
IS THE INSOLVENCY AND BANKRUPTCY CODE, 2016, AN EFFECTIVE RESOLUTION TOOL?

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I. Introduction: The Genesis and Objectives of India's Insolvency Reform

India's economic landscape, prior to 2016, was characterized by a convoluted and inefficient insolvency framework that significantly hampered credit recovery and business continuity. The pre-Insolvency and Bankruptcy Code (IBC) era saw a fragmented legal regime, encompassing a multitude of statutes such as the Companies Act, 1956, the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI), and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). This dispersion led to protracted delays in resolving insolvency cases, often extending to an average of 4.3 years or even 1500 days, with creditors typically recovering less than 25% of their dues. The system's primary emphasis was on winding up businesses rather than facilitating their revival, contributing to India's dismal 136th ranking in the "resolving insolvency" component of the World Bank's "Ease of Doing Business" index in 2015. Historically, while ancient Indian texts like the Vedas and Dharmashastras recognized debt and repayment, and medieval periods saw financial instruments like Hundis, a modern, cohesive insolvency law remained elusive until recently.

The enactment of the Insolvency and Bankruptcy Code, 2016, marked a transformative moment in India's economic reforms. Born from the recommendations of expert committees, notably the Bankruptcy Law Reforms Committee (BLRC) chaired by Dr. T. K. Vishwanathan, the IBC consolidated disparate insolvency laws under a single, unified framework.¹ The BLRC advocated for a comprehensive framework, time-bound resolution, empowering creditors, and establishing new regulatory bodies and professionals.

¹ Bankruptcy Law Reforms Comm., Ministry of Fin., Gov't of India, The Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design (Nov. 2015).

The core objectives of the IBC are multifaceted: to facilitate time-bound resolution of insolvency cases, maximize the value of assets, promote entrepreneurship, enhance the availability of credit, improve the ease of doing business in India, and balance the interests of all stakeholders. A foundational principle is the prioritization of corporate revival over mere debt recovery, aiming to put the corporate debtor "back on its feet" rather than resorting to liquidation as a first resort. The Code explicitly separates the interests of the corporate debtor from those of its promoters, aiming to end the "defaulter's paradise". This shift is not merely a legal reorientation but a profound socio-economic lever. The term "defaulter's paradise" vividly describes a systemic issue where individuals could default on loans, yet retain control or benefit from their assets, often at the expense of creditors and the broader economy. The IBC's design directly challenges this by bifurcating the corporate debtor's interests from its management or promoters and prioritizing revival or orderly liquidation under creditor control. This creates a strong, credible deterrent against willful defaults and irresponsible financial behavior. This deterrence fosters a new credit culture: if defaulting promoters face the real risk of losing control and assets, they are incentivized to repay debts, engage in timely resolution, or manage their businesses more prudently. This, in turn, improves credit discipline across the economy, makes lending safer, and potentially increases the availability of credit for viable businesses. It signals a fundamental change in the moral hazard associated with corporate debt, contributing to a more disciplined and accountable corporate governance environment.

The Code establishes a time-bound process, initially 180 days, extendable to 330 days including litigation, to prevent value erosion and ensure efficient resolution. A significant philosophical shift is from a 'debtor in possession' to a 'creditor in control' model, empowering creditors to drive the resolution process. The evolution from fragmented laws to a unified code reflects India's economic maturity. The shift to a "single unified umbrella" is more than administrative simplification; it signifies a maturation of India's economic and legal framework. The historical context, from ancient texts to British-era laws, shows a long, often piecemeal, engagement with debt and insolvency. The IBC represents a conscious, comprehensive effort to align India's insolvency regime with global best practices, driven by the imperative to improve the "Ease of Doing Business" ranking.¹ This move from reactive, sector-specific remedies to a proactive, holistic approach indicates a strategic recognition of the interconnectedness of legal frameworks and economic health. This consolidation and modernization are critical for a rapidly growing, globally integrated economy. Fragmented laws create legal uncertainty, deter foreign and domestic investment, and hinder efficient

capital allocation. A unified, predictable framework reduces transaction costs, enhances investor confidence, and allows for more efficient recycling of capital, thereby supporting broader economic growth and stability. The very act of consolidating these laws under one Code reflects a strategic intent to create a robust foundation for modern corporate finance and governance.

This article undertakes a balanced assessment of the IBC's effectiveness as a resolution tool, acknowledging its transformative impact on India's financial landscape while critically examining the persistent challenges that continue to impede its full potential.

II. Evolution of the IBC Framework: Key Mechanisms and Amendments

The IBC introduced a comprehensive framework for insolvency resolution, underpinned by several key mechanisms and institutions.

i. Corporate Insolvency Resolution Process (CIRP)

The Corporate Insolvency Resolution Process (CIRP) is the cornerstone legal procedure under the IBC, 2016, designed to address the financial distress of corporate entities. Initiation can be by a financial creditor (Section 7), an operational creditor (Section 9), or voluntarily by the corporate debtor itself. Upon admission of the application by the National Company Law Tribunal (NCLT), a moratorium is immediately imposed, prohibiting the institution or continuation of legal actions against the corporate debtor and preventing asset transfers, thus preserving the debtor's assets.¹⁵ The CIRP is time-bound, initially set at 180 days, extendable by 90 days, with a mandatory maximum of 330 days, including any time taken in legal proceedings. The process culminates in one of two outcomes: a resolution, where the company is revived under new ownership or management with restructured debts, or liquidation, where the company's assets are sold to repay outstanding debts.

ii. Roles of Key Institutions

- **National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT):** These specialized adjudicating authorities were established to expedite insolvency resolution and alleviate the burden on traditional courts. The NCLT serves as the primary tribunal for initiating and managing insolvency proceedings, approving or rejecting resolution plans, overseeing liquidation, issuing moratorium

orders, and investigating fraudulent transactions. The NCLAT acts as the appellate authority, reviewing NCLT decisions, clarifying legal ambiguities, and ensuring regulatory compliance.

- **Insolvency and Bankruptcy Board of India (IBBI):** Established on October 1, 2016, the IBBI is the regulator responsible for the implementation and oversight of the IBC. It regulates insolvency professionals (IPs), insolvency professional agencies (IPAs), insolvency professional entities (IPEs), and information utilities (IUs). Its functions include making and administering regulations for various insolvency processes, promoting professional development through education and training, collecting and disseminating data, and conducting research. The IBBI also acts as the 'Authority' for registered valuers.
- **Resolution Professionals (RPs):** RPs are qualified and licensed professionals appointed to manage the affairs of a corporate debtor undergoing CIRP. Their duties are extensive, including taking immediate custody and control of assets, managing the company as a going concern, maintaining an updated list of claims, convening and attending Committee of Creditors (CoC) meetings, preparing information memorandums, inviting and presenting resolution plans, and filing applications for avoidance transactions. RPs effectively function as the MD/CEO of the distressed corporate debtor during the process.
- **Committee of Creditors (CoC):** Composed primarily of financial creditors (excluding related parties), the CoC is the supreme decision-making body during the CIRP. It holds the power to decide the fate of the corporate debtor by approving a resolution plan or opting for its liquidation, with its commercial wisdom largely respected by the courts. The CoC's responsibilities include protecting creditor interests, gathering financial information, evaluating and approving resolution plans, authorizing significant transactions, and engaging legal or financial professionals. Voting shares within the CoC are assigned based on the amount of debt owed.
- **Information Utilities (IUs):** IUs are professional organizations registered with the IBBI, mandated to collect, assemble, authenticate, and disseminate financial information from companies and creditors. Their primary role is to reduce the time required to establish debt and default, thereby accelerating the insolvency and bankruptcy process. Financial

creditors are obligated to submit financial information to IUs, which act as custodians of this data, ensuring its integrity as it cannot be deleted or modified.

Table 1: Evolution of India's Insolvency Regime: Pre-IBC vs. Post-IBC Comparison

Feature	Pre-IBC (Before 2016)	Post-IBC (After 2016)
Legal Framework	Fragmented laws (Companies Act, SICA, RDDBFI, SARFAESI, Presidency/Provincial Insolvency Acts)	Unified Code (Insolvency and Bankruptcy Code, 2016)
Primary Focus	Liquidation/Winding Up	Revival/Resolution (Going Concern) and Value Maximization
Control During Process	Debtor-in-possession (promoter/management)	Creditor-in-control (CoC, RP)
Average Timelines	Prolonged (e.g., 4.3 years, 1500 days)	Time-bound (180/330 days statutory, though often exceeded in practice)
Average Recovery Rates	Low (frequently <25% of dues, 26% under SARFAESI)	Improved (e.g., 32% of admitted claims, 169% of liquidation value)
Key Institutions	BIFR, DRTs, High Courts	NCLT, NCLAT, IBBI, RPs, CoC, IUs
Ease of Doing Business (Resolving Insolvency Ranking)	136th (2015)	Significantly improved (52nd in 2019, 63rd in 2020) ⁴
Insolvency Philosophy	Judicial/Government-driven	Market/Creditor-driven

III. Assessing the Effectiveness of IBC: Performance Metrics and Impact

The effectiveness of the IBC as a resolution tool can be rigorously assessed through a combination of quantitative performance metrics and its broader impact on India's financial ecosystem.

i. Improved Recovery Rates

The IBC has demonstrably improved recovery rates for creditors compared to the pre-Code era. As of September 2023, creditors realized ₹3.16 lakh crore out of admitted claims of ₹9.92

lakh crore, translating to an average recovery rate of 32%². The RBI Financial Stability Report (2023) corroborates this with an average recovery rate of 32.9% of admitted claims. While an overall 32% recovery rate might appear modest, it is a significant improvement over the pre-IBC recovery rates under the SARFAESI Act, which averaged 26% over 4.3 years. Some analyses suggest the IBC boasts the highest recovery rate among various mechanisms, reaching 45.5%. Crucially, when evaluated against liquidation value and fair value at the time of admission, the realization rates are 169% and 86% respectively, which is considered encouraging, especially given that significant value destruction often occurs in distressed assets prior to their admission under the IBC. Recovery rates are also influenced by resolution timelines: cases resolved within 330 days achieved a 49% recovery rate, while those dragging beyond 600 days yielded a substantially lower 26%.

The Code has facilitated successful resolutions for major corporate defaulters, demonstrating its capacity to recover substantial value:

- **Essar Steel:** A landmark case where creditors recovered approximately ₹42,000 crore, representing 92% of their dues. This resolution, completed in November 2019, fetched lenders an impressive 85% recovery on a ₹49,000 crore debt.
- **Bhushan Steel:** This case saw a recovery of ₹35,200 crore by Tata Steel. It was one of the fastest resolutions under IBC, completed in just 10 months, yielding a 63% recovery on a ₹56,051 crore debt.
- **Alok Industries:** Reliance and JM Financial recovered ₹5,000 crore in this resolution.
- Other notable cases include Dewan Housing Finance Ltd. (DHFL), where lenders took a 57% haircut on ₹87,082 crore debt, and Videocon Industries, which saw a nearly 96% haircut.

ii. Streamlined Resolution Timelines

One of the core objectives of the IBC was to ensure time-bound resolution, addressing the prolonged delays of the previous regime. The average resolution time has significantly reduced from over 4 years (pre-IBC) to approximately 394 days or 380 days for resolution plans. This

² Insolvency & Bankruptcy Bd. of India, Quarterly Newsletter, vol. 28 (July–Sept. 2023).

marks a "tremendous improvement" from the average of 1500 days previously. However, despite the statutory limit of 330 days for CIRP (including litigation), actual average resolution times often exceed this. The average time taken for a CIRP is reported as 683 days, and as of June 2024, the average time to resolve cases was 685 days for resolution closures and 499 days for liquidation closures. Data indicates that 68% of ongoing CIRPs have crossed the 270-day mark, and only 35% of cases are disposed of within the 270-day deadline, with an average disposal time of 521 days. This highlights a persistent challenge in adhering to the stipulated timelines.

The paradox of "improved timelines" amidst "persistent delays" reveals that while the design and framework of the IBC are effective in creating a faster process, its implementation is hampered by systemic bottlenecks. The "380 days" might represent the average for *successful resolution plans*, whereas the higher figures like "683 days" represent the overall average CIRP duration, which includes more complex or litigious cases, and those that eventually lead to liquidation. The underlying causes for these persistent delays are explicitly identified as an overburdened NCLT/NCLAT, strategic litigation tactics employed by corporate debtors, and broader procedural inefficiencies within the adjudication process. Even the "time taken for admission of a case" itself contributes significantly to the overall delay. The broader implication is that the full potential of the IBC in maximizing asset value is not being realized due to these persistent delays. Prolonged processes lead to "value erosion", directly impacting recovery rates. Thus, a foundational strength of the IBC—its time-bound nature—is significantly undermined by operational and behavioral realities. This indicates a critical area for ongoing reform to fully unlock the Code's effectiveness.

iii. Impact on Non-Performing Assets (NPAs)

The IBC has played a crucial role in improving the asset quality of the Indian banking sector. According to the RBI Report on Trend and Progress of Banking in India (December 2024), the IBC emerged as the dominant recovery route, accounting for 48% of all recoveries made by banks in FY 2023-24, surpassing the SARFAESI Act (32%), Debt Recovery Tribunals (17%), and Lok Adalats (3%). Gross Non-Performing Assets (NPAs) of scheduled commercial banks have seen a significant decline, from a peak of 11.2% in March 2018 to 3.9% in 2023 and further to 2.8% in March 2024. A substantial portion of this reduction is directly attributed to resolution processes enabled under the IBC. The Reserve Bank of India (RBI) actively

leveraged the IBC by directing banks to initiate insolvency proceedings against major corporate debtors, which significantly contributed to cleaning up bank balance sheets.

iv. Enhanced Ease of Doing Business

The IBC has indisputably contributed to India's improved standing in global business rankings. India's ranking in the World Bank's Ease of Doing Business Index saw a dramatic improvement, jumping from 130th in 2016 to 63rd in 2020. Specifically, in the "resolving insolvency" indicator, India's ranking improved by 84 places, from 136th in 2016 to 52nd in 2019. This enhancement is attributed to the IBC's role in fostering a more creditor-friendly environment, discouraging willful defaults, and establishing a transparent and predictable insolvency process, which in turn has boosted investor confidence and attracted foreign direct investment (FDI) into stressed assets.

V. Behavioral Shift and Deterrent Effect

Perhaps the most significant, albeit indirect, outcome of the IBC has been the profound "behavioral shift" it has ushered in. The credible threat of insolvency proceedings under the Code has compelled debtors to engage in out-of-court settlements or repay their dues to avoid losing control of their businesses. The dual nature of IBC as a resolution tool and a deterrent mechanism is evident here. The Code directly resolves a percentage of cases through formal proceedings, but a very high number of cases are withdrawn *before* admission due to settlement. The prevalence of pre-admission withdrawals (under Section 12A) demonstrates that the credible "threat of insolvency" under the IBC is a powerful incentive. This threat compels defaulting debtors to settle their dues or engage in out-of-court workouts to avoid the formal CIRP, which entails losing control of their businesses (the shift from 'debtor in possession' to 'creditor in control'). This "substantial behavioral shift" is a key, often understated, success of the Code. It means that the IBC's true impact is not solely measured by the number of cases formally resolved in court, but also by its preventative and catalytic effect on out-of-court settlements. This dual function makes the IBC a more potent and economically efficient tool than if it were solely a formal resolution mechanism. It fosters a broader culture of credit discipline and responsible borrowing across the economy, significantly contributing to the reduction of the overall Non-Performing Asset (NPA) burden on banks. The perspective that the "real success of a formal insolvency framework lies in its role as a deterrent than based on its actual use" underscores that a substantial portion of the IBC's effectiveness is realized

outside the formal resolution process, making the Code's influence far-reaching and impactful beyond what direct resolution statistics alone might suggest.

Evidence of this deterrent effect is substantial: as of August 2023, 26,518 applications for CIRPs, involving an underlying default amount of ₹9.33 lakh crore, were withdrawn *before* admission. By March 2024, this number rose to 28,818 cases with ₹10.22 lakh crore default withdrawn prior to admission. This improved credit discipline has contributed to the marked decline in bank NPAs.

IV. Conclusion

The Insolvency and Bankruptcy Code, 2016, represents a landmark reform that has fundamentally transformed India's approach to corporate financial distress. It has successfully consolidated fragmented laws, introduced a time-bound and creditor-driven resolution mechanism, and significantly improved recovery rates compared to the previous regime. The Code's most profound impact lies in its ability to foster a behavioral shift, compelling debtors to address defaults proactively, thereby contributing substantially to the reduction of Non-Performing Assets and enhancing India's global Ease of Doing Business ranking. The consistent improvements in the resolution-to-liquidation ratio further underscore its increasing acceptance as a tool for corporate revival.

However, the journey towards optimal effectiveness is ongoing. Persistent challenges, particularly concerning prolonged resolution timelines due to overburdened adjudicating authorities and strategic litigation tactics, continue to erode asset value and lead to substantial haircuts for creditors. Concerns surrounding the functioning of the Committee of Creditors, the competence and oversight of Resolution Professionals, and complexities in asset valuation, especially those involving third-party ownership, require continuous attention. Furthermore, sector-specific nuances in real estate and MSMEs, alongside the absence of a comprehensive cross-border insolvency framework, highlight areas where the Code's application remains complex.

Despite these challenges, the IBC ecosystem has demonstrated remarkable adaptability through continuous legislative amendments and judicial interpretations. The ongoing efforts to enhance judicial capacity, streamline processes, address valuation complexities, and improve stakeholder accountability are critical. By leveraging technology and systematically analyzing

data, the framework can become more efficient, transparent, and responsive. Ultimately, the IBC is not merely a recovery mechanism but a crucial structural reform designed to preserve enterprise value, promote credit discipline, and foster a robust financial ecosystem. Its continued evolution and refinement are indispensable for India's aspirations of sustained economic growth and a resilient corporate sector.