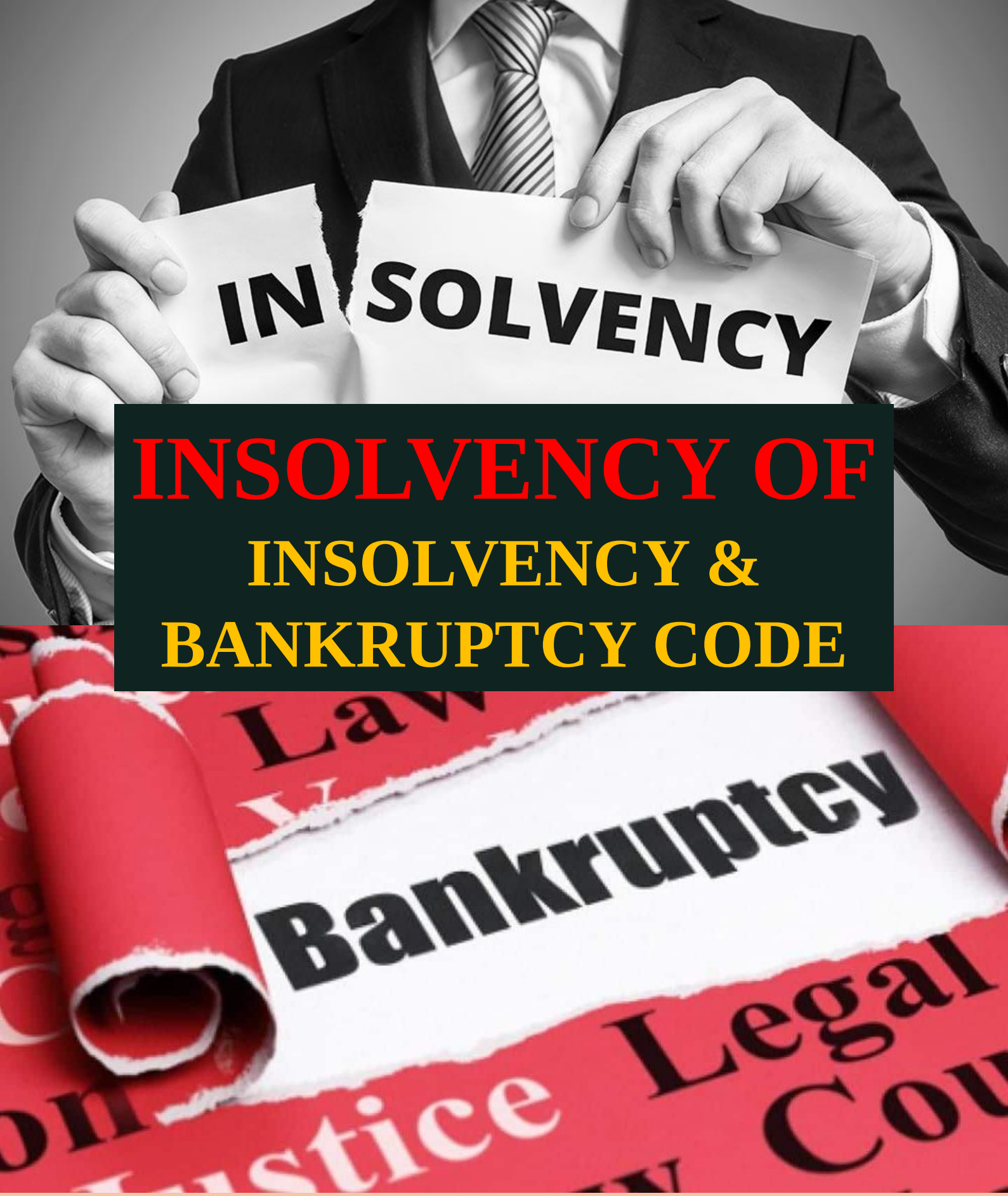


INSOLVENCY OF INSOLVENCY & BANKRUPTCY CODE

MAHARASHTRA STATE BANK EMPLOYEES FEDERATION

AFFILIATED TO ALL INDIA BANK EMPLOYEES ASSOCIATION

LIC has purchased (was compelled to purchase) 529 crores of shares of IDBI Bank

Share price at that time was around Rs. 60 per share. LIC has invested around **Rs. 30,000 crores** to acquire these shares

Now, Govt. wants LIC to sell these Shares to a private company. Present market price of the Share is around Rs. 40 per share.

So LIC will get **Rs. 21,000 crores.**

Thus LIC will lose Rs. 9,000 crores
But don't forget
LIC's money is people's money

AIBEA

FOREWORD

We are bringing out various analytical articles on Insolvency and Bankruptcy Code published in the print media through this compilation. The government while enacting the Insolvency and Bankruptcy Code had claimed that it will be a "Game Changer" but in reality the same has proved to be the escape route for the big corporates. In the process banks are losing lacs of crores of rupees because of which the government is required to infuse fresh capital to those banks by providing in the budget. The money which banks are sacrificing in the name of "Haircut" is hard earned savings of the common man. The money government is infusing as capital by providing for in the budget is out of tax which common man pays. Thus it is common man who is paying for the big corporate defaults.

The amount of sacrifice in the name of "haircut" is huge and unimaginable. In some of the cases it goes to more than 90% which is inexplicable.

We all are aware that the root cause for the present crisis in banking in huge Non Performing Assets (NPAs) in which the share of corporates is more than 80%. Since NPAs have increased phenomenally banks had to book continued losses. To overcome this the government is proposing privatization of the banks, which is not in the interest of banking, economy or the nation.

On the background AIBEA has started a comprehensive campaign against Bank Privatisation and as a part of that we are releasing this compilation on behalf of Maharashtra State Bank Employees Federation to depict the shortcomings in the IBC process which was being claimed as game changer by the Government.

AIBEA has been demanding for amendments in Indian Penal Code to treat the wilful default as a criminal offense, amendments in the code of conduct for the elections by providing for disqualification to contest the elections by willful defaulters, amendments in the banking secrecy laws to enable the Banks to declare the names of wilful defaulters and an effective recovery mechanism. These amendments will enable banks to recover NPAs, which in turn will make banking a profit making concern and government will not be required to provide for the capital. But instead of bringing in requisite legal frameworks the government is resorting to Privatisation of Public Sector Banks. In the process corporates those who have wilfully defaulted in repaying their loans taken from these banks are aspiring to be the owners of those banks.

Our campaign aims at “People's Money for People's Welfare and not for Corporate Loot”. We appeal to you, we urge upon you to please do whatever is possible to Defend Public Sector Banking and to Oppose Bank Privatisation.

With greetings,

DEVIDAS TULJAPURKAR
GENERAL SECRETARY

A Non-performing Code for Bad Debt

C. P. Chandrasekhar and Jayati Ghosh

June 29, 2021

In mid-June, the National Company Law Tribunal (NCLT) approved a resolution plan for the Rs. 35,000 crore non-performing debt of Videocon Industries. The plan was a successful offer made by Twin Star Technologies, a Vedanta group company, and accepted by a committee representing the creditors exposed to Videocon. While granting approval, the NCLT noted that the scheme involved Vedanta paying almost nothing, with its successful offer amounting to 4.15 per cent of the outstanding claim and the creditors settling for a "hair cut" of 95.85 per cent. Moreover, the NCLT felt it necessary to request the Insolvency and Bankruptcy Board of India (IBBI) to examine whether confidentiality requirements had been met in the resolution process, especially since the successful bid was so close to the liquidation value at which assets could, probably, have been sold as scrap. Twin Star's successful bid offered creditors Rs. 2962.03 crore, whereas the valuers had estimated the liquidation value at Rs. 2568.13 crore. By flagging the small difference between the two, the NCLT was implicitly casting doubt on the integrity of the resolution process.

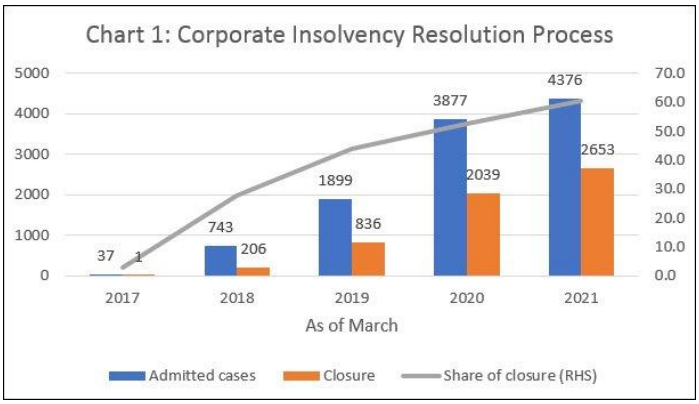
This is of significance since the Insolvency and Bankruptcy Code (IBC), which the NCLT oversees, has been touted as a game changer in the effort at debt resolution. It has been known for close to a decade now that the credit boom of the 2000s had led to the unsustainable accumulation of bad debt in the books of Indian banks. It was also clear that with the defaulters now consisting mainly of big corporates with huge loan exposures and deep side pockets, recovering a reasonable share of that debt was proving to be extremely difficult. Disputes were dragged to the courts and languished there for years, even while assets with the corporate debtors that could be expropriated as compensation were stripped or just suffered erosion of value.

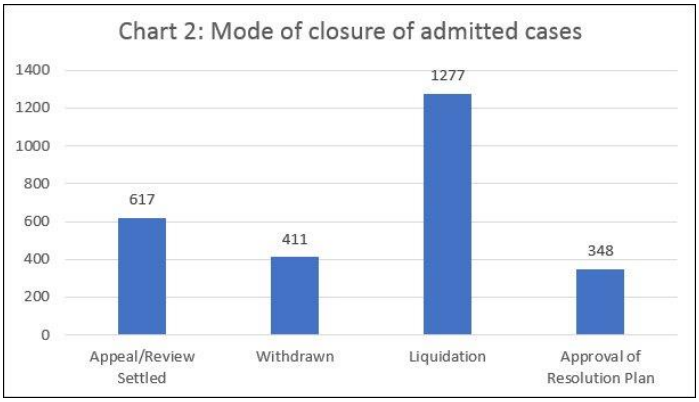
It was in this context that the government decided to frame and enact the Insolvency and Bankruptcy Code (IBC) of 2016. Earlier frameworks for resolution, such as the Debt Recovery Tribunals, the Lok Adalats and even the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act (SARFAESI Act) of 2002, which sought to provide more power to the creditor's elbow, had proved unequal to the task. Unable to recover these big loans, banks faced the prospect of insolvency, unless the government underwrote a large share of their losses. The IBC, it was argued, through an efficient and time-bound process, would achieve what the legacy channels could not.

This view has been bolstered by referring to instances such as Essar Steel, where the creditors managed to recover 92 per cent of Rs. 49,0000 crore of debt outstanding, Bhushan Power and Steel in which 41 per cent of Rs. 47,157 crore debt outstanding was recovered, Bhushan Steel in which 64 per cent of Rs. 56,022 crore outstanding was retrieved, and Binani Cements in

whose case all of the Rs. 6,469 crore outstanding was recovered. Not only were these recovery rates significantly higher than recorded under legacy channels including the SARFAESI Act, but they reflected substantially lower haircuts than the paltry sums which could be garnered through the liquidation route.

The problem with this argument is that it fails to note that these instances of high recovery are more the exception than the rule. If we take the experience with resolution under the IBC till March-end 2021, several features stand out. First, out of the 4376 cases for which the Corporate Insolvency Resolution Process (CIRP) had commenced, only 2653 have been closed, with just 348 (or 13.1 per cent) of those closed being disposed after approval of a debt resolution plan (Charts 1 and 2). As many as 1277 cases closed (48.1 per cent) were sent for liquidation. (The remaining were either closed after appeal/review or withdrawn.) The high share of liquidation indicates that resolution was ensured only in a minority of cases.

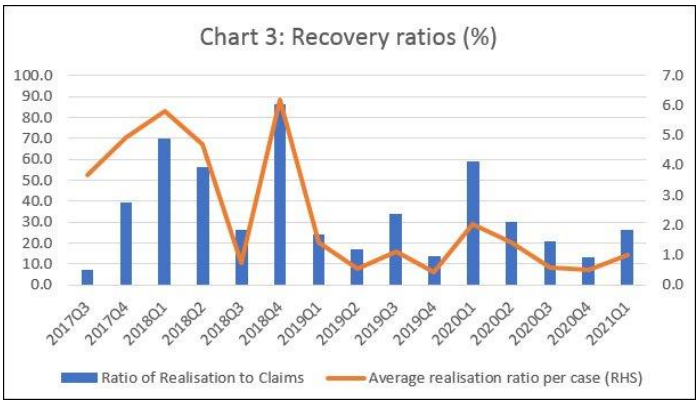




Second, if we consider the proportion of outstanding credit recovered from defaulters through the resolution process, the figure stands at 39.26 per cent even for the minority of cases resolved through the CIRP, which is not very much higher than the 26 per cent registered for cases dealt with under the SARFAESI Act. The argument that the IBC would be a game changer is yet to be validated.

Third, even this 39.26 per cent recovery figure is explained by the overwhelming influence of the "exceptional" cases which were few in number but large in terms of the claims admitted and resolved. Thus, in the second quarter of 2018, Bhushan Steel accounted for Rs. 35,571 crore of the total of Rs. 42,885 crore realised from a total of 12 resolution approvals; in the third quarter of 2019 Bhushan Power and Steel accounted for Rs. 14,789.63 crore out of the Rs. 27,159.17 crore realised from 31 cases, and in the first quarter of 2020 Jaypee Infratech accounted for Rs. 23,223 crore of the Rs. 25,355.37 crore realised from 29 cases. As a consequence, there have been only 7 out of 15 quarters in which the ratio of realisation value

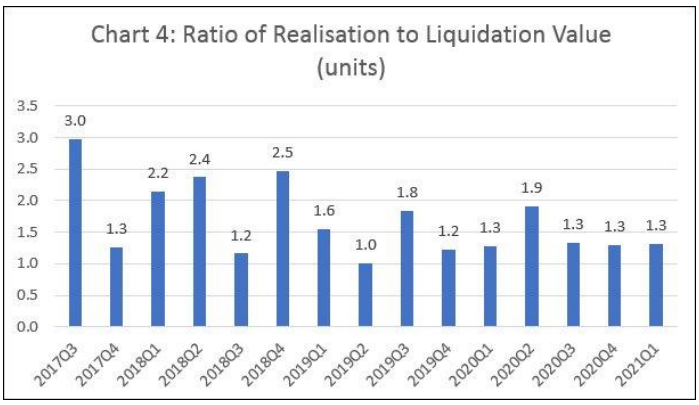
to the claims admitted has been at or above 30 per cent (Chart 3), or the haircut accepted by creditors has been less than 70 per cent on average. Moreover, if we consider the average realisation ratio per case, even accounting for the successes, that figure has been less than 6 per cent in all quarters, indicating that the realisation ratio in the poor performers must have been extremely low.



Finally, if we examine the ratio of realisation value to liquidation value, it was below 2 in 11 out of 15 quarters, and has been at or below 1.3 in 8 out of 15 quarters (Chart 4). Despite the successes, the average amounts realised in most periods have not been significantly above the liquidation value. That is, the resolution process has not helped recover very much more than what could have been obtained through liquidation in most cases. That validates the NCLT's query on the integrity of the resolution process.

All these of course refer to the 348 cases that were closed through approval of the 2653 cases admitted to the corporate insolvency resolution process. There are 1723 cases still awaiting closure. Many of these have been under consideration for long, and the delay in closure suggests that they are cases where it is either difficult to find a bidder for the asset or where the committee of creditors is unsatisfied with the bids received. We can expect that, when some of these are resolved, the haircut would on average be high and the recovery would not be very much higher than the liquidation value.

For all the hype, the IBC has not been able to help banks recover the loans they have given major corporate players, who with impunity have just refused to service those liabilities.



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Why has IBC failed to live up to its promise?

Take away some high-profile resolutions where buyers paid big value and the recovery rate drops to 24%. What can be done to ensure better recoveries?

Published: 02nd July 2021 12:00 AM | Last Updated: 02nd July 2021 12:00 AM |

By Prosenjit Datta

The Insolvency and Bankruptcy Code (IBC) has come under a fair amount of scrutiny of late. Several recent settlements have raised eyebrows. The Videocon bankruptcy where 13 separate companies of the group were lumped together and sold off to Twin Star Technologies Ltd, a part of Anil Agarwal's Vedanta group, is one. The bankers took a 95.8% haircut and the National Company Law Tribunal (NCLT)'s Mumbai Bench has expressed surprise at how close the final bid value was to the liquidation value, which was supposed to be confidential. The one-time settlement that IDBI Bank agreed to take from the promoters of Siva Industries and Holdings Ltd despite protests from other banks has also attracted the gaze of the NCLT Chennai Bench. The Bench asked why IDBI showed such alacrity for a one-time settlement that was a pittance—barely 6.5% of what was owned in total.

And these are only two examples. There are probably several dozen other cases that need close examination to see why 85% or more haircuts are accepted. After all, when the bankruptcy law was passed, this was not what the policymakers wanted.

The defenders of IBC will point out that it still gives better results than anything that was tried out earlier and that is true. The overall recovery so far (till March 2021) has been around 39% of total claims—way better than what borrowers recovered from corporate defaulters before the law was passed. At the same time, it is also true that the law has failed to live up to its initial promise and the recoveries have come down. Take away some high-profile resolutions where buyers paid big value and the recovery rate drops to 24%.

So what is going wrong and what can be done to ensure better recoveries? There are three broad reasons why many recoveries are so low.

The state of the economy and the sector:

The IBC process works by seeking a buyer for the non-performing asset. The overall economy and the demand for assets in a particular sector play a big role in what the bankers finally recover. The initial high-profile cases included big high-quality steel assets at a time when the steel demand was going up. There were multiple bidders—Tata Steel, Sajjan Jindal's JSW group and the Laxmi Mittal group, among others. Bidding wars led to good recoveries. In the case of Essar Steel, the creditors managed to recover 92%. In Bhushan Steel, they got 64%. Similarly in the cement sector, with robust prospects, lenders recovered the full amount in the Binani Cements insolvency case. But there were few bidders for assets in other sectors where the demand was low or there was overcapacity, which was why lenders realised little from many cases.

Since then, the economy has further deteriorated and capacities in a host of sectors are at 60% or lower utilisation. Many potential acquirers with enough cash are sitting on the sidelines until the economy recovers.

The integrity of the players:

The IBC process can work well only if the Resolution Professional (RP), the lenders who form the Committee of Creditors (CoC) and the NCLT Bench all have the same goal in mind - maximising the value at which the asset is sold. This would seem obvious but in practice this is not so.

Several RPs have horror stories about pressure brought in by erstwhile promoters, sometimes acting with the help of one or two members of the CoC. The problems start with the appointment of valuers because the liquidation value sets the floor. While the debtor has to be valued by two agencies and the RP can ask questions if the values are widely different, it can still be rigged. A RP gives the example of one case where the valuation firm used historical prices to value land and buildings instead of the current market prices.

Worse, inventory and accounts receivable were not valued while coming up with the liquidation value. Potential bidders were scared off and a proxy of the erstwhile promoter was the only bidder. These cases are quite common in cases of smaller enterprises and they often get away because of the shortage of NCLT judges and the sheer volume of cases. Too much dependence on the commercial wisdom of CoCs also creates its own set of issues.

Assets deteriorate:
The value that can be realised from an asset depends on its condition. Many lenders wait too long and by the time the bankruptcy proceedings are initiated, there is little value left to be realised. Former Reserve Bank of India governor Urjit Patel tried to fix this but some of his initiatives were later diluted.

Finally, bankruptcies will happen for multiple reasons. Apart from corrupt promoters or bad management, policy changes as well as shifting demand or too much competition or even spike in input prices play a role. It is up to bankers to keep a close eye on their loans and also ensure they have robust processes in place. The IBC is not a substitute for due diligence at the time of lending—something many PSBs forget.

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NEWS & VIEWS
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12 Top Nationalised Banks Wrote Off Rs6.32 Lakh Crore in 8 Years; Recovered Just 7% of Write Off Debt from Big Defaulters

Vivek Velankar 30 November 2020

RTI activist, Vivek Velankar has been running a vigorous campaign in Pune to unearth information from big nationalised banks on large loan write-offs, exceeding Rs100 crore each. He covered 12 public sector banks (PSBs) in this mission and the results are staggering. Clearly, PSBs have little interest in the recovery of written off bad loans, especially from big defaulters, and are focused instead on merely keeping the account books clean and NPA-free, by writing off bad loans. An underhand nexus between the banks and the defaulters is a distinct possibility and merits investigation at the highest level. We have been publishing reports based on information shared by Mr Velankar regularly over the past five months and now present a summarised version of his findings.

Over the past eight years, 12 nationalised banks have written off a massive of Rs6.32 lakh crore of bad loans. Of these, as much as Rs2.78 lakh crore of the loans written off were to big defaulters with borrowings of Rs100 crore and above. While the government had aggressively claimed that loans written off are aggressively pursued and recovered, the recovery by these 12 banks from defulters is just 7% or only Rs19,207 crore.

In the past four years alone, these 12 PSBs wrote off bad loans amounting to Rs4.95 lakh crore but recovered Rs79,000 crore or 16%.

The 12 lenders include the State Bank of India (SBI), Bank of Baroda (BoB), Bank of Maharashtra (BoM), Union Bank of India (UBI), IDBI Bank, Punjab National Bank (PNB), Indian Overseas Bank (IOB), Central Bank of India, Canara Bank, UCO Bank, Indian Bank and Bank of India (BoI). Of these, IDBI Bank was re-categorised as a private sector lender in January 2019 after Life Insurance Corporation of India (LIC) increased its stake to 51% in the bank.

A few months ago, government advisers, economists and finance ministry officials had claimed on social media that technical write off does not mean waiving off loans and efforts are on for the recovery of these written off loans. Their tweets were amplified by paid digital armies to create the impression that worries over bad loans were baseless, and the bankruptcy law was the magic solution to recovery. The reality, as facts show, is vastly different.

Nobody bothered to provide concrete data to support the government's argument. So, I decided to gather factual data from 12 nationalised banks about how much of the bad loans were written off over the past eight years and how much amount has been recovered by defaulters whose loans were written off. My findings are presented in the table below:

NATIONALISED BANKS LOANS WRITE-OFF SUMMARY							(All Amts in Rs crore)		
BANK NAME	Last 8 Years			Last 4 Years			BIG Defaulters		
	Written Off Amt	Recovery	In %	Write Off Amt	Recovery	In %	8 yrs. w/off amt.	Recovery	In %
State Bank of India *	2,35,091	34,677	15%	1,79,245	26,891	15%	1,23,432	8,969	7%
Bank of Maharashtra*	15,361	2,219	14%	13,140	1,169	9%	7,100	250	4%
Bank of Baroda *	44,937	12,105	27%	38,451	10,653	27%	21,474	1,057	5%
Union Bank *	26,073	4,555	17%	20,928	3,272	16%	26,073	NA	NA
IDBI Bank*	45,693	3,704	8%	37,235	2,637	7%	18,158	NA	NA
Punjab National Bank*	61,741	15,762	25%	44,564	12,028	27%	31,966	7,028	22%
Indian Overseas Bank *	41,392	7,253	17%	34,061	4,748	14%	17,921	102	0.5%
Central Bank of India	21,989	1,923	9%	16,904	1,531	9%	17,240	1,206	7%
Canara Bank *	47,310	8,901	19%	39,320	6,058	15%	NA	NA	NA
UCO Bank	25,266	1,702	7%	21,571	1,608	7%	10,361	529	5%
Indian Bank *	10,249	2,183	21%	8,774	1,564	18%	4,792	66	1%
Bank of India *	57,275	13,560	23%	40,997	6,991	17%	NA	NA	NA
TOTAL	**6,32,377**	**1,08,544**	**17%**	**4,95,190**	**79,150**	**16%**	**2,78,517**	**19,207**	**7%**

** 8 Years and 4 years write off figures as per Annual Reports Published on respective bank websites*
Union Bank and IDBI Bank did not provide information about recovery from big defaulters
Bank of India and Canara Bank did not provide any information about write off and recovery of big defaulters.
PNB provided information about big defaulters only for four years.
Indian bank provided information about big defaulters only for three years.
Only State bank of India & Indian Overseas Bank provided names of big defaulters whose loans are written off

I also started gathering information on how much of the bad loans of big defaulters (bad loans above Rs100 crore) have been written off in the past eight years by each of these banks and how much amount is recovered from this write-off till date.

Being a shareholder of SBI, BoB and BoM entitled and enabled me to ask questions and obtain information during the annual general meeting (AGM) of these banks. My queries yielded information about bad loan write-offs and recovery from big defaulters for the past eight years for these three nationalised banks. For the remaining nine banks, I decided to file applications under the Right to Information (RTI) Act.

In response to my RTI applications, instead of providing the information, barring the Central Bank of India, UCO Bank and, to some extent, PNB, which gave data for four years only, all other banks directed me to extract information about the total loan write-off and recovery data from their annual reports published on their websites.

Accordingly, I studied the annual reports of 10 banks for the past eight years and the information I gathered was shocking. Over the past eight years, these 12 nationalised banks together have written off bad loans worth Rs6.32 lakh crore and recovered just Rs1.08 lakh crore, or 17%.

Of these, 10 banks (Canara Bank and BoI did not share any information) together have written off bad loans of big defaulters' worth about Rs2.78 lakh crore and could recover only Rs19,207 crore or less than 7% till date.

Except SBI and IOB, all other PSBs refused to disclose names of these big defaulters, claiming it as confidential information and that disclosing it would be breach of privacy.

Here the million-dollar question is: If this information is confidential, then how is it that SBI disclosed the names of 225 big defaulters and IOB disclosed the names of the 66 big defaulters? Does the definition of confidentiality change from bank to bank?

Moreover, if a bank has practically lost hopes of recovery and has, hence, written off the loan, why should such a loan get the shield of secrecy?

When a common borrower defaults, the same bank publishes his name and all the details through advertisements in newspapers. Why then are the names of bigger defaulters protected? Why don't the 'confidentiality' and 'fiduciary relation' clauses apply while publicising the names of the common borrowers?

Technically speaking, when debts are written=off, they are removed as assets from the balance sheet because the bank does not expect to recover payment.

This practice is frowned upon by experts but is routinely followed by banks as part of their tax management clean-up process. The beneficiaries are invariably some of our biggest industrialist defaulters.

In contrast, when a bad debt is written down, some of the bad debt value remains as an asset because the bank expects to recover it.

Such write-offs also debunk the aggressive posturing by the government and policy-makers about their so-called recovery efforts.

All this clearly indicates that PSBs hardly have any interest in the recovery of written-off bad loans, especially from big defaulters. Banks are just interested in reducing the non-performing assets (NPAs) by writing off bad loans from their account books or may have some underhand dealing with these defaulters and thus are reluctant to recover bad debts.

This also shows that banks are reluctant to follow rules and laws passed by the Union government to recover loan amounts from big borrowers. In fact, banks are more interested in writing off loans of these big defaulters so as to show a smaller amount under NPAs. May be there is a nexus among bankers and these defaulters resulting in banks not showing much interest in recovering written-off debt.

Also, since these written-off loans are not part of the balance sheet, nobody even looks at them. Since this method of writing off loans is being rampantly used by banks, both the finance ministry and the Reserve Bank of India (RBI) need to take strong action against banks indulging in such practices.

All this information proves beyond doubt that the claims made by banks and other experts that writing off bad loans is just book entry and recovery process continues, is sheer hogwash.

BusinessToday.In
Friday, July 09, 2021 | Updated 23:12 IST

Banks take 57% haircut in 94 cases worth Rs 1.75 lakh crore in FY19

The average resolution timeline for these 94 cases was 324 days as against the stipulated timeline of 270 days

PTI/BusinessToday.In
May 03, 2019, Updated May 03, 2019, 8:57 PM IST

Banks realised less than half of admitted claims in cases resolved during the last financial year, according to industry bodies. The lenders took a huge 57 per cent haircut in 94 large accounts worth 1.75 lakh crore which was resolved in FY 2018-19. They managed to recover only Rs 75,000 crore, which amounts to only 43 per cent of the admitted claims. These numbers come as the Insolvency and Bankruptcy Code (IBC) enters its third year.

"Only 94 stressed with a total claim of Rs 1,75,000 crore by financial creditors were resolved in FY19 with a recovery of Rs 75,000 crore or 43 per cent of the admitted claims under the insolvency process approved by the various national company law tribunals (NCLTs)," a joint study by rating agency CRISIL and trade organisation ASSOCHAM said.

The average resolution timeline for these 94 cases was 324 days as against the stipulated timeline of 270 days. The report pointed out that liquidating these 94 companies would have realised only 22 per cent of the admitted claims, which is significantly lower than the recoveries made from the normal resolution process.

By the end of March, there were 1,143 cases pending at various bankruptcy tribunals. Around 32 per cent of these cases were pending for more than 270 days. The CRISIL-ASSOCHAM report further said there are a few big-ticket accounts for which resolution has not been finalised for over 400 days as IBC framework is still a work in progress.

According to the study, some of the key issues that need to be addressed for successful implementation of IBC are adherence to timelines, adequate judicial infrastructure, creditor classification and prioritising, among others.

To maximise value and stakeholders' interest, the IBC framework for liquidation under a going concern basis needs to be explored further and should be followed in the true spirit, the report said.

Mallya, Choksi & Nirav Modi Should Have Gone the NCLT Route!

By Thomas Franco | June 26, 2021

Harsh Goenka, Chairman, RPG Enterprise has stated, "Promoters slash away on the side, take the company to cleaners, get an 80% to 90% haircut from Bankers / NCLT. That's the new game in town". He has tweeted this to the Prime Minister of India.

Sowmya Datta, General Secretary, 'All India Bank Officers Confederation has stated, "Seems like the entire body chipped into pieces and left with a few strands of hair". He has tweeted to the Finance Minister.

It is now becoming clear that the Insolvency and Bankruptcy Code was brought to help few Corporates to loot banks through Resolution Plan (RP) and to help other Corporates to buy Industries worth thousands of crores at throw away prices. The Banks alone face the brunt, and the top executives get away. They become Board of Directors of some of these Corporates after retirement.

The cleaners mentioned by Goenka are the retired judges sitting on the National Company Law Tribunal's benches across the country and the Insolvency Professionals (Mostly Retired Bankers forming a resolution Agency with Chartered Accountants and Lawyers) are the modern day brokers for these deals. The Judges are given extension till they attain 67 years in most of the cases.

IBBI reports say 80% of the cases brought to NCLT are above Rs.10 Crores. Against the norms set in the act, to close cases within 180 days, average days taken are 406 days. In 360 major cases settled, the average haircut (write off) is 80%. In the initial provisions of the act, the creditors have to vote with 75% majority to agree for the settlements. This rule was amended to suit Mukhesh Ambani to buy Alok Industries worth Rs.29253 crores with a 83% haircut.

Let's have a glance at some settlements.

Company	**Loan Out standing**	**Settled (Crs)**	**Haircut**	**Took over by**
Deccan Chronicle	8180	357	95%	SREI Multiple Inv. Trust
Videocon	59132	2884	95%	Twinstar Technologies (Anil Agarwal)
Synergy Dooray	972	54	94%	Millennium Finance Ms. Binani
Ushdev International	3292	197	94%	Taguda Singapore
Reliance Infratel	41055	4235	89%	Reliance Jio

Alok Industries	29253	5052	83%	Reliance & JM
Amtek Auto	12641	2614	79%	Liberty House UK
DHFL	87000	32700	63%	Piramal Group
Reliance Home Fin	11200	2887	60%	Authem Infra
Siva Industries	4863	323	93%	Vallal (Father & Partner)

Deccan Chronicle is running Videocon and 12 of its sister concerns will soon work under Anil Agarwal. Synergy Dooray is functioning. Ushdev International is also functioning, and other two will function. The only losers are the Banks. Has any Proprietor gone bankrupt? No. They all continue to live in style.

DHFL promoter Kapil Wadhevan has openly offered Rs.50000 Cr instead of Rs.32700 Cr offered a by Piramal Group. How? No one knows. No questions asked.

Siva Industries case is classic. It's Promoter C. Sivasankaran was Aircel Promoter. Banks lost more than Rs.10000 Crores. He had cheated IDBI of Rs.600 crores, but again Siva Industries could get another loan. He is a citizen of Seychelles now, where he had declared himself bankrupt. NCLT Chennai bench has reserved final judgement but the lenders with majority have approved one time settlement of Rs. 323 Crores with 94% haircut. The biggest Bank of the Country SBI voted against but could not stop the deal. C. Sivasankaran's father Vallal is going to buy the company under this settlement. He is a partner. Siva has his political connections and has got away many times earlier too.

Anil Agarwal, the sterlite owner- the company responsible for polluting Tutucorin and killing peaceful agitators, got rewarded with Videocon group of companies at throw away price. He will donate more to the ruling party.

Does anyone remember Reliance Defence, which got the Rafael deal? Without even experience of making a paper plane?

It is the same Anil Ambani who could get away with reliance Home Finance Loan of Rs.11200 crores with 60% haircut and Reliance Infratel Loan of Rs.41055 crores with 89% haircut! Wonder who is the beneficiary? His elder brother Mukhesh Ambani who has offered Just Rs.4235 crores to banks against Rs.41055 plus accrued interest. Reliance Infratel has 43000 towers and 1.72 lakh km optic Fibre Network which will be taken over by Reliance Jio for a pittance. The loser is not Anil Ambani. It is the banks! SBI has withdrawn its petition in the Supreme Court classifying the account as fraud. Can anyone imagine that the biggest bank with RBI representative and Finance Ministry representative in its board classify an account as fraud without proper scrutiny? This can happen only in India. Because you have a powerful Prime Minister who is representing the Corporates and thinks he can fool the electorate with his Hindutva Ideology. Other things do not matter.

We should pity the fools Mallya, Choksi and the other Modi. They could have stayed here and gone to NCLT and the ruling party.

Govt has no business to be in business, if it has friends in business who take care of everything. People easily forgot demonetisation, GST, Pulwama Story and now the Covid mismanagement. God Save this Country.

Thomas Franco is former General Secretary of All India Bank Officers' Confederation.

moneycontrol

Siva group-IDBI Bank deal divides bankers, triggers debate on weakening bankruptcy law

Under the agreed one-time settlement with Sivasankaran's SIHL, banks will get 10 percent of their money owed which they say is better than liquidation value. Some eperts say defaulting promoters could use this way to take back control of their companies at a pittance.

DINESH UNNIKRISHNAN

MAY 19, 2021 / 11:51 AM IST

The one-time settlement deal between Siva Industries and Holdings Ltd (SIHL) and its lenders has sparked a debate on whether it sets a bad precedent for defaulting promoters to regain control of their companies by undermining the Insolvency and Bankruptcy Code.

SIHL, the holding company of the Siva group, owed around Rs 5,000 crore to lenders. It was dragged to NCLT in July 2019 and with no successful suitors yet, the company was heading to liquidation. In April this year, its promoter C Sivasankaran managed to convince majority of the lenders to withdraw the company from the corporate insolvency resolution process and go in for a one-time settlement of Rs 500 crore. In effect, banks sacrificed 90 percent of their outstanding loans—about Rs 4,500 crore—to SIHCL.

"This is completely defeating the purpose of the much trumpeted IBC system," said C H Venkatachalam, general secretary of All India Bank Employees Association (AIBEA), a trade union. "This is devoid of transparency. Besides, this will encourage more wilful corporate defaulters to pressurise banks to retain their ownership by repaying a small portion of the loan taken."

Dealing with powerful and influential corporate defaulters is always a tough game for bankers. When IBC was legislated in 2016, it was touted to be a game changer since, unlike previous legislation, it put creditors in control of a defaulting company until a resolution was achieved. Thus, it would help banks in making time-bound and meaningful recoveries from big corporate defaulters.

However, as this case indicates, big defaulters could now find a way of using out-of-court settlements to wrest back management control of their company before it goes into liquidation, paying a fraction of what they actually owed to banks.

SIHL's promoter Sivasankaran is a well- known Chennai-based businessman with investments spanning real estate, hospitality, shipping, minerals and agro exports. At one time, he also controlled companies such as Aircel and Barista, and had a stake in Tamilnad Mercantile Bank.

To be clear, this deal does not violate any law. Section 12 A of the IBC allows insolvency cases to be withdrawn with the approval of the members of the committee of creditors (CoC) with 90 percent voting share. In SIHL's case too, creditors voted in favour of the settlement in the first week of April and National Company Law Tribunal (NCLT) approval is awaited, IDBI Bank, the lead lender said on **Twitter**.

Setting a bad precedent

But some experts believe the deal still violates the spirit of the code and prompt banks to keep pushing for more OTS deals outside the IBC court, thus undermining the law.

"This is a significant digression or dilution from the principles of IBC, the judicial pronouncements, the amendments in the last four years, although this may make commercial sense to banks," said Prem Rajani, Managing Partner of Rajani Associates. "While this may be good for the honest promoters, on the flip side this could set a precedent for crony promoters to use the same method, which could very well defeat the purpose of Section 29A."

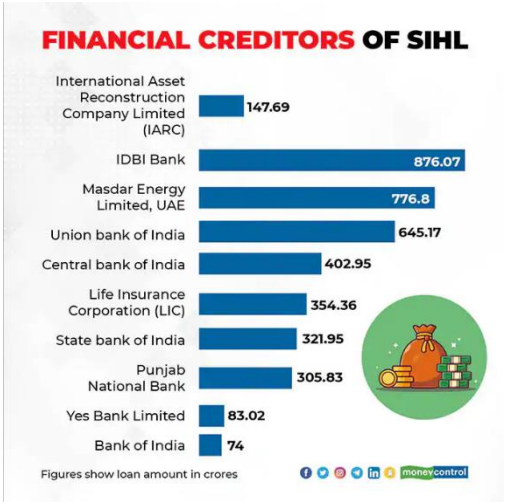
According to the Section 29A of IBC, an insolvent, a wilful defaulter or a person who was a promoter or was in the management of the corporate debtor, among other conditions would not be allowed to bid for the insolvent company concerned. A recent **Supreme Court** judgement also made it clear that promoters cannot even participate in the liquidation of a company under IBC.

Now, other promoters could potentially take the same path path to retain control of their bankrupt companies as buyers typically stay away from companies embroiled in investigations. In the absence of a buyer, the company will be pushed to liquidation, giving way to the old promoter make a counter offer. Already, the IDBI-SIHL deal has sparked a rush among promoters to their lenders seeking general bail outs, reported the **Business Standard** on May 16.

What has also added fuel to the controversy is the **allegation by Royal Partners**, a bidder for SIHL, that IDBI had derailed the sale of Siva Industries by vetoing its bid despite not having the requisite voting share in the consortium.

An email sent to Royal Partners on this issue didn't elicit any response till the time of filing this story. SIHL could not be reached for comments. IDBI did not respond to a detailed questionnaire seeking comment.

Banks want to maximise recoveries



In its Twitter note, IDBI Bank, which itself was bailed out by the Life Insurance Corporation of India two years ago, said that the OTS made sense for the lenders as they would have got an even lower amount had SIHL gone into liquidation considering the valuation of the assets available as security.

“The idea of NCLT itself is to get maximum financial recoveries possible. When the company is heading for liquidation, accepting the offer made sense to lenders,” said a banker who didn’t want to be named. Even with Rs 500 crore, banks would be happy since they would be able to write back some part of earlier provisions (money set aside against loss) and show as profit.

Apart from IDBI which has an exposure of Rs 876.07 crore, SIHL owed money to Union Bank of India, State Bank of India, Yes Bank and Bank of India, and International Asset Reconstruction Company (IARC), among others.

It’s a commercial call

On the other hand, there are industry experts who don't find anything wrong with such deals. They are of the view that banks took the right decision by accepting the offer as there was no scope to recover money through liquidation.

“Banks would take commercial decisions based on realisable value of available rights and securities post defaults. Usually, in terms of profitability, if the loans are fully written off, any inflows would be booked as profits,” said Sanjay Agarwal, head BFSI, CARE.

“Banks could have lost all money if they didn't accept this and wait for liquidation. I think similar approach can be done in other NCLT cases also where there is no scope for recovery through resolution,” Agarwal said.

Indeed, it isn’t as if banks have gone along with all such offers by promoters. There have been a few prominent cases in the past where banks have refused to entertain the offers of defaulted promoters for OTS or similar settlements. The most recent example is Kapil Wadhawan’s bid for Dewan Housing Finance Corporation (DHFL). Wadhawan had repeated his offer to pay off the dues to all creditors over a period of seven to eight years. But banks didn’t accept the offer. Eventually, the company went to Piramal Group. Wadhawan owed around Rs 90,000 crore to lenders.

Though not an NCLT case, a similar thing happened in the Kingfisher-Vijay Mallya case as well. Mallya who has defaulted around Rs 9,000 crore to an SBI-led consortium and escaped to UK in March, 2016, has made offers several times to settle principal amount to lenders. But banks rejected the offer in this case too.

Veteran banking industry expert Ashvin Parekh too believes that banks have made a smart move in this case.

“Banks would have considered the present value of the assets. Banks do have a right to take the case back from the NCLT if they choose to,” said Ashvin Parekh of Ashvin Parekh Advisory services.

Still, people like Venkatachalam of AIBEA would have none of this argument. They say that apart from undermining the IBC, the written off amount is public money as banks are guardians of public deposits “The fact is Rs 4,500 crore is a loss. It is people’s money. Who will bear this Rs 4,500 crore loss?” asked Venkatachalam.

DINESH UNNIKRISHNAN

TAGS: #bankruptcy law #IDBI Bank #Siva Group

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Rs 6.5 lakh crore haircut, 1.1 million job losses; is IBC really a success?

Out of Rs 9,870 crore worth of claims, the creditors have received a princely sum of Rs 96 crore - that is right. Less than 1% after more than one year of running around, which will not compensate even the expenses incurred by the creditors

For 970 cases which have been closed through the IBC Process so far, 780 cases were liquidated

Hari Hara Mishra
Feb 26, 2020, Updated Aug 27, 2020, 1:50 PM IST

The cover page of the recently released IBBI Newsletter up to December 2019 starts with a graphic representing the core values of the Insolvency and Bankruptcy Code (IBC).

1. Saving life
2. Maximising values
3. Balancing interest

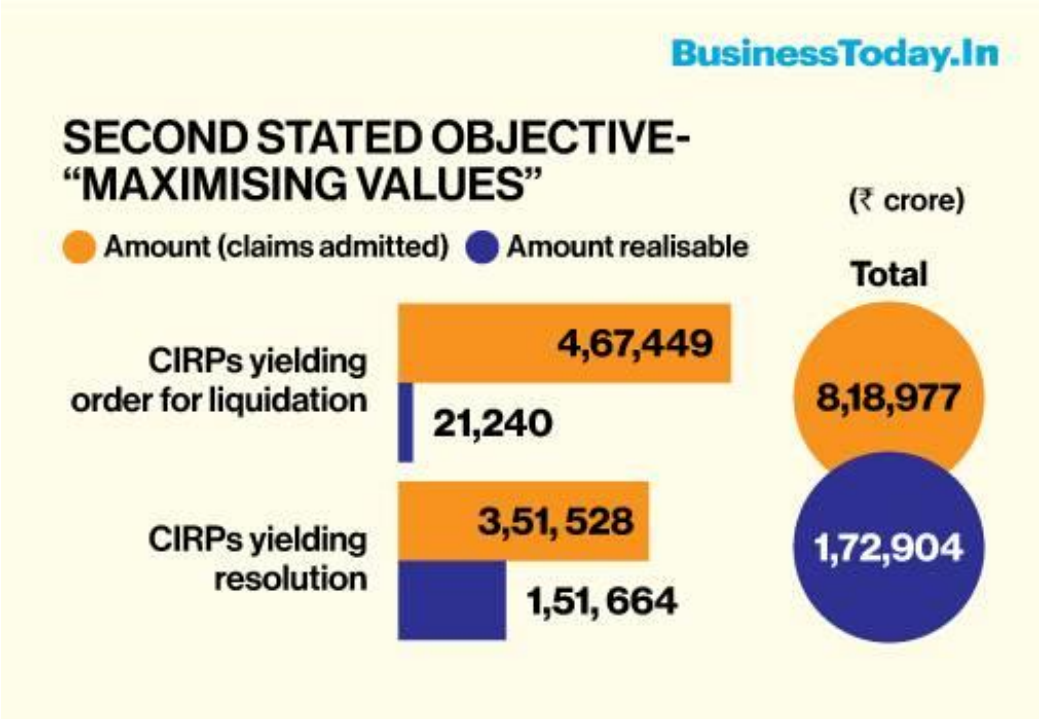
Let us see how the performance so far stands up to these stated goals

BusinessToday.In

FIRST STATED OBJECTIVE "SAVING LIFE"

Sl No	Category	No of cases
1	Cases referred to IBC so far	3,312
2	Ongoing process	1,961
3	Closed by dissolution	780
4	Closed on withdrawal/appeal	381
5	Closed by resolution	190

For 970 cases which have been closed through the IBC Process so far, 780 cases were liquidated. **Put it differently, 80% Mortality rate in the 'Saving life" process**. We will come to the Post- Mortem report too in a while.



So, for claims amounting to Rs 8.19 lakh crore, creditors have got "Maximum value" of Rs 1.73 lakh crore. **Resultant Haircut, whopping Rs 6.46 lakh crore in 970 cases closed, so far**. Hold on, another 1961 cases still under IBC Process.

BusinessToday.In

OVERALL RECOVERY UNDER IBC

Sl No	Category	Amount (claims admitted)	Amount realisable	Recovery %
1	Resolution	3,51,528	1,51,664	43%
2	Liquidation	4,67,449	21,240	5%
3	Total	8,18,977	1,72,904	21%
4	Less 7* out of first 12 large cases closed so far	2,13,731	1,12,894	53%
5	Excluding the outlier cases	6,05,246	60,010	10%

The 7 cases are, Electro steel, Bhusan Steel, Monnet Ispat, Essar Steel, Alok Industries, Bhusan Power & Steel, Jyoti Structures. **These 7 cases out of the total 780 cases closed so far are 1% by number but contribute 65% of total amount realisable and distort the correct picture of recovery under IBC in general. Excluding these 7 cases, IBC recovery so far is only 10%. That is where "Value Maximisation" stands.**

Now, we focus on post mortem of Liquidated cases

Only 51 liquidations have reached the final stage. Out of Rs 9,870 crore worth of claims, the creditors have received a princely sum of Rs 96 crore- that is right. Less than 1% after more than one year of running around, which will not compensate even the expenses incurred by the creditors.

In essence, many cases referred to IBC finally leading to liquidation may have a negative impact on the creditors.

Balancing interest

On third objective, of balancing interest (among various stakeholders), in the absence of sufficient empirical data, we will give it a pass. However, anybody having rudimentary experience in the area understands the huge inter-creditor issues based on security and charge particulars and creditors Vs other stakeholders including statutory authorities for the realisation of their dues.

Finally, as reported in several sections of media, it is heartening to note that people at the apex level, including PMO, have started realising the ground realities. As reported, "In the case of smaller companies (loan size of less than? 200 crore, approximately employing 3,000-4,000 workers), resolution professionals are usually unable to successfully run these companies due to the lack of industry and sectoral knowledge. This invariably leads to unit shutdowns and job losses."

It advises banks not to refer cases below the threshold limit of Rs 200 crore to NCLT, and rather try inhouse resolution including a settlement with the promoter.

While data in respect of the number of employees on the roll of companies now facing liquidation and who have lost jobs in the process is not available, an approximated number could be arrived at based on information as reported in media.

For a Rs 200 crore company: Average No of workers 3000-4000, let us take Midpoint, 3500. Put it another way - For every Rs 1 crore involved - 17.5 number of workers.

As on date, Companies with Rs 4,67,000 crore under liquidation.

Before approximating the job losses, let's take cognisance of two important factors which have a significant bearing.

First, In case of liquidations, the IBBI newsletter mentions that in respect of 561 out of 774 (liquidation) cases, were either in BIFR or defunct. So, let us assume that 2 out of 3 cases at present liquidation were already defunct.

Further, as the loan size goes up and mechanisation improves, the number of jobs per Rs 1 crore may come down substantially. Let us assume, it employs only 6.5 workers instead of 16.5 per Rs 1 crore, as applicable for small loans with an outstanding amount of below Rs 200 crore.

Factoring these two, the job losses due to liquidation in IBC Cases may be estimated at 467000/3*6.5 = 10,11,833 (1.1 million). To repeat, it is an approximation and an empirical study on the issue would place the exact number of job losses, that followed liquidation.

(The author is a Public Policy analyst and commentator. Views are personal and do not represent any organisation/industry body he is associated with)

Banks Paying Heavily for Corporate Loan Waivers: RTI

By Ashish Kajla | July 30, 2020

Not Write offs, Corporate Loan Waivers

Banks Recovered Only 10% Bad Loans After Writing Them Off !!

According to an RTI response received from Reserve Bank of India, between 2014 and 2019 scheduled commercial banks in India have written off bad loans worth Rs 6.35 lakh crore and have recovered only 9.7% i.e. Rs 62,220 crore from written off loans. While in response to the RTI, RBI didn't provide the data for recovery of the written off loans for the period before 2014, but provided the details of bad loans that were written off. From 2004 to 2019, scheduled commercial banks wrote off a total sum of Rs 8.41 lakh crore worth bad loans from their books, 75% of which – Rs 6.35 lakh crore were written off only in previous 5 years between 2014 and 2019.

Banks write off (remove) bad loans from their balance sheets in order to clean their books and for tax efficiency. Later, any recovered amount from those loans is added as profit. The data provided by the RBI shows that almost 90% of the loans that were written off (removed) by banks are never recovered. K C Chakrabarty, former deputy governor of Reserve Bank of India, have also termed these write offs a scam where most of the written off loans are big loans issued to corporates.

These bad loans, technically called Non-Performing Assets (NPAs) has been the primary cause of the banking crisis for about 5 years now. The government of the day is quite happily claiming that bad loans have come down and banks are doing a good job of recovering the bad loans. This reduction in NPAs that they are claiming is in reality not much and definitely not due to recovery. Gross NPAs declined from 11.5% in 2018 to 9.3% in 2019, but it has more to do with the writing off of bad loans than the recovery made by banks.

The amount of bad loans can be reduced in two ways, either through the recovery or by writing them off. Finance Ministry has been responding in parliament as well as outside parliament that "comprehensive steps have been taken under the 4R's strategy – recognising NPAs transparently, resolving and recovering value from stressed accounts, recapitalising PSBs, and reforms – to reduce NPAs of Public Sector Banks". But there is no mention of continuous write offs of large amount of bad loans by public sector banks.

The experts of the banking sector have repeatedly raised questions about writing off of bad loans. In response to the question asked in Lok Sabha, Ministry of Finance said that these write offs are a regular exercise to clean up the balance sheet, avail of tax benefit and optimise capital, in accordance with RBI guidelines and policy approved by their Boards, and borrowers do not get benefitted from writing off NPAs, the process of recovery of dues from them continues (Lok Sabha, Unstarred Q 1285, 25/11/2019). The Finance Minister also gave the same response when RBI released list of top 50 willful defaulters where banks had written of Rs 68,000 crore and people raised the questions about them. Interestingly, again there was no mention of recovery made by banks from the loans that were written off by the banks.

The following tables proves that government's claims of "write off does not mean waiver, borrowers do not get benefitted from write offs, banks continue to recover those loans" are nothing but a white lie. The large amount of write offs and negligible recovery shows that in the name of cleaning the balance sheets, banks have been waiving off corporate loans through write offs.

Table 1: Write off of bad loans and recovery from them between 2014-19

Banks	Amount of written off bad loans	Recovered from written off bad loans	Recovery Percentage
All Scheduled Commercial Banks	Rs 635,164 crore	Rs 62,220 crore	9.7%
Public Sector Banks	Rs 515,636 crore	Rs 51,419 crore	9.9%
SBI (and associate banks)	Rs 169,546 crore	Rs 20,519 crore	12.1%

Source RTI

In 2015, to get the real picture of bad loans, the then RBI governor Raghuram Rajan made rules of NPA classification stringent and asked banks to identify bad loans instead of ever greening them through restructuring. Non-performing assets spiraled from Rs 2.6 lakh crore in 2014 to Rs 3.23 lakh crore in 2015, peaked in 2018 with Rs 10.35 lakh crore and after a slight decrease it was Rs 9.49 lakh crore in 2019. Since then the government and the RBI both are grabbing every opportunity to claim that bad loans are decreasing, triumphing the 4R's strategy and IBC process for recovering the bad loans. But the data from Reserve Bank of India portrays completely different picture with banks writing off huge amount of bad loans and barely recovering 10% of the loans that banks had written off from their books.

Public sector banks are not performing any better and have recovered only 9.9% i.e. Rs 51,419 crore from the written off bad loans in the period between 2014 and 2019, where the amount of written off bad loans by them in the same period is Rs 515,636 lakh crore.

State Bank of India, the largest bank of India has also written of Rs 1.6 lakh crore in these 5 years and have only recovered Rs 20,500 crore from the written off bad loans, showing that merger of five associate banks with SBI did not improve the recovery side of the bank.

Table 2: Amount of written off bad loans and recovery from written off bad loans from 2014 to 2019

Financial Year	Amount of written off NPAs by Scheduled Commercial Banks	Recovered amount from written off NPAs by Scheduled Commercial Banks (% of recovered amount from written off bad loans)	Amount of written off NPAs by Public Sector Banks	Recovered amount from written off NPAs by Public Sector Banks
2014-15	Rs 58,785 crore	Rs. 6,789 crore (11.5%)	Rs 49018 crore	Rs 5,284 crore
2015-16	Rs 70,414 crore	Rs. 9,655 crore (13.71%)	Rs 57,585 crore	Rs 8,035 crore
2016-17	Rs 108,373 crore	Rs. 10,218 crore (9.4%)	Rs 81,684 crore	Rs 8,538 crore
2017-18	Rs 161,327 crore	Rs. 12,653 crore (7.8%)	Rs 128,230 crore	Rs 10,272 crore
2018-19	Rs 236,265 crore	Rs 22,905 crore (9.6%)	Rs 199,119 crore	Rs 19,290 crore
Total	Rs 635,164 crore	Rs 62,220 crore	Rs 515,636 crore	Rs 51,419 crore

Source: RTI

Table 3: Amount of NPA write offs:

Banks	Amount of NPAs written off between 2004-2019	Amount of NPAs written off between 2014-2019
Scheduled Commercial Banks	Rs 841,938 crore	Rs 635,164 crore
Public Sector Banks	Rs 663,326 crore	Rs 515,636 crore

Source: RTI

Table 4: Industries with high amount of bad loans (as of March 2019)

Industry	Amount of Bad Loans
Infrastructure	Rs 203,017 crore
Basic Metal and Metal Products	Rs 83,092 crore
All Engineering	Rs 39,838 crore
Textiles	Rs. 30,417 crore
Food Processing	Rs. 29,279 crore
Construction	Rs. 25,730 crore
Gems & Jewellery	Rs. 19,189 crore
Chemicals and Chemical Products	Rs. 18,349 crore
Total	**Rs 448,911 crore**

Source: RTI

While the pro-business sections and media never miss an opportunity to target and calling out farm loan waivers as bad for banks, there is hardly any noise on the massive write offs of corporate bad loans. The recent statements by former governor Urjit Patel and former deputy governor Viral K Acharya about attempts to weaken the IBC process to benefit big corporate defaulters shows that government is letting corporates take advantage of banking system and not trying to recover the bad loans. In 2017, 12 companies identified by RBI for bankruptcy had total NPAs of worth Rs 2.44 lakh crore, almost 25% of gross NPAs of that time. Read: List of 12 companies constituting 25% of total NPAs. Till December 2018, the top 100 borrowers of Indian banks had bad loans worth 4.44 lakh crore. Read: Nearly 50% of All NPAs Due to Loans Taken by Top 100 Borrowers. In 2019, Infrastructure and Metal industry alone have bad loans of approx. 3 lakh crore. Out of the total Rs 9.5 lakh crore bad loans in 2019, 81.8% loans were of the amount higher than Rs 5 crore, indicating that small retail credits and farm loans are not the primary cause for the bad loans.

In 2019, Infrastructure and Metal industry alone have bad loans of approx. 3 lakh crore. Out of the total Rs 9.5 lakh crore bad loans in 2019, 81.8% loans were of the amount higher than Rs 5 crore, indicating that small retail credits and farm loans are not the primary cause for the bad loans. Even according to the RBI report on Agriculture, in the year 2017 – 18, which saw the most number of farm waivers (seven states) was Rs 49,000 crore (budgetary allocation) but in the same year the amount of bad loans written off was Rs 1,61,327 crore. The farm waivers are used as a political tool and electoral gimmick, with high pitch announcements by political parties and state governments, but most of the time they are conditional and are not implemented fully stating budget constraints, but this is never the case with write offs that are silently done year after year in the name of cleaning the books and never recovered thereafter. The huge loss caused by the writing off of corporate bad loans with negligible recovery percentage has also resulted in exponential increase in service charges on banking services for depositors of the banks.

It is high time, we should stop calling them technical write offs, this is nothing but a corporate loan waiver and fraud with the depositors – the primary financiers of the banks. The banks must immediately stop this practice, government should formulate strict laws with respect to writing off of bad loans and to strengthen the process of recovery mechanisms instead of diluting them.

Opinion: For A 90% Haircut, Try India's Bankruptcy Salon

Andy Mukherjee | Bloomberg
Opinion(c) 2021, Bloomberg Updated: July 05, 2021 2:44 pm IST

Five years ago, India came up with a legal answer to its perennial economic challenge of rescuing the money stuck in zombie firms. Unlike China, which has the cushion of high savings, India's inefficient use of limited domestic capital has meant a chronic inability to put its swelling ranks of youth to work. After toying with the idea for more than a decade, the solution New Delhi hit upon was a modern bankruptcy code.

The numbers have been a mixed bag. According to an analysis by REDD Intelligence, of the 4,300-plus stressed debtors that have been taken through the 2016 corporate insolvency law, 48% were liquidated, half of them under 314 days. Of the 13% that got sold to bidders, half exited bankruptcy in less than 425 days. These, as the REDD researchers note, aren't bad outcomes, considering that wait times previously were five-years-plus.

However, if the insolvency law did indeed lead to timely extraction of meaningful sums, one should also see redeployment of credit in new ventures. The evidence on this front is weak. At 6%, loan growth is anemic. Companies don't want to borrow even at negative real interest rates; corporate leverage is at an all-time low of 0.46 times equity, according to the Boston Consulting Group.

Incomplete bankruptcy reform isn't the only reason Indian banks aren't lending more to new firms, choosing instead to finance unsecured personal credit, which doesn't create many more new jobs. Over the past year, it could be seen as a confidence issue. As a deadly second bout of the pandemic recedes, firms probably need assurance that the economy won't be hit by lockdowns again. That would require a far greater proportion of the population to be fully vaccinated than the less than 5% at present.

Yet the bankruptcy code doesn't deserve the full benefit of the doubt. Its biggest failing is its institutional infirmity. Leaving aside a few big-ticket sales, mostly of steelmakers such as Essar Steel India Ltd., the recovery rate for creditors has been just 24%, according to Macquarie. While India is perhaps able to extricate capital faster than before, it still can't get much out of dead firms. Even the insolvency tribunal is surprised that metals magnate Anil Agarwal is "paying almost nothing" to wrest control of Videocon Industries Ltd., after creditors accepted just 4 cents on the dollar for their 648 billion rupee ($8.7 billion) exposure to the consumer-appliance maker and its 12 group companies. Bankers to Siva Industries and Holdings Ltd. approved a one-time settlement with the controlling shareholder of the investing firm, taking a 93.5% hit on their outstanding claims of $650 million. In the case of Ruchi Soya Industries Ltd., lenders first agreed to a harsh haircut. Then they gave money to Yoga guru Baba Ramdev's Patanjali Ayurved Ltd. to take over the bankrupt edible-oil maker.

The low recovery rate isn't doing any favors to India's state-run banks, which hold most of the soured loans. Several of them will now own a stake in Jet Airways India Ltd., which last flew more than two years ago. The airline's landing slots at airports have been given to other carriers, and the pandemic has ravaged the economics of aviation. All this drama to recoup 5% of loans when

creditors had only to oust Naresh Goyal, the founder of what was once India's dominant airline, in time. They didn't. Even now, Vodafone Group Plc's India joint venture is struggling to stay afloat because of extractive government demands, but bankers aren't doing much to protect their exposure to the debt-laden telecom operator.

Political constraints have never allowed India's public institutions to save capitalism from powerful capitalists, something that a tough bankruptcy law was supposed to change. It hasn't. So employees and vendors suffer, as do taxpayers who fill state-run banks' capital hole. For nine years, Punjab National Bank, the second-largest of them by assets, has only fleetingly traded above its book value, a reflection of what investors make of the asset quality of public-sector lenders.

In hindsight, giving poorly governed state-run banks the power over assets was a bad idea. A U.S.-style debtor-in-possession bankruptcy may have been far more suitable to India's on-the-ground reality. Abusing productive capital to benefit a small, politically connected capitalist class has exacerbated unfairness, and loaded the dice against workers in a labor-surplus country.

As Observatory Group analyst Ananth Narayan notes, India's employment-to-population ratio, which was a steady 55% in 2005, has fallen to 43%. Bangladesh and Vietnam have fared better. Not all of the blame for inhibited employment can be laid on the doorstop of a flawed bankruptcy law. By ignoring low-skill textile and shoe manufacturing and overemphasizing high-skill software, India has scored an own goal.

Still, the large-scale gaming of insolvency resolution has cost India. Even before the pandemic, the financial system was creaking, Now, it's just being kept in a holding pattern. Banks have the assurance of government guarantees on loans to pandemic-hit small businesses. The interest they need to pay savers is also being kept artificially depressed by the central bank in the face of persistently stubborn inflation. Even then, 9.8% of their loan book could sour by March 2022, the central bank has warned. The plan now is to shift at least $11 billion in dud corporate loans from commercial lenders to a newly created bad bank.

A junkyard for firms that have very little salvageable capital won't do much for new investments. Rehabilitating assets that still have some value will require an urgent fix to the law. A bankruptcy salon offering 90% haircuts is a sad joke on on India's taxpayers, savers and workers.

(*Andy Mukherjee is a Bloomberg Opinion columnist covering industrial companies and financial services. He previously was a columnist for Reuters Breakingviews. He has also worked for the Straits Times, ET NOW and Bloomberg News.*)

ThePrint

Why India's bankruptcy framework needs urgent reform, once again

Biggest failing of the bankruptcy code is its institutional infirmity. A US-style debtor - in - possession bankruptcy may have been far more suitable to India's on-the-ground reality.

ANDY MUKHERJEE 5 July, 2021 9:10 am IST

Representational Image of Indian banks | Vivek Prakash | Bloomberg

Five years ago, India came up with a legal answer to its perennial economic challenge of rescuing the money stuck in zombie firms. Unlike China, which has the cushion of high savings, India's inefficient use of limited domestic capital has meant a chronic inability to put its swelling ranks of youth to work. After toying with the idea for more than a decade, the solution New Delhi hit upon was a modern bankruptcy code.

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However, if the insolvency law did indeed lead to timely extraction of meaningful sums, one should also see redeployment of credit in new ventures. The evidence on this front is weak. At 6%, loan growth is anemic. Companies don't want to borrow even at negative real interest rates; corporate leverage is at an all-time low of 0.46 times equity, according to the Boston Consulting Group.

Incomplete bankruptcy reform isn't the only reason Indian banks aren't lending more to new firms, choosing instead to finance unsecured personal credit, which doesn't create many more new jobs. Over the past year, it could be seen as a confidence issue. As a deadly second bout of the pandemic recedes, firms probably need assurance that the economy won't be hit by lockdowns again. That would require a far greater proportion of the population to be fully vaccinated than the less than 5% at present.

Yet the bankruptcy code doesn't deserve the full benefit of the doubt. Its biggest failing is its institutional infirmity. Leaving aside a few big-ticket sales, mostly of steelmakers such as Essar Steel India Ltd., the recovery rate for creditors has been just 24%, according to Macquarie.

While India is perhaps able to extricate capital faster than before, it still can't get much out of dead firms.

Even the insolvency tribunal is surprised that metals magnate Anil Agarwal is "paying almost nothing" to wrest control of Videocon Industries Ltd., after creditors accepted just 4 cents on the dollar for their 648 billion rupee ($8.7 billion) exposure to the consumer-appliance maker and its 12 group companies. Bankers to Siva Industries and Holdings Ltd. approved a one-time settlement with the controlling shareholder of the investing firm, taking a 93.5% hit on their outstanding claims of $650 million. In the case of Ruchi Soya Industries Ltd., lenders first agreed to a harsh haircut. Then they gave money to Yoga guru Baba Ramdev's Patanjali Ayurved Ltd. to take over the bankrupt edible-oil maker.

The low recovery rate isn't doing any favors to India's state-run banks, which hold most of the soured loans. Several of them will now own a stake in Jet Airways India Ltd., which last flew more than two years ago. The airline's landing slots at airports have been given to other carriers, and the pandemic has ravaged the economics of aviation. All this drama to recoup 5% of loans when creditors had only to oust Naresh Goyal, the founder of what was once India's dominant airline, in time. They didn't. Even now, Vodafone Group Plc's India joint venture is struggling to stay afloat because of extractive government demands, but bankers aren't doing much to protect their exposure to the debt-laden telecom operator.

Political constraints have never allowed India's public institutions to save capitalism from powerful capitalists, something that a tough bankruptcy law was supposed to change. It hasn't. So employees and vendors suffer, as do taxpayers who fill state-run banks' capital hole. For nine years, Punjab National Bank, the second-largest of them by assets, has only fleetingly traded above its book value, a reflection of what investors make of the asset quality of public-sector lenders.

In hindsight, giving poorly governed state-run banks the power over assets was a bad idea. A U.S.-style debtor-in-possession bankruptcy may have been far more suitable to India's on-the-ground reality. Abusing productive capital to benefit a small, politically connected capitalist class has exacerbated unfairness, and loaded the dice against workers in a labor-surplus country.

As Observatory Group analyst Ananth Narayan notes, India's employment-to-population ratio, which was a steady 55% in 2005, has fallen to 43%. Bangladesh and Vietnam have fared better. Not all of the blame for inhibited employment can be laid on the doorstop of a flawed bankruptcy law. By ignoring low-skill textile and shoe manufacturing and overemphasizing high-skill software, India has scored an own goal.

Still, the large-scale gaming of insolvency resolution has cost India. Even before the pandemic, the financial system was creaking, Now, it's just being kept in a holding pattern. Banks have the assurance of government guarantees on loans to pandemic-hit small businesses. The interest they need to pay savers is also being kept artificially depressed by the central bank in the face of persistently stubborn inflation. Even then, 9.8% of their loan book could sour by March 2022, the central bank has warned. The plan now is to shift at least $11 billion in dud corporate loans from commercial lenders to a newly created bad bank.

A junkyard for firms that have very little salvageable capital won't do much for new investments. Rehabilitating assets that still have some value will require an urgent fix to the law. A bankruptcy salon offering 90% haircuts is a sad joke on on India's taxpayers, savers and workers.

TSG SundayGuardianLive

Insolvency and Bankruptcy Code not working: Banks

Shantanu Guha Ray
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NEW DELHI: Senior officials of the Reserve Bank of India have expressed serious apprehension over the way banks are taking huge haircuts while settling outstanding loans from corporate giants.
In most cases, the RBI has observed that the banks are taking almost 80%-90% haircuts. And this, claim senior officials of the bank, is becoming a matter of serious concern. At the heart of these, claim the officials, are the attempts of the banks and the companies to resolve the crisis under the Insolvency and Bankruptcy Code (IBC). “It is failing time and again, there is lack of interest from external bidders and the banks are unable to recover even 20% of the cash loaned,” a senior official told this reporter.

Ministry of Finance officials say the closure of cases through liquidation under IBC has seen a massive value erosion of companies. The policymakers are worried, ostensibly because a huge number of insolvency cases are closed through the liquidation process. “This is not a good sign, the IBC is not working. It was designed to save jobs and protect companies from dying in the case of financial difficulties. But now it’s perpetuating joblessness instead by encouraging promoter replacement (through NCLT) as a first step.”

Consider the case of Suzlon Energy Limited. It is now open news that the State Bank of India has agreed to a restructuring proposal, the decision taken by the bank’s board after a series of deliberations. Suzlon owes the banks Rs 11,300 crore and SBI has accepted a haircut of about 68% on the debt. This is very worrisome news even as Suzlon has claimed that it wants to convert Rs 7,700 crore in debt into convertible debentures (to be held in the investment books of the banks). It is nothing but one step forward and two step backward syndrome. For example, the banks may convert a small portion of the debt into equity, giving lenders minority shareholding in the company. In turn, this will allow lenders to benefit from the upside in the company’s stock price once operations stabilise. “But will the operations stabilise?” asked the official.

Said the official: “The most damaging aspect of the IBC is on the competency and integrity of the resolution professionals (or RPs) and the bankers. No wonder so many companies are on death row.”

The Suzlon case is a perfect example to understand what is going wrong with IBC. Lenders have been planning to revamp the wind energy company after it failed to attract investors. Suzlon talked with Brookfield Asset Management and Vestas Wind Systems, but both backed out in 2019. The options were limited for the lenders, who could either approve the restructuring plan or refer the company for

insolvency proceedings. That was not good news, considering the low interest in assets related to the power sector. And even if lenders approve the restructuring plan, this would be the second time that Suzlon has restructured debt since 2013. Suzlon reported a net loss of Rs 705 crore in the October-December 2019 quarter, last year the loss was Rs 64 crore. Total income from operations dropped to Rs 673 crore in the third quarter, as compared with Rs 1,112 crore last year.

Experts in Delhi say the Suzlon saga relates to various schemes initiated during the previous UPA era when P. Chidambaram was the Finance Minister. Chidambaram worked on the lines of withdrawn schemes, which basically meant creating a framework for revitalising distressed assets, corporate debt restructuring (CDR), flexible structuring of long term project loans (also known as 5/25 scheme), strategic debt restructuring schemes (SDR), change in ownership outside SDR, and scheme for sustainable structuring. "Even though the schemes were intended for genuine stressed companies, many took shelter under these schemes and mis-utilised the loans. And now, these very loans have skyrocketed to undesirable levels. As a result, the banks have no options but to take a huge haircut," said a senior Finance Ministry official.

So what exactly is the problem?

"India is passing through a strange phase. The real SMEs are struggling for credit, unicorns are getting huge valuation despite heavy losses, large NPAs are settled for pennies, eroding the capital of PSU banks. And innovators do not have space despite creating big brands with genuine, intrinsic values. In short, merit has no value. It is overridden by the malicious interest of a few minions in power. This is not a good sign for the Indian economy," said the official.

Let's check the data collated by the Insolvency and Bankruptcy Board of India (IBBI). Of the 51 liquidation cases in which final reports have been submitted till 31 December 2019, only Rs 96 crore were recovered against Rs 9,870 crore claims admitted. Of the realised amount, Rs 92 crore has been disbursed among the creditors. "Do you realise the difference between Rs 96 crore and Rs 9,870 crore?" asked the official.

This is not all. Out of the 551 ongoing liquidation cases, whose data is now with the IBBI, the total claim amount is Rs 4.47 lakh crore, while the liquidation value is just Rs 21,147 crore. This is a big, big crisis zone. Out of over 3,300 cases admitted under IBC till December 2019, 780 have gone into liquidation and only 190 cases have been resolved. Of the 780 cases in liquidation, only 51 have seen proper closure with proceeds from asset sales being disbursed to the creditors. Of the 51 closed cases, only one corporate debtor—Emmanuel Engineering Private Ltd—has been liquidated as going concern. Of the ongoing 725 cases, at least 22 cases have not been closed even after the earlier stipulated two-year time period. As many as 250 cases have been going on for over one year.

The rules of the IBC are clear. It says under the IBC, if a resolution plan is not approved by the committee of creditors within the stipulated 270 days, the National Company Law Tribunal (NCLT) can order liquidation of the defaulting company. The liquidation process had to be completed two years earlier, but now it's one year. The regulations now allow a defaulting company to be liquidated as a going concern, but the mere order of liquidation can lead to serious erosion of value of the company. Due to paltry realisation under liquidation process, the cash gets over by the time cost of insolvency process, workers' dues and financial creditors' claims are met. Corporate creditors and those below in the waterfall model get nothing.

So where does it leave the Indian banking sector? It has been identified as the most exposed to deterioration in corporate debt repayment capacity. The Moody's Investor Service said the following recently: "In the banking sector, deterioration in growth dynamics and macroeconomic conditions will inevitably weigh on banks' asset quality through a combination of deteriorating debt repayment capabilities and rising default risks among weaker Asian companies. Our stress tests on corporate income shock impact show that India and Indonesia are the countries most exposed to deterioration in corporate debt repayment capacity, followed by Singapore, Malaysia and China."

This is not good news for the RBI, and for the Indian banks.

FINANCIAL EXPRESS
Read to Lead

Bankruptcy Code: The God that is failing…

March 31, 2021 5:45 AM

To save the IBC, get the lenders to commit to the revival process, strengthen the RP system, and set very well-defined timelines to judges at NCLT

Unsurprisingly, few ministers and officials talk about it these days,
but surprisingly there is very little angst about the God that is failing.

By PN Vijay

The Insolvency and Bankruptcy Code (IBC) was hailed as one of the most transformational reforms in India of modern times. It was meant to revive businesses, ensure preservation of assets and capital, and be fair to all the stakeholders. It was supposed to make doing business in India much easier; such was the hope and hype that the world applauded us and we catapulted from 108th rank in 2018 to 52nd in 2019 in the Ease of Doing Business Index.

Now, after three years, most of us are less convinced; opinion is now swinging from the most charitable “it is still evolving” to a more blunt “a good law spoilt by terrible implementation”.

The numbers are disappointing. In terms of reviving and saving businesses, up to December 2019, of the 3,312 cases referred for the CIRP (Corporate Insolvency Resolution Process), only 190 were closed by resolution and a whopping 780 firms were liquidated. Balance cases are either work in progress or were withdrawn by mutual consent. This is a mortality rate of 80%. In terms of lenders getting back their money, of the total 970 cases closed by liquidation or resolution, lenders recovered only Rs 1.73 lakh crore and took a haircut of a huge Rs 8.19 lakh crore.

Much was made about reviving a Bhushan Steel or a Monnet Ispat. However, these seven ‘poster boy’ cases of the 970 listed above account for just 1% of the total cases, though in terms of value they are considerably higher. In terms of time taken, the 180-day period is seldom followed, and in fact the National Company Law Appellate Tribunal (NCLAT) and the Insolvency and Bankruptcy Board of India (IBBI) have had very harsh things to say about the inordinate and unacceptable delays.

Last but not the least, in terms of jobs lost and recovered, the figures are difficult to arrive at, but estimates are that about 1 million jobs have been lost due to the closure of companies. So, in a nutshell, anecdotally, the Code has substantially failed in all the objectives it had set out for itself—to revive companies, protect public money and preserve jobs.

Unsurprisingly, few ministers and officials talk about it these days, but surprisingly there is very little angst about the God that is failing.

Let us dive a bit deeper and analyse why “in spite of good intentions, the IBC has been the way to Hell”. In my view, the primary reason is the mindset of the lenders who are mainly government-owned banks, and in a few cases the private ones. These bankers have already written-off these loans and, hence, they are most reluctant to participate in a complex revival plan that calls for patience and often commitment of some working capital; in short, their attitude is “the quicker we kill this one and bury the corpse, the better”. The negative risk-averse attitude of banks is, in my view, the most important reason for the failure of the IBC to deliver.

The second reason is the lack of expertise amongst the resolution professionals to perform what is surely a very complex task of reviving a firm that has gone sick. Even for industry experts and management gurus, reviving sick companies is a challenge. And these gentlemen—RPs, as we call them—are mostly company secretaries with no or little knowledge of how companies run and make money, leave alone how to revive them; the result has been a disaster. There is very little trust between the existing owners and the RPs, and the CIRP period degenerates into a period when the ‘sick’ company is made sicker and sicker by the day.

It is pathetic to see how relatively good companies are ‘killed’ by the RPs who have no clue how to deal with the situation. It is said “war is too important a matter to be left to the generals”. Likewise, reviving companies is too important a matter to be left to the RPs whose only claim to fame has been to faithfully make agendas and minutes of Board meetings.

As if this was not enough to ‘get rid’ of a company, there is the legal system which makes sure that even if a company has some chance of revival, the inordinate delays make that almost impossible. The lawmakers, in their infinite wisdom, decided that 180 days was adequate to complete a resolution process and in extreme case it can be 270 days. But, in actual practice, it is found that the CIRP hardly ever ends in 180 days, and routinely goes beyond even 270 days. But who are we ‘lesser mortals’ to question the honourable judges who sit in the National Company Law Tribunal and routinely give adjournments?
The former Chief Justice, in his very first speech after joining the Rajya Sabha, lamented that the judicial system in India has collapsed. This is one more example of that collapse. No wonder, every investor who overflies India and lands in China or Vietnam has only one lament—the Indian judicial system can never enforce contracts. The IBC is a victim of this malaise.

Is there is a solution or do we philosophically accept this failure as one of the several malaises of a system that cannot implement its own laws? I am an optimist and believe that things can be done to achieve the mission that the IBC set for itself.

We need to get the lenders to commit to the revival process. The Ministry of Finance and the Reserve Bank of India (RBI) should haul up bank chiefs and tell them that their performance is going to be judged on their capacity to revive companies in the CIRP and bring back public money and jobs; in short “read the Riot Act to the Bank CEOs”. Secondly, we need to enormously strengthen the RP system; we could—where the loans involved are more than Rs 5 crore—have a team of RPs appointed which could include management consultants, technical experts etc.

Thirdly, we must get the Supreme Court to set very well-defined timelines to the judges who sit in the NCLT to decide issues within the 180-day time-frame set by law. We all were clamouring for a bankruptcy law for many years in seminar halls; we got one but have messed up with the implementation. Let us try and set it right.

The author is an investment banker and ex-convenor of the BJP Central Economic Cell. Views are personal.

Telangana Today
Sunday, July 11, 2021

Opinion: Whopping haircuts and IBC reforms

The scorecard in terms of recovery / resolution value of many of the big accounts is quite underwhelming

By Author B Sambamurthy | Published: 8th Jul 2021 12:35 am

The Insolvency and Bankruptcy Board of India (IBBI), no wolf warrior, disrupted the resolution and recovery regime for good. Judicial pronouncements validating IBC only sharpened its teeth and claws for good. It left the dilatory regimes like DRT (Debt Recovery Tribunal), BIFR (Board for Industrial and Financial Reconstruction), SARFASEI, and ARC (Asset Reconstruction Company) miles behind.

The resolution process under the Insolvency and Bankruptcy Code (IBC) is now counted in terms of days and not years or decades as earlier. It sent signals and not just noise that errant borrowers would lose divine right to continue to own and manage the very companies that they pushed into insolvency. Ease of doing business is another gain. Credit culture too shows signs of improvement. It is huge progress.

Recoveries Meek, Measly: Peanuts?

But the scorecard in terms of recovery/resolution value of many of the big accounts is underwhelming if not dismal. There are several major cases, which have suffered whopping haircuts of over 70% and in some cases, even 95%. Apparently, flabbergasted at the measly settlement of 5% in a recent case, the National Company Law Tribunal (NCLT) while approving, dismissively characterised it as peanuts.

Reacting to these steep haircuts, Harsh Goenka in a recent statement, said “hard earned public money being stolen as companies’ promoters stash away money on the side”. Coming as it does from an eminent businessman, this may be ignored at lenders/government peril.

These huge haircuts leave a jarring note among the public, small borrowers and depositors. The top 15 accounts that were resolved under the IBC involved a debt of nearly Rs 5.1 lakh crore and were settled by the NCLT for a meagre Rs 1.8 lakh crore. Thus banks, financial and operational creditors lost a whopping Rs 3.3 lakh crore. The down payment is hardly 10-15% of the resolved value, often equivalent to cash sitting in the company and the rest of the settled money is payable only after several years through fresh IOUs. One is not sure whether these massive haircuts were envisaged by the committee that recommended the IBC legislation.

Facts, Truth and Valuations: Bugbear of IBC

Valuation by the IBBI-appointed valuers is the (safe) reference point for accepting the bid prices by prospective buyers. But in many cases, these valuations are many times much lower than the value of assets certified by defaulting company auditors nearer to the insolvency date. Valuation by the company’s auditor is higher, ranging from two times and in some cases 2/10 times.

In oft-quoted big recent case, the difference in valuation is almost 13 times. The IBBI-appointed valuers certify values under Fair Value method and auditors of companies also certify values as True and Fair with some caveats. It is accepted that valuation varies from scenario to scenario and context. But that does not explain such low valuation by IBBI valuers.

One does not know for certain whether bid prices are ‘dirty’ or valuations are ‘dirty’ or price discovery is not effective and efficient. The gulf between these valuations may vitiate the IBC process and should not leave scope for misuse. The IBBI needs to address this, including process and models.

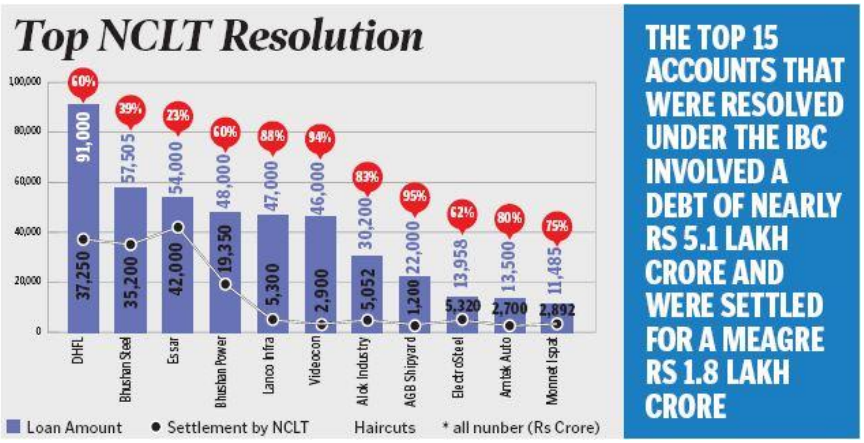
Trace Funds Quickly

If the assets are gold plated, as is widely believed in many cases and funds siphoned off, it is imperative that these siphoned off funds are recovered early and restored to the lenders. In a recent case of ransom payment for a cyber attack on a US gas supply company, the FBI traced and blocked the money, which was routed through over 20 entities globally to a digital wallet in a matter of few days.

Stress Not Asymptomatic

A non-performing asset (NPA) is an interplay of business stress and financial stress, and these are not asymptomatic, at least to the directors and auditors. Badly run companies have been hiding losses (NPA) behind new borrowings and carrying on business year after year and only piling up losses and pushing the company into inevitable insolvency. The IBC terms this as wrongful trading (Sec 66), which the directors are obligated to know. This law slaps liability on directors and others if they do not take action to halt such wrongful trading and minimise losses to the creditors.

The enforcement of these provisions needs to improve so that huge haircuts may be mitigated. Fail early and fail small is a useful business strategy and helps cut losses, both for businesses and lenders.



Capacity Building: IBBI 2.0

Resolution Professionals, Valuers, Committee of Creditors, NCLT, IBBI and other stakeholders are new to the game. Many of them have no adequate experience in handling valuation and resolution of enterprises/conglomerates involving tens of thousands of crores, and that too a complex web of corporate networks.

It is not known how many of them earlier handled cases involving even hundreds of crores, leave alone tens of thousands of crores. The size and complexity of these accounts would be overwhelming for many of these functionaries. As such, it is not difficult to game the system. This needs urgent and massive capacity building across the entire ecosystem.

Separating victims from villains is another exercise. Goenka's lament is a wake-up call to review IBC afresh and plug the loopholes without delay. Besides mitigating losses, this would put a stop to de-motivating genuine and disciplined risk-takers and entrepreneurs.

Way Forward

• Enforce wrongful trading rules in time and inculcate a culture of Fail Small and Fail Early. This helps in early recognition of irreversible business stress and NPAs and thus minimises losses to all stakeholders. The important lesson is 'DELAY is DECAY'.

• Revisit valuation process and valuation models to get realisable value. IBBI needs to orchestrate dialogue between valuers and borrowers' auditors in the presence of COC to get a true if not factual valuation. Double/Triple blind valuations can mitigate subjectivity.

• Haircuts, in many cases, hover around $1-6 billion and stressed asset market is over $150 billion. This is global scale. It is imperative that all the functionaries have very high degree of skill and capabilities. Capacity building across the entire ecosystem of resolution framework brooks no delay. Create a global market for price discovery and participation.

• Given the huge stakes, one may not be faulted to assume that various IBC functionaries are vulnerable to sabre-rattling. IBBI needs to build some guard rails, checks and balances to ensure a high degree of integrity and skills so that commercial decisions are of high quality. Auction models may be changed for better price discovery and ensuring confidentiality of valuations.

• Case studies offer useful lessons to all stakeholders — to lenders on better underwriting and monitoring practices, to regulators on supervisory practices and forbearance policies and to the government in the case of PSU banks on advisories for lending.

These measures, if well implemented, can bring down the haircuts by at least 25%, which may translate to about Rs 1 lakh crore.

Heard long ago we have only sick industries but not sick promoters. Does it hold true in the IBC regime as well? Does this process produce IBC billionaires? NPAs are inevitable (maybe under 2%), but 70%+ haircuts are not.

(The author is former Director, Institute for Development and Research in Banking Technology)

BEFORE THE RBI's COMMITTEE ON FUNCTIONING OF ASSET RECONSTRUCTION COMPANIES - ARCs

ALL INDIA BANK EMPLOYEES' ASSOCIATION

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- **Our suggestions**

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AIBEA/GS/2021/RBI/ARC **30th May, 2021**

To
Sri. Sudharshan Sen
(Former Executive Director – RBI)
Chairman of the Committee on
Functioning of Assets Reconstruction Companies
C/o. Reserve Bank of India
Mumbai.

Sir,

Views and suggestions on Assets Reconstruction Companies

We introduce ourselves - **All India Bank Employees' Association (AIBEA)** - as the oldest and largest trade union of bank employees, representing about half a million members working in Public Sector, Private Sector, Foreign Banks, Regional Rural Banks and Co-operative Banks.

We refer to the Press releases dated 19th April, 2021 and 28th April, 2021, wherein a committee has been formed under your Chairmanship to undertake a comprehensive review of the working of Assets Reconstruction Companies (ARCs) on the following terms of reference:

(i) Review of existing legal and regulatory framework applicable to ARCs and recommend measures to improve efficacy of ARCs;

(ii) Review of role of ARCs in resolution of stressed assets including under Insolvency & Bankruptcy Code (IBC), 2016;

(iii) Suggestions for improving liquidity in and trading of security receipts;

(iv) Review of business models of the ARCs;

(v) Any other matter relevant to the functioning, transparency and governance of ARCs.

In the above regard, we give the following views and suggestions on the framework and functioning of the Assets Reconstruction Companies (ARCs).

Bad Loan – not a new issue:

Bank Loan Defaults & Recovery measures including framing of legislations to recover the bad loans, have been the topics of discussions for last 2 decades for various stake holders. RBI, as a regulator, has been in the forefront to design and prescribe various measures. In fact, RBI from time-to-time, designed and introduced various debt restructuring schemes, to revive the bad loans lying with the Banks, besides imposing various regulatory measures to curb the slippage of quality of assets and recover bad loans. It also introduced regulatory measures for ARC and allowed the ARC to work as an initiative and tool for recovering NPAs.

The attempt was always to hide the NPAs:

All the Measures of RBI in the form of various debt structuring schemes, transfer/sale of bad assets to ARC, Government introducing IBC Code and its inbuilt weaknesses, not prescribing effective measures to handle the Prudentially Written-off Bad loans and other so called recovery measures have not resulted in any real effective recovery of bad debts. But, all of them enabled the Banks to hide and write-off debts permanently at the cost of stakeholders.

Bad Loans and Bad Politics:

Banks' NPAs are being highlighted in high pitch, along with formulation of new legislations and innovative recovery measures and painting a picture as if all these will enable recovery. NPAs and huge Bad loans have also become a political issue in the sense that the present NDA Government has been constantly blaming the previous UPA Government for their 'phone banking' as a cause for the high level of NPAs in Banks. It is more a political ball game than any earnest attempt to recover the bad loans.

Economic boom Vs Credit boom Vs Bad Loan boom:

One of the reasons for abnormal rise in bad loans is that during last decade, the RBI and the Government pushed the PSBs to aggressively lend towards infra, power, steel and textile projects even by relaxing the norms that enabled the corporate to leverage large borrowings but with no matching cashflows/capacity to repay.

Government wanted economic growth at a faster pace and results was increase in bank credit and increase in bad loans too.

	Total Loans / Advances	Bad loans
2004-05	**9 lac cr**	**48,000 cr**
2005-06	14 lac cr	41,400 cr
2006-07	15,000 cr	39,000 cr
2007-08	17 lac cr	39,000 cr
2008-09	23 lac cr	45,000 cr
2009-10	27 lac cr	60,000 cr
2010-11	33 lac cr	74,600 cr
2011-12	39 lac cr	117,300 cr
2012-13	45 lac cr	165,000 cr
2013-14	**52 lac cr**	**216,700 cr**

The sudden expansion in bank credit during the above decade from just Rs. 9 lac crores in 2004 to Rs. 52 lac crores in 2014, i.e., an increase of 477%, explains policy of the then Government to encash on the global economic boom prevailing at that time and achieve as much growth rate as possible. RBI also claimed this as a big success story at that time.

Subsequently, the same RBI conducted Asset Quality Review (AQR) to identify the corporate accounts with large borrowings in the above sectors and to categorise those, who were unable to service the loans, as NPA etc.

It can be said that RBI is also, in a big way, responsible for the present NPA Mess in Banks.

Govt. encashed economic boom - Corporates encashed credit boom:

Record indicates that almost all the leading corporate with the well-known reputed promoters & owners are today NPA borrowers with huge Bank exposure to them. The corporate NPA is very high with Securities of inflated values and with no Personal guarantee of Promoters.

Now, with the introduction of IBC code and NCLAT the issue of recovery of bad loans is still eluding the Banks, whereas large amounts of profits earned by the Banks are locked up as Provisions. Even NPA accounts classified as financial Frauds on the Banks, the recovery is not forthcoming within all the available recovery laws and measures.

NPA is the by-product of the boom – what is required is surgery – cough syrup will not do:

The real issue is creation of NPA - mainly by corporate that too by willful and deliberate corporate delinquents. Instead of addressing this issue by stringent legal measures against them, mere building up of recovery measures that too through loose measures will not help the Banks. It is bound to be a cosmetic exercise only.

ARC – tool or hole?

The ARCs are in existence since 2002, for last more than 20 years and they are already regulated by RBI with certain measures. ARC had already been tried as one of the important tools, to enable recovery. But the defaulters know the holes in the system of ARC under which they escape.

What ARC can do which a Bank cannot do:

That is why the results have not been good so far. This may be because of non-availability of secondary market for bad debts owned by the banks and transferred to ARC. ARCs also depend very much on the same recovery laws and recovery forums through which the Banks have already tried for recovery in vain.

In fact, through transfer of bed debts to ARC against the Security Receipts issued by the Trust holding the Bad debts, Banks have been able to camouflage their balance sheets for some time and thereafter finally write-off the bad debts with very meager recovery.

It is observed that ARC enables creation of false financial assets and floating of new instruments with facility for trading etc., that are not suitable for country like India.

Why one more ARC?

Now, government has decided to float new National Asset Reconstruction Company Ltd - NARCL to deal with accumulated NPAs of PSBs. **This is what is infamously called the BAD BANK**. Hence, RBI is roped in to revisit the ARC's model of business, capital requirements and other regulatory measures to relax the same to give enough elbow rooms for ARCs to function. With FDI allowed to 100% in ARCs, government wants further relaxation.

In the above background, RBI's Committee will decide the new regulatory measures for ARCs.

Looking to ARCs' track record, recovery performances, and the loss borne by the Banks on bad debts handled by ARCs, we are very clear that **ARCs are not required but stringent laws should be enacted to recover all willful defaults at a relatively quick-time**.

Why ARCs at all:

Asset Reconstruction Companies are an offshoot of spurt in bad loans in the Banks and the inability of Banks to recover these loans or provide for them from out of their earnings. Thus, the crux of the issue is increasing bad loans and the need to recover these loans through effective means. ARC, like other similar mechanisms, is only a remedial attempt and hence is not the panacea for the main problem of huge bad loans in Banks.

Bad loans are the offshoot of the liberalization of banking regulations and the process of deregulation in Banks.

- **If Banks are regulated well, incidence of bad loans will be minimal.**
- **If bad loans are at minimum level in the Banks, the provisions towards the same would be manageable.**
- **If provisions are within manageable limits, profits of the Banks would not be adversely impacted.**
- **If profits of the Banks are not adversely impacted, there would be no need to sell the bad loans and thus,**

there would be no need for setting up Asset Reconstruction Companies.

Hence the priority attention should be to recover the bad loans than to allow more and more bad loans to be accumulated in the Balance Sheets and then try to trim the Balance Sheets with the help of ARCs. Bulk of the bad loans are attributable to corporates and private companies and stringent actions are to be taken against their misconduct. In a situation where creation of a bad loan has become an exquisite art, these **ARCs will work only as a temporary laundry** to whitewash the Balance Sheets.

Burgeoning Bad Loans – At a glance:

As on 31st March	Gross NPA of PSBs - Rs. in Crores
1997	47,300
1998	50,815
1999	58,554
2000	60,408
2001	63,883
2002	54,673
2003	54,090
2004 - UPA I	51,537
2005	48,399
2006	41,358
2007	38,968
2008	39,030
2009 - UPA II	44,957
2010	59,927
2011	74,664
2012	1,17,000
2013	1,64,461
2014 – NDA I	2,16,739
2015	2,78,877
2016	5,39,955
2017	6,84,733
2018	8,95,600
2019 - NDA II	7,39,541
2020	6,78,318

Provisions for Bad Loans from the profits earned by the Banks:

Year	Amount transferred from Operating Profits as provisions for Bad Loans/ NPAs.
2009	11,121 Cr.
2010	18,036 Cr.
2011	29,830 Cr.
2012	38,177 Cr.
2013	43,102 Cr.
2014	63,389 Cr.
2015	76,837 Cr.
2016	1,60,303 Cr.
2017	1,68,469 Cr.
2018	2,70,953 Cr.
2019	2,29,852 Cr.

Actual amount Written-off towards Bad Loans:

Year	Amount Written Off
2001	5,555 cr
2002	6,428 cr
2003	9,448 cr
2004	11,308 cr
2005	8,048 cr
2006	8,799 cr
2007	9,189 cr
2008	8,019 cr
2009	6,966 cr
2010	11,185 cr
2011	17,794 cr
2012	15,551 cr
2013	27,013 cr
2014	32,595 cr
2015	49,976 cr
2016	59,400 cr
2017	81,684 cr
2018	1,28,230 cr
2019	1,83,391 cr

See where the Profits go:

Year	Gross Profit Before Provisions for Bad Loans	Provisions for Bad Loans and contingencies	Published Net Profit
2008-09	45,494 Cr.	11,121 Cr.	34,373 Cr.
2009-10	57,293 Cr.	18,036 Cr.	39,257 Cr.
2010-11	74,731 Cr.	29,830 Cr.	44,901 Cr.
2011-12	87,691 Cr.	38,177 Cr.	49,514 Cr.
2012-13	93,684 Cr.	43,102 Cr.	50,582 Cr.
2013-14	1,27,652 Cr.	63,389 Cr.	37,018 Cr.
2014-15	1,37,817 Cr.	76,837 Cr.	37,540 Cr.
2015-16	1,36,926 Cr.	1,60,303 Cr.	- 17993 Cr.
2016-17	1,58,982 Cr.	1,68,469 Cr.	- 11,388 Cr.
2017-18	1,55,689 Cr.	2,41,060 Cr.	- 85,371 Cr.
2018-19	1,49,804 Cr	2,16,412 Cr.	- 66,608 Cr.
2019-20	1,74,336 Cr	2,00,353 Cr.	- 26,015 Cr.

Background of ARCs:

The origin and concept of Assets Reconstruction Companies (ARCs) came into being due to the problems that the banks were facing on the loans that have been sanctioned but went bad and not recoverable.

Even though the issue concerning the bad loans started 30 years ago, the concept of Assets Reconstruction Companies (ARCs) found its origin in the recommendations of the Narasimham Committee (1991) as an approach and methodology to solve the problem of bad loans.

The objective was to cleanse the Balance Sheets as the Banks could not concentrate much on the recovery of these huge bad loans and

the idea of ARCs was to purchase the bad loans (along with the assets under lien to the banks) at a discount and thereafter to realise those assets.

Based on this approach, it was supposed to enable the Banks to clear the bad loans from their Balance Sheets, even though they may have to write-off a portion of the loans' outstanding since they have been sold to ARCs on discount.

It was supposed that the write-off portion of the loans was to be minimal and the banks were supposed to recover substantial portion of the outstanding balance by selling the loans to ARCs.

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, gave a legal status to the Assets Reconstruction Companies (ARCs).

Functioning of ARCs:

The Assets Reconstruction Companies (ARCs) were supposed to buy the bad loans at a discount from the banks.

ARCs buy bad loans by paying cash upfront at 15% of the agreed and discounted amount of the dues and for the balance of 85% of that agreed amount, Security Receipts (SRs) would be issued.

On realization of the assets or after the recovery, banks get the portion covered by the Security Receipts (SRs).

Banks will be treating the portion covered under the Security Receipts as investments with the period of redemption upto a period of 8 years

(or in special cases more than 8 years) as per regulatory requirements.

The banks will have to make provisions for the value covered under the Security Receipts (SRs) based on the Net Asset Value (NAV) arrived at by the ARCs. The provisions shall be normally about 20% of the book value of the Security Receipts as per the regulatory requirements.

The book-value of the Security Receipts - SRs issued in the past 5 years or more, backed by NPAs sold by State Bank of India was Rs. 8,761.31 Crores, UCO Bank was Rs.1,486.86 Crores, Indian Bank was Rs.2,336.72 Crores and Punjab National Bank was Rs.1,509.10 Crores, as on 31st March, 2020, for which provisions made by the above 4 banks were to the tune of Rs. 2,803.70 Crores, which is nearly 20% of the book-value.

It is on record that the 27 Assets Reconstruction Companies (ARCs) issued Security Receipts (SRs) to various banks to the total cumulative value of more than Rs.1 lakh Crores.

With the pandemic raging since last more than a year, the realisable value of the underlying assets and the cash flows to the banks backed up by the SRs are likely to be impacted in a negative way as the buyer interest seems to be waning. Hence, recovery and redemption of SRs will be impacted in the near to medium term and the NAV of the Security Receipts will soon be ending up in negative territory.

AIBEA's viewpoints on Assets Reconstruction Companies (ARCs):

AIBEA submitted its viewpoints before the Narasimham Committee about the ARCs. We have opined that the recommendations of the Narasimham Committee suggesting for foundation of ARCs is nothing but an effort to whitewash the Bank Balance Sheets. We have highlighted that the accountability for huge NPAs should be fixed and ARCs should not be a proxy to shield the big sharks, who ate away the banks' money, borrowed in the form of loans. We further stated that ARC is not a panacea for NPA reduction and instead we suggested that the legal system should be strengthened, stringent laws should be enacted to recover the bad loans and unless it is done, prescribing ARCs would be self-defeating.

Problems of Bad Loans, whether solved by ARCs?

We would like to state and submit that nearly after 2 decades of its origin, the ARCs have not solved the problem of bad loans in the banks. The problems relating to the bad loans of the banking sector, in general and public sector banks, in particular, have been highlighted by our Organisation since last 3 decades and more.

The bad loans, euphemistically called Non-Performing Assets (NPAs) constitute the bane of Indian Banking system.

We would like to point out that the credit appraisal system and monitoring of the large borrowal accounts have been, by and large, tardy, casual, perfunctory and treated with a sense of indifference in almost all the banks.

While proper skills for credit appraisal is yet to be developed, not much of monitoring is being made especially at the post-sanction and post-release stages. Attempts at recovery are not that serious at different levels of the bank managements.

Accountability is a consistent casualty:

While accountability is being enforced in respect of small loans viz., agriculture or otherwise, for the loans that have been sanctioned at the Credit Appraisal Committees/Management Committees of Boards of the Banks, the accountability and responsibility seem lesser.

Make willful default a criminal offence:

We have been demanding of the successive Governments to make willful bank loan default a criminal offence. As of now, default of bank loans is being tried under Civil Procedure Code. In the name of secrecy, even their names are not being published. Reserve Bank of India seems to be protecting these defaulters from being publicly defamed by releasing the list. All India Bank Employees' Association has published the list of such loan defaulters on number of occasions but it is high time that RBI should come forward to periodically publish the names of willful bank loan defaulters. Government should also enable some directives and provisions for RBI to do so.

It is also an irony that while the loan of a company gets defaulted due to business failure, mismanagement, diversion of funds or otherwise, the Directors, owners and promotors of the Company don't go bankrupt, rather they get more wealthy**.**

Company is sick but owner is healthy:

We would like to highlight the following facts and data as far as the issue of bad loans is concerned.

GROSS NPA OF PUBLIC SECTOR BANKS

(Rs. In crores)

		2018	2019	2020
1	Allahabad Bank	26,563	28,705	27,847
2	Andhra Bank	28,124	28,974	28,709
3	Bank of Baroda	56,480	48,233	69,381
4	Bank of India	62,328	60,661	61,550
5	Bank of Maharashtra	18,433	15,324	12,152
6	Canara Bank	47,468	39,224	37,041
7	Central Bank of India	38,131	32,356	32,589
8	Corporation Bank	22,213	20,724	19,399
9	Dena Bank	16,361	12,768	Merged
10	Indian Bank	11,990	13,353	14,151
11	Indian Overseas Bank	38,180	33,398	19,913
12	Oriental Bk of Commerce	26,134	21,717	21,751
13	Punjab & Sind Bank	7,802	8,606	8,875
14	Punjab National Bank	86,620	78,473	73,479
15	Syndicate Bank	25,759	24,680	24,086
16	UCO Bank	30,550	29,888	19,282
17	Union Bank of India	49,370	48,729	49,085
18	United Bank of India	16,552	12,053	9,935
19	Vijaya Bank	7,526	8,923	Merged
20	State Bank of India	223,427	172,750	149,092
		8,40,011	**7,39,539**	**6,78,317**

Unending tale of bad loans year after year:

Fresh Bad Loans In 10 years

Rs. 21,01,270 crores in Public Sector Banks

Fresh/new NPAs during 2009-10	44,818 Crores
Fresh/new NPAs during 2010-11	58,226 Crores
Fresh/new NPAs during 2011-12	92,808 Crores
Fresh/new NPAs during 2012-13	1,19,613 Crores
Fresh/new NPAs during 2013-14	1,63,546 Crores
Fresh/new NPAs during 2014-15	1,92,034 Crores
Fresh/new NPAs during 2015-16	3,85,962 Crores
Fresh/new NPAs during 2016-17	3,27,500 Crores
Fresh/new NPAs during 2017-18	5,00,000 Crores
Fresh/New NPAs during 2018-19	2,10,270 Crores

Systemic or Systematic – All Schemes failed:

During these years, various recovery mechanisms and schemes were in operation like

- **Debt Recovery Tribunal (DRT),**
- **SARFAESI Act,**
- **One Time Settlement Scheme (OTS),**
- **Corporate Debt Restructuring Scheme (CDR),**
- **Strategic Debt Restructuring (SDR),**
- **Debt Conversion to Equity Scheme,**
- **Scheme for Sustainable Structuring of Stressed Assets (S4A),**
- **Flexible Structuring of Long-Term Loans (5/25),**
- **Corrective Action Plan (CAP),**
- **Insolvency and Bankruptcy Code (IBC).**

All these Schemes were brought and devised by the Government and the RBI claiming to expedite recovery of loans. But as the figures reveal, the recovery through these schemes were most unsatisfactory and the bad loans continued to increase every year.

One has to come to conclusion whether the failure or ineffectiveness of these Schemes were systemic or systematic.

But fact remains that bad loans were increasing despite all these schemes.

What is the guarantee that when all the above Schemes have not helped the Banks to recover the huge bad loans, particularly from the corporate borrowers, the proposed BAD BANK or another Asset Reconstruction Company will help to solve the problem of bulging bad loans in the Banks?

Insolvency and Bankruptcy Code (IBC) - Another failure:

In 2016, with all fanfare, the Government brought the IBC – Insolvency and Bankruptcy Code and claimed that it will do miracles to recover the bad loans. So, all Schemes were relegated and this scheme came into being.

As per the Economic Survey, since the inception of IBC in December, 2016, 4117 applications have been admitted till the end of December, 2020.

As per the recent Report on Financial Stability, the IBC scheme has not produced any miracles.

RESOLUTIONS UNDER INSOLVANCY AND BANKRUPTCY CODE:

Loan given to	Loan given by Banks	Resolved and settled at	Loss to the Bank	Concession & haircut
Essar	54,000 cr	42,000 cr	12,000 cr	23 %
Bhushan Steel	57,505 cr	35,571 cr	21,934 cr	38 %
Jyothi Structures	8,179 cr	3,691 cr	4,488 cr	55 %
Electrosteel Steels	13,958 cr	5,320 cr	8,638 cr	62 %
Monnet Ispat	11,478 cr	2,892 cr	8,586 cr	75 %
Alok Industry	30,200 cr	5,052 cr	25,148 cr	83 %
In 6 accounts As above	1,75,870 cr	94,526 cr	80,794 cr	46 %

Claims, Recovery and Haircut:

Through IBC, **out of the total claim amount of Rs.2,49,548 Crores**, an amount of **Rs.1,38,732 Crores (55.60%) alone could be recovered** while for the balance amount of **Rs.1,10,816 Crores (44.40%), the banks had to undergo "hair-cut"**. In other words, an amount of **Rs.1,10,816 Crores stood written-off** from the banks' books of accounts from out of the profits earned/provisions made.

In the name of Insolvency and Bankruptcy Code, Corporate defaulters are relieved of their huge loan obligations to the Banks and these bad loans are sold to other Corporates for cheap rates. Thus, Banks are the losers and Corporates are the gainers in the process.

Banking sector has entered a danger zone with non-stop increase in bad loans' portfolio. Non-Performing Assets in the Banks have reached alarming proportions. Government has also admitted in a written reply to a question raised in the Parliament that there are 9063 Willful Defaulters, who together owe Rs. 1,10,050 Crores to the Banks.

Even in the past also, there have been velvety treatments to the defaulters – One Time Settlements (OTS), interest waivers, Compromise Settlements, Rescheduling, Restructuring, viz., Corporate Debt Restructuring (CDR), Strategic Debt Restructuring (SDR), Scheme for Sustainable Structuring of Stressed Assets (S4A) huge provisioning, Write-offs, etc., to quote a few. For the small borrowers, farmers, students, etc., the recovery laws are stringent and they are being unduly harassed. For the big borrowers, it is concessions all the way.

Latest in the list is the Insolvency and Bankruptcy Code (IBC). The Government has brought this as a mechanism to deal with bad loans.

Recovery Vs Resolution?

From AIBEA, we demand recovery of bad loans. But unfortunately, the Government wants to resolve the bad loans. **IBC is a resolution module and not a recovery mode.**

Security Receipts (SRs) as tradable derivative instruments:

As far as the ARCs are concerned, the loans are bought from the banks at a discount and for over 85% of the agreed amount, Security Receipts are issued to the banks. A couple of years ago, these security receipts have been allowed by the Government to be traded in the security market as derivative instruments. We would like to state and submit that these kinds of derivative instruments that were invented and introduced in the security markets led to the great financial meltdown and turmoil in the Western and Developed Economies in 2008.

Therefore, we are of the opinion that such derivative instruments should not be introduced in the market at all.

The prime concern and focus should be to streamline the mechanism of sanction of corporate loans, monitoring post-sanction of loans and ensure recovery at the earliest stage of account showing signs of distress.

Our viewpoints:

1. The authorities or the Committees that have sanctioned loans must not have the powers to write-off the same. A central authority shall have to be formed by a group of retired bankers with credit knowledge and integrity under the auspices of Central Vigilance Commission to vet the proposals for write-off and compromise.

2. All write-off proposals beyond a particular limit should be disposed off by the Central Authority constituted specifically for the purpose and "Compromise" proposals should be screened at the highest levels as by present-day experiences, these so-called "Compromise proposals" are nothing but camouflage and cover-up of collusive acts.

3. Willful Bank loan default should be treated as a criminal offence punishable under law of the land and bank loan defaulters should not be allowed to hold public office.

4. Personal guarantees/assets of the borrowers including Directors of the corporate sector should be attachable for recovery of bank loan dues as has been held by the Supreme Court of India.

5. Periodically RBI should publish the names of willful bank loan defaulters of Rs.1 Crore and above.

6. Effective and stringent laws should be enacted for recovery of bad loans.

7. The banks should be banned from lending to the company or group of companies, which defaulted and whose account has become a Non-Performing Asset in a particular bank. The loans of such groups in other banks should also be treated as NPA and should be recalled by the banks. This, we feel, would enable speedy recovery of willfully defaulted corporate loans.

8. The company or group of companies should not also be allowed to participate in the auction for purchase of assets of other

defaulting company or group of companies that are brought through SARFAESI or ARCs.

9. Debt Recovery Tribunals (DRTs) should be given more powers for recovery of loans and the number of DRTs should be increased manifold. The Presiding Officers to DRTs should be appointed immediately and on a war-footing as many of the existing DRTs do not have Presiding Officers to decide upon the pending cases.

10. The IBC is for resolution of bad loans and not a recovery model and hence should be scrapped at once.

11. In case of ARCs, as far as the Public Sector Banks are concerned, the amount of discount with which a bad loan is sold, the discounted amount should be replenished by the Government of India as they are the primary owners of these banks.

12. While ARCs are purchasing the loans with the assets on lien on a negotiated, discounted value, from out of the profits earned by sale or realization of the value of the Assets or recovery by the ARC, the discounted amount should be ploughed back to those banks.

In our considered opinion, the models of Assets Reconstruction Companies (ARCs) and Insolvency and Bankruptcy Code (IBC) have not reduced the burden on the banks as far as bad loans are concerned.

On the contrary, the willful defaulters have been let off the hook through the loopholes found in the system. The bad loans have become a systemic problem and hence, in order to resolve the bad loans, stringent measures should be taken by the government. The Banks are bleeding because of the problem of bad loans and huge write-offs and provisioning are being made year after year from out of the operating profits.

Therefore, we do not think that review of the functioning of the ARCs or that of the IBC would in any way give relief to the banks unless the above suggestions are taken seriously by the Government and if the bad loans are recovered, the banks would run on their own steam and there would not be any necessity of either disinvestment or infusing of capital from the Government of India.

According to Sec. 29A of the Insolvency and Bankruptcy Code, an insolvent, a willful defaulter or a person who was a promoter or was in the management of the corporate debtor, among other conditions, would not be allowed to bid for the concerned insolvent company. This should also be incorporated under SARFAESI Act, 2002. Even though RBI has advised ARCs to stick to the principles of Sec.29A of the IBC and not to sell the loans to promoters even outside the bankruptcy codes. This should be legalized by incorporating the provisions of Sec. 29A of IBC as one of the enabling provisions of SARFAESI Act.

In our considered opinion, the Security Receipts (SRs) should not be treated as a derivative instrument and while suggestions have been invited for improving the liquidity and trading of security receipts, we

feel that these Security Receipts should not be treated as derivative instruments.

As we have stated elsewhere in these submissions, it was due to introduction and trading of such kind of derivative instruments, in United States of America, in Europe and in other Developed Economies, financial sector went on a turmoil in 2008, incurring colossal losses and failure of many financial institutions including renowned and large banks. Therefore, trading in Security Receipts (SRs) issued by ARCs should be banned and Security Receipts (SRs) issued by ARCs should not be treated as tradable derivative instruments.

In view of the above, we have serious reservations about the effectiveness of ARCs as a tool to recover the bad loans of the Banks. However, it is also a reality that the huge bad loans of the Banks are a serious drag on the Balance Sheets of the Banks and hence a way out has to be worked out both to recover the bad loans as well as to provide some back up to the Banks to deal with this vexations issue of bad loan burden.

Accordingly, until the Government would gather the political will and muscle to be tough with the defaulters, these devices will have to be depended upon such as ARCs as an interim measure to handle the bad loans.

Keeping all these in view, we submit the following suggestions regarding Assets Reconstruction Companies for the consideration of the RBI's Committee.

Our suggestions:

1) **Assets Reconstruction Companies (ARCs) shall have to be formed by the group of public sector banks and their management should be handled by the experts in credit and recovery.**

2) **Foreign Institutional Investors (FIIs) and other private agencies should not be allowed to run the Assets Reconstruction Companies (ARCs) as their motive is only profit and thereby the Public Sector Banks would be left in the lurch with purchase of loans at a steep discount and the realization of assets for ARCs would be much more.**

3) **No investments requirements for ARC or permitting limited investments should be changed. ARC Promoter has to bring in sizable capital to show their commitment in the business.**

4) **The present practice of Security Receipts of ARC being subscribed by NPA selling Banks need to be modified.**

5) **The guidelines for Non-Institutional Investors to invest in Security Receipts of ARC should be framed in line with the proposal in the Union Budget of 2016-17.**

6) **ARC Management fee has to be in-line with market trends and the same should be negotiated by Banks.**

7) **The present system of sharing recovery on Water Fall structure has to change. At present, ARC recovers first its legal and resolution expenses and then Management fees and thereafter the recovery is shared in the agreed ratios. This need to be changed to proportionate sharing of all the items so as to keep the ARC driving recovery.**

8) **With the Bank normally providing up to 100% of Bad debts within 4 years of the loan identified as NPA, the NPA selling Bank has to transparently place all the details pertaining to transfer of Bad debts to ARC with its efforts so far to recover the bad debts and the justification for selling it to ARC with reasons and expected timeline for recovery.**

9) **Minimum owned funds of ARC should be increased substantially.**

10) **Disclosures by ARC in their financial statements/ Balance sheet and also by NPA selling banks in their Balance sheet should include more information with regard to as on date status of recovery measures, likely erosion in value of securities due to stress on account, delay in resolution with passage of time and further proposed steps.**

11) **Internal Audit of ARC should be carried by firms not connected to promoters/owners and or to the connected parties. They should not be connected to the NPA selling Banks and their parties.**

12) **Information on quarterly reports from ARC to RBI should be reviewed to include vital points like the delay in resolution of assets and proposed steps to force resolution etc.**

13) **Approval of RBI for change in management of ARC and its location should continue as it is but the approval process should seek more value-added inputs to decide any request on merits.**

14) **Primary goal for ARC and their functioning need to be relooked and redefined to enable to have focus on easier resolution of NPAs within the limited timeline. T**

15) **ARCs should not be allowed to undertake activities other than managing Bad Loans/NPAs.**

16) **Eligibility criteria for ARC should include that no Director of ARC is a bank loan defaulter and/or connected to any of the bank loan defaulting companies. Number of sponsored directors from promoters and its subsidiaries should be limited.**

17) **ARCs' permissible business items norms and areas should not be diluted on the premise of that ARCs were short of secondary buyers.**

18) **More stricter norms for valuation of assets including the test on stressed conditions and transparent disclosures of such valuation prior to transfer of assets to ARC to stake holders need to be ensured.**

19) **Buy back of Restructured assets by banks from ARC should be on stricter norms and purely on merits based on various factors.**

20) **Redesigning the NPA auctions to bring in equitable share of risks between Banks and NPA buyers is required.**

At the end, we wish to reiterate that in as much as our experiences of ARCs in the last two decades are not satisfactory, ARCs are not likely to produce any major result to expedite the recovery of bad loans. Recovery Performance of ARC, measured in-terms of Security Receipts issued, shows a sharp decline in recent years, especially on NPAs originated after 2014. So, Concept of ARC and its role in the emerging scenario will be negligible in the future. The very scope of ARC would also be resolution and not recovery. **What Banks need today is stringent measures against Corporate defaulters and recovery of loans.**

We are hopeful and confident that our suggestions and viewpoints would be taken in right earnest for consideration by the Committee. We shall be further happy to interact, explain and elucidate our views if the Committee so deems necessary.

Yours faithfully,

C.H. VENKATACHALAM
GENERAL SECRETARY

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Loans Written Off by Banks of Big Defaulters (Rs100 crore and above)

Name of Bank	Period	Loan Written Off	Recovery in %	Recovered Amount
State Bank of India	FY2012-20	Rs1,23,432 crore	7%	Rs8,969 crore
Bank of Baroda	FY2012-20	Rs21,476.89 crore	4.91%	Rs1,056.53 crore
Bank of Maharashtra	FY2012-20	Rs7,402 crore	4%	Rs253.55 crore
Union Bank of India	FY2012-20	Rs26,072 crore	Not Shared	Not Shared
IDBI Bank*	FY2014-20	Rs45,693 crore	8%	Rs3,704 crore
Punjab National Bank	FY2017-20	Rs31,966 crore	22%	Rs7,027.94 crore
Indian Overseas Bank	FY2013-20	Rs41,392 crore	17%	Rs7,253 crore
UCO Bank	FY2012-20	Rs25,266 crore	7%	Rs1,702 crore
Indian Bank	FY2018-20	Rs4,792 crore	1%	Rs66 crore
Bank of India+	FY2012-20	Rs57,275 Crore	23%	Rs13,560 crore
	TOTAL	Rs3,84,767 crore		Rs43,592.02 crore

Top NCLT Resolution (Rs Crore) - More Losses than Recovery to Banks from Corporate NPA

Corporate Loan Given To	Loan Amount	Settlement by NCLT	Loss to Banks	Hair Cuts	Beneficiary
DHFL	91,000	37,250	53,750	60%	Piramal Group
Bhushan Steel	57,505	35,200	22,305	39%	Tata Steel
Essar	54,000	42,000	12,000	23%	Arcelor Mittal
Bhushan Power	48,000	19,350	28,650	60%	JSW Steel
Lanco Infra	47,000	5,300	41,700	88%	kalyan Group
Videocon	46,000	2,900	43,100	94%	Vedanta Group
Alok Industry	30,200	5,052	25,148	83%	RIL+JM Fin
ABG Shipyard	22,000	1,200	20,800	95%	Liquidation
ElectroSteel	13,958	5,320	8,638	62%	Vedanta Group
Amtek Auto	13,500	2,700	10,800	80%	DVIL
Monnet Ispat	11,485	2,892	8,593	75%	JSW Stell Aion
Jyothi Structure	8,179	3,692	4,487	55%	Sharad Sanghi+
Amount in Crore (Rs)	442,827	162,856	279,971	63%	

Source: News Articles, Please refer to offcial websites. Any mismatch is typo error. - @idesibanda (Newton)

NATIONALISED BANKS LOANS WRITE-OFF SUMMARY (All Amts in Rs crore)

BANK NAME	Last 8 Years			Last 4 Years			BIG Defaulters		
	Written Off Amt	Recovery	In %	Write Off Amt	Recovery	In %	8 yrs. w/off amt.	Recovery	In %
State Bank of India *	2,35,091	34,677	15%	1,79,245	26,891	15%	1,23,432	8,969	7%
Bank of Maharashtra*	15,361	2,219	14%	13,140	1,169	9%	7,100	250	4%
Bank of Baroda *	44,937	12,105	27%	38,451	10,653	27%	21,474	1,057	5%
Union Bank *	26,073	4,555	17%	20,928	3,272	16%	26,073	NA	NA
IDBI Bank*	45,693	3,704	8%	37,235	2,637	7%	18,158	NA	NA
Punjab National Bank*	61,741	15,762	25%	44,564	12,028	27%	31,966	7,028	22%
Indian Overseas Bank *	41,392	7,253	17%	34,061	4,748	14%	17,921	102	0.5%
Central Bank of India	21,989	1,923	9%	16,904	1,531	9%	17,240	1,206	7%
Canara Bank *	47,310	8,901	19%	39,320	6,058	15%	NA	NA	NA
UCO Bank	25,266	1,702	7%	21,571	1,608	7%	10,361	529	5%
Indian Bank *	10,249	2,183	21%	8,774	1,564	18%	4,792	66	1%
Bank of India *	57,275	13,560	23%	40,997	6,991	17%	NA	NA	NA
TOTAL	**6,32,377**	**1,08,544**	**17%**	**4,95,190**	**79,150**	**16%**	**2,78,517**	**19,207**	**7%**

** 8 Years and 4 years write off figures as per Annual Reports Published on respective bank websites*
Union Bank and IDBI Bank did not provide information about recovery from big defaulters
Bank of India and Canara Bank did not provide any information about write off and recovery of big defaulters.
PNB provided information about big defaulters only for four years.
Indian bank provided information about big defaulters only for three years.
Only State bank of India & Indian Overseas Bank provided names of big defaulters whose loans are written off

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