

# Insolvency and Bankruptcy Code (IBC) and Long-Term Bulk Lending in India\*

Jaimini Bhagwati

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# **Insolvency and Bankruptcy Code (IBC) and Long-Term Bulk Lending in India\***

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## Abstract

The paper examines the effectiveness of the 2016 Insolvency and Bankruptcy Act (IBC) as the most recent legislation to enable quicker resolution of disputes between borrowers and lenders thus encouraging higher volumes of long-term lending. The Sick Industrial Companies (Special Provisions) Act (SICA) and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI) were passed by parliament in 1985 and 2002, respectively. In practice, the mechanisms set up under these two Acts including Debt Recovery Tribunals (DRTs), took a long time, even decades to resolve cases involving bankruptcies and liquidation. The initial sections of the paper provide the context of long-term domestic credit in India and in other large economies, the relative size of the Indian equity market and investments made by institutional long-term investors such as insurance companies. The overall efficacy of the IBC is examined including whether the time taken to resolve disputes between lenders and borrowers has shortened significantly. The role of the Insolvency and Bankruptcy Board of India (IBBI), set up under the IBC, is reviewed as also that of Insolvency Professionals (IPs) and Committees of Creditors (CoCs). Between 2010-2019, the Reserve Bank of India modified its regulations several times to address difficulties faced by banks and other lenders. Despite the continuing efforts of financial sector regulators, it is taking longer than anticipated to arrive at IBC driven court judgements. Delayed court judgements have occasionally resulted from legal stratagems used by borrowers to avoid meeting their contractual obligations even as they resort to asset stripping. Vacancies on the benches of the National Company Law Tribunals (NCLTs) & National Company Law Appellate Tribunals (NCLATs)<sup>1</sup> and at times lack of domain knowledge have contributed to delays in resolutions of bankruptcies. Systemic delays in addressing large volume bankruptcies reduces the appetite for term lending, resulting in shortages of funding for infrastructure and other long gestation projects. This paper suggests that in addition to tightening of banking sector regulations for defaults, court processes need to be expedited since such delays can overwhelm all other efforts to conclude timely resolution of bankruptcies. Lengthy bankruptcy resolution makes bulk long-term<sup>2</sup> project financing unviable for lenders and the Indian economy pays a significant price in terms of foregone growth.

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<sup>1</sup> A table showing bench strengths in NCLTs and NCLATs is at Annex 1.

<sup>2</sup> Defined as bullet final maturity of the principal of 5 or more years

## Introduction

### Development Finance Institutions (DFIs)

Setting up Development Finance Institutions (DFIs) was and remains one of the ways that the central government has promoted financing of long-term projects. These attempts have included establishing a range of DFIs, including the National Bank for Financing Infrastructure and Development (NaBFID) in 2021 and an Asset Reconstruction Company (ARC) to hive off bad debts from the balance sheets of banks to help them resume long-term lending. The NaBFID has been set up as an unlisted government corporation. Consequently, it will be outside the regulatory purview of the Reserve Bank of India (RBI) and the Securities and Exchange Board of India (SEBI).

The first DFIs were set up relatively soon after Indian independence. For instance, the Industrial Finance Corporation of India (IFCI) was established in July 1948 under the direct supervision of the Ministry of Finance. IFCI came under the Companies Act in 1993 and it does not any longer engage in development financing and is a non-deposit taking Non-Banking Financial Company listed on BSE and NSE. About a decade later, the Industrial Credit and Investment Corporation of India (ICICI) was established in January 1955 with the support of the central government and the World Bank. The objective again was to provide medium to long-term project financing support to Indian companies. Nine years later, the Industrial Development Bank of India (IDBI) was formed in 1964 under an Act of Parliament and was expected to provide long maturity financing for Indian industry. IDBI was set up initially as a statutory corporation and an RBI subsidiary. Subsequently, IDBI was transferred to the government in 1976.

Yet again, with central government support another DFI called the Infrastructure Development and Finance Company (IDFC) Ltd was set up in January 1997. Later in 2015, after obtaining RBI approval, IDFC Ltd spawned the IDFC Bank. Subsequently, IDFC Bank merged with a non-banking finance company (NBFC) called Capital First Ltd to form IDFC First Bank. Earlier, ICICI and IDBI had reversed merged themselves into commercial banks, which were set up by them in 2002 and 2005, respectively. In 2019, the Life Insurance Corporation of India acquired a majority stake in IDBI bank.

In the 21st century, the India Infrastructure Finance Company Limited (IIFCL) was established in January 2006 with an authorized capital of Rs 10,000 crore which was clearly inadequate given the volumes of long-term project lending required to meet even a fraction of the country's infrastructure needs. According to the website of this wholly-owned government company, it was established to "provide long-term financial assistance to viable infrastructure projects." In September 2013, IIFCL was registered with RBI as an NBFC. Seven years later in September 2020, IIFCL's loan book stood at about Rs 34,000 crore and has been stagnant at about this level. Separately, under a hard currency line of credit from RBI, as of March 2020, IIFCL had disbursed about US\$ 2 billion. About 50 percent of IIFCL's total borrowings has come from plain vanilla bonds, borrowings from financial institutions and multilateral lending institutions such as the Asian Development Bank, World Bank, European Investment Bank and the Japan International Cooperation Agency. Incomprehensibly, IIFCL has set up an Asset Management Company which is inconsistent with its primary objective of providing long-term lending.

In 2015, the central government set up an infrastructure specific fund and named it the National Infrastructure Investment Fund (NIIF). The announcement for the setting up of NIIF was made by then Finance Minister Arun Jaitley in his budget speech in February 2015. According to NIIF's slickly designed website, it manages about Rs 33,000 crores via channels called "Master Fund, Fund of Funds and Strategic Opportunities Fund." NIIF appears to have part funded airport to city roads in Karnataka and Telangana which are 22 and 60 kilometers long respectively. There is no readily

available information in the public domain to indicate the volumes of loans provided for these road projects by NIIF or its equity participation to support generation of renewable energy. NIIF is registered with SEBI as a Category II Investment Fund and with RBI as a NBFC. It is not clear how all this helps NIIF to provide significant volumes of funding for Indian infrastructure projects.

On February 1, 2021, the Central government announced another DFI called the National Bank for Financing Infrastructure and Development (NaBFID). The government has budgeted Rs 20,000 crore to capitalize NaBFID and this institution will be provided tax advantages. Perhaps this would be in the form of exemption from withholding tax on interest paid on NaBFID's bonds.

The track record of DFIs set up in the past has been spotty, and several of them have ceased to exist as DFIs and folded into their banking company offshoots. The central government's acquiescence in the shutting down of older DFIs was illogical given the paucity of sources for long-term project financing and because it has now found it necessary to set up NaBFID. It is unclear why past central governments and RBI allowed term lending institutions such as IFCI, IIFCL and NIIF to divert their attention from project lending and for ICICI, IDBI and IDFC to convert themselves into banks. One explanation could be that these institutions had accumulated large volumes of Non-Performing Assets (NPAs) through indiscriminate lending. Possibly it was convenient for the government to let the banks or NBFCs into which these institutions had converted clean up their balance sheets on their own. The volumes of loans on the books of select DFIs, dated way back as of May 29, 2004,<sup>3</sup> are listed in Table 1 – Chapter I of RBI's "Report of the Working Group on DFIs."

On a related note, the Board of a large NBFC called Infrastructure Leasing and Financial Services (IL&FS), which had provided long-term credit backed inordinately by short-term borrowings, was taken over by the government in 2018. IL&FS is a classic case of a duration mismatch between its liabilities and assets. For instance, out of the Rs 94,000 crore of debt on the books of IL&FS, a substantial fraction was short term. A few of the long gestation projects (assets) to which IL&FS provided funding support are the Chenani-Nashri tunnel (9 km in length) and the Delhi-NOIDA toll bridge.<sup>4</sup> In November 2021, it was still not clear to what extent public sector banks and other creditors would take a hit on their loans to IL&FS.

On February 1, 2021 the central government also included the setting up of a National Asset Reconstruction Company Limited (NARCL) as part of its 2021-22 budget announcements. The government statement in parliament mentioned that this company would "consolidate and take over existing stressed debt." It appears that the official intention is for NARCL to function as a "bad" bank and NPAs would be transferred from PSBs to NARCL. It has also been announced that government would guarantee Rs 2 lakh crore worth of securities to be issued by NARCL. However, it is not clear why NARCL would recover a higher proportion of what has been deemed as irrecoverable loans by PSBs. The intention could be to declutter the balance sheets of PSBs and thus encourage fresh long-term lending. A more transparent way to promote prudent long-term project lending would be to lay bare the full extent to which outstanding bad loans need to be written off.

## **Bulk Long-term Lending & Resolution of Defaults**

In the past eight years since 2013, well before the Covid-19 induced sharp economic slowdown in 2020-21, Indian gross domestic product (GDP) growth had sputtered down. A number of factors were responsible for this reduction in growth rates and a significant contributory cause for the deceleration was the burden of non-performing assets. Long-term lending in India has been shouldered mostly by banks and large non-deposit taking NBFCs. Within the banking sector, it is public sector banks which provide a bulk of the loans with longer term maturities, invariably via

<sup>3</sup> See <https://m.rbi.org.in/scripts/PublicationReportDetails.aspx?UrlPage=&ID=387>

<sup>4</sup> See Business Standard for more details: <https://www.business-standard.com/about/what-is-il-fs-crisis>

consortium lending to share unquantifiable credit risk. For the past several decades, some private sector borrowers of large volumes of loans have taken advantage of the interminable delays in resolving debt defaults. Such defaulting borrowers have either stripped assets from their bankrupt firms or used India's labyrinthine legal processes to wrest back control after obtaining substantial haircuts on the amounts owed by them.<sup>5</sup>

In overall terms, Indian banks and non-bank financial companies depend largely on deposits from the public and to a smaller extent, on corporations for their funding. PSBs have consistently provided higher volumes of loans for infrastructure, power, steel production and other long-term projects as compared to private and foreign banks operating in India. The larger PSBs are not lagging private banks in their ability to project cash flows or evaluate market, credit and operational risks. Delays in environmental and land acquisition clearances were contributory factors in projects not being completed within estimated time periods. To that extent it was to be expected that PSBs would have higher proportions of NPAs than private banks.

As for deliberate acts of commission or omission involving PSBs, a relatively recent example is that of the Punjab National Bank (PNB) which lost about Rs 13,000 crore in the Nirav Modi case and this came to light in January 2018.<sup>6</sup> According to media reports, PNB's management made the incredible claim that it did not receive RBI's directions for all banks to strengthen the management systems of their Core Banking System (CBS) and integrate with the Society for Worldwide International Financial Telecommunications (SWIFT).

For purposes of comparison, two recent cases involving wrong-doing in private sector banks are those of Chanda Kochhar<sup>7</sup> of ICICI bank in 2018 and Rana Kapoor<sup>8</sup> of Yes Bank again in 2018. As for the NBFC Infrastructure Leasing and Financial Services Limited (IL&FS) the Life Insurance Corporation (LIC), State Bank of India (SBI) and the Central Bank of India held 25.3, 6.4 and 7.7 per cent equity in this NBFC when its Board was dismissed by the government in October 2018. LIC and SBI are India's largest insurance company and scheduled commercial bank respectively and they were represented on the Board of IL&FS. It is difficult to understand why the chairpersons of these venerable institutions and Indian financial sector regulators failed to pick up on the multiple pointers indicating IL&FS's irresponsible and crony lending.

On balance, PSBs are more vulnerable to extraneous pressures. Consequently, professional banking circles have suggested that all PSBs should be privatized or at a minimum, made more Board driven. The latter of these two suggestions should be implemented in letter and in spirit. At the same time, it would serve the purpose of providing banking services to lowest income groups better if PSBs were to be consolidated into two or at most three banks. This would give these few PSBs the advantage of size to be able to compete with nimbler private sector banks. Further, it should be easier for its majority equity shareholder, namely the central government, and regulator RBI to keep a closer watch on them.

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<sup>5</sup> In June 2021, industrialist Harsh Goenka remarked in a tweet: "Promoters stash away money on the side, take the company to the cleaners, get 80-90 per cent haircut from bankers/NCLT — that's the new game in town. . . we can't have our hard-earned public money being stolen!"

<sup>6</sup> See Business Standard <https://www.business-standard.com/about/what-is-pnb-scam>

<sup>7</sup> <https://theprint.in/opinion/icici-board-must-answer-for-the-chanda-kochhar-scandal/185762/>

<sup>8</sup> <https://www.livemint.com/industry/banking/rana-kapoor-ignored-warnings-by-yes-bank-s-risk-treasury-teams-11631040409652.html>



## SICA, BIFR & SARFAESI

Over the years, the Government has passed laws and set up various mechanisms to resolve the systemic problems stemming from borrowers unable to service loans received from financial institutions. The Sick Industrial Companies (Special Provisions) Act (SICA) was passed more than three decades ago in 1985 to resolve bankruptcies and the Bureau of Industrial and Financial Reconstruction (BIFR) was set up under SICA. Over time BIFR became a byword for exceptionally long delays (Nair, 2015) in disentangling the various issues related to insolvencies. Even if BIFR recommended winding up of companies, Indian courts invariably delayed that process under the mistaken notion of protecting rights of workers (Zwieten, 2015).

It was evident from the 1991 and 1998 reports of the Narasimham Committee,<sup>9</sup> and the work of the 2001 N.L. Mitra Committee on Legal Aspects of Bank Frauds<sup>10</sup> that fresh legislation was needed to resolve bankruptcies faster and to reduce fraudulent disposal of assets. Accordingly, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act was approved by parliament in 2002. Implementation of SARFAESI was expected to cut delays it but did not result in significantly speedier resolution of cases involving large volume defaults (Bhagwati, 2017).

## Recoveries Prior to the Insolvency and Bankruptcy Code (IBC)

The numbers on recoveries relating to non-performing loans via Lok Adalats, Debt Recovery Tribunals (DRTs) and by invoking SARFAESI are listed in Table 1. The SARFAESI route has shrunk in effectiveness and the average amount recovered has come down from 27 to 7 percent between 2012-13 and 2016-17. The same number for Lok Adalats has decreased from 6 to 4 percent. In comparison, DRTs have been more effective since that number has risen from 14 to 24 percent. However, the amounts recovered using these three channels put together, as a percentage of outstanding non-performing assets (NPAs) decreased from 22 percent in 2012-13 to 10 percent by 2016-17. Precisely comparable numbers for the IBC route are not yet readily available. A few significant cases of large volume NPAs which were addressed using the IBC are tabulated later in this paper.

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<sup>9</sup> <https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?ID=22>

<sup>10</sup> <https://m.rbi.org.in/Scripts/PublicationReportDetails.aspx?ID=247>

**Table 1: Recoveries on NPAs of Scheduled Commercial Banks prior to IBC**

			Lok Adalats	DRTs	SARFAESI Act	Total
<b>2012-13</b>	1	No. of cases referred	840,691	13,408	190,537	1,044,636
	2	Amount involved	6,600	31,000	68,100	105,700
	3	Amount recovered*	400	4,400	18,500	23,300
		3 as percentage of 2	6	14	27	22
<b>2013-14</b>	1	No. of cases referred	1,636,957	28,258	194,707	1,859,922
	2	Amount involved	23,200	55,300	95,300	173,800
	3	Amount recovered*	1,400	5,300	25,300	32,000
		3 as percentage of 2	6	10	27	18
<b>2014-15</b>	1	No. of cases referred	2,958,313	22,004	175,355	3,155,672
	2	Amount involved	31,000	60,400	156,800	248,200
	3	Amount recovered*	1,000	4,200	25,600	30,800
		3 as percentage of 2	3	7	16	12
<b>2015-16</b>	1	No. of cases referred	4,456,634	24,537	173,582	4,654,753
	2	Amount involved	72,000	69,300	80,100	221,400
	3	Amount recovered*	3,200	6,400	13,200	22,800
		3 as percentage of 2	4	9	17	10
<b>2016-17</b>	1	No. of cases referred	2,152,895	28,902	80,076	2,261,873
	2	Amount involved	105,787	67,089	113,100	285,976
	3	Amount recovered*	3,803	16,393	7,758	27,954
		3 as percentage of 2	4	24	7	10

Source: RBI databases

All amounts in Rupees crore

\*Refers to amount recovered during the given year, which could be with reference to cases referred during the given year as well as during the earlier years; # Number of Notices issued; DRTs – Debt Recovery Tribunals

## Private Sector's Access to Credit from Domestic Sources

Taking a step back to reflect, in the sixty years from 1960 to 2020, India's domestic credit to the private sector has grown substantially from 7.8 to 55.3 percent of GDP. However, India is far short of the global average which stood at 146.7 percent in 2020. Table 2 lists the numbers on domestic credit from all sources to private borrowers in several countries including India. Clearly, excessively easy credit to private sector borrowers could lead to cascading defaults and consequent difficulties in effecting recoveries. Nevertheless, by global standards India is falling short of prudent levels of lending to the private sector. For instance, in 2008 this number was higher for India than that for Brazil. However, by 2020, Brazil was about 15 percentage points higher than India. Malaysia was way ahead of India in 2008 and 2020 and Indonesia, by comparison, has lagged considerably behind India. As for China, the 2008 number for credit to the private sector was about twice that for India. By 2020, the same number for China was almost four times that for India.

**Table 2: Domestic Credit to Private Sector as percentage of GDP**

	1960	1980	2000	2008	2014	2020
<b>India</b>	7.8	20.5	28.3	49.6	51.9	55.3
<b>Brazil</b>	20.2	42.5	31.1	45.8	66	70.2
<b>Malaysia</b>	8.9	49.9	135	96.7	120.6	134.1
<b>Indonesia</b>	-	9.68	22	-	36.4	38.7
<b>China</b>	-	52.7	110.4	102	140.2	182.4
<b>Germany</b>	-	73.9	115.7	97.7	79.3	86.6
<b>Japan</b>	-	127.2	221.3	160.1	163.7	-
<b>United Kingdom</b>	17.3	26.2	115.2	191.7	135.5	146.4
<b>United States</b>	70.9	94.3	162.6	185.8	184.9	216.3
<b>Euro Area</b>	-	-	-	103.7	92.6	94.9
<b>European Union</b>	-	-	-	101.6	42.4	93.7
<b>World</b>	205.1	50.5	135.9	120.9	120.2	146.7

Source: World Development Indicators IBRD-IDA.

## Municipalities & Insurance Companies

Municipalities and insurance companies in developed economies are able to raise bulk long-term funding for major projects. The following Table 3 provides an illustrative listing of municipal bond issuance from 1997 till 2020. Except for the Rs 2000 crore raised presumably by the Andhra Pradesh government to develop a new capital and the city of Indore for infrastructure development, the other amounts raised are a few hundred crore rupees or less.

**Table 3: Municipal Bond Issuance in India (Rupees Crore)**

Year of Bond Issue	City	Purpose	Amount Raised	Credit Ratings
1997	Bengaluru	City roads and drains	125	-----
1998	Ahmedabad	Water Supply and Sewerage	100	-----
1999	Ludhiana	Water Supply and Sewerage	10	-----
1999	Nashik	Water Supply and Sewerage	100	-----
2000	Indore	Improvement of City roads	10	-----
2001	Madurai	City Roads	30	-----
2001	Nagpur	Water Supply	50	-----
2002	Ahmedabad	Water Supply and Sewerage	100	-----
2002	Nashik	Underground sewerage scheme and storm water drainage system	50	-----
2002	Tamil Nadu Water and Sanitation Pooled Fund	Refinancing loans for water and sanitation projects of 13 ULBs	30.2	-----
2003	Hyderabad	Road construction and widening	82.5	-----
2003	Hyderabad	Drinking water- Hyderabad Metropolitan Water Supply and Sewerage Board	50	-----
2003	Chennai	Chennai water supply augmentation project Chennai Metropolitan Water Supply & Sewerage Board	42	-----
2004	Ahmedabad	Water Supply, Storm water drainage, roads and bridges	58	-----
2004	Vishakhapatnam	Water Supply	20	-----
2004	Vishakhapatnam	Water Supply	50	-----
2005	Karnataka Water and Sanitation Pooled Fund	Water Supply, Storm water drainage, roads and bridges	100	-----
2005	Chennai	Water Supply- Chennai Metropolitan Water Supply & Sewerage Board	50	-----
2005	Chennai	Roads	45.8	-----
2005	Ahmedabad	Roads and Water Supply	100	-----
2007	Nagpur	Water Supply and Sewerage	21.2	-----
2008	Tamil Nadu Water and Sanitation Pooled Fund	-----	6.7	-----
2010	Vishakhapatnam	Water Supply	30	-----
2010	Tamil Nadu Water and Sanitation Pooled Fund		83.19	-----
2010	Karnataka Water and Sanitation Pooled Fund	Lending to ULBs through Directorate of Municipal Administration	300	-----
2012	Tamil Nadu Water and Sanitation Pooled Fund	-----	51	-----

2013	Tamil Nadu Water and Sanitation Pooled Fund	-----	51	-----
2017	Pune	Water metering project	200	AA+
2018	Hyderabad	Strategic road development project	200	AA
2018	Indore	Development of infrastructure	1139.90	AA
2018	Hyderabad	Strategic road development project	195	AA
2018	Andhra Pradesh	Building of new state capital	2000	B W R AA- (-)
2018	Bhopal	Implementation of projects defined under AMRUT	175	B W R AA(SO)
2019	Ahmedabad	Development projects under AMRUT	200	AA+
2020	Lucknow	Development projects under AMRUT	200	

----- Not Rated

Source: Ministry of Urban Development

In developed countries insurance companies are significant investors in long-term debt securities issued by municipalities and private sector firms. In India, the Life Insurance, General Insurance and Reinsurers are among those other than banks that do provide long-term capital. However, Indian insurance companies are restricted by underlying legislation and regulations of the Insurance Regulatory & Development Authority of India (IRDAI) to invest mostly in central and state government debt and approved securities. Consequently, Indian corporates and other borrowers are excessively dependent on banks and non-banking financial companies (NBFCs) for long-term financing. It follows that in India the speed with which the current overhang of substantial volumes of non-performing assets (NPAs) held mostly by Indian public sector banks is resolved becomes that much more important. Table 4 provides the numbers on investments made by Indian insurance companies in central and state government debt instruments and the infrastructure sector. In 2020, investments in infrastructure amounted to a little over 15 percent of total investments.

**Table 4: Investments made by Insurance Companies (as of March 31) (in Rupees crore)**

	Category	General insurers		Reinsurers		Total	
		2019	2020	2019	2020	2019	2020
1	Central Government securities	61,546 (24.19)	69,750 (23.87)	20,210 (33.72)	24,449 (34.69)	81,755 (26.01)	94,199 (25.97)
2	State Government and other approved securities	40,455 (15.90)	50,314 (17.22)	8,493 (14.17)	11,791 (16.73)	48,948 (15.57)	62,105 (17.12)
3	Housing and loans to state Government for Housing and FFE	26,161 (10.28)	27,791 (9.51)	5,609 (9.36)	5,384 (7.64)	31,770 (10.11)	33,176 (9.15)
4	Infrastructure Investments	44,143 (17.35)	48,203 (16.50)	5,927 (9.89)	6,728 (9.55)	50,070 (15.93)	54,931 (15.15)
5	Approved Investments	72,443 (28.48)	85,086 (29.12)	17,719 (29.57)	17,451 (24.76)	90,162 (28.68)	1,02,536 (28.27)
6	Other Investments*	9,652 (3.79)	11,043 (3.78)	1,975 (3.29)	4,666 (6.62)	11,626 (3.7)	15,709 (4.33)
<b>Total</b>		<b>2,54,400 (100)</b>	<b>2,92,187 (100)</b>	<b>59,932 (100)</b>	<b>70,469 (100)</b>	<b>3,14,331 (100)</b>	<b>3,62,656 (100)</b>

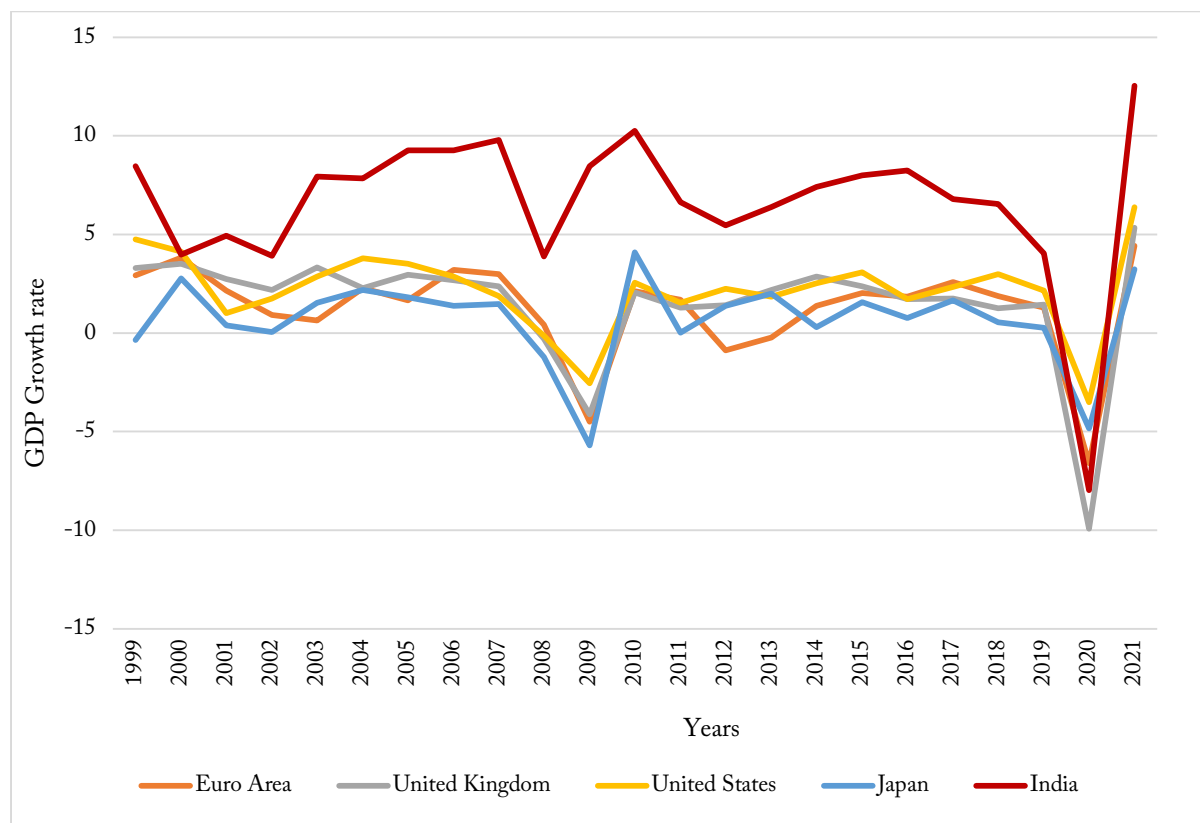
Source: Annual Report 2019-20, IRDAI

- Notes: 1) Figures in brackets are percentages of totals  
2) General insurers include specialized insurers and SAHI insurers  
3) Reinsurers included branches of foreign insurers  
4) FFE: Fire Fighting Equipment  
\*Listed stocks, real estate and debt instruments

## Lending and Economic Growth

Taking a step back to reflect, governments and central banks around the world have noted that an important factor which contributed towards causing the 2008 solvency crisis was excessively leveraged lending by major financial sector institutions. As for the decline in India GDP growth rates post the 2008 crisis, this started happening around 2012 which was well before the Covid-19 virus induced slowdown. One of the causal reasons was the rise in defaults on banking sector loans made mostly by public sector banks. Figure 1 provides a graphical representation of India's GDP growth rates and those of major developed countries between 1999 and 2021.

**Figure 1: GDP Growth Rates: India and Major Developed Countries 1999-2021 (at constant prices)**



Source: International Monetary Fund, World Economic Outlook Database, April 2021.

In 2009-2010 budget speech, the then Finance Minister Pranab Mukherjee mentioned that, “Indira Gandhi’s bold decision to nationalize our banking system on July 14, 1969 appeared as wise and visionary over past few months.”

If media reports are even somewhat accurate, lending by Indian public and private sector banks and NBFCs has been often driven by the government in power or influenced by wrong doing.<sup>11</sup> The RBI and/or government have had to step in at times as in the cases of the large NBFC called Infrastructure Leasing Financial Services (IL&FS), Punjab National Bank and Yes Bank in February 2018, August 2019 and March 2020 respectively. Turning to lack of effective management as of September 2021, 11 PSBs do not have non-executive chairpersons (Bandopadhyay, 2021). Further, several Boards of PSBs do not have the required number of non-official independent directors. At first glance, the problems of PSBs appear to be also correlated to the non-appointment of senior most management in a timely manner.

Figure 1 also shows that, except for the global financial sector meltdown induced sharp dip in growth, Indian GDP growth rates were rising between 2002 and 2010-11. According to Rakesh Mohan and Partha Ray, “there was a significant expansion of large corporate sector lending in terms of absolute magnitude after the late 2000s, including for lumpy infrastructure projects.” The subsequent slowdown in Indian growth rates was partly due to a rising share of non-performing assets on the books of Indian banks. In this context, Chapter 4 of the 2016-2017 Economic Survey<sup>12</sup> titled “Twin Balance Sheet Problem” mentions that gross non-performing assets of PSBs as a fraction of total advances rose from about 4 percent in 2013-2014 to 12 percent in three years by 2016-2017.

<sup>11</sup> See cover story in India Today dated December 2020. <https://www.indiatoday.in/magazine/cover-story/story/20201228-fixing-the-banking-mess-1750945-2020-12-18>

<sup>12</sup> Economic Survey 2016-17: <https://www.indiabudget.gov.in/budget2017-2018/es2016-17/echapter.pdf>

This Economic Survey also reported that the average size of non-performing loans for the 50 largest borrowers was estimated to be about Rs 20,000 crores. This level of default concentration was not acted upon with sufficient dispatch by the Indian government for PSBs and by RBI for all lenders. It was surprising that the Ministry of Finance had to rely on a Credit-Suisse report for these numbers on non-performing loans rather than the RBI or the PSBs themselves.

The following Table 5 indicates that the volumes of doubtful and loss advances of public sector banks as proportions of total advances were consistently higher than the comparable numbers for private and foreign banks.

**Table 5: Classification of Loan Assets of Scheduled Commercial Banks as of 31 March**  
(Rupees Crore)

Bank Group	Doubtful Advances			Loss Advances			Total Advances		
	2010	2015	2020	2010	2015	2020	2010	2015	2020
<b>Public sector banks</b>	25,400	1,63,049	4,24,829	5,800	10,003	1,16,638	27,33,500	56,16,717	6,615,112
<b>Private banks</b>	6,600	17,636	1,07,279	2,200	5,228	38,899	6,44,200	16,08,657	37,76,231
<b>Foreign banks</b>	1,400	5,446	5,775	800	2,982	1,161	1,67,400	3,36,609	4,36,066
<b>All SCBs*</b>	33,400	1,86,131	5,38,530	8,700	18,213	1,56,736	35,45,000	75,61,983	109,18,918

\*SCBs Scheduled Commercial Banks  
Source: Department of supervision, RBI

The volumes of loans outstanding with residual long-term maturities above five years provided by PSBs, private and foreign banks as of 2010, 2015 and 2019 are listed in Table 6. Disregarding alleged malfeasance PSBs have done more of the heavy-lifting in providing longer term loans. The cumulative volume of loans disbursed by private sector banks, as compared to PSBs, with maturities above 5 years increased substantially between 2015 and 2019.

**Table 6: Cumulative Loans and Advances (for residual maturities over 5 years) (Rupees crore)**

	2010	2015	2019
<b>Public sector banks</b>	4,52,618	9,04,509	12,06,362
<b>Private sector banks</b>	1,08,365	2,91,242	7,20,044
<b>Foreign banks</b>	19,931	39,361	49,656
<b>All scheduled commercial banks</b>	5,80,915	12,35,113	19,82,939

Source: RBI



The volumes of loans and advances with all maturities provided by non-banking finance companies (NBFCs) are listed in Table 7. These numbers are lower as compared to all scheduled commercial banks. However, the outstanding total in 2018 for non-deposit taking systemically important NBFCs-ND-SI was higher than that for PSBs. It needs to be noted though that these numbers are for all loans including short-term trade financing, including loans with maturities of 6 months to a year.

**Table 7: Cumulative Loans and Advances by NBFCs (all maturities) (Rupees Crore)**

	2013	2014	2015	2016	2017	2018 (P)
<b>NBFCs-D*</b>	91,983	1,58,502	1,59,037	2,11,806	2,45,307	3,11,006
<b>NBFCs-ND-SI **</b>	7,60,039	8,27,266	9,51,558	11,00,000	12,34,664	14,53,300

\*NBFCs-D: NBFCs accept public deposits

\*\*NBFC-ND-SI: Non-Deposit taking Systemically Important NBFCs

Source: RBI

The loans and advances made by the central government sponsored development financial institutions (DFIs) were substantially lower in volume than NBFCs. It can be seen in Table 8 that there has been little growth in longer maturity lending by the two cited DFIs between 2017 and 2021.

**Table 8: Loans and Advances of Specific Development Finance Institutions (DFIs) (all maturities) (Rupees Crore)**

	2017	2018	2019	2020	2021
<b>India Infrastructure Finance Company Limited (IIFCL)</b>	34,073	32,588	35,136	33,559	36,646
<b>National Investment and Infrastructure Fund Limited</b>	-	-	4,685	-	-

Source: Individual Annual Reports

Table 9 provides the volumes of foreign institutional investments in short dated Treasury Bills, which are negligible to zero, and for dated securities issued by state and central governments. Such investments do not result in longer maturity funding except if there is a correlation between issuance of such government securities and on lending via PSBs to public sector companies engaged in infrastructure projects.

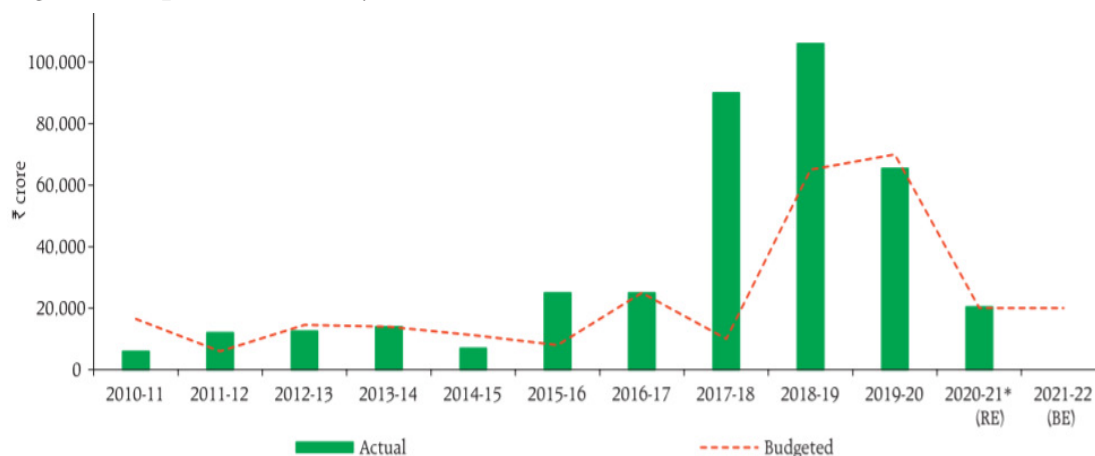
**Table 9: Outstanding stocks of investments by Foreign Institutional Investors (FIIs) (Rupees Crore)**

	2010	2014	2015	2019
<b>Treasury Bills</b>	-	19,917	0	0
<b>State Government Securities</b>	-	19	0	2,458
<b>Central Government Securities</b>	-	62,530	152,652	190,566

Source: RBI

As PSBs have usually taken the lead in providing longer-term loans they have higher proportions of impaired assets on their books. This in turn has resulted in the need for recapitalization support from the central government. The following Figure 2 indicates the amounts of funding support provided by government to PSBs between 2010-2021. This capital support reached a peak in 2018-19 crossing Rupees 100,000 crores.

**Figure 2: Capital Infusion by GOI in PSBs**

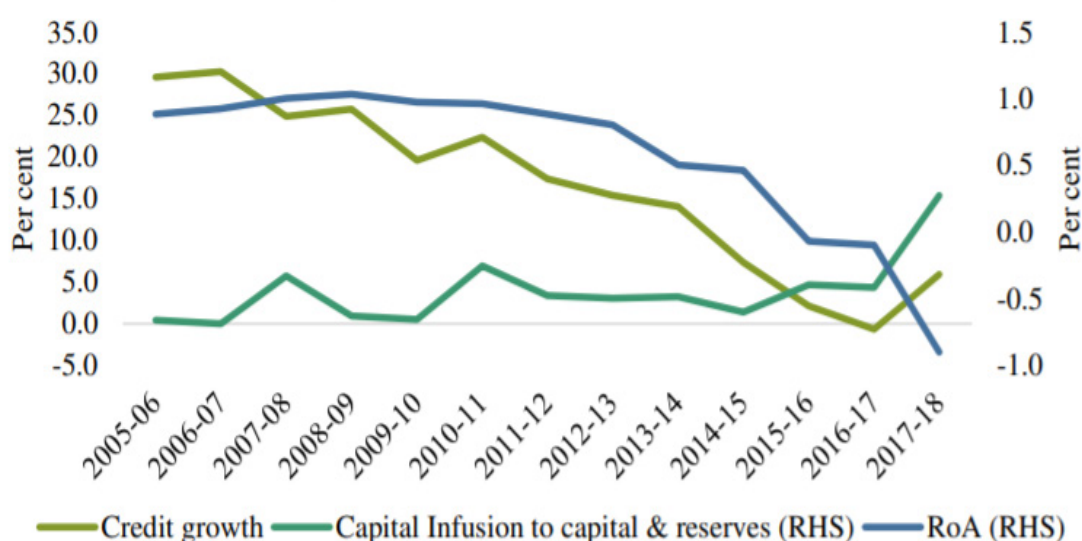


Source: Union Budget document of various years

Notes: Apart from the infusion of ₹5,500 crores as fresh capital in PSBs in 2020-21. The GOI also infused capital through issue of bonds in three other banks namely IDBI (₹4,577 crores), EXIM Bank (₹5050 crores) and IIFCL (5297.6 corers)

The next Figure 3, provides a sense of the extent to which return on assets (RoA) dipped between 2008-09 and 2017-18 and credit growth went down too.

**Figure 3: Capital Infusion, Profitability and Credit Growth**



Source: Statistical tables related to banks in India, RBI

In the larger G7 economies, corporations and municipalities have access to wide, deep and long maturity bond markets. By contrast in India, in addition to fixed income securities issued by the central, state governments and public sector banks, there is investor appetite only for bonds issued by the largest public sector undertakings (PSUs) such as Oil Natural Gas Corporation (ONGC),

National Thermal Power Corporation (NTPC), Power Grid Corporation and the highest rated private corporations. An illustrative list of the volumes of such issuance and corresponding maturities are listed in Table 10. Except for large public sector or private companies with better credit ratings, the majority of issuers are financial companies or banks. It follows that relatively lower rated private borrowers which need long-term capital have to turn to PSBs and NBFCs.

**Table 10: Issuance 2021-2022 (BSE Bond – EBP)**

	Public/ Private	Name of the Issuer	Date of Issue	Amount raised (Rs crores)	Tenor (years, months)	Credit rating
1	Pub	Indian railway finance corporation limited	28-07-2021	4693	15y	AAA
2	Pub	Hindustan Petrol Corporation limited	05-05-2021	1950	9y, 11m	AAA
3	Pub	National Highway Authority of India	09-08-2021	6000	17y	AAA
4	Pub	Power Finance Corporation limited	30-09-2021	1988	10y	AAA
5	Pub	Power finance Corporation Limited	30-07-2021	1985	3y	AAA
6	Pub-Bank	National Bank for Agriculture and Rural Development	28-07-2021	1456.3	15y	AAA
7	Pub-Bank	National Bank for Agriculture and Rural Development	27-04-2021	5000	3y	AAA
8	Pub-Bank	State Bank of India	01-09-2021	4000	999y	AA+
9	Pvt-Bank	ICICI Bank limited	11-06-2021	2827.4	7y	AAA
10	Pvt-Bank	HDFC Bank	23-07-2021	2500	10y	AAA
11	Pvt	Jamnagar Utilities and Power Private limited	28-09-2021	4000	5y	AAA
12	Pvt	JSW Steel limited	30-04-2021	1000	10y	AA- (CARE)
13	Pvt	Sikka Ports and Terminals limited	20-04-2021	4000	5y	AAA
14	Pvt-NBFC	Tata Motors Financial Limited	14-06-2021	260	1y, 8m	A
15	Pvt-NBFC	Bajaj Financial limited	23-09-2021	2171	9y, 6m	AAA
16	Pvt-NBFC	Shriram Transport Financial Company limited	29-04-2021	1000	2y	AA+
17	Pvt-NBFC	Muthoot finance limited	25-08-2021	400	3y	AA+
18	Pvt-NBFC	Aditya Birla finance limited	27-05-2021	750	10y	AAA

Source: Public issue, BSE

## IBC and Insolvency & Bankruptcy Board of India (IBBI)

A significant shortcoming of the SICA Act was that owners and directors remained in charge of insolvent companies during BIFR proceedings. SICA was repealed by Parliament in 2004 although the final gazette notification did not happen till December 1, 2016. If conspiracy theories are to be believed, those who wanted the then highly inefficient system of default resolution to continue delayed this notification by 12 years. It is also possible that a few BIFR cases lingered on since courts took decades to pass final judgements. Be that as it may, the central government was seized of the crying necessity to make the bankruptcy resolution process quicker. Consequently, the Insolvency and Bankruptcy Code (IBC) was passed 31 years after SICA was approved, by both houses of Parliament on May 11, 2016. A Press Information Bureau news release on the same day stated crisply that the objective of the new law was to: “promote entrepreneurship, availability of credit, and balance the interests of all stakeholders by consolidating and amending the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner and for maximization of value of assets of such persons and matters connected there with or incidental thereto.” After the IBC was approved by the President, the gazette notification was issued in little over a fortnight on May 28, 2016. The key definitions and provisions of the 103-page IBC are listed in Annex I.

An important feature of the IBC is that it provided for the setting of up an Insolvency and Bankruptcy Board of India (IBBI). This body was set up with the express purpose of monitoring the processing of bankruptcy cases and its responsibilities include the registering of insolvency professionals. The IBBI was set up on October 1, 2016 and IBBI drafts regulations under the IBC Act. For example, the IBBI has spelt out what is a corporate insolvency resolution process (CIRP); what constitutes corporate insolvency and the minimum default amount for initiation of a CIRP against a corporate debtor, which is Rs 1 crore; who is a financial creditor; and who is a corporate debtor.<sup>13</sup> IBBI does not have precise equivalents in the US, UK or Germany.

In a report released on November 16, 2021 a Working Group set up by IBBI made an overarching recommendation that the IBBI should “come up with a standardized framework with a real time data bank with data on time, cost and recovery rates together with macroeconomic indicators to assess the success of the five-year law and improve its implementation.”<sup>14</sup> (Economic Times, 2021)

### Committees of Creditors (CoCs)

Indian banks usually form consortiums of several lenders when they provide large volume loans to borrowers. For instance, in the default case involving Reliance Communications, the debt owed was Rs 49,000 crore and involved multiple creditor banks and bond holders. Under the IBC, CoCs are entitled to appoint Insolvency Professionals (IPs). One of the reasons that the IBC process has currently become lengthy in practice is that interested parties often question the decisions of CoCs. In this context, in the second week of September 2021, the Supreme Court ruled that once a CoC decides on a resolution plan it cannot be sought to be modified by the resolution applicant. The Supreme Court also indicated that the deadline of 330 days for resolution should be observed. At a National Council of Applied Economic Research (NCAER) sponsored discussion on December 14, 2021<sup>15</sup> it was emphasised that at times CoCs do not react with sufficient speed or interest to offers for impaired assets.

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<sup>13</sup> See this FAQ on the IBBI website for more details [https://www.ibbi.gov.in/uploads/faqs/FAQ\\_IPs.pdf](https://www.ibbi.gov.in/uploads/faqs/FAQ_IPs.pdf)

<sup>14</sup> See this report in Economic Times: <https://economictimes.indiatimes.com/news/economy/policy/bajpai-led-committee-suggests-standard-framework-time-cost-data-tracking-to-improve-bankruptcy-code/articleshow/87716174.cms>

<sup>15</sup> The participants included Member of Parliament Jayant Sinha, former head of IBBI M.S. Sahoo and Pallav Mohapatra CEO and Managing Director of Asset Reconstruction Company of India Ltd. (ARCIL).

## Insolvency Professionals (IPs)<sup>16</sup>

To assist in resolving bankruptcies the IBC provides for a category of experts called insolvency professionals. These experts are usually chartered accountants or lawyers with professional experience in dealing with the Indian financial sector. IPs are expected to monitor and assess the maintenance in value of physical and monetary assets owned by debtors. The IBC provides for National Company Law Tribunals (NCLTs) as the primary adjudicating authority (AA). If this AA passes an order, for example liquidation under Section 33 of the IBC an insolvency professional is required to act as a liquidator. The corporate debtor(s) and others involved are required under the IBC to cooperate fully.<sup>17</sup>

The IBBI conducts examinations to assess the competence of potential IPs and once they are deemed eligible, they are accredited. Questions have been raised about the professional qualifications and conflicts of interest that some IPs have in dealing with the cases assigned to them. A specific criticism levelled at IPs is that they demand excessive compensation. The expectation when the IBC was passed by parliament was that IPs would be scrupulously objective when a distressed asset owner needs to be divested of management control and in the assignment of who would manage the company in the interim as a NCLT decides on the disposal of assets. In this context, the IBBI has put together a “Handbook on Ethics for Insolvency Professionals.”<sup>18</sup>

Given the significant financial stakes involved for bankrupt owners and for potential buyers of distressed assets, often at huge discounts, it was to be expected that IPs would be under considerable pressure to favour either debtors or buyers. Some Indian accounting and legal firms have suggested that assessments made by IPs should be audited independently and a separate regulator, in addition to IBBI, is needed for IPs. Setting up yet another regulator is likely to prolong the resolution of bankruptcies without adding to the integrity of the process. If NCLTs were to impose substantial financial penalties on debtors and creditors for inordinate delays in providing the required information that would help speed up the disposal of cases. In any case, an additional regulator’s decision too could be challenged in NCLTs.

Since the licensing of IPs was first initiated, about 200 investigations have been conducted against IPs by IBBI and disciplinary action taken in 123 cases. In some cases, IPs in league with owners-management allowed assets of bankrupt companies to be stripped and the latter were consequently indifferent if an Asset Reconstruction Company (ARC) (Bhagwati, Khan and Bogathi, 2017) or anyone else took over their equity holdings which had little residual value. Given the huge financial stakes involved, IPs face the risk of being targeted by the police or other authorities. An illustrative example is the case of Anuj Jain who was appointed as an Interim Resolution Professional by the Supreme Court to ensure that debt burdened Jaypee Infratech was managed transparently and efficiently. The case originated from Jaypee’s inability to service debt of Rs 28,000 crore to a consortium of lenders including Axis Bank. Jain was arrested on March 1, 2021, in Mumbai by the Greater NOIDA police under an FIR which alleged that the Jaypee Infratech Limited (JIL), namely the operator for the 165 kilometers long Yamuna Expressway and Anuj Jain, the IP, had not taken adequate safety measures to reduce accidents. The advocates appearing on behalf of Jain in the Supreme Court argued that he could not be personally responsible for the company not spending Rs 115 crore to install crash barriers on this expressway. In its remarks dated March 2, 2021, the Supreme Court mentioned that it was “appalled” by this action of Uttar Pradesh police and ordered the immediate release of Jain.<sup>19</sup>

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<sup>16</sup> Known as Resolution Professionals when involved in bankruptcy resolution processes.

<sup>17</sup> Further details of the responsibilities and accountabilities of NCLTs are stated in Section 34 of the IBC.

<sup>18</sup> <https://ibbi.gov.in/uploads/whatsnew/0ab3ccba77975afcd9eb7ac679154de8.pdf>

<sup>19</sup> [https://www.business-standard.com/article/companies/sc-appalled-over-arrest-of-court-appointed-interim-resolution-professional-121030201186\\_1.html](https://www.business-standard.com/article/companies/sc-appalled-over-arrest-of-court-appointed-interim-resolution-professional-121030201186_1.html)

In the past five years since the IBBI was set up at the end of 2016 it has disseminated information about the manner in which bankruptcy proceedings, including liquidation, would be conducted under the IBC. For instance, depending on specific circumstances of defaults IPs can take over the functions of the entire Board of bankrupt companies. Further, IPs could, if required, oversee the liquidation of a company. In the Indian context, as distinct from developed countries, the “promoter families” of companies are often actively engaged in management. At times promoters tend not to cooperate with IPs and delay the process of bankruptcy resolution or liquidation through repeated appeals in courts.

## Default Resolution and Recovery Percentages

The IBC process has turned out to be slower than initially anticipated and recovery rates too are lower than expected. Table 11 provides the details in 16 cases of relatively large debt defaults including the amounts recovered and the time taken to resolve these bankruptcies. For example, in the case of the Dewan Housing Finance Corporation Limited the total amount owed to creditors was Rs 87,247 crore. It took seven months to resolve this bankruptcy caused by egregious wrongdoing in this housing finance company even though the RBI was monitoring the resolution process.

An important concern about bankruptcies is that erstwhile owners may not be attentive enough or be involved in asset stripping leading to a sharp drop in the value of assets. Consequently, speed of disposal is of paramount importance for the IP, in his/her role as interim management, to demystify non-transparent book-keeping and accounting. The recovery percentages in the defaults listed in Table 11 varied from a high of 89 percent in the Monnet Ispat case to just 4.6 percent in that of Videocon Industries. In practice the level of recovery is dependent not just on the speed with which a RP is able to untangle issues but most importantly the urgency with which the cases are dispatched by NCLTs, NCLATs and finally the Supreme Court. Further details about the judgements in the court cases listed in Table 11 are available at the websites mentioned in Annex IV.

**Table 11: Prominent defaults or delayed court decisions**

	Creditors	Debtors	Amount (Rupees crores)	Resolution seeker	Final judgement date	Resolution time (months)
1	Individual or institutional investors	Dewan Housing Finance Corporation Limited	87,247	Reserve Bank of India Piramal Capital & Housing Finance Limited (recovered 34.3 per cent - Rupees 37,250 crores)	07.06.2021	7
2	Bank of Maharashtra	Videocon Industries Group	64,838	Venugopal Dhoot (2,962 crores recovered, 5% of the claim)	19-07-2021	36
3	State Bank of India (SBI)	Bhushan Steel Limited	56,002	Subsidiary of Tata Steel (35,571 crores realised, 64% of the claim)	18.05.2018	12
4	SBI	Essar Steel India Limited	49,473	Arcelor Mittal Private Limited (41,018 crores, 83% of the claim)	04.07.2019	24

5	SBI, PNB, Canara Bank and other	Bhushan Power and Steel Ltd.	47,158	JSW Steel (19,350 crores recovered, 41% of the claim)	26-03-2021	18
6	SBI	Alok Industries	29,523	Reliance Industries Limited and JM Financial (5,000 crores recovered, 17% of the claim)	08.03.2019	20
7	SBI	Monnet Ispat & Energy Limited.	11,015	JSW (9,772 crores recovered, 89% of the claim)	24.07.2018	13
8	SBI	Jet Airways	7,807	Jalan Fritsch Consortium a consortium (1,375 crores recovered, 17% of claim)	22.06.2021	24
9	Bank of Baroda	Binani Industries limited	7,289	Vijay Kumar Iyer, (recovered 7,950 crores, 18% of the claim)	14.11.2018	9
10	Bank of Baroda	Shiv Kumar Reddy	45	AA	04-04-2021	52
11	Several banks & Ericsson India Private Limited	Reliance Communications Limited	49,000	UV Asset Reconstruction Company (approved to pay 4,400 crores, 9% of the claim)	15.05.2018	8
12	IDBI Bank Limited	Jaypee Kensington Boulevard Apartments Welfare Association	23,640	NBCC (India) Ltd. & Others (97.34 per cent of voting share allotted to creditor)	24.03.2021	43
13	ICICI bank	Innoventive Industries limited	1,190	Management of Corporate Debtors	25.10.2017	24
14	SREI infrastructure Finance and SREI equipment finance		35,000	RBI has named Rajneesh Sharma as administrator	04-10-2021	-----

Source: SKV Law Offices

Even after a NCLT/NCLAT/Supreme Court rules in favor of an applicant to takeover an asset the nature of the company determines if further time-consuming regulatory clearances are required. If, for instance, the asset up for sale is a power production, transmission or distribution company the relevant regulator has to assess the capability of a potential new owner and this could lead to further delays in the transfer of assets to new owners. A way to reduce such delays would be for regulators to develop templates such that only those who have the appropriate work experience and qualifications would be eligible as bidders for the corresponding assets up for sale in bankruptcy cases.

The IBC has reduced the time taken to resolve bankruptcies as compared to lengthy delays under the SICA or SARFAESI Acts. However, it was apparent as of November 2021 that in the 5 years since the IBC was passed the time that would be taken for resolution and liquidation processes to be completed was underestimated. The NCLTs and NCLATs have to take a part of the blame for lengthy processes. At the same time the contention that delays are also due to vacancies in NCLTs and NCLATs is factually correct. For instance, of the sanctioned strength of 64 judges for NCLTs only 45 positions were occupied as of November 2021 (details about the numbers of benches, judicial and technical members as also location of NCLTs and NCLATs are listed in Annex I). To that extent government has to take a time bound approach to fill vacancies. Further, the apex court namely the Supreme Court should not hear petitions for reviews of NCLATs decisions without imposing heavy penalties on losing parties. For example, the change of ownership of Essar Steel at serial number 4 in Table 11 is a representative example of unnecessary delay in the resolution of bankruptcy cases in India. This case could be taught in Indian business and law schools to think of ways to shorten the disposal of similar cases.

Even after a NCLT/NCLAT/Supreme Court rules in favour of an applicant to takeover an asset, the nature of the company determines if further time-consuming regulatory clearances are required. If, for instance, the asset up for sale is a power production, transmission or distribution company the relevant sector regulator has to assess the capability of a potential new owner and this leads to further delays in the transfer of assets to new owners. A way to reduce such delays would be for regulators to develop templates such that only those who have the appropriate work experience and qualifications would be eligible as bidders for the corresponding assets up for sale in bankruptcy cases.

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## Review of IBC by Parliamentary Standing Committee

As of September 2021, a little more than five years since July 2016, there have been six amendments of the IBC and there are suggestions from various quarters, including from the Standing Committee on Finance of the 17th Lok Sabha, for further revisions in the IBC and downstream regulations. This Standing Committee's report was submitted on August 3, 2021 and is titled "Implementation of the Insolvency and Bankruptcy Code – Pitfalls and Solutions." The principal observations and recommendations of this Committee are listed in Annex II.

The Standing Committee's report has commented that the NCLT takes long to admit cases. Further, that the Committees of Creditors too, take substantial time to take decisions and occasionally accept offers for distressed assets which come in considerably later than those which came in earlier in the bidding process. Another comment of the Standing Committee was that recovery rates were low and, in some cases, lenders were taking haircuts of as much as 95 percent. However, it has to be recognized that the IBC process, even if it is managed efficiently, cannot raise the market's perception about the value of the residual assets.

The Committee has also suggested that selection of IPs needs to be made more transparent. The IBBI accredits IPs who are eligible to take up cases of stressed assets. It is not clear from this Parliamentary Committee's recommendation what else can be done to make the process of IP accreditation even more above board.

Additionally, this Committee has observed that micro-, small-, and medium-sized enterprises (MSMEs) are usually listed as operational rather than financial creditors. To that extent, in the event of bankruptcies, claims of MSMEs get lower priority than those of financial creditors. The Committee's recommendation that frivolous appeals should attract substantial penalties should be implemented by NCLTs and appellate tribunals.

The Standing Committee has pointed out that the NCLT was functioning at less than its intended strength with 45 members in position compared to a sanctioned number of 64 judges. A telling observation of the Committee is that as of August 2021 about 13,740 bankruptcy cases were pending with NCLTs. Further, that 71 percent of such cases have been under process for more than 180 days and the total amount involved in these cases was a staggering Rs 9 lakhs crore. To reduce delays this Standing Committee has recommended that there should be specialized NCLTs which only take up IBC related cases. This recommendation should be implemented by government.

## RBI's regulatory role regarding NPAs

RBI's master circular on willful defaulters is dated July 1, 2015. According to this circular a "willful default" is one in which a borrower defaults even when it has the capacity to repay. Alternatively, for willful default to be applicable, the borrower should have diverted the borrowed funds to other than stated purposes. Yet again, for the label willful default to apply the funds should no longer be available in the form of assets or the assets were siphoned off without informing lenders. RBI also stipulates that for the "default to be categorized as willful it must be intentional, deliberate and calculated."<sup>20</sup> Thus, in India the causal reasons for default have at times turned out to be negotiable beyond the terms of debt contracts. RBI as the overarching regulator for the financial sector provides for reasons under which defaults could be deemed to be not willful. This opens up a proverbial Pandora's box of judicial scrutiny and to that extent financial institutions may be circumspect about lending long term.

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<sup>20</sup> [https://m.rbi.org.in/scripts/BS\\_ViewMasCirculardetails.aspx?id=9907](https://m.rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=9907)

In G7 countries there is no such precisely comparable provision of “willful default”. In developed countries default is measured by the number of days that have elapsed since repayment was missed by borrowers. Relaxations are permitted in the case of natural disasters, war or some other force-majeure event which was mentioned in the loan contract or is standard in that jurisdiction. The grace period for defaults is usually 90 to 180 days depending on the terms of loan contracts.

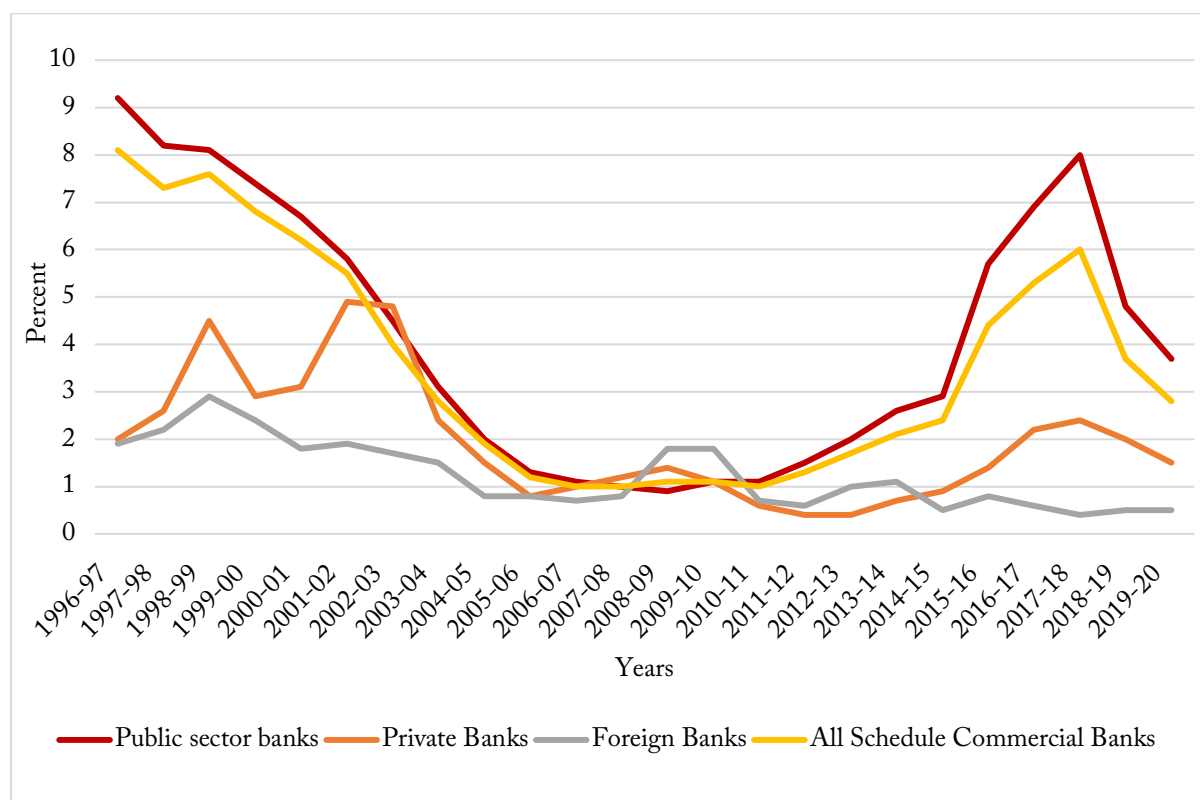
The following Table 12 and Figure 4 provide the numbers and graphical representation of net non-performing assets (NNPAs) as percentages of net advances for public sector, private and foreign banks between 1996-2020.

**Table 12: Net NPAs as percentages of Net Advances**

<b>Fiscal year</b>	<b>Public sector banks</b>	<b>Private banks</b>	<b>Foreign banks</b>	<b>All Scheduled commercial banks</b>
1996-97	9.2	2	1.9	8.1
1997-98	8.2	2.6	2.2	7.3
1998-99	8.1	4.5	2.9	7.6
1999-00	7.4	2.9	2.4	6.8
2000-01	6.7	3.1	1.8	6.2
2001-02	5.8	4.9	1.9	5.5
2002-03	4.5	4.8	1.7	4
2003-04	3.1	2.4	1.5	2.8
2004-05	2	1.5	0.8	1.9
2005-06	1.3	0.8	0.8	1.2
2006-07	1.1	1	0.7	1
2007-08	1	1.2	0.8	1
2008-09	0.9	1.4	1.8	1.1
2009-10	1.1	1.1	1.8	1.1
2010-11	1.1	0.6	0.7	1
2011-12	1.5	0.4	0.6	1.3
2012-13	2	0.4	1	1.7
2013-14	2.6	0.7	1.1	2.1
2014-15	2.9	0.9	0.5	2.4
2015-16	5.7	1.4	0.8	4.4
2016-17	6.9	2.2	0.6	5.3
2017-18	8	2.4	0.4	6
2018-19	4.8	2	0.5	3.7
2019-20	3.7	1.5	0.5	2.8

Source: RBI

**Figure 4: Net NPAs as percentage of Net Advances**



Source: RBI.

As can be seen in Figure 4, for public sector banks, NNPA started rising from 2013-14 onwards and peaked in 2017-18. From around 2013-14 RBI offered several schemes to help borrowers revert to making timely repayments. For instance, in December 2014 the RBI introduced the 5:25 year scheme. Under this scheme for loan sizes above Rs 500 crore banks could extend maturities to 20-25 years such that there was a better match between cash inflows for borrowers and their debt servicing obligations. Subsequently, RBI introduced other avenues to help borrowers under stress such as the corporate debt restructuring scheme (CDR) which was introduced in August 2001, the strategic debt restructuring scheme (SDR) started in June 2015, sustainable restructuring of stressed assets (S4A) was initiated in June 2016 and the joint lenders forum (JLF). RBI’s notification for JLF was titled “Timelines for Stressed Assets Resolution” and dated May 5, 2017.<sup>21</sup> These RBI initiatives were meant to help debtors resolve their pending dues in consultation with lenders. At the same time, the “regulator’s (RBI) inspection reports rarely cautioned banks to the extent required about the high credit growth, which was running well ahead of real growth”(Patel, 2020). In any case, the debt overhang was too large for several borrowers even when repayments were restructured or rescheduled.

Under the Right to Information Act an activist called Subhash Agarwal sought names of defaulters in specific instances of non-payment. This request finally made its way, via the Chief Central Information Commissioner, to the Supreme Court. The RBI argued that under Section 45-E of the 1934 RBI Act it could not provide specific information about defaults in the economic interests of the state.<sup>22</sup>

<sup>21</sup> <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10957&Mode=0>

<sup>22</sup> <https://www.business-standard.com/article/finance/rbi-defies-supreme-court-order->

The Supreme Court's judgement in this matter was announced on December 16, 2015 and it directed RBI to disclose the names of the said defaulters. As of end September 2021, it appears that RBI has not yet complied with this Supreme Court order of December 2015. In this context, RBI's Annual Report and its 6 monthly Financial Stability Reports do not provide specific information about large volume defaulters. The anonymity about defaulters is such that the Economic Survey of 2016-2017 had to depend on a foreign investment bank to cite the volumes of large defaults and the aggregate numbers of corporate defaulters. RBI's supervisory warnings need to be more specific and put out in the public domain as it is tax-payers who end up recapitalizing PSBs repeatedly.

On February 12, 2018 RBI issued a circular which provided for a tighter regime to recognize stressed assets and the modalities for lenders to address defaults.<sup>23</sup> This circular was titled: Timelines for Large Accounts to be Referred under IBC. After this circular was issued, a factually incorrect impression emerged in the Indian media that the resolution process had to start within a day of debt default. A simple reading of the circular indicates that the resolution process of approaching a NCLT needed to start within 180 days of default and not within a day. The Supreme Court struck down this RBI circular in a judgement dated April 2, 2019 focussing on the letter of the law. The relevant banking regulation law was interpreted by the Supreme Court to stipulate that RBI has to apply its mind to each individual case of default rather than lay down a general principle for default cases to be taken to a NCLT. The central government chose not to amend the relevant piece of banking regulation legislation to make RBI's February 2018 circular consistent with judicial scrutiny.

It was reported in the Times of India dated October 4, 2021<sup>24</sup> that an internal RBI study has indicated that borrower defaults came down within 6 months, after the February 2018 circular was issued. However, defaults increased again after this circular was declared invalid. In this context, RBI's "Report on Trends and Progress of Banking in India" dated December 24, 2019 had commented that "faster (emphasis added) resolution of stressed assets remains key to the revival of the banking system and that "credit growth for PSBs was well below that for private banks in the last few years."

In the above context, RBI's Financial Stability Report (FSR) dated July 11, 2021 mentioned that macro-stress tests for credit risk under a baseline scenario indicate that the Gross Nonperforming Assets (GNPAs) of Scheduled Commercial Banks may increase from 7.5 percent in September 2020 to 13.5 percent by September 2021. And, if the macroeconomic environment deteriorates, the ratio could increase to 14.8 percent. According to this FSR, as of September 2020, net non-performing assets (NNPAs) of PSBs amounted to 3 percent while the same number for private banks was 1 percent.

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<sup>23</sup> <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11218>

<sup>24</sup> [https://timesofindia.indiatimes.com/business/india-business/rbis-disputed-circular-cut-delinquency-study/articleshow/86738205.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst&pcode=461](https://timesofindia.indiatimes.com/business/india-business/rbis-disputed-circular-cut-delinquency-study/articleshow/86738205.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst&pcode=461)

## Conclusions

On December 15, 2015 the Supreme Court had directed RBI to provide the names of prominent defaulters in specific cases of debt default to the central government's Chief Information Commissioner (CIC). Almost three years later in September 2018 former RBI Governor R. Rajan reportedly said<sup>25</sup> that RBI had sent a list of high-profile default cases to the Prime Minister's Office (PMO) for coordinated action to be taken "to bring at least one or two to book". Without getting into the merits of a former RBI Governor's comment about sensitive information provided to PMO it appears that there has been inadequate transparency in India about wrongdoing by high net-worth defaulters.

The IBC and the IBBI were expected to reduce controversies and the time taken to resolve bankruptcies. One of the observations of the parliamentary Standing Committee which submitted its report on the functioning of the IBC in August 2021 was that haircuts on borrowings were at times upwards of 90 percent. On a separate note, a general expectation was that the unending waiting periods in the past for BIFR to take decisions would be definitively over after the passing of the IBC. As of end March 2021, of the ongoing insolvency resolution processes (IRPs) about 80 percent were not resolved after 270 days which is the statutory outer time limit for resolution. As of November 2021, NCLTs had 19 vacancies and NCLATs were reopening cases too often. More than the expected numbers of cases are ending up in the Supreme Court and this too has contributed to delays in resolving bankruptcies.

To speed up resolution of bankruptcies the number of NCLT benches could be increased from 16 to at least 40 and sanctioned strength of judges raised from 64 to about 350.<sup>26</sup> Around 10 NCLTs could be reserved for non-repayments in cases of borrowings above Rs 10,000 crores. Setting aside a specified number of NCLTs to hear cases of large defaults would be consistent with the recommendations of the parliamentary Standing Committee. It appears that the central government has not acted with sufficient urgency to fill vacancies in NCLTs/NCLATs despite the delays in bankruptcy resolution due to such vacancies. Incidentally, the suggested number of 350 judges for NCLTs is less than the numbers of judges involved in bankruptcy cases in the US. That said, the IBC has brought in a huge improvement, compared to the SICA and SARFAESI regimes, in both quicker and more transparent resolution of bankruptcies.

In October 2021 RBI pointed to the need for external auditors to be more vigilant in their work. Of course, that is necessary and particularly in the context of preempting bankruptcies. Three years earlier, in October 2018 former Chairman of the US Federal Reserve Paul Volcker book titled "Keeping at It: The Quest for Sound Money and Good Government" was published. Volcker makes the telling remark in this book that when it comes to financial sector governance "it is all about character." Obviously, this is particularly relevant for transparent, equitable and timely resolution of bankruptcies under the IBC thus providing an enabling environment for bulk long-term lending in India. Currently, the Indian economy is emerging gradually from the Covid induced slowdown. Consequently, it is as yet premature to assess definitively if NPA resolution has improved significantly due to IBC and credit growth for longer maturity lending by PSBs is reviving sufficiently to contribute towards sustainable GDP growth rates of 7-8 percent and higher.

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<sup>25</sup> <https://economictimes.indiatimes.com/industry/banking/finance/banking/rbi-submitted-a-list-of-high-profile-fraud-cases-to-pmo-raghuram-rajan/articleshow/>

<sup>26</sup> The need for around 350 NCLT judges was mentioned by M.S. Sahoo former Chairman of IBBI to the author in informal conversation in November 2021 and in a December 21, 2021 Business Standard article co-authored with C.G.K Nair (Director, National Institute of Securities Markets) [https://www.business-standard.com/article/opinion/insolvency-proceedings-in-slow-motion-121122101379\\_1.html](https://www.business-standard.com/article/opinion/insolvency-proceedings-in-slow-motion-121122101379_1.html).

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## Annex I

### Strength of NCLT & NCLAT Benches as of November 2021

	NCLT	NCLAT
<b>No. of benches</b>	16	2*
<b>Judicial members</b>	19	5
<b>Technical members</b>	26	6

Source: NCLT, NCLAT and Ministry of Corporate Affairs

### Location of NCLT Benches

Name & Location of NCLT Benches	Number of Benches
(a) National Company Law Tribunal, Principal Bench. (b) National Company Law Tribunal, New Delhi Bench.	2
National Company Law Tribunal, Ahmedabad Bench.	1
National Company Law Tribunal, Allahabad Bench.	1
National Company Law Tribunal, Amaravati Bench.	1
National Company Law Tribunal, Bengaluru Bench.	1
National Company Law Tribunal, Chandigarh Bench.	1
National Company Law Tribunal, Chennai Bench.	1
National Company Law Tribunal, Cuttack Bench.	1
National Company Law Tribunal, Guwahati Bench.	1
National Company Law Tribunal, Hyderabad Bench.	1
National Company Law Tribunal, Indore Bench.	1
National Company Law Tribunal, Jaipur Bench.	1
National Company Law Tribunal, Kochi Bench.	1
National Company Law Tribunal, Kolkata Bench.	1
National Company Law Tribunal, Mumbai Bench.	1
<b>Total number of NCLT Benches</b>	<b>16</b>

Source: NCLT



Name and Location of NCLAT Benches	Number of Benches
NCLAT Principal bench (four courts), New Delhi	1
NCLAT Chennai bench	1
Total number of NCLAT Benches	2

Source: NCLT & NCLAT

Note 1. There are two members (one Judicial and one Technical) on each bench

2. \*There are four courts functioning under the principal bench i.e. New Delhi

3. Government has appointed 28 more Members in the NCLTs recently bringing the total number of members to 52 against the sanctioned strength of 63. After some Members demitted office the present strength of Members is 48.

4. The Recruitment Rules for 320 posts in NCLTs were notified on 21.01.2020. NCLTs are in the process of filling up these posts. Further, Govt. has sanctioned 725 posts to be filled up on a contractual and outsourced basis and NCLTs have hired staff accordingly.

Source: Standing Committee on Finance, Ministry of Corporate Affairs, 2020-21, url-[http://164.100.47.193/lssccommittee/Finance/17\\_Finance\\_9.pdf](http://164.100.47.193/lssccommittee/Finance/17_Finance_9.pdf)

## Annex II

### 12.1 Insolvency & Bankruptcy Code (IBC)<sup>21</sup>

- The provisions of this Code shall apply to—
  - a. any company incorporated under the Companies Act, 2013 or under any previous company law;
  - b. any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;
  - c. any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;
  - d. such other body incorporated under any law for the time being in<sup>27</sup> the full text of the IBC is at force, as the Central Government may, by notification, specify in this behalf; and
  - e. Partnership firms and individuals, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be;
  - f. Board means the Insolvency and Bankruptcy Board of India established under sub-section (1) of section 188, Adjudicating Authority means National Company Law Tribunal (NCLT) constituted under section 408 of the Companies Act, 2013”;
  - g. bench means a bench of the Adjudicating Authority;
  - h. bye-laws mean the bye-laws made by the insolvency professional agency under section 205;
  - i. charge means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage;
  - j. Auditor” means a chartered accountant certified to practice as such by the Institute of Chartered Accountants of India under section 6 of the Chartered Accountants Act, 1949”;
  - k. Financial” creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to”;
  - l. Insolvency resolution process period “means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day”;
  - m. Operational debt “means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”;
  - n. The “interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors. The committee of creditors shall comprise all financial creditors of the corporate debtor”;
  - o. The committee of creditors, may, in the first meeting, by a majority vote of not less than seventy-five per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional”;
  - p. In situations in which “any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter” (chapter II of the IBC);
  - q. Operational creditors are those who have not received payment for supplies and/or services rendered to any enterprise and under the IBC operational creditors cannot be members of a Committee of Creditors (CoCs).

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<sup>27</sup> <https://www.mca.gov.in/Ministry/pdf/TheInsolvencyandBankruptcyofIndia.pdf>

## Annex III

### Report of the Standing Committee on Finance of the 17th Lok Sabha titled “Implementation of the Insolvency and Bankruptcy Code – Pitfalls and Solutions”<sup>28</sup>

The principal findings and recommendations of committee are as follows:

- a. The NCLT had no president as of August 2021 and it had only 34 members as compared to a sanctioned strength of 62.
- b. one of the principal reasons for delays in resolving bankruptcies is that the NCLT takes too long to admit cases and (unless otherwise rejected) applications should be admitted within 30 days by default;
- c. Committees of Creditors (COCs) also take too long to take decisions and often accept offers to purchase distressed assets which are very delayed compared to other bidders. This leads to inordinate delays in resolutions of debt default cases;
- d. there should be a professional “code of conduct” for COCs the selection of resolution professionals (RPs) needs to be made more transparent;
- e. there should be an “Institute of Resolution Professionals” as of August 2021 13, 170 bankruptcy cases are pending with the NCLT;
- f. 71 per cent of pending cases have been under process for more than 180 days and total amount involved in these cases amounts to Rupees 9 lakh crores;

As of August 2021, there are several insolvency professional agencies. The Insolvency and Bankruptcy Board of India (IBBI) and these agencies regulate the functioning of resolution professionals (RPs). The Committee has recommended that a separate institute to regulate RPs should be set up;

- a. All records of NCLT and presumably NCLAT proceedings should be digitized and made freely available;
- b. Huge penalties for frivolous appeals;
- c. NCLT should allow assets to be sold in pieces;
- d. Micro, Small and Medium sized enterprises are often classified as operational creditors rather than financial creditors. Priority should be given to their claims;
- e. The NCLT and NCLAT should be specialist benches with domain knowledge;
- f. NCLT should only have High Court level judges.

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<sup>28</sup> <https://www.ibbi.gov.in/uploads/whatsnew/fc8fd95f0816acc5b6ab9e64c0a892ac.pdf>

## Annex IV

### Year wise and Bank wise Capital Infusion ( Rupees in Crores)

Name of PSBs	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	Total
Allahabad bank			670			400	320	973	451	2,814
Andhra bank			1,173			200	120	378	1,100	2,971
Bank of Baroda			2,461		850	550	1,260	1,786		6,907
Bank of India			1,010		809	1,000		3,605	2,838	9,262
Bank of Maharashtra			940	470	406	800		394	300	3,310
Canara Bank						500	570	947	748	2,765
Central Bank of India	700	450	2,253	676	2,406	1,800		535	1,397	10,217
Corporation bank			309		204	450		857	508	2,328
Dena bank			539			700	140	407	1,046	2,832
Indian overseas bank			1,054	1,441	1,000	1,200		2,009	2,651	9,355
Indian bank							280			280
Oriental bank of commerce			1,740			150		300		2,190
Punjab national bank			184	655	1,248	500	870	1,732	2,112	7,301
Punjab and Sind bank					140	100				240
Syndicate bank			633			200	460	740	776	2,809
UCO bank	450	450	1,613	48	681	200		935	1,925	6,302
Union bank of India			793		1,114	500		1,080	541	4,028
United bank of India	250	300	558		100	700		480	1,026	3,414
Vijaya bank	500		1,068			250		220		2,038
State bank of India				7,900	3,004	2,000	2,970	5,393	5,681	26,948
IDBI			3,119	810	555	1,800		2,229	1,900	10,413
<b>Total</b>	<b>1,900</b>	<b>1,200</b>	<b>20,117</b>	<b>12,000</b>	<b>12,517</b>	<b>14,000</b>	<b>6,990</b>	<b>25,000</b>	<b>25,000</b>	<b>1,18,724</b>

Source: Department of Financial Services, Ministry of Finance

## Annex V

### INSOLVENCY REGIMES IN THE UK AND USA

#### United Kingdom

1. The statutory processes available to insolvent companies in the United Kingdom are set out in the Insolvency Act 1986 (IA 1986). The legal processes available to solvent companies are set out under the Companies Act 2006 (CA 2006). These two pieces of legislation apply throughout the United Kingdom.
2. There is no specific tribunals or courts that exercise jurisdiction over insolvency proceedings in the UK.
3. There are four principal types of insolvency proceedings applicable to corporations in the UK (England, Wales and Northern Ireland) — administration, receivership, liquidation and company voluntary arrangements and schemes.
4. A Corporate Insolvency and Governance Act (CIG Act) came into force on June 26, 2020 which introduced fundamental changes to UK's company and insolvency laws which not only provide assistance to companies and their directors during the COVID-19 crisis but also on a more permanent basis
5. The administrator, supervisors, liquidators, and administrative receivers must be authorized insolvency practitioners as deemed by the Insolvency Practitioners Association, Association of Chartered accountants and related bodies. A report on the conduct of all the Directors (who were in office for the last 3 years in the company) must be sent by the administrative receiver or liquidator to the secretary of the state of business, energy, and industrial strategy. Examples of the most commonly reported misconduct are: failing to send in or pay tax that is due; entities continue to pursue their business even when they are insolvent or were disqualified for wrongful trading etc.
6. For Directors of insolvent companies, the Company Directors' Disqualification Act 1986 would be applicable and resolution arrangements would be governed Companies Act 2006.
7. **Insolvency proceeding and stepwise supervision are as follows:**
  - a. scheme for reconstructing may not be effective until an order of the United Kingdom Bankruptcy Court recognizes the scheme in accordance with chapter 15 of the bankruptcy code;
  - b. - the time period for drafting of restructuring documents and related schemes is four to eight weeks;
  - c. - the first hearing to be completed within two to three weeks and a letter that specifies the overview of the scheme and voting classes of creditors has to be circulated to affected creditors;
  - d. - In the first court hearing debtors seek an order to convene the meeting(s) of creditors for voting purposes. Creditors can raise challenges. At the same time, detailed documentation of proposed resolution is provided to the related creditors of the company;
  - e. - after two to three weeks a meeting(s) is held with creditors to vote on a proposed scheme for resolution;
  - f. - at a second court hearing which is held a few days after a meeting with creditors is meant to produce a resolution scheme and creditors can challenge such schemes before the court.
8. **Rights and responsibilities of related stakeholders:**
  - a. **Debtor:** the debtor will have to propose the scheme of arrangement or resolution proposal through the terms agreed by the committee of the creditor. The debtors act as facilitators to various stakeholder constituencies in the reconstruction process of the concerned company.

- b. **Directors of the debtor:** the directors will control the restructuring process unless debtors are in administration or liquidation. The directors need to have primary regard for the interests of creditors in case of insolvency of the company. They have to manage the potential conflict issues among the various stakeholders of interest.
  - c. **Shareholders of the debtor:** The role of the shareholders in restructuring proceedings will vary depending on the transaction. They may retain full control of the company (particularly if providing new money); they may be diluted through a debt-for-equity swap, or they may be disenfranchised entirely (with or without their consent). The shareholders will owe no duties to the company's creditors and may act in their own interests.
  - d. **Secured creditors:** the role of secured creditors depends on the nature of the scheme in the company, they may have the right to vote in the resolution. proposal, although no statutory moratorium will apply to prevent a creditor from exercising its rights.
9. **Helpful links:**
- a. <https://www.squirepattonboggs.com/~media/files/insights/publications/2011/04/a-practical-guide-to-uk-insolvency-proceedings/files/eur6182-girr--squire-sanders/fileattachment/eur6182-girr--squire-sanders.pdf>
  - b. <https://cms.law/en/int/expert-guides/cms-expert-guide-to-restructuring-and-insolvency-law/united-kingdom>
  - c. <https://www.gov.uk/government/publications/liquidation-and-insolvency/liquidation-and-insolvency>
  - d. <https://thelawreviews.co.uk/title/the-insolvency-review/united-kingdom-england--wales>
  - e. <https://www.mondaq.com/uk/insolvencybankruptcyre-structuring/939090/restructuring-insolvency-comparative-guide>

### United States of America

- 10. The US Constitution gives the US Congress the authority to enact laws on the subject of bankruptcy for the country. In exercising this authority, legislators have passed several laws on the subject of bankruptcy, the most recent being the Bankruptcy Reform Act of 1978, which largely governs the country's current bankruptcy laws. The US Bankruptcy Code is also referred to as Title 11 of the United States Code. It governs the procedures that businesses and individuals must follow when filing for bankruptcy in the United States Bankruptcy Court.
- 11. The Bankruptcy Code is composed of nine chapters. Chapters 1, 3 and 5 provide the structural components that generally apply to all bankruptcy cases. Chapters 7, 9, 11, 12, 13 and 15 lay out general procedures specific to certain types of bankruptcies.
- 12. The procedural aspects of bankruptcy processes are governed by the Federal Rules of Bankruptcy Procedure (often called the "Bankruptcy Rules") and local rules of each bankruptcy court. The Bankruptcy Rules contain a set of official forms for use in bankruptcy cases. The Bankruptcy Code and Bankruptcy Rules (and local rules) set forth the formal legal procedures for dealing with the debt problems of individuals and businesses.
- 13. There is a bankruptcy court for each judicial district in the country. Each state has one or more districts. There are 90 bankruptcy districts across the country.
- 14. The court official with decision-making power over federal bankruptcy cases is the United States bankruptcy judge, a judicial officer of the United States district court. The bankruptcy judge may decide any matter connected with a bankruptcy case, such as eligibility to file or whether a debtor should receive a discharge of debts. Much of the bankruptcy process is administrative, however, and is conducted away from the courthouse. In cases under chapters 7, 12, or 13, and sometimes in chapter 11 cases, this administrative process is carried out by a Trustee who is appointed to oversee the case.

15. Statutory framework and substantive law: Insolvency and bankruptcy law is primarily governed by the federal law of the United States, Article 1, Section 8 of the US constitution, which grants the government power to enact the “uniform laws” in regard to insolvency cases in the country. Although individual states also have their own laws to govern bankruptcy proceedings and relationships among stakeholders of the insolvent companies (debtors, creditors, stockholders, etc.). Bankruptcy Abuse and Consumer Protection Act 2005 is the most recent amendment to the US Bankruptcy Code.
16. The code is segregated in form of 9 chapters, i.e. chapters 1, 3, 5 (main structure of the restructuring of the bankruptcy case), chapters 7, 9, 11, 12, 13, and 15 designed for certain types of insolvency cases, which are as follows:
  - a. trustee-administered liquidation (Chapter 7)
  - b. municipality bankruptcy (Chapter 9)
  - c. debtor-in-possession (DIP) managed reorganization or liquidation (Chapter 11)
  - d. family farmer and fisherman bankruptcies (Chapter 12)
  - e. individual bankruptcies (Chapter 13); and (f) cross-border cases (Chapter 15).
17. general, there are two different regimes under the US bankruptcy code, one is trustee-controller liquidation (chapter 7) and DIP-controller liquidation (chapter 11).
18. **The Automatic Stay:** Automatic stay is a very important provision of the US bankruptcy code under Section 362. It is a statutory injunction that applies directly upon the commencement of insolvency proceedings. It prevents creditors from pursuing actions against debtors’ property. Despite having no significant exception, it can be modified by the court if needed. It provides necessary preservation to the debtors to assess all the property of the estate and maximize their value without creditors seeking remedies to protect their interests. The automatic stay does not apply to the contracts (colloquially referred to as financial contracts) which includes for example security contracts, forward contracts, master netting contracts, commodities contracts, repurchase agreement with debtors given that counterparties may need to exercise their remedies promptly.
19. **The absolute priority rule:** It gives the higher priority to the creditor to be paid in full before low priority creditors receive compensation from an insolvent estate, and ensures a fair and just distribution of the debtor’s asset under the applicable non-insolvency law. Equity holders do not receive anything until all creditors of the company get paid in full since equity holders possess the lowest priority.
20. **Avoidance Actions:** The US bankruptcy code allows debtors or trustees for that matter to avoid pre-insolvency transfer of assets from an insolvent estate. This not only enables debtors to prevent a decline of the company before commencement of insolvency proceedings but gives time to preserve-maximize the value of an insolvent company.
21. **Policy:** the aim of the united states bankruptcy code is to ensure a maximum of the creditor’s claims, then for the equity holders of the debtor company.

The priority was given to reorganizing the debtor company instead of liquidating the business to protect employees given the fact that reorganizing value is more than the liquidation value of the company. Reorganizing the business would be done under the provision of chapter 11 of the US bankruptcy code. But if the creditor’s return cannot be maximized by reorganizing the debtor company, then the business can be liquidated either in accordance with chapter 7 or chapter 11. Management of the debtor’s company will get control of the liquidation process since they are more familiar with the assets of the company and their actual value. Debtors are more likely to liquidate in accordance with chapter 7 if funds are not enough to run under the chapter 11 process since the recoveries for creditors is lower in the case of chapter 7 liquidation proceeding.

22. **Insolvency proceedings:** Chapter 7 and 11 are the two main bankruptcy proceedings available to businesses as discussed in Section I of the Bankruptcy code of the US.
23. **Chapter 7:** The aim of chapter 7 is to provide the most efficient and orderly liquidation of the assets of the debtor's company to the creditors and other stakeholders, the debtor entity cannot reorganize under chapter 7. The chapter 7 trustee administered the liquidation procedure, the trustee is appointed by the US trustee or by an election conducted by creditors.
24. **Chapter 11:** Under this Chapter, directors and management of the company remain in control unless a Trustee is appointed by the US trustee or by election. The debtor can reorganize the company's operations and capital structure if it expects to emerge from insolvency proceeding into a healthier company.

It also gives debtors a right to reorganize and propose a plan for the first 120 days after insolvency proceedings start, and this can be extended up to 18 months with the condition that the company is making progress. However, debtors have to show significant reason to the court for such further extension. This chapter is a more detailed and a structured form of liquidation as compared to Chapter 7.

25. **Chapter 15:** It includes insolvency proceedings for international cases and allows foreign debtors to initiate ancillary proceedings for insolvency (through its foreign representative) in the US.

#### 26. References

- a. <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basicsprocess-bankruptcy-basics> <https://thelawreviews.co.uk/title/the-insolvency-review/usa>
- b. <https://corporatefinanceinstitute.com/resources/knowledge/other/us-bankruptcy-code/>
- c. [https://uk.practicallaw.thomsonreuters.com/7-501-6870?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/7-501-6870?transitionType=Default&contextData=(sc.Default)&firstPage=true)
- d. <https://iclg.com/practice-areas/restructuring-and-insolvency-laws-and-regulations/usa>
- e. <https://www.uscourts.gov/services-forms/bankruptcy>

#### 27. Helpful Links:

- a. <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/process-bankruptcy-basics>
- b. <https://thelawreviews.co.uk/title/the-insolvency-review/usa>
- c. <https://corporatefinanceinstitute.com/resources/knowledge/other/us-bankruptcy-code/>
- d. [https://uk.practicallaw.thomsonreuters.com/7-501-6870?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/7-501-6870?transitionType=Default&contextData=(sc.Default)&firstPage=true)
- e. <https://iclg.com/practice-areas/restructuring-and-insolvency-laws-and-regulations/usa>
- f. <https://www.uscourts.gov/services-forms/bankruptcy>

#### 28. Further Readings

- a. <https://www.jonesday.com/files/Publication/b0c886bd-6721-4c66-9213-db7f01ddb55f/Presentation/PublicationAttachment/96b1ebf1-2203-4577-bff4-8baf89f4e0d1/Comparison>
- b. [https://www.shumaker.com/Templates/media/images/Practices/SLK\\_CHA--2.pdf-Comparison between Germany, UK and US Laws on Insolvency](https://www.shumaker.com/Templates/media/images/Practices/SLK_CHA--2.pdf-Comparison%20between%20Germany,%20UK%20and%20US%20Laws%20on%20Insolvency)
- c. [https://www.clearygotlieb.com/-/media/files/emrj-materials/issue-8-winter-2018\\_2019/indian-bankruptcy-codehow-does-it-compare-pdf.pdf](https://www.clearygotlieb.com/-/media/files/emrj-materials/issue-8-winter-2018_2019/indian-bankruptcy-codehow-does-it-compare-pdf.pdf)



## Annex VI

	Lender	Cases	Links
1.	ICICI bank	Innoventive Industries Ltd. v ICICI Bank & Anr 2018(1) SCC 40	<p>Supreme court Order:</p> <p><a href="https://ibbi.gov.in/webadmin/pdf/order/2017/Sep/31%20Aug%202017%20in%20the%20matter%20of%20Innoventive%20Industries%20Ltd.%20Vs.%20ICICI%20Bank%20&amp;%20Anr.%20Civil%20Appeal%20Nos.8337-8338%20of%202017_2017-09-01%2009:56:52.pdf">https://ibbi.gov.in/webadmin/pdf/order/2017/Sep/31%20Aug%202017%20in%20the%20matter%20of%20Innoventive%20Industries%20Ltd.%20Vs.%20ICICI%20Bank%20&amp;%20Anr.%20Civil%20Appeal%20Nos.8337-8338%20of%202017_2017-09-01%2009:56:52.pdf</a></p> <p>Liquidation Order:</p> <p><a href="https://ibbi.gov.in/webadmin/pdf/order/2018/Jan/8th%20Dec%202017%20in%20the%20matter%20of%20Innoventive%20Industries%20Ltd.%20C.P.%20No.%2001-I&amp;BP-2016%20(Liquidation%20Order)_2018-01-17%20-11:52:36.pdf">https://ibbi.gov.in/webadmin/pdf/order/2018/Jan/8th%20Dec%202017%20in%20the%20matter%20of%20Innoventive%20Industries%20Ltd.%20C.P.%20No.%2001-I&amp;BP-2016%20(Liquidation%20Order)_2018-01-17%20-11:52:36.pdf</a></p>
2.	Bank of Baroda	Binani Industries Limited Vs. Bank of Baroda & Anr	<p>Admission Order:</p> <p><a href="https://ibbi.gov.in/webadmin/pdf/order/2017/Sep/25th%20July%202017%20in%20the%20matter%20of%20Binani%20Cement%20Limited%20CP%20(IB)%20No.%20359-KB-2017_2017-09-12%2010:52:21.pdf">https://ibbi.gov.in/webadmin/pdf/order/2017/Sep/25th%20July%202017%20in%20the%20matter%20of%20Binani%20Cement%20Limited%20CP%20(IB)%20No.%20359-KB-2017_2017-09-12%2010:52:21.pdf</a></p> <p>NCLAT approval of Resolution Plan:</p> <p><a href="https://ibbi.gov.in/webadmin/pdf/order/2018/Nov/14th%20Nov%202018%20in%20the%20matter%20of%20Binani%20Industries%20Ltd.%20Vs.%20Bank%20of%20Baroda%20&amp;%20Anr.%20CA%20(AT)%20No.%2082-2018_2018-11-14%2017:12:47.pdf">https://ibbi.gov.in/webadmin/pdf/order/2018/Nov/14th%20Nov%202018%20in%20the%20matter%20of%20Binani%20Industries%20Ltd.%20Vs.%20Bank%20of%20Baroda%20&amp;%20Anr.%20CA%20(AT)%20No.%2082-2018_2018-11-14%2017:12:47.pdf</a></p>
3.	State Bank of India	State Bank of India v. Bhushan Steel Limited (C.P) (I.B)-201 (PB)/2017	<p>Resolution Plan Approval:</p> <p><a href="https://ibbi.gov.in/uploads/order_e4ac2c06deeb1daee90acba13bcbe0ea.pdf">https://ibbi.gov.in/uploads/order_e4ac2c06deeb1daee90acba13bcbe0ea.pdf</a></p> <p>NCLAT affirming Resolution Plan:</p> <p><a href="https://ibbi.gov.in/webadmin/pdf/order/2018/Aug/10th%20Aug%202018%20in%20the%20matter%20of%20Renaissance%20Steel%20India%20Pvt.%20Ltd.%20Vs.%20Electrosteels%20Steel%20India%20Ltd._2018-08-2-0%2011:23:35.pdf">https://ibbi.gov.in/webadmin/pdf/order/2018/Aug/10th%20Aug%202018%20in%20the%20matter%20of%20Renaissance%20Steel%20India%20Pvt.%20Ltd.%20Vs.%20Electrosteels%20Steel%20India%20Ltd._2018-08-2-0%2011:23:35.pdf</a></p>
4.	State Bank of India	Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors	<p>Approval of Resolution Plan:</p> <p><a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/In%20the%20matter%20of%20Standard%20Chartered%20Bank%20and%20State%20Bank%20of%20India%20Vs%20Essar%20Steel%20India%20Limited%20CP%20(IB)%20No.%2039%20-40%20-2017%201_2019-03-13%2022:02:42.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/In%20the%20matter%20of%20Standard%20Chartered%20Bank%20and%20State%20Bank%20of%20India%20Vs%20Essar%20Steel%20India%20Limited%20CP%20(IB)%20No.%2039%20-40%20-2017%201_2019-03-13%2022:02:42.pdf</a></p> <p>Resolution Plan affirmed by SC:</p> <p><a href="https://ibbi.gov.in/uploads/order/d46a64719856fa6a2805d731a0edaa7.pdf">https://ibbi.gov.in/uploads/order/d46a64719856fa6a2805d731a0edaa7.pdf</a></p>

5.	State Bank of India	State Bank of India vs Monnet Ispat & Energy Limited.	Resolution Plan approval: <a href="https://ibbi.gov.in/webadmin/pdf/order/2018/Jul/24th%20Jul%202018%20in%20the%20matter%20of%20Monnet%20Ispat%20&amp;%20Energy%20Ltd.%20MA%20No.%20346-2018%20in%20CP%20(IB)-1139-(MB)-2017_2018-07-26%2015:33:46.pdf">https://ibbi.gov.in/webadmin/pdf/order/2018/Jul/24th%20Jul%202018%20in%20the%20matter%20of%20Monnet%20Ispat%20&amp;%20Energy%20Ltd.%20MA%20No.%20346-2018%20in%20CP%20(IB)-1139-(MB)-2017_2018-07-26%2015:33:46.pdf</a>
6.	State Bank of India	State Bank of India vs Alok Industries	Admission Order: <a href="https://ibbi.gov.in/webadmin/pdf/order/2017/Jun/18thJuly2017inthematterofAlokIndustriesLtdCPIBNo487AHM2017.pdf">https://ibbi.gov.in/webadmin/pdf/order/2017/Jun/18thJuly2017inthematterofAlokIndustriesLtdCPIBNo487AHM2017.pdf</a>  Resolution Plan Order: <a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/CP(IB)%20048%20of%202017%20FINAL%20ALOK%20COMMON%20ORDER_4_2019-03-12%2021:02:09.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/CP(IB)%20048%20of%202017%20FINAL%20ALOK%20COMMON%20ORDER_4_2019-03-12%2021:02:09.pdf</a>
7.	State Bank of India	State Bank of India vs Jet Airways	Admission Order: <a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jun/20th%20Jun%202019%20in%20the%20matter%20of%20Jet%20Airways%20(India)%20Limited%20CP%201938,1968%20&amp;%202205%20(MB)-MB-2019_2019-06-21%2016:52:41.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Jun/20th%20Jun%202019%20in%20the%20matter%20of%20Jet%20Airways%20(India)%20Limited%20CP%201938,1968%20&amp;%202205%20(MB)-MB-2019_2019-06-21%2016:52:41.pdf</a>  Resolution Plan Approval order: <a href="https://ibbi.gov.in/uploads/order/1f9303d5fed6f1d2514809fa5363deaa.pdf">https://ibbi.gov.in/uploads/order/1f9303d5fed6f1d2514809fa5363deaa.pdf</a>
8.	Reserve Bank of India	Reserve Bank of India v. Dewan Housing Finance Corporation Limited	Admission Order: <a href="https://ibbi.gov.in/uploads/order/d9c77ba13d4eea5107ae79715a8c0402.pdf">https://ibbi.gov.in/uploads/order/d9c77ba13d4eea5107ae79715a8c0402.pdf</a>  Resolution Plan Approval Order: <a href="https://ibbi.gov.in/uploads/order/4dc4028ccc12768a83b5726399fc8698.pdf">https://ibbi.gov.in/uploads/order/4dc4028ccc12768a83b5726399fc8698.pdf</a>
9.	Ericsson India Private Limited	Ericsson India Private Limited v. Reliance Communications Limited	Admission Order: <a href="https://ibbi.gov.in/webadmin/pdf/order/2018/Jul/17th%20May%202018%20in%20the%20matter%20of%20Reliance%20Communications%20Ltd.%20C.P.%20(IB)-1387-(MB)-2017_2018-07-24%2016:56:04.pdf">https://ibbi.gov.in/webadmin/pdf/order/2018/Jul/17th%20May%202018%20in%20the%20matter%20of%20Reliance%20Communications%20Ltd.%20C.P.%20(IB)-1387-(MB)-2017_2018-07-24%2016:56:04.pdf</a>  Supreme Court: <a href="https://ibbi.gov.in/uploads/order/4e3ee52f0c92364d2d605ee096ff2a88.pdf">https://ibbi.gov.in/uploads/order/4e3ee52f0c92364d2d605ee096ff2a88.pdf</a>

10.		Dharani Sugars and Chemicals v. Union of India	<p>Supreme Court Judgment:</p> <p><a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Apr/2nd%20Apr%202019%20in%20the%20matter%20of%20Dharani%20Sugars%20and%20Chemicals%20Ltd.%20Vs.%20Union%20of%20India%20&amp;%20Ors.%20Transferred%20Case%20(Civiil)%20No.%2066%20of%202018%20In%20Transfer%20Petition%20(Civil)%20No.%201399%20of%202018_2019-04-02%2016:39:21.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Apr/2nd%20Apr%202019%20in%20the%20matter%20of%20Dharani%20Sugars%20and%20Chemicals%20Ltd.%20Vs.%20Union%20of%20India%20&amp;%20Ors.%20Transferred%20Case%20(Civiil)%20No.%2066%20of%202018%20In%20Transfer%20Petition%20(Civil)%20No.%201399%20of%202018_2019-04-02%2016:39:21.pdf</a></p> <p>RBI Circular:</p> <p><a href="https://rbidocs.rbi.org.in/rdocs/notification/PDFs/PRUDENTIALB20DA810F3E148B099C113C2457FBF8C.PDF">https://rbidocs.rbi.org.in/rdocs/notification/PDFs/PRUDENTIALB20DA810F3E148B099C113C2457FBF8C.PDF</a></p>
11.	IDBI Bank Limited	Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors	<p>Resolution Plan Approval Order:</p> <p><a href="http://www.jaypeeinftratech.com/communications/2020_03_06_Approval_of_Resolution_Plan_by_NCLT.pdf">http://www.jaypeeinftratech.com/communications/2020_03_06_Approval_of_Resolution_Plan_by_NCLT.pdf</a></p> <p>Supreme Court Order:</p> <p><a href="https://ibbi.gov.in/uploads/order/0fb1262c0473ece0b614ecc9d46fbb12.pdf">https://ibbi.gov.in/uploads/order/0fb1262c0473ece0b614ecc9d46fbb12.pdf</a></p>
12.	SBI, PNB, Canara Bank and other	Bhushan Power and Steel Ltd.	<p><a href="file:///D:/OneDrive%20-%20CSEP/MY%20DATA/Downloads/Jsw_Steel_Ltd_vs_Mahender_Kumar_Khandelwal_An_r_on_17_February_2020.PDF">file:///D:/OneDrive%20-%20CSEP/MY%20DATA/Downloads/Jsw_Steel_Ltd_vs_Mahender_Kumar_Khandelwal_An_r_on_17_February_2020.PDF</a></p> <p><a href="https://ibbi.gov.in/uploads/order/cd7bd9d4be62446168ecbf584ee77063.pdf">https://ibbi.gov.in/uploads/order/cd7bd9d4be62446168ecbf584ee77063.pdf</a></p>
13.	Bank of Maharashtra	Videocon Industries Group	<a href="https://ibbi.gov.in/uploads/order/2e45ab6b057f2fd01e56cc47f29b6dce.pdf">https://ibbi.gov.in/uploads/order/2e45ab6b057f2fd01e56cc47f29b6dce.pdf</a>
14.	Bank of Baroda	Shiv Kumar Reddy ad Aur.	<p><a href="https://ibbi.gov.in/uploads/order/07c2cef2ae8e3f3c25647dcaf8271a7f.pdf">https://ibbi.gov.in/uploads/order/07c2cef2ae8e3f3c25647dcaf8271a7f.pdf</a></p> <p><a href="file:///D:/OneDrive%20-%20CSEP/MY%20DATA/Downloads/Dena_Bank_Now_Bank_Of_Baroda_vs_C_Shivakumar_Reddy_on_4_August_2021.PDF">file:///D:/OneDrive%20-%20CSEP/MY%20DATA/Downloads/Dena_Bank_Now_Bank_Of_Baroda_vs_C_Shivakumar_Reddy_on_4_August_2021.PDF</a></p>
15.	UCO bank, Axis Bank, SBI and others	SREI infrastructure Finance and SREI equipment finance*	<p><a href="https://ibbi.gov.in/uploads/order/f8f85320199f022fb038aeb4fe680ef1.pdf">https://ibbi.gov.in/uploads/order/f8f85320199f022fb038aeb4fe680ef1.pdf</a></p> <p><a href="https://ibbi.gov.in/uploads/announcement/3fca8234c10888be92b736018231a2e4.pdf">https://ibbi.gov.in/uploads/announcement/3fca8234c10888be92b736018231a2e4.pdf</a></p>

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