

## A Critical Review Of CIRP Under India's Insolvency And Bankruptcy Code, 2016 In Resolution Of Distressed Assets

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**Abstract** – The paper describes the Insolvency and Bankruptcy Code, 2016 of India and its role in resolution of distressed assets. The goal of the Code is to consolidate numerous legislations on the subject and provide a single, unified and vital platform for revival and / or liquidation of corporate and non-corporate bodies and self- proprietors. The main and substantial policy and procedural changes envisaged in the Code targets to salvage the movable and immovable assets engaged in the distressed organizations in a time-bound manner to protect the interests of not only creditors but also employees, workers, government dues and others involved. An attempt has been made to understand as to how far the corporate insolvency resolution process under the code is effective for resolving distressed assets.

**Keywords:** Insolvency, Bankruptcy, Moratorium, Haircut, clean slate principle.

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### INTRODUCTION

Insolvency and bankruptcy, a subject being viewed as an object of academic pursuits and professional outlook has gained prominence in India and abroad. "A dialogue between two characters in a novel goes like this: 'How did you go bankrupt?' Bill asked. 'Two way mike said, gradually and then suddenly<sup>1</sup>.' If we attempt to have a look at most of the insolvency and bankruptcy cases in India and abroad it has happened that way. Corporate insolvency is an offshoot of Company law. The reforms in insolvency took place in India after in the pipeline for many years and these took a formal shape with the introduction and enactment of the Insolvency and Bankruptcy Code 2016. It is the failure of the corporate persons to service debt which has led to insolvency and the Code provides and helps the resolution of distressed assets whenever it is feasible and liquidation where the same cannot be revised. After the introduction of the Code, some discipline has been observed in the corporate sector and certain big organizations have started to pay back their loans and are trying to make their balance sheets free of debt so that they may not face proceedings under IBC. However, Code is not meant to be a debt recovery legislation<sup>2</sup>

### Key recommendations of the Code made by Bankruptcy Law Reforms Committee

Bankruptcy Law Reforms Committee was formed and the key recommendations of the Code were made by it. The said Committee<sup>3</sup> submitted its report dated November 4, 2015 to Late Arun Jaitely, the then Finance Minister in the Government of India. In the Executive Summary of the BLRC at page ten of the Report has stated "The limited liability company is a

contract between equity and debt. As long as the corporate debtor meets debt obligations, equity share holders have substantial control, and creditors have not much to say as to how the business should be carried out."<sup>4</sup> Along with lending to companies with limited liability, funds are lent to individuals, proprietorship firms, partnership firms and limited liability partnership registered under Limited Liability Partnership Act, 2008. If default occurs, control of the corporate debtor is supposed to get transferred to the creditors and equity shareholders have no say. It has been further stated that the promoter stay in control of the company even after default committed in matter of payment of Interest and principal amount and to a limited extent, banks have power to repossess fixed assets which were pledged with by the companies. It has also been observed that due to poor recovery rates, the lenders are reluctant to take risk and concentrate funding in low risk, low growth industries and sectors. This results into lending concentrated in few sectors of the economy. The aforesaid committee was assigned the task of drafting a detailed consistent solution of bankruptcy and insolvency as "a single unified process which deals with bankruptcy and insolvency by persons other than financial firms. Multiple contradictory elements in the legal arrangements are complicating the process and the committee devised the strategy of repealing many existing laws<sup>5</sup>" dealing with bankruptcy. The Committee endeavored for a modern law which is a simple, coherent and effective under Indian conditions. An important economic question in the bankruptcy process is what is to be done when the firms or corporate debtor defaults. We can think of many possibilities, one possibility is to negotiate a structuring of debt where the

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creditors/lenders accept a haircut on an NPV basis in the hope that the value negotiated exceeds the liquidation value, if this is not possible, then the firm or corporate debtor is liquidated. We can think of many hybrid structures of these broad categories. Banking Law Reforms Committee at page 12 of its report has observed "The Committee believes that there is only one correct forum for evaluating such possibility and making a decision: a creditors committee (CoC), where the financial creditors have votes in proportion to the amount of debt that they hold"<sup>6</sup>. "In the past, laws in India have brought arms of the Government (legislative, executive or judiciary) into this question. It has also been observed that the appropriate disposition of a defaulting firm is a business decision and only the creditors should make it"<sup>7</sup>.

#### **Preamble of Code**

It has been observed that The Insolvency and Bankruptcy Code, 2016 has been enacted with a view to fast track Corporate Insolvency Resolution Process and if the same is not feasible, to order liquidation of the same in the best interest of all. Preamble<sup>8</sup> of the Insolvency and Bankruptcy Code, 2016 is as follows: "An Act to consolidate and amend the laws relating to reorganization and insolvency of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India and for matter connected therewith or incidental thereto."

#### **Authorities, Applicability, Resolution Professional, under the IBC, 2016**

Insolvency Bankruptcy Board of India (IBBI), a regulatory authority was established on October 1, 2016, "The Insolvency and Bankruptcy Code 2016" (IBC) has been notified in the gazette of India on May 28, 2016. National Company Law Tribunal (NCLT) which is an adjudicating authority (AA) under IBC has been constituted by the Central Government under Section 408 of Companies Act, 2013. Appeals against the orders of NCLT are filed with National Company Law Appellate Tribunal (NCLAT) and appeals against the orders of NCLAT are filed with Supreme Court of India on points of questions of law. NCLT is adjudicating authority for insolvency resolution and liquidation of corporate persons. NCLT has also jurisdiction in respect of personal insolvency of guarantors of the corporate debtors. However, for insolvency resolution and bankruptcy of non-corporate bodies, the adjudicating authority is Debt Recovery Tribunal (DRT) and appeals against the order of DRT are to be filed in Debt Recovery Appellate Tribunal (DRAT) and appeals against the orders of DRAT are to be filed in Supreme Court on points of questions of law.

The provisions of the Code are applicable to both corporate persons viz. Companies, Limited Liability

Partnerships and Personal Guarantors, as well as to the non-corporate businesses run by individuals and partnership firms. IBC extends to the whole of India. Part III relating to individuals and the traditional partnership are not applicable to the State of Jammu and Kashmir (now Union Territories)<sup>9</sup>. Earlier the provisions of the Code were applicable on a default of one lakh rupees by the corporate debtor but for COVID-19, this has been increased to Rupee one crore by a notification<sup>10</sup>. "The corporate debtor means a corporate person who owes a debt to any person [(section 3(8) of IBC)". Corporate persons under the provisions of the Code are registered corporate entities like companies and limited liability partnerships. "As per section 3(11) of the Code, debt means a liability or obligation in respect of a claim which is due from any person and it includes a financial debt and operational debt." Financial Creditors, Operational Creditors and Corporate Debtors may apply for Corporate Insolvency Resolution Process (CIRP). Secured Creditors, Unsecured Creditors and Decree-Holders are also Creditors as per the Code. "According to section 12, the corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application to initiate such process." However, it is also provided in the Code that the same can be extended by 90 days when approved by NCLT. However as per the direction of the Hon'ble Supreme Court of India, the same shall mandatorily be completed within a period of 330 days from the insolvency commencement date. "As per section 11(b), a corporate debtor having completed corporate insolvency resolution process 12 months preceding the date of making of the application" is not entitled to make application. The adjudicating authority, NCLT declares the moratorium under the Corporate Insolvency resolution process. Resolution professional (RP) plays an important role in the Code. "Resolution professional means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional (IRP)"<sup>11</sup> After Insolvency commencement date, IRP is appointed within 14 days. It has been provided that the IRP under the CIRP "shall be vested with the management of the corporate debtor and be responsible for receiving claims [section 15(b)]" and "have the authority to access the books of accounts, records and other relevant documents of corporate debtor available with [section 17(2) (d)]" the board of directors, information utility, depositor of securities. The notice to public shall include the concluding time for submission of claims and all particulars of the interim resolution professional. Meetings of the Committee of creditors are presided over by the Resolution Professional. Duties undertaken by the resolution professional include, inter alia, to convene the committee meeting, to appoint accountants, legal or other professionals and to prepare information memoranda. Section 28 of the Code enlists various actions for which RP requires approval of the Committee of Creditors (CoC). However, he does not need approval of CoC to seek information from the

Company's bankers. The registered valuer is appointed by the RP within 7 days of appointment of resolution professional. In case, the corporate insolvency resolution fails, the Adjudicating Authority may order for liquidation of corporate person.

#### **Lenders may scrap Bankruptcy Process**

Sometimes lenders and corporate debtor wish to settle the matter even after initiating and admission of the application by NCLT for the Corporate Insolvency Resolution Process (CIRP). Section 12A of the "Insolvency and Bankruptcy Code, 2016" empowers the lenders to withdraw the application pending with NCLT provided 90% of the lenders agree on the same. In the past, IDBI Bank agreed to accept an out-of-court offer from Siva Industries and also agreed to withdraw bankruptcy proceedings against this company and majority of the creditors voted in favour of the resolution plan under section 12A of the Code. It is not expected for lenders to accept a settlement from promoters once a company has been admitted for bankruptcy proceedings as it is usually a last resort and secured creditors exhaust all options before they take a company to court. It is observed that the acceptance of offer of Siva Industries by the lender differs from the usual practice of rejection by creditors of such deals proposed by promoters seeking to withdraw their companies from bankruptcy proceedings. Atul Punj of Punj Lloyd, Videocon's Venugopal Dhoot, Sanjay Singhal of Bhushan Power and Steel tried their best to override creditors to stall bankruptcy proceedings but of no avail<sup>12</sup>.

#### **Unlawful transactions entered into by the Companies prior to their admission into IBC**

As per IBC, the Resolution Professionals are under an obligation to carry out an audit of all transactions undertaken by a company up to two years prior to the company's admission into bankruptcy proceedings. The purpose of such an audit is to know if there are any unlawful transactions that have taken place and such transactions need to be reported to NCLT. Such transactions are termed as 'avoidance transactions under IBC. Such transactions include preferential payments made to related entities of the promoter group without the knowledge of the creditors or bankers of the company thereby causing loss to the creditors. Other avoidance transactions are undervalued, extortionate and combination transactions. The Code read with Regulations require the RPs and liquidators to file applications for avoidance of transactions, with the AA seeking appropriate directions. 1442 applications seeking avoidance of transactions for Rs.3,89,964 crore have been filed with the AA till June, 2025.

#### **Speed is of essence in the working of Bankruptcy Code**

"In the working of the Bankruptcy Code, speed is of essence. There are two reasons for the same. First, the 'calm period' can help an organization float, however, without the full clarity of ownership and control,

significant decisions cannot be made."<sup>13</sup> Second, with every day, "the liquidation value tends to go down with time as many assets suffer from a high economic rate of depreciation. From the creditors prospective, a good realization can generally be obtained if the firm is sold as a going concern."<sup>14</sup> It is true when delays induce liquidation, there is value destruction. If there is delay in liquidation, the realization is lower. For high recovery rate, there is need for identifying and combating the sources of delay. It is imperative that before the commencement of CIRP, all parties such as financial creditors, operational creditors, the corporate debtors need to have an accurate account of their claims. Before the introduction of the Code, considerable time used to be lost before all parties obtain this information and it used to take up years to resolve in courts. To solve this problem with the introduction of 'information utilities' undisputed and complete information is available to all persons involved within a day of commencement of CIRP. Another important source of delay before introduction of the Code was in the adjudicatory mechanism. This problem has been solved by setting up "National Company Law Tribunal (for corporate debtors) and Debt Recovery Tribunal (for individual and partnership firms)".<sup>15</sup>

#### **The Insolvency Resolution Process**

The Code along with its regulations provide for a well-defined insolvency resolution process. In case of certain businesses, firms can be salvaged as a going concern. If this is possible, the revival of the concern through reorganization, change of management or expansion into new business lines or shrinking the size of business, or any other conceivable business model, the damage to various stakeholders minimizes. It is observed that under "the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI, 2002)", debts rights are available for secured creditors only. In view of this, the Committee on Bankruptcy Reforms (2015) proposed "that any creditor whether financial or operational, should be able to initiate the insolvency resolution process (IRP) under the Code"<sup>16</sup>. The aforesaid committee also proposed that whenever default takes place, IRP can be initiated and the same should be completed within 180 days. Insolvency professional (IP) is appointed who oversees the IRP. IP has been given substantial powers under the Code. The Committee also suggested that the IP appointed under the Code is to "make sure that assets are not stolen from the company and initiates a careful check of the transactions of the Company for the last two years, to look for illegal diversion of funds."<sup>17</sup> It was also suggested by the committee that in case there is diversion of assets, the same would induce criminal charges. During the period "IRP is in process, the committee recommended for a calm period where creditors stay their claims"<sup>18</sup>. It helps the firms a better chance to survive as a going concern. During this calm period of 180 days in which IRP is in operation, the CoC will analyze the affairs of the company and will

get the proposals for resolution of the corporate debtor for consideration and make up its mind as to what has to be done which is in the best interest of all. As per data available for CIRP, as on 31 December, 2025, 8833 cases were admitted, out of which 6954 have been closed and 1879 have been ongoing. The Code has rescued 4002 CDs (1376 through resolution plans, 1366 through appeal or review or settled and 1260 through withdrawal. It has referred 2952 CDs for liquidation. The data provided regarding corporate processes is provisional as it is getting revised on a continuous basis depending on the flow of updated

information as received from IPs, or the information in respect of process changes. For example, a process may ultimately yield an order for liquidation even after approval of resolution plan or may ultimately yield resolution plan even after an order for liquidation. If we look at the mode of closure, we come to know that out of total 6954 cases closed 4002 have been rescued which comes to 58% and in respect of 2952 cases, there is commencement of liquidation which comes to 42%. That aforesaid data is presented in the Table given below:

### Details of CIRP cases as on December 31, 2025 (Since inception of IBC)

CIRP Cases	Number	
Admitted		8833
<b>Closure :</b>		
Withdrawn under section 12A	1260	
Closed on appeal or review or settled	1366	
Resolution plans approved	1376	
Liquidation orders passed	2952	6954
<b>Ongoing CIRP Cases</b>		<b>1879</b>

Compiled from IBBI Newsletter October to December 2025

The data compiled from March 2017 to December 2025 in respect of CIRPs is given below:

CORPORATE INSOLVENCY RESOLUTION PROCESS								
As on	Admitted	Appeal/Review	Withdrawal	Closed by			% of commencement	Ongoing
				Approval of Resolution Process	% of Closure due to Resolved/Review/Settled/Withdrawn	Commencement of Liquidation		
				D	E	F		
	A	B	C		(B+C+D) / (A-H) * 100		G	H
							(F) / (A-H) * 100	
Mar-17	37	1	0	0	100	0	0	36
Mar-18	701	67	0	22	51	87	49	525
Mar-19	1858	152	91	94	47	378	53	1143
Mar-20	3774	312	157	221	43	914	57	2170
Mar-21	4376	617	411	348	52	1277	48	1723
Mar-22	5258	731	586	480	53	1609	47	1852
Mar-23	6571	959	848	678	55	2030	45	2056
Mar-24	7567	1154	1070	947	56	2476	44	1920
Mar-25	8308	1276	1154	1194	57	2758	43	1926
Jun-25	8492	1314	1191	1258	58	5824	88	1905
Sep-25	8659	1342	1223	1300	57	2896	43	1898
Dec-25	8833	1366	1260	1376	58	2952	42	1879

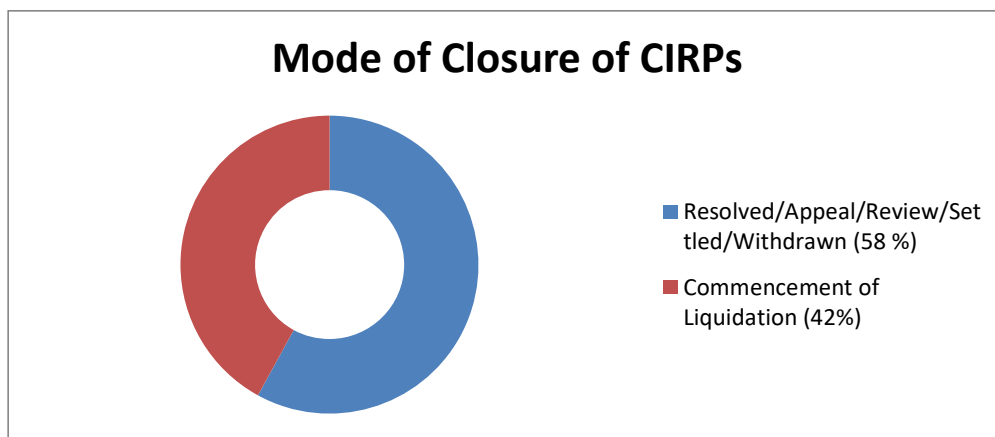
Source: Compilation from website of the NCLT and filing by IPs

The distribution of Stakeholder-wise initiation of CIRPs is presented in Table. FCs triggered 47.70 % of the CIRPs, followed about 46.10 % by OCs and remaining by the CDs

Year-wise and Stakeholder-wise Initiation of CIRPs				
Period	No. Of CIRPs Initiated by			Total
	Financial Creditors	Operational Creditors	Corporate Debtors	
2016-17	8	7	22	37
2017-18	286	310	111	707
2018-19	517	569	71	1157
2019-20	883	1057	51	1991
2020-21	197	317	22	536
2021-22	372	474	43	889
2022-23	654	538	70	1262
2023-24	535	402	66	1003
2024-25	451	227	55	733
Apr-Jun 25	102	72	13	187
July-Sept 25	97	53	13	163
Oct-Dec 25	109	44	10	163
<b>Total</b>	<b>4211</b>	<b>4070</b>	<b>547</b>	<b>8828</b>

Note:- This excludes five cases wherein applications filed by the RBI were admitted u/s 227 of the Code.

Mode of Closure:

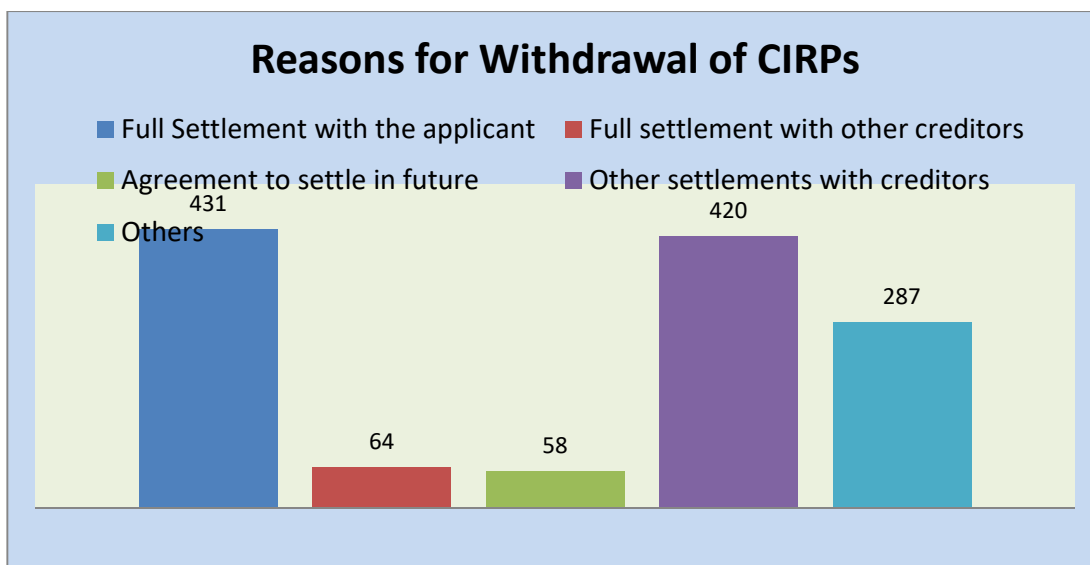


Compiled from IBBI Newsletter October to December 2025

#### Reasons for withdrawal of CIRPs

Till December, 2025, a total of 1260 CIRPs have been withdrawn under section 12A of the Code. The reasons for withdrawal are presented in Table and Figure. More than three fourth of these CIRPs had claims of less than Rs. 10 crore.

Reason for Withdrawal of CIRPs				
Full Settlement with the applicant	Full Settlement with other creditors	Agreement to settle in future	Other settlements with creditors	Others
431	64	58	420	287



Compiled from IBBI Newsletter October to December 2025

Till December, 2025, the creditors have realized Rs. 4.11 lakh crore under the resolution plans. The fair value and the liquidation value of the assets available with these CDs, when they entered the CIRP was estimated at Rs. 3.66 lakh crore and Rs. 2.40 lakh crore respectively, as against the total claims of the creditors worth Rs.13.00 lakh crore. The creditors have realized 171.54% of the liquidation value and 94.95% of the fair value (based on 1250 cases where fair value has been estimated). The haircut for creditors relative to the fair value of assets was less than 5% while relative to their admitted claims is around 69%. Furthermore, this realization does not include the CIRP cost, and many probable future realizations such as equity, realizations from corporate and personal guarantees, funds induced into the CD

including capital expenditure by the resolution applicants and recovery from avoidance applications. The outcome of CIRP yielding realization and liquidation are in the following table:

**Outcome of CIRP yielding Resolution and Liquidation**

<b>Outcome of CIRPs Yielding Resolutin and Liquidation</b>										
	<b>Amount (Rs in Crores)</b>			<b>CIRPs Yielding Resolution Plans</b>				<b>CIRPs Yielding Liquidation</b>		
	Total Admitted Claims	Liquidation Value	Fair Value	Total Realisable Value	Realisation by Creditors as % of Admitted Claims	Realisation by Creditors as % of Liquidation Value	Realisation by Creditors as % of Fair Value	Average time taken for closure of CIRPs in Days	Liquidation value as % of Claims	Average time taken for closure of CIRPs in Days
Till Sept 2025	1272242.6	235380.93	359345.4	405603.58	31.37	172.31	112.87		18.5	
Sept-Dec 2025	27360.9	4263.31	6388.26	5477.36	20.02	128.48	85.74		15.58	
Till Dec 2025	1299603.5	239644.24	365733.6	411080.94	31.63	171.54	94.95	739	18.44	527

\* Based on 1250 cases where fair value has been estimated

Outcome of CIRPs yielding Resolution Plans and CIRPs yielding Liquidations are given in the following table. It is observed that average time taken for closure of CIRPs is 739 days and average time taken for order of Liquidation are 527 days.

**Outcome of CIRPs as on December 31, 2025**

CIRPs yielding Resolution Plans	Realisation by Creditors as % of Liquidation Value	172
	Realisation by Creditors as % of their Claims	32
	Average Time taken for Clousre of CIRP	739
CIRPs yielding Liquidations	Liquidation Valaue as % of Claims	6
	Average Time taken for order of Liquidation	527

Compiled from IBBI Newsletter October to December 2025

**Resolution of Large Cases (Admitted Claims > Rs.1000 crore)**

Of the 1376 CDs rescued under the Code as on December, 31, 2025, 197 had admitted claims of more than Rs. 1,000 crore. The realizable value of the assets available with these 197 CDs, when they entered the CIRP, was only Rs. 2.04 lakh crore, though they owed Rs. 11.14 lakh crore to the creditors. Till December, 2025, realization by the claimants under resolution plans in comparison to liquidation value is 179.08%, while the realization by them in comparison to their claims is 32.78%. These realizations are exclusive of realizations that would arise from value of equity holdings post-resolution, resolution of PGs to CDs, and from disposal of applications for avoidance transactions

**Details of large cases as on December 31, 2025**

Details of Large Cases as on December 31, 2025		(Amount in Rs. Lakh Crore)		
CIRP Cases (Admitted Claims > Rs 1000 Crore)		Till Sept 2025	Oct - Dec 2025	Till Dec 2025
Resolution plans approved	No of Cases	195	2	197
	Admitted Claims	10.96	0.18	11.14
	Liquidation Value	2.01	0.03	2.04
	Realisation by Creditors	3.61	0.04	3.65
	Realisation by Creditors as % of Admitted Claims	32.97%	21.15%	32.78%
	Realisation by Creditors as % of Liquidation Value	179.85%	127.69%	179.08%

Compiled from IBBI Newsletter October to December 2025

#### Details of resolution plans approved for FiSPs

CIRPs of four financial service providers (FiSPs) i.e Dewan Housing Finance Corporation Ltd., Srei Equipment Finance Limited, Srei Infrastructure Finance Limited and Reliance Capital Limited have yielded resolutions under the Code. The details of these resolutions are presented in the following table

#### Detail of resolution plans approved for FiSPs

Detail of resolution plans approved for FiSPs						Amount in Rs Crore
S.No	Claims of Financial Creditors Dealt Under Resolution					Resolution Applicant
	Name of FiSP	Amount Admitted	Amount Realized	Realization as % of admitted claims	Realization as % of Liquidation Value	
1	Dewan Housing Finance Corporation Limited	87247.68	37167.00	42.60%	138.42%	Piramal Capital & Housing Finance Limited
2	Srei Equipment Finance Limited	33050.43	13784.76	42.12%	280.74%	National Asset Reconstruction Company Limited
3	Srei Infrastructure Finance Limited					National Asset Reconstruction Company Limited
4	Reliance Capital Ltd	26088.97	9661	37.03%	73.42%	IndusInd International Holdings Ltd.

Compiled from IBBI News letter October to December 2025

#### High IBC haircuts or tonsures

It has been observed that in a number of cases, the lenders of the corporate debtors have agreed for higher haircuts as high as ninety-five per cent of the loan amounts. Notable cases in point are Siva Industries where lenders agreed to accept a 93.4% haircut to settle the dues of Rs. 4863 crore. Similarly, in the case of Videocon Group companies, there is 95.85% haircut taken by the lenders which has been questioned but

later on approved by the NCLT. The promoter of Videocon Group has filed a petition before NCLAT stating that the process undertaken by the resolution professional suffers from material irregularity as all assets have not been included in the Information Memorandum and the resolution plan is against the objective of IBC. It has also been submitted before NCLAT that the commercial wisdom by the Committee of Creditors (CoC) is arbitrary and irrational and does not reflect application of mind. As per data issued by IBBI, banks have taken an average haircut of 67%. House Panel of Parliament of India

have taken serious note of the disproportionately large haircuts taken by the banks under the IBC and has cautioned the Government for taking some remedial action. On being questioned about the large haircuts, the Government told the panel that the lenders generally take large haircuts where liquidation values are very low. The panel recommended that since the insolvency process has fairly matured now, there is need to have a benchmark for the quantum of haircut, comparable to global benchmark

#### **Need for examination of the functioning of the IBC and overhaul of the present system**

The Parliamentary Committee set up to examine the working of functioning of the IBC recommended an overhaul of the system being followed and also to set a threshold rate of haircut for creditors. The Committee also recommended for establishing a new supervisory body to oversee resolution professionals. For quicker disposal of cases, the committee recommended that only high court judges be appointed to the NCLT. It has been observed that the low recovery rates due to high haircuts as much as 95% is deviation from the original objective of the Code. It has also been stated that 78% of the cases pending beyond the 270-day time frame as provided in the law is also a deviation from the stated objective of the Code.

#### **IBC Amendment for a pre-packaged resolution process for MSME**

The Central Government enacted the Insolvency and Bankruptcy Code (Amendment) Act, 2021 which was deemed to have come into force on April 4, 2021 introducing the Pre-packaged insolvency resolution process (PPIRP) for corporate MSMEs. The Central Government notified the rules and IBBI notified the regulations. This was brought in the Code to help pre-packaged insolvency resolution of MSMEs. The added advantage of the pre-packaged solution for MSMEs is that it is hybrid in nature and instead of creditors, it will be the debtors who will be in control and both debtors and creditors are working as a team. It has blend of elements and virtues of both formal and informal insolvency proceedings. This will speed up the process and the resolution will be completed in 120 days. It has pegged the minimum threshold for default at Rs. ten lakh for initiation of insolvency process for MSMEs corporate debtor. It is reiterated that the Pre-packaged process makes it feasible to allow creditors and debtors, shareholders to come together with a view to identify a prospective buyer and to negotiate a resolution plan before approaching the NCLT. The expected advantages of this amendment are that it will lessen the burden of adjudicating authorities, will ensure continuity of business operations for corporate debtor. It will also help in reducing processing cost as well as maximum realization for financial creditors. These amendments also provide assurance of continued business relations with corporate debtor and will also pave the way for protection of rights of operational creditors. "A pre-packaged administration is a pre-planned insolvency procedure wherein a

company arranges to sell its assets to a buyer prior to filing for insolvency to facilitate the sale and the creditors and the shareholders approach a bankruptcy court with a pre-negotiated corporate reorganization plan, the 'Pre-packaged'. This sort of company rescue procedure significantly reduces the time taken in lengthy court proceedings for businesses undergoing financial distress."<sup>32</sup>. "Consequently, the Pre-pack can seek to facilitate going concern sale of the business of the corporate debtor at 'fair value' during the insolvency resolution process and not merely break-up 'liquidation value'." As per information available with the Board, 14 applications have been admitted as on June 30, 2025 out of which one has been withdrawn and resolution plans have been approved in nine cases.

#### **SARFAESI Act vs. IBC**

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Act (SARFAESI) enables banks and financial institutions to recover non-performing assets (NPAs) by directly seizing and auctioning secured assets without needing court intervention. This act implies to loans secured against assets such as vehicles or machinery. It is particularly beneficial for quick recovery in cases where assets can be liquidated to settle the debt. However, SARFAESI is limited to secured creditors and cannot be invoked for unsecured loans. For secured creditors with clear collateral, SARFAESI provides a faster and more cost effective method of debt recovery. On the other hand IBC is for comprehensive resolution of insolvency either through business revival or orderly liquidation. In SARFAESI, there is minimal to no court intervention, a non-judicial process. In IBC, there is mandatory judicial oversight by the NCLT/NCLAT. Under SARFAESI, there is a direct action to seize and sell secured assets, on the other hand, under IBC, there is a structured, time-bound process involving a moratorium, resolution plan or liquidation. There is broad, addressing the overall financial distress of a debtor and their entire estate. But under SARFAESI, scope is limited to the specific collateral provided as security. Since the IBC has a non-obstante clause, IBC overrides SARFAESI in case of overlap or conflict.

#### **CONCLUSION & SUGGESTIONS**

##### **Conclusions**

The Code provides a single umbrella for speeding up of insolvency process. It is a legislation which facilitates the reorganization as well as the exit of weak businesses. With enactment of this Code in 2016, the focus has shifted from 'Debtors in Possession' to 'Creditors in Control'. Maximization of value and not maximization of price is the objective of the Code. Value improves if business is continued and assets are used more efficiently. Though recovery is incidental under the Code, its primary objective is rescuing companies in distress. It is observed that the efficiency may improve from a change of management, technology, or product portfolio. It also improves on acquisition, or disposal of assets, businesses or undertakings, restructuring of the organization, business model, ownership or balance sheet. Hon'ble

Supreme Court of India has passed a number of landmark judgments and these have filled the gaps in the Code. If we have a look at the CIRP's yielding resolution plans as on 30<sup>th</sup> June, 2025, we come to know that realization by creditors as percentage of liquidation value is 170.84 and realization by creditors as percentage of their claims is 32.57. Average time taken for closure of CIRP is 724 days. On the other hand, in case of CIRP's yielding Liquidations, Liquidation Value as percentage of claims is 6.1. Average time taken for closure of CIRP in case of CIRP's yielding liquidation is 512 days. Despite the recovery of 170.84% of the liquidation value, the financial creditors had to take haircut of 67% as compared to their claims. This reflects the extent of value erosion that had taken place as compared to their claims when these companies entered the process. Nevertheless, as compared to other options, banks are recovering much better through IBC as per data released by Reserve Bank of India. The Code has helped in improvement in the recovery but there have been delays which is a cause of concern. The Code was enacted to give a quicker, time-bound alternative for recovery of bad loans for banks. As on 30<sup>th</sup> June, 2025, 8492 cases were admitted in IBC, out of which 2824 (33%) cases ended in closure by commencement of liquidation.

#### **Suggestions**

The IBC needs to be overhauled and time-bound resolution is the objective of the IBC and unwarranted delays need to be avoided. Serious thoughts need to be given on substantial haircuts as high as 67%. CoC needs to be fair to all the stakeholders. Though commercial wisdom has been left to the CoC, yet there should be proper checks and balances and it is the duty of the adjudicating authorities to see whether all the relevant provisions of IBC are taken care of by the resolution professionals and the Committee of Creditors. Courts need to assure that unnecessary litigation and resolutions professional and Committee of Creditors need to be accountable for their actions in the resolution process of the corporate debtor. The suggestions are summarized as under:

#### **Application of Pre-packaged Insolvency Resolution Process (PIRP) for large cases also**

At present, pre-pack is available only for MSMEs. A pre-packaged bankruptcy is a strategy to emerge from bankruptcy by negotiating with creditors in advance. It should be applicable for large companies also. Pre-pack is already there in U.S.A and U.K. It is the need of the hour that pre-pack should be introduced for large companies also so that substantial time taken by NCLT in admission of the corporate debtor for corporate insolvency resolution process is reduced and in this way, the resolution of distressed assets of the corporate debtor can take place within shortest possible time and the erosion in the value of distressed assets can be avoided. .

#### **CIRP under IBC is 'Creditor-Led'**

CIRP under IBC is 'Creditor-led' as against in U.S.A where it is Debtor-led and Debtor is given first option to submit the resolution plan. India has followed U.K where it has earlier been Creditor-led but now after passing of The Corporate Insolvency and Governance Act 2020 (CIGA) the U.K has adopted a debtor-in-possession model to help companies restructure and avoid insolvency and India should also take a cue from this and if possible some hybrid system may be adopted so that the promoters get another chance to resolve the corporate debtor.

#### **Committee of Creditors consist of independent financial creditors**

Under IBC, Committee of Creditors is constituted by Interim Resolution Professional appointed by NCLT. IBC provides that CoC mainly consists of independent financial creditors. If there are no financial creditors, then it will consist of eighteen largest operational creditors. In U.S.A CoC is appointed by the U.S. Trustee and ordinarily consists of unsecured creditors who hold the seven largest claims against the debtor. There is need to have proper representation of creditors other than financial creditors in the committee of creditors so that their views may also be considered while resolving the distressed assets of the corporate debtor.

#### **Better Co-ordination among stakeholders**

There is need to be better communication among stakeholders i.e creditors, debtors and resolution professionals and other stakeholders so that there is transparency to built trust and confidence. Technology integration in the CIRP process need to be improved to enhance efficiency and transparency.

#### **IBBI need to strengthen regulatory oversight**

IBBI need to strengthen regulatory oversight on Insolvency Professionals, Insolvency Professional Entities, Insolvency Professional Agencies and Information Utilities so that there is no delay in the resolution of the corporate debtor as more the delay, more is the erosion in the value of the distressed assets of the corporate debtor.

#### **Better Enforcement to ensure compliance**

There is a need for better enforcement to ensure compliance with the IBC and CIRP regulations, rules. IBBI being the regulatory authority is responsible for oversight on insolvency professionals, insolvency professional agencies and Information Utilities. It should ensure that all the stakeholders are complying with the provisions of Insolvency Bankruptcy Code, 2016, Various rules made by the Central Government and regulations framed by the regulatory authority from time to time. .

#### **IBC Amendment Act, 2026**

Realising certain shortcomings in the IBC, 2016, the Government of India enacted IBC Amendment Act, 2026. Under Section 7 of the Act, three exhaustive and self sufficient conditions for admission of CIRP has

been provided, these are default, application being complete and no disciplinary proceeding pending against IP. It has been also provided that application with IU Report shall be sufficient to ascertain existence of default. Adjudicating Authority cannot reject the application on any other ground. It is observed that the amendment effectively nullifies the Vidarbha judgment and will not have any discretionary powers while dealing with CIRP applications. Another important aspect in this regard is that Information Utility shall be the conclusive basis of default confirmation. As per amendment in the Act, Operational Creditors will also be required to register a default in advance with Information Utility. It is to be noted that IU records shall be exclusive and conclusive evidence of default. In regard to withdrawing CIRP application, Regulation 30 has been aligned with Section 12A which provides that the application for withdrawal can be made within 3 days of approval of the CoC by a voting majority of 90%. Thus, withdrawal of application can be done after constitution of CoC and before issuance of first invitation for resolution plan by RP. Another important amendment is there in Section 5(26) which provides that resolution plan may include piecemeal sale and may also provide for sale of non-core assets. Section 28A of the Act provides for transfer of assets of guarantor to CD as part of CIRP to avoid fragmented sale of assets. Enabling powers have been given to Central Government to have rules for group insolvency. Also powers given to Central Government to promulgate rules for cross border insolvency. It also provides for including provisions of the code that will not apply or apply with exceptions or modifications and one or more benches for dealing cross-border insolvency matters. Another important amendment- a new concept is Creditor-led Insolvency Resolution Process which is an informal or out-of-court resolution of a stress. There is no interference of the Adjudicating Authority except for the purpose of formal CIRP initiation and for moratorium. The process may be converted into CIRP on creditor consent. Under this system, Debtor remains in possession but several decisions of CD require approval of CoC. The prescribed timeline for the process is 150 days with a one time extension of 45 days, if not completed it can be converted into CIRP. Insolvency resolution takes place under financial institutions and there is a limited role of Adjudicating Authority. In this case, there is requirement of pre-notice of intent and after receiving CD's representation, a dual approval with 51% vote and then initiation on public notice by resolution professional. Under this system, moratorium is not automatic but the same is there only on decision by Adjudicating Authority. It can be converted into CIRP if resolution plan is not received within due time-line or resolution plan is rejected or where CD or its personnel failed to co-operate with resolution professional. This system works on "Clean State Principle" which implies that past liabilities cannot be the basis for suspending any rights/ licenses or to initiate any proceedings. Another important aspect in

relation to resolution plan is that separate approvals are there for implementation and distribution.

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