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7th NATIONAL SUMMIT

Insolvency & Bankruptcy Code and Valuation

KNOWLEDGE REPORT



Message from Assocham

The Insolvency & Bankruptcy Code (IBC) is a landmark legislation amongst a horde of pathbreaking reforms brought in by the current government. This single piece of legislation has allowed us to jump several places in the world ranking on ease of doing business in India. IBC had been implemented with a view to fastest reporting of default by any corporate and collective resolution of the same in a time bound manner. The implementation of IBC was also aimed at addressing NPA issues affecting the economy.

Having gained traction since then, it has brought about a paradigm shift in the recovery and resolution process by empowering the creditors. It has also brought about a time-bound resolution process, through a transparent mechanism for creditors to resolve financial stress of any corporate. While, investors also gain from available opportunities, the tendency of borrowers to default has been curbed. The resulting increase in M&A activity also has been driven by the lure of valuable assets being made available at attractive prices and takeover of companies on clean slate basis.

The IBBI has been pro-active in addressing market concerns, challenges in the process and has thereby endeavoured to make relevant changes in the Regulations to address concerns. The recent amendments in the Regulations regarding the facilitating resolution of different assets in different manner during CIRP, modification in timelines and overhaul of the functions and powers of the Stakeholders Consultation Committee during Liquidation along with procedural changes such as allowing success fee linked to early resolution and recovery for Insolvency Professionals evidences its proactive nature.

On this occasion, ASSOCHAM & Resurgent India have jointly prepared a comprehensive knowledge paper. We hope this report, along with the discussions during the summit, will help the regulators, market participants, government departments and research scholars for the further development of the sector.

I thank the Knowledge Partner for their valuable contribution and convey my best wishes for the success of the summit.



Shri Deepak Sood

Secretary General
ASSOCHAM



Message from Resurgent India Ltd

The Insolvency and Bankruptcy Code (IBC) of 2016 is a significant reform in the Indian financial sector aimed at providing a single, unified framework for resolving insolvency and bankruptcy issues in the country. The code replaces the existing complex and fragmented insolvency and bankruptcy laws with a unified legal framework, making the resolution process more efficient and predictable. The code is widely seen as a significant step towards modernizing the Indian financial sector and promoting a more business-friendly environment in the country.

Creating a market for such assets is seen as one effective approach to dealing with the non-performing assets (NPA) problem. The establishment of a secondary market for NPAs would relieve banks of the burden of debt collection, while also freeing up cash and resources for new lending. This tool would also enhance the banks' ability to manage market and credit risks, bolstering their risk management strategy. India's stressed-asset market has the potential to attract significant foreign investments due to several strategic factors, including an abundant supply of distressed assets, regulatory transparency, favourable currency exchange rates, and the prospect of higher investment returns compared to other global stressed-asset markets.

The establishment of a market for distressed assets would not only benefit financial institutions but also support corporate restructuring and expand sources of financing. By improving secondary market liquidity for loans, it would attract a wider range of institutional investors to assist in corporate restructuring. In the short term, a market for distressed assets could facilitate the exit of non-viable firms and support the growth of viable ones, resulting in a faster recovery. Over time, it would enable the reallocation of resources towards more productive corporations and assist in their reorganization and expansion, contributing to greater economic growth and stability.

The analysis presented in the report delves deep into the distressed-asset market in India. It provides a comprehensive overview of the challenges and prospects in the market and puts forth suggestions for the growth and development of the market.

Shri Jyoti Prakash Gadia

Managing Director
Resurgent India Ltd



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A BRIEF OVERVIEW

The Insolvency and Bankruptcy Code (IBC) was enacted by the Indian government in 2016 and came into effect in 2016. The code provides a single, unified framework for resolving insolvency and bankruptcy issues in the country, replacing the existing fragmented laws and regulations. The IBC applies to both individuals and companies, including limited liability partnerships, partnership firms, and one-person companies.

The code provides a transparent, and market-oriented resolution process for insolvency, aimed at protecting the interests of creditors and maximizing recovery. The IBC replaces the existing complex and fragmented insolvency and bankruptcy laws with a unified legal framework, making the resolution process more efficient and predictable. This code is widely seen as a significant step towards modernizing the Indian financial sector and promoting a more business-friendly environment in the country.

One of the key objectives of the IBC is to ensure a quick and effective resolution of insolvency and bankruptcy issues. The code provides for a time-bound process, with specific deadlines for each stage, to resolve the matter in a maximum of 330 days. The introduction of the IBC has brought a significant change in the recovery and resolution process by replacing the traditional "debtor in possession" with the concept of "creditor in control". This means that in case of default in payments of loans or interest, any financial or operational creditors can take control of the company through insolvency professionals. The IBC provides clear guidelines for the entire process, including the distribution of recovery proceeds, ensuring that creditors have greater control over the proceedings.

The IBC is a significant reform in the Indian economy and has helped improve the ease of doing business, reduced the scope for litigation, and encouraged entrepreneurship and foreign investment. The IBC aims to promote accountability in the insolvency and bankruptcy resolution process. This is achieved through the clever use of technology and the appointment of insolvency professionals, who must maintain records and provide regular updates to stakeholders. In addition to the benefits for creditors, the IBC is also expected to positively impact the Indian economy as a whole. The code also requires companies to comply with specific standards and practices to improve corporate governance and reduce the risk of default.

Before the Insolvency and Bankruptcy Code (IBC), the laws related to insolvency and bankruptcy in India were fragmented and scattered across multiple statutes. Some of the laws that dealt with these issues included the Companies Act, of 1956, the Sick Industrial Companies (Special Provisions) Act, of 1985, and the Recovery of Debts Due to Banks and Financial Institutions Act, of 1993.

These laws suffered from several problems, including lengthy and complex resolution processes, overlapping jurisdiction among various tribunals, and limited protection for creditors. The resolution process was often slow and ineffective,



taking several years to complete, and leading to significant financial losses for creditors.

The existing legal framework also lacked a clear framework for the appointment of insolvency professionals, and the process was often subject to delay and inefficiency. The fragmented nature of the laws also made it difficult for companies and individuals to understand the insolvency and bankruptcy process, leading to confusion and uncertainty.

THE 4WS AND H OF IBC



DEVELOPING A MARKET FOR DISTRESSED ASSETS

There is an urgent need to create a secondary market for non-performing assets in order to free up banks so they may concentrate on new lending and lessen the strain on their resources for debt collection (NPAs). A market for distressed assets would also facilitate company reorganization and broaden the pool of available funding options.

The Indian stressed-asset market can attract foreign investors in good measure due to strategic factors like the plentiful supply of stressed assets, regulatory transparency, favourable currency rates, and the potential for greater returns on investment compared to other global stressed assets.

In the vast pool of the world's asset management sector, distressed asset investment enterprises are minuscule. These enterprises are skilled at raising money from wealthy investors through specialized investment vehicles, and have played a pivotal role to some of the largest business restructurings over the past three decades.

Further sources of funding and help for business reorganization would be provided via the secondary market for distressed assets. It would increase the liquidity of loans on the secondary market and draw more institutional investors to support corporate restructuring.

Furthermore, the secondary market can also play a key role in drawing institutional investors to support corporate restructuring efforts. These investors typically have large pools of capital and are able to provide the necessary funding to support businesses through the complex process of reorganization. By making it easier and more attractive for these investors to participate in the market, the secondary market for distressed assets can help to unlock additional sources of funding and support for businesses undergoing restructuring.



Distressed Asset Management situation in India

1987 BIFR formed to revive sick industrial units

1993

debt-recovery tribunal set up
RDDBFI Act

2002-2003

SARFAESI Act enacted in 2002 and guidelines governing ARCs formed: AIRCIL formed as the first ARC in India

2004

ARSEC and ACE get licenses to operate as public limited ARCs.



2005

RBI guidelines on FCD/FII investment and NPA sale by banks

2006

private players like Alchemist, Pegasus and International ARCs start operations

2008-2009

Five new ARCs formed: total of 14 ARCs in existence by 2009

2010-2016

continuous amendments brought by the RBI in the existing framework for handling NPAs and ARCs

2017-2019

first resolution order under IBC approved by NCLT and the first dirty dozen cases resolved

2020-2022

Multiple amendments in SARFAESI Act and IBC



INDIA'S DISTRESSED ASSET ISSUE

According to the Reserve Bank of India (RBI), the main causes of the rise in stressed assets include aggressive lending practices, wilful default, loan fraud, and corruption.

Relevantly, recent supervisory data indicate that the RBI's efforts to strengthen its regulatory and supervisory agenda and the resolution mechanism established by the Insolvency and Bankruptcy Code, 2016 (Code/IBC), have had a significant impact on the resolution of non-performing assets (NPAs). The gross non-performing assets (GNPA) ratio of SCBs has been declining sequentially from its peak in 2017-18 to reach 5.8 per cent at end-March 2022.

For a developing economy like India, where the corporate bond market is underdeveloped, and market participants are highly dependent on bank loans, developing a market for distressed assets is crucial. The necessity of the hour is to create a well-developed distressed assets market to sell these NPAs effectively as banks struggle with growing NPAs.

MARKET DEMAND FOR DISTRESSED ASSETS

One of the various approaches to effectively address the NPA issue is to create a market for distressed assets. The burden of debt collection on banks would be lessened by a secondary market for NPAs, which would also free up cash and resources for new lending. Giving the bank another tool to manage market and credit risks, it would help strengthen its risk management plan.

In addition to assisting business reorganisation, a market for distressed assets would also broaden the range of available funding options. It would increase loan liquidity on the secondary market and draw in more institutional investors to support corporate restructuring. A market for distressed assets could hasten the recovery in the short term by enabling the exit of failing businesses and fostering the expansion of successful ones. It would eventually allow resources to be reallocated to more productive corporations, aiding in their restructuring and growth.

Investment companies for distressed assets have started to emerge as a component of the global asset management sector. They are skilled at raising money from wealthy investors for specialised investment vehicles. These companies have contributed significantly to some significant corporate revivals over the past three decades, including those of Sunbeam-Oster, Samsonite, and National Gypsum during the 1990s junk bond crisis, large East Asian financial institutions during the 1997-98 Asian crisis, and more recently General Motors, Chrysler, and Nine Entertainment (Australia).

IBC AND THE DISTRESSED ASSET MARKET

The IBC's implementation has produced a productive market for the settlement of distressed assets. The law has provided the distressed asset investment environment in India with a legal framework, clear processes, roles, and deadlines. One can argue that distressed asset investment in India has become more sophisticated, creating an opportunity for astute



roles, and deadlines. One can argue that distressed asset investment in India has become more sophisticated, creating an opportunity for astute investors to pick "valuable" assets. Due to the absence of a strong regulatory framework, such investors had mostly been avoiding this market.

There is a genuine interest among investors in the distressed asset investment markets due to their inherent "buy low-sell high potential" as a result of the implementation of the Code and the consequent advancement in the resolution process for NPAs. Businesses are searching for chances to purchase solid underlying assets with the possibility of a turnaround at fair prices.

Through a procedure that is time-bound, information-intensive, and culminates in a plan that is binding on all stakeholders, the Code has prepared the way for investors seeking to finance business expansion. It has broadened the range of decisions that permit the acquisition of existing enterprises through mergers, amalgamations, and demergers, free from the previous transgressions of the former promoters. Investors can now purchase capital-intensive enterprises from the infrastructure and electricity sectors that have entered the corporate insolvency resolution procedure (CIRP) at attractive prices.

The provision of a streamlined method for stressed MSMEs/corporate resolution in the form of a pre-packaged insolvency resolution framework is the most recent development that has started the revival and recovery process.

The surge in non-performing assets spurred the creation of a National Asset Reconstruction Company Limited (NARCL), aimed at establishing and enhancing a secondary market for such assets. Public sector banks hold a majority stake in the ARC. For the purpose of addressing these stressed assets, India Debt Resolution Company Ltd (IDRCL), a service company/operational entity, has been floated alongside NARCL.

NARCL is basically a bad bank created by the government in the mould of an asset. The NARCL will pick up bad loans above a certain threshold from banks.



OPPORTUNITIES FOR PROSPECTIVE INVESTORS

The Insolvency and Bankruptcy Code (IBC) is a comprehensive legislation introduced in India to provide a robust framework for the resolution of insolvency and bankruptcy issues. It is a game-changer for the Indian economy, as it provides a level playing field for all stakeholders, including creditors, debtors, and investors.

As an investor, there are several opportunities that the IBC offers. Here are some of the key benefits that prospective investors should be aware of:

- **Distressed assets:** One of the most significant opportunities for investors under the IBC is to invest in distressed assets. The IBC has made it easier for investors to acquire distressed assets, as the resolution process is now more streamlined and transparent. This provides an excellent opportunity for investors to buy assets at a lower price and then turn them around for a profit.
- **Resolution process:** The IBC has made the resolution process more transparent and predictable, which has increased the confidence of investors. The resolution process is now being managed by professionals, which has increased the speed and efficiency of the process. This has reduced the risks associated with investing in distressed assets and has made it a more attractive proposition for investors.
- **Regulatory framework:** The IBC has established a regulatory framework that protects the interests of all stakeholders, including investors. This has increased the confidence of investors in the Indian market, particularly in the distressed asset space. The regulatory framework has also made it easier for investors to navigate the market and to make informed investment decisions.
- **Increased competition:** The IBC has increased competition in the Indian market, particularly in the distressed asset space. This has resulted in better pricing for investors and has made it a more attractive proposition for them. The increased competition has also forced companies to become more efficient, which has resulted in better returns for investors.

Investors find it appealing because of the faster and open settlement procedure, the legal framework, and the heightened competitiveness.

Under the IBC, offshore investors or funds have opportunities to participate in the corporate insolvency process by either bidding on distressed assets (or providing funding to bidders) or serving as creditors on the Committee of Creditors. In 2019, the RBI introduced a new avenue for resolution applicants by rationalizing ECB norms and allowing for borrowing through the approval route from approved foreign entities or lenders to repay rupee loans obtained domestically, on the condition that an eligible corporate borrower can avail a loan to repay and revive itself if permitted by the Resolution Plan. This means that eligible Indian companies can use such debt instruments to raise capital and also aid in the bidding process for distressed assets. The RBI's liberal approach in structuring regulations for ECBs provides a wide range of investment opportunities through the ECB route.

Investors looking to gain exposure to distressed debt portfolios can invest in securitized instruments called SRs, which are issued against non-performing loans acquired by debt aggregation vehicles called ARCs.



However, in contrast to public sector asset management companies (AMCs) in other countries that have typically enjoyed government funding or support, Indian asset reconstruction companies (ARCs) have been privately owned and registered with the RBI. However, the ARC sector in India has faced capital constraints, and their performance in terms of recovering and reviving businesses from non-performing assets (NPAs) has been sub-optimal, as per available data. This can be attributed to several factors, including the transfer of age-old NPAs to ARCs, difficulty in raising funds, and the unavailability of additional funding for stressed borrowers.

Previously, credit funds that focused on distressed assets often invested in stressed loans through an ARC, with some funds acting as a sponsor for the ARC. However, the stringent compliance requirements mandated by the RBI made the process costly and complex. On the other hand, AIFs are regulated under the AIF Regulations, which provide greater flexibility for fund managers and encourage investments from investors. SEBI's decision to introduce SSFs as a sub-category under Category I AIF to address issues with stressed loans is commendable and is expected to provide sources of capital for distressed companies. Deep-pocketed funds from developed markets may consider purchasing distressed loans with the goal of recovery or restructuring. SEBI has also implemented safeguards to prevent SSFs from acquiring stressed loans from their associates and investing outside India. Additionally, SEBI has provided a six-month lock-in period for SSFs to work toward the potential resolution of the stressed asset before exiting.

While SSFs are expected to provide a new source of capital for distressed companies, they may face a roadblock as they are not considered 'secured creditors' under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. This lack of secured creditor status could mean that certain investors may not have an exit option if needed. In contrast, ARCs, being secured creditors, have an established framework for the recovery of their investments where any security interest created in favour of an ARC can be enforced without court intervention.



CHALLENGES IN IMPLEMENTING IBC

The Insolvency and Bankruptcy Code (IBC) was introduced in India in 2016 to provide a robust framework for the resolution of insolvency and bankruptcy issues. While the IBC has been largely successful in addressing the challenges of the Indian insolvency and bankruptcy system, there have been several challenges in implementing the code. Here are some of the key challenges in implementing the IBC:

- **Infrastructure:** The implementation of the IBC requires a robust infrastructure, including a network of insolvency professionals, insolvency professional agencies, and information utilities. The establishment of this infrastructure has been slow, which has hindered the effective implementation of the code.
- **Legal framework:** The IBC requires a supportive legal framework to be effective. However, the legal framework in India is complex and slow, which has resulted in delays in the resolution process. This has also resulted in a backlog of cases, further hindering the code's implementation.
- **Awareness:** The IBC is a new law, and many stakeholders, including creditors and debtors, are not fully aware of its provisions. This has resulted in confusion and delays in the resolution process. There is a need to raise awareness about the IBC and its provisions among all stakeholders.
- **Resistance to change:** The IBC has introduced several changes to India's insolvency and bankruptcy system, including introducing a time-bound resolution process and new stakeholders such as information utilities. This has led to resistance to change among some stakeholders, which has further hindered the implementation of the code.
- **Inadequate capacity:** The implementation of the IBC requires the capacity of various stakeholders, including the National Company Law Tribunal (NCLT) and the Insolvency and Bankruptcy Board of India (IBBI). However, there are inadequate human resources and technical capacity, which has hindered the effective implementation of the code.
- **Judicial backlog:** The judicial system in India is already burdened with a backlog of cases, and the introduction of the IBC has further added to this burden. This has resulted in delays in the resolution process and has hindered the implementation of the code.
- **Worker obligations:** You must pay up all of the obligations owed to your coworkers and employees for the 24 months prior to the start of the liquidation. Even though it has been documented, this situation is still not entirely clear.



What's hampering the Bankruptcy Code

ABSENCE OF STRATEGIC PLAYERS

General slow down in the economy and overleveraged corporates, government should step in to create a better policy environment

LACK OF GLOBAL INTEREST

No confidence yet in time-bound resolution the 180 and 270 days deadline should be followed strictly

LEGAL CHALLENGES

Bidders and defaulting promoters are challenging the sale and orders, should set precedents for smooth functioning

FORCED APPROACH

RBI pushing banks to take companies to bankruptcy, should be left to banks



UNPREPARED BANKERS

No coordination amongst bankers or plans for turnaround or ready buyers need an I- Banking kind of approach

CLOGGED IBC Infrastructure

TOO MANY AMMENDMENTS



THE IMPACT OF INSOLVENCY AND BANKRUPTCY CODE ON ECONOMY

The Insolvency and Bankruptcy Code (IBC), which was introduced in 2016, has had a significant impact on the Indian economy. The IBC is a comprehensive law that consolidates and modernizes regulations related to the timely restructuring and insolvency resolution of corporations, partnerships, and individuals. Its primary objective is to promote entrepreneurship and maximize asset value, which will ultimately contribute to the expansion of the economy.

Since its inception, the IBC has undoubtedly been a significant reform in a series of measures introduced by the Government of India that have acted as a catalyst in accelerating the Indian economy. The IBC has revolutionized economic regulation by creating a comprehensive "one-stop-shop" for insolvency resolution, paving the way for a straightforward exit in the event of an honest corporate failure. The IBC has remedied serious flaws in India's staggered insolvency rules by unifying them. The Code's results have improved India's rating in ease of resolving insolvency metrics.

India's ranking in the Global Innovation Index 2021 for "Ease of Addressing Insolvency" increased from 111 in 2017 to 47 in 2021.

A clear and time-limited method for the resolution of distressed assets is provided by the IBC, which has addressed many of these problems. Investor trust in the Indian market has increased as a result, making it simpler for businesses to raise cash and grow. The boosted investment and competitiveness have significantly strengthened the country's economy.

One of the key benefits of the IBC is its ability to facilitate the resolution of non-performing assets (NPAs). NPAs are assets that are unable to generate income and are at risk of becoming non-recoverable. The IBC has helped quickly resolve these NPAs, freeing up capital for lending, and improving the banking sector's health. This has led to an increase in the availability of credit, which is essential for the growth of businesses and the economy as a whole.

The IBC has promoted entrepreneurship by giving failing enterprises a quick way out of the market. Until the IBC, bankrupt enterprises frequently left behind large debts with no obvious means of resolving them. As a result, there was a decline in entrepreneurship as people were reluctant to take chances and launch their own firms. This has been altered by the IBC, which offers a clear road to bankruptcy and enables business owners to bounce back from setbacks and start anew quickly.

The Insolvency and Bankruptcy Code has improved investor confidence, strengthened the credit culture, and encouraged entrepreneurship, all of which positively affect the Indian economy. For many years to come, these advantages are anticipated to fuel India's economic growth and development.

The IBC was implemented in 2016 to address the problems with bad loans that were impacting the banking system. Without question, the IBC has played a significant role in the government of India's ongoing policy initiatives that have served as a stimulant for the expansion of the Indian economy.

By establishing a complete "one-stop-shop" for insolvency proceedings, the IBC revolutionized economic legislation and paved the



straightforward exit in the case of an honest company failure. The IBC, which combined them, has fixed the significant problems in India's current staggered insolvency legislation. The outcomes of the Code have improved India's ranking in the measures measuring how easily insolvency can be resolved.

The IBC has significantly changed how economic legislation is framed. In the event of an honest business collapse, a straightforward escape is now possible thanks to the creation of a comprehensive go-to solution for insolvency resolution. The outcomes under it have been really positive. The major objective of the Code is to save the lives of corporate debtors (CDs) who are in difficulties.

According to a report released in 2022-23, scheduled commercial banks (SCBs) were able to recover 67% of the amount involved through IBC for the financial year of 2022, which is the highest recovery rate when compared to recovery under other modes and laws. "The Code's behavioural change among debtors has been one of the far-reaching spillover impacts. Many of debtors have been pushed to pay their debts even before the start of insolvency procedures out of a concern of losing control of the CD upon the start of CIRP. Till September 30 2022, 23,417 applications for initiation of CIRPs of CDs (Corporate Debtors) with underlying default of Rs 7.3 lakh crore were disposed of before their admission into CIRP.

The significant impact of the IBC on improving the ease of doing business in India and accelerating the economy is undeniable. However, the IBC will face a significant challenge in meeting high expectations for consistent and speedy execution. Despite this hurdle, there is great confidence that the IBC will continue to drive the Indian economy towards fairness, stability, and prosperity based on its notable achievements so far.



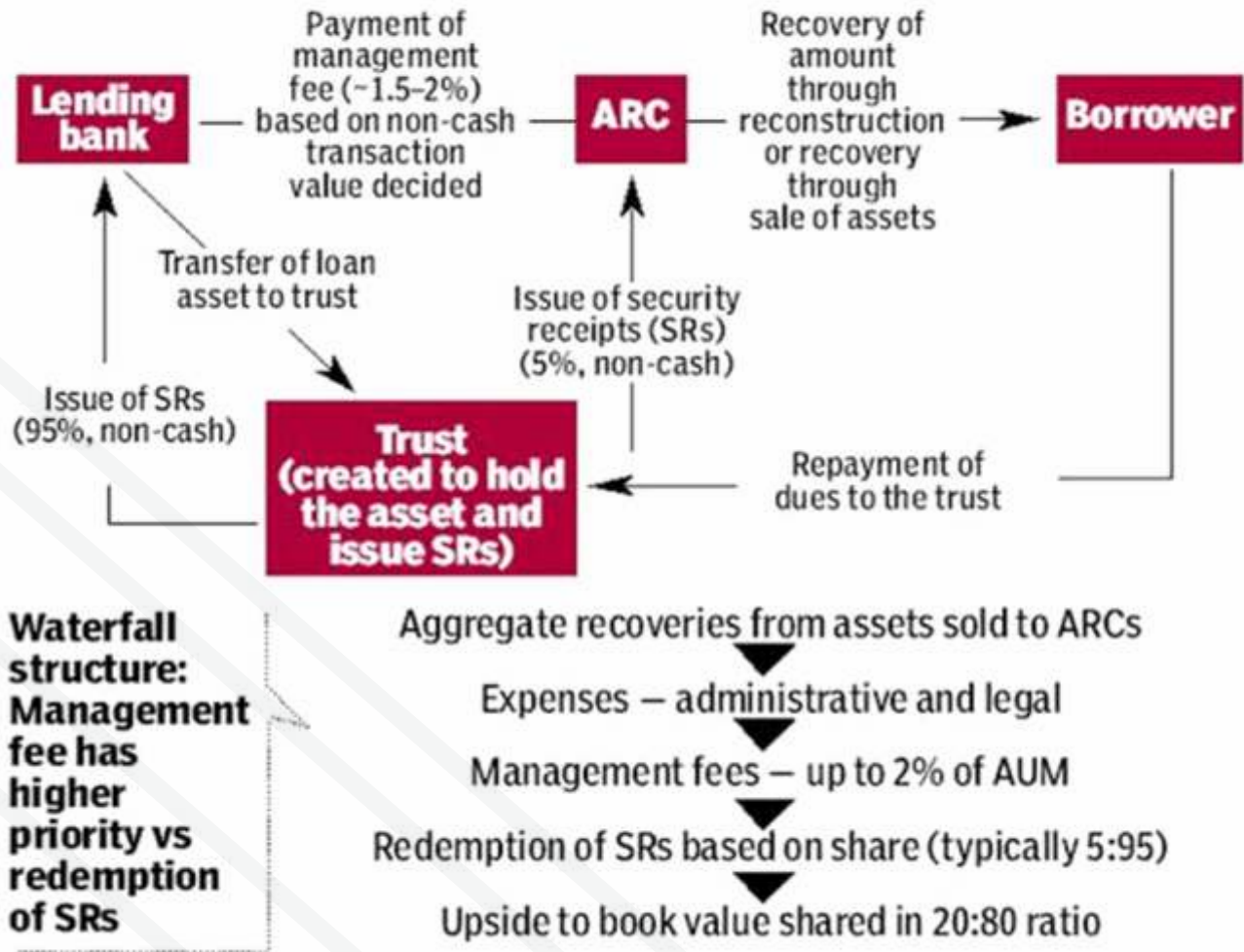
THE ROLE OF ASSET RECONSTRUCTION COMPANIES

Asset Reconstruction Companies (ARCs) play a crucial role in resolving distressed assets under the Insolvency and Bankruptcy Code (IBC) in India. ARCs are in the business of buying bad loans from banks. The asset reconstruction sector is poised for impressive growth this fiscal year, with its assets under management projected to rise nearly 10% to Rs 1.1 lakh crore. Comprising 29 players, the ARC (asset reconstruction company) industry has faced significant regulatory changes and obstacles since its inception in 2002.

The industry must consider providing incentives for early resolution. Additionally, the recovery rate remains a concern, having increased from 16% in 2016 to only 38%. The RBI's framework for securitizing stressed assets will transform the market, but corporates or other similarly structured entities need to buy out stressed assets at a mutually acceptable haircut.



ARC transaction structure



Source: Company data, Credit Suisse estimates

The Reserve Bank of India (RBI) has made a significant policy change by allowing Asset Reconstruction Companies (ARCs) to be Resolution Applicant (RA) entities under the 2016 Insolvency and Bankruptcy Code (the Code). The RBI released a new regulatory framework for ARCs on October 11, 2022. ARCs are allowed to carry out activities as RA in accordance with the Code under the amended structure. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) does not clearly address this duty. Hence the RBI was required to get particular authorization under Section 10 of the Act.

It should be emphasized that Chapter III of the SARFAESI Act governs the process of creating, regulating, and running ARCs. The actions an ARC may take to reconstruct an account's assets are outlined in Section 9 of the Act. These actions resemble resolution plans under the Code in many ways.

ARC's participation in CIRP under the Code is now possible. Since ARCs having a minimum NOF of INR 1,000 crore are eligible to operate as RA, this comes with several restrictions and riders. Moreover, ARC will require a Board-approved policy with a sectoral exposure internal limit for this



purpose. The involvement of ARC will be case-by-case and subject to the approval of an internal committee that will be predominately made up of independent directors.

Previously, the ARC's minimum investment requirement for purchasing distressed assets through a structured deal with the seller was 15%, with qualified investors permitted to invest up to 85%. The revised regulations have reduced the ARC's minimum investment obligation to 2.5%, resulting in an increased ability to obtain distressed assets. Furthermore, as co-investors will have significant exposure, the quality of acquisitions will not be compromised.

Perhaps the most significant change is the board's loss of authority to approve one-time settlements. Previously, ARCs' boards created policies for such settlements and could empower a committee of directors, including executives and/or directors of an ARC, to make decisions on such matters.

Under the new regulation, only an Independent Advisory Committee (IAC) composed of professionals with financial, legal, and technical expertise may approve such settlements with distressed borrowers. The IAC will evaluate the borrower's financial condition, including projected earnings and cash flows, as well as the timeline for recovering dues, before making settlement recommendations.



KEY FINDINGS

The Insolvency and Bankruptcy Code (IBC) has had a transformative impact on the Indian economy. The IBC has reformed the insolvency and bankruptcy resolution framework in India, introducing a transparent and time-bound process for the resolution of distressed assets. The new framework has boosted investor confidence and made it easier for companies to raise capital and expand their businesses, while strengthening the overall credit culture in the country. Additionally, the IBC has facilitated the quick resolution of non-performing assets, which has helped improve the banking sector's health and increase the availability of credit in the market.

ARCs were previously obligated to invest at least of 15% in each security receipts scheme (Srs). According to the revised regulatory framework, ARCs must now invest a minimum of 2.5% of all SRs issued, or 15% of a transferor's investment, in SRs. Admittedly, ARC has yet to completely realise its potential for resolving stressed assets.

The updated regulatory framework falls short in addressing operational aspects such as consolidating debt, incentivizing the involvement of debt capital markets in SRs, improving the traceability of SRs, and implementing resolution-friendly measures, such as altering borrower management or offering protection to ARCs from routine legal proceedings that can impede the resolution process.

The securitisation market in India remains inactive for various reasons. Firstly, banks and financial institutions are hesitant to securitise high-quality standard assets. Additionally, special purpose entities (SPEs)/asset reconstruction companies (ARCs) in India are unwilling to acquire standard assets that are prone to becoming non-performing assets (NPAs) in a short period unless a substantial reduction in value is permitted.

Moreover, there is a need for unified regulation of both asset acquirers (SPEs/ARCs) and asset managers (asset management companies (AMCs)). Currently, SPEs/ARCs are regulated by the RBI, while AMCs are registered with SEBI in India.

The securitisation of standard assets is not permitted for revolving credit, restructured loans and advances, loans with refinance exposures, loans with bullet payments, short-term loans with a remaining maturity of less than one year, and other similar cases.

Retail loans and corporate loans make up the underlying pool of NPAs that are eligible for securitization. However, transferring NPAs from one balance sheet to another using securitisation is not an effective method of resolving the issue. If banks are unable to restructure loans amicably, it is doubtful that special purpose entities (SPEs) can accomplish the task.

For creditors, the IBC has provided a more efficient and transparent process for the resolution of distressed assets, which has improved recovery rates and reduced delays in the resolution process. The

IBC has also helped to create a more level playing field for creditors, as the resolution process is now based on a merit-based system that considers all potential bidders equally. This has helped to reduce the bargaining power of debtors and has ensured that creditors receive a fair value for their distressed assets.

For debtors, the IBC has provided a more efficient exit mechanism in case of failure, encouraging entrepreneurship and reducing the stigma associated with failure. The IBC has also provided a clear path to bankruptcy, allowing entrepreneurs to recover from their failures and start again quickly.



ABOUT ASSOCHAM

The Associated Chambers of Commerce & Industry of India (ASSOCHAM) is the country's oldest apex chamber. It brings in actionable insights to strengthen the Indian ecosystem, leveraging its network of more than 4,50,000 members, of which MSMEs represent a large segment. With a strong presence in states, and key cities globally, ASSOCHAM also has more than 400 associations, federations, and regional chambers in its fold.

Aligned with the vision of creating a New India, ASSOCHAM works as a conduit between the industry and the Government. The Chamber is an agile and forward-looking institution, leading various initiatives to enhance the global competitiveness of the Indian industry, while strengthening the domestic ecosystem.

With more than 100 national and regional sector councils, ASSOCHAM is an impactful representative of the Indian industry. These Councils are led by well-known industry leaders, academicians, economists and independent professionals. The Chamber focuses on aligning critical needs and interests of the industry with the growth aspirations of the nation.

ASSOCHAM is driving four strategic priorities – Sustainability, Empowerment, Entrepreneurship and Digitisation. The Chamber believes that affirmative action in these areas would help drive an inclusive and sustainable socio-economic growth for the country.

ASSOCHAM is working hand in hand with the government, regulators, and national and international think tanks to contribute to the policy making process and share vital feedback on implementation of decisions of far-reaching consequences. In line with its focus on being future-ready, the Chamber is building a strong network of knowledge architects. Thus, ASSOCHAM is all set to redefine the dynamics of growth and development in the technology-driven 'Knowledge-Based Economy'. The Chamber aims to empower stakeholders in the Indian economy by inculcating knowledge that will be the catalyst of growth in the dynamic global environment.

The Chamber also supports civil society through citizenship programmes, to drive inclusive development. ASSOCHAM's member network leads initiatives in various segments such as empowerment, healthcare, education and skilling, hygiene, affirmative action, road safety, livelihood, life skills, sustainability, to name a few.



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