

A STUDY ON EFFICACY OF IBC OVER OTHER DEBT RECOVERY CHANNELS – WITH SPECIAL REFERENCE TO RECOVERY OF NPA'S OF SCHEDULED COMMERCIAL BANKS IN INDIA

Dr.N.L.Vijaya*
Dr.S.Muralidhar**

ABSTRACT

In our country, the existing legal and institutional mechanism for handling debt default, either through the Indian Contract Act, 1872 or through special laws like the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, or Enforcement of security interest under the SARFAESI Act, 2002 has not effectively exercised by the lenders. The measures taken under the Sick Industrial Companies (Special Provisions) Act, 1985 and winding up provisions of the Companies Act, 1956 also not yielded the expected result in terms of recovery of Non-performing assets by the banks/Financial institutions or achieved quick restructuring of default firms. In this context, a milestone improvement is implementation of IBC, 2016. It has emerged as single law to address insolvency and bankruptcy by merging various laws. IBC, 2016 covers individuals, partnerships, partnership firms companies and other legal entities as may be notified except financial service providers. It is aimed towards establishing an overarching framework to ease the winding up of the business or engineering a turnaround or exit. The code aims at insolvency resolution in a less time frame by insolvency professionals appointed for the purpose. The aim of this study is to research the efficacy of IBC, 2016 over other recovery modes and legislations on recovery of Non-performing assets of SCBs in India.

Keywords: IBC 2016, Insolvency, Bankruptcy, Liquidation, NCLT, DRT.

Introduction

The banking sector in India plays a vital role in transmitting monetary policy impulses to the financial system. Lending by the banks usually encouraged because the funds has to be transferred from the banking system to productive purposes, which ends up into economic progress. But lending also associated with credit risk which arises from the default of the borrower. Non recovery of loans with interest forms a major hurdle in the process of credit cycle. These non recovery of loans affect the bank's liquidity and profitability on an outsized scale. Accumulation of larger amount of NPAs in commercial banks in India over a decade led the RBI to introduce the IBC, which took timely corrective measure to scale back recovery time either through insolvency resolution process or liquidation. IBC, 2016 was introduced through an act of Indian Parliament in the year 2015 and it was passed by Parliament on 11th may 2016. The code received the approval of the president of India on 28th may 2016 and the same day it was notified in the Gazette of India. IBC, 2016 is a merged enactment of varied code, which provides a single window clearance system of all earliest Acts.

Applicability

The provisions of the Code shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of the subsequent entities:

- Any company incorporated under the businesses Act, 2013 or the other previous law.
- The other company which is governed by any legislative act
- Indebtedness Partnership incorporated under the indebtedness Partnership Act, 2008
- Partnership firm whether registered or not under the Partnership Act, 1932
- A person Person.

* Associate Professor of Commerce, Govt. College for Women, Kolar, Karnataka, India.

** Associate Professor of Commerce, Govt. First Grade College, Kolar, Karnataka, India.

Exceptions: IBC shall not apply to financial service providers like- Banks; Financial Institutions; and Insurance companies.

History

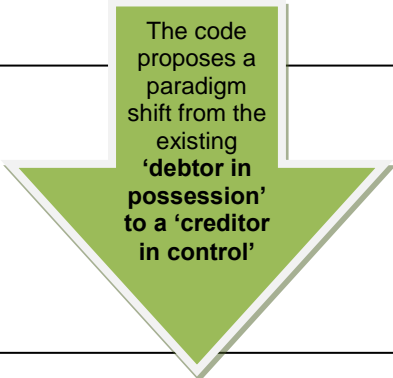
- Presidency Towns Insolvency Act, 1909
- Provincial Insolvency Act, 1920
- Indian Partnership Act, 1932
- Companies Act, 1956
- Sick Industries Companied Act, 1985
- Recovery of debts due to Banks & Financial Institutions Act, 1993
- SARFAESI Act, 2002
- Companies Act, 2013
- Insolvency & Bankruptcy Code, 2016

Evolution of the Code

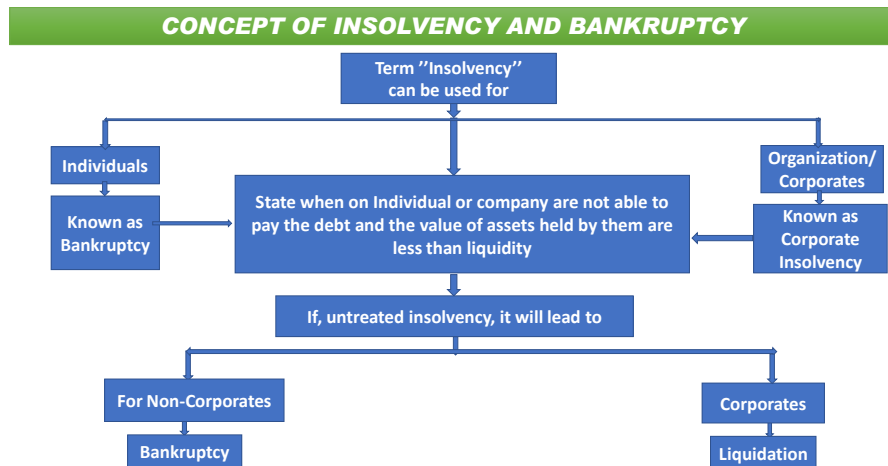
Evolution Of The Code

- Tiwari Committee 1981 SICA
- 1991 – Narasimhan Committee RDDBFI
- 1998 – Narasimhan Committee SARFAESI Act 2002
- Bankruptcy Law Reforms Committee Report – 2015
- LokSabha and RajyaSabha May 2016
- President Assent 28th May 2016 – IBC 2016

The code proposes a paradigm shift from the existing 'debtor in possession' to a 'creditor in control'



Concept of Insolvency and Bankruptcy



Distinguished Features of IBC, 2016

- **Comprehensive Law:** It is an extensive law which envisages and regulates the process of insolvency and Bankruptcy of all the entities which are enlisted in the code.
- **No multiplicity of law:** IBC is a single platform which provides reliefs pertaining to recovery of debts and insolvency.
- **Low time resolution:** The insolvency resolution process under IBC for the entities mentioned in the code should be completed within stipulated time (180+90=270 days), which ensures less time frame.

- **One window clearance:** The code provides a facility that allows the applicant to get the appropriate relief from the single authority with respect to insolvency resolution or winding up and liquidation. Mention of one window clearance was absent in earlier enactments.
- **Clarity within the process:** The code provides for a well defined process with respect to the insolvency and bankruptcy.
- **One chain authority:** The code has one chain authority which does not allow even civil courts to interfere in the pending process before the AA (Adjudicating Authority), which avoids multiplicity of litigation.
- **Priority to the interest of workmen and employees:** Interest of the employees and workmen is protected in the Act which ensures priority while distribution of debtor's assets during liquidation process towards payment of workmen under pension fund, provident fund and gratuity.
- **New regulatory agency:** It provides for constitution of a new regulatory authority IBBI (INSOLVENCY AND BANKRUPTCY BOARD OF INDIA) to administer resolution professionals, agencies and information utilities who are to be engaged in insolvency resolution process of various entities.
- **Promote entrepreneurial activity:** The code promotes entrepreneurial activity in India due to its rejuvenation mechanism and quick resolution process.

Regulatory Mechanism

The IBC, 2016 applies to companies, Limited liability partnership, individuals and other mentioned entities in the code. It provides for a time-bound process to resolve insolvency. When a default in repayment occurs, creditors gain control over debtor's assets and must take decisions to resolve insolvency within 180 + 90 = 270days period (CRIP to be mandatorily completed within 330 days). To make sure continuous resolution process, the Code also assures protection to debtors from resolution claims of creditors during this period. The Code also consolidates provisions of the present legislative framework to establish a standard forum for debtors and creditors of all classes to resolve insolvency.

The Code establishes different institutions to ease resolution of insolvency. They are as under;

- **Insolvency and Bankruptcy Board of India (IBBI):** The Board will regulate insolvency professionals, insolvency professional agencies and information utilities set up under the Code. The Board will contain representatives of RBI, Ministries of Finance, Corporate Affairs and Law.
- **Adjudicating authorities (AA):** The proceedings of the resolution process are to be adjudicated by the National Companies Law Tribunal (NCLT), for companies; and the Debt Recovery Tribunal (DRT), for individuals. The duties of the authorities will include approval to initiate the resolution process, appoint the insolvency professional, and approve the ultimate decision of creditors.
- **Insolvency Professional Agencies (IPA):** The insolvency professionals are registered with insolvency professional agencies. The agencies conduct examinations to certify the insolvency professionals and enforce a code of conduct for his or her performance.

Functions of Insolvency Professional Agencies (IPAs)

- Regulatory Functions
 - Drafting detailed standards and codes of conduct
- Executive functions
 - Monitoring, inspecting and investigating members on a daily basis
 - Gathering information on their performance
 - Malfeasance within the conduct of IP duties
- Quasi-judicial Functions
- Addressing grievances of aggrieved parties, hearing complaints against members and taking suitable actions.

Insolvency Professionals (IP): An expert cadre of licensed professionals is proposed to be created. These professionals will administer the resolution process, manage the assets of the debtor, and supply information for creditors to help them in taking decision.

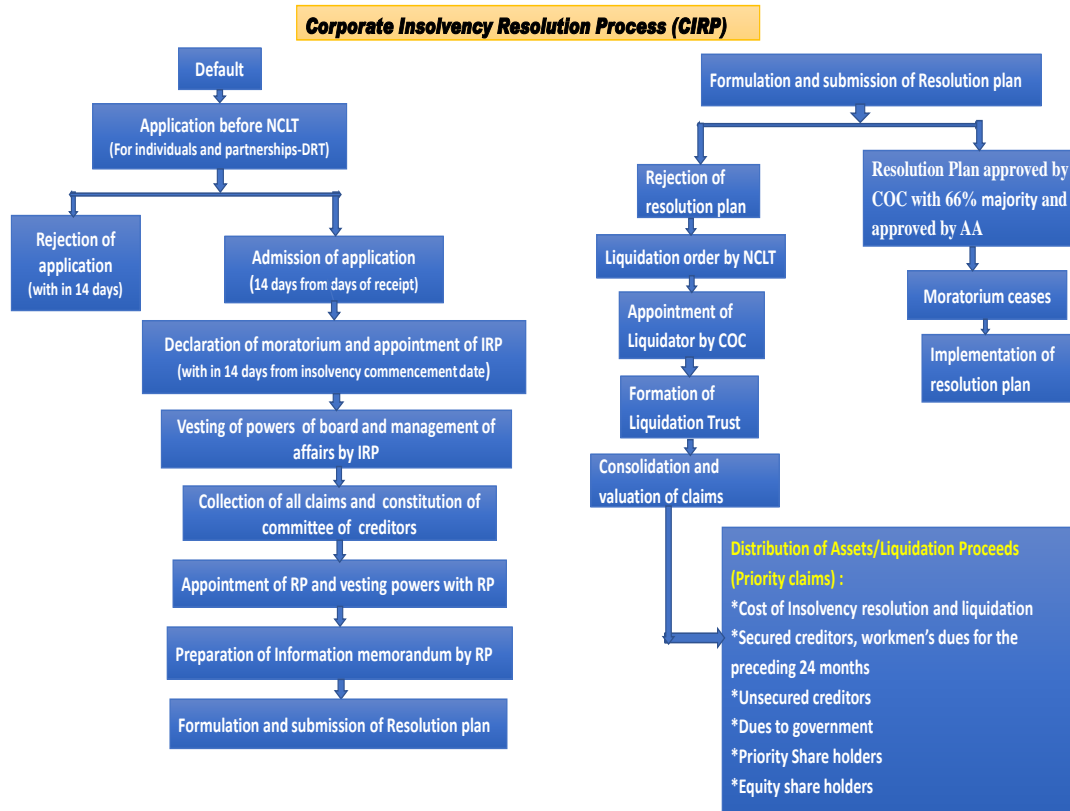
- Insolvency Professional (IP)
- Interim Resolution Professional (IRP)
- Resolution Professional (RP)

Adjudicating authorities (AA) will appoint Resolution professional (RP) as Liquidator and Insolvency Professional (IP) acts as Liquidator or bankruptcy trustee.

Information Utilities (IU): Creditors will report financial information of the debt owed to them by the debtor. Such information will include records of debt, liabilities and defaults.

Process or Procedure to Resolve Insolvency

- **Insolvency Resolution Process**
 - **Commitment of default:** Non-payment of whole/part/instalment due or not repaid by debtor/corporate debtor. IBC applies only if the amount of default is Rs.1 lakh or more. From 24th March 2020 default limit increased to Rs. 1 crore.
 - **Application with the Adjudicating Authority (AA) by;**
 - Financial Creditor (FC) – loans – Banks/FI etc
 - Operational Creditor (OC) – Trade – Purchases etc.
 - Corporate Debtor (CD) – itself
- National Company Law Tribunal (NCLT) - For Corporates, LLP and Personal guarantees related to corporate debtors.
- Debt Recovery Tribunal (DRT) - For Individuals and Partnerships.
 - **Acceptance or Rejection of Application** – 14 days from the date of receipt of application.
 - **Declaration of Moratorium and Appointment of Interim Resolution Professional (IRP):** to be appointed within 14 days from insolvency commencement date.
 - Vesting powers of Board and management of affairs by IRP.
 - Collection of all claims and Formation of Committee of Creditors (COC): Composition of COC includes all financial creditors. (Related parties of corporate debtor cannot form part of COC).
 - Appointment of RP and vesting of powers in RP
 - Preparation of Information memorandum by Resolution professional (RP)
 - Formulation and submission of Resolution Plan.
 - Plan approved by COC with 66% majority and AA
 - Moratorium ceases
 - Implementation of resolution plan: Corporate Insolvency Resolution Process (CIRP) to be mandatorily completed within 330 days from the insolvency commencement date.
- **Liquidation Process: (If Resolution plan is rejected)**
 - Liquidation order by NCLT
 - Appointment of Liquidator by COC
 - Formation of Liquidation Trust
 - Consolidation and valuation of claims
 - Distribution of Assets/ Liquidation proceeds. (Priority claims)
 - Insolvency resolution costs, including the remuneration to the insolvency professional,
 - Secured creditors, whose loans are backed by collateral, dues to workers, other employees,
 - Unsecured creditors,
 - Dues to government,
 - Priority shareholders and
 - Equity shareholders.



Literature Review

Deepak Tandon, Neelam Tandon (2019): They also opined that in spite of the fact that RBI has been taking preventive measures for the treatment of stressed assets and also swift corrective actions to improve asset quality but still the results are not very promising ones and progress has been appearing at a very slow pace. They were of the opinion that Strength and sustainability of the credit growth is the need of the hour for improving conditions of banking system in the times to come.

Srijan Anant, Aayushi Mishra (2019): The authors concluded that IBC is one of the major reforms brought about in the legal system in India. According to the author, IBC is not only giving strength to the Legal system in India but is also providing a new identification and recognition to India at the global level.

Renuka Sane (2019): Examined that the accomplishment of the IBC depends on the design of the subordinate legislation as well as the evolution of the institutional infrastructure.

Nishith Desai Associates (2019): The regulatory and supervisory body has been doing a noteworthy job in energetically spreading awareness. The researcher has analysed the important judgments which were pronounced during the year and opines that the intent demonstrated by corporate India in turning around loss making companies is extremely promising for the economy and the banking industry burdened by growing NPAs. The researcher has deeply focussed on 3 segments viz the Impact of IBC on Creditors and Investors, the Statutory and Regulatory Developments and finally the Judicial Developments that have taken place.

Akshaya Kamalnath (2019): Examined that in 2016, The Insolvency and Bankruptcy Code (IBC) was introduced with the prime object as a tool for efficient restructuring and rescue. The IBC model was constituted with some commendable infrastructure like dedicated company law tribunals, a dedicated regulator and strict timelines.

Objectives of the Study

- To study Insolvency & Bankruptcy code, 2016.
- To evaluate the efficacy of IBC, 2016 over other recovery modes and legislations on recovery of Non-performing Assets of Scheduled Commercial Banks in India.

Scope of the Study

Scope of the study confined to study the Corporate Insolvency Resolution Process (CIRP) under Insolvency and Bankruptcy Code, 2016 and its efficacy over other debt recovery channels with special reference to NPA recovery of Scheduled commercial banks in India.

Research Methodology

- **Source of Data:** The study is based on the secondary data where data has been collected, collated and compiled from various RBI annual reports, websites like IBBI, NCLT and DRT, books, journals, and various research papers.
- **Plan of analysis:** Four years data, since enactment of IBC, 2016 on recovery of NPAs through various channels were collected from Reserve Bank of India reports on Operations and Performance of Commercial Banks and compared NPAs recovery through IBC with other channels of recovery viz, Lok Adalats, DRTs, and SARFAESI Act, 2002, Average Recovery of NPAs through Various channels from 2016-17 to 2019-20, NPA amount recovered as % of NPA amount involved and % of Recovery made through each mode out of total NPAs recovered in each year were calculated and analysed.

Data Analysis and Interpretation

Table 1: No. of NPA cases referred, Amount involved, Amount recovered and Percentage of amount recovered as percentage of amount involved in each channel of NPA recovery for the years 2016-17 and 2017-18.

(Amt. in Crores)

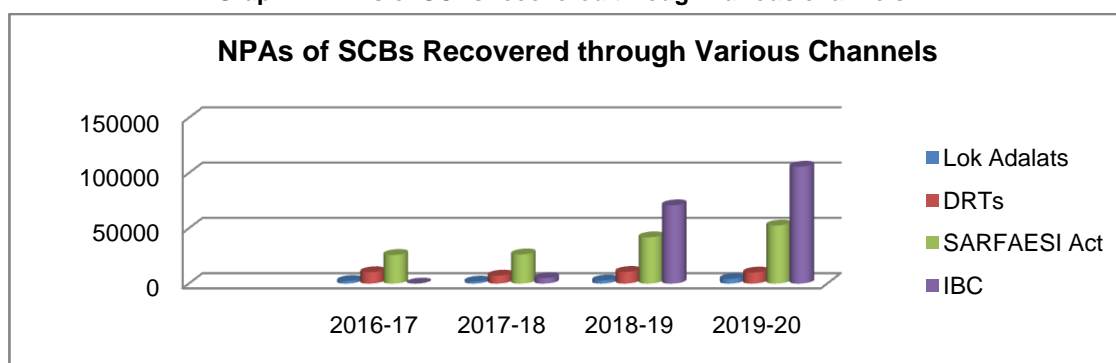
Recovery Channel	2016-17				2017-18			
	No. of cases referred	Amount involved	Amount recovered	Col. (4) as % Col. (3)	No. of cases referred	Amount involved	Amount recovered	Col. (8) as % Col. (7)
1	2	3	4	5	6	7	8	9
LokAdalats	35,55,678	36100	2300	6.3	33,17,897	45,728	1,811	4.0
DRTs	32418	100800	10300	10.2	29,345	1,33,095	7,235	5.4
SARFAESI ACT	199352	141400	25900	18.3	91,330	81,879	26,380	32.2
IBC	37	-	-	-	704	9,929	4,926	49.6
TOTAL	37,87,485	278300	38500	13.8	34,39,276	2,70,631	40,352	14.9

Table 2: No. of NPA cases referred, Amount involved, Amount recovered and Percentage of amount recovered as percentage of amount involved in each channel of NPA recovery for the years 2018-19 and 2019-20.

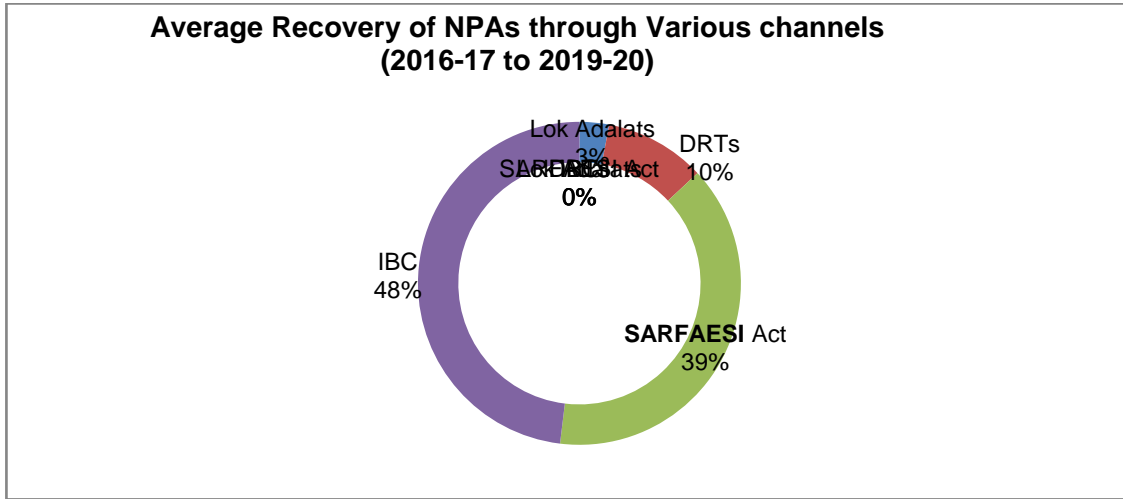
(Amt. In Crores)

Recovery Channel	2018-19				2019-20			
	No. of cases referred	Amount involved	Amount recovered	Col. (4) % of Col. (3)	No. of cases referred	Amount involved	Amount recovered	Col. (8) % of Col. (7)
1	2	3	4	5	6	7	8	9
LokAdalats	40,80,947	53,506	2,816	5.3	59,86,790	67,801	4,211	6.2
DRTs	52,175	3,06,499	10,574	3.5	40,818	2,45,570	10,018	4.1
SARFAESI ACT	2,48,312	2,89,073	41,876	14.5	1,05,523	1,96,582	52,563	26.7
IBC	1,135	1,66,600	70,819	42.5	1,953	2,32,478	1,05,773	45.5
TOTAL	43,82,569	8,15,678	1,26,085	15.5	61,35,084	7,42,431	1,72,565	23.2

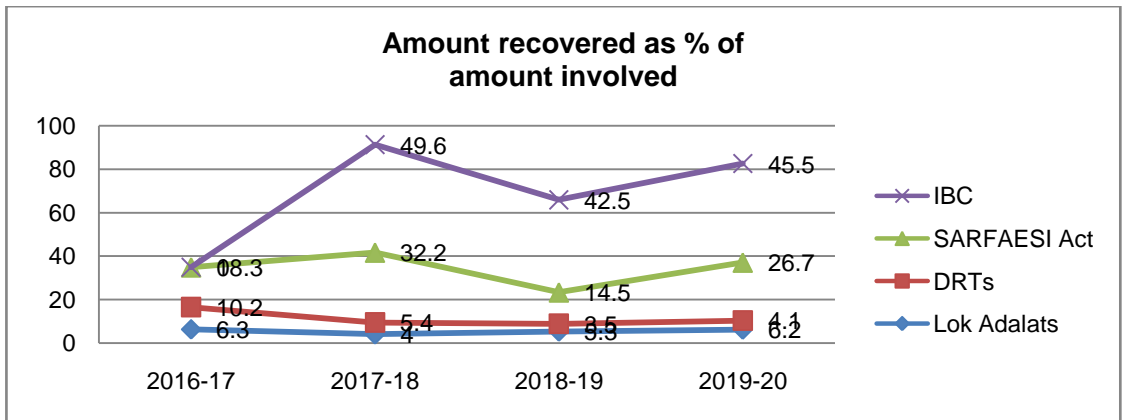
Graph 1: NPAs of SCBs recovered through various channels.



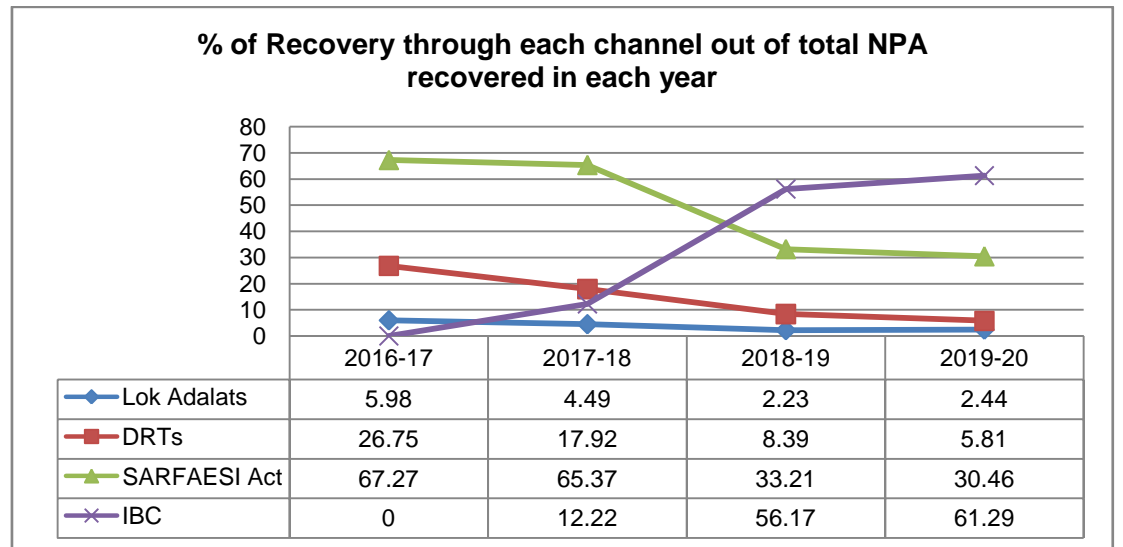
Graph 2: Average Recovery of NPAs through various channels.



Graph 3: Amount recovered as percentage of amount involved in each channel of recovery



Graph 4: % of Recovery through each channel out of total NPA Recovered in each year



Interpretation

- Recovery of Non-Performing assets (NPAs) of Scheduled commercial banks under Insolvency and Bankruptcy Code, 2016, the recovery is zero in the year of inception of the code, in 2017-18 it is 4926 crores, 2018-19; 70819 crores and for 2019-20 it is 1,05,773 crores. (Table – 5.1, 5.2 and graph 5.1)
- Average recovery of NPAs under IBC from 2016-17 to 2019-20 is 48% which is highest among all other alternative mechanisms. (Graph: 5 .3)
- NPA recoveries under IBC were more than the combined recoveries under Lok Adalat, Debt Recovery Tribunal and the SARFAESI Act during 2018-19 and 2019-20.(2018-19: IBC- 56.17% ,other modes : 43.83% and 2019-20: IBC - 61.29%, other modes - 38.71%) (Graph: 5.3)
- The study shows that as a percentage of claims, scheduled commercial banks were able to recover 45.5% of the amount involved through IBC for the fiscal year 2019-20, which is the highest as compared to recovery under other modes and legislations i.e, Lok adalat - 6.2%, DRT-4.2%, SARFAESI- 26.7% .
- As per Economic Survey, 2021: Statistics of resolution under the IBC reveal that;
- As on December 2020, 308 corporate debtors having 4.99 lakh crore dues to their creditors successfully completed resolution process.
- Out of 1.03 lakh realisable value of the assets of these corporate debtors, Creditors were able to recover 1.99 lakh crore, which was more than 193% of realisable value.
- According to the latest survey by the industry body FICCI and Indian Banks Association (IBA), the implementation of IBC has accelerated the recovery process of stuck loans and improved the financial condition of banks.
- Since 2016, the cases to be filed in LokAdalat and their settlement have decreased. It seems that smaller lenders are going for IBC over SARFAESI and DRT.
- Default limit under IBC was extended from rupees one lakh to rupees one crore immediately after imposition of lockdown on account of corona pandemic to make sure the insolvency proceeding should not be initiated for smaller defaults.
- Government of India has imposed moratorium on fresh initiation under IBC starting from 25th march 2020 for one year to guard companies affected by covid-19.
- NPA cases of 1 lakh rupees, operational corporate creditors are filing suit in NCLT. Due to this NCLT is not able to settle large NPA accounts in a timely manner.
- Currently there is no cross border insolvency framework.
- “Re-impose moratorium on taking companies to NCLT under IBC in wake of 2nd Covid-19 wave”: Assocham (The Associated Chambers of Commerce and Industry of India) Industry body on Friday April 16th 2021 demanded the Government of India to re-impose moratorium on IBC initiative.

Conclusion and Suggestion

IBC, 2016 is an economic reform, prior to its enactment; the legal and institutional mechanisms to address the problem of debt default were ineffective and does not sink with global best practices. Creditors initiation for recovery of dues using available statutes were time consuming and did not yield the desired results. The code not only maximises the value of the assets of debtors but also promotes entrepreneurship, balances the interest of all stakeholders in a given time frame. Since the inception of the code till December, 2020, 308 CIRPs having 4.99 lakh crores dues to their creditors were successfully resolved, creditors recovered 1.99 lakh crores out of 1.03 lakh crores which was 193% of realisable value of the assets of these corporate debtors. The release of blocked invaluable funds could be transmitted by the banks to the economy through further lending thereby achieving growth of our country.

But, after implementation of measures to tackle the pandemic crises all the initiative under IBC were stopped by the Government. A report released by Reserve bank of India on 29th December 2020, also mentioned its concern regarding sharp deterioration in asset quality of banks due to uncertainty caused by the pandemic and its actual monetary impact after slow rollback of the measures taken to deal with covid-19 crises. From the study it is concluded that, In order to continue to enjoy the benefits of the Code, sustained constructive impact on NPA recovery and its efficacy over other recovery modes and legislations, it may be imperative to revoke the suspension of the Code at an early date by the Government.

In a normal social-economic condition, when other things remain constant, Insolvency and Bankruptcy Code would be an effective instrument for reducing the NPA and increasing the recovery rate. Soon after the end of the COVID19 pandemic crisis, the economy will recover and the economic activities would return back to normalcy. The Government's policy would also be changed and thereby allowing the IBC to be initiated effectively on a full swing and empowering the Banking Institutions in reducing the NPA and enhancing the productive loans and thereby contributing to the Economic Growth and Development. Routing the financial resources to the constructive purposes in a judicial way is the long term goal of IBC. It will enable the economy to achieve the long term mission of achieving the Socio-Economic Equality and encourage the Banking institutions to fund potential Entrepreneurs, and Capable Industries. Insolvency and Bankruptcy Code has brought Paradigm Shift in the Indian Financial Sector, more particularly among the Scheduled Commercial Banks. Hope, in future, the Indian Commercial Banks will raise from sickness and march towards the Progress with a float called IBC.

References

1. Deepak Tandon (2019), "Ballooning Non-Performing Assets in Indian Banking and Insolvency and Bankruptcy Code: Resolution Plans and Cases", International Journal of Political Activism and Engagement, Volume 6, Issue 1, January-March 2019
2. Srijan Anant and et al., "A Study Of Insolvency And Bankruptcy Code And Its Impact On Macro Environment Of India", International Journal of Engineering Development and Research, Volume 7, Issue 3 | ISSN: 2321-9939
3. Renuka Sane(2019), "The way forward for personal insolvency in the Indian Insolvency and Bankruptcy Code", No. 251, National Institute of Public Finance and Policy, January-2019
4. Nishith Desai(2019), Analysing 2018 Through the Insolvency Code And Bankruptcy Hotline January 17, 2019.
5. Valecha, Javish & Xalxo, Ankita Anupriya. (2017) "Overview of the Insolvency and Bankruptcy Code, 2016 & the Accompanying Regulations", Journal on Contemporary Issues of Law, Vol-3, Issue-4, ISSN 2455-4782, 2017.
6. Goel, Shivam. (2017) "The Insolvency and Bankruptcy Code, 2016: Problems & Challenges", Imperial Journal of Interdisciplinary Research (IJIR), Vol-3, Issue-5, ISSN: 2454-1362, 2017.
7. Wadhwa, Rakesh. (2016) "Insolvency and Bankruptcy Code", 2016" The Journal of Corporate Professionals (ICSI), Vol-46, Issue-9, ISSN 0972-1983, September 2016.
8. Balasubramanian, N. (2016) "Insolvency and Bankruptcy Code – A look from a common man's perspective", The Journal of Corporate Professionals (ICSI), Vol-46, Issue-9, ISSN 0972-1983, September 2016.
9. Sriram, G. (2016) "The Insolvency and Bankruptcy Code, 2016" ", The Journal of Corporate Professionals (ICSI), Vol-46, Issue9, ISSN 0972-1983, September 2016.
10. Athavale, M.A. & Anasingaraju Anagha. (2016) "Opportunities for Company Secretaries under the Insolvency and Bankruptcy Code, 2016", The Journal of Corporate Professionals (ICSI), Vol-46, Issue-9, ISSN 0972-1983, September 2016.

Webliography

11. www.caclubindia.com/articles/insolvency-and-bankruptcy-code-an-introduction-27031.asp
12. <http://www.ibbi.gov.in/>
13. www.rbi.org.in/scriptS/PublicationsView.aspx?id=18060
14. <https://rbi.org.in/Scripts/AnnualReportMainDisplay.aspx>
15. www.mca.gov.in/Ministry/pdf/TheInsolvencyandBankruptcyofIndia.pdf
16. <https://www.ibef.org/economy/indian-economy-overview>
17. <https://timesofindia.indiatimes.com/business/india-business/owners-settle-rs-83k-crore-bankdues/articleshow/64279946.cms>
18. <https://www.livemint.com/Companies/c17rNOIV4h5i1zTnIUfEVN/IBC-impact-MA-deals-worth-143-billion-signed-in-2-years.html>
19. https://www.ey.com/en_gl
20. <https://www.icai.org/>

