33%) have been identified as most challenging while making an in investment in the stressed asset market in India. Incidentally, the BLRC noted, "The professional will manage the resolution process of negotiation to ensure a balance of power between the creditors and debtor and protect the rights of all creditors. **The professional will ensure the reduction of asymmetry of information** between creditors and debtor in the resolution process". The survey results indicate that urgent steps need to be taken to address such market concerns to ensure the development of the stressed asset market in India.

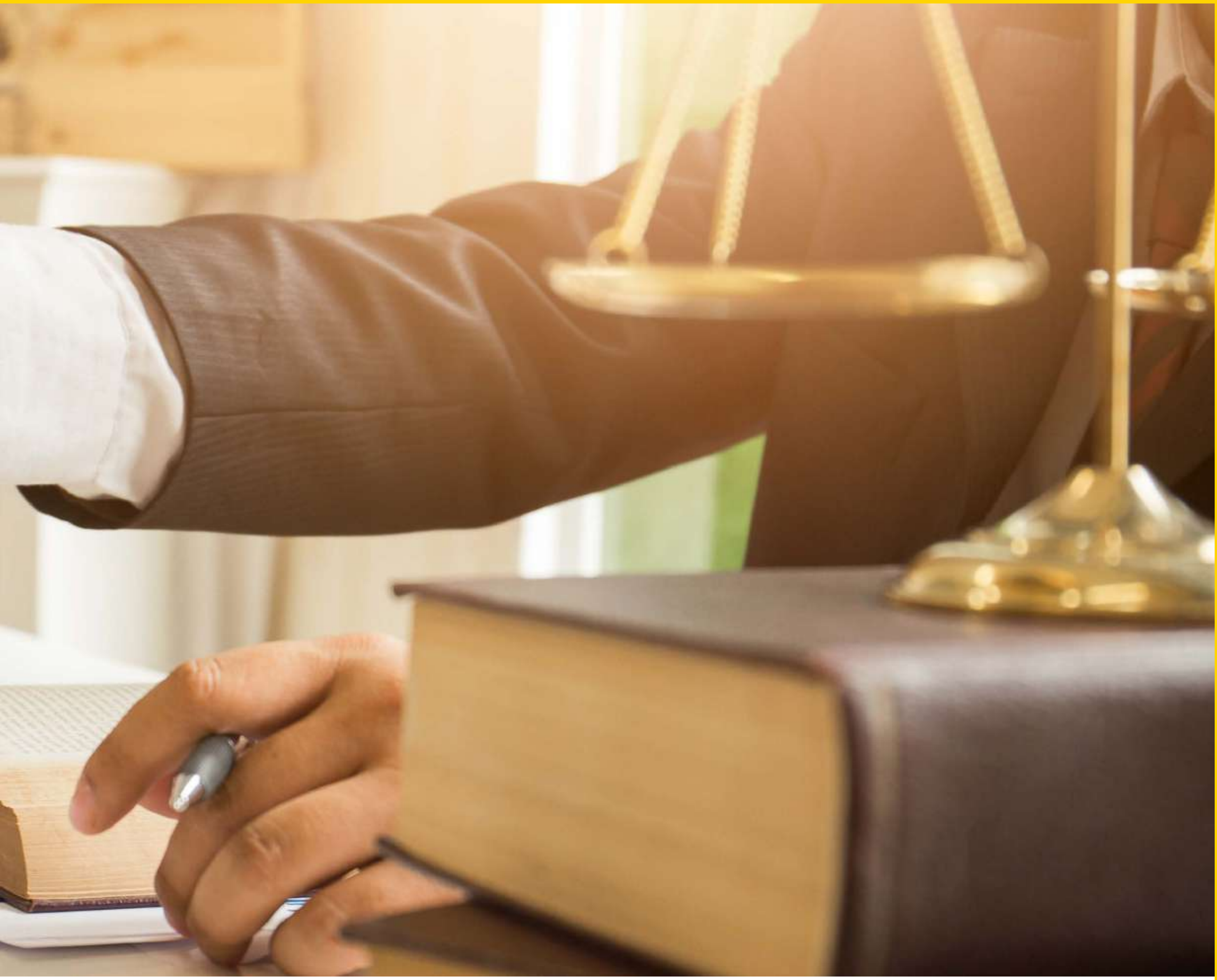


The delay in approval of a resolution plan (44%) and delay in admission of CIRP (36%) have been identified as the most critical issues having an adverse effect on insolvency resolution. The Standing Committee on Finance in its 32nd Report noted that 71% cases pending for more than 180 days are an indicator of deviation from the original objectives of the Code intended by the Parliament. Additionally, the Insolvency Law Committee, 2022 noted that delays have been observed in the disposal of resolutions plans submitted to the AA. As per the NCLT, 21,089 cases were pending with NCLT benches as on 31 Jan 2022, which included 13,188 cases under Insolvency and Bankruptcy Code (IBC), 1,107 cases of Merger and Amalgamation (M&A), and 6,794 other cases.

06

Select judicial precedents

investor perspective



CIRP admission

1. **Vidarbha Industries Power Limited vs. Axis Bank Limited, Supreme Court (22 September 2022)**
   - In the case of an application by an FC, the AA has to examine the expedience of initiation of CIRP, taking into account all relevant facts and circumstances, including the overall financial health and viability of the CD.
   - Default as a solitary condition is not sufficient for admission of an insolvency application. AA has to consider the grounds made out by the CD against admission, on its own merits.
2. **Vipul Himatlal Shah & Anr. vs. Teco Industries & Anr., NCLAT (18 May 2022)**
   - Reg 21 of the IU Regulations, 2017 provides that once an e-mail is sent to the Debtor regarding the information of default or a reminder thereon, there is a three-strike rule and if the debtor does not respond even after three reminders, the information available with the IU is deemed to be authenticated and verified.
   - The NCLAT observed that since the debtor did not respond even after three reminders, the information of default was deemed to be authenticated. It further noted that CD did not take any action under Grievance Redressal Policy under IU Regulations to set the record straight in case it found it to be incorrect. The NCLAT accordingly observed that based on the facts and analysis, they were inclined to hold that the CD cannot deny the existence of a financial debt as defined in the IBC
   - In case the record of Information Utility shows that there is a debt which is in default, the Adjudicating Authority or the Appellate Authority are not required to further examine the record maintained by the Information Utility.

Commercial wisdom of CoC

1. **Vallal RCK vs. M/s. Siva Industries and Holdings Limited and Ors. Supreme Court (3 June 2022)**
   - The provisions under Section 12A of the IBC have been made more stringent as compared to Section 30(4) of the IBC. Whereas under Section 30(4) of the IBC, the voting share of CoC for approving the Resolution Plan is 66%, the requirement under Section 12A of the IBC for withdrawal of CIRP is 90%
   - When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stakeholders to permit settlement and withdraw CIRP, the AA or the NCLAT cannot sit in an appeal over the commercial wisdom of CoC.

Resolution plan / bidding under liquidation

1. **State Tax Officer vs. Rainbow Papers Limited, Supreme Court (6 September 2022)**
   - SC observed that there may be situations where security interest may be created by an operation of law – for example, in case of statutory dues where the law creates a security interest.
   - In this case, the SC held the claimant of statutory dues, viz. the government department to be a secured creditor for the purposes of determining distribution under Section 53 of the Code.
   - If a company is unable to pay its debts, which should include its statutory dues to the government and/ or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in section 53 of the Code.
2. **Sunil Kumar Jain and Ors. vs. Sundaresh Bhatt and Ors. Supreme Court (19 April 2022)**
   - The SC held that when the CD is being managed as a going concern during the CIRP period, the wages/ salaries of such workmen/employees who actually worked during that period shall be included in the CIRP costs. In case of liquidation of the CD, dues towards the wages and salaries of such workmen/ employees who actually worked when the CD was a going concern, are entitled to have the first priority and must be paid in full as per section 53(1)(a) of the Code.
3. **M/s. Visisth Services Limited Vs. S. V. Ramani & Ors. NCLAT (11 January 2022)**
   - The Bidder is bound by the terms and conditions of the Bid document and no communication to the Liquidator stating that it is a conditional offer, is

sustainable. If the Appellant had any apprehensions and conditions about the liabilities, the Appellant could have exercised their choice of not participating in the Bid. Having participated, the Appellant cannot propose certain conditions subsequent to their participation and putting in their bid.

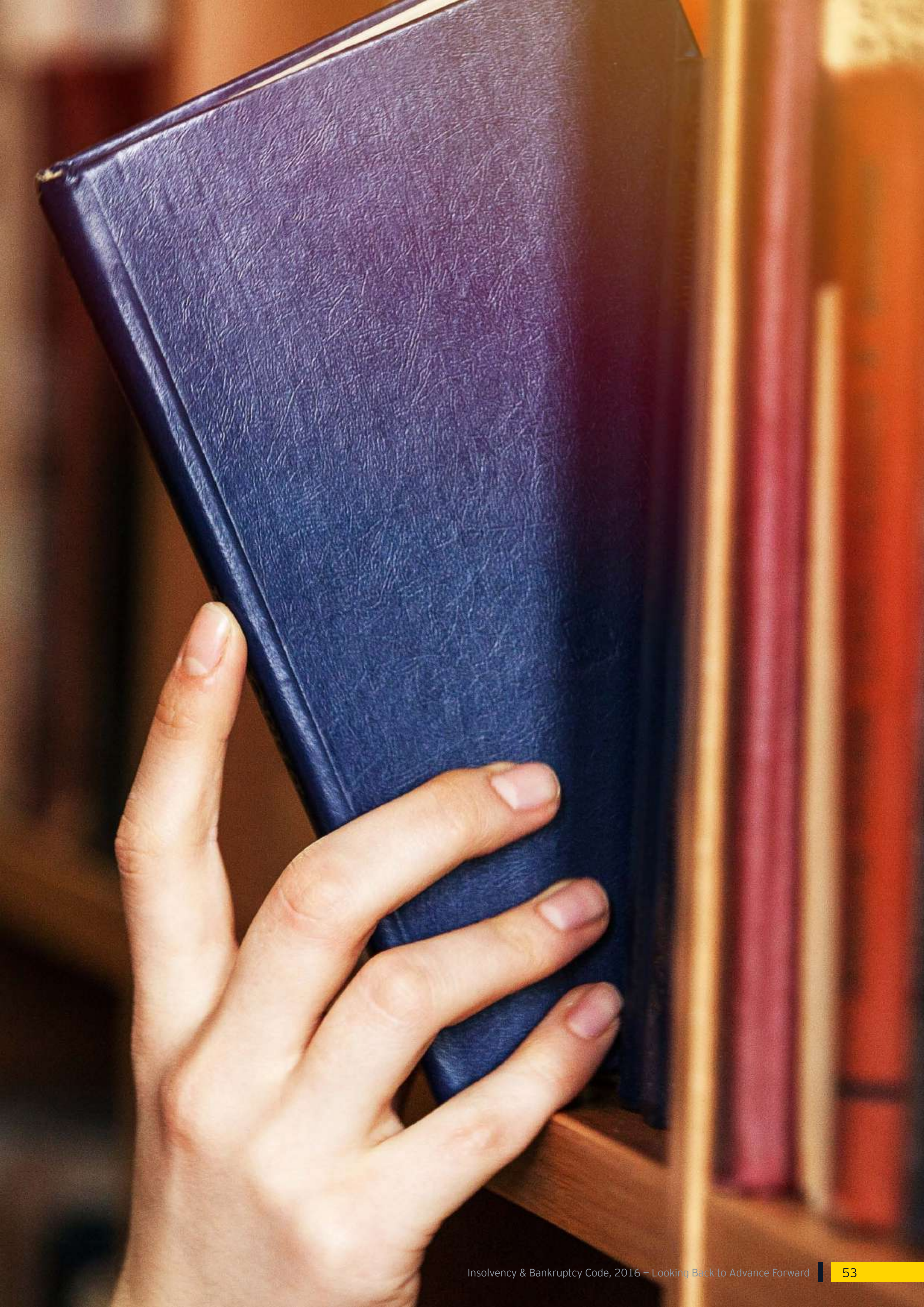
4. **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr. Supreme Court (13 September 2021)**
    - The resolution plan even prior to the approval of the AA is binding inter-se the CoC and the successful resolution applicant.
    - Common law remedies of withdrawal or modification on account of frustration or force majeure are not applicable to CoC approved resolution plans owing to the nature of the IBC.
    - A conditionality which allows for further negotiations, modification or withdrawal, once the resolution plan is approved by the CoC would only derail the time-bound process envisaged under the IBC.
    - A resolution applicant, after obtaining the financial information of the CD through the IU and perusing the IM, is assumed to have analyzed the risks in the business of the CD and submitted a considered proposal. A submitted resolution plan is binding and irrevocable as between the CoC and the successful resolution applicant.
    - The NCLT and NCLAT should be sensitive to the impact of delays on the insolvency resolution process and be cognizant that adjournments hamper the efficacy of the judicial process.
5. **Deputy Commissioner, CGST Kalol, Gujrat vs. M/s Gopala Polyplast Ltd NCLAT (16 July 2021)**
    - The approved resolution plan is binding on the central government, state government, any local authority, Guarantors and other stakeholders.
    - Sufficiency or insufficiency of the amount is matter of commercial decision of the Committee of Creditors.
6. **Jet Aircraft Maintenance Engineers Welfare Association vs. Ashish Chhawchharia Resolution Professional of Jet Airways (India) Ltd. & Ors. NCLAT**
    - Employees are entitled to receive the full amount of provident fund till the insolvency commencement date. Thus, successful resolution applicant is to make payment of amount of provident fund payable to the employees till the insolvency commencement date in full.
    - Any amount already deposited toward provident fund dues for workforce and employees, with the EPFO cannot be utilized by the resolution applicant as a means to pay pre-ICD PF dues.
    - Workmen and employees are entitled to gratuity payments, due to them before the insolvency commencement date. Gratuity payment under the provisions of Payment of Gratuity Act, 1972 is confined only to the date of insolvency commencement date and Successful Resolution Applicant is also liable to make the said payment.
    - The non-payment of full provident fund amount to the workforce and employees and the gratuity payment till the insolvency commencement date amounts to non-compliance of provisions of Section 30(2)(e) of the Code.
7. **Potens Transmissions & Power Pvt. Ltd vs. Gian Chand Narang NCLAT (12 May 2022)**
    - Under the Liquidation regulations, the 90 days' period provided for making the payment towards consideration is the maximum period under which the Auction Purchaser has to make the deposit. The 2nd Proviso of Item 12 of Schedule I provides that sale shall be cancelled if the payment is not received within 90 days.
    - When the consequence of non-compliance of the provision is provided in the statute itself, the provision is necessary to be held to be mandatory. Item 12 provides that payment is to be made within 90 days and with interest after 30 days at the rate of 12 percent. On the non-compliance of the 2nd proviso, the sale shall be cancelled if the payment is not received within 90 days.
8. **Association of aggrieved Workmen of Jet Airways (India) Limited v. Jet Airways (India) Ltd., Represented by Shri Ashish Chhawchharia Resolution Professional & Ors NCLAT (20 January 2022)**
    - The resolution plan cannot be made available to anyone who has no genuine claim or interest in the process.
    - However, the appellant is entitled for the relevant part of the resolution plan relating to the claim of the workmen and employees. The NCLAT directed that the resolution plan which deals with claim of workmen and employees should be provided to the Appellant by successful resolution applicant

Real estate

1. **Anand Murti vs. Soni Infratech Private Limited & Anr. Supreme Court (27 April 2022)**
   - While considering the undertaking given by the Promoter and the fact that there are only seven out of the 452 homebuyers, opposed the Settlement Plan, the NCLAT observed that it will be in the interest of the homebuyers that the promoter is permitted to complete the project.
   - The SC noted that the promoter has agreed that the cost of the flat will not be escalated and has also given the timeline within which the project would be completed. The promoter has also undertaken to refund the amount paid by the seven objectors, if they so desire.
   - The SC found that there is every possibility that if the CIRP is permitted, the cost that the homebuyers will have to pay could be much higher. The Promoter was permitted to complete the project, and the IRP was directed to submit quarterly reports to the NCLAT

Extinguishment of past dues / pre-CIRP liabilities

1. **Eastern Power Distribution Company of Andhra Pradesh Limited Vs. Maithan Alloys Limited & Ors. NCLAT (26 May 2022)**
   - The appellant claimed payment of the entire pre-CIRP and post-CIRP dues from successful auction purchaser in liquidation. This position, if accepted, will be in contravention of IBC.
   - Payment of creditors including operational creditors, i.e., electricity supply provider, shall be dealt with as per the resolution plan or liquidation, as the case may be.
2. **Bhatpara Municipality vs. Nicco Eastern Pvt. Ltd. & Ors. NCLAT (22 November 2022)**
   - The outstanding dues of the property tax relating to the period prior to sale confirmation are dues that are akin to claims of an unsecured creditor (Bhatpara Municipality in the present case) and should be discharged in terms of the distribution waterfall prescribed in Section 53 of the Code.
   - The auction purchaser cannot be held liable to pay any such dues relating to the period prior to confirmation of sale.
3. **Piramal Capital & Housing Finance Ltd. vs. The Administrator, Dewan Housing Finance Corporation Ltd & Anr. NCLAT (12 July 2021)**
   - All the dues including the statutory dues owed to the central government, any state government, or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues can continue for the period prior to the date of approval of the plan by the Adjudicating Authority.
4. **Ghanashyam Mishra and Sons Pvt. Ltd. Through Authorized Signatory vs. Edelweiss Asset Reconstruction Company Ltd. Through the Director & Ors. Supreme Court (13 April 2021)**
   - Once a resolution plan is duly approved by the AA, the claims as provided in the resolution plan shall stand frozen and will be binding on the CD and its employees, members, creditors including the central government, any state government or any local authority, guarantors and other stakeholders.
   - On the date of approval of resolution plan by the AA, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not part of the resolution plan.
   - Consequently, all the dues including the statutory dues owed to the central government, any state government, or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the AA grants its approval.



Abbreviations

AA	Adjudicating Authority
AIF	Alternate Investment Fund
ARC	Asset Reconstruction Company
BLRC	Banking Law Reform Committee
BIFR	Board of Industrial and Financial Reconstruction
CD	Corporate Debtor
CIRP	Corporate Insolvency Resolution Process
CoC	Committee of Creditors
DRTs	Debts Recovery Tribunals
FC	Financial Creditor
FSP	Financial Service Provider
GDP	Gross Domestic Product
GNPA	Gross Non-Performing Assets
IDRCL	India Debt Resolution Company Ltd.
IIG	India Investment Grid
IM	Information Memorandum
IU	Information Utility
IMF	International Monitory Fund
IBC/Code	Insolvency and Bankruptcy Code,2016
IBBI	Insolvency and Bankruptcy Board of India
ILC	Insolvency Law Committee
IEOI	Invitation for Expression of Interest
IPs	Insolvency Professionals

LV	Liquidation Value
M&A	Merger & Amalgamation
MSME	Medium, Small and Micro Enterprises
NARCL	National Asset Reconstruction Company Limited
NCLT	National Company Law Tribunal
NCLAT	National Company Law Appellate Tribunal
NBFC	Non-Banking Financial Company
NoC	Non-Objection Certificate
NPA	Non-Performing Assets
OC	Operational Creditor
PPIRP	Pre-packaged Insolvency Resolution Process
PF	Provident Funds
RA	Resolution Applicant
RBI	Reserve Bank of India
RFRP	Request for Resolution Plan
RP	Resolution Professional
SCB	Scheduled Commercial Bank
SSF	Special Situation Funds
SDR	Strategic Debt Restructuring Scheme
SC	Supreme Court
S4A	Sustainable Structuring of Stressed Assets
U/S	Under Section

About ASSOCHAM

The Associated Chambers of Commerce & Industry of India (ASSOCHAM) is the country's oldest apex chamber. It brings in actionable insights to strengthen the Indian ecosystem, leveraging its network of more than 4,50,000 members, of which MSMEs represent a large segment. With a strong presence in states, and key cities globally, ASSOCHAM also has more than 400 associations, federations, and regional chambers in its fold.

Aligned with the vision of creating a New India, ASSOCHAM works as a conduit between the industry and the Government. The Chamber is an agile and forward-looking institution, leading various initiatives to enhance the global competitiveness of the Indian industry, while strengthening the domestic ecosystem.

With more than 100 national and regional sector councils, ASSOCHAM is an impactful representative of the Indian industry. These Councils are led by well-known industry leaders, academicians, economists and independent professionals. The Chamber focuses on aligning critical needs and interests of the industry with the growth aspirations of the nation.

ASSOCHAM is driving four strategic priorities - Sustainability, Empowerment, Entrepreneurship and Digitisation. The Chamber believes that affirmative action in these areas would help drive an inclusive and sustainable socio-economic growth for the country.

ASSOCHAM is working hand in hand with the government, regulators, and national and international think tanks to contribute to the policy making process and share vital feedback on implementation of decisions of far-reaching consequences. In line with its focus on being future-ready, the Chamber is building a strong network of knowledge architects. Thus, ASSOCHAM is all set to redefine the dynamics of growth and development in the technology-driven 'Knowledge-Based Economy. The Chamber aims to empower stakeholders in the Indian economy by inculcating knowledge that will be the catalyst of growth in the dynamic global environment.

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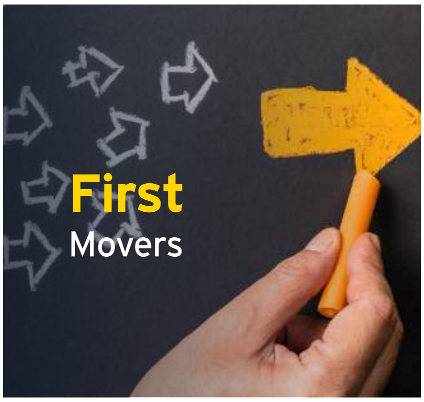

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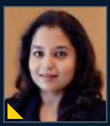

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