JETIR.ORG ISSN: 2349-5162 | ESTD Year : 2014 | Monthly Issue
JOURNAL OF EMERGING TECHNOLOGIES AND INNOVATIVE RESEARCH (JETIR)
An International Scholarly Open Access, Peer-reviewed, Refereed Journal

Management of Non-Performing Assets under the Insolvency and Bankruptcy Code 2016- With Reference to Indian Public Sector Banks

Deepali Yadav

Research Scholar

Department of Commerce and Business Administration, University of Allahabad

Dr. Himanshu Srivastava

Assistant Professor

Department of Commerce and Business Administration, University of Allahabad

Abstract

A stable banking sector is must for a sustained inclusive growth and development of an economy. From past a few decades rising NPAs of the public sector banks has posed a threat to the economy. The earlier insolvency and bankruptcy regimes proved to be a failure in resolving the insolvency matters. The different governments have brought in various regulatory and legislative reforms to strengthen the assets resolution mechanism. In the series of these reforms, the Insolvency and Bankruptcy Code was enacted in 2016. It was perceived as the most effective and progressive resolution tool for recovery of NPAs. This code repealed various archaic laws and amended others to bring an overhaul in the resolution of NPA problem of the country. The current paper examines the various provisions of the code for the management of NPAs of the Indian public sector banks. The paper also explores the various new provisions which were introduced in the code to make it the most advanced legislation up till date. The study is exploratory in nature and is based on secondary data.

Keywords: Non-performing assets, Bankruptcy, Insolvency, Insolvency and Bankruptcy Code 2016, Public sector banks.

1. Introduction

At the time of independence, the Indian government introduced a mixed economy system so that the underprivileged masses of India could enjoy the fruits of economic growth and development. The Indian state is a socialist country that works for the welfare of its citizens. According to this national philosophy, banks were

nationalized in two phases, first in 1969 and then in 1980. This led to the formation of public sector banks in the country**.**

Public sector banks have the largest market share in the Indian banking sector and are owned and managed by the government, which uses them as facilitators of economic development and growth for the country and its population. They act as the backbone of the country's financial system. They enable the financial inclusion of unbanked regions and masses in the financial system (Singh, 2016) Although they sometimes experienced a major economic crisis like the 2008 recession, rising NPAs have always acted as a sword of Damocles. for sustainability, profitability and overgrowth of banks. The increase in generic payments not only requires large provisions for lost assets, but also weakens the creditworthiness of banks. Due to liberal and lax credit policies, concentration of loans to few large borrowers and certain sectors, NPAs of public sector banks are increasing (Brahmaiah, 2019)2. Their leadership was weak and ineffective. Crown capitalism is also a big problem for public entities.

The NPA issue of public radio broadcasts generated heated debates in public and in parliament. Governments have periodically introduced legislative and infrastructural changes to address the NPA problem. It enacted the Banks and Financial Institutions Debt Recovery Act in 1993. It created DRTs to deal with insolvency cases of individuals and partnerships. In 2002, the Financial Securitization and Reconstruction and Security Interest Enforcement Act came into effect, allowing banks and financial creditors to foreclose on debtors without court intervention. Local adalats were introduced as an amicable solution outside the agreement procedure using a compromise method. But all these options lacked provisions such as time-bound settlement of cases, preferential treatment of creditors in repayment of loans. The various definitions in these regulations are unclear. To overcome these limitations, the idea of a comprehensive regulation was born that would meet the required international standards and enable an easy exit mechanism and maximum value. This resulted in the Insolvency and Bankruptcy Act 2016.

2. Objectives

To examine the provisions of the Insolvency and Bankruptcy Code 2016, for the management of NPAs of the public sector banks.

3. Literature Review

The literature review involves the study of current literature covering the area of research on the management of assets done under the IBC.

1. Gupta (2018)[3] concluded that the success of the Code depends on the way in which the provisions of the Code are implemented. He used data from the early years of the code and found that the success of the code could not be denied because of the challenges of the code, namely tight schedules, different treatment of different creditors, too

much power in one hand. creditors' committee, trustee's liability, silence on third-party contracts, disparate conduct of stakeholders inconsistent with the general purpose of the Code.

2. **Gupta and et.al. (2020)[4]** in their study highlighted the code hinterland and the challenges faced by the Indian economy in transition from the old system to the new system. They also analyze the impact of the code on the country's macroeconomics, highlighting its effectiveness in reducing unreported payments. They analyze the performance in the light of variables like NPA management, FDI growth, M&A growth etc.

3. **Gupta and Singh (2020)[5]**. Tried to find out whether the code is an effective tool for recovery of NPAs by analyzing secondary data on various aspects of IBC and recovery of NPAs offered by Indian banks through various channels. They found that infrastructure improvements are needed to speed up the settlement process

4. **Bagga and Sahni (2020)[6]** in their study assessed the pattern of NPAs and the decline in NPAs before and after the enactment of IBC. They analyzed the secondary data available in the annual report of Punjab National Bank. They observed a significant decline in PNB's NPA levels after the introduction of the code and found that the code helped in quick recovery of non-performing assets.

5. **Intelly and Chandra (2022)[7]** conducted a study on the role of the IBC as a manager of the Indian economy and pointed out the shortcomings of the Code. They noted that shortfalls in the number of NCLT tribunals pose a challenge in meeting the timeline for the adjudication process.

4. Insolvency and Bankruptcy Code 2016

The enactment of the Insolvency and Bankruptcy Act 2016 is seen as the second generation of financial reform. The first generation of economic reforms allowed companies to enter the market freely in 1991, and this code allows sick companies to exit the market smoothly, so that they can easily realize asset value maximization (Raman, 2020)8.

In the early 2000s, the Indian economy was booming. Banks began lending to businesses and individuals non-stop. This led to concentration of NPA problems in banks. This also caused a double balance problem. During the financial crisis of 2008, companies did not make a profit and could not repay bank loans. This increased the burden on banks' loan loss provisions and weakened bank profits. This led to an increase in the number of insolvent and bankrupt companies, which in turn increased unreported payments from banks.

All this was further complicated by existing insolvency and bankruptcy laws, which had no time limits for the resolution process of sick companies and failed banks. They even lacked mutual coordination. There was redundancy in various provisions in different Acts and overlapping of provisions was evident. Several judgments have created confusion in the minds of stakeholders, resulting in delays in recovering the maximum value of the property. All this confusion led to the need for a comprehensive law that could act as a one-stop solution for all insolvency and bankruptcy problems. The 2016 Insolvency and Bankruptcy Act were introduced to do this. By

section 243, this Act repealed both the Provincial Insolvency Act of 1920 and the Presidential Insolvency Act of 1909.These laws were modified by this code.

S.No	Act Amended	Section of the Code	Schedule
1	The Indian Partnership Act, 1932	245	First
2	The Central Excise Act, 1944	246	Second
3	The Income- tax Act, 1961	247	Third
4	The Customs Act, 1962	248	Fourth
5	The Recovery of Debts due to Banks and Financial Institutions Act, 1993	249	Fifth
6	The Finance Act, 1994	250	Sixth
7	The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002	251	Seventh
8	. The Sick Industrial Companies (Special Provisions) Repeal Act, 2003	252	Eighth
9	. The Payment and Settlement Systems Act, 2007	253	Ninth
10	The Limited Liability Partnership Act, 2008	254	Tenth

11	The Companies Act 2013	255	Eleventh

5. Major Provisions of the Code

The code has made various provisions which make it a progressive and effective tool of resolving the problem of NPAs.

1. Corporate Insolvency Resolution Process

According to Section 6, the company's insolvency proceedings can be initiated by the company's debtor, financial creditor, and operational creditor. In case of non-fulfillment of obligations, creditors can individually or jointly request a resolution procedure from the decision-making authority. According to section 7(4), the adjudicating body must ensure that there is no negligence in obtaining the necessary financial information from the information service company in accordance with section 209 of the Code.

Operational creditors can also present a CIRP in the event of insolvency, but not before the debtor has served a statement of claim in accordance with section 8(1) of a copy of the outstanding operational debt invoice.

According to section 12(1), the CIRP must be completed within 180 days of the receipt of the request to start such a process from the date. Section 16 (1) requires the decision-making authority to appoint interim resolution professionals within 14 days of the commencement date of the CIRP.

According to section 17 (1) of the Law, the management of the affairs of the debtor of the company is transferred to temporary specialists from the date of their appointment. The article also states that the powers of the board and partners of corporate debtors have been suspended and are being used by temporary resolution professionals.

According to section 16 (5) of the Law, the powers of the temporary resolution specialist cannot exceed 30 days from the day of his appointment. According to section 19 (1) of the Act, the corporate debtor must establish and assist a temporary resolution professional to manage the affairs of the corporate debtor, and if this is not the case, a petition can be presented against the debtor with a temporary decision. debtor of the company to the authority.

According to section 20 (1),the responsibility of the temporary resolution expert is to use all reasonable means to safeguard and preserve the value of the business debtor's assets and to operate the business debtor as a going concern. According to section 21(1) of the Law, after receiving all claims received by the joint debtor and after clarifying the property status of the joint debtor, the temporary resolution professional forms a creditors' committee, which includes all financial creditors.

2. Cases for Initiation of Liquidation Process

The main purpose of the rule is to ensure that insolvency and bankruptcy are resolved to the extent possible. If a solution is still not possible, liquidation can begin. According to Section 33 (1) of the Act, liquidation can be started as follows:

a) Does not receive a resolution plan as described in sub-section (6) of section 30; b) Rejects the resolution plan as described in section 31 due to non-compliance with its requirements .

In the following manner

a) Issue a decree mandating the aid-down method of corporate debtor liquidation.

b) publish a notice informing the public that the corporate debtor is liquidating; and

c) Demand that the authority where the corporate debtor is registered receive a copy of the order.

In accordance with section 34 (1), unless the adjudicating authority designates another resolution professional, the resolution professional designated for the corporate insolvency resolution process shall act as the liquidator for the purposes of liquidation when the adjudicating authority passes an order for the liquidation of the corporate debtor under section 33. According to section 36(1), the liquidator must create an estate out of the debtor's assets for liquidation purposes. This estate is referred to as the liquidation estate in respect to corporate debtors. In accordance with section 38(1), the liquidator must receive or collect creditor claims within thirty days of the day the liquidation process began. In accordance with section .An operational creditor may submit a claim to the liquidator in the manner and with the proof-required supporting documents that the Board may specify in line with section 38(3). Within fourteen days of filing his claim, a creditor may, in accordance with section 38(5), withdraw or modify it. In accordance with section 39 (1), the liquidator must examine the claims made pursuant to section 38 within the time frame designated by the Board.

3. Fast Track Corporate Insolvency Resolution Process

- A faster resolution to the insolvency of small businesses is intended by the Fast Track Corporate Insolvency Resolution Process (FCCRP), a streamlined version of the Corporate Insolvency Resolution Process (CIRP). It was implemented in India under the Insolvency and Bankruptcy Code, 2016, to give small and less complicated corporate debtors a quicker resolution process.
- The FCCRP is applicable to companies with an outstanding debt of up to Rs. 1 crore. Under the FCCRP, the process of resolution is completed within 90 days, as compared to 180 days under the regular CIRP. The objective of the FCCRP is to provide a speedy resolution to the insolvency of small companies, thereby minimizing the loss to all stakeholders involved.
- During the FCCRP, the process of appointment of the Insolvency Professional (IP) is fast-tracked, and the period for submission of claims by creditors is reduced to 30 days. The IP is required to complete the entire resolution process, including the preparation of a resolution plan, within 90 days from the date of admission of the application.

- If the resolution plan is approved by the creditors and the National Company Law Tribunal (NCLT), the company is revived, and the creditors are paid as per the terms of the plan. If the resolution plan is not approved, the company is liquidated, and its assets are sold to pay off the creditors.

4. Voluntary Liquidation of Corporate Persons

The chapter fourth of the code deals with voluntary liquidation by a corporate debtor. Section 59(1) states that a corporate debtor can voluntarily apply for liquidation and has not committed any default, only after the debtor fulfills the required conditions as specified by the board for such liquidation.

5. Adjudicating Authority for Corporate Persons

According to Section 60(1) of the Act, the authority making decisions in company insolvency proceedings is the National Company Law Tribunal. Subject to section 61(1) and notwithstanding anything to the contrary contained in the Companies Act, 2013, any person aggrieved by an order made by a Magistrate under this Part may prefer an appeal to the National Company Law Appellate Tribunal. According to Section 62(1) of the Act, any person who has contravened an order of the National Company Law Appellate Tribunal may file a complaint with the Supreme Court on a legal matter arising from an order made on the basis of this Act within forty-five days of receipt of it. that. of such order. Civil Courts do not have jurisdiction over NCLT and NCLAT cases. Section 64(1) states that if an application is not processed or an order is not issued within the time frame specified in this regulation, the domestic company court or the domestic company court appeal court, as applicable, must record the reasons why it was not completed in that time frame. The President of the Court of Company Law or the President of the Appellate Court of National Company Law may, as applicable, after taking the reasons into consideration, take further action.

6. Authorities Created under the Code

The code has four pillars on which the entire operation of the code works. They are entrusted with particular duties and powers and their powers. They are designed to meet the objectives of the Code and international standards of insolvency and bankruptcy law.

The first is the Insolvency and Bankruptcy Board of India constituted under Section 188(1) of the Code.Section 189(1) of the Code specifies the members of the Code, including the president, who is ex officio; three members from among central government officials who do not hold the rank of joint secretary or equivalent, who each represent the Ministry of Finance, the Ministry of Enterprise, and the Ministry of Law; one member to be appointed ex officio by the Reserve Bank of India; and d) five additional members appointed by the central government. The Act's section 196 subsection 1 outlines the board's authority.

The second is bankruptcy specialists according to section 199. In accordance with section 204, insolvency specialists must perform the following tasks:a) grant membership to individuals who satisfy all requirements for payment of the membership fee outlined in its regulations; b) establish professional conduct standards for its members; c) monitor its members' performance; d) protect the rights, privileges, and interests of the insolvent professionals who are its members; e) suspend or cancel the membership of the insolvent professionals who are its members for the reasons outlined in its statutes; (f) to adhere to the rules and regulations of the organisation.. The definition of insolvency practitioners is given in section 206. The third is an information service under section 209. According to section 213, the functions of information services are (a) to create and maintain financial information in a generally accessible form; (b) accept electronic financial information from persons subject to a duty to disclose financial information under section 215(1) in the form and manner required by the regulations; c) accept electronic submissions of financial information in a certain form and manner by persons intending to send such information; d) fulfill possible requirements for quality of service in the regulations; (e) that all relevant persons confirm information received from various persons before recording such information; (f) provide access to stored financial information to any person who intends to access such information in accordance with the law; g) publishes the statistical data foreseen in the regulation; h) they must have interoperability with other information services. The fourth is a body called the National Company Law Tribunal. The appellate body is the National Company Appellate Law Tribunal. A final appeal can be made to the Supreme Court of India.

7. Objectives of the provisions of the code

The code was brought as a one stop solution for the matters of insolvency of corporate persons. The code was brought to fulfill following objectives;

1) Resolution of the NPAs in a specific time limit.
2) Declaration of liquidation of the debtors and publically announcing it to the public.
3) Declaration of the moratorium and making public announcement of the same.
4) Public announcement of the CIRP.
5) To ensure that the corporate debtors corporate with the CIRP.
6) To make a consensus among different creditors so that the hierarchy can be established for repayment of realized amount of the liquidated assets, by forming committee of creditors.
7) Assessing the liquidation estate and consolidate the claims on the estate.
8) Fast track resolution of certain insolvency processes.
9) To define the penalties and offences for fraudulent applications and practices in the CIRP.

8. Conclusion

The code has surely been a good initiative to strengthen the insolvency and bankruptcy regime of the country and make it at par with the international standards as given under the United Nations Commissions on International Trade Law. The code has the caliber to **self-reliant in sustaining its banking sector and achieving the inclusion of objective of the Jan Dhan Yojana.** But certain provisions of the code are not being efficiently implemented.

The time bound manner resolution is defeated due to lack of enough infrastructure for adjudication, The IBBI has also been facing various lags, such as casual working of the board and appointment of the chairperson of the board. To make the code a success, it is necessary to address these issues.

References

1) Singh, C. (December, 2016). *An Essay on Banking and Macroeconomics: Role of Public Sector Banks in India* (IIMB-WP NO.530).

2) Brahmaiah, B. (2019). Why Non-Performing Assets Are More in Public Sector Banks in India? *Theoretical Economics Letters*, 09(01), 75–82. https://doi.org/10.4236/tel.2019.91007

3) Gupta, A. (2018). Insolvency and Bankruptcy Code, 2016 : A Paradigm Shift within Insolvency Laws in India. *The Copenhagen Journal of Asian Studies*, 36(2), 75–99.

4) Gupta, N., Desai, N., & Garg, E. (2020). Impact of Insolvency and Bankruptcy Code on India's Macro Economy Focusing on Indian Commercial Banks. *Supremo Amicus*, 22, 1–11.

5) Gupta, M. S., & Singh, J. B. (2020). Insolvency and Bankruptcy Code (IBC) in India : Impact on Recovery of NPAs by Banks. *Bihar Journal of Public Administration, XVII (2)*, 606–614.

6) Chopra Bagga, S., & Sahni, D. (2020). A Study of Non Performing Assets of Punjab National Bank and Their Reduction before and After the Enactment of Insolvency and Bankruptcy Code, 2016. *Journal of Critical Review, 7(16)*, 3834–3847.

7) Intelly, & Prakash, C. (2022). Role of Insolvency and Bankruptcy Code 2016 in Sustaining Indian Economy. *International Journal for Multidisciplinary Research*, 4(4), 308–314.

8) MINISTRY OF LAW AND JUSTICE (Legislative Department). (2016, May 28). *THE INSOLVENCY AND BANKRUPTCY CODE, 2016* [Press release]. https://www.mca.gov.in/Ministry/pdf/TheInsolvencyandBankruptcyofIndia.pdf