INSOLVENCY AND BANKRUPTCY CODE (IBC):

WHOSE LOSS, WHOSE GAIN?

A Critical Analysis of Performance of Two Years of IBC
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Non-performing assets, which neoliberal economic reform failed to wipe off the books of Indian banks as promised, have returned to haunt the banking sector. Battling to address the problem as the volume of recognised NPAs rose, the government sought to put in place, through the Insolvency and Bankruptcy Code (IBC), a process that would in time-bound fashion “resolve” the problem. In principle, resolution was to occur within 180 days, or at most in 270 days. The nature of the process, described in detail in this study, and the time limits specified, it was claimed, would ensure such resolution.

That the IBC was aimed at quickly getting NPAs off the books of banks was clear from the fact that an amendment to the Banking Regulation Act allowed the RBI to force banks through a circular issued in February 2018, to recognise NPAs early, and to begin the IBC process for sequential lists of large defaulters who accounted for a dominant share of the NPAs. This monograph is a meticulous assessment, based on the dispersed and incomplete evidence available, of what really the government, the RBI and the banks have achieved, based on the powers conferred on them by the IBC. It makes a major contribution by following the IBC process in the case of a large number of individual defaulters, to identify the obstacles faced and issues raised by that experience.

Few disagree that reducing large NPAs and writing off the rest is the way to go. Three questions remain, however. The first, is which is the most effective means of resolution. The second is, who would bear the cost of this restructuring of unpaid bank debt. And, the third, the answer to which is difficult to provide so long as financial liberalisation is in place, is how to ensure that, once addressed, the NPA problem does not recur as it did, starting in the early 2000s, when NPAs had been brought down to a minimum.

The broad areas of concern of this monograph are the first two. NPAs can be technically written off, but then recovered in full or large measure by expropriating the assets serving as explicit or implicit collateral for the debt in question, assuming of course that such assets still exist and have value. When NPAs are recovered only in part, banks take a “hair-cut”. If the NPA issue is to be resolved, the hair cut must be within the limits that banks would, or could be made to, accept. By making the IBC process time-
bound, and by reducing the proportion of debt-linked creditor votes required for agreement on a resolution plan, the IBC has increased the pressure on creditors to settle, even if they were not fully satisfied with the offer.

But, the problem does not end there. The larger are the NPAs the more severe would be the adverse effects of that process on bank balance sheets and solvency, which if not addressed could hurt depositors and can have adverse external effects across the economy. To prevent that, the burden of losses incurred in restructuring of debt would have to be shared with the banks by the debtors and the government (with the losses being socialised and borne by the tax payers). The IBC process, as it evolves, seems to reflect an effort by the government to reduce its contribution to the resolution effort, without consideration of the long-term consequences that may have.

The IBC process was an attempt to separate out various kinds of defaulting firms. First, there were those that were seen as having been pushed into defaulting on some payments because of external or “environmental” factors, and not because of fraud or bad management, and needed help to get back on their feet. Second, those that though in possession of assets with value are seen as incapable of clearing a significant share of their dues under their current management. This required transfer of ownership (at some discounted price). And, finally, those that cannot be kept in operation given their liabilities, assets and income earning prospects, and therefore need to be liquidated. In each case the burden sharing agreement can have different distributional features, when working out a scheme where without having to get the government into large recapitalisation efforts the NPA problem can be optimally resolved. The claim was this would be a process in which banks would get the best recovery possible in a short period of time, while firms that need assistance to return to viability would not be unduly penalised.

None of these expectations, the study establishes, are being realised in practice. To start with, in a very large number of the cases that have been taken to the NCLT, which could not be resolved without being put up for sale or liquidation, getting the process completed in the 180-270 days permitted window has proven to be impossible. Moreover, even when the process led to resolution without liquidation, the hair cut that had to be taken by the banks involved has been extremely high. Barring an
exceptional case like that of Bhushan Steel, haircuts in the case of the first 12 large defaulters identified by the RBI for IBC action, involve or are likely to involve haircuts well in excess of 50 per cent and amounting to as much as 85 per cent. This feature of the IBC process has been sought to be whitewashed by highlighting cases such as Bhushan Steel, or on the grounds that the process is proving to be more effective (in terms of the proportion of outstanding debt recovered) than the Debt Recovery Tribunals, the Lok Adalats and the SARFAESI Act, which were the means of recovery earlier. But the fact remains that the IBC record is not good enough to make the process one that, from the perspective of the banks and saving and tax paying households, “resolves” the problem.

What emerges at the end is that the IBC process has been one in which a set of large corporates have been able to obtain cheap, and at the expense of the banks and the “public” that owns them, some good assets, while the worst assets have been liquidated with adverse consequences for workers and employees. The study also flags how these corporates and, in many cases, defaulting promoters have sought to game the system to their advantage, with some success. In some cases, such as Alok Industries there are allegations based on circumstantial evidence that this has been facilitated by the government.

The IBC-based resolution process is ongoing. Absence of full evidence in the public domain, or the fact that such evidence has not been brought to public attention has hindered objective assessment of the consequences of that process, and its costs and benefits. In that context, this, detailed, balanced and excellent study of the process and its effects, is an important contribution, and deserves all attention.

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1. **Introduction**

When the Bill for ‘Insolvency and Bankruptcy Code, 2016’ was passed in Parliament in May 2016, it was hailed as the biggest economic reform by the current government only next to GST. The Insolvency and Bankruptcy Code, 2016 consolidated and amended various laws relating to insolvency resolution of companies, limited liability entities, partnerships and individuals, which were contained in various enactments into a single legislation. The Insolvency and Bankruptcy Code (IBC) received praises from multilateral institutions like World Bank and IMF and was considered one of the major reasons of India’s sudden jump in the Ease of Doing Business rankings. Even the United States envoy to India praised Finance Minister Arun Jaitley and Parliament for passing the Insolvency and Bankruptcy Code.\(^1\)

The IBC came into force in December, 2016 and the first case under IBC was referred to as the National Company Law Tribunal (NCLT) in January 2017. The first insolvency resolution order under IBC was passed in August 2017 for Synergies-Dooray Automotive, a company manufacturing automotive parts, where the lenders (banks and other creditors) were forced to take a 94% haircut.\(^2\) Since then, a number of cases have been sent to NCLT by the lenders for speedy resolution. The IBC process was projected as a panacea for the recovery of NPAs or bad loans and the government went to the extent of claiming in April 2018 that more than Rs. 4 lakh crore of NPAs had been recovered through the IBC process.\(^3\) However, the data from RBI later revealed that the actual figures for recovery had been much lower. The NPA accounts of 40 companies (12 in the first list and 28 in the second list) referred by RBI for the resolution process came much into limelight as they together account for 40-45% of bad loans in the banking system. Meanwhile, gross non-performing assets (NPAs), or bad loans of Indian banks, stood at Rs 10.25 lakh crore as on 31 March, 2018.\(^4\)

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3. Rs 4 lakh crore NPAs have returned due to insolvency system: Official - The Economic Times - April 04, 2018 - https://economictimes.indiatimes.com/industry/banking/finance/banking/rs-4-lakh-crore-npas-have-retumed-due-to-insolvency-system-official/articleshow/63610426.cms
4. Will 'bad bank' be good for the banking sector? - Money Control - June 09, 2018 -
Insolvency and Bankruptcy Code is a vast framework and a critical review of it can be done from various angles, right from the ‘efficiency’ of the process, i.e. the number of insolvency cases handled by the NCLT machinery in a specific time, to measuring the ‘efficacy’ of the process from the viewpoint of lenders, i.e. whether IBC is able to deliver its promises in terms of ensuring a fair recovery for the financial and operational creditors. One way of assessing the Code is also to analyze the readiness of the system in terms of the number of benches, judges, insolvency professionals, lawyers, etc. to handle the workload related to the IBC process. The Code can also be analyzed vis-à-vis the other alternatives in the past to handle cases of insolvency and bankruptcy and how the Code is faring compared to the previous set of laws.

In this report, the Insolvency and Bankruptcy Code is primarily analyzed from the lens of recovery of debt for lenders or financial creditors (mainly the banks and NBFCs), once the companies are referred to NCLT either by the Financial Creditors, Operational Creditors or Corporate Debtors themselves. Though hundreds of companies have been referred to NCLT for insolvency cases in the past two years, the focus of this report is primarily on the RBI 40 List, i.e. a total of 40 companies referred to NCLT by RBI in two phases. The report also looks into the various claims of recoveries made by the Government and other Industry bodies and how much they correspond with the available data. There is a detailed section which provides the data on the insolvency resolution and liquidation of the companies as per provided by IBBI. For the sake of the reader, this report provides a brief overview of the IBC process and the associated terminologies. For readers, who would like to explore more about the details of the IBC process can refer several number of literature available online.

The report delves into some of the shortcomings in the IBC process, which have come to light in the due course of time. This covers a wide array of topics ranging from infrastructural capacity of NCLT to misuse of IBC by various entities to some of the frauds which have come across within the IBC framework to the criticism of IBC from political parties and bank unions. Considering the wide scope of IBC, this report in no way claims to

provide a comprehensive critique of the IBC framework as a whole, but focuses more on the aspect of recovery for the lenders through IBC.

The report makes an overall attempt to familiarize the reader with the IBC framework along with providing empirical evidence over the past two years to establish the case that IBC may not be the answer for addressing the NPA crisis, even though this has been proactively touted by the government and the industry experts that IBC is a panacea for the NPA woes of the lenders.

Methodology

This report has primarily relied on secondary research, which has included referring to various news sources, along with other relevant reports. The data quoted in the report has primarily been taken from the website of Insolvency and Bankruptcy Board of India (IBBI), along with some other news sources. Court orders of NCLT have also been referred here from the IBBI website for the purpose of the report. Though the data provided here is not exhaustive in nature, best efforts have been taken to include as much data as possible. In terms of timeline, the news articles referred here are spread over many years though the latest articles referred here are up to March 2019.

Acknowledgments

This booklet would not have been possible without the support of colleagues at CFA, for which I am highly indebted. Additionally, I would like to thank Comrade Thomas Franco (former General Secretary, All India Bank Officers Confederation), for providing his invaluable guidance and insights on Insolvency and Bankruptcy Code, which has helped a lot in shaping up this report.
2. A BRIEF BACKGROUND OF INSOLVENCY AND BANKRUPTCY CODE (IBC) IN INDIA

Before the introduction of the Insolvency and Bankruptcy Code there was no single legislation governing corporate insolvency and bankruptcy proceedings in India. The various provisions related to the insolvency of businesses was scattered over various acts such as the Companies Act, 1956 (Companies Act), the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDB Act), the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and Sick Industrial Companies (Special Provisions) Act, 1985 (SICA).

There were also two other legislations covering individual bankruptcy, viz. Provincial Insolvency Act, 1920 and the Presidency Towns Insolvency Act, 1909. Overall, these legislations covered insolvency and bankruptcy of companies, limited liability partnerships, partnerships firms, individuals and other legal entities in India. These legislations gave jurisdictions at various stages to different legal institutions such as the high courts, district courts, the Company Law Board, the Board for Industrial and Financial Reconstruction (BIFR) and the Debt Recovery Tribunals (DRTs). The presence of multiple legislations and institutions led to systemic delays and complexities.

A High Level Committee was set up in 1999 by the government of India under the chairmanship of Justice V.B. Eradi to examine the existing laws on insolvency of companies and winding-up proceedings and suggest reforms to reduce the delay involved in the process. The committee identified that the most significant reason causing the critical delay in dissolution of companies was the presence of multiplicity of court proceedings. The committee submitted its report in 2000, whereby it recommended that the jurisdiction, power and authority relating to winding up of companies should be vested in a National Company Law Tribunal (NCLT), instead in the high court. Following this, in December 2002, the Companies (Second Amendment) Act, 2002 was passed by Parliament to restructure the Companies Act, 1956 including the setting up of NCLT and NCLAT, combining the powers of the Company Law Board (CLB) under the Companies Act, Board for Industrial & Financial Reconstruction (BIFR) and

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Appellate Authority for Industrial & Financial Reconstruction (AAIFR), under the Sick Industrial Companies (Special Provisions) Act, 1985 and the jurisdiction and powers relating to winding-up vested in the high courts.

In order to strengthen the Second Amendment Act, Dr. J. J. Irani Committee was set up, which submitted its recommendations in 2005 whereby it made some key recommendations such as time-bound proceedings, applicability and accessibilities, moratorium and suspension of proceedings, operating agencies, appointment of administrators and their duties, creditor’s committee and liquidators, increased role of professionals, insolvency practitioners, cross border insolvency etc. These recommendations paved the way for overhauling the existing bankruptcy laws in order to facilitate easy and time-bound winding up of businesses. Under the chairmanship of former law secretary T.K. Viswanathan, the Banking Law Reforms Committee (BLRC) was constituted in October 2014. The BLRC came out with its report in November 2015, recommending significant changes to the laws relating to insolvency and bankruptcy (BLRC Report). The BLRC Report recommended a complete institutional overhaul, along with proposing the constitution of a regulator (which eventually became the Insolvency and Bankruptcy Board of India), information utilities, insolvency professional agencies and insolvency professionals. The BLRC proposed that India shift from a “debtor-in-possession” to a “creditor-in-control” model, taking cues from the statutory framework in place in other developed countries.

The Bankruptcy Law Reforms Committee in its report highlighted that before the introduction of the Insolvency and Bankruptcy Code, the bankruptcy process of firms had a highly fragmented framework whereby powers of the creditor and debtor under insolvency were provided under different Acts. Moreover, the presence of multiple judicial institutions lacked business or financial expertise, and information or bandwidth, to take decisions on such matters, which led to delays and extensions in reaching an outcome and vulnerability to appeals of the outcome. The report stressed that in an environment of legislative and judicial uncertainty, the outcomes on insolvency and bankruptcy were poor. According to the World Bank Doing Business Report of 2016, in India,

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6 Insolvency and Bankruptcy Code, 2016 - Chartered Secretary - September 2016 - http://icsiip.com/Portals/0/Articles%20%20%28March%20%20March%202017%29.pdf
insolvency cases took an average of 4.3 years. This was much longer than 1.7 years in China, 1.5 years in the US, 0.8 years in Singapore and 0.6 years in Japan. Similarly, India ranked very low in terms of the recovery where lenders recovered only 26 cents on an average for a dollar.\(^8\) India was ranked at 136\(^{th}\) position in terms of the parameter of resolving insolvency by the World Bank in 2016.\(^9\)

Finance Minister Arun Jaitley in his budget speech\(^10\) in 2015-16 had stated:

“Bankruptcy law reform that brings about legal certainty and speed has been identified as a key priority for improving the ease of doing business. SICA (Sick Industrial Companies Act) and BIFR (Board for Industrial and Financial Reconstruction) have failed in achieving these objectives. We will bring a comprehensive Bankruptcy Code in fiscal 2015-16 that will meet global standards and provide necessary judicial capacity.” (Para 36)

The Insolvency and Bankruptcy Code, 2015 was introduced in Lok Sabha in December 2015. In April 2016 report of the Joint Committee on the Insolvency and Bankruptcy Code, 2016 was presented to Parliament. Lok Sabha passed the Insolvency and Bankruptcy Code, 2016 in May 2016 and Rajya Sabha also passed this bill in the same month and the Insolvency and Bankruptcy Code, 2016 was enacted too in May 2016. The National Company Law Tribunals were constituted in June 2016. The regulator for the Insolvency and Bankruptcy Code, Insolvency and Bankruptcy Board of India (IBBI), was established in October 2016. Dr. M.S. Sahoo was appointed as the Chairman of the IBBI. The provisions related to corporate insolvency resolution and liquidation in the Insolvency and Bankruptcy Code came into force in December 2016.

The objective of the Insolvency and Bankruptcy Code, 2016 stated in the Act\(^11\) says:


“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution 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 matters connected therewith or incidental thereto.”

One can see that the Insolvency and Bankruptcy code in its objective stresses on insolvency resolution in a time-bound manner, maximization of value of assets and balancing the interests of all the stakeholders involved. Even though Insolvency and Bankruptcy Code was introduced by the NDA government, it can be seen that the push for having a Bankruptcy Code in India had been there for quite some time and there has not been any major opposition to it by the ruling parties or the opposition. The pressure on India to improve its bankruptcy laws has also been there from multilateral institutions like the World Bank.
3. How the IBC Process Works?

It is said that in an economy it is important to have time-bound processes for winding up of businesses to serve the best interests of the lenders, business partners and investors. The lengthy litigations related to bankruptcy erode the economic value of the firms, affecting not just the lenders but also employees and suppliers, and adversely affects the economy as a whole. The Insolvency and Bankruptcy Code was brought to facilitate closure of businesses under a unified framework. While providing an in-depth insight into the Insolvency and Bankruptcy Code is beyond the scope of this document, a brief mention of the Corporate Insolvency Resolution Process (CIRP) is provided, which would be useful in the later sections of the document.

3.1 Some Key Terms Related to Insolvency and Bankruptcy Code

Before going into details of the IBC process, it is important to have a clarity on few of the terms, which would be used frequently in the document.

**Key difference between Insolvency and Bankruptcy**

**Insolvency**: In legal terms, insolvency is a financial state whereby an entity (say a company) has lost the capability to pay off its debts to the creditors. When the entity is not able pay back the debts to its creditors on time and lacks the financial viability of shedding its liability then that entity is known as insolvent. The entity may be in a position to pay at a later date some amount or even in full, but at the promised date of payment, the entity is unable to make the payment. Insolvency leads to the state of default. Even in the absence of any explicit fraud, the default can happen due to financial failure or business failure. A company can turn insolvent when the value of assets along with the money flowing into the company is less than the liabilities and money outflow from the company. When an entity is facing insolvency, corrective actions need to be taken to rectify the situation in order to avoid possible bankruptcy. This can be done by ways like generating surplus cash or by minimizing the overhead costs. The company can generate surplus cash by selling off the assets of the company and paying back to the creditors or investors from the sale proceeds of the assets. Similarly, the concerned entity can negotiate the repayment terms with the lenders.
Bankruptcy: Bankruptcy is termed as legal declaration of insolvency, i.e. one’s inability to pay off debts. Bankruptcy is a financial condition where a firm/individual is unable to repay debts to its creditors in the present and foreseeable future. According to the Insolvency and Bankruptcy Code 2016, a bankrupt entity is a debtor who has been adjudged as bankrupt by an adjudicating authority (i.e. NCLT) by passing a bankruptcy order.

Key difference between Financial Creditor and Operational Creditor

A creditor refers to an entity to whom a debt is owed and includes both Financial Creditor and Operational Creditor. It is important to understand the distinction between Financial Creditor and Operational Creditor.

Financial Creditor: A Financial Creditor is a bank or financial institution, or any other lender, providing loans, credit facility or any other kind of financial assistance. Financial Creditors are those whose relationship with the concerned entity is purely based on a financial contract.

Operational Creditor: An Operational Creditor is defined as an entity to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. Operational debt has been defined as “a debt in respect of the provision of goods and services”. Operational Creditors are suppliers of good or services to any company or operational debtor.

Key difference between Resolution and Liquidation

Resolution: Resolution refers to a plan proposed by any authorized person/entity for enabling the overdue payments of a corporate debtor through restructuring of debts or through part payments, during which the corporate debtor is allowed to continue as a going concern.

The National Company Law Appellate Tribunal (NCLT), while hearing an appeal in the case of ‘Binani Industries Ltd. vs Bank of Baroda & Another’, gave a landmark decision in November 2018, where it clarified on the purpose of resolution. The judgement said, “The Purpose of Resolution is for maximization of value of assets of the ‘Corporate Debtor’ and thereby for all creditors. It is not maximization of value for a ‘stakeholder’ or ‘a set of stakeholders’ such as Creditors and to promote entrepreneurship, availability of credit and balance the interests. The first order objective is

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12 NCLAT Judgement - Binani Industries Ltd. vs. Bank of Baroda & Another - November 2018 - https://nclat.nic.in/Useradmin/upload/744324065bebc1bd0ef4a.pdf
“resolution”. The second order objective is ‘maximization of value of assets of the Corporate Debtor’ and the third order objective is ‘promoting entrepreneurship, availability of credit and balancing the interests’. This order of objective is sacrosanct."

Liquidation: Liquidation is the winding up of a corporation or incorporated entity under the supervision of a person or ‘liquidator’, empowered under law for such operation and for the distribution of proceeds to the various creditors as per an agreed formula. It is to be noted that only businesses can be liquidated. Defaulting individuals cannot be liquidated.

3.2 Institutional Framework of Insolvency and Bankruptcy Code

Before moving to the detailed process of initiating insolvency, it is important to have a brief understanding of the institutional framework of Insolvency and Bankruptcy Code. Given below are the institutions within the IBC framework:

i. **Insolvency and Bankruptcy Board of India (IBBI):** Under the Insolvency and Bankruptcy Code, a regulatory and supervisory board has been created by the name of ‘Insolvency and Bankruptcy Board of India (IBBI)’, which has the overall responsibility to implement the Bankruptcy Code in an effective manner. IBBI is entrusted with the responsibility of promoting transparency and governance in the administration of IBC. The Board regulates Insolvency Professionals, Insolvency Professional Agencies and Information Utilities set up under the Code. The Board consists of representatives of the Reserve Bank of India and the Ministries of Finance, Corporate Affairs and Law.

ii. **Insolvency Professionals:** Insolvency professionals are a specialized cadre of licensed professionals who are enrolled with an insolvency professional agency and registered with the Insolvency and Bankruptcy Board of India (IBBI). An Insolvency Professional is appointed as an Insolvency Resolution Professional during the corporate insolvency resolution process to manage the resolution process and as a liquidator to conduct liquidation of a corporate debtor. A Resolution Professional is appointed by the Adjudicating Authority, i.e. NCLT and is given power by NCLT to effectively run the entity as a going concern.
and manage the assets of the entity at all times during the process of resolution.

iii. **Insolvency Professional Agencies**: Insolvency Professional Agencies are professional bodies registered with IBBI which regulate the activities of Insolvency Professionals. Insolvency Professionals are mandated to be enrolled with Insolvency Professional Agencies which are empowered to conduct examinations to certify the insolvency professionals and enforce a code of conduct.

iv. **Information Utilities**: An Information Utility is a professional organization registered with IBBI which acts like an information network storing high-quality authenticated information about debts and defaults. The utility specializes in procuring, maintaining and providing/supplying financial information. The access to this information is made available to insolvency professionals, creditors, businesses, financial institutions, adjudicating authority and other relevant stakeholders in the insolvency resolution process so that all stakeholders are on the same page while making decisions.

v. **Adjudicating Authorities**: The adjudicating authority for insolvency proceedings relating to companies, limited liability partnerships and other corporates is the National Company Law Tribunal (NCLT). The appeals arising out of NCLT is heard by the National Company Law Appellate Tribunal (NCLAT) and thereafter by the Supreme Court. For individuals and other persons, the adjudicating authority is the Debt Recovery Tribunals (DRT). Appeals arising out of DRT orders is heard by the Debt Recovery Appellate Tribunal (DRAT) and thereafter by the Supreme Court. The duties of the adjudicating authorities include approval to initiate the resolution process, appoint the Insolvency Professional, and approve the final decision of the creditors.
3.3 Categories of Applicants for Filing Insolvency Cases

The initiation of Corporate Insolvency Resolution Process can be done by Financial Creditor, Operational Creditor or Corporate Debtor. Let us briefly look into these three scenarios.

I. Initiation by Financial Creditor

In case of a default, a financial creditor or a group of financial creditors can initiate the Insolvency Resolution Process by filing an application before the NCLT. Along with filing the application, a notice needs to be served to the debtor regarding the same.

The Code stipulates that NCLT has to ascertain the existence of the debt and default and has to admit or reject the application, within fourteen days of filing of an application. The timeline for the Insolvency Resolution Process effectively starts from the date the application is admitted. In case an application is incomplete or has any kind of defect then it can be rejected.

II. Initiation by an Operational Creditor

The Bankruptcy Code has formulated a two-step process for the initiation of insolvency proceedings by an Operational Creditor. Upon occurrence of a default the operational creditor will have to demand payment of the unpaid debt from the corporate debtor. On receipt of this demand, the corporate debtor has to either dispute this debt or pay the unpaid debt. If the situation arises that the corporate debtor has neither disputed the debt nor repaid the debt, then an application can be filed in NCLT by the operational creditor to initiate the Insolvency Resolution Process.

III. Initiation by a Corporate Debtor

The Insolvency and Bankruptcy Code also allows the provision for a corporate debtor to file for the initiation of insolvency proceedings. For this the corporate debtor should provide information related to the books of account and the Resolution Professional has to be appointed. Further, the shareholders of the corporate debtor (or three-fourth of the total number of partners) must also pass a special resolution approving the filing of the insolvency resolution application.¹³

3.4 Step-by-Step Mechanism of Insolvency Resolution Process

i. Initiation of Insolvency Resolution Process

Once an application is filed by the Financial Creditor/Operational Creditor in the NCLT, an Interim Resolution Professional (IRP) has to be appointed by the NCLT within 14 days from the insolvency commencement date. The Interim Resolution Professional (IRP) has to be replaced by a Resolution Professional appointed by the Committee of Creditors (CoC) within 30 days (RP) of his appointment.

With the appointment of the Insolvency Resolution Professional, the board of directors of the corporate debtor are suspended and management vests with the IRP. The responsibilities an IRP is entrusted with include conducting the insolvency resolution process, taking over the assets and management of a company and collecting financial information of the corporate debtor from information utilities.

To take the Insolvency Resolution Process further, the IRP assesses the actual financial position of the debtor by collecting information on assets, finances and operations. The IRP is also required to make a public announcement of the insolvency resolution process, as per the order of NCLT, whereby the creditors are required to submit their claims before a due date.

The IRP receives and collates claims submitted by the creditors. The IRP is also entrusted with ascertaining a liquidation value and a fair value of the insolvent company. The fair value of the company is defined as a realizable value of the assets of the insolvent company, if the company was sold to a prospective buyer on the date on which insolvency application was admitted. The provision for calculating the fair value of the company was added later by IBBI, as many resolution applicants were submitting bids only closer to the liquidation value.

During the duration when the insolvency resolution process is going on, all the creditors’ claims are frozen and no coercive proceedings can be launched against the corporate debtor in any other forum or under any other law, till the time the Resolution Plan is approved or the liquidation process is initiated.
ii. **Action Taken by Committee of Creditors**

Initially, the Interim Resolution Professional is entrusted to constitute the Committee of Creditors (CoC). Whenever there is a scenario of consortium-based lending, every Financial Creditor is eligible to be a part of the Committee of Creditors. The vote share among the Committee of Creditors is proportionate to the financial debt owed to each financial creditor. It should be noted that a related party of the Corporate Debtor to whom a financial debt is owed is not given any representation, participation or voting rights in the Committee of Creditors to avoid any conflicts of interest. Operational creditors get to be a part of Committee of Creditors (without voting rights) if their aggregate dues are not less than 10% of the debt.  

The Committee of Creditors is supposed to meet within seven days of its constitution and has to decide by a 66% vote, whether they want to continue with the Interim Resolution Professional as the Resolution Professional for the rest of the insolvency resolution process or whether they want to appoint a new Resolution Professional. Thereafter, the Resolution Professional is formally appointed by NCLT. The Committee of Creditors with at least 66% vote can change the Resolution Professional any time.

The Committee of Creditors evaluates various resolution plans submitted for an insolvent company, and, based on their evaluation, determine the appropriate resolution plan. This should ensure that the bid evaluation process is more transparent and provides a layer of procedural fairness to any challenge to the process by unsuccessful bidders.

The routine decisions taken by the Committee of Creditors require an approval of a minimum of 51% of voting share. However, if, for some major decision, the voting threshold has been set as 66%, such as appointment of the resolution profession, the approval of the resolution plan and extending the time limit for the insolvency resolution process is required. Additionally, the Committee of Creditors is given the powers to allow the withdrawal of an insolvency application if approved.

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15 [When the Insolvency and Bankruptcy Code came into effect, this voting threshold for major decisions was set at 75%, which was later on reduced to 66% by an Ordinance in June 2018 and was then included through an amendment brought in August 2018.](https://www.thecompaniesact2013.com/uploads/1481524464_ibc%20Article%201.pdf)
by a vote share of 90% by the Committee of Creditors. Whenever there is a scenario of consortium-based lending, every Financial Creditor is eligible to be a part of Committee of Creditors. The vote share among the Committee of Creditors is proportionate to the financial debt owed to each financial creditor.

In case of consortium-based lending, every Financial Creditor is eligible to be a part of the Committee of Creditors. The voting in such a situation would be based on the share of the financial debts owed to such Financial Creditors.

iii. Implementation of Resolution Plan

The Insolvency and Bankruptcy Code is essentially geared towards achieving a resolution, instead of pushing a company towards liquidation. For this, an insolvency resolution plan needs to be finalized. An ideal Resolution Plan would provide a solution for the repayment of debts back to the creditors, along with ensuring the survival of the corporate debtor as a going concern. The resolution plan should also include the repayment of debt of operational creditors with the condition that the amount repaid by the corporate debtor shall not be less than the amount due in case the debtor is liquidated. The resolution plan should also cover the plan for repayment of costs related to insolvency resolution, along with the strategy for implementation and supervision.

If the terms of the resolution plan are approved by the Committee of Creditors, then, it is subsequently sent to NCLT for approval and the Resolution Plan eventually gets implemented. The implementation of a successful resolution plan may help the debtor to overcome the existing debt crisis with reduced liabilities along with a chance for reviving the business. The Resolution Professional is also required to prepare an information memorandum which assists in the formulation of a resolution plan.

The resolution plan can be presented in front of Committee of Creditors by a Resolution Applicant, who needs to meet certain eligibility criteria. The Resolution Applicant prepares the resolution plan based on the information provided in the information memorandum. An amendment was introduced in the Code in Section 29A which rendered some categories of applicants ineligible to submit a resolution plan.
plan, such as wilful defaulters, persons who controlled an account classified as non-performing assets, promoters and their relatives of defaulting companies, etc.

If, in case, none of the resolution plans submitted by the Resolution Applicants are approved by the Committee of Creditors, then the NCLT may pass an order for the company to be liquidated. Provisions have also been made where a Resolution Applicant needs to deposit a performance security if the resolution plan is approved by the Committee of Creditors. If in case the NCLT approves this resolution plan and the Resolution Applicant does not implement the plan or fails to implement the plan, then the performance security gets forfeited.

The Code has also been amended to make provisions for a creditor approaching the NCLT in case of non-implementation of a resolution plan, or else there might be a high probability of the corporate debtor being forced to get liquidated.

iv. **Liquidation as the Last Resort**

In the scenario if no resolution plan is received for the insolvent company or the Committee of Creditors do not approve a resolution plan with at least 66% vote share, then the NCLT passes an order of the liquidation of the firm. The Resolution Professional hired for the Insolvency Resolution Process also acts as the liquidator, unless NCLT decides to hire another liquidator.

For the purpose of liquidation, the liquidator creates a corpus of all assets of the insolvent company which can be distributed upon liquidation. After this, the liquidator is supposed to collect all the claims from the creditors within 30 days of the date of commencement of liquidation. The liquidator can accept or reject the submitted claims and the creditors can appeal against this decision.

According to the Insolvency and Bankruptcy Code, an order of priority has been laid down for the creditors that determines the sequence in which outstanding debts are repaid:

1. Fees paid to the Resolution Professional and other costs incurred in the Insolvency Resolution Process.
2. Secured Creditors (where the loan is backed by a collateral/security) who chose not to enforce the security they hold and the dues owed to workmen.
3. Employee wages.
4. Unsecured Creditors.
5. Dues owed to the government and residual debts to creditors even after the enforcement of security.
6. Any other outstanding debt.
7. Shareholders, with preference shareholders’ rights, taking precedence.

The Code stipulates that once an order for liquidation has been passed, suits or legal proceedings cannot be instituted by/against the corporate debtor. Normally, the liquidator sells the assets of the corporate debtor by the auction method, but under some conditions, a private sale of assets is also allowed.

3.5 Time-frame for Insolvency Resolution Process

The Code mandates that the Insolvency Resolution Process has to be completed within 180 days from the date of the application being admitted in NCLT. Beyond the normal timeframe of 180 days assigned for the Insolvency Resolution Process, the Code allows a further extension of a maximum of 90 days in case of a delay, if an application is submitted by the Committee of Creditors demanding an extension beyond the normal timeframe. Thus the Code stipulates that the Insolvency Resolution Process has to be completed within 270 days in a time-bound manner, which was also one of the key motivations behind bringing the Insolvency and Bankruptcy Code.
4. **A Brief Insight into the Status of Insolvency/Liquidation of Companies Referred by RBI to NCLT**

In June 2017, an Independent Advisory Committee (IAC) for RBI had its first meeting on June 12, 2017. In the meeting, IAC decided to focus on large stressed accounts at that time and accordingly took up for consideration the accounts which were classified partly or wholly as non-performing from amongst the top 500 exposures in the banking system. The IAC came up with an objective, non-discretionary criterion, whereby those accounts were shortlisted whose fund and non-fund based outstanding amount was greater than Rs 5,000 crore, along with 60% or more classified as non-performing by banks as on March 31, 2016. According to the recommended criteria, the IAC identified 12 accounts totaling about 25% of the current gross NPAs of the banking system to be referred to NCLT. The RBI also requested the NCLT to accord priority to these cases. This proactive step was taken by RBI after the promulgation of the Banking Regulation (Amendment) Ordinance, 2017, which empowered the RBI to issue directions to any of the banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC).

4.1 **Companies referred to NCLT under RBI 1st List**

The RBI 1st List comprising 12 companies, called together as “Dirty Dozen” constituted 25% of the total NPAs of the Indian banking system. This roughly translated to Rs 2.5 lakh crore of NPAs stuck with these 12 companies.

Given below is the list of 12 companies referred by RBI in the 1st List:

1. ABG Shipyards Ltd.
2. Alok Industries Ltd.
3. Amtek Auto Ltd.
4. Bhushan Power and Steel Ltd.

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5. Bhushan Steel Ltd.
6. Electrosteel Steel Ltd.
7. Era Infra Engineering Ltd.
8. Essar Steels Ltd.
10. Jyoti Structures Ltd.
11. Lanco Infratech Ltd.
12. Monnet Ispat & Energy Ltd.

Given below are the updates related to the 12 companies in the RBI 1st List. This includes information related to the amount owed to the lenders and the details related to insolvency proceedings.

1. ABG Shipyard Ltd

ABG Shipyard Ltd. is a part of ABG Group of Companies. The company was established in 1985 and is the largest private sector ship-building company in India. ABG Shipyard builds a range of commercial vessels such as self-loading and self-discharging bulk carriers, container ships, floating cranes, dynamic positioning ships, offshore supply vessels, etc. ABG was granted clearance from the government of India to build warships and various other vessels for the Indian Navy. ABG is the second private shipyard to receive such a license after Pipavav Shipyard.

The insolvency petition for ABG Shipyard was admitted in the Ahmedabad bench of NCLT in August 2017. The petition was filed by ICICI Bank. Even before the company was referred to NCLT, Reliance Defence and Engineering Ltd., Shapoorji Pallonji Group and Liberty House Group of UK had shown interest in buying out the ABG Shipyard. Post its admittance in NCLT, in three rounds of bidding, the company had only a sole bidder in the form of Liberty House UK, which had offered Rs 5,600 crore for acquiring the company, which would have been payable only from the fifth year, along with the condition of no interest payments in the interim period. The lenders had turned down this offer stating that the bid was too low, along with no upfront payment of cash. Another reason as to why

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lenders had been wary of Liberty House has been that it had not honored its commitments related to the resolution plans for Adhunik Metals and Amtek Auto, the two other companies referred to in NCLT.

According to the 270-day deadline, the resolution process of the company should have been completed by April 28, 2018. However, the final order for liquidation is yet to come from NCLT. Lenders had placed a liquidation value for Rs 2,200 crore for ABG Shipyard, while the company owed Rs 18,254 crore as debt. The company had a total of 22 lenders. ABG Shipyard owed Rs 5,304 crore to ICICI Bank, Rs 2,573 crore to IDBI Bank and Rs 2,373 crore to State Bank of India (SBI) as the top three lenders. In March 2019, finally, the resolution professional for ABG Shipyard filed an application with the NCLT seeking liquidation of the company. The Committee of Creditors (CoC) led by ICICI Bank approved the resolution backing up the liquidation plan. The final order for liquidation is expected to be delivered soon. When ABG Shipyard eventually gets liquidated, the lenders will have to take a haircut of more than 85%. The whole insolvency process for ABG Shipyard would have taken close to two years.

**Admitted in NCLT?:** Yes  
**Date When Company Admitted in NCLT:** August 01, 2017  
**Bench:** Ahmedabad Bench  
**Nature of Applicant:** Financial Creditor  
**Case Filed by:** ICICI Bank  
**Lead Bank:** ICICI Bank  
**Other Financial Creditors:** IDBI Bank, State Bank of India, Oriental Bank of Commerce, Punjab National Bank, Dena Bank  
**Name of Bidders Submitting Resolution Plan:** Liberty House UK  
**Has Final Order of Resolution/Liquidation Passed by NCLT?:** No  
**Date of Passing Final Order of Resolution/Liquidation:** NA  
**Name of Bidder Selected for Resolution:** NA

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2. **Alok Industries Ltd.**

Alok Industries Ltd. was established in 1986 as a textiles company and it became a public limited company in 1993. The company is a manufacturer of home textiles, garments, apparel fabrics and polyester yarns, selling directly to manufacturers, exporters, importers, retailers and garment brands, with a presence in the cotton and polyester segments. The company exports its products to over 90 countries across the United States, Europe, Latin America, Asia and Africa.

The insolvency petition against Alok Industries was admitted in the New Delhi Bench of NCLT in July 2017. This insolvency petition was filed by the State Bank of India. It was reported in December 2017, that the insolvency resolution professional hired for Alok Industries had invited for fresh bids, as the company had not received any bids in the first round till the last date of submitting the Express of Interest (EoI), i.e. 12 October.\(^{24}\) By April 2018, Reliance Industries-JM Financial Asset Reconstruction Company was the sole bidder for Alok Industries. NCLT had admitted claims worth Rs 29,615 crore owed to the financial creditors.\(^{25}\) However, just a few days later, Reliance Industries informed that it did not get the approval from the Committee of Creditors (CoC) as only 70% of them had approved the resolution plan, when the minimum threshold was 75%. Earlier, Reliance Industries had made an offer of Rs 4,950 crore which they had revised slightly to Rs 5,050 crore.

The Committee of Creditors were not in favor of the offer from Reliance Industries as it was not much higher than the liquidation value of the company, which was Rs 4,200 crore. Accepting the offer would have meant that the lenders would have taken an 83% haircut for their loans. In an attempt to save the company, employees of Alok Industries had filed an interlocutory petition through Alok Employees Benefit and Welfare Trust urging the lenders who had opposed the offer from Reliance Industries to save the company from liquidation. The financial creditors who were opposed to the deal included Dena Bank, Central Bank of India, IDBI Bank, Union Bank of India, and LIC of India. Alok Industries employs more than 18,000 people, which include 12,000 permanent employees and 6,000 employees.


temporary staff. Similar to the petition filed by the employees of Alok Industries, ten operational creditors of Alok Industries had also filed an interlocutory petition to consider the resolution plan submitted by Reliance Industries in order to save the company from liquidation.

The Committee of Creditors finally approved the resolution plan for Reliance Industries-JM Financial ARC on 22 June, which was approved by 72.19% of the lenders. NCLT had directed the CoC to take a re-voting considering the IBC amendment in June 2018 which reduced the voting threshold from 75% to 66%. This move by the government enabled Reliance Industries to acquire Alok Industries. However, this was met by opposition from the bank unions which alleged that the government had brought in the amendment merely to favor Reliance Industries forcing a huge haircut for the lenders. Some leaders of political parties also questioned this move in Parliament stating that the government should have referred this to a joint committee instead of bringing the change through an ordinance. The NCLT finally approved the resolution plan of Reliance Industries-JM Financial ARC in March 2019, thus completing the resolution process for Alok Industries. The 83% haircut forced upon the lenders raised several questions over the efficacy of the IBC process in addressing the NPA crisis for the banks, especially when there have been instances of sole bidders, thus lacking any competition in determining the best deal for the lenders and the bidders submitting resolution plans which are barely higher than the liquidation value.

Admitted in NCLT?: Yes
Date When Company Admitted in NCLT: July 18, 2017
Bench: Ahmedabad
Nature of Applicant: Financial Creditor
Case Filed by: State Bank of India
Lead Bank: State Bank of India

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**Other Financial Creditors:** Axis Bank, Corporation Bank, UCO Bank, Bank of Maharashtra, Allahabad Bank, Union Bank of India, Dena Bank, Oriental Bank of Commerce, United Bank of India, Life Insurance Corporation of India

**Name of Bidders Submitting Resolution Plan:** Reliance Industries - JM Financial ARC

**Has Final Order of Resolution/Liquidation Passed by NCLT?** : Yes

**Date of Passing Final Order of Resolution/Liquidation:**

**Name of Bidder Selected for Resolution:** Reliance Industries - JM Financial ARC

3. **Amtek Auto Ltd.**

Amtek Auto Ltd. was incorporated in 1988. The company is an integrated auto component manufacturer, engaged in forging, iron casting, aluminum die casting, machining and sub-assembly. Amtek Auto also manufactures components for non-auto sectors such as the railways, specialty vehicles, aerospace and agricultural and heavy earth moving equipment. It has facilities across India, Japan, Thailand, Germany, Hungary, Italy and Romania, among others.

The insolvency petition for Amtek Auto was admitted in the Chandigarh bench of NCLT in July 2017. The insolvency application was filed by Corporation Bank. Amtek Auto faced claim of Rs 12,722 crore from the financial creditors and Rs 223 crore from operational creditors. UK-based metals group Liberty House and Deccan Value Investors, a US-registered hedge funds, emerged as the top bidders for Amtek Auto, by the end of December 2017. 29 However, lenders rejected the bids from both Liberty House and Deccan Value stating that the bid amounts were lower than the liquidation value and were unacceptable to the lenders. It was also speculated that at one point the lenders were considering to sell Amtek Auto along with its subsidiaries Castex Technologies and Metalyst Forgings as a single offering, which were undergoing separate bankruptcy proceedings. Around April 2018, the Committee of Creditors approved the resolution plan of Liberty House after it revised its bid to offer Rs 4,334 crore, which entailed a 66% haircut for the lenders. However, Resolution

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Professional of the company sought clarification from NCLT regarding the eligibility of Liberty House, as it was deemed ineligible for non-payment dues of $3 million of Indian Exim Bank. NCLT gave a go ahead to Liberty House in July 2018 to acquire Amtek Auto. In November 2018, it was reported that Liberty House had missed the deadline to pay the dues to the lenders of Amtek Auto.

Over the inaction of Liberty House, the Committee of Creditors (CoC) of Amtek Auto sought to bar Liberty House from bidding for any other insolvent company. The CoC appealed to the NCLT bench to invoke Section 74 of the IBC where it said there was "lack of bonafide" intent on the part of the company to follow the terms of resolution plans approved by the adjudicating authority. The company also wanted to invoke Section 60 (5) of IBC Act against Liberty House as the company failed to make payments according to the resolution plan approved by the tribunal. Section 74 (3) of the IBC states that officials of successful resolution applicants can be imprisoned for a minimum of one year with a maximum tenure of five years, and fined a minimum of Rs 1 lakh with the maximum penalty of up to Rs 1 crore if they are found to violate terms of the plan approved by the NCLT under Section 31 of the IBC.

Finally, in February 2019 NCLT granted permission to conduct a fresh round of bidding for Amtek Auto after backing out of Liberty House. NCLT had given a reduced time-frame of 140 days to re-do the insolvency process. In March 2019, the lenders further sought an approval from NCLAT for the second round of bidding. The NCLAT said that it would first like to hear the second-highest bidder, Deccan Value, on this matter, as Deccan Value was considering revising its offer. Earlier, Deccan Value had submitted a bid of Rs 3,150 crore. It would only be known in the coming months whether the resolution of Amtek Auto gets completed, or, if it will have to eventually face liquidation. The insolvency process of Amtek Auto would most likely cross more than two years due to the backing out of

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Liberty House, which also raises questions about the claims of time-bound resolutions under the IBC Framework.

**Admitted in NCLT?:** Yes  
**Date When Company Admitted in NCLT:** July 24, 2017  
**Bench:** Chandigarh  
**Nature of Applicant:** Financial Creditor  
**Case Filed by:** Corporation Bank  
**Lead Bank:** NA  
**Other Financial Creditors:** NA  
**Name of Bidders Submitting Resolution Plan:** Liberty House UK  
**Has Final Order of Resolution/Liquidation Passed by NCLT?:** Yes (But the approved bidder backed out)  
**Date of Passing Final Order of Resolution/Liquidation:** July 25, 2018  
**Name of Bidder Selected for Resolution:** Liberty House (Did not materialize)

4. **Bhushan Power and Steel Ltd.**

Bhushan Power and Steel Limited. (BPSL) was established in 1970. The company is a manufacturer of steel products such as billets, wire, rods, sponge iron, tubes, sheets, coils, etc. BPSL had commissioned a 3.5 million Tonnes Per Annum (TPA) Greenfield Steel and Power Plant in Odisha. Bhushan Power and Steel Ltd. is part of the Bhushan Group.

The insolvency petition against Bhushan Power and Steel was admitted in the New Delhi Bench of NCLT in July 2017. This insolvency petition was filed by Punjab National Bank. Bhushan Power had initially received bids from Tata Steel, Liberty House and JSW Steel. In March 2018, it came to light that Tata Steel and JSW Steel knew the bidding price of each other which was supposed to be confidential. The lawyer for Tata Steel had argued that the bid from Liberty House was higher by only Rs 1,000 crore and that the offer was made by Liberty House after the announcement was made that Tata’s bid was the highest. This also raised concerns about breach of confidentiality in the bidding process within IBC. Further, Liberty House had submitted its bid after the deadline for submitting bids had lapsed, which was later accepted by the lenders, as per the order given by NCLT.³³

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In May 2018, Tata Steel filed an application in NCLAT challenging NCLT’s order, which allowed accepting a late bid from Liberty House, even though the Committee of Creditors had rejected it initially. The Tata Steel bid offered an upfront payment of Rs 17,000 crore to the lenders, along with a working capital infusion of Rs 7,000 crore. According to The Economic Times, the bid from Liberty House was for an upfront payment of Rs 18,500 crore. Bhushan Power owed Rs 48,524 crore to over two dozen banks. Bhushan Power owed the highest amount to SBI.\(^{34}\) A few days later, NCLAT asked the Committee of Creditors to proceed ahead with the bids of Tata Steel and Liberty House. In July 2018, the Committee of Creditors asked the bidders for Bhushan Power to submit revised bids. Tata Steel wrote a letter to the lenders raising objection that the rebid process was violating the NCLT order and provisions of IBC. JSW Steel had revised its offer from Rs 11,000 crore to Rs 18,000 crore.\(^{35}\) In August 2018, NCLAT had asked the three bidders to submit their revised bids.

After a long meeting of the Committee of Creditors, it was revealed that JSW Steel had emerged as the highest bidder with an offer to pay Rs 19,350 crore, along with an additional Rs 350 crore, to the operational creditors. JSW Steel’s revised bid was Rs 2,700 crore higher than the bid by Tata Steel and Rs 850 crore higher than Liberty House.\(^{36}\) It was reported in February 2019 that the Resolution Professional for Bhushan Power and Steel had issued a Letter of Intent (LoI) in favor of JSW Steel. The insolvency process would have further required the acceptance of LoI by JSW Steel and submission of resolution plan of JSW Steel to the NCLT for final approval.\(^{37}\) The final order from NCLT is still awaited. The acquisition of Bhushan Power and Steel by JSW Steel would result in a 59% haircut for the lenders, despite being an asset heavy steel firm. This also shows that the insolvency process is eventually forcing the lenders to settle with heavy haircuts despite the claims of huge recoveries for the lenders.

### Admitted in NCLT?: Yes
### Date When Company Admitted in NCLT: July 26, 2017
### Bench: New Delhi
### Nature of Applicant: Financial Creditor
### Case Filed by: Punjab National Bank
### Lead Bank: Punjab National Bank
### Other Financial Creditors: NA
### Name of Bidders Submitting Resolution Plan: Tata Steel, JSW Steel and Liberty House UK
### Has Final Order of Resolution/Liquidation Passed by NCLT?: No
### Date of Passing Final Order of Resolution/Liquidation: NA
### Name of Bidder Selected for Resolution: NA

5. Bhushan Steel Ltd.

Bhushan Steel Ltd. is now a subsidiary of Tata Steel Ltd. and is known as Tata Steel BSL Ltd. The company is the largest manufacturer of auto-grade steel in India and is the 3\textsuperscript{rd} largest secondary steel producer in the country with a production capacity of 5.6 million TPA. The company manufactures a variety of products such as Hot Rolled Coil, Galvanized Coil and Sheet, Galume Coil and Sheet, Colour Coated Coils, Colour Coated Tiles, High Tensile Steel Strips, etc. Bhushan Steel was established in 1987, when it had acquired Jawahar Metals.

The insolvency petition against Bhushan Steel was admitted in New Delhi Bench of NCLT in July 2017. This insolvency petition was filed by State Bank of India. Tata Steel and JSW Steel had emerged as the main contenders for acquisition of Tata Steel. It was speculated that JSW Steel had submitted a bid for Rs 28,000 crore. JSW Steel was submitting this bid jointly with India Resurgence Fund, a partnership between Piramal Enterprises and Bain Capital. Earlier, Arcelor Mittal had expressed interest in submitting a bid for Bhushan Steel, but, later, did not submit any bid.\(^\text{38}\) In May 2018, NCLT approved the bid of Tata Steel for acquiring Bhushan Steel. In addition to it, NCLT also imposed a fine of Rs 1 lakh against the employees of Bhushan Steel who had filed a petition in NCLT opposing the bid from Tata Steel. Similarly, NCLT also dismissed the plea of engineering and construction firm Larsen & Toubro (L&T), which had sought higher

\(^{38}\)JSW Steel, Tata Steel Among Suitors For Bhushan Steel - Business World - February 05, 2018 - http://www.businessworld.in/article/JSW-Steel-Tata-Steel-Among-Suitors-For-Bhushan-Steel/05-02-2018-139636/
priority in the recovery of loan and NCLT imposed also a fine of Rs 1 lakh on the company. A plea by Bhushan Energy to continue its power purchase agreement with Bhushan Steel was also rejected.

Tata Steel had offered to pay Rs 35,200 crore to the lenders, along with paying Rs 1,200 crore to the operational creditors. Bhushan Steel owed Rs 56,080 crore to its lenders and Rs 1,332 crore to its operational creditors. Tata Steel had also offered to provide 12.27% equity to the financial creditors. Almost 99.8% of the lenders had approved the resolution plan from Tata Steel. The acquisition of Bhushan Steel by Tata Steel was done through Bamnipal Steel Ltd. (BSPL), a wholly-owned subsidiary of Tata Steel, through the acquisition of controlling the stake of 72.65% stake in Bhushan Steel. During the time of the acquisition, Bhushan Steel said, “The investment from BNPL in BSL has been done through a combination of equity of Rs 158.89 crore and inter-corporate loan of Rs 34,973.69 crore. Additionally, Rs 100 crore has been paid by BNPL to the financial creditors of BSL as consideration for novation of remaining financial debt of BSL. The acquisition is being financed through a combination of external bridge loan of Rs 16,500 crore availed by BNPL and balance amount through investment by Tata Steel in BNPL. The bridge loan availed by BNPL is expected to be replaced by debt raised at BSL over time.”

The liquidation value of Bhushan Steel was Rs 14,451 crore. In this particular case, lenders were able to get a fairly higher value compared to the liquidation value. Tata Steel faced some hiccups when promoters of Bhushan Steel had appealed in NCLAT that Tata Steel was ineligible to bid for Bhushan Steel under Section 29A of IBC. Section 29 A of the IBC mandates that a person convicted for any offence punishable with imprisonment for two years or more is ineligible for submitting a resolution plan. Tata Steel UK, a foreign subsidiary of Tata Steel, was fined by an English Court in February 2018 under the UK Act which had a provision of imprisonment for a term not exceeding 12 months, or a fine, or both.

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NCLAT clarified that provisions in Section 29A stipulate that any entity which has been convicted for any offence punishable with imprisonment for two years or more cannot be equated with Section 33(1)(a) of the UK Act. The NCLAT also rejected the claims of operational creditor L&T, which had opposed Tata Steel's resolution plan seeking a higher priority in debt resettlement.

Tata Steel received approval from the government in November 2018 to change Bhushan Steel’s name to Tata Steel BLS Ltd. This acquisition of Bhushan Steel enabled Tata Steel to further consolidate its position as one of the top steel companies of India. This acquisition also became a landmark acquisition for the Insolvency and Bankruptcy Code framework since the deal ensured that lenders had only a 37% haircut, which is quite less than the haircuts which lenders had to face for other companies.

Admitted in NCLT?: Yes  
Date When Company Admitted in NCLT: July 26, 2017  
Bench: New Delhi  
Nature of Applicant: Financial Creditor  
Case Filed by: State Bank of India  
Lead Bank: State Bank of India  
Other Financial Creditors: NA  
Name of Bidders Submitting Resolution Plan: Tata Steel and JSW Steel  
Has Final Order of Resolution/Liquidation Passed by NCLT?: Yes  
Date of Passing Final Order of Resolution/Liquidation: May 15, 2018  
Name of Bidder Selected for Resolution: Tata Steel

6. Electrosteel Steels Ltd.

Electrosteel Steels was incorporated in 2006 as Electrosteel Integrated Limited and is a subsidiary of the Electrosteel Group. The company engages in the manufacturing of steel. The company produces Pig Iron, Billets, TMT Bars, Wire Rods and Ductile Iron Pipes. Electrosteel Steels Ltd has set up a 2.51 million Ton Per Annum (MTPA) Greenfield Integrated Steel Plant. Electrosteel Steels got listed in the stock exchange in 2010.

The insolvency petition against Electrosteel Steels was admitted in the Kolkata bench of NCLT in July 2017. The insolvency petition was filed by
SBI. Electrosteel Steels became the first company among the RBI’s “Dirty Dozen” list which was resolved under the Insolvency and Bankruptcy Code. The resolution professional for Electrosteel Steels had received bids from Vedanta, Edelweiss Alternative Asset Advisors, Tata Steel and Renaissance Steel in January 2018. The bid from Vedanta was approved by the Committee of Creditors (CoC) in March end. Renaissance Steel had alleged that Vedanta and Tata Steel were not eligible to bid for Electrosteel Steels, according to Section 29A of the Insolvency and Bankruptcy Code. However, NCLT had quashed the objection from Renaissance Steel. NCLAT ordered in the beginning of May 2018 that status quo should be maintained regarding the implementation of Vedanta’s resolution and had decided to hear the matter later.

In the subsequent hearing, NCLAT allowed Vedanta to make an upfront payment of Rs 5,230 crore to the lenders according to the resolution plan. At the same time, NCLAT reserved its verdict on Vedanta’s eligibility to submit a resolution plan under Section 29A of the Insolvency and Bankruptcy Code (IBC). The NCLAT order overrode the earlier order passed by it asking Vedanta and the lenders to maintain status quo over Renaissance Steel’s objection. However, NCLAT also clarified that if Vedanta’s bid was found to be in contravention of IBC, then the lenders would have to revert the received amount. Electrosteel Steels owed Rs 13,395 crore to its lenders. Vedanta had earlier made a bid of roughly Rs 4,500 crore, but revised its bid to Rs 5,320 crore later whereby Vedanta had agreed to pick up 90% stakes in Electrosteel. Vedanta had informed that a wholly-owned subsidiary of the company would subscribe to the share capital of Electrosteel for Rs 1,805 crore and provide additional funds of Rs 3,515 crore by way of debt. This resolution resulted in roughly a 60% haircut for the lenders.

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44NCLAT allows Vedanta to make Rs5,320 crore upfront payment for Electrosteel Steels - Livemint - May 30, 2018 - https://www.livemint.com/Companies/Ywc7fhEqO5BcB8w5f6Me5f/NCLAT-allows-Vedanta-to-make-Rs5320-crore-upfront-payment.html
Admitted in NCLT?: Yes
Date When Company Admitted in NCLT: July 21, 2017
Bench: Kolkata
Nature of Applicant: Financial Creditor
Case Filed by: State Bank of India
Lead Bank: State Bank of India
Other Financial Creditors: Canara Bank, UCO Bank Indian Overseas bank, Oriental Bank of Commerce, SREI Infrastructure & Finance Ltd.
Name of Bidders Submitting Resolution Plan: Renaissance Steel India, Tata Steel, Vedanta
Has Final Order of Resolution/Liquidation Passed by NCLT?: Yes
Date of Passing Final Order of Resolution/Liquidation: April 17, 2018
Name of Bidder Selected for Resolution: Vedanta

7. Era Infra Engineering Ltd.

Era Infra Engineering Ltd. is a flagship company of conglomerate Era Group. The company was set up in 1990 and primarily deals in infrastructure projects. The company’s two major divisions are Engineering, Procurement and Construction (EPC) Division and Equipment Management Division. The company is engaged in execution of large construction projects such as highways, airports and industrial projects.

The insolvency petition against Era Infra Engineering was admitted in NCLT in May 2018. The insolvency petition was filed by Union Bank of India. Era Infra was the last company in the RBI’s “Dirty Dozen” list to be admitted in NCLT. Era Infra was taken to NCLT over a recovery of Rs 681 crore by Union Bank of India, along with an overdue external commercial borrowing of $12 million. Earlier, Era Infra had raised objections regarding initiation of insolvency proceedings against the company, citing that there were already several pending company petitions in the Delhi High Court seeking “winding up” of the company. However, NCLT went ahead with its decision as it stated that there is no restriction on NCLT to trigger insolvency proceedings on an application filed under Sections 7, 9 and 10, if a winding up petition is pending, unless an official liquidator has been appointed and a winding up order has been already passed.47 In October

47 NCLT admits Union Bank of India’s insolvency plea against Era Infra - Livemint - May 09, 2018 - https://www.livemint.com/Companies/Thwjr3tP7h6Os1W5Ioic1N/NCLT-admits-Union-Bank-of-Indias-insolvency-plea-against-Er.html
2018, the lenders of Era Infra had a meeting to decide whether to wait for the arbitration claim worth Rs 17,500 crore to be settled, which the company had filed before going to insolvency, or whether to proceed with the insolvency process. Era was awarded Rs 525 crore arbitration against the National Highways Authority of India in the Gwalior Bypass Project (GBPL), and the lenders were hopeful that the settlement of similar claims of arbitration would help to improve the value of the company.48

It was reported in February 2019 that the lenders for Era Infra were considering a ‘stalking horse’ bid for the company. This plan was proposed by the lead bank, Union Bank of India, which needs a mutual consent among members of the consortium to sell Era together with the SPVs and JVs and not as a stand-alone entity in order to ensure a better value for all the stakeholders. This plan would also have required the approval from NCLT. This plan would have brought Era Infra and its SPVs under one fold, which included its master SPV Era Infrastructure India and at least six others, including Bareilly Highway Projects, West Haryana Highway Project, Haridwar Highway Project, Dehradun Highway Project and Hyderabad Railroad Project. Under this plan, the share of each creditor would have been in proportion to one’s admitted claims.49

It was reported in March 2019 that the lenders of Era Infra had got a 215-day breather from NCLT which agreed to exclude the days which were spent in a last-ditch effort to save the company from liquidation. The creditors had approached the NCLT on the grounds that the insolvency process had faced several stumbling blocks on account of investigations by the income tax authorities making it difficult for prospective bidders to examine the company’s books of accounts which were in the custody of the authorities. By this time lenders had received a sole bid from Suraksha ARC, but the lenders did not even consider it as no upfront payments were offered. Era Infra owed more than Rs 12,000 crore to the lenders.

It is important to mention that in May 2018, the Enforcement Directorate had registered a case of money-laundering after taking into consideration a FIR filed by CBI in April 2018. The case was pertaining to an alleged Rs 621 crore loan fraud involving UCO Bank and Era Infra Engineering India Ltd.

The CBI had alleged that employees of Era Infra were involved in defrauding UCO Bank by diversion and siphoning off the bank loans in collusion with bank officials, stating that loans were not utilized for the sanctioned purpose.\textsuperscript{50} It also came to light in July 2018 that Union Bank of India had ignored its own Special Investigative Audit (SIA) report which had flagged concerns about the functioning of Era Group before approving the earlier Corporate Debt Restructuring proposal. The investigative report from Zee Business published in July 2018 highlighted several discrepancies related to Era Infra and the report mentioned, “EIEL has defied almost every borrowing norm — from fudging financial numbers, using a wrong accounting method to false billing, according to the findings of the Union Bank SIA report prepared by Mumbai-based accounting company GD Apte & Co.”\textsuperscript{51}

Admitted in NCLT?: Yes  
Date when company admitted in NCLT: May 08, 2018  
Bench: New Delhi  
Nature of Applicant: Financial Creditor  
Case Filed by: Union Bank of India  
Lead Bank: Union Bank of India  
Other Financial Creditors: ICICI Bank, State Bank of India, Punjab National Bank, UCO Bank and IFCI  
Name of Bidders Submitting Resolution Plan: Suraksha ARC  
Has Final Order of Resolution/Liquidation Passed by NCLT?: No  
Date of Passing Final Order of Resolution/Liquidation: NA  
Name of Bidder Selected for Resolution: NA

8. Essar Steel Ltd.

Essar Steel Ltd. was established in 1976. The company is an integrated steel producer with an annual capacity of 10 million tonnes with a presence in steel markets of Asia and North America. The company has manufacturing facility which comprises ore beneficiation, pellet making, iron-making, steel-making and downstream facilities.

The insolvency petition against Essar Steel was admitted in the New Delhi Bench of NCLT in August 2017. This insolvency petition was filed by State Bank of India. By March 2018 there were only two bidders for Essar Steel, i.e. Mauritius-based Numetal and UK-based Arcelor Mittal. Numetal is a Special Purpose Vehicle (SPV) that focuses on steel and infra space along with manufacturing. The shareholders of Numetal are VTB Capital, Russian Steel and engineering company TPE. Other promoters involved with Numetal include Indo International (a Dubai-based steel trading firm) and Aurora Enterprises. Rewant Ruia, son of one of the Essar Group promoters, Ravi Ruia, was a beneficiary in Aurora Enterprises and owned 25% in Numetal. VTB Capital owns majority in Numetal. Essar Group had clarified that Rewant Ruia had resigned from the board of Essar Steel back in 2012 and was in no way related to Essar Steel promoters.

Numetal had challenged Arcelor Mittal’s eligibility to bid as Arcelor Mittal’s Indian joint venture, Uttam Galva, was a defaulter and was undergoing insolvency proceedings in NCLT. Arcelor Mittal had also questioned Numetal’s eligibility because of Rewant Ruia’s ownership in the company. By April 2018, there were some developments regarding the bidders for Essar Steel. JSW Steel had joined hands with Numetal and Vedanta also joined in the race along with Arcelor Mittal, submitting fresh bids. Earlier, Insolvency Resolution Professional had asked to submit for fresh bids after the bids from both Numetal and Arcelor Mittal were found to be non-compliant. JSW Steel had agreed to buy the 25% stake of Rewant Ruia in Numetal. Meanwhile, Arcelor Mittal had also severed its links with Uttam Galva.

The resolution professional for Essar Steel informed NCLT in April 2018 that Rewant Ruia was one of the ultimate beneficiaries and owner of a shareholder of Numetal through various holding companies and trusts. The Resolution Professional informed NCLT that Numetal was a joint venture between Aurora Enterprises, Crinium Bay, Indo International Ltd and Tyazhpromexport (TPE). Numetal was incorporated on October 13, 2017, a week before submitting the Expression of Interest (EoI) for acquiring Essar Steel. At the time of incorporation, the entire shareholding for Numetal was

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held by Aurora Enterprises Ltd. (AEL), which, in turn, was held by Aurora Holdings Ltd., which was, in turn, held entirely by Rewant Ruia (through a trust and another holding company). Further, on October 18, 2017, AEL transferred 26.1% of its shareholding to Essar Communications Ltd. (ECL). Later, ECL transferred its entire shareholding to Crinium Bay Holdings Ltd. (indirect wholly-owned subsidiary of VTB Bank) and AEL transferred its shareholding to Crinium Bay, 25.1% shareholding to Indo International Ltd. and 9.9% to Tyazhpromexport (TPE).

On the date when Numetal submitted its resolution plan (February 12, 2018), its shareholding was as follows: 40% held by Crinium Bay, 25.1% held by Indo International Ltd, 9.9% by Tyazhpromexport and 25% by AEL. With Ravi Ruia being father of Rewant Ruia, the Resolution Professional said, Numetal was ineligible to bid under Section 29A of IBC, as Rewant Ruia was deemed to be acting in concert with Ravi Ruia.54

It was revealed in May 2018 that Numetal had made a bid of Rs 37,000 crore in the second round of bidding. In the first round, Numetal had made a bid of Rs 19,000 crore, while Arcelor Mittal had made a bid of Rs 32,000 crore. The disclosure was made even as NCLT declared the second round invalid and directed the resolution professional not to open those bids. In the second round, Numetal dropped Rewant Ruia, son of Ravi Ruia, promoters of Essar Steel, and replaced him with JSW Steel. Essar Steel owed more than Rs 49,000 crore to the lenders.55 The NCLAT asked Aurora Enterprises promoter Rewant Ruia to file an affidavit stating that he has no business with Ravi Ruia in the affairs of Numetal, which was in the race to acquire debt ridden Essar Steel.

In October 2018, Essar Steel promoters took everyone by surprise when it made an offer of Rs 54,389 crore to the lenders to withdraw Essar Steel from the Corporate Insolvency Resolution Process if 90% of the lenders agreed to it under Section 12A of IBC. Section 12A was inserted in June 2018 which allows withdrawal of applications admitted under Section 7, 9 or 10 of the Insolvency and Bankruptcy Code. The plan included an upfront cash payment of Rs 45,507 crore to the lenders, resulting in 100% recovery for the lenders. Earlier, apart from Numetal and Arcelor Mittal, Vedanta had

offered Rs 34,000 crore plus Rs 500 crore equity in the company. Arcelor Mittal had raised objections to this move of Essar Steel promoters stating that Section 12A was not applicable in case of Essar Steel.

In end of January 2019, NCLT rejected the offer made by Essar Steel promoters on the grounds of violating Section 12A, paving way for the takeover by Arcelor Mittal. In the first week of March, 2019, NCLT Ahmedabad approved the takeover bid by Arcelor Mittal. However, immediately after NCLT’s decision, the process got stalled when NCLAT asked the Ruia family to pay the overdue loan of the entire Essar group before it can propose to take Essar Steel out of the ongoing insolvency process. So far, it is still not clear whether Arcelor Mittal would get to acquire Essar Steel, or, whether the company would go back in the hands of the promoters. In either case, it looks like the lenders would be able to get a good recovery for Essar Steel.

Admitted in NCLT?: Yes
Date When Company Admitted in NCLT: August 02, 2017
Bench: Ahmedabad
Nature of Applicant: Financial Creditor
Case Filed by: State Bank of India and Standard Chartered Bank
Lead Bank: State Bank of India
Other Financial Creditors: NA
Name of Bidders Submitting Resolution Plan: Numetal, Arcelor Mittal and Vedanta
Has Final Order of Resolution/Liquidation Passed by NCLT?: No
Date of Passing Final Order of Resolution/Liquidation: NA
Name of Bidder Selected for Resolution: NA


Jaypee Infratech Limited (JIL) was incorporated in 2007 as a Special Purpose Vehicle (SPV) to develop, operate and maintain the Yamuna Expressway and related real estate projects. Jaypee Infratech is a subsidiary of the Jaypee Group and operates as an infrastructure development company.


The insolvency petition against Jaypee Infratech was admitted in the Allahabad bench of NCLT in August 2017 which was filed by IDBI Bank. A few days later, hundreds of buyers who had bought flats in Jaypee Group’s housing projects, protested against the company. They feared that if Jaypee Infratech was initiated then banks would auction the flats to recover their money, causing a huge loss to the home-buyers. In September 2017, the Supreme Court stayed the order of NCLT for initiating insolvency proceedings against Jaypee Infratech. The Supreme Court order stated that the insolvency proceedings will not proceed unless a clarity is reached on the status of the consumers, as to whether they are financial creditors/operational creditors/ or, secured/unsecured creditors.

The homebuyers had raised their concern before the court that they would neither get a home nor a refund of their hard-earned money on account of being "unsecured creditors". This was a unique case because other companies which had been taken to NCLT were business-to-business firms, but in this case thousands of homebuyers were involved.58 However, a few days later, the Supreme Court lifted the stay on insolvency proceedings and asked its parent company, Jaiprakash Associates, to deposit Rs 2,000 crore with the court to cover the unit’s liabilities towards home-buyers in its residential projects. The resolution professional for the company was also asked to draw up a resolution plan for the company within 45 days, which should also take care of the interests of the homebuyers.59

In November 2017, it was informed that Jaypee Infratech had received 18 bids from investors willing to pump in at least Rs 2000 crore to complete the housing project floated by Jaypee Infratech that involved nearly 32,000 apartments, plots and villas. Among the parties who expressed interest include Vedanta Group, Essel Highways, Lodha Group, L&T, Cube Highways from Singapore, Kotak Infra, SARE Group, Deutsche Bank, Asset Reconstruction Company (India) Limited, Suraksha Realty, JSW and Tata Realty.60 Jaypee Infratech further got into trouble in February 2018, when the Resolution Professional for the company, accused it of “fraudulently

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and wrongfully” mortgaging 858 acre land to secure the loans of Jaiprakash Associates, its parent company. It has also alleged that the transaction amounted to “asset stripping”. The petition said that the land was valued at Rs 5,000-6,000 crore and was mortgaged to secure loans taken by Jaiprakash Associates Ltd (JAL) from SBI, ICICI Bank, IDBI Bank and Standard Chartered Bank. The move took place at a time when banks had started classifying Jaypee Infratech as a “non-performing asset” due to loan defaults.61 In May 2018, the Allahabad bench of NCLT passed a verdict that the transaction by which 758 acres of land had been used to secure loans for Jaiprakash Associates, its parent company, was fraudulent, preferential and undervalued. The Allahabad bench had ordered the immediate release of the collateral that JAL had used to secure loans of more than Rs 21,000 crore from a clutch of lenders that included State Bank of India, ICICI Bank and Standard Chartered Bank.62 A few days later, NCLAT stayed the NCLT order which had directed the realty firm to return nearly 760-acre land to its subsidiary Jaypee Infratech, stating that the NCLT finding was not based on “evidence” or “in accordance with law”.

By May 2018, Jaypee group had deposited a total of Rs 750 crore with the Supreme Court to ensure refund for the home-buyers. In August 2018, the Supreme Court asked NCLT to deal with the insolvency proceedings of Jaypee Infratech stating that the time-period of 180 days would start from August 9, 2018. The Supreme Court also barred Jaypee Group or its promoters from participating in the fresh bidding process. The Supreme Court also directed that Rs 750 crore deposited by Jaypee Group should be transferred to NCLT, Allahabad. The Supreme Court bench also ordered that home-buyers should also be included in the panel of Committee of Creditors in accordance with amendments made in IBC in June 2018, which stated that home-buyers in a firm would have to be included as financial creditors.63

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63 SC asks NCLT to deal with insolvency proceedings against Jaypee group - The Hindu - August 09, 2018 - https://www.thehindu.com/business/Industry/sc-asks-nclt-to-deal-with-insolvency-proceedings-against-jaypee-group/article24640276.ece
Lakshadweep -- a joint venture between the Sudhir Valia-led Suraksha Asset Reconstruction Company and Mumbai-based Dosti Realty, had emerged as a front-runner to acquire Jaypee Infratech with a Rs 7,350 crore bid. However, in May 2018, lenders of Jaypee Infratech rejected the bid by Lakshadweep as they found it inadequate. Jaypee Infratech had an outstanding debt of nearly Rs 9,800 crore of which Rs 4,334 crore pertains to IDBI. Other lenders are -- IIFCL, LIC, SBI, Corporation Bank, Syndicate Bank, Bank Of Maharashtra, ICICI Bank, Union Bank, IFCI, J&K Bank, Axis Bank and Srei Equipment Finance. It was reported in December 2018 that State-owned NBCC, Kotak Investment, Singapore-based Cube Highways and Suraksha group had been shortlisted as bidders for debt-laden Jaypee Infratech. Jaiprakash Associates had submitted a proposal to the lenders for the second time in February 2019 to settle the dues for Jaypee Infratech under Section 12A of the Insolvency and Bankruptcy Code. Section 12A under IBC allows a corporate debtor to have another chance at clearing up the default and retain control over the company even after the case is admitted to NCLT. Jaiprakash Associates had also made an unsolicited offer of about Rs 10,000 crore in April 2018 to settle the dues of Jaypee Infratech.

By February 2019, lenders of Jaypee Infratech had shortlisted NBCC and Suraksha Group and was in the process of negotiating with both of them. The Committee of Creditors had a meeting in March 2019 to discuss the resolution plans submitted by NBCC and Suraksha group. The NBCC had promised to deliver flats to home-buyers in three years. As per the resolution plan, NBCC had offered 1,400 acre land worth Rs 6,000 crore and had provided commitment to pay Rs 2,500 crore, which included Rs 1,000 crore upfront raised from Yamuna Expressway. Suraksha group had made an offer of about Rs 20 crore as upfront payment and land worth Rs 5,000 crore. The Mumbai-based group had also promised to complete pending projects in three years. The insolvency process of Jaypee Infratech would be completed in the coming months, but it has to been seen whether the Committee of Creditors would finally accept the bid from NBCC or Suraksha Group. In case the company heads for liquidation, then

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it might raise severe problems for the home-buyers related to Jaypee Infratech.

**Admitted in NCLT?: Yes**
**Date When Company Admitted in NCLT:** August 09, 2017
**Bench:** Allahabad
**Nature of Applicant:** Financial Creditor
**Case Filed by:** IDBI Bank
**Lead Bank:** IDBI Bank
**Other Financial Creditors:** IIFCL, LIC, SBI, Corporation Bank, Syndicate Bank, Bank Of Maharashtra, ICICI Bank, Union Bank, IFCI, J&K Bank, Axis Bank, Srei Equipment Finance
**Name of Bidders Submitting Resolution Plan:** NBCC, Kotak Investment, Cube Highways and Suraksha group
**Has Final Order of Resolution/Liquidation Passed by NCLT?:** No
**Date of Passing Final Order of Resolution/Liquidation:** NA
**Name of Bidder Selected for Resolution:** NA

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Jyoti Structures Limited (JSL) was registered as a private company in 1974 and it began its commercial operations in 1979. The company went public in 1989. Jyoti Structures is involved in executing projects related to power transmission and distribution. The company manufactures transmission line towers, sub-station structures, antenna towers and railway electrification structures.

The insolvency petition for Jyoti Structures was admitted in July 2017. The petition was filed by SBI. Jyoti Structures became the first company to be referred to NCLT by the lenders. In March 2018, the Committee of Creditors led by State Bank of India had rejected the single bid received from a group of net high worth investors, including Netmagic Solutions MD & CEO Sharad Sanghi, Kedaara Capital Advisors Managing Partner Manish Kejriwal and Reliance Capital’s former chief investment strategist Madhu Kela for Jyoti Structures. Accepting this bid would have entailed an 80% haircut for the banks. The 270-day deadline for achieving a resolution for Jyoti Structures was supposed to end on March 31, 2018. However, the

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Resolution Professional for Jyoti Structures had asked for a grace period beyond the 270 day deadline, stating that there was some delay in voting among the Committee of Creditors and 75% approval of lenders would be achieved in some more time. By first week of April, the RP had able to garner 81% votes for the resolution plan.

However, Singapore-based DBS Bank had approached NCLT to challenge the resolution plan, claiming that the voting for the resolution plan had not been conducted in a “fair manner”. DBS Bank was one of the secured financial creditors and one of the bankers suggested that DBS Bank would have got more out of liquidation as it was a secured creditor.\(^67\) In July 2018, NCLT rejected the resolution plan and an order for liquidation was passed. Using this method, Jyoti Structures became the first company among the RBI “Dirty Dozen” list to be liquidated. However, in August 2018, NCLAT stayed the liquidation order of Jyoti Structures, over a plea filed by more than 800 employees of the corporate debtor and the sole bidder against the liquidation.\(^68\) In November 2018, NCLAT asked Jyoti Structure’s bidder to modify its resolution plan. It asked the bidder to reduce the repayment period to 5 years and increase the upfront payment. The sole bidder had offered Rs 3,674 crore to financial creditors to be paid over a period of 15 years with an upfront payment of Rs 170 crore. While financial creditors had claimed Rs 8,226 crore, the Resolution Professional admitted claims worth Rs 7,364 crore. The largest lender, SBI, had an exposure of Rs 1,875 crore.\(^69\) The liquidation value for Jyoti Structures stood at Rs 1,113 crore. In March 2019, NCLAT had set aside the liquidation order for Jyoti Structures and had asked the Mumbai bench of NCLT to consider afresh the offer of Rs 4,000 crore from Sharad Sanghi and others.\(^70\) The final outcome for Jyoti Structures is still awaited. It is almost two years since the insolvency petition for Jyoti Structures has been filed in NCLT.

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\(^68\) NCLAT stays liquidation process of Jyoti Structures - Livemint - August 20, 2018 - https://www.livemint.com/Companies/mZayZEkF0cnQ4IZKZtEHP/NCLAT-stays-liquidation-process-of-Jyoti-Structures.html


Admitted in NCLT?: Yes  
Date When Company Admitted in NCLT: July 04, 2017  
Bench: Mumbai  
Nature of Applicant: Financial Creditor  
Case Filed by: State Bank of India  
Lead Bank: State Bank of India  
Other Financial Creditors:  
Name of Bidders Submitting Resolution Plan: Sharad Sanghi and others  
Has Final Order of Resolution/Liquidation Passed by NCLT?: No  
Date of Passing Final Order of Resolution/Liquidation: NA  
Name of Bidder Selected for Resolution: NA

11. Lanco Infratech Ltd.

Lanco Infratech Limited (Lanco) was incorporated in 1993 and operated as a business conglomerate. The company was listed in 2006. The company was an independent power producer with operations in the fields of engineering, procurement and construction (EPC), power, solar, natural resources and infrastructure. In 2011, the group became the largest private power provider in India. Lanco was one of the first Independent Power Producers (IPP) in India. Lanco Infratech constructed power plants of 3,460 MW capacity and additional 4,636 MW was under construction when it was referred to NCLT.

The Insolvency Petition against Lanco Infratech was filed by IDBI Bank which was admitted in the Hyderabad bench of NCLT in August 2017. Lanco Infratech had received a bid from Chennai-based Thriveni Earthmovers, but it was rejected by the Committee of Creditors (CoC) as barely 15% lenders were in favor of it. Later on, Thriveni Earthmovers tried to submit a revised offer with the permission of NCLT; even that was rejected by the CoC. Thriveni Earthmovers had proposed to pay Rs 1,500 crore, along with continuing to service the debt of its subsidiaries. After the rejection of Thriveni’s bid, another EPC company, Vijaywada-based Power Mech Projects, had filed a petition seeking more time to make a resolution plan. However, NCLT dismissed its petition and ordered the liquidation of the company in August 2018.\(^1\) Lanco Infratech had piled up a debt of Rs

47,000 crore but its liquidation value, including the subsidiaries, stood at a mere Rs 1,400 crore.\textsuperscript{72}

When Lanco Infratech was admitted in NCLT, the bench had raised doubts on the company’s prospects of resolution. The court order read, “It is contented that the respondent/corporate debtor is the only holding company and EPC contractor for SPVs and others. So, Lanco has little value as it derives majority of its value from the investment it holds in the SPVs and EPC work it undertakes for its SPVs. Therefore, it is contented if under-construction SPVs are themselves stressed, the CIRP of LITL will not yield insolvency resolution, and it would lead to liquidation only.”\textsuperscript{73}

The liquidation of an EPC firm like Lanco Infratech shows that the IBC route may not bring any relief to the lenders. This would also mean that NPA woes of the lenders would continue despite IBC coming into effect.

**Admitted in NCLT?: Yes**

**Date When Company Admitted in NCLT:** August 07, 2017  
**Bench:** Hyderabad  
**Nature of Applicant:** Financial Creditor  
**Case Filed by:** IDBI Bank  
**Lead Bank:** IDBI Bank  
**Other Financial Creditors:** NA  
**Name of Bidders Submitting Resolution Plan:** Thriveni Earthmovers  
**Has Final Order of Resolution/Liquidation Passed by NCLT?:** Yes  
**Date of Passing Final Order of Resolution/Liquidation:** August 27, 2018 (Liquidation)  
**Name of Bidder Selected for Resolution:** NA

12. Monnet Ispat & Energy Ltd.

Monnet Ispat & Energy Limited (MIEL) was established in 1994. The company is engaged in manufacturing and marketing of Sponge Iron, Steel and Ferro Alloys. MIEL is also engaged in the mining of minerals like coal and iron ore. In August 2018, Monnet Ispat & Energy Limited (MIEL) was

\textsuperscript{72}Lanco Infratech Headed For Liquidation After Thriveni Earthmovers’ Bid Is Rejected - Bloomberg Quint - May 03, 2018 - https://www.bloombergquint.com/insolvency/2018/05/03/lanco-infratech-headed-for-liquidation-after-thriveni-earthmovers-bid-is-rejected

jointly acquired by a consortium of Aion Investments Private Limited (AION) and JSW Steel Limited.

The insolvency petition against Monnet Ispat & Energy was admitted in the Mumbai Bench of NCLT in July 2017. The insolvency petition was filed by SBI. Monnet Ispat became the second company to be admitted under the insolvency proceedings among the RBI’s list of 12 companies. While financial creditors had claimed dues of Rs 11,573 crore from Monnet Ispat, NCLT admitted claims of Rs 11,014 crore. It was reported in January 2018 that JSW Steel & AION Capital turned out to be the sole bidder for acquiring Monnet Ispat offering a bid for Rs 3,700 crore. Earlier, JSW Steel had offered Rs 3,500 crore but the lenders negotiated to pay Rs 200 crore more. As per the arrangement, JSW Steel would have been paying Rs 2,700 crore as cash to the lenders and would be investing Rs 1,000 crore as equity for settling dues of the employees and operational creditors and for day-to-day expenses. The Committee of Creditors (CoC) had cleared the resolution plan by a 98.97% favorable voting, through an e-voting process. However, another steel player Arcelor Mittal, had raised issues over Monnet’s acquisition by JSW Steel, claiming that Section 29A of the Insolvency and Bankruptcy Code was being violated, as wife of Sajjan Jindal, owner of JSW Steel, was related to a promoter of Monnet Ispat and Energy. In response, JSW Steel denied any violation of the rules.

The IFCI had also moved the Mumbai bench in April 2018 seeking intervention that its claim for Rs 158 crore was not included by the resolution professional whereby the loan was in form of a corporate guarantee by Monnet Ispat for one of its subsidiaries. A similar claim was made by ICICI Bank for a corporate guarantee of Rs 486 crore ($75 million) for External Commercial Borrowing (ECB) of its subsidiary, Monnet Power Ltd. The Standard Chartered Bank had also stated that out of its claims for Rs 147 crore, claims for only Rs 58 crore were admitted. The NCLT had asked the RP to include claims from these creditors too. In May 2018, it

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Monnet Ispat: NCLT wants claims of other banks to be included - Livemint - April 05, 2018 - https://www.livemint.com/Companies/39CmpDXGdvHWuq598Tykfl/Monnet-Ispat-NCLT-wants-claims-of-other-banks-to-be-include.html
reserved its judgment on JSW Steel-Aion Investment’s resolution plan for Monnet Ispat. Monnet Ispat owed around Rs 440 crore to its operational creditors. The legal counsel for the company’s operational creditors had filed a plea where they claimed that they had not been notified about the details of the plan. The legal counsel for one of the operational creditors had said, “It is the larger responsibility of the Committee of Creditors (CoC) to keep us informed. However, I have not been informed. The Insolvency and Bankruptcy Code (IBC) says (that) there must be a balance in paying the dues of the financial creditors and operational creditors.”

There was also a controversy around the liquidation value decided by the RP for Monnet Ispat. The Mumbai bench of NCLT had questioned the basis on which RP for Monnet Ispat had reached a liquidation value of Rs 2,365 crore and it sought clarifications whether the mining rights of one of its mines in Chhattisgarh was considered for valuation for which Monnet Ispat had won the rights in 2015. The 270-day deadline for completing the resolution formalities for Monnet Ispat was April 13, 2018. However, in May 2018, the Mumbai Bench of NCLT reserved its judgment on the resolution plan of JSW Steel and AION Capital, after complaints were filed by the Operational Creditors of the company that they had not been kept in loop about the resolution plan. The company owed around Rs 440 crore to its operational creditors. The resolution plan was finally approved by the Mumbai Bench in July 2018, more than a year after the company being admitted in NCLT for insolvency proceedings.

The bench clarified that the Gara Palma coal mine would not be included in the liquidation value of the company. The resolution plan for Monnet Ispat was approved by the bench in July 2018, a year after the insolvency petition was admitted. The final offer from the sole bidder, JSW Steel and AION Capital, was for Rs 2,875 crore, which included Rs 25 crore allocated for the operational creditors and an additional Rs 1,000 crore pledged as equity. The resolution of Monnet Ispat and Energy led to roughly a 77%

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haircut for the lenders, among which State Bank of India had the highest exposure.\textsuperscript{81}

In August 2018, Monnet Ispat informed that all the formalities related to the implementation of the resolution plan had been completed, which included providing a working capital advance of Rs 125 crore to the company. Additionally, JSW Steel had paid Rs 2,457 crore to the secured creditors.\textsuperscript{82} While the insolvency process of Monnet Ispat was eventually completed without an exorbitant delay, but, having received only a sole resolution plan for the company led to a heavy haircut for the lenders, which raises questions on how much IBC can come to the rescue for the beleaguered lenders.

**Admitted in NCLT?:** Yes  
**Date When Company Admitted in NCLT:** July 18, 2017  
**Bench:** Mumbai  
**Nature of Applicant:** Financial Creditor  
**Case Filed by:** State Bank of India  
**Lead Bank:** State Bank of India  
**Other Financial Creditors:** ICICI Bank, Axis Bank, Punjab National Bank, IDBI Bank, Bank of Baroda, Industrial Finance Corporation of India (IFCI)  
**Name of Bidders Submitting Resolution Plan:** JSW Steel + AION Steel  
**Has Final Order of Resolution/Liquidation Passed by NCLT?:** Yes  
**Date of Passing Final Order of Resolution/Liquidation:** July 24, 2018  
**Name of Bidder Selected for Resolution:** JSW Steel + AION Steel

### 4.2 Companies Referred to NCLT under RBI\textsuperscript{2nd} List

RBI had released a second list of 28 companies in August 2017 and had given time to the lenders till December 13, 2017 to find a resolution plan in accordance to a formula prescribed by it, or else they needed to send these companies to NCLT. These 28 companies put together, owed

\textsuperscript{82} Monnet Ispat says NCLT’s insolvency resolution plan completed - The Times of India - August 31, 2018 - https://timesofindia.indiatimes.com/business/india-business/monnet-ispat-says-nclts-insolvency-resolution-plan-completed/articleshowprint/65628987.cms
roughly Rs 2 lakh crore to the banks. Later, the banks had requested the RBI to extend the December deadline, but RBI refused to do so.\textsuperscript{83}

Given below is the list of companies under RBI 2\textsuperscript{nd} List. A brief update about 15 of these companies have been provided. Name of one company could not be determined in the RBI 2\textsuperscript{nd} List. The names of remaining companies which are part of the RBI 2\textsuperscript{nd} list are also given for reference.

**List of companies for which updates are provided:**

1. BILT Graphic Paper Products Ltd.
2. East Coast Energy Private Ltd.
3. EPC Constructions India Pvt. Ltd.
4. IVRCL Ltd.
5. Jai Balaji Industries Ltd.
6. Jayaswal Neco Ltd.
7. Nagarjuna Oil Corporation Ltd.
8. Orchid Chemicals & Pharmaceuticals Ltd.
9. Ruchi Soya Industries Ltd.
10. SEL Manufacturing Company Ltd.
11. Shakti Bhog Foods Ltd.
12. Transstroy (India) Ltd.
13. Unity Infraprojects Ltd.
14. Videocon Industries Ltd.
15. Visa Steel Ltd.

**List of other companies in the RBI 2\textsuperscript{nd} List:**

1. Anrak Aluminium Ltd.
2. Asian Colour Coated Ispat Ltd.
3. Castex Technologies Ltd.
4. Coastal Projects Ltd.
5. Jaiprakash Associates Ltd.
6. Monnet Power Company Ltd.
7. Soma Enterprise Ltd.
8. Ushdev International Ltd.
9. Uttam Galva Metallics Ltd.
10. Uttam Galva Steels Ltd.

11. Videocon Telecommunications Ltd.
12. Wind World India Ltd.

Given below is a brief update about the insolvency case about the selected companies in the RBI 2nd List. This includes information related to the amount owed to the lenders and the details related to insolvency proceedings.

1. BILT Graphic Paper Products Limited

BILT Graphic Paper Products Ltd. is a subsidiary of Ballarpur Industries Ltd. which is the largest manufacturer of writing and printing paper in India. Ballarpur Industries Ltd. is owned by the business conglomerate group called Avantha Group.

In February 2018 RBI had directed IDBI Bank to refer BILT Graphics to NCLT after the regulator rejected the debt recast package saying that only 70% of the lenders had agreed for the revival package. The company had borrowed over Rs 7,000 crore as loans in the form of secured and unsecured debt. In April 2018, Axis Bank and ICICI Bank had sold their loans of Rs 600 crore and Rs 1,200 crore respectively to Edelweiss ARC and later State Bank of India, the lead bank also sold its loan to Edelweiss ARC. Hence, RBI asked IDBI Bank to refer BILT Graphics to NCLT. In March 2018, the Delhi High Court ordered IDBI Bank not to initiate insolvency proceedings against BILT Graphics. The company had moved the Delhi High Court against IDBI Bank and RBI arguing that RBI had forced the company to be pushed for insolvency proceedings despite a Master Restructuring Agreement being approved by 71% of the lenders (in value) which was above the minimum norms of RBI. However, lawyers from the lenders’ side argued that IBC prevents any blocking of proceedings by the civil courts. The company has still not been admitted in NCLT so far.

Admitted in NCLT?: No
Date When Company Admitted in NCLT: NA
Bench: Mumbai

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84 Lender asked to take Bilt Graphic to bankruptcy court - The Economic Times - February 06, 2018 - https://economictimes.indiatimes.com/industry/banking/finance/lender-asked-to-take-bilt-graphic-to-bankruptcy-court/articleshow/62799533.cms
Nature of Applicant: Financial Creditor  
Case Filed by: IDBI Bank  
Lead Bank: IDBI Bank  
Other Financial Creditors: Axis Bank, SBI, ICICI Bank, Edelweiss ARC  
Name of Bidders Submitting Resolution Plan: NA  
Has Final Order of Resolution/Liquidation Passed by NCLT? : No  
Date of Passing Final Order of Resolution/Liquidation: NA  
Name of Bidder Selected for Resolution: NA

2. East Coast Energy Private Limited

East Coast Energy Private Limited (ECEPL) is a power project which is in the process of developing a coal-based thermal power plant in Srikakulam district, Andhra Pradesh. The project is to be implemented in two phases, each of 1,320 MW capacity. The project has been jointly promoted by Asian Genco, Cobalt Power, Athena Energy Ventures, Abir Infrastructure and PTC India Financial Services.

The independent power producer has defaulted over loans of more than Rs 5,000 crore. The project had failed to take off due to delay in clearances and cost overruns, along with facing a massive agitation against the power plant. Most of the top executives and even the managing director had left the company. A former executive of the company said that the promoters would lose heavily if the company was liquidated. The SBI and PFC had initiated petitions under Section 7 of IBC in January 2018. The company owes Rs 952 crore to SBI and Rs 1,371 crore to Power Finance Corporation. The company has not received any bids from the interested parties and would most likely be liquidated in the coming days.

Admitted in NCLT?: Yes  
Date When Company Admitted in NCLT: April 03, 2018  
Bench: Hyderabad  
Nature of Applicant: Financial Creditor  
Case Filed by: State Bank of India and Power Finance Corporation Ltd.  
Lead Bank: Power Finance Corporation Ltd.

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Other Financial Creditors: State Bank of India
Name of Bidders Submitting Resolution Plan: NA
Has Final Order of Resolution/Liquidation Passed by NCLT?: No
Date of Passing Final Order of Resolution/Liquidation: NA
Name of Bidder Selected for Resolution: NA

3. EPC Constructions India Pvt. Ltd.

EPC Constructions India Pvt. Ltd. is an EPC (Engineering, Procurement & Construction) company and is a subsidiary of Essar Group. EPC Constructions was earlier known as Essar Projects (India) Ltd. The company has over four decades of experience in executing mega projects in sectors such as hydrocarbons, pipelines, infrastructure, minerals and metals and power plants.

The insolvency application against EPC Constructions India Pvt. Ltd. was admitted in the Mumbai bench in NCLT in April 2018. The petition was filed by IDBI Bank. It was reported in November 2018 that Arcelor Mittal had emerged as the sole bidder for EPC Constructions with a bid of Rs 500 crore against the outstanding bid of Rs 7,268 crore. However, the lenders were not happy with the bid as it would have forced them to take more than 90% haircut and the company would most likely head for liquidation. The lenders having exposure to the company include IDBI Bank (Rs 1,117 crore), Central Bank of India (Rs 1,054 crore), UCO Bank (Rs 1,011 crore), Indian Exim Bank (Rs 884 crore), Corporation Bank (Rs 722 crore) and Suraksha Asset Reconstruction Co. (Rs 642 crore). The final verdict for EPC Constructions is still awaited from NCLT.

Admitted in NCLT?: Yes
Date When Company Admitted in NCLT: April 20, 2018
Bench: Mumbai
Nature of Applicant: Financial Creditor
Case Filed by: IDBI Bank
Lead Bank: IDBI Bank
Other Financial Creditors: ICICI Bank, Axis Bank, Yes Bank, Dena Bank, Central Bank of India, Indian Exim Bank, Corporation Bank
Name of Bidders Submitting Resolution Plan: Arcelor Mittal

88 ArcelorMittal seeks to buy EPC Constructions at 93% discount - Livemint - November 30, 2018 - https://www.livemint.com/Companies/xmNj5BaH92PCtzrWuPflpJ/ArcelorMittal-seeks-to-buy-EPC-Constructions-at-93-discount.html
Has Final Order of Resolution/Liquidation Passed by NCLT?: No
Date of Passing Final Order of Resolution/Liquidation: NA
Name of Bidder Selected for Resolution: NA

4. IVRCL Limited

IVRCL Ltd. was incorporated in 1987 and is engaged in the business of development and execution of Engineering, Procurement, Construction and Commissioning (EPCC) and Lump Sum Turnkey (LSTK) facilities in various infrastructure projects. Its business units include water and environmental projects, transportation, buildings and industrial structures, power transmission projects, mining, overseas forays, and technical services and solutions.

The Hyderabad bench of NCLT admitted SBI’s petition for insolvency in February 2018 whereby SBI claimed that IVRCL owed the bank Rs 604 crore as of October 2017. The company had a total debt of more than Rs 10,000 crore. Earlier, a consortium of 20 lenders led by SBI had exited the Corporate Debt Restructuring in October 2017. The CDR package for Rs 7,350 crore was approved in mid-2014 in an attempt to revive the company. According to the data compiled by the Resolution Professional in April 2018, the aggregate claims against the company were roughly Rs 13,400 crore, which included claims from 38 financial institutions, 2,185 operational creditors and 3,368 unpaid workers.

Among the financial institutions, the highest claim was from ICICI Bank (913 crore), followed by Canara Bank at (Rs 900 crore), Indian Overseas Bank (Rs 763 crore), IDBI Bank (Rs 720 crore) and State Bank of India (Rs 663 crore). The Committee of Creditors had received no valid resolution plans as per the terms and conditions of the Expression of Interest and bid process memorandum documents. Hence, the CoC requested the Resolution Professional in November 2018 to file an application with the NCLT to end the CIRP period for liquidation of IVRCL. The company will most likely be liquidated though the final order from NCLT is still awaited.

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89 NCLT admits SBI’s insolvency proceedings against IVRCL - The HinduBusinessline - March 04, 2018 - https://www.thehindubusinessline.com/companies/nclt-admits-sbis-insolvency-proceedings-against-ivrcl/article2924476.ece
90 At Rs 13K cr debt, IVRCL rivals top NCLT cases - DNA India - April 19, 2018 - https://www.dnaindia.com/business/report-at-rs-13k-cr-debt-ivrcl-rivals-top-nclt-cases-2606415
91 IVRCL heading for liquidation as resolution plan fails - The Hindu Businessline - November 21, 2018 -
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<td>Date When Company Admitted in NCLT: February 23, 2018</td>
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<td>Bench: Hyderabad</td>
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<td>Nature of Applicant: Financial Creditor</td>
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<td>Case Filed by: SBI</td>
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<td>Has Final Order of Resolution/Liquidation Passed by NCLT?: No</td>
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<tr>
<td>Date of Passing Final Order of Resolution/Liquidation: NA</td>
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<tr>
<td>Name of Bidder Selected for Resolution: NA</td>
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5. Jai Balaji Industries Limited

Jai Balaji Industries Ltd. is a steel producing company and was established in 1999. The company offers a range of products, such as sponge iron, pig iron, steel bars/rods, ferro alloys, ductile iron pipe, power, sinter and coke. The company is an integrated steel plant with five manufacturing facilities located in Durgapur and Raniganj in West Bengal, and Durg in Chhattisgarh.

As of March 2017, Jai Balaji Industries had a debt of Rs 3,713 crore. In September 2017, SBI tried to sell bad loans worth Rs 873 crore of Jai Balaji Industries to Asset Reconstruction Companies, but failed to find a buyer. Similarly, Bank of India and Indian Overseas Bank had put up loans of Rs 124 crore and Rs 183 crore respectively, but of no avail. In October 2017, IFCI had filed an insolvency plea against the company against an unpaid due of Rs 31 crore, but this was withdrawn after the company agreed to settle its due with the creditor.

In June 2018, SBI approached the Kolkata bench of NCLT for initiating insolvency proceedings against the company. However, SBI faced a hassle when the Calcutta High Court passed a winding-up order in June 2018 against Jai Balaji Industries for failing to pay dues to an operational creditor, Kolkata-based Lakhotia Transport Company, which caused a

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https://www.thehindubusinessline.com/companies/ivrcl-heading-for-liquidation-as-resolution-plan-fails/article25560218.ece

conflict with SBI’s application in NCLT. Later, the high court agreed to recall its winding up order against the company. Eventually, the insolvency petition was not admitted in NCLT.93 SBI had put its exposure of Rs 859 crore on sale on a 100% cash basis with a reserve price of Rs 284 crore, which would have entailed a 67% haircut. It was also estimated earlier by the financial firm CLSA that the resolution through insolvency route would have entailed a haircut of 69%.94

Admitted in NCLT?: No
Date When Company Admitted in NCLT: NA
Bench: Kolkata
Nature of Applicant: Financial Creditor
Case Filed by: State Bank of India
Lead Bank: NA
Other Financial Creditors: NA
Name of Bidders Submitting Resolution Plan: NA
Has Final Order of Resolution/Liquidation Passed by NCLT?: No
Date of Passing Final Order of Resolution/Liquidation: NA
Name of Bidder Selected for Resolution: NA

6. Jayaswal Neco Ltd
Jayaswal Neco Industries Limited was established in 1972. The company is a manufacturer and supplier of a variety of sanitary castings which include centrifugally cast iron pipe and fittings, cast iron manhole, cast iron castings, etc.

SBI had filed an insolvency application under Section 7 of the IBC in January 2018 and the company had acknowledged in its BSE filing that it had received a copy of the application.95 However, Jayaswal Neco had filed a plea in the Bombay High Court against the attempt of SBI to save itself from being pushed for insolvency proceedings. The company argued that RBI had not considered its Master Restructuring Agreement (MRA), which

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had been agreed by the lenders. In April 2018, the Supreme Court directed that status quo should be maintained in the insolvency process of the company. As of March 2017, the company’s total debt stood at Rs 3,853 crore.96

After seven months of the status quo by Supreme Court, SBI and PNB decided to sell their exposure to Jayaswal Neco to Asset Reconstruction Companies in December 2018. The PNB had put its exposure of Rs 780 crore (of which Rs 727 crore is fund-based) on the sale for Rs 501 crore upfront cash payment.97 This shows that despite RBI pushing the top debtors for insolvency proceedings, companies like Jayaswal Neco have prevented themselves from going to NCLT, which has forced the banks to try to sell the exposure to ARCs. This puts a question mark on the efficacy of IBC in improving recovery for the lenders.

Admitted in NCLT?: No
Date When Company Admitted in NCLT: NA
Bench: Mumbai
Nature of Applicant: Financial Creditor
Case Filed by: State Bank of India
Lead Bank: State Bank of India
Other Financial Creditors: Union Bank of India, Punjab National Bank
Name of Bidders Submitting Resolution Plan: NA
Has Final Order of Resolution/Liquidation Passed by NCLT?: No
Date of Passing Final Order of Resolution/Liquidation: NA
Name of Bidder Selected for Resolution: NA

7. Nagarjuna Oil Corporation Ltd.

Nagarjuna Oil Corporation Ltd. (NOCL) was incorporated in 1991. The company owns and operates a petroleum refinery in India. It refines and exports crude petroleum. Nagarjuna Oil Corporation Ltd. was formerly known as Pennar Refineries Ltd.

Nagarjuna Oil Corporation Ltd. was admitted in the Chennai bench of NCLT in July 2017 by an operational creditor over unpaid dues. In April

2018 the Committee of Creditors (CoC) recommended liquidation of the company after it failed to find any successful bidder. The company had roughly debts of Rs 8,800 crore and the liquidation value had been set at Rs 1,450 crore. In August 2018, it came to light that the Chennai bench of NCLT had asked the lenders to examine the possibility of resolution despite bids being rejected earlier by CoC. As NOCL had not been in operation, it was not earning any revenue unlike other companies undergoing insolvency resolution. The bidders, Haldia Petrochemicals and Gulf Petrochem, had challenged in NCLT the liquidation value set by the lenders claiming it as too high.

The NCLT had also observed that in IBC liquidation value cannot be a basis of accepting or rejecting a resolution plan. In October 2018, NCLT had asked the CoC to suggest some acceptable modification and improvements to the resolution plan submitted by Haldia Petrochemicals. However, the NCLT finally passed the liquidation order in December 2018, stating that the lenders had not accepted the proposal from prospective buyers.

Admitted in NCLT?: Yes  
Date When Company Admitted in NCLT: July 25, 2017  
Bench: Chennai  
Nature of Applicant: Operational Creditor  
Case Filed by: Sulzer India Pvt. Ltd.  
Lead Bank: State Bank of India and IDBI Bank  
Other Financial Creditors: NA  
Name of Bidders Submitting Resolution Plan: Citax Energy DMCC, Bharat Petroleum Corporate Ltd. (BPCL), Gulf Petrochem FCZ and Haldia Petrochemicals Ltd.  
Has Final Order of Resolution/Liquidation Passed by NCLT?: Yes  
Date of Passing Final Order of Resolution/Liquidation: Liquidation Order passed on December 11, 2018  
Name of Bidder Selected for Resolution: NA

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8. Orchid Chemicals & Pharmaceuticals Limited

Orchid Chemicals & Pharmaceuticals Ltd. was established in 1992 as an export-oriented unit (EOU). Orchid is a vertically integrated company spanning the entire pharmaceutical value chain, including research, manufacturing and marketing. Orchid ranks among the top 15 pharmaceutical companies in India.

The insolvency petition against Orchid Pharma was admitted in the Chennai bench of NCLT in August 2017. The petition was moved by Laxmi Vilas Bank over a loan of Rs 50 crore. It was reported that the company was planning to challenge this petition at NCLAT. The company owed Rs 3,500 crore to its lenders. Initially, six pharma companies and four financial firms were considering to bid for Orchid Pharma. After three rounds of bidding, Resolution Professional for the company considered bids from Union Quimico Farmacéutica, Ingen Capital and Fidelity Trading Corporation. However, the lenders had rejected all the three bidders. Ingen Capital and Fidelity Trading Corporation were not compliant with Section 29A of IBC and the bid from Union Quimico Farmacéutica was too low to be considered. It is to be noted that Section 29A bars those companies that have defaulted on payments to lenders from bidding for other stressed assets. However, in September 2018, the Committee of Creditors had approved the Resolution Plan from Ingen Capital with a vote share of 79% by value due to which lenders from 24 banks would have received roughly Rs 1,000 crore against the outstanding Rs 3,200 crore, implying a heavy amount of haircut. NCLT had also asked Ingen Capital to clear the dues of the banks within 30 days.

In November 2018, it came to light that the resolution process of Orchid Pharma had hit a roadblock as Ingen Capital had failed to infuse the required funds. On 2 November, NCLT had asked Ingen Capital to pay at least one-third (i.e. roughly Rs 334 crore) to the financial creditors within

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five days, but Ingen Capital had failed to do so. In February 2019, NCLT annulled the resolution plan of Ingen Capital after it failed to pay the required amount of Rs 1,000 crore to the lenders. Moreover, IRP of Orchid Pharma had again opened a fresh round of bidding for the company. NCLT has provided only 105 days to resolve this matter to make up for the lost time in the earlier bidding process. In March 2019, NCLAT had also asked Ingen Capital to reply in three weeks as to why action should not be taken against the company for not paying the Rs 1,000 crore amount as specified in the approved resolution plan. This reluctance from Ingen Capital also exposed as how such bidders can jeopardize the resolution process of insolvent companies.

Admitted in NCLT?: Yes
Date When Company Admitted in NCLT: August 17, 2017
Bench: Chennai
Nature of Applicant: Operational Creditor
Case Filed by: Lakshmi Vilas Bank Ltd.
Lead Bank: SBI
Other Financial Creditors: NA
Name of Bidders Submitting Resolution Plan: Union Quimico Farmacéutica, Ingen Capital and Fidelity Trading Corporation
Has Final Order of Resolution/Liquidation Passed by NCLT?: No
Date of Passing Final Order of Resolution/Liquidation: NA
Name of Bidder Selected for Resolution: NA

9. Ruchi Soya Industries Ltd.

Ruchi Soya Industries is headquartered in Indore and was founded in 1986. Ruchi Soya Industries Limited is engaged primarily in the business of processing of oil-seeds and refining of crude oil for edible use. The company is also engaged in trading in various products and generation of wind power. The company exports its products to several countries. Its brands include Nutrela, Mahakosh, Sunrich, Ruchi Gold and Ruchi No.1.

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The insolvency petition against Ruchi Soya Industries was admitted in the Mumbai bench of NCLT in December 2017. The petition was earlier filed by Standard Chartered Bank and DBS Bank Ltd separately in September 2017. These two banks were not part of the Joint Lenders Forum (JLF) and had moved the NCLT for CIRP against Ruchi Soya in September, individually. Ruchi Soya owed around Rs 33 crore to Standard Chartered and a sum of around Rs 150 crore to DBS Bank. It was reported in May 2018 that Patanjali Ayurved and Adani Wilmar had submitted similar bids for acquiring Ruchi Soya and the Committee of Creditors was contemplating to conduct a ‘Swiss Challenge’ to decide the better resolution plan. Under the Swiss Challenge method there is an open bidding. By December 2017, Ruchi Soya owed about Rs 12,000 crore to the lenders.

In June 2018, it was reported that Patanjali Ayurved had raised objections over the eligibility of Adani Wilmar to participate in the bidding process under Section 29 A of the Insolvency and Bankruptcy Code. Section 29A of IBC states that the bidders for an insolvent company cannot be allowed to offer a resolution plan if the bidding company is 'connected' to another corporate group having stressed loans. It had been alleged that Pranav Adani, who is MD of Adani Wilmar and a relative of Gautam Adani (chief of Adani Group), has been married into the Kothari family, the erstwhile promoter of Rotomac group, which has been undergoing investigations for siphoning off loans worth Rs 3,000 crore. This objection came after a recent IBC ordinance, where the definition of "connected person" had broadened to include "related party" and "relatives", a category that was expected to include in-laws. Adani Wilmar had come up with an offer of Rs 6,000 crore and Patanjali was asked revise its bid for Rs 5,700 crore to match or exceed the offer by Adani Wilmar.

It was reported in January 2019 that Adani Wilmar had decided to opt out of bidding for Ruchi Soya citing delays in the insolvency process, even though it was the highest bidder. Meanwhile, Patanjali Ayurved had

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informed the NCLT that it was willing to match the bid by Adani Wilmar. Earlier, the Committee of Creditors (CoC) had approved the resolution plan of Adani Wilmar with 92% voting. In March 2019, Patanjali Ayurved offered to revise its bid to Rs 4,350 crore from the previous offer of Rs 4,100 crore. Patanjali Ayurved had offered to infuse Rs 1,700 crore in the company, similar to Adani Wilmar. Ruchi Soya, during the process of insolvency, attracted over two dozen bids, including bids from private equity majors KKR and Aion Capital, along with consumer goods entities such as ITC, Godrej Agrovet and Emami (apart from Patanjali and Adani). The lenders would most likely accept Patanjali’s offer, which would mean a 60% haircut for the lenders.

Admitted in NCLT?: Yes
Date When Company Admitted in NCLT: December 15, 2017
Bench: Mumbai
Nature of Applicant: Financial Creditor
Case Filed by: Standard Chartered Bank and DBS Bank
Lead Bank: State Bank of India
Other Financial Creditors: NA
Name of Bidders Submitting Resolution Plan: Patanjali Ayurved and Adani Wilmar
Has Final Order of Resolution/Liquidation Passed by NCLT?: No
Date of Passing Final Order of Resolution/Liquidation: NA
Name of Bidder Selected for Resolution: NA

10. SEL Manufacturing Company Ltd.

SEL Manufacturing Company Ltd. traces its origin back to 1969. The company is a vertically integrated textile conglomerate, operating in various textile sub-segments having facilities for spinning, knitting, processing of yarns and fabric, along with terry towels and ready-made garments. The company has additionally a captive power generation capacity of 22 MW.

Note:
109 Patanjali only suitor for Ruchi Soya as Adani opts out - Livemint - January 16, 2019 - https://www.livemint.com/Companies/2Vt7458HnUaByydSJUTeK/Patanjali-only-suitor-for-Ruchi-Soya-as-Adani-opts-out.html
Earlier, SBI had filed its insolvency application in the Chandigarh bench against SEL Manufacturing in October 2017, which became the first company in the 2nd List of RBI. At the end of March 2017, SEL Manufacturing had a debt of Rs 4,275 crore. SEL Manufacturing Company had earlier undergone debt restructuring under CDR mechanism. However, in its FY 2017 Annual Report, the company said that the credit facilities sanctioned under CDR were not released fully by the lenders and the company could not complete a spinning project where a major expense was incurred leading to adverse financial performance. In January 2018, it came to light that Andhra Bank was selling its exposure to SEL Manufacturing to Asset Reconstruction Companies (ARC). Andhra Bank’s principal exposure to the company stood at Rs 103 crore. The NCLT finally admitted the insolvency application against the company in April, 2018. The final verdict on the company is still awaited. According to the company’s website, the total claims admitted by Financial Creditors stood at Rs 7,173 crore.

Admitted in NCLT?: Yes
Date When Company Admitted in NCLT: April 11, 2018
Bench: Chandigarh
Nature of Applicant: Financial Creditor
Case Filed by: State Bank of India
Lead Bank: State Bank of India
Name of Bidders Submitting Resolution Plan: NA
Has Final Order of Resolution/Liquidation Passed by NCLT?: No
Date of Passing Final Order of Resolution/Liquidation: NA
Name of Bidder Selected for Resolution: NA

112Andhra Bank to sell SEL Manufacturing loan to ARCs - Livemint - January 29, 2018 - https://www.livemint.com/Industry/AeKNxHgy3FIwh0tsiN8cM/Andhra-Bank-to-sell-SEL-Manufacturing-loan-to-ARCs.html
11. Shakti Bhog Foods Ltd.

Shakti Bhog Foods Ltd. was established in 1970. The company is in the business of food products and has been an exporter and supplier of wheat flour, basmati and non-basmati rice, pulses and beans, corn flour, maize flour, atta, mustard oil, pickles and semolina (suji). The company has been exporting its products in overseas markets like USA, New Zealand, Australia, UAE, Qatar and host of other countries.

Shakti Bhog Foods was referred to NCLT by SBI in December 2018. The company owed more than Rs 4,000 crore to the lenders. However, NCLT refused to initiate insolvency proceedings against Shakti Bhog Foods in February 2018 through which SBI was supposed to recover Rs 2,045 crore. The NCLT gave the reason that the company was already undergoing liquidation and hence the insolvency proceedings could not be initiated. Shakti Bhog Foods was undergoing liquidation in the Delhi High Court.

Admitted in NCLT?: No
Date When Company Admitted in NCLT: NA
Bench: New Delhi
Nature of Applicant: Financial Creditor
Case Filed by: SBI
Lead Bank: SBI
Other Financial Creditors: NA
Name of Bidders Submitting Resolution Plan: NA
Has Final Order of Resolution/Liquidation Passed by NCLT?: No
Date of Passing Final Order of Resolution/Liquidation: NA
Name of Bidder Selected for Resolution: NA

12. Transstroy (India) Ltd.

The Transstroy (India) Ltd. was established in 2001 and is headquartered in Hyderabad. The company is in the business of construction and infrastructure projects and deals with irrigation, roads, hydropower, metro rail and port sectors.

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The Canara Bank had filed an insolvency petition with the Hyderabad bench of NCLT in December 2017 to initiate the insolvency proceedings. The company owed a total of Rs 725 crore to Canara Bank.\textsuperscript{115} The insolvency petition against Transstroy was finally admitted in October 2018. In another development in December 2018, the Hyderabad High Court upheld the right of Andhra Bank to auction the firm’s assets to recover its dues. The company’s total dues against the lenders stood at Rs 3,694 crore as per the plea filed in the Debt Recovery Tribunal (DRT). The company argued in the court that as the company was undergoing insolvency process, hence, its assets cannot be sold. However, the high court dismissed this plea stating that RBI’s letter (dated August 28, 2017) does not mention about any authorization given by the central government to initiate only “insolvency resolution process” in the event of a default, under the IBC.\textsuperscript{116} This also shows the discrepancy which can occur when courts outside NCLT pass their own judgment. The final order from NCLT is still awaited for the company.

**Admitted in NCLT?:** Yes  
**Date When Company Admitted in NCLT:** October 10, 2018  
**Bench:** Hyderabad  
**Nature of Applicant:** Financial Creditor  
**Case Filed by:** Canara Bank  
**Lead Bank:** Canara Bank  
**Other Financial Creditors:** Andhra Bank, Dena Bank  
**Name of Bidders Submitting Resolution Plan:** NA  
**Has Final Order of Resolution/Liquidation Passed by NCLT?:** No  
**Date of Passing Final Order of Resolution/Liquidation:** NA  
**Name of Bidder Selected for Resolution:** NA

**13. Unity Infraprojects Ltd.**

Unity Infraprojects Ltd. is an infrastructure construction company. The company is a civil engineering and Engineering, Procurement, Construction (EPC) contractor associated with various projects. The company operates in four verticals: buildings and housing, transportation, water supply and

\textsuperscript{116} HC: Banks can sell Transstroy assets - The Times of India - December 20, 2018 - https://timesofindia.indiatimes.com/city/hyderabad/hc-banks-can-sell-transstroy-assets/articleshow/67172045.cms
irrigation. The company builds dams, tunnels, bridges, flyovers, subways, roads and buildings.

In December 2014, a Corporate Debt Restructuring (CDR) package involving loans worth Rs 3,550 crore was approved by the lenders of Unity Infraprojects. In March 2016, the company informed that the lenders had decided to invoke the Strategic Debt Restructuring (SDR) framework, whereby they would convert their debt into equity in the company.\textsuperscript{117} The company had approached the Mumbai bench of NCLT in June 2017 where its application was admitted. In October 2018, NCLT had reserved its decision on Unity Infraprojects. In March 2018, the Resolution Professional (RP) had appealed to the NCLT for obtaining the liquidation order as the Committee of Creditors had rejected a resolution plan earlier.\textsuperscript{118} The total admitted amount by Financial Creditors as given on company’s website stands at Rs 3,368 crore. The final decision from NCLT for Unity Infraprojects is still awaited.

Admitted in NCLT?: Yes  
Date When Company Admitted in NCLT: June 20, 2017  
Bench: Mumbai  
Nature of Applicant: Corporate Debtor  
Case Filed by: Unity Infraprojects Ltd.  
Lead Bank: State Bank of India  
Name of Bidders Submitting Resolution Plan: NA  
Has Final Order of Resolution/Liquidation Passed by NCLT?: No  
Date of Passing Final Order of Resolution/Liquidation: NA  
Name of Bidder Selected for Resolution: NA

\textsuperscript{117}Banks to take control of Unity Infra under SDR - Livemint - March 29, 2016 - https://www.livemint.com/Companies/Xj7RY3fZx16caswyE07yN/Banks-to-take-control-of-Unity-Infra-under-SDR.html  
\textsuperscript{118}NCLT reserves order on liquidation of Unity Infra - The Hindu Businessline - October 16, 2018 - https://www.thehindubusinessline.com/companies/nclt-reserves-order-on-liquidation-of-unity-infra/article25241013.ece
14. Videocon Industries Ltd.

Videocon Industries Ltd. was established in 1986. The company is engaged in the manufacture, and wholesale and retail trade of consumer electronics and home appliances items. Its segments include consumer electronics and home appliances, crude oil and natural gas, telecommunications, power, among other interests.

The SBI had filed insolvency petition against Videocon Industries Ltd. in January 2018 in the Mumbai bench of NCLT. The insolvency petition was admitted only in June 2018. Videocon Industries had a debt of more than Rs 20,000 crore and the company chairman Venugopal Dhoot had claimed that lenders would be able to recover 80% of the debts. Videocon Industries was hoping that it would escape the insolvency proceedings as the company was planning to use a provision in IBC, according to which a case from NCLT could be withdrawn if at least 90% of the creditors agree to it. The company chairman told the media that all its lenders did not want the company to go to NCLT. The Resolution Professional of the company started inviting bids for the company in September 2018. The Resolution Professional also informed that the insolvency resolution process in respect of 11 group companies of Videocon Industries had also commenced and for the other four other entities NCLT would be passing an order in a short time.

In October 2018, Venugopal Dhoot had approached NCLT to seek its intervention to stop inviting Express of Interest by the Resolution Professional of the company. The promoter argued that the company has cross-shareholdings in other companies of the group and the insolvency process can hurt the prospects of other group companies as well. The company had also requested the NCLT to consolidate all the group companies into one matter for carrying out the insolvency proceedings. Later, SBI agreed to hire a common process adviser which would liaison among the separate resolution professionals and prospective bidders for

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121 Bids invited for debt-ridden Videocon under insolvency resolution process - Livemint - September 25, 2018 - https://www.livemint.com/Companies/svblEj0Elq7CDprG61H0H/Bids-invited-for-debt-ridden-Videocon-under-insolvency-resol.html
the 15 group companies of Videocon. The group companies include Videocon Industries Ltd, Videocon Telecommunications Ltd, KAIL Ltd, Electroworld Digital Solutions Ltd, Value Industries Ltd, Evans Fraser and Co (India) Ltd, Millennium Appliances India Ltd, Sky Appliances Ltd, PE Electronics Ltd, Techno Electronics Ltd, AppliComp (India) Ltd, Techno Kart India Ltd, Century Appliances Ltd and CE India Ltd. The matter of insolvency of Videocon Industries is still pending with NCLT.

Admitted in NCLT?: Yes
Date When Company Admitted in NCLT: June 06, 2018
Bench: Mumbai
Nature of Applicant: Financial Creditor
Case Filed by: State Bank of India
Lead Bank: State Bank of India
Other Financial Creditors: ICICI Bank, IDBI Bank, Central Bank of India, Union Bank
Name of Bidders Submitting Resolution Plan: NA
Has Final Order of Resolution/Liquidation Passed by NCLT?: No
Date of Passing Final Order of Resolution/Liquidation: NA
Name of Bidder Selected for Resolution: NA

15. Visa Steel Limited

Visa Steel Ltd. was established in 2003 and is headquartered in Kolkata. Visa Steel Ltd. is a subsidiary of Visa Group and is engaged in the manufacturing of iron and steel products, including pig iron, sponge iron, special steel and high carbon ferro chrome with a captive power plant at Kalinganagar, Odisha. The company’s segments include special steel and ferro chrome.

The SBI had filed its insolvency application against Visa Steel in the Kolkata bench of NCLT in January 2018. Meanwhile, Visa Steel was also trying to work out a resettlement plan with its lenders, whereby it had defaulted on loans of Rs 3,600 crore to SBI, which included selling its loans to Asset Reconstruction Companies (ARC). Intervening in this matter, the Orissa

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123 Visa Steel makes last last mile effort to settle dues outside NCLT - The Economic Times - January 10, 2018 -
High Court granted an interim stay on the insolvency proceedings in March 2018 stating that the company had an arguable case. In January 2019, NCLT gave six weeks to Visa Steel to get a clear order from the Orissa High Court regarding the stay on its insolvency proceedings. Earlier, Visa Steel had approached the Orissa High Court challenging SBI’s decision on two grounds. First, it said that the lenders had not prepared any resolution plan for the company before invoking the IBC. Second, the company argued that as the company’s outstanding debt was less than Rs 5,000 crore, hence, it was not supposed to be sent to NCLT as per the RBI criteria, as it is applicable to companies with debts of over Rs 5,000 crore. The company is yet to be admitted in NCLT for insolvency proceedings.

Admitted in NCLT?: No
Date When Company Admitted in NCLT: NA
Bench: Kolkata
Nature of Applicant: Financial Creditor
Case Filed by: State Bank of India
Lead Bank: State Bank of India
Other Financial Creditors: Bank of Baroda, Bank of India, Punjab National Bank, Canara Bank, Syndicate Bank
Name of Bidders Submitting Resolution Plan: NA
Has Final Order of Resolution/Liquidation Passed by NCLT?: No
Date of Passing Final Order of Resolution/Liquidation: NA
Name of Bidder Selected for Resolution: NA

124Visa steel gets interim stay on insolvency proceedings - The Economic Times - March 19, 2018 -
125Breather for Visa Steel - The Telegraph - January 15, 2019 -
https://www.telegraphindia.com/business/nclt-gives-visa-steel-6-weeks-to-avoid-slipping-into-insolvency-stage/cid/1681808
5. Data on Corporate Insolvency Resolution Process (CIRP) under IBC Process

With two years since IBC came into effect in December 2016, we have some data in hand to analyze as to how effective IBC has been in terms of fetching a fair recovery for the lenders (mostly Public Sector Banks). The data has been primarily divided into three sections, i.e. data related to CIRPs achieving resolution, data related to CIRPs leading to order of liquidation and a third section which provides data on the status of insolvency cases under NCLT. In the first two sections, the focus is mainly on the companies in which financial claims are more than Rs 500 crore for any company.

5.1 Data on Corporate Insolvency Resolution Process Yielding Resolution

So far, IBBI has provided data on the list of insolvency cases which had yielded resolution under the Corporate Insolvency Resolution Process (CIRP) up to December 31, 2018. The list includes a total of 82 companies up to the given date. The data provided by IBBI provides some interesting insights about the companies for which resolution was achieved. The list of companies which have achieved resolution have total financial claims ranging from Rs 43 lakh (Master Shipyard Pvt. Ltd.) to Rs 57,505 crore (Bhushan Steel Ltd.).

Among these 82 companies, in 18 instances, the insolvency process was triggered by Corporate Debtors themselves. Similarly, 42 cases of insolvency were triggered by Financial Creditors and the rest 22 cases were triggered by Operational Creditors.

The total amount of admitted claims for these 82 companies comes to approximately Rs 1,42,600 crore, whereby the total claims of financial creditors stands at approximately Rs 1,36,300 crore. The total resolution amount comes to Rs 68,900 crore for these 32 companies, while Financial Creditors got the sum of Rs 65,700 crore.

It should be noted here that in the resolution process, often, a company bids for buying out the defaulting companies and the financial creditors

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may not get all the amount at one go, but, it might be paid to them over a period of few years.

Given below is the data related to the resolution amount for the creditors and the percentage of haircut borne by Financial Creditors. Only those companies which have total claims of more than Rs 500 crore have been included in the table below.

*Table 1: Corporate Insolvency Resolution Process Yielding Resolution: As on December 31, 2018*

(Amount in Crore)

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Corporate Debtor</th>
<th>Total Admitted Claims</th>
<th>Total Claims of Financial Creditors</th>
<th>Liquidation Value</th>
<th>Resolution Amount for Financial Creditors</th>
<th>Percentage of Haircut for Financial Creditors</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Bhushan Steel Ltd.</td>
<td>57505.05</td>
<td>56022.06</td>
<td>14541.00</td>
<td>35571.00</td>
<td>36.51</td>
</tr>
<tr>
<td>2.</td>
<td>Electrosteel Steels Ltd.</td>
<td>13958.36</td>
<td>13175.14</td>
<td>2899.98</td>
<td>5320.00</td>
<td>59.62</td>
</tr>
<tr>
<td>3.</td>
<td>Amtek Auto Ltd.*</td>
<td>12811.50</td>
<td>12605.00</td>
<td>4129.00</td>
<td>4334.00</td>
<td>65.62</td>
</tr>
<tr>
<td>4.</td>
<td>Monnet Ispat &amp; Energy Ltd.</td>
<td>11478.08</td>
<td>11014.91</td>
<td>2365.00</td>
<td>2892.12</td>
<td>73.74</td>
</tr>
<tr>
<td>5.</td>
<td>Binani Cements Ltd.</td>
<td>7202.36</td>
<td>6469.36</td>
<td>2300.70</td>
<td>6469.36</td>
<td>0.00</td>
</tr>
<tr>
<td>6.</td>
<td>Adhunik Metaliks Ltd.*</td>
<td>5648.13</td>
<td>5371.23</td>
<td>431.50</td>
<td>410.00</td>
<td>92.37</td>
</tr>
<tr>
<td>7.</td>
<td>Orissa Manganese &amp; Minerals Ltd.</td>
<td>5414.49</td>
<td>5388.54</td>
<td>301.02</td>
<td>310.00</td>
<td>94.25</td>
</tr>
<tr>
<td>8.</td>
<td>Zion Steel Ltd.*</td>
<td>5368.17</td>
<td>5367.02</td>
<td>14.55</td>
<td>15.00</td>
<td>99.72</td>
</tr>
<tr>
<td>No.</td>
<td>Company Name</td>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
<td>E</td>
</tr>
<tr>
<td>-----</td>
<td>--------------------------------------</td>
<td>---</td>
<td>---</td>
<td>-----</td>
<td>-----</td>
<td>----</td>
</tr>
<tr>
<td>9.</td>
<td>Orchid Pharma Ltd.*</td>
<td>3457.99</td>
<td>3341.55</td>
<td>1309.49</td>
<td>1292.22</td>
<td>61.33</td>
</tr>
<tr>
<td>10.</td>
<td>Kohinoor CTNL Infrastructure Company Pvt. Ltd.</td>
<td>2578.64</td>
<td>2528.40</td>
<td>329.90</td>
<td>2246.00</td>
<td>11.17</td>
</tr>
<tr>
<td>11.</td>
<td>Assam Company India Ltd.</td>
<td>1526.95</td>
<td>1379.17</td>
<td>359.91</td>
<td>884.00</td>
<td>35.90</td>
</tr>
<tr>
<td>12.</td>
<td>Kamineni Steel &amp; Power India Pvt. Ltd.*</td>
<td>1523.50</td>
<td>1509.00</td>
<td>760.00</td>
<td>600.00</td>
<td>60.24</td>
</tr>
<tr>
<td>13.</td>
<td>MBL Infrastructure Ltd.</td>
<td>1506.87</td>
<td>1428.21</td>
<td>269.90</td>
<td>1597.13</td>
<td>-11.83</td>
</tr>
<tr>
<td>14.</td>
<td>Sree Metalik Ltd.</td>
<td>1289.73</td>
<td>1287.22</td>
<td>340.62</td>
<td>607.31</td>
<td>52.82</td>
</tr>
<tr>
<td>15.</td>
<td>Synergies Dooray Automotive Ltd.</td>
<td>972.15</td>
<td>972.15</td>
<td>8.17</td>
<td>54.70</td>
<td>94.37</td>
</tr>
<tr>
<td>16.</td>
<td>Sharon Bio-Medicine Ltd.</td>
<td>917.92</td>
<td>891.38</td>
<td>182.69</td>
<td>294.03</td>
<td>67.01</td>
</tr>
<tr>
<td>17.</td>
<td>Basai Steels and Power Pvt. Ltd.</td>
<td>896.05</td>
<td>853.69</td>
<td>52.09</td>
<td>125.81</td>
<td>85.26</td>
</tr>
<tr>
<td>18.</td>
<td>Shirdi Industries Ltd.</td>
<td>695.74</td>
<td>673.88</td>
<td>103.05</td>
<td>176.36</td>
<td>73.83</td>
</tr>
<tr>
<td>19.</td>
<td>Sirpur Paper Mills Ltd.</td>
<td>636.93</td>
<td>533.38</td>
<td>202.76</td>
<td>340.00</td>
<td>36.26</td>
</tr>
<tr>
<td>20.</td>
<td>Kalyanpur Cements Ltd.</td>
<td>631.95</td>
<td>131.05</td>
<td>119.74</td>
<td>98.60</td>
<td>24.76</td>
</tr>
</tbody>
</table>
21. Raj Oil Mills Ltd. 612.59 243.19 22.83 55.87 77.03
22. JEKPL Pvt. Ltd. 606.57 606.57 222.06 162.00 73.29
23. Fenace Auto Ltd. 505.66 483.41 104.80 127.44 73.64

Total 137745.38 132275.51 31370.76 63982.95 51.63

*Certain issues have come up post approval of the resolution plan.

# CIRPs mentioned at Serial Nos. 6, 13 and 22 have moved into liquidation later.
It can be observed from the table that Financial Creditors or lenders have to take a huge haircut, which is a loss of public money, as most of the lenders to these companies are Public Sector Banks. The figure of an average of 52% haircut is quite steep when we consider these 23 companies. However, if we remove Bhushan Steel and Binani Cements from the picture as exceptions, then the data presents a much more worrisome scenario as the average haircut for the lenders of the remaining 21 companies jumps to 69%. The lenders could limit their haircut in case of...
Bhushan Steel, as the steel companies have a better chance of fetching returns during a takeover due to their existing assets.

Similar was the case for Binani Cements where UltraTech Cement agreed to pay the full amount to the lenders. However, not all such cases fetch similar returns under the IBC process. While the current government have been hailing IBC as a panacea for the recovery of NPA accounts of Public Sector Banks, this should be questioned by the people. Is the IBC process pushing the banks for facilitating corporate loot in which certain companies can take over other defaulting companies at dirt cheap prices from the lenders? Moreover, as more data comes out about the resolution of companies in the coming months, the claim of IBC as a success story may further fall flat.

5.2 Data on Corporate Insolvency Resolution Process Ending With Order of Liquidation

Similarly, IBBI has come out with data up to June 30, 2018 on the companies which eventually had to go for liquidation. The list includes a total of 136 companies from various sectors. The total admitted claims for these 136 companies comes to Rs 57,640 crore. Out of this sum, the admitted claims of Financial Creditors amount to Rs 52,670 crore. However, the liquidation value of these companies equals to an appalling low figure of Rs 4,820 crore. For our analysis, from this list, only those companies have been chosen whose total admitted claims has been more than Rs 500 crore for each company. The list narrows down to 16 companies whose total admitted claims put together amounts to Rs 47,330 crore. The admitted claims of Financial Creditors amounts to Rs 43,580 crore and the liquidation value for these companies comes to a paltry Rs 2,660 crore. The data specific to these 16 companies is provided below.

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### Table 2: Corporate Insolvency Resolution Process Ending with Order of Liquidation: As on June 30, 2018

(Amount in Crore)

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Corporate Debtor</th>
<th>Total Admitted Claims</th>
<th>Total Claims of Financial Creditor</th>
<th>Liquidation Value</th>
<th>Liquidation Value as percentage of Total Admitted Claims</th>
<th>Number of Resolution Plans Received (Highest Resolution Value Proposed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>REI Agro Ltd.</td>
<td>8625.86</td>
<td>8624.97</td>
<td>341.19</td>
<td>3.96</td>
<td>0</td>
</tr>
<tr>
<td>2.</td>
<td>Gujarat NRE Coke Ltd.</td>
<td>5250.85</td>
<td>3641.16</td>
<td>351.00</td>
<td>6.68</td>
<td>1 (420)</td>
</tr>
<tr>
<td>3.</td>
<td>Rotomac Global Pvt. Ltd.</td>
<td>3943.64</td>
<td>3927.46</td>
<td>141.93</td>
<td>3.60</td>
<td>0</td>
</tr>
<tr>
<td>4.</td>
<td>Roofit Industries Ltd.</td>
<td>3943.40</td>
<td>3921.53</td>
<td>49.52</td>
<td>1.26</td>
<td>0</td>
</tr>
<tr>
<td>5.</td>
<td>Gupta Coal India Pvt. Ltd.</td>
<td>3894.80</td>
<td>3408.96</td>
<td>250.10</td>
<td>6.42</td>
<td>0</td>
</tr>
<tr>
<td>6.</td>
<td>Gupta Corporation Pvt. Ltd.</td>
<td>3561.00</td>
<td>3430.00</td>
<td>172.00</td>
<td>4.83</td>
<td>0</td>
</tr>
<tr>
<td>7.</td>
<td>JODPL Pvt. Ltd.</td>
<td>3011.00</td>
<td>3011.00</td>
<td>579.50</td>
<td>19.25</td>
<td>0</td>
</tr>
<tr>
<td>8.</td>
<td>Jenson &amp; Nicholson (India) Ltd.</td>
<td>2898.77</td>
<td>2817.00</td>
<td>35.37</td>
<td>1.22</td>
<td>0</td>
</tr>
<tr>
<td>9.</td>
<td>Rotomac Exports Pvt. Ltd.</td>
<td>2885.95</td>
<td>2885.95</td>
<td>0.41</td>
<td>0.01</td>
<td>0</td>
</tr>
<tr>
<td>10.</td>
<td>Lohaa Ispat</td>
<td>2080.51</td>
<td>2073.72</td>
<td>115.48</td>
<td>5.55</td>
<td>1 (491)</td>
</tr>
<tr>
<td>No.</td>
<td>Company Name</td>
<td>Shares Held</td>
<td>Amount Invested</td>
<td>Interest Earned</td>
<td>Loss (Gain)</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>-------------------------------------</td>
<td>-------------</td>
<td>----------------</td>
<td>----------------</td>
<td>-------------</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Cethar Ltd.</td>
<td>1668.02</td>
<td>1198.71</td>
<td>219.00</td>
<td>13.13</td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Innovative Industries Ltd.</td>
<td>1496.90</td>
<td>1413.50</td>
<td>144.00</td>
<td>9.62</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2 (287)</td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td>Asian Natural Resources (India) Ltd.</td>
<td>1363.62</td>
<td>781.46</td>
<td>5.86</td>
<td>0.43</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>14.</td>
<td>VNR Infrastructures Ltd.</td>
<td>1250.35</td>
<td>1102.35</td>
<td>30.21</td>
<td>2.42</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1 (426)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4 (122)</td>
<td></td>
</tr>
<tr>
<td>16.</td>
<td>Servalakshmi Paper Ltd.</td>
<td>679.64</td>
<td>628.08</td>
<td>116.33</td>
<td>17.12</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2 (54)</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>47330.86</strong></td>
<td><strong>43584.10</strong></td>
<td><strong>2664.33</strong></td>
<td><strong>5.62%</strong></td>
<td></td>
</tr>
</tbody>
</table>
It can be observed from Table 2 that for most of the companies the liquidation value as a percentage of total admitted claims is less than 10%, while for the companies listed in the table, on an average, the percentage comes to an abysmally low figure of 5.62%. This clearly shows that once a company needs to undergo liquidation through the IBC process, then the loss for the lenders stands to be much more than what happens in the cases where the companies are able to achieve a resolution after bidding. It can also be seen from the table that 10 out of the 16 companies received not even a single resolution plan and liquidation remains the only option in such instances. Moreover, even though six other companies received a resolution plan, they still had to undergo liquidation, as the Committee of Creditors (CoC) need to accept the resolution plan with 66% votes in favor, which may not happen in all situations, leading to further losses.
5.3 Data on Status of Cases under Corporate Insolvency Resolution Process

The table below captures the data related to the insolvency cases of two years till December 2018 since the Insolvency and Bankruptcy Code came into effect in December 2016. Roughly, 1,500 cases have been admitted in NCLT and a quarter-wise break-up has been provided for it.

Table 3: Corporate Insolvency Resolution Process

<table>
<thead>
<tr>
<th>Quarter</th>
<th>CIRPs at Beginning of Quarter</th>
<th>Admitted</th>
<th>Appeal/Review/Settled</th>
<th>Withdrawal under Section 12A</th>
<th>Approval of Resolution Plan*</th>
<th>Commencement of Liquidation</th>
<th>CIRPs at the end of the quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan-Mar, 2017</td>
<td>0</td>
<td>37</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>36</td>
</tr>
<tr>
<td>Apr-Jun, 2017</td>
<td>36</td>
<td>129</td>
<td>8</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>157</td>
</tr>
<tr>
<td>Jul-Sep, 2017</td>
<td>157</td>
<td>232</td>
<td>18</td>
<td>-</td>
<td>2</td>
<td>8</td>
<td>361</td>
</tr>
<tr>
<td>Oct-Dec, 2017</td>
<td>361</td>
<td>147</td>
<td>38</td>
<td>-</td>
<td>7</td>
<td>24</td>
<td>439</td>
</tr>
<tr>
<td>Jan-Mar, 2018</td>
<td>439</td>
<td>195</td>
<td>20</td>
<td>-</td>
<td>11</td>
<td>59</td>
<td>544</td>
</tr>
<tr>
<td>Apr-Jun, 2018</td>
<td>544</td>
<td>245</td>
<td>20</td>
<td>1</td>
<td>14</td>
<td>50</td>
<td>704</td>
</tr>
<tr>
<td>Jul-Sep, 2018</td>
<td>704</td>
<td>235</td>
<td>30</td>
<td>26</td>
<td>32</td>
<td>83</td>
<td>768</td>
</tr>
<tr>
<td>Oct-Dec, 2018</td>
<td>768</td>
<td>264</td>
<td>7</td>
<td>36</td>
<td>13</td>
<td>78</td>
<td>898</td>
</tr>
<tr>
<td>Total</td>
<td>NA</td>
<td>1484</td>
<td>142</td>
<td>63</td>
<td>79</td>
<td>302</td>
<td>898</td>
</tr>
</tbody>
</table>

* These exclude 3 resolutions which have since yielded into liquidation

(Source: IBBI)
It can be seen in the table that out of the 1,484 cases admitted in NCLT in two years, resolution plan for only 79 cases have been approved, while 302 companies have been sent for liquidation. As many as 898 companies are still undergoing the resolution process, which also shows the rise in volume of insolvency cases coming to NCLT each quarter.

It is also helpful for the readers to go through the sector-wise break-up of the cases coming to NCLT. The data here is provided from the start of the IBC process till December 2018.

Table 4: Sector-wise distribution of CIRPs as on 31 December, 2018

<table>
<thead>
<tr>
<th>Sector</th>
<th>No. of CIRPs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Closed</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>259</td>
</tr>
<tr>
<td>Food, Beverages &amp; Tobacco Products</td>
<td>24</td>
</tr>
<tr>
<td>Chemicals &amp; Chemical Products</td>
<td>26</td>
</tr>
<tr>
<td>Electrical Machinery &amp; Apparatus</td>
<td>20</td>
</tr>
<tr>
<td>Fabricated Metal Products</td>
<td>16</td>
</tr>
<tr>
<td>Machinery &amp; Equipment</td>
<td>34</td>
</tr>
<tr>
<td>Textiles, Leather &amp; Apparel Products</td>
<td>39</td>
</tr>
<tr>
<td>Wood, Rubber, Plastic &amp; Paper Products</td>
<td>30</td>
</tr>
<tr>
<td>Basic Metals</td>
<td>55</td>
</tr>
<tr>
<td>Others</td>
<td>15</td>
</tr>
<tr>
<td>Real Estate, Renting &amp; Business Activities</td>
<td>87</td>
</tr>
<tr>
<td>Construction</td>
<td>47</td>
</tr>
<tr>
<td>Wholesale &amp; Retail Trade</td>
<td>69</td>
</tr>
<tr>
<td>Hotels &amp; Restaurants</td>
<td>17</td>
</tr>
<tr>
<td>Electricity &amp; Others</td>
<td>12</td>
</tr>
<tr>
<td>Transport, Storage &amp; Communications</td>
<td>18</td>
</tr>
<tr>
<td>Others</td>
<td>77</td>
</tr>
<tr>
<td>Total</td>
<td>586</td>
</tr>
</tbody>
</table>
It can be observed from the table that the highest share of sectors coming to NCLT include:

i. Basic Metals (within Manufacturing) - 116 cases
ii. Real Estate, Renting & Business Activities - 235 cases
iii. Construction - 153 cases
iv. Wholesale & Retail Trade - 151 cases

It will also be useful for the reader to go through the data on the quarter-wise break-up of the stakeholders triggering the insolvency resolution process. It can be seen from the table below, 50% of the cases had been triggered by Operational Creditors, followed by 38% by Financial Creditors and only 12% by Corporate Debtors themselves.
Table 5: Initiation of Corporate Insolvency Resolution Process (Till December 2018)

<table>
<thead>
<tr>
<th>Quarter</th>
<th>No. of CIRPs initiated by</th>
<th>Operation Creditor</th>
<th>Financial Creditor</th>
<th>Corporate Debtor</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan-Mar, 2017</td>
<td>7</td>
<td>8</td>
<td>22</td>
<td>37</td>
<td></td>
</tr>
<tr>
<td>Apr-Jun, 2017</td>
<td>58</td>
<td>37</td>
<td>34</td>
<td>129</td>
<td></td>
</tr>
<tr>
<td>Jul-Sep, 2017</td>
<td>101</td>
<td>92</td>
<td>39</td>
<td>232</td>
<td></td>
</tr>
<tr>
<td>Oct-Dec, 2017</td>
<td>69</td>
<td>64</td>
<td>14</td>
<td>147</td>
<td></td>
</tr>
<tr>
<td>Jan-Mar, 2018</td>
<td>89</td>
<td>84</td>
<td>22</td>
<td>195</td>
<td></td>
</tr>
<tr>
<td>Apr-Jun, 2018</td>
<td>128</td>
<td>99</td>
<td>18</td>
<td>245</td>
<td></td>
</tr>
<tr>
<td>Jul-Sep, 2018</td>
<td>136</td>
<td>83</td>
<td>16</td>
<td>235</td>
<td></td>
</tr>
<tr>
<td>Oct-Dec, 2018</td>
<td>154</td>
<td>95</td>
<td>15</td>
<td>264</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>742</td>
<td>562</td>
<td>180</td>
<td>1484</td>
<td></td>
</tr>
</tbody>
</table>

(Source: IBBI)

In Table 6 one can observe the break-up of cases as on December 31, 2018 in terms of their status. It can be seen from the table below that out of the 898 cases for which the insolvency resolution process is going on, 275 cases have taken more than 270 days, even though under IBC the maximum time for an insolvency case has been fixed as 270 days. In fact, the normal timeline fixed for a case is 180 days and a 90 days extension is allowed only in special circumstances, if no results can be achieved in the 180 days time-frame. If we include both the categories where cases have taken more than 180 days, but less than or equal to 270 days, and cases which have taken more than 270 days, then we see that out of 898 cases, roughly 50% of the cases have crossed the regular time limit of 180 days. This table does not provide the data about the time taken for the CIRPs for cases which have been closed under various categories.
### Table 6: Status of CIRPs as on 31 December, 2018

<table>
<thead>
<tr>
<th>Status of CIRPs</th>
<th>No. of CIRPs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admitted</td>
<td>1484</td>
</tr>
<tr>
<td>Closed on Appeal/Review/Settled</td>
<td>142</td>
</tr>
<tr>
<td>Closed by Withdrawal under section 12A</td>
<td>63</td>
</tr>
<tr>
<td>Closed by Resolution</td>
<td>79</td>
</tr>
<tr>
<td>Closed by Liquidation</td>
<td>302</td>
</tr>
<tr>
<td>Ongoing CIRP</td>
<td>898</td>
</tr>
<tr>
<td>&gt; 270 days</td>
<td>275</td>
</tr>
<tr>
<td>&gt; 180 days ≤ 270 days</td>
<td>166</td>
</tr>
<tr>
<td>&gt; 90 days ≤ 180 days</td>
<td>202</td>
</tr>
<tr>
<td>≤ 90 days</td>
<td>255</td>
</tr>
</tbody>
</table>

(Source: IBBI)

Note:
1. The number of days pending is from the date of admission.
2. The number of days pending includes time excluded by the Tribunals.

It is also worrisome that by March 2019, IBBI has only disclosed financial data on the liquidation of companies till June 30, 2018. If IBBI had shared data on resolution of companies till December 2018, then why is it reluctant on sharing data on the liquidation of companies? Is IBBI trying to refrain from disclosing more data on liquidation of companies, which would affect the credibility of IBC as a framework? Only availability of more data in this regard can give a clearer picture.
6. A Critical Review of the Insolvency and Bankruptcy Code Since It Came Into Effect

Considering the fact that Insolvency and Bankruptcy Code is barely two years old, it still has to undergo an evolutionary process and its efficacy would be more visible in the next 4-5 years. To provide a critique of the Insolvency and Bankruptcy law as a whole and its related aspects is beyond the scope of this document. Given below are some of the key areas, where the implementation of IBC raises questions and to what extent it would be helpful as a framework in addressing the NPA woes of the banks and the related issues.

1. Recovery of NPAs under IBC Process for the Lenders

A key focus for the Insolvency and Bankruptcy Code has been on the speedy recovery of loans of the banks, as the banks have been grappling with a humongous amount of NPAs. In February 2019, Financial Services Secretary Rajiv Kumar had informed that banks had recovered Rs 1 lakh crore under IBC and that it would touch Rs 1.80 lakh crore by March 2019. However, the data on recovery in the above sections does not show a very promising picture and it has even been seen that the government has over-stated the claims on recovery which is far away from the actual numbers. Moreover, if one removes some exemplary cases like the acquisition of Bhushan Steel by Tata Steel, or the acquisition of Electrosteel Steel by Vedanta, or the acquisition of Binani Cement by Ultratech Cement, then, even the IBC route is not necessarily giving a fillip to the NPA crisis. The companies which have been loss-making and have weak financials, leave lesser scope of fetching decent returns for the banks.

While several news reports and even government officials claimed that IBC would be an effective tool, the IBC per se has not been formulated keeping only the recovery for the lenders in mind. This was underscored by NCLAT in its judgment in the case of Prowess International Pvt. Ltd. vs. Parker Hannifin India Pvt. Ltd., in which it stated, "It is made clear that Insolvency Resolution Process is not a recovery proceeding to recover the dues of the creditors. I & B Code, 2016 is an Act relating to reorganization and insolvency resolution of corporate persons, partnership firms and

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individuals in a time-bound manner for maximization of value of assets of such persons and to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including the government dues.”

The brokerage and investment group, CLSA, had projected in March 2018 that cases in NCLT worth over Rs 4.12 lakh crore would see a haircut close to 60%, with the haircuts ranging from 20% to 90% and varying across sectors, with the steel sector seeing the least haircuts and EPC firms and the power sector witnessing the highest haircut. Similarly, another investment company, Edelweiss Securities, had come out with a report in April 2018 in which it had projected that banks would face a 52% haircut from the top NPA accounts in the RBI List. However, the data made available from IBBI till December 2018 shows that except for a couple of companies banks are being forced to have more than 65% haircut on an average for large accounts. As things proceed in the coming months, one would get a more realistic picture of how much recovery of NPAs is possible for the lenders through the IBC route.

The Limitation of Effective Recovery of NPAs under IBC

The majority of 40 companies which were referred to NCLT by RBI belonged to some key sectors like steel, power, infrastructure, etc. whereby these companies went into default not just due to mismanagement by the promoters, but also because of excessive lending in some specific sectors, which added strain on these companies under changing external economic conditions. When certain companies have been admitted under NCLT, the resolution plans submitted by other companies have not only come from the competitors, but also from asset management companies, asset reconstruction companies, companies having no relevant sectorial expertise, etc. This leads to a situation in which the firms bidding for the companies under NCLT want to buy such companies at a much lower price, leading to a heavy amount of haircut for the lenders. This could also lead to

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130 NCLT haircuts to range between 20% to 90%: report - Fortune India - March 26, 2018 - https://www.fortuneindia.com/macro/nclt-haircuts-to-range-between-20-to-90-report/101693
situations in which the firm buying the defaulting company would get more into speculative trading instead of making efforts to revive the company, which has been the initial aim of IBC, especially when the entity interested in buying companies might be a trading house.

There have been some exceptions, such as in the case of Bhushan Steel, whereby Tata Steel bought Bhushan Steel for roughly Rs 36,000 crore which saved the banks from taking less than 40% haircut. However, this should be seen more as an aberration, rather than a successful model, since, in the case of many other companies, the banks had to take a 60%-70% haircut. The IBC has definitely created an atmosphere where errant promoters would be fearful that the control of their companies can be taken away if they end up in default. Indeed, much more due diligence should be exercised by the lenders at the same time.

The data in the previous section also clearly reveals that despite the tall claims of the government and industry experts that the Insolvency and Bankruptcy Code can give a fillip to the existing NPA crisis, there seems to be lesser empirical back-up for this claim in both the scenarios in which the companies have either gone for resolution or for liquidation. The IBC may have some pivotal role in altering the business landscape in India when it comes to the closure of failing businesses, but it can hardly be termed as a panacea for addressing the NPA woes.

**Understanding Sectorial Background of Companies for Recovery of Loans**

It would also be useful to note that the amount of recovery of companies under IBC depends to an extent on the sectorial background of these companies, for instance, in which category these companies belong. While in this report a sectorial mapping has not been done in terms of the average haircut for the lenders based on the sectors to which the companies belong, it can be observed that certain asset-heavy companies end up with having more interested parties keen to acquire them, than the companies which do not have much assets to offer against their debts, such as EPC firms.

The EPC firms referred to NCLT face dim prospects of resolution as these companies have very less assets which could be used by the prospective buyers for expanding their businesses. Moreover, banks are reluctant to lend working capital to such firms which are already stressed, which makes
their revival more difficult. Unlike asset-heavy companies such as steel or power companies, where land and machinery is owned or leased by the company, the value of EPC firms are derived from intangibles like the current order book and ongoing infrastructure projects which lose value once bankruptcy proceedings are initiated against these firms.

In a news report of DNA (24 September, 2018), Kumar Saurabh Singh, partner at a reputed legal firm, Khaitan & Co., said, “We would see the largest number of liquidation in the EPC sector under the insolvency and bankruptcy resolution process. Once an EPC company turns insolvent, its qualifications for future projects become very doubtful. Ability to qualify for projects is the most critical asset of an EPC player. How these entities, large but non-qualified, would be able to survive then, as projects can be given to other small players who can assemble sub-contractors and get the work executed. This is a big concern among large bidders who are now staying away.”

The IBC route favors the companies who are willing to expand their businesses by acquiring insolvent firms at dirt cheap prices. However, when seen from the perspective of the lenders, it presents a dismal picture for them in most of the cases. Hence, the lenders should focus more on improving their lending practices, including using more due diligence while extending the loans, rather than expecting that IBC would come to their rescue in dire times. Based on the trends so far, it can be said that the volume of recovery of loans for the lenders will not get automatically better with more companies coming under the fold of IBC ending up in resolution or liquidation.

2. Infrastructural Capacity and Deadlines

With its expansive scope covering all the sectors of the economy, the number of cases being referred to NCLT would see a further rise. This would add further strain on the current infrastructure of NCLT constituting merely 12 benches (including the principal bench at New Delhi) and 27 judges, especially when NCLT is bound to adhere to the strict deadlines of 180 days (as additional 90 days are allowed only on an exception basis). Moreover, in the Guwahati and Jaipur benches of NCLT, judges from other

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benches need to go there on a weekly basis. Two additional benches at 
Kochi and Cuttack are yet to start functioning. It has been earlier estimated 
that India would need roughly 80 benches in the next five years to resolve 
the number of cases expected to be referred to NCLT. Moreover, the 
number of insolvency judges in India is 26 which needs to be increased to 
handle more benches of NCLT.\textsuperscript{134}

In August 2018, it was reported that a senior government official had 
mentioned that the government was planning to double the existing 
number of benches from 11 to 24 to tackle the rising number of insolvency 
cases.\textsuperscript{135} Without an adequate infrastructure in place, the delays in 
insolvency cases would keep piling up and would go against the \textit{raison 
d’etre} of bringing the Insolvency and Bankruptcy Code for a time-bound 
resolution of insolvency cases. Perhaps the government should have 
expanded the infrastructural capacity before pushing for the 
implementation of the law. Owing to the under-developed infrastructure 
capacity of NCLT and with a spike in the number of cases being referred to 
it, there are huge delays happening in handling the insolvency cases. In the 
earlier sections of the document it has been shown that even for high 
priority cases referred by the RBI, the 270 day deadline has not been 
strictly adhered to and many cases are taking time which is much beyond 
that. There is also a shortage of trained insolvency professionals, especially 
with the piling up of number of cases, which needs to be addressed in the 
coming days.

Moreover, with the delays caused due to the multi-stakeholder dimensions 
of the insolvency cases, it needs to be seen retrospectively whether the 
deadlines fixed for the cases by the Code are realistic in implementation or 
not. Defending the 180 days deadline, the Chairman of IBBI, Dr. M.S. 
Sahoo wrote in the IBBI newsletter (Q1 2017), “\textit{If the hero in the novel} 
‘Around the world in 80 days’ could circumnavigate planet Earth in 79 days 
when transport and communication facilities were rudimentary during the 
late 19th century, 180 days is a long period now with all the advantages of 
modern technology and well-informed brains. Going forward, a CIRP could

\textsuperscript{134} NCLT facing huge shortage of judges as bankruptcy cases go up - Business Today - April 25, 2018 - https://www.business today.in/current/corporate/nclt-judges-bankruptcy-insolvency-ibc/story/275582.html
\textsuperscript{135} NCLT benches may be doubled to cope with rising cases - Financial Express - August 10, 2018 - https://www.fina ncialexpress.com/industry/nclt-benches-may-be-doubled-to-cope-with-rising-cases/1276014/
possibly be completed in a few days or even hours, particularly with use of artificial intelligence”.

Only in the years to come would we get to see whether NCLT’s infrastructure can cope up with the number of insolvency cases to adhere to the 180 days deadline.

The RBI in its ‘Report on Trend and Progress of Banking in India (2017-18)’ released in December 2018, stressed on the need of improving the NCLT infrastructure in order to ensure time-bound resolution of cases. The report said, “In view of the large number of cases that may be referred to National Company Law Tribunal (NCLT) in near future, there may be a case for strengthening the NCLT infrastructure in order to ensure that it can deliver on its promise of time-bound resolution.” Additionally, it said, “Strengthening the infrastructure of insolvency resolution, including the proposed increase in the number of benches of National Company Law Tribunal (NCLT), should help reduce the overall time currently being taken for resolution under the IBC.”

Corporate Affairs Secretary Injeti Srinivas raised concerns about the non-adherence to timelines and delays in admission of cases as major concerns. In an interview on 27 December, 2018 he said, “I think one of the areas where it has not succeeded in a manner we thought it would is adherence to timelines. This is an area that is causing deep concern; and even after the apex court has given such a speaking order about the sanctity of timelines, we find that even today a number of big 12 cases also appear to be locked up in unending litigation.” He also raised his concern about the inordinate delays in admission of cases, whereby the cases supposed to be admitted in NCLT in less than 14 days were taking more than three months.

3. Misuse of IBC process

There are several ways in which different entities have tried to misuse the IBC process. This affects the credibility of IBC, highlighting its

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shortcomings. Given below are some of the ways in which such attempts have been made:

i. **Case of Submission of False Claims**

There have been several roadblocks in the implementation of IBC as the overall process has slowed down due to a rising number of litigations, delaying timely resolution. There have been a growing number of false claims. In several cases the operational claims which have been rejected has been in the range of 9% to 90%. This has included companies such as Alok Industries, Essar Steel, Ruchi Soya and Coastal Projects.\(^{139}\) Some instances of submissions of false claims are mentioned below:

a. In June 2017, National Company Law Appellate Tribunal (NCLAT) had chided India’s largest private bank, the ICICI Bank, for submitting misleading claims against Starlog Enterprises while moving a default application. The NCLAT had even imposed a Rs 50,000 fine on the lender.\(^{140}\)

b. In the case of ABG Shipyard, one of the companies belonging to the RBI “Dirty Dozen” list, it turned out that out of the total claims submitted by Operational Creditors, around 90% were rejected.

c. In the case of IVRCL Ltd., one of the companies belonging to the RBI 2\(^{nd}\) List, the Resolution Professional admitted claims of Operational Creditors only worth Rs 1,234 crore, out of the total submitted claims of Rs 3,420 crore.

ii. **Intimidation for Recovery of Dues Using IBC**

The IBC as a framework has been envisaged for resolution and maximization of assets of the corporate debtor. Even NCLT has emphasized that IBC cannot be used as a tool for recovery of debts.

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\(^{139}\) Mountain of false claims tests bankruptcy process - Livemint - September 05, 2018 - https://www.livemint.com/Politics/LXfF9ufsr28xjDAj10LeL/Mountain-of-false-claims-tests-bankruptcy-process.html

In the initial days of IBC, it came into light that Operational Creditors were using the Insolvency and Bankruptcy Code as a debt collection tool thereby going against the spirit of the Code. Various instances have been found in which IBC has been used by companies as a tool to intimidate other companies to recover their dues.

a. A small company, Shiv Sneha Associates, came out with an advertisement that it would file bankruptcy proceedings against travel company MakeMyTrip in order to recover its dues.\(^{142}\)
b. Three employees of Aruna Hotels filed bankruptcy proceedings against the company to recover their arrears and gratuity. It was the first instance in which employees had filed bankruptcy proceedings against a company.\(^{143}\)
c. In the case of Kirusa Software Pvt. Ltd. vs. Mobilox Innovations Pvt. Ltd., the Supreme Court came out with a ruling that existence of a dispute between the two parties can lead to the rejection of the bankruptcy application. Mobilox was mobile-technology partner of a Reality TV show and it had sub-contracted part of its work to Kirusa Software which was supposed to provide toll-free numbers for audience-voting. A Non-Disclosure Agreement was signed between the two parties, which, according to Mobilox, Kirusa Software violated, since it mentioned on its website that it had provided tele-voting services for the Reality TV show. This led to Mobilox declining a payment of Rs 20 lakhs. Kirusa decided to file a case in NCLT. The case was dismissed, but Kirusa challenged it in NCLAT. An appeal was filed in the Supreme Court by Mobilox and the court ruled in favor of Mobilox. This was considered a landmark judgement because it clarified that commercial disputes

\(^{142}\)How the bankruptcy code can be abused by unscrupulous elements - The Economic Times - August 02, 2017 - https://economictimes.indiatimes.com/industry/banking/finance/banking/how-the-bankruptcy-code-can-be-abused-by-unscrupulous-elements/articleshow/59870030.cms
cannot be misused by Operational Creditors to initiate
bankruptcy proceedings.

iii. Misuse by Corporate Debtors

There have been instances when companies have tried to transfer
their assets to other companies linked to the promoters and then
applied for liquidation citing inability to repay the debts.

a. In case of education company, Educomp Solutions,
which owed close to Rs 3,000 crore to the lenders, it was
found that the company had effectively transferred its core
business to other companies having strong links to the
promoter before filing for bankruptcy. Even the auditor of
the company Haribhakti & Co. LLP, raised concerns over the
financials of the company stating that the financials did not
give a “true and fair view”; this was ignored by NCLT.\textsuperscript{144}
When the company went to NCLT, it received bids only from
two companies which were old business partners of the
promoter and the selected bidder offered to pay only Rs 325
crore which imposed almost a 90% haircut for the lenders.
The World Bank’s private arm, the International Finance
Corporation (IFC), was also a creditor to Educomp. In May
2018, IFC filed a petition in NCLT to seek a probe under
Section 65 of IBC which covers “fraudulent or malicious”
initiation of bankruptcy proceedings. The IFC requested
NCLT to probe if “preferable transactions” reported by
media had any bearing on the company’s bankruptcy
process and if any wrongdoing was found then re-bidding
should happen for Educomp.\textsuperscript{145}

\textsuperscript{144}How Educomp May Have Subverted the Spirit of India’s Insolvency and Bankruptcy Process - The Wire -
April 03, 2018 - https://thewire.in/business/how-educomp-may-have-subverted-the-spirit-of-indias-
insolvency-and-bankruptcy-process

\textsuperscript{145}World Bank arm seeks independent investigation into Educomp bankruptcy - The Economic Times - May
09, 2018 - https://economictimes.indiatimes.com/industry/services/education/world-bank-arm-seeks-
independent-investigation-into-educomp-bankruptcy/articleshow/64088000.cms
iv. **Threat to Insolvency Resolution Professionals**

Under IBC, it has also come to notice, that Insolvency Resolution Professionals (IRPs) have faced bullying from the promoters for which even the courts had to intervene to protect the IRPs from the promoters. Two such examples have been Rolex Cycles Pvt. Ltd. and Ashok Magnetics, whereby NCLT took cognizance of the bullying by the promoters towards the IRPs. The Chandigarh and Chennai benches respectively issued warning to the promoters and ordered police protection for the IRPs. In case of Rolex Cycles, the IRP was not allowed to enter the site to perform an assessment of the company’s assets. In case of AML Steels, the IRP had to inform NCLT that it was facing stiff resistance from the owners of the company.146

A bizarre case also came up when a Mumbai-based Resolution Professional was kidnapped by angry investors in a company which was running a collective investment scheme. The investors were angry and wanted to know when they would get their money back. With quick action from the police, the Resolution Professional was rescued unhurt, but the case raised concerns about the safety of IRPs. Taking cue from this incident, insurance companies have come up with insurance policies covering kidnap and ransom, along with providing professional indemnity.147

4. **Issue of Related Parties under IBC**

When IBC was introduced, it allowed any person to submit a resolution plan in respect of a company undergoing the corporate insolvency resolution process (CIRP). This made the situation problematic as it allowed persons, who had contributed to the defaults of a company, to regain control of such a company or gain control of another company. In order to rectify this, Section 29A was introduced in January 2018 to ensure that persons who were responsible for the default of a company, or, certain undesirable persons, do not acquire or regain control of a company by

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146 Bullying won’t be allowed, IRPs are supreme: NCLT - The Economic Times - September 18, 2017 - https://economictimes.indiatimes.com/markets/stocks/news/bullying-wont-be-allowed-irps-are-supreme-nclt/articleshow/60728185.cms

participating in the resolution process. This addition of Section 29A aimed towards barring wilful defaulters, defaulter promoter, and related parties, from the bidding process of a bankrupt company. The definition of “connected person” had broadened to include “related party” and “relatives” like members of the family, husband, wife, father, mother and other familial relations, including in-laws. This inclusion of Section 29A had unintended effects that it made the bidding process too restrictive, cutting down the number of those eligible to bid for assets, effectively weakening competition and reducing the amount that banks can recover from the insolvent companies.

For example, in the case of Monnet Ispat, the only bidder of the company was JSW Steel-AION Capital consortium. It turned out that Sajjan Jindal, promoter of JSW Steel, was the brother-in-law of Monnet Ispat’s founder Sandeep Jajodia. This led to legal confusion about the definition of related parties.

Similar concerns were raised by Patanjali Ayurved against Adani Wilmar in the insolvency case of Ruchi Soya; Patanjali alleged that Adani Wilmar was ineligible to bid for Ruchi Soya due to the Section 29A clause. It turned out that Pranav Adani, MD of Adani Wilmar and a relative of Adani group chief Gautam Adani, was married to Namrata, who was daughter of Vikram Kothari, the erstwhile promoter of Rotomac group. Vikram Kothari had been arrested by the CBI earlier on a complaint of fraud by Bank of Baroda.

Even in the case of Essar Steel, the bidders — Arcelor Mittal and Numetal — were held ineligible due to the related party clause. Numetal had Rewant Ruia, the son of Essar Steel promoter Ravi Ruia, as beneficiary, while Arcelor Mittal owned 29% stake in defaulter Uttam Galva. Arcelor Mittal’s bid for Essar Steel was finalized after it paid the outstanding dues of Uttam Galva to the tune of Rs 7,000 crore.

It was reported in December 2018 that the government was mulling over relaxing the “related party” clause of IBC so that more potential bidders can be included. If the government relaxes the criteria, then it would allow the relatives of defaulting promoters to bid for stressed assets if they establish that there are no business ties.148

In January 2019, SBI Chairman Rajnish Kumar also raised concerns that Section 29A was being “stretched too far” and that there was need for more clarity on it. The clause of “related parties” has led to more confusion and the government needs to strike a balance while dissuading the defaulting promoters from gaining back door entry in the company. At the same time, it should not push companies into liquidation with poor recovery for the lenders due to the exclusion of many interested parties.

5. Backing Out from Insolvency Process

There have been instances where companies have backed out even after winning the bids which has derailed the entire insolvency process for the companies facing bankruptcy proceedings. In order to counter this, lenders of various companies have been looking for the possibility of Section 74 of the IBC which provides for a penalty and a possible jail term. The government has also been mulling over imposing a penalty of Rs 1 crore. The prominent case was of UK-based Liberty House which backed off from the resolution process of Adhunik Metals and Amtek Auto citing various reasons. Similarly, Adani Wilmar was also under scrutiny after it pulled out of a deal to win Ruchi Soya, while even the Committee of Creditors had backed it.

In fact, the Committee of Creditors (CoC) of Amtek Auto had moved an application in NCLT in December 2018 seeking to invoke Section 74 of the IBC against Liberty House stating that there was a “lack of bonafide” intent on part of the company to follow the resolution plans approved by NCLT. The committee also wanted to invoke Section 60(5) of the IBC against Liberty House as the company failed to make payments according to the resolution plan approved by the tribunal. Amtek Auto was referred to NCLT in July 2017 when it had defaulted on loans of roughly Rs 12,300 crore and Liberty House won the bid with roughly Rs 4,200 crore. However, the company failed to make any payments to the lenders despite repeated requests from the Resolution Professional.


In December 2018, a senior official from the Ministry of Corporate Affairs, responding on Amtek Auto and Ruchi Soya cases, had said in an interview,

“The Amtek Auto and Ruchi Soya cases have rattled the process. Bidders cannot go unpunished. While the ministry is considering action against the defaulting bidders, there is a need to tighten the norm for them. The ministry is in the process of introducing a harsh clause and heavy penalty”. The official added that the ministry wanted to take action against Liberty House to set a precedent: “While we are considering legal options for Liberty House, we would not allow others to follow the example. The ministry needs to fix this loophole. We will come up with a solution soon.”

6. Criticism of IBC from Political Parties and Bank Unions

The Insolvency and Bankruptcy Code (IBC), since it came into effect, garnered praise from various industry experts and international agencies like the World Bank and IMF. When the IBC was introduced in Lok Sabha in December 2015, on the request of Finance Minister Arun Jaitley, the Bill was immediately referred to a Joint Committee consisting of members from Lok Sabha and Rajya Sabha. This diffused possible criticism from the opposition parties for introducing the Bill in haste. However, since the time IBC has come into effect, the government has brought certain amendments to the Code, from time to time. This has led to criticism from political parties and bank unions who have alleged that the government has introduced amendments through the ordinance route to favor select business houses.

In June 2018 the government brought an amendment through which the percentage of vote required among the Committee of Creditors for approval of a resolution plan was brought down from 75% to 66%. This move came under the scanner as this directly benefitted Reliance Industries. Earlier, the Committee of Creditors was not able to have a vote share of 75% to accept the resolution plan from Reliance Industries-JM Financial ARC, whereby Reliance Industries had submitted a bid of Rs 5,050 crore against the total debts of Rs 29,500 crore of Alok Industries. Accepting the offer of Reliance Industries meant that the lenders had to

152Quitters will have to pay - The New Indian Express - December 31, 2018 - http://www.newindianexpress.com/business/2018/dec/31/quitters-will-have-to-pay-1918692.html
face a 83% haircut. This move by the government, especially by bringing an amendment through ordinance, was seen as directly favoring Reliance Industries to help it in acquiring Alok Industries. However, the government tried to defend its move by arguing that the ordinance was not introduced to favor any specific company.

Bharatruhari Mahtab, Member of Parliament from Biju Janta Dal, opposed the introduction of this amendment. He stated in Parliament: “All this has happened because of the complicity of this government. This is nothing but a fixed match. Bad-loan resolution is becoming [a] deep-rooted nexus between the bankers, auditors and promoters, which is undermining serious recovery. Alok Industries is a glaring example. Should the law be bent like this? Should we be the party to this law, this loot? It stinks.” 154

The Chairman of the Standing Committee of Finance, Veerappa Moily from Congress, had asserted that NCLT had become “an instrument for siphoning off funds”, as banks were being forced to take huge haircuts and companies get to buy insolvent firms at a cheap price. He had urged the government to refer the bill to the Standing Committee, stating, “Be fair and refer the bill to the Standing Committee. Because you got stuck in the NCLT, you brought in the bill. The ordinance is tainted and sending it to the Standing Committee will remove the taint.” He added that bringing this bill was facilitating the loot of the banks. Saugata Ray from Trinamool Congress also backed the demand of sending the Bill to the Standing Committee. He said, “Mr Goyal, our caretaker Finance Minister, we can’t see the banking sector collapse... I support the Congress demand of referring the bill to the Standing Committee.”

P. Venugopal of AIADMK questioned the government’s urgency. He said, “The IBC is being amended in haste to allow Reliance Industries to take over Alok Industries... In the name of NPA clean-up, the government should not be seen as supporting crony capitalism.”

The government tried to sideline the concerns raised by the opposition by arguing that the amendments were not just about changing the voting

requirements of the Committee of Creditors, but also for making homebuyers financial creditors and to help the MSME Sector.\textsuperscript{155}

The All India Bank Officers’ Confederation (AIBOC) had also opposed this move saying that Public Sector Banks were being forced to take a large haircut in order to favor corporate houses like Reliance. The resolution plan was only approved by 72% of the lenders. Without this specific amendment, the resolution plan would not have been accepted in which Reliance Industries was the sole bidder. AIBOC strongly opposed this move. It said, “At a time when the banks are already struggling to cope with the rise in non-performing assets (NPAs) and decline in their net profits, such a step on the part of the government to further weaken the banks is very unfortunate. Our Confederation condemns such a pro-corporate and anti-public sector banks approach on the part of the government and RBI. In the name of cleaning up the balance sheet, now, the banks are forced to allow 83% haircut and benefits the corporate, and again when the net profits will come down, it will be the same bankers who are to be blamed for the same.”\textsuperscript{156}

In an interview to Business Standard on 29 April, 2018, the general secretary of All India Bank Employees Association (AIBEA) raised concerns about the IBC. He said, "The IBC route is neither beneficial to banks nor helpful for the borrower. It is killing banks and enterprises. Through this route, banks will not get all their money back. Their sacrifice will be very high. It will result in huge haircuts, a minimum of 50%. Genuine people, who are caught in economic stagnation, will lose everything and thousands will lose jobs. On the other hand, it is likely to benefit crooked borrowers. For instance, the IBC proceedings in the case of Vijay Mallya are against Kingfisher Airlines, not Mallya. So the company and its employees will suffer and the banks will take a haircut, but Mallya can start another business. The Reserve Bank of India must publish the names of wilful defaulters."\textsuperscript{157}

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The IBC continues to face the ire of the bank unions, though political parties have largely been in tacit approval regarding implementation of the Code.

7. Frauds Under IBC Process

*The Economic Times* reported on 30 September, 2018 that a senior government official had shared that resolution professionals had come across fraudulent transactions worth over Rs 40,000 crore spread over 110 companies referred to NCLT. The fraudulent activities included siphoning of funds and transactions with related parties and fictitious persons which would lead to lower recoveries for the lenders. The official had mentioned, “It shows that at least 15% of the accounts have seen frauds of some nature or other. Typically, the reports come after the IP (insolvency professional) had spent some time in the company and studied the books. So, the number is likely to go up.”

Moreover, out of the 12 companies referred to RBI under the 1st List, instances of fraud have been reported in at least 10 of these companies.\(^{158}\)

In a NCLT verdict in May 2018, the Allahabad bench of NCLT termed a transaction of Jaypee Infratech as “fraudulent, preferential and undervalued”, whereby 758 acres of land had been used by its parent company, Jaiprakash Associates, to secure loans of over Rs 21,000 crore. The court annulled the mortgage where the NCLT order said, “The corporate debtor entered into a transaction without even taking prior approval of the Joint Lenders Forum and mortgaged its unencumbered land in favor of lenders of Jaiprakash Associates. The impugned transactions are declared fraudulent, preferential and undervalued. We pass the order for release and discharge of the security interest created by the corporate debtor in favor of lenders of Jaiprakash Associates.”\(^{159}\)

In another instance, NCLT had slapped a penalty on Tata Chemicals for filing a fraudulent petition against its vendor, Raj Process Equipment and Systems Pvt. Ltd. The court had ordered a penalty of Rs 10 lakh for Tata


Chemicals terming its petition fraudulent and with the malicious intent to liquidate Raj Process Equipment. Tata Chemicals had filed the petition demanding Rs 9.19 crore, instead of Rs 4.40 lakh which was paid as an advance to the vendor. Tata Chemicals had claimed Rs 9.15 crore as financial loss due to the failure in timely delivery of an equipment from the vendor. The court order said that Tata Chemicals had submitted a false figure of Rs 9.19 crore as the advanced principal amount and had even vouched for it in the affidavit. The bench had emphasized that the claim for damages does not become operational debt until the liability is adjudicated upon and damages assessed by an adjudicating authority.\footnote{NCLT slaps penalty on Tata Chemicals for fraudulent case against vendor - The Hindu Businessline - January 18, 2019 - https://www.thehindubusinessline.com/companies/nclt-slaps-penalty-on-tata-chemicals-for-fraudulent-case-against-vendor/article26030527.ece}

8. The Case of Sole Bidders

The Insolvency and Bankruptcy Code has been formulated with the assumption that once a company is moved to NCLT, there would be other companies interested to take it over, or, at least, the creditors would get some returns once the company is liquidated. To have a win-win situation for the company willing to take over, and the lenders, it could only happen when an acceptable deal is reached from both ends. This reflects the best price the resolution could fetch through the process of bidding. However, for many insolvent companies it has come to light that there have either been only sole bidders or no bidders at all. When the Committee of Creditors receive a sole bid for an insolvent company, it has the prerogative of accepting or rejecting that bid; but, it also reflects that in the absence of any ‘competition’, the sole bidder might place its bid only slightly higher than the liquidation value in order to maximize profits.

While the amendment in Section 29A of the IBC has been done to avoid conflict of interest debarring promoters from buying back their own companies, this adversely affects the smaller companies for which there might be very few interested buyers, or none at all. This can push these companies towards eventual liquidation. The CEO of Kotak Mahindra Bank and President of Confederation of Indian Industries (CII), Uday Kotak, expressed similar views in April 2018. He said, “The challenge is not at this stage but as we go into the future, as we go into smaller companies where you may not get even one bid. How are we going to handle that situation? Are we going to force those companies into liquidation where probably in
some of those situations the only buyer may be the promoter at some price? I think that is one area which down the road will be an issue which will need to be addressed.

While it is difficult to map all the cases referred in NCLT, where bids have come only from sole bidders, one can take a look at the RBI “Dirty Dozen” list and few other big companies where bids were submitted only by single bidders.

Given below are examples of some of the companies having sole bidders:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of the Company</th>
<th>Sole Bidder</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Alok Industries</td>
<td>RIL-JM ARC</td>
</tr>
<tr>
<td>2.</td>
<td>Jyoti Structures</td>
<td>Sharad Sanghi &amp; Others</td>
</tr>
<tr>
<td>3.</td>
<td>Essar Group EPC</td>
<td>Arcelor Mittal</td>
</tr>
<tr>
<td>4.</td>
<td>Monnet Ispat</td>
<td>AION-JSW Energy</td>
</tr>
<tr>
<td>5.</td>
<td>ABG Shipyard</td>
<td>Liberty House</td>
</tr>
<tr>
<td>6.</td>
<td>Lanco Infratech</td>
<td>Thriveni Earthmovers</td>
</tr>
<tr>
<td>7.</td>
<td>Asian Colour Coated Ispat Ltd.</td>
<td>JSW Steel</td>
</tr>
<tr>
<td>8.</td>
<td>Era Infra Engineering</td>
<td>Suraksha ARC</td>
</tr>
</tbody>
</table>

9. Other Issues in IBC Process

i. **Lack of Transparency in IBC Process**

Concerns have also been raised around lack of transparency in IBC at various stages of the insolvency process. The meeting of Committee of Creditors is usually a ‘Black Box’ and the public has no clue of knowing how certain decisions were reached. Even lot of bidders for companies have raised issues that there is a need for transparency in the bidding process, as the bidding amount cannot be the sole factor in deciding as to who should be winning the bid.

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Moreover, the decisions made in the insolvency process, does not include all the stakeholders. Even though the money of Operational Creditors is stuck in an insolvent firm, they are usually not involved in all the decision-making process of the Committee of Creditors. Having a more transparent framework would help in improving the credibility of the IBC process, especially when a humungous amount of public money is involved via Public Sector Banks. The public has the right to know if the banks have made their best efforts towards ensuring returns on their loans and if they colluding with any specific business houses to favor them.

   ii. Issues around Bidding and Liquidation Value

It came to light in October 2017 that banks were trying to lobby with the regulators to do away with the evaluation of the mandatory ‘liquidation value’ of the companies undergoing the insolvency process. They urged IBBI to use only the ‘enterprise value’ of the company which is calculated assuming the company as a going concern. The bankers pointed out that the difference between enterprise value and liquidation value can be huge and the bidders for the insolvent firms were only bidding a slightly higher amount than the liquidation value, forcing a large haircut for the lenders.  

Issues were raised regarding the breach of confidentiality in the bidding process. If the bidding parties get to know the bidding amount of each other, then it is a loss to the lenders since they will quote a bid only to outperform their competitor. This may not lead to realizing the best deal for the lenders. In the insolvency resolution process of Bhushan Power & Steel, it appeared that both the bidding parties, i.e. Tata Steel and Liberty House, knew each other’s bidding amount. The rules for resolution process stipulate that the Resolution Professional, the Resolution Applicants, and the Committee of Creditors are required to maintain confidentiality. The breach of this confidentiality goes against the ethos of the insolvency process.  


iii. **Acceptance of Bids Below Liquidation Value**

Usually, in an insolvency case, the lenders are supposed to accept a bid which is higher than the estimated liquidation value, as the lenders would at least get the minimum amount if the firm gets liquidated. However, a few instances came to light in which the Committee of Creditors (CoC) accepted the bids which were pegged lower than the liquidation value. Such kind of resolutions put a question mark on the credibility of the IBC process. In the cases of Kamineni Steel and Power India Pvt. Ltd. and JEKPL Pvt. Ltd., the Committee of Creditors accepted bids of Rs 600 crore (against the liquidation value of Rs 760 crore) and Rs 162 crore (against the liquidation value of Rs 222 crore).\(^{164}\)

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7. **Conclusion**

The Insolvency and Bankruptcy Code has proven to be a game-changer in the winding up of defaulting companies. It has enabled a scenario in which other companies can take over companies referred to NCLT for expanding their businesses, while providing a speedier resolution for the lenders who had to spend years in negotiating earlier mechanisms like SARFAESI, DRTs, BIFR, etc. While the time bound resolution has definitely changed the scenario for the lenders, questions need to be raised as at what cost the lenders (mostly the Public Sector Banks) have been pushed into accepting the massive haircuts, ultimately facilitating corporate loot and loss to the public exchequer. The initial claims of the government of massive recovery of NPAs through the IBC process has fallen flat, and this would be further rebutted as more data on the insolvency cases come up in the public domain in the coming months.

The insolvency proceedings of the 40 companies under the RBI’s 1st and 2nd List has shown that barring few exceptions like Bhushan Steel (and probably Essar Steel, in the future), there is not much scope of recovery for the lenders. While asset-heavy firms like steel companies had more takers, the EPC firms, which had amassed heavy debts, had hardly any interested buyers. In fact, lenders of many of these companies got resolution plans only from sole bidders who quoted a bid value which is marginally higher than the liquidation value. This reflects that the Insolvency and Bankruptcy Code, in a way, favors the companies willing to acquire these insolvent firms, rather than coming to the rescue of the lenders who are grappling with the massive NPA crisis in Indian economy.

The IBC has definitely given more teeth to the lenders in terms of taking the companies to insolvency courts. This has instilled fear in the minds of errant promoters who went on taking loans from the banks to expand their businesses, taking undue risks, and, at times, have been caught up with siphoning off funds for other purposes, or causing wilful defaults. The fear of losing control over their companies, or, getting dragged into the insolvency court by Financial Creditors, or, Operational Creditors, will make it a more level-playing field for everyone. At the same time, the government and insolvency regulator IBBI need to ensure that the IBC process is not misused by Financial Creditors or Operational Creditors by dragging corporate debtors to insolvency courts over petty matters, or implicating them falsely.
The government has been hailing the IBC as a key determining factor in improving ‘India’s Ease of Doing Business’ rankings. The IBC has gained an extremely favorable response from a wide range of industry experts. The presence of the IBC framework goes a long way in changing the business landscape. Easier winding up of defaulting companies would help in building a more robust economy. The keen interest of global institutions like the World Bank in pushing the Insolvency and Bankruptcy Code in India can also be judged from the fact that the World Bank’s private arm, the International Finance Corporation (IFC), has come forward to support IBBI to strengthen the insolvency and bankruptcy framework by focusing on capacity-building of insolvency professionals, developing technology standards and identifying information and data needs for Information Utilities.

The IBC framework is under an evolutionary process at the moment. It is evident from the various amendments brought to the IBC from time to time in the past two years, based on feedback. In the past two years there have been several landmark cases in the NCLT with further appeals in NCLAT. They have even been taken to the Supreme Court, in some instances. New precedents are being set up and with some landmark judgments being delivered.

The IBC process would gain more maturity in the coming years. However, if the government does not ramp up the infrastructural capacity of NCLT on an urgent basis, in terms of increasing the number of judges and benches, then the IBC process might crumble under its own weight. There have been several instances of non-adherence of deadlines with extended litigations in high-profile cases.

It would be crucial in the coming years that more citizens take active interest in the IBC process, especially since public money is involved, and not treat it as the domain of corporate houses, lawyers and bankers. The techno-legal nature of NCLT might dissuade a lot of people, but this should not become an easy avenue for the corporate houses to expand their empires and monopolize their businesses. It is imperative that the government should ensure more transparency and accountability in the entire process. It should ensure that all stakeholders get a fair deal.

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including employees, suppliers and contract workers of the companies referred to NCLT.

IBC cannot be a cure for faulty lending practices of the banks and other financial institutions who have resorted to reckless lending without due diligence and risk-mapping to tackle the situations when corporate borrowers default on their loans. Several factors have been responsible in the accumulation of the NPA crisis in the Indian banking system and IBC would mostly be helpful in treating the symptoms and not the cause. Indeed, it would be a fallacious assumption to think of IBC as a panacea for solving the NPA crisis!
Insolvency and Bankruptcy Code (IBC), once hailed as the panacea of all ills plaguing bad debt of corporations and for quick recovery of outstanding loans from them, has been in operations for a while now.

What we have seen is, on the one hand, large corporates wriggling out of bad debts lightly and on the other, banks losing a major share of the lending, often camouflaged under the term haircut!

**Insolvency and Bankruptcy Code: Whose Loss, Whose Gain?**
A Critical Analysis of Performance of Two Years of IBC gives a comprehensive analysis of the IBC, and what it achieved and where it failed. For anyone interested in understanding IBC and the banking crisis due to non-performing assets in a detailed, balanced and extensive manner, this study would help.

In the 50th anniversary of Nationalisation of Banks, this book deserves all attention of its contribution to the banking sector.