THE IBC AND THE POWER SECTOR PARADOX: EXAMINING THE SUITABILITY OF THE INDIAN INSOLVENCY FRAMEWORK FOR FINANCIALLY DISTRESSED DISCOMS

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ABSTRACT

India's power distribution sector has remained in a state of persistent financial distress despite repeated government bailouts and reform initiatives. Power Distribution Companies (DISCOMs) continue to accumulate substantial losses and debt, raising serious concerns about the effectiveness of existing legal mechanisms to address their insolvency. The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted to provide a time-bound and efficient framework for resolving corporate insolvency; however, its application to DISCOMs has remained largely theoretical, with no significant or successful insolvency resolution proceedings to date. This paper examines the suitability and efficacy of the IBC framework in addressing the financial distress of DISCOMs within India's heavily regulated power sector. The study analyses the unique regulatory, political, and operational characteristics of DISCOMs that distinguish them from conventional corporate debtors. It highlights how factors such as state control, politically influenced tariff determination, regulatory approvals, delayed subsidy disbursements, and the essential public utility nature of electricity supply complicate insolvency resolution under a market-driven framework like the IBC. Through a doctrinal analysis of insolvency law and electricity regulation, supported by sectoral data and policy reports, the paper demonstrates that insolvency in the power distribution sector is not merely a financial issue but one deeply rooted in governance and regulatory design. The paper further explores whether sector-specific insolvency frameworks or calibrated modifications within the IBC are required to address these challenges effectively. It evaluates alternative mechanisms, including sectoral financial restructuring, regulatory-led interventions, and the use of non-insolvency recovery tools such as the SARFAESI Act. The study concludes that a uniform insolvency framework may be ill-suited for DISCOMs and argues for a differentiated approach that balances creditor interests with public service obligations and sectoral realities

Introduction

India's power distribution sector has long been mired in financial distress, with distribution companies ("**DISCOMs**") accumulating billions in outstanding debt despite multiple bailout packages and reform initiatives. The persistent financial distress in the electricity distribution sector has been a long-standing issue, with cumulative losses exceeding ₹3 lakh crore between 2017-18 and 2022-23.[1] The Insolvency and Bankruptcy Code, 2016 ("**IBC**") was designed to provide a time-bound and efficient resolution process for distressed entities, ensuring the maximization of asset value and creditor recovery. However, despite the precarious financial health of DISCOMs, there has been no significant case of a DISCOM being successfully admitted into insolvency under the IBC. This raises critical questions regarding the effectiveness of the insolvency framework in resolving the crisis in the power distribution sector.

The lack of insolvency proceedings against DISCOMs under the IBC can be attributed to sector-specific regulatory, financial, and operational complexities that make resolution highly uncertain. Unlike conventional businesses, DISCOMs operate in a heavily regulated industry where a successful Resolution Applicant ("**RA**") must navigate multiple layers of approvals and sectoral constraints. Even if an RA successfully acquires a distressed DISCOM, its ability to turn around the company is fraught with challenges. One such issue is regulatory uncertainty, as the electricity regulator plays a decisive role in determining who can run a DISCOM and may refuse to grant approval on the grounds that the eligibility criteria for operating a DISCOM have not been met. Moreover, financial viability often hinges on securing tariff revisions, but state electricity regulators, despite their mandate to ensure fair pricing, often function under political influence. If an RA is unable to secure necessary tariff increases, the DISCOM may remain financially unsustainable even after resolution. Additionally, the structural and political challenges that have contributed to DISCOM distress persist, including difficulties in billing and collection, delays in government subsidy payments, and inadequate and irregular tariff revisions. DISCOMs, in many cases, serve as tools of redistribution, with state governments offering subsidized or free electricity to certain consumer groups while failing to ensure

[1] Power Fin. Corp. Ltd., *Report on Performance of Power Utilities 2022–23* (Apr. 2024), https://www.pfcindia.com/ensite/DocumentRepository/ckfinder/files/Operations/Performance_Reports_of_State_Power_Utilities/Report%20Database%202022-23%20-%20updated%20up%20to%20April%202024EntityApr.pdf (last visited Mar. 10, 2025).

financial sustainability, making them chronically dependent on state support.

These challenges suggest that DISCOM insolvency is not merely a question of financial distress but also one of governance inefficiencies, political constraints, and regulatory hurdles. Unlike conventional corporate entities, where insolvency under the IBC can facilitate a smooth change of ownership and financial restructuring, DISCOMs operate under politically controlled tariff structures and regulatory oversight, making them significantly more complex to resolve. The viability of a going-concern sale for Discoms is severely constrained by these sectoral risks, creating substantial uncertainty for investors and making resolution through IBC an unattractive option.

Given these complexities, it becomes necessary to evaluate whether sector-specific insolvency resolution frameworks are required or if there is a need for some relaxations to the DISCOMs under the IBC framework. Separate mechanisms may be needed when:

(a) There is a large volume of insolvency cases in a sector, necessitating a tailored approach to resolution.

(b) The corporate debtor has distinct sectoral characteristics, requiring specialized treatment beyond the general insolvency framework.

(c) There are significant delays in the insolvency process due to sector-specific hurdles, making the existing framework ineffective.

This research paper will examine whether these factors apply to the power distribution sector and whether DISCOMs require additional safeguards or sector-specific modifications within the IBC framework. The study will analyse the legal and regulatory framework governing Discoms and its interaction with the IBC, while also comparing the insolvency resolution process under the IBC with alternative mechanisms such as government-led financial restructuring. Based on these findings, the research will determine whether the existing insolvency framework is sufficient or if a sector-specific approach, such as targeted financial restructuring, regulatory reforms, or alternative resolution mechanisms, is required to effectively address the persistent financial crisis in India's power distribution sector. By addressing these key issues, this study aims to critically evaluate the effectiveness of the IBC for DISCOM insolvency resolution and contribute to the broader discussion on how financial distress in critical infrastructure sectors should be managed.

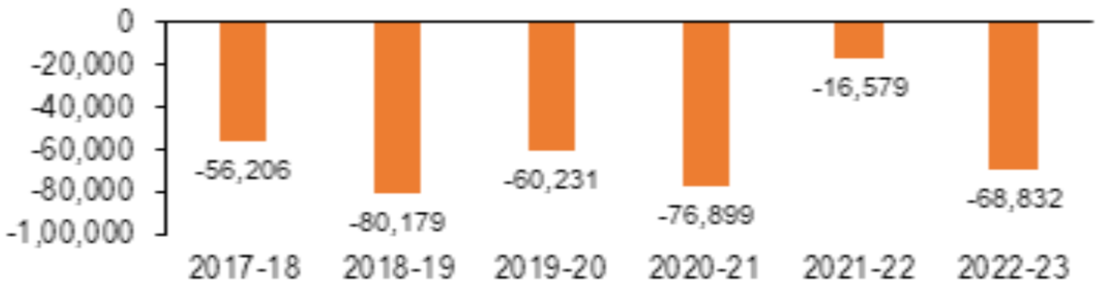
I. State of Affairs of Power Distribution Companies: Mounting Losses

According to recent data from the Power Finance Corporation, state-owned power distribution companies (**DISCOMs**) across India collectively incurred financial losses amounting to ₹68,832 crore in the financial year 2022-23.[2] The persistent financial distress in the electricity distribution sector has been a long-standing issue, with cumulative losses exceeding ₹3 lakh crore between 2017-18 and 2022-23.[3]

A temporary reprieve was observed in 2021-22 when DISCOMs reported a significant reduction in losses, primarily due to state governments disbursing ₹1.54 lakh crore in subsidies to clear outstanding dues. These subsidies, intended to provide affordable electricity to domestic and agricultural consumers, are often delayed, exacerbating liquidity constraints and contributing to the mounting debt burden of DISCOMs. The financial strain is further aggravated by high operational costs, revenue shortfalls, and inadequate tariff revisions, which fail to reflect the actual cost of power supply.

Despite these challenges, the financial liabilities of DISCOMs remain a critical concern, impacting not only their viability but also the broader power sector. The recurring cycle of losses necessitates structural reforms, including improved tariff rationalization, reduction of transmission losses, and timely subsidy disbursement, to ensure the long-term sustainability of power distribution in India.

Figure 1: Financial losses of discoms (in Rs crore)



[2] *Report on Performance of Power Utilities 2022-23* (Power Finance Corporation, April 2024)
[3] Tanvi Vipra, *What Is Fuelling Power Sector Losses?*, PRS Legislative Research (May 2024), https://prsindia.org/theprsblog/what-is-fuelling-power-sector-losses?page=99&per-page=1 (last visited Mar. 10, 2025).

II. Challenges in the Power Distribution Sector

While the power distribution sector has witnessed notable advancements in key operational and financial metrics, several long-standing structural challenges persist. These legacy issues continue to strain the sector's financial health, necessitating sustained government intervention and internal reforms within distribution companies (DISCOMs) over an extended period.

1. **Mounting Debt Burden:** The sector has witnessed a consistent increase in debt, primarily driven by capital expenditure (**CAPEX**) requirements, funding operational losses, and addressing working capital shortages. The financial burden is further exacerbated by rising financing costs.[4] Both central and state governments have undertaken initiatives to alleviate this debt, with the UDAY Scheme being a key intervention. Additionally, state governments have supported DISCOMs by assuming liabilities through equity infusion and subsidies, while the central government has introduced Additional Prudential Norms to encourage fiscal discipline.[5] However, long-term debt reduction remains contingent upon improved financial and operational efficiency within the sector.

2. **Outstanding Payables to Generation and Transmission Companies:** A significant challenge in the power distribution segment is the high level of outstanding payables to power generation companies (**GenCos**) and transmission companies (**TransCos**), primarily due to financial distress and liquidity constraints. Notably, FY23 marked a considerable improvement in trade payables despite a 24% rise in power procurement costs.[6] This was largely attributable to the Late Payment Surcharge (LPS) Rules introduced by the central government, which mandated timely payment of dues and facilitated the conversion of legacy outstanding amounts into structured equated monthly installments (EMIs). Despite this progress, the sector has yet to meet the 45-day benchmark stipulated under the LPS Rules, indicating a need for further fiscal discipline.[7]

3. **Trade Receivables and Collection Challenges:** Trade receivables, which include outstanding consumer dues and electricity duty/cess payable to the government, remain a

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[4] Tanvi Vipra, *What Is Fuelling Power Sector Losses?*, PRS Legislative Research (May 2024), https://prsindia.org/theprsblog/what-is-fuelling-power-sector-losses?page=99&per-page=1 (last visited Mar. 10, 2025).
[5] ibid
[6] *Report on Performance of Power Utilities 2022-23* (Power Finance Corporation, April 2024)
[7] ibid

persistent issue. Efficient revenue collection mechanisms and disciplined consumer payment behavior are critical to reducing receivables. Addressing this issue necessitates investment in infrastructure, including comprehensive metering and improved billing systems for agricultural feeders.[8] Additionally, DISCOMs with disproportionately high receivables must adopt pragmatic approaches to provisioning for aged dues. While FY23 saw only a marginal increase in total trade receivables despite significant revenue growth, the challenge of collection efficiency remains a pressing concern.

4. **Regulatory Assets and Subsidy Arrears:** Over the past two years, state governments have demonstrated commendable fiscal discipline in tariff subsidy disbursals, with aggregate payments exceeding 100% of the booked amounts.[9] However, certain states continue to grapple with significant outstanding subsidy arrears accumulated over an extended period. Furthermore, some states have amassed substantial regulatory assets, estimated at approximately ₹1.6 lakh crore. In such cases, coordinated efforts between state governments and regulatory authorities are essential to develop structured liquidation plans.[10] Resolving these outstanding liabilities would significantly improve the financial stability of affected utilities and enhance the overall sustainability of the power distribution sector.

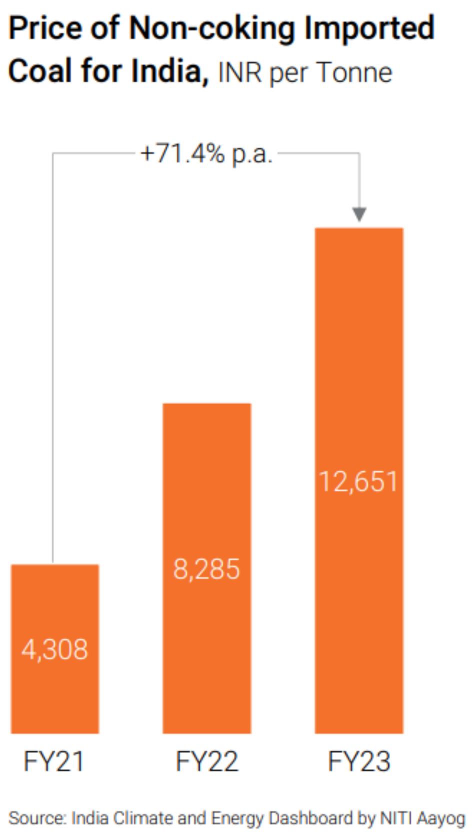
III. Insolvency and Bankruptcy Code, 2016 and the Indian Energy Sector

Prior to the enactment of the Insolvency and Bankruptcy Code (IBC), 2016, India had a fragmented legal framework for insolvency and winding-up proceedings. Various statutes governed different aspects of insolvency, including the Sick Industrial Companies (Special Provisions) Act, 1985, the Provincial Insolvency Act, 1920, the Presidency Towns Insolvency Act, 1909, the Civil Procedure Code, 1908, and the SARFAESI Act, 2002. However, these laws were inadequate in addressing the mounting crisis of non-performing assets ("**NPAs**"), necessitating a comprehensive insolvency framework. Following extensive deliberations, the IBC was enacted in May 2016 to streamline and expedite insolvency resolution in India.

[8] Akhil Kumar & Lakshya Godara, *Stress in the Power Sector: Need for Structural Reforms*, IJPIEL (Sept. 2021), https://ijpiel.com/index.php/2021/09/20/stress-in-the-power-sector-need-for-structural-reforms/ (last visited Mar. 8, 2025).
[9] NITI Aayog, *Turning Around the Power Distribution Sector: Learnings and Best Practices from Reforms* (Aug. 2021).
[10] ibid

The IBC integrates key provisions from earlier legislations such as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and the SARFAESI Act, 2002. Unlike its predecessors, which were largely debtor-friendly, the IBC prioritizes creditors' interests and aims to ensure time-bound resolution of insolvency for corporate entities, partnership firms, and individuals.[11] A significant shift introduced by the IBC is the establishment of disciplined borrowing practices among companies, thereby improving financial accountability. The Code allows three categories of stakeholders, financial creditors, operational creditors, and corporate debtors to initiate the Corporate Insolvency Resolution Process (CIRP). One of its most critical features is the imposition of strict timelines for resolution, as reinforced by the 2019 amendment to Section 12(3), which prevents indefinite delays in insolvency proceedings.[12]

Despite the IBC's broad applicability, the Indian energy sector requires specific safeguards within the insolvency framework.[13] To understand the necessity of sector-specific treatment, it is essential to recognize the challenges facing power generation in India, which operates across three primary segments: new and renewable energy, hydroelectric power, and thermal power generation. Among these, the thermal power sector has been particularly vulnerable to financial distress, grappling with persistent energy deficits and supply chain disruptions. India's energy deficit has risen to 1%, significantly above the previous average of 0.3%, exacerbating the financial instability of power generators.[14]



Additionally, electricity prices have surged, reaching ₹20 per unit, the maximum ceiling permitted by the Central Electricity Regulatory Commission. This escalation can be largely attributed to coal shortages, despite notable increases in domestic coal production, Coal India Ltd. reported a 23% rise, Singareni

[11] Meghna Rao & Abeer Tiwari, *India, Indian Energy Sector and IBC: An Assay*, IJPIEL (July 2022), https://ijpiel.com/index.php/2022/07/16/india-indian-energy-sector-and-ibc-an-assay/ (last visited Mar. 8, 2025).
[12] The Insolvency and Bankruptcy Code 2016, s 12(3)
[13] ibid
[14] NITI Aayog n(9)

Collieries Company Ltd. recorded a 34.2% increase, and captive mines registered a 40% growth.[15] However, these supply improvements have not sufficed to meet rising electricity demand. Several factors have contributed to this shortfall, including under-preparedness of power utilities in managing coal inventories, unanticipated heatwaves leading to spikes in electricity consumption, and geopolitical disruptions such as the Russia-Ukraine conflict, which has affected global energy markets.

Given the critical nature of power supply to national infrastructure and economic stability, the insolvency framework must be adapted to account for the strategic importance of energy companies. This could involve sector-specific resolution mechanisms, priority treatment of energy-sector creditors, and government-backed restructuring schemes to ensure the continued viability of power generators, thereby safeguarding India's energy security. Resultantly, the government invoked section 11(1) of the Electricity Act, 2003, which states:

"Appropriate Government may specify that a generating company shall, in extraordinary circumstances, operate and maintain any generating station under the directions of that Government."

Explanation. - For this section, the expression 'extraordinary circumstances' means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in the public interest."[16]

IV. Conceptualising a Separate Framework for Sectoral Insolvencies

Evaluating the necessity of a sector-specific insolvency resolution framework is essential in determining whether power distribution companies should be granted certain relaxations under the Insolvency and Bankruptcy Code (IBC). A distinct mechanism may be justified under the following circumstances:

(i) "There is a large volume of insolvency cases in a sector, necessitating a tailored approach to resolution.

(ii) The corporate debtor has distinct sectoral characteristics, requiring specialized

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[15] ibid

[16] The Electricity Act 2002, s 11(1)

treatment beyond the general insolvency framework.

(iii) There are significant delays in the insolvency process due to sector-specific hurdles, making the existing framework ineffective."[17]

The conceptualization of a sectoral insolvency framework requires a thorough understanding of the distinct challenges, complexities, and structural intricacies of the sector. It is equally important to assess whether a sector requires a dedicated framework or if it should remain governed by a uniform insolvency law applicable across industries. Insolvency law should not be utilized as an instrument to address broader sectoral issues; its primary objective is to facilitate the resolution of financially distressed entities, ensuring optimal value realization and an efficient exit process. Consequently, a sector-specific framework would only be warranted if:

1. **A sector experiences a high volume of insolvency cases:** The rationale for a sectoral insolvency framework is reinforced when a significant proportion of insolvency cases originate from a particular sector.[18] For instance, amendments to the insolvency framework were necessitated in the real estate sector due to implementation difficulties, given that it represented the second-largest proportion of insolvency cases. Without a substantial volume of cases, such a framework could risk creating opportunities for regulatory arbitrage, wherein companies from unrelated industries may attempt to exploit sector-specific benefits to maximize profits.

2. **The corporate debtor exhibits sector-specific characteristics**: The primary function of insolvency law is to resolve financially distressed corporate entities rather than to salvage particular assets. The framework is designed to manage the affairs of an insolvent company while safeguarding creditors' interests and facilitating either a structured resolution or an orderly liquidation. In cases where a uniform insolvency law proves inadequate due to the debtor's unique characteristics, such as requiring specialized financing mechanisms or extraordinary creditor protections, a sectoral insolvency framework may become necessary. A precedent for this can be found in the treatment of financial service providers, where

[17] Debanshu Mukherjee & Karan Gulati, *Evaluating the Need for Sectoral Insolvency Frameworks in India: The Telecom Sector as a Case Study*, 9 NLS Bus. L. Rev. 2 (2023).
[18] ibid

entities deemed to be of systemic significance are excluded from the general insolvency framework.

3. **Insolvency proceedings in a sector suffer from prolonged delays**: The timely resolution of insolvency cases is critical to preserving value, ensuring creditor recoveries, and maintaining economic stability. However, beyond economic efficiency, delays in sectors with far-reaching public consequences, such as power distribution, can result in job losses, hinder economic development, and undermine public confidence. Sectors that experience recurrent delays due to unique operational or regulatory complexities may benefit from a specialized insolvency framework designed to expedite proceedings and align them with broader public interest considerations.

Beyond these fundamental criteria, the introduction of a sectoral insolvency framework must also account for potential challenges and unintended consequences. Considerations such as capital preservation, regulatory coherence, and the safeguarding of public interest must be weighed carefully. For instance, the Union Government has acknowledged the need for reassessing amendments made to the IBC regarding real estate allottees, as they resulted in conflicts among creditors following the formation of post-amendment committees. Furthermore, a sector-specific framework must be designed to prevent jurisdictional conflicts between regulatory bodies, ensuring a comprehensive and coordinated approach to insolvency resolution.

V. Peculiar Features of Insolvency of Power Distribution Companies

The Indian energy sector is confronted with multiple challenges, including complexities in billing structures, coal linkages, and environmental clearances. These issues significantly impact the sector, leading to financial distress among energy companies. Consequently, as these entities seek essential funding, creditors often resort to invoking the Insolvency and Bankruptcy Code for resolution.[19]

Given the nature of these challenges, it becomes imperative to assess the necessity of a distinct framework for the Indian energy sector within the IBC:

[19] Meghna Rao & Abeer Tiwari, *India, Indian Energy Sector and IBC: An Assay*, IJPIEL (July 2022), https://ijpiel.com/index.php/2022/07/16/india-indian-energy-sector-and-ibc-an-assay/ (last visited Mar. 8, 2025).

1. When insolvency proceedings under the IBC are initiated by financial creditors, operational creditors, or corporate debtors, the primary objective is to settle outstanding debts, restructure the entity, and replace the management responsible for its financial collapse. However, the unique financial structure of DISCOMs presents a more complex scenario. Challenges such as non-payment by DISCOMs, delayed third-party receipts, and prolonged appellate processes have historically hindered effective resolution.[20] In an effort to address these concerns, the Ministry of Power, in December 2021, clarified that DISCOMs, as 'government companies' under Section 2(45) of the Companies Act, 2013, fall within the scope of IBC under Section 3(7).[21] This position was reaffirmed in *Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) v. Union of India*.[22] However, despite these legal clarifications, the prolonged resolution timeline exacerbates financial distress, undermining the fundamental objective of the IBC to ensure timely resolution, as mandated under Section 12(3).[23] Additionally, the nature of electricity as a commodity presents further complications. Unlike other goods, electricity must be consumed immediately and cannot be stored efficiently. Consequently, once insolvency proceedings under Section 7 of the IBC are admitted, an interim resolution professional is appointed within 14 days.[24] However, the continuous nature of electricity consumption means that supply cannot be abruptly halted merely because the power company is undergoing insolvency proceedings, creating operational challenges in CIRP implementation.

2. The over-regulation of the power sector and the predominant state control over DISCOMs introduce further complexities. Regulatory commissions impose constraints concerning tariff structures, compensation claims, and allocation of resources for power generation. Despite the introduction of the open-access power market, regulatory inconsistencies persist. The open-access system, which was intended to allow industrial and commercial consumers to procure electricity directly from generators rather than through costly state grids, faces numerous challenges. Restrictions such as increased

[20] Shardul Amarchand Mangaldas, *Implications of Using Bankruptcy Code Against Discoms* (2021), https://www.amsshardul.com/insight/implications-of-using-bankruptcy-code-against-discoms/ (last visited Mar. 10, 2025).
[21] The Insolvency and Bankruptcy Code 2016, s 3(7)
[22] *Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) v. Union of India* W.P.No.19785 of 2021.
[23] The Insolvency and Bankruptcy Code 2016, s 12(3).
[24] The Insolvency and Bankruptcy Code 2016, s 7.

open-access charges, denial of open-access approvals, and stringent energy banking norms have effectively curtailed its intended benefits.[25] This excessive regulatory intervention and the monopolistic control exercised by state utilities are inconsistent with the commercial principles underlying the IBC, which aims to facilitate market-driven resolutions rather than reinforce state dominance in critical sectors.

3. The interplay between Special Purpose Vehicles ("**SPVs**") and the IBC in the context of the Indian energy sector requires careful consideration. SPVs, also known as Special Purpose Entities (SPEs), are subsidiary companies created by parent entities to mitigate financial risks associated with large-scale projects. Given their independent legal status, SPVs are often excluded from the parent company's balance sheet, creating potential concerns regarding their treatment under insolvency law. However, precedents have already established legal clarity on the matter:

    - The State Bank of India recently approached the National Company Law Tribunal (NCLT) to recover debts amounting to ₹100 crores from Essel Infra Projects, involving two SPVs, including Coruscation Vidyut Vitaran (Ujjain), formerly known as Essel Vidyut Vitaran. This SPV was subjected to proceedings under the SARFAESI Act, as Essel Infra Projects acted as its guarantor.

    - The legal status of SPVs was further elaborated in *Tamil Nadu Power Association v. Tamil Nadu Electricity Regulatory Commission*.[26] The Appellate Tribunal for Electricity (APTEL), while interpreting the Electricity Rules, 2005, specifically Rule 3 concerning the captive status of Captive Generation Plants (CGPs), held that SPVs cannot be equated with Associations of Persons (AOPs) within the meaning of the rule.

In light of these factors, it is evident that the current insolvency framework does not adequately address the sector-specific intricacies of DISCOMs. The unique operational, regulatory, and financial challenges faced by the energy sector necessitate serious consideration of a

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[25] Hemant Sahai, *Why the Power Sector Deserves Exemption from IBC*, HSA Advocates (2020), https://hsalegal.com/article/why-the-power-sector-deserves-exemption-to-ibc/ (last visited Mar. 12, 2025).
[26] Appeal No. 131 of 2020 (APTEL)

specialized insolvency mechanism under the IBC.

VI. Looking for Alternatives: The Way Forward

The application of the Insolvency and Bankruptcy Code, 2016 to the power sector necessitates a more nuanced approach, recognizing the distinct financial, regulatory, and operational characteristics of power companies. The rigid applicability of the existing insolvency framework may not be suitable given the sector's critical role in the economy, its exposure to government policies, and its unique risk profile.[27] Consequently, several modifications could be introduced to tailor the insolvency regime to the needs of the power industry.

One viable reform is the introduction of additional prerequisites for initiating insolvency proceedings against power sector entities. This could include higher default thresholds, ensuring that minor or temporary financial setbacks do not trigger insolvency proceedings that could destabilize the sector. Further, the inclusion of a 'pre-existing disputes' ground as a defense for power companies facing insolvency petitions could prevent the premature admission of cases where payment defaults arise from unresolved contractual disputes, regulatory delays, or force majeure events rather than genuine financial distress.

A differentiated application of the IBC across various segments of the power sector could also be explored— on similar lines to financial service providers for whom a separate regime has been notified under section 227 of IBC.[28] Unlike DISCOMs, which are predominantly state-owned and subject to extensive regulatory oversight, power generation and transmission assets often involve substantial private sector investment. The IBC's full application to generation and transmission companies, particularly those with diversified financing structures, may be more appropriate, while distribution companies could be subject to a modified insolvency resolution framework recognizing their state ownership and public service obligations.

Moreover, the IBC should not apply to commissioned and operational generation and transmission assets where defaults result from prolonged non-payment by a sole procurer, such as a state-owned DISCOM. Given that tariff regulations typically account for two to three months of working capital needs, insolvency proceedings should not be initiated against power

[27] Shardul Amarchand Mangaldas, *Implications of Using Bankruptcy Code Against Discoms* (2021), https://www.amsshardul.com/insight/implications-of-using-bankruptcy-code-against-discoms/ (last visited Mar. 10, 2025).
[28] The Insolvency and Bankruptcy Code 2016, s 227.

generators or transmission entities unless payment defaults persist beyond a reasonable timeframe, such as three to six months. This approach would prevent unnecessary insolvency proceedings in cases where financial distress is not due to mismanagement but rather systemic payment delays within the sector.

In addition to these reforms, alternative legislative mechanisms may be better suited for addressing financial distress in the power sector without the disruptive effects of insolvency resolution under the IBC. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**"), for instance, allows lenders to enforce security interests without necessarily displacing management or dismantling the corporate structure.[29] This is particularly relevant in the power sector, where the continued operation of assets is essential for economic stability and consumer welfare. Utilizing the SARFAESI Act, financial institutions can recover their dues while allowing power companies to restructure and continue operations as going concerns, ensuring minimal disruption to energy supply.

Another alternative could be sector-specific financial restructuring schemes, facilitated by regulatory commissions in collaboration with financial institutions and the government. Such schemes could focus on debt restructuring, financial support mechanisms, or special dispensation for distressed assets in the power sector. The implementation of a dedicated resolution framework under the Electricity Act, 2003, or through sectoral regulators, could provide a structured mechanism to deal with financial stress in power entities without resorting to formal insolvency proceedings under the IBC.

In light of these considerations, Parliament must undertake a thorough evaluation of the power sector's unique challenges and explore legislative modifications that address the distinct realities faced by private investors in generation and transmission. A one-size-fits-all approach under the IBC may not be suitable, given the structural and regulatory complexities of the power sector. A balanced approach, where insolvency laws accommodate sectoral nuances while ensuring creditor rights and financial discipline would be essential in fostering long-term investment, financial stability, and sustainable growth in the energy industry.

[29] Hemant Sahai, *Why the Power Sector Deserves Exemption from IBC*, HSA Advocates (2020), https://hsalegal.com/article/why-the-power-sector-deserves-exemption-to-ibc/ (last visited Mar. 12, 2025).

Conclusion and way forward

The intersection of the Insolvency and Bankruptcy Code and the Indian power sector presents significant legal and economic challenges, necessitating a reconsideration of the existing insolvency framework. The primary concern arises from the application of a purely commercial insolvency regime to an industry that is either dominated by state monopolies or heavily regulated, even within open-access power markets. The existing framework fails to account for the unique operational and financial dynamics of power distribution companies (DISCOMs), leading to complexities in insolvency resolution.

A prevailing view among resolution professionals is that the introduction of private players under the IBC could mitigate the financial burden on state governments, as financial restructuring led by private entities may reduce the need for government grants and financial support. However, this perspective overlooks the critical public service nature of DISCOMs, the potential for disruption in electricity supply during insolvency proceedings, and the jurisdictional conflicts between the National Company Law Tribunal (NCLT) and state electricity regulatory commissions. The fundamental nature of electricity as an essential commodity raises concerns regarding service continuity, consumer rights, and regulatory oversight in cases where DISCOMs are subjected to insolvency proceedings.

Given these challenges, a sector-specific legislative framework for power sector insolvency appears to be a more viable solution. Alternative legal mechanisms, such as those under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, offer a less disruptive approach by allowing financial restructuring and debt recovery without dismantling the entire corporate structure. The SARFAESI framework provides a way for lenders to recover dues while enabling distressed power companies to continue operations as going concerns.

If a separate insolvency framework for the power sector is introduced, it must be carefully structured to address the concerns of all stakeholders, including creditors, investors, regulators, and consumers. Such a framework should focus on ensuring service continuity, streamlining regulatory approvals, and balancing financial restructuring with operational stability. Furthermore, sector-specific financial restructuring schemes, facilitated through regulatory commissions and financial institutions, could provide an alternative to the rigid insolvency framework under the IBC.

While the IBC has introduced a structured approach to corporate insolvency in India, its blanket application to the power sector is problematic due to the industry's unique regulatory and operational constraints. A differentiated approach, whether through sector-specific insolvency legislation, modifications to the IBC, or alternative resolution mechanisms, must be explored to ensure financial stability without compromising the essential services provided by power sector entities. Parliament and regulatory authorities must engage in a comprehensive assessment of these challenges and develop a legal framework that safeguards both economic interests and public utility obligations.