

Insolvency and bankruptcy code: Government's best bet against the bad loan mess

By: [Banikinkar Pattanayak](#) | Published: February 2, 2019 4:08 AM

The increasing application of the IBC marks a clear shift in the balance of power in favour of creditors, instead of defaulters. The fact that Essar Steel promoters now want to clear all dues to retain control is a testimony to it.



Illustration: Shyam Kumar Prasad

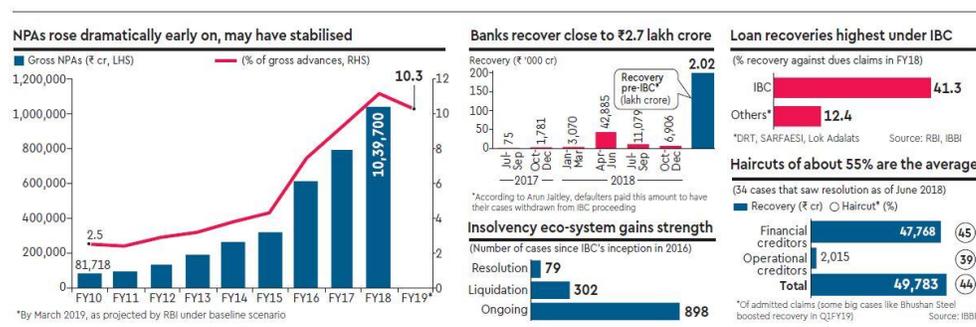
It started with a whimper, but acquired a bang along the way. Invoked initially in mostly “dead cases” transferred from the earlier regime, the Insolvency and Bankruptcy Code (IBC), which facilitates early detection and time-bound resolution of bad loans, has emerged as one of the most crucial laws enacted by the Modi government.

To be sure, 54% of the Rs65,797-crore recovery by financial creditors in the 79 resolved cases since the IBC's inception in late 2016 came from just one large case (Bhushan Steel) and lenders had to take a steep 52% haircut in these cases, show the news-letters of the insolvency regulator. As many as

52% of cases were closed through liquidation. The average time taken for resolution was 317 days, against 270 days stipulated under the IBC.

Nevertheless, the IBC has proved to be far superior than the tools used earlier. According to an RBI report, banks recovered as much as 41.3% of their claims in cases where resolution took place under the IBC in FY18, against just 12.4% through other mechanisms such as SARFAESI Act, Debt Recovery Tribunals and Lok Adalats (mostly resorted to in the UPA era). The recovery under the IBC improved further this fiscal.

Union minister Arun Jaitley said in early January that creditors apparently recovered some Rs2 lakh crore by just filing insolvency applications with NCLT. Fearing that they would lose their firms if the IBC was invoked, defaulters cleared dues before the adjudicating authority admitted the lenders' plea. The government is expecting an extra Rs70,000 crore this fiscal from the likely resolution of Bhushan Power and Steel and Essar Steel.



With NPAs spiking and the efficacy of earlier tools waning, the government strengthened the IBC through a series of amendments and barred defaulting promoters from bidding for their assets (except for MSMEs). The RBI recommended 12 large cases, accounting for a quarter of bad loans in the system, for resolution under the IBC in June 2017, and topped it up with another 29. It also brought in a circular in February last year, directing banks to refer any default case where they are unable to find resolution in six months to the IBC. The circular, however, has been challenged at the Supreme Court.

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However, promoters' dogged pursuit to hold on to their firms has put the law to its toughest test. Litigation has delayed resolution in high-profile cases. For instance, Essar Steel, which was admitted by NCLT on August 2, 2017 after a default of around Rs49,000 crore, is yet to be resolved. The resolution process for Alok Industries and ABG Shipyard is still not over, even though they were admitted in July-August 2017. The resolution of Monnet Ispat and Energy took 409 days.

Frustrated by the delay, SBI last week put on sale its stressed exposure to Essar Steel India worth Rs15,431 crore, willing to take a 38% haircut instead of 27% if it would wait longer. Winning bidders of stressed assets backing out of payment obligation is another worry. Recently, Liberty House missed the deadline to pay up for Amtek Auto.

The good thing is the ministry of corporate affairs and regulator Insolvency and Bankruptcy Board of India (IBBI) have been swift in responding to the changing requirements of the nascent eco-system. IBBI has also tightened regulations to punish the successful bidders for backing out. The government has decided to raise the number of NCLT benches as well as members, among others, to help cut delay.

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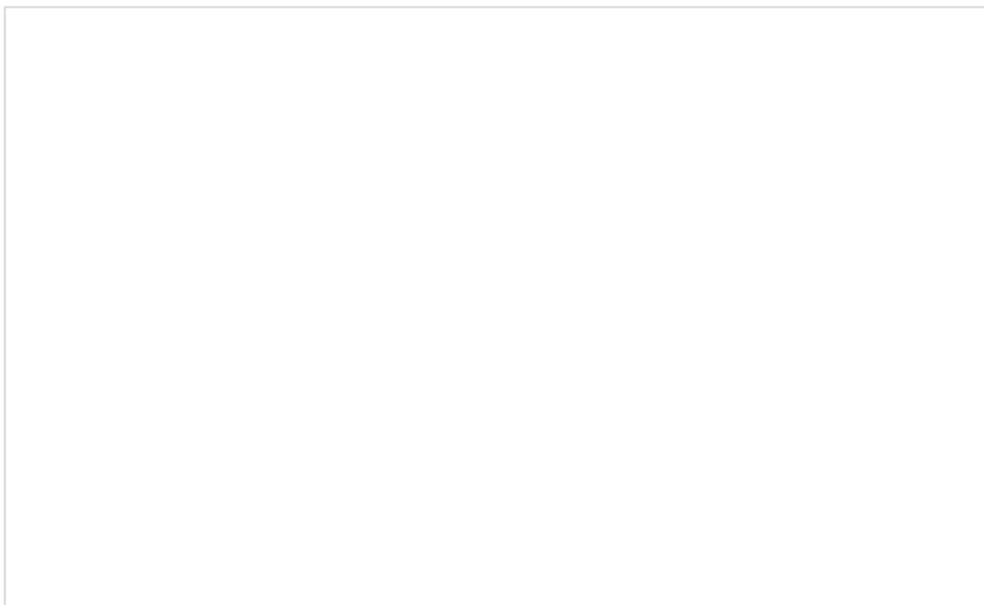
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