Evolving landscape for resolution of Stressed Assets in India: an update

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Foreword

The Insolvency and Bankruptcy Code (IBC or Code) was meant to signal a break from the past. While there were large macroeconomic objectives at play such as solving the twin balance problem, developing a robust corporate bond market, improving the credit environment, and consequently, providing a fillip to India's competitiveness as a business destination, the new code was designed to streamline corporate insolvency resolution process, which among other things, prevents value destruction if there is corporate distress. The resolution process is a representative action for the general body of creditors and not for the recovery of money of an individual creditor.

Being a time-bound process to resolve cases (within 180 days extendable to 270 days), the IBC has received praise from the World Bank and IMF and has materially contributed to India's improved ranking in 2018's 'Ease of Doing Business' by 30 places. The Code has also received significant attention from foreign investors. However, issues such as the proposed eligibility criteria for bidders have left it bogged down and suppressed its capacity to help out creditors efficiently. The strict time line for the resolution process, as mandated by the IBC, is an area that has drawn much attention and it merits further review in order to balance the twin objectives of speedy resolution and maximising recovery for lenders. To its credit, the Government has been willing to hear out suggestions.

The IBC has been in focus given the respite it promises to various stakeholders and its ability to expeditiously resolve large amounts of NPA and debts. The year 2017, witnessed several legal and regulatory developments in terms of the Court's interpretation of the Code, modification to the Code to plug loopholes and fine tune it along with modifications in allied laws. The dynamic activity in terms of number of applications filed for resolution, their outcome and quantum of NPA to be resolved has put the IBC Code in the forefront. In this newsletter, we have attempted to capture a gist of key regulatory changes and the status of matters to be resolved.

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Recap of the Code: one of the biggest reforms in India

‘One’ Law for bankruptcy

2 laws repealed

11 amended

Time-bound process

180 days to resolve insolvency

270 days, if extension is granted in some circumstances

No deadlock

- Bankruptcy resolved in prescribed time

  If not resolved on time—
  assets to be sold (liquidation)

No asset stripping

- Creditor is king
- Insolvency professional takes charge of assets on behalf of creditors

Metrics that matter

Status of cases before the Court (NCLT) for Resolution

Quarter	No. of companies beginning of quarter	Admitted	Appeal/ Review	Approval of resolution plan	Commencement of liquidation	No. of companies end of quarter
Q1 2017	0	37	1			36
Q2 2017	36	128	8			156
Q3 2017	156	228	13	2	8	361
Q4 2017	361	141	33	8	24	437
Q1 2018	437	167	12	12	55	525
Total		701	67	22	87	525

Source: IBBI Newsletter January–March 2018

Categories of Stakeholders who triggered resolution process

Quarter	No. of resolution process initiated by			Total
	Financial creditor	Operating creditor	Corporate debtor	
Q1 2017	8	7	22	37
Q2 2017	36	58	34	128
Q3 2017	91	97	40	228
Q4 2017	61	67	13	141
Q1 2018	66	81	20	167
Total	262	310	129	701

Source: IBBI Newsletter January–March 2018

Top 12 high profile cases: status

Reserve Bank of India (RBI) released a list of 12 cases to be prioritised by lenders for reference to IBC. Together these constitute 25% of the country's NPAs. However, in most of these cases the time threshold of 180/270 days has been exceeded due to ongoing litigations.

Sectors contributing majority of distressed assets

- Steel
- Roads & Infra
- Power
- Textile
- Real Estate

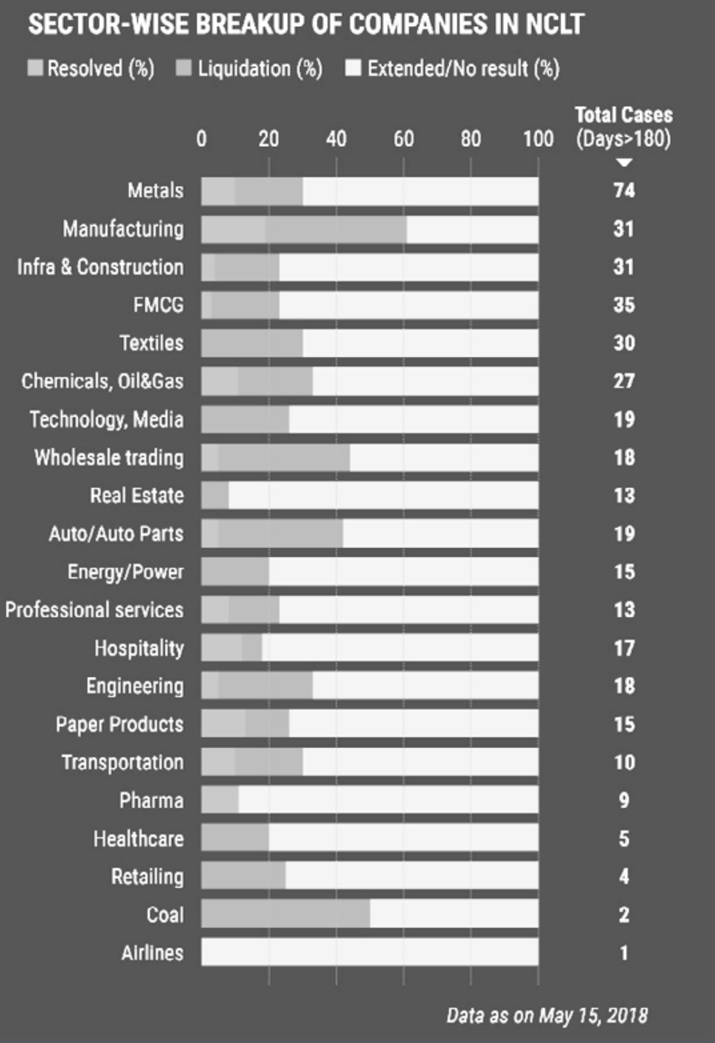
Company	Bidder	Approx. Debt (INR Cr)	Status
Amek Auto	Liberty House UK	14,074	NCLT has reserved its order on eligibility of Liberty House as bidder
Bhushan Steel	Tata Steel	44,478	Successful
Electrosteel Steels	Vedanta	10,273	Successful
Jyoti Structures	Sharad Shinghi	5,165	Resolution plan submitted – NCLT to decide on oppositions raised against resolution plan
Monnet Ispat & Energy	JSW - AION	12,115	Successful
ABG Shipyard	Liberty House UK	6,953	Next hearing on July 25 – to deliberate which plan of bidder should be considered (2 plans submitted) and end date of proceeding
Alok industries	JM Financial –RIL	22,075	Accepted bids of JM Financial-RIL
Bhushan Power and Steel	Tata Steel, JSW Steel, Liberty House UK	37,248	Final Stage of voting of successful bidder. However promoter has challenged certain aspects before the Apex Court
Era Infra Engineering	NA	10,065	Admitted after a number of hearings by NCLT
Essar Steel	Numetal-JSW, ArcelorMittal- Nippon Steel, Vedanta	37,284	NCLT hearing litigation by bidders. Second round of bidding completed
Jaypee Infratech	Adani Enterprises, Kotak Realty- Cude highways, JSW, Suraksha ARC	9,635	Lenders looking at alternatives to liquidation
Lanco Infratech	Thriveni Earthmovers	44,364	NCLT looking at revised resolution plan of bidder

Source: https://www.financialexpress.com/industry/banking-finance/indias-bad-loans-here-is-the-list-of-12-companies-constituting-25-of-total-npa/903396/

Sector-wise analysis of companies already before bankruptcy courts (i.e. NCLT)

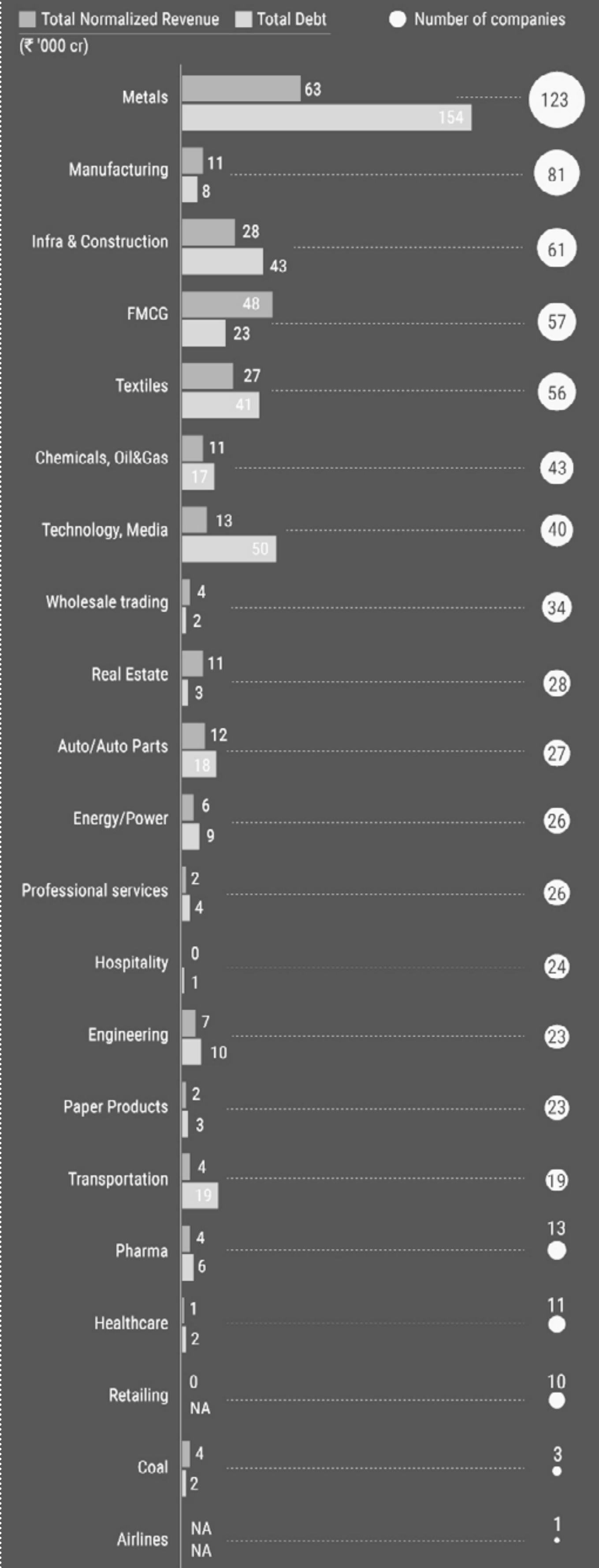
Snapshot of status of cases resolved and those heading towards liquidation

Days in NCLT	No of companies	Into liquidation	Resolved
More than 270 days	241	At least 73	At least 27
180-270 days	185	At least 21	At least 1
Less than 180 days	304	NA	NA
Total	730	At least 94	At least 28



Source: https://www.vccircle.com/india-incs-distress-to-worsen-as-150-more-firms-face-insolvency-eight-capital/

A sector-wise snapshot of companies already in bankruptcy courts, with their revenues and debts



Source: https://www.vccircle.com/bankruptcy-resolution-or-liquidation-how-companies-admitted-to-nclt-are-faring/

Key updates

New outlook towards restructuring

The Reserve Bank of India (RBI), the regulator, issued revised guidelines in February 2018 (Revised RBI Guideline) for expeditious resolution of bad loans, harmonising existing guidelines with the norms specified in the Code. Key aspects:

- Revised RBI guidelines overrides and subsumes earlier laws issued by the RBI
- All defaulting loans of more than 2,000 crores INR to be resolved by September 2018–by putting in place a resolution plan
- This covers 50 large borrowers with a total debt of 2.5 lakh crores INR
- If resolution plan involves any restructuring, even standard loans will get tagged as NPA
- If there is no resolution plan by September 2018, banks will have to launch insolvency proceedings

Code reboot

The Government of India had sought recommendations from an expert committee on modifications required to the IBC to fine tune it and plug-in loopholes. The recommendations of the committee that were accepted were brought in as Amendments to the IBC Code. Significant amendments include:

- Homebuyers to be treated at par with financial creditors—homebuyers can also take builders to bankruptcy court
- Lenders to decide turnaround or liquidation by 66% vote, down from 75%—decision-making easy
- Redefines entities disqualified from bidding for bankrupt firm—widens the pool for bidders
- Withdrawal of application admitted under IBC, 2016 by approval of 90% lenders—exit opportunity to corporate debtors for better settlement outside IBC purview
- IBC allows MSME promoters to bid for their enterprises, which are undergoing Corporate Insolvency Resolution (CIR) process provided they are not wilful defaulters—big relief to MSMEs
- Classes of creditors with at least 10 creditors in the class given the option to select resolution professionals
- Where rate of interest has not been agreed upon between parties in case of creditors in a class, the voting share of such a creditor should be in proportion to financial debt including interest at the rate of 8% per annum

Amendments in Corporate Law

Certain amendments were made in the Companies (Amendment) Act, 2017 in lieu of IBC.

- Companies can issue their shares at discount to its creditors when their debts are being converted into equity in pursuance to any statutory resolution plan (under IBC or any debt restructuring scheme of RBI).
- Companies who have defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, will now have to take prior approval of such lenders for payment of managerial remuneration.
- Registered valuer is prohibited from undertaking the assignment of valuation of assets in which he has direct or indirect interest or becomes so interested at any time during the three years prior to his appointment as valuer or three years after valuation of assets was conducted by such valuer.

Amendment to local tax laws

The local tax laws have been amended to provide relief for companies covered under the IBC, permitting carry forward and set-off of business losses in the event of a change in shareholding, and reduction of aggregate amount of unabsorbed depreciation and brought forward losses from book profit for Minimum Alternative Tax purposes.

Ease of delisting

The market regulator, i.e., Securities and Exchange Board of India has exempted companies under the IBC from adhering to prescribed delisting norms with certain riders.

Fast-track for start-ups

Regulations have been issued for expediting insolvency resolution for start-ups, small companies and unlisted companies with total assets worth less than 1 crore INR. The notable feature is that the resolution of such cases has to be completed within 90 days (extended by 45 days in certain circumstances) as compared to 180 days.

Government's proposed initiative to resolve bad debts

- With an aim to resolve the problem of stressed assets of public sector banks, the Government recently unveiled another strategy, called 'Project Sashakt'. The five-pronged "Sashakt' strategy is designed to address bad loans and strengthen the credit capacity, credit culture and portfolio of public sector banks.
- Project Sashakt sketches the resolution of bad loans, depending on their size. It includes an SME approach, a bank-led resolution approach, an asset management company (AMC) or alternate investment fund (AIF)-led approach, an NCLT or IBC-led approach and an asset trading platform approach.
- It is anticipated that most of the banks will come together to sign inter-creditor agreements that would aim to speed up the resolution process - under the framework of Project Sashakt.

Closing remarks

IBC has instilled a sense of urgency among all stakeholders to resolve bad loans. The fear of losing control over their companies has prompted various promoters to settle or resolve their dues before action is initiated under IBC. While, amendment in Company's Act & Finance Act would facilitate successful resolution of big corporates, the recent MSME amendments are expected to help bring about resolutions in the small and medium enterprise space also. The proposition of the Government to introduce cross border insolvency wherein lenders can access overseas assets of stressed companies will further strengthen and bolster IBC.

PwC Capabilities

Why PwC

- *Subject matter expertise*
- *Experience in successful resolution plans of top companies in India*
- *Handling labour and employment issues*
- *Practical experience in dealing with all aspects in the stressed asset space*
- *In depth knowledge of various sectors*
- *Globally leading restructuring services*
- *Experienced team of resolution professionals and restructuring specialists*
- *Extensive international experience combined with deep local market insight*
- *Global investor network*

How we can help

We lead financial restructuring projects from start to end

Through our diverse offerings, PwC can provide solutions to various business liquidity and restructuring needs. Our professionals focus on the entire continuum of reorganisations. Through our experience, we have noted that larger the lead time, the more options a business may have. And if a company does utilise bankruptcy, the filings should be viewed as a way to open doors, and not the other way around.

Opportunities for change to optimise, divest or modify

- Working Capital Optimisation
- Cash flow monitoring for Lenders
- Business Plan Review
- Development of a Turnaround Plan
- Negotiation with Stakeholders
- Interim Financing
- Bringing in Investors from Global Network
- Working with Stressed Assets Investor category
- Third party funding for claims in certain sectors
- Fund raising for stressed assets

Navigating through bankruptcy

- Bankruptcy Filing Preparation
- Resolution Professional services
- Bid evaluation for Lenders
- Negotiation with Creditors
- Develop Plan of Reorganisation
- Enterprise Valuation
- Liquidation services and portfolio sales
- Claim verification
- Insolvency Process Monitoring / Implementation
- End-to-end CIR Process Advisory for a successful and speedy resolution

PwC has the capabilities to help clients through an entire continuum of a business' life cycle. Due to our extensive experience in business plan optimisation, due diligence, tax, valuation, complex accounting and access to capital markets, PwC is able to help our clients maximise their opportunities and value throughout the business life cycle.

Distressed Opportunities

Debt resolution, monitoring
Resolution Professional services, stressed assets advisory, turnaround support, monitoring agent

Tax & Regulatory Services
Structuring, licensing, transaction advisory, M&A, transfer pricing, GST

Value Creation
Commercial and operational improvement

Business plan/ modelling
Licensing / commercial purposes, preparation of resolution plan and bids

Valuation
Shares, NPAs, Security Receipts, Business valuation, valuations as per I.T. Act

Corporate Finance / Investment Banking
Fund-raising, NPA deal sourcing

Assurance
Statutory, tax, internal audits, IND AS impact analysis and transition

Due Diligence
Tax, Financial, Regulatory, Forensic

Governance
Policies, internal controls, SOPs

What's new in PWC India's stressed asset practice

Successfully completed one of the top 12 cases in the Iron and Steel sector listed under IBC in April 2018

Initiated corporate insolvency resolution proceeding for one of the top 12 cases in the Infrastructure sector, which has a debt size of more than 15000 crores INR

Initiated corporate insolvency resolution proceeding for a company in the Iron and Steel sector, which had a debt size of 5,000 crores INR

Initiated corporate insolvency resolution proceedings for large group companies in the FMCG sector

Participated in and organised overseas investor forum and mobilised investor interest in Indian stressed assets

Advising the committee of creditors as a Process Advisor on 11 CIR processes across sectors such as Iron & Steel, Consumer Media, Pharma, Education, EPC and Shipping

Notes

Notes

About PwC

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