



RECOVERY MECHANISM FOR NPA WITH SPECIAL REFERENCE TO INSOLVENCY AND BANKRUPTCY CODE 2016 – AN ANALYSIS

LALIT KUMAR

PH.D. RESEARCH SCHOLAR

UGC – NET QUALIFIED

Abstract:

A formal framework for the recovery of non-performing assets (NPAs) in India was created by the Insolvency and Bankruptcy Code (IBC) of 2016, which was passed for the first time in 2016. The purpose of this study is to investigate the recovery mechanism which is described in the IBC. This mechanism is intended to overcome the difficulties that are related with the traditional recovery approaches. Creditors, debtors, insolvency professionals, adjudicating agencies, and the Insolvency and Bankruptcy Board of India (IBBI) are some of the important players that are involved in the procedure. Creditors initiate the process of bankruptcy, which ultimately results in the appointment of an insolvency professional to manage the debtor's affairs. This is the beginning of the process. A moratorium period is a period of time during which creditors are forbidden from pursuing legal action against the debtor. This allows for the design and adoption of a resolution plan. The plan is put into action in the event that it is authorized in order to either restore the debtor's business or liquidate its assets in a methodical way. Liquidation may be carried out in situations when a resolution plan cannot be reached by all parties involved. The proceeds from the liquidation are then divided to creditors in accordance with the order of priority of their claims. The recovery mechanism of the Insolvency Bankruptcy Code (IBC) offers openness, efficiency, and legal certainty, which in turn helps to foster confidence in the financial system and makes it easier to allocate resources.

keywords: Recovery, Mechanism, Npa

Introduction

A thorough framework for dealing with insolvency and bankruptcy procedures in India was provided by the Insolvency and Bankruptcy Code (IBC) of 2016, which was passed in 2016. In accordance with the Insolvency Bankruptcy Code (IBC) one of the most important methods is the recovery mechanism for Non-Performing Assets (NPAs), which is designed to

effectively alleviate the anguish that is experienced by both creditors and debtors. In accordance with the IBC, the recovery mechanism of non-performing assets (NPAs) offers a method that is both organized and time-bound for the purpose of resolving bankruptcy. The main objective of this mechanism is to maximize the value of assets and ensure that creditors are fairly distributed. This approach is intended to overcome the issues that are connected with old recovery procedures, which frequently proven to be time-consuming, inefficient, and vulnerable to delays and uncertainty. In accordance with the Insolvency and Bankruptcy Board of India (IBBI), the recovery method for non-performing assets (NPAs) involves a number of important players. These stakeholders include creditors, debtors, insolvency professionals, adjudicating agencies, and several other entities. Following the engagement of an insolvency professional to manage the debtor's affairs, the process normally begins with the creditor initiating insolvency proceedings, either individually or as part of a group. This can be done in any of these ways. Immediately following the beginning of the insolvency procedures, there is a period of moratorium during which creditors are banned from beginning or continuing any legal proceedings against the debtor. The development and approval of a resolution plan, which details the planned restructuring or liquidation of the debtor's assets, is possible during this time which provides for the formulation of the plan. A resolution plan is put into action in order to aid the resuscitation of the debtor's business or the orderly liquidation of its assets, provided that it is accepted by both the committee of creditors and the institution that is in charge of adjudicating the case. It is possible that the debtor will be forced to liquidation in the event that a resolution plan cannot be agreed upon within the allotted amount of time. The profits from the sale of assets will be distributed among the creditors in line with the order of priority of their claims. Generally speaking, the recovery mechanism of non-performing assets (NPAs) that is outlined in the IBC offers a framework that is clear, efficient, and amicable to creditors. This framework is designed to resolve bankruptcy and maximize the value of distressed assets. Through the simplification of procedures and the provision of legal assurance, the objectives of the Insolvency Bankruptcy code (IBC) are to foster trust in the Indian financial system and to make it easier to allocate capital effectively.

Literature Review

Chipalkatti and Rishi (2007) investigated the behavior of banks in India throughout the period of time from 1996 to 2002 in order to determine whether or not weaker Indian banks may have had an incentive to understate their gross non-performing assets and underprovide for loan loss provisions (LLPs) in order to increase their profitability and capital adequacy ratios (CRARs).

Gupta (2012) It has been suggested that despite the efforts of banks to manage non-performing assets (NPAs), the level of slippage is still considerable. Public sector banks are more vulnerable to the risk, but private sector banks are able to consolidate their operations via the use of technology and improved techniques.

Salunkhe et al. (2013) It has been stated that it is essential for financial institutions to maintain a low level of non-performing assets (NPAs) since this has an influence on the

profitability of the institutions. As a result, it is essential to have a robust recovery mechanism that should be properly run under the control and supervision of higher authorities.

Shaardha and Jain (2016) According to the findings of a study that investigated the procedure and effect of the SARFASEI act 2002 and its influence on the recovery of non-performing assets in public sector banks in India, it was discovered that the modification of the SARFASEI act 2002 makes it simpler to recover non-performing assets.

Khosla and Kumar (2017) revealed that the Indian banks were dealing with a problem of non-performing assets (NPAs) of more than 90,000 crores of rupees and were experiencing a loss of benefit. It was hard to find a means to cope with the situation of recouping the terrible credits since the common laws of the nation consisted of exceedingly awkward provisions.

Sengupta and Bhardhan (2017) it has been suggested that regulatory forbearance does not help to resolve the banking crisis and can instead make the situation worse by providing incentives to banks to postpone the recognition of nonperforming assets and to delay taking action towards them. The choice to restructure a loan should be made by a bank based on its commercial considerations, and the bank should not automatically be eligible for regulatory concessions in terms of delaying the reporting of nonperforming assets (NPAs).

Objectives of Paper:

1. To examine the attainment of the objective of the IBC in preventing the insolvency of corporations within a specified time frame.
2. To assess how the Insolvency Bankruptcy Code (IBC) 2016 affects the efficient conclusion of the liquidation or restructuring procedure.

Research Methodology

In this study, the research is based on a secondary study that is conducted using law, statistical data from the RBI, IBBI, and World Bank, as well as reports from the government. The data collection process is carried out using the doctrinal technique since the purpose of the Research Paper is to investigate the efficient operation of the IBC in the process of reorganization and liquidation of corporations.

B. Effective Insolvency Law:

To have a financially stable arrangement, it is necessary to have an efficient insolvency procedure. As a result, it is of the utmost importance to establish a solid framework for the reorganization and rehabilitation of corporations, in addition to a framework for winding up and liquidating the business. While acknowledging the rights of creditors and treating all stakeholders in an equal manner, the primary goal should be to protect assets and increase the value of those assets to the greatest extent possible. A prompt and comprehensive recovery of debts should also be included, in addition to the provision of cross-border bankruptcy. A balanced resolution method that allowed for prompt recovery without causing a decrease in the value of assets did not exist prior to the implementation of IBC. Earlier investigations into

corporate insolvency were conducted by the Company Law Board, which is now handled by the IBC, 2016. In the past, corporate insolvency was governed by a number of different laws, including the Companies Act of 1956, the Sick Industries Companies Act of 1985, the Recovery of Debts Due to Banks and Financial Institutions Act of 1993, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002, the Civil Procedure Code of 1909, and Lok Adalat, amongst others.

The ineffective many legislations that have been enacted to address the issue of NPA are controlled by the IBC, 2016, which is a single umbrella agreement. The recommendations submitted by the Committee have been addressed by the IBC, which are as follows:

Rehabilitation:

The Insolvency Bankruptcy Code (IBC) offers, in the first place, the possibility of successful restructuring or rehabilitation solutions for a firm that has the potential to be viable. Both the process of rehabilitation and the process of winding down corporate operations should be kept in a state of equilibrium. In the event that the operations to rehabilitate the company are unsuccessful, the decision to liquidate the firm should be made.

Liquidation

If the conditions permit a quick conversion of insolvency proceedings from rehabilitation to liquidation, or vice versa, this gives the company an opportunity to turn things around in the event that there is fraud in the processes.

The committee that conducted the study that was conducted by the World Bank in 2005 (Doing firm-India Regional Profile) found that it takes around ten years on average to wind up or liquidate a firm in India, which is comparable to the amount of time that is required in other countries throughout the world. This occurred as a result of the fact that different judicial actions overlapped with one another and there was no one legislative entity that dealt with both personal and corporate insolvencies. Not only is it advised for time-bound actions, but it is also recommended for the protection of asset value and the full recovery of obligations.

There must be a single, impartial venue for insolvency cases that is conducted in a manner that is not obtrusive. The Committee took notice of the fact that the modified Companies Act included provisions for the establishment of NCLT and NCLAT in order to deal with the rehabilitation, restructuring, and liquidation of corporate debtors under Insolvency Bankruptcy Code (IBC) 2016 . Using the waterfall method, the National Company Law Tribunal (NCLT) is a single independent statutory form of expertise that deals with insolvency law and the process of rehabilitation or liquidation. It does this while maintaining an equitable balance among all different parties.

'Insolvency and Bankruptcy Code, 2016 and Regulation made under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016' control the stage of liquidation, which begins after the failure of CIRP. This stage is governed by the regulations that were created under these regulations. "for non-compliance with the proceedings under

section 33(1)(b)," the Adjudicating Authority (NCLT) is required to reject the CIRP in accordance with section 31 of the Insolvency Bankruptcy Code (IBC). It is possible for liquidation to begin in the event that the Committee of Creditors (CoC) has agreed for liquidation in accordance with section 33(2) of the Insolvency Bankruptcy Code (IBC) , with a minimum of 66% of the voting share is required to liquidate the corporate debtor. One year from the date of initiation is the amount of time that is required to liquidate the assets of the creditor corporation.

Rehabilitative efforts are emphasized: The new rule affords a reasonable opportunity for the company to be rehabilitated prior to the beginning of the process of liquidation. Along with the National Company Law Tribunal (NCLT), the Committee of Creditors and Insolvency specialists provide assistance in restoring productivity, coordinating stakeholders, preventing needless delays, stripping asset value while safeguarding asset value, determining whether or not the firm is viable, and defending the interests of employees.

Period of time Proceeding with: Insolvency Bankruptcy Code (IBC) has devised a specific and projected time period for the process of rehabilitation and liquidation. In accordance with section 12, the Corporate Insolvency Resolution procedure (CIRP) requires individuals to finish the resolution procedure within one hundred eighty days of the date on which their application was accepted. There should be no more than 330 days in total for the process of final settlement, which means that it should not be prolonged for more than 90 days. Insolvency cases involving several companies, including "Videocon Industries, Jet Airways, Sintex Industries, and Dewan Housing Financial Limited," among others, are now awaiting resolution before a number of National Company Law Tribunals (NCLTs), which may result in the lenders receiving haircuts in the process of debt recovery . In accordance with the provisions of Section 4 of the Insolvency and Bankruptcy Amendment Act of 2019, it is required to finish the CIRP within 330 days from the day that the resolution procedure was initiated. This time restriction is extended by the National Company Law Tribunal (NCLT). In the event that the Corporate Insolvency and Restructuring Plan (CIRP) is not finished within 330 days, the corporate debtor will be submitted for liquidation. "Struck down the word mandatorily stating that the time taken during the legal proceeding should not affect the interest of the litigation," the Supreme Court of India stated in one of its decisions about the Essar Steel case. It was further stated by the court that the resolution process must be finished within 330 days, while also keeping in mind that the time that is spent in the legal procedures may be extended further by the NCLT or NCLAT in extraordinary situations in order to ensure that justice is served.

According to the report published by the IBBI, as of September 30, 2021, 73% of the CIRP has taken more than 270 days to complete. This is a significant increase in the maximum time frame that is authorized. Due to the fact that they are large organizations, the CIRP procedure takes a significant amount of time since there are several problems that arise during the process. Between December 1, 2016, and September 2021, a total of 4,708 critical incident response plans (CIRPs) have been closed, and 3,068 of those CIRPs have had their resolution plans approved.

According to the recommendation made by the Committee, the CIRP should decrease the likelihood of appeals in order to further reduce delays in the process of concluding the cases. In the event that the CIRP effort is unsuccessful, the liquidation process may take an additional year.

Management of Rehabilitation Process:

The possible insolvent firms are obligated to take measures to preserve the rights of various stakeholders and their assets, as well as to adopt such actions as are essential to contain insolvency in order to enable whistleblowing on awaiting bankruptcy. In the event that the corporate debtor is unable to repay their obligations over a period of time or chooses to liquidate their business voluntarily, the rehabilitation plan can be adjusted with the committee of secured creditors.

Challenges under the IBC 2016:

Due to the pandemic caused by the COVID-19 virus, the recovery of non-performing assets (NPAs) by financial creditors through IBC has decreased. The rehabilitation process has experienced a decline as a result of prospective bidders being cautious owing to the uncertainty that the economy is experiencing. Due to the fact that IBC has lost its enchantment, the recovery is progressively starting to slow down. Even after the ratification of CIRP, the rigorous time-bound structure was not successful in reducing delays inside the environment. A significant amount of time has been provided to the promoters, allowing them to divert or misappropriate the assets and finances of the firm.

Data Analysis:

Public sector banks (PSBs) have been able to recover more over Rs. 5.49 lakh crore over the course of the previous seven financial years as a result of the comprehensive efforts taken by the government. The recovery of the public sector banks in India has increased from 11.33 percent in 2017-2018 to 13.52% in 2018-19 and to 14.69 percent in 2019-20 as a result of the Indian government's efforts to decrease non-performing assets and effectively recover financial institutions over the course of the past several fiscal years. The recovery of non-performing assets (NPA) for the 2020-21 fiscal year began at 12.28%, despite the fact that the COVID-19 pandemic adversely affected the economy. As of the 31st of March in the year 2021 the NPA level has decreased to 9.11%. At the end of the quarter in December 2021, the Insolvency and Bankruptcy Board of India revealed that creditors were only able to collect Rs. 4406.76 crore out of the total acknowledged claims amounting to Rs. 32,861.90 crore. This represents just 13.41% of the total debts.

Table 1: As of the 30th of September in 2021, the status of the distressed assets (Amount in Crore')

Description	Companies Rescued	Companies Ordered for Liquidation	Total

No. of Companies	421	1419	1840
Aggregate Claims	794168	738631	1532799
Liquidation Value	147886	52036	199922
Assets available % of Aggregate Claims	18.62	7.04	13.04
Resolution Value	254983	NA	254983 ⁹
Resolution Value as % of Liquidation Value	172.42	NA	NA
Resolution Value as % of Aggregate Claims admitted	32.11	NA	NA
Average time taken	495 days	375 days	435 days
Cost % of Resolution Value	0.54	NA	NA ¹⁰

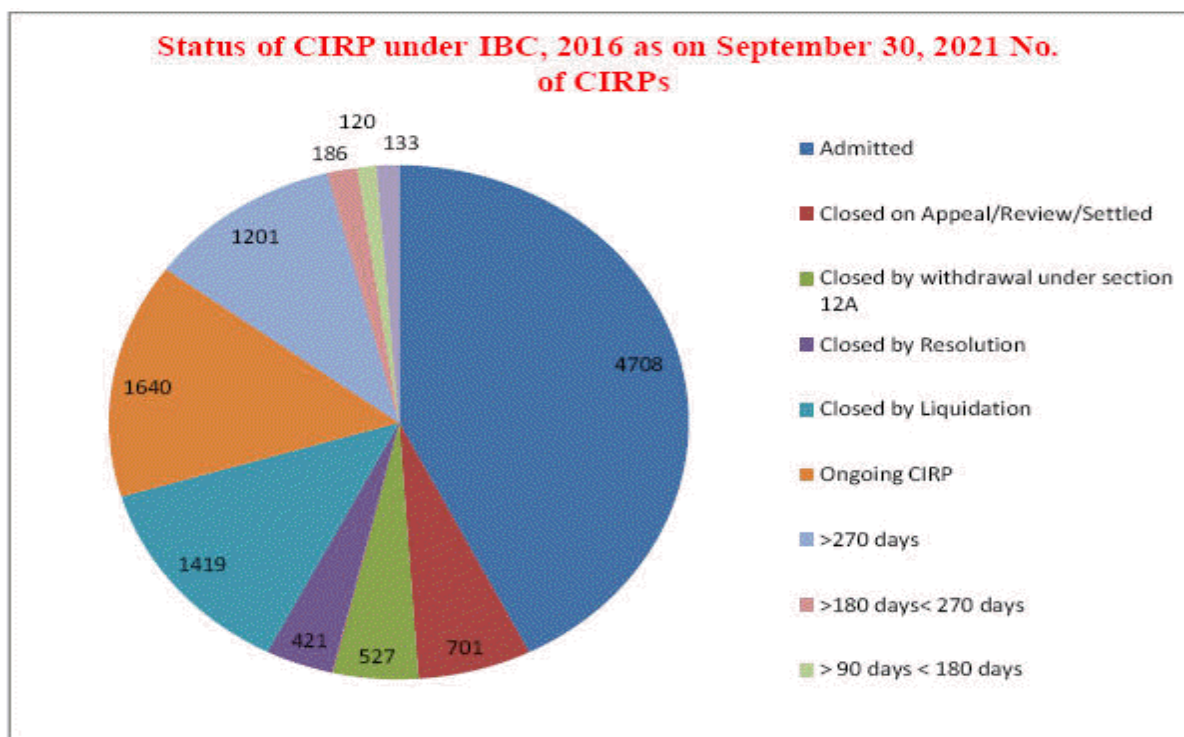
The status of assets that are in a state of distress is displayed in table 1, together with information pertaining to the process of liquidation. During the time when CIRP was being implemented, the value of the corporate assets that may be realized was 421 crores. With a total of 7.94 lakh crores, the resolution strategy was successful in recovering 2.55 lakh crore.

Table 2: Status of CIRP under IBC, 2016 as on September 30, 2021

CIRP Status	No. of CIRPs
Admitted	4708
Closed on Appeal/Review/Settled	701
Closed by withdrawal under section 12A	527
Closed by Resolution	421
Closed by Liquidation	1419
Ongoing CIRP	1640
>270 days	1201
>180 days 270 days	186

> 90 days 180 days	120
90 days	133

Source: IBBI Report 2021



There is a significant disparity in the number of cases that were admitted, closed on appeal/review/settled, and closed by withdrawal under action, as demonstrated by the analysis of the CIRP process that is presented in Table 2 above. There are three types of CIRPs: closed by resolution, closed by resolution, and continuing. After 90 days of statutory time, there are 133 cases that have been closed, 120 cases have been closed between 90 days and 180 days, 186 cases have been closed between 180 days and 270 days, and 1201 cases have been closed between more than 270 days. Regarding the time-bound resolution, the primary purpose of the IBC has not been accomplished. The number of cases that were resolved through the resolution process is 420, whereas the number of cases that were closed through liquidation is 1419. This indicates that the liquidation rate is higher than the resolution rate.

Conclusion:

The process of liquidation An umbrella legislation known as the Insolvency and Bankruptcy Code 2016 has been developed to provide a variety of choices, each of which promises to be an effective resolution process and to recover debt within a specific amount of time. The purpose of the IBC is to bring a firm that is on the verge of bankruptcy back to life. A committee of creditors is in charge of the CIRP, which is responsible for the settlement of insolvency. This committee is autonomous and can make decisions to safeguard the interests of the creditors. Instead of focusing on the collection of debts owed by creditors, the

Insolvency and Bankruptcy Code (IBC) has been shown to be effective in providing a Corporate Insolvency Resolution Plan. This is evidenced by the fact that several instances have had haircuts of more than 90 percent. It is the intention of the IBC to bring a dying firm back to life, but the data indicate that the majority of the cases that are brought to the NCLT end up in liquidation. In the context of CIRP, the reasons for firms entering into liquidation are referred to as failure. Based on the fact that the resolution value was larger than the liquidation value, it was believed that the firm had a possibility of having a comeback through the process of reorganization and restructuring. Nevertheless, it is challenging to arrive at a definitive answer based on the proportion of firms that are going into liquidation for reasons such as the failure of the CIRP by the NCLT or COC, the operational inefficiency of the resolution plan, contingent claims, and several other factors. The fact that COC operates in its own self-interest rather than safeguarding the interests of the corporation is another worry that has been voiced by experts with regard to the matter. Due to the vast authority that creditors possess, they have a tendency to view liquidation as a simple tool that can be used to recover their debts, even if it means taking significant losses.

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