

IBC: REFORMS IMPLEMENTED AND THE NEED FOR CONTINUING MOMENTUM



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The Insolvency and Bankruptcy Code, 2016 (IBC) was introduced in 2016 as a significant milestone in India's economic reforms. Its primary objective is to resolve stressed assets efficiently, improve the credit culture, and enhance the overall business environment. To make IBC more efficient and effective, the Insolvency and Bankruptcy Board of India (IBBI) has been actively engaged with multiple stakeholders by inviting comments from public and regulators. Since its enactment in 2016, IBC and rules and regulations thereunder have been amended from time to time in response to the market requirements.

Positive impact on the economy

The enactment of the IBC in India has had a significant impact on both - ease of doing business and the overall economy. Prior to IBC, winding down pursuant to insolvency was a cumbersome process, resulting in low recovery rates, high costs, and prolonged legal battles. More importantly, there was no generally available regime for rehabilitation of companies facing temporary liquidity /cash mismatch, and the only recourse open to creditors and stakeholders was wind down the company.

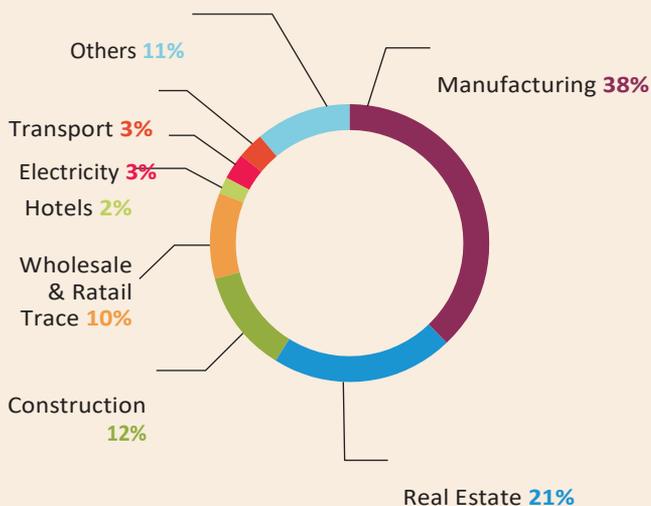
Since then, several key reforms introduced by the IBC transformed the insolvency resolution landscape. As of March 2024, creditors have recovered around 31.91 per cent as against their admitted claims and more than 166 per cent as against the liquidation value in insolvency process under IBC. After the enactment of the IBC, the average time taken to close insolvency cases has reduced to 1.8 years as compared to 4 years before its enactment. The IBC's success in resolving stressed assets has been instrumental in improving the asset quality of scheduled commercial banks as there has been a significant reduction of gross non-performing assets scheduled commercial banks (NPA) ratio from 9.6 per cent (as of March 2017) to 2.8 per cent (as of March 2024). Additionally, IBC has significantly lowered the cost of resolution, benefiting both creditors and debtors. Previously, resolution costs were around 9 per cent of the value of the debtors estate, but now they stand at just 1 per cent. India's ranking in the World Bank's 'Ease of Doing Business Index' improved significantly after the implementation of IBC. Specifically, in the "resolving insolvency" category, India's ranking jumped from 108 to 52 in 2019. Furthermore, the IBC had a positive impact on the investor confidence in the Indian market due to its

transparent and effective insolvency resolution framework. The enactment of the IBC strengthened the freedom to exit, which was previously not robust. In summary, the IBC has significantly enhanced the ease of doing business in India, leading to better recovery rates, reduced resolution costs, and increased investor confidence. Its impact extends beyond the corporate sector, positively influencing the overall economy.

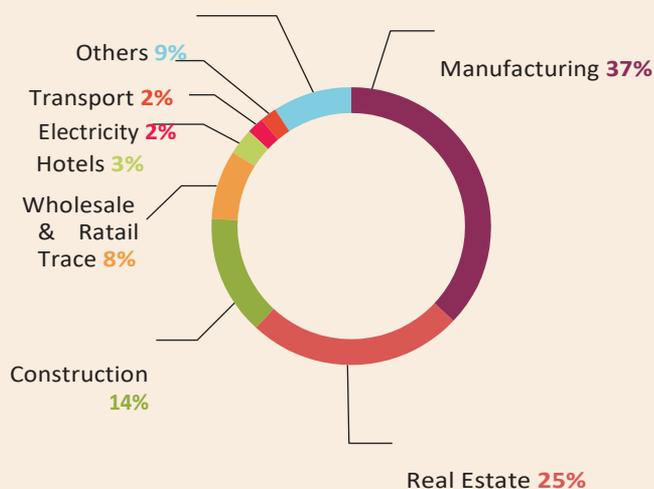
Sector-wise distribution

Breaking down the cases initiated under the IBC by sector, we find that 38 per cent of them were from the manufacturing space, 21 per cent from real estate, 12 per cent from construction, and 10 per cent from retail/wholesale trade. On the other hand, 41 per cent of the debtors undergoing liquidation are from manufacturing space, 18 per cent from real estate, 13 per cent from wholesale / retail trade, and 7 per cent from construction (amongst others). These statistics highlight the significant impact of the IBC across various sectors.

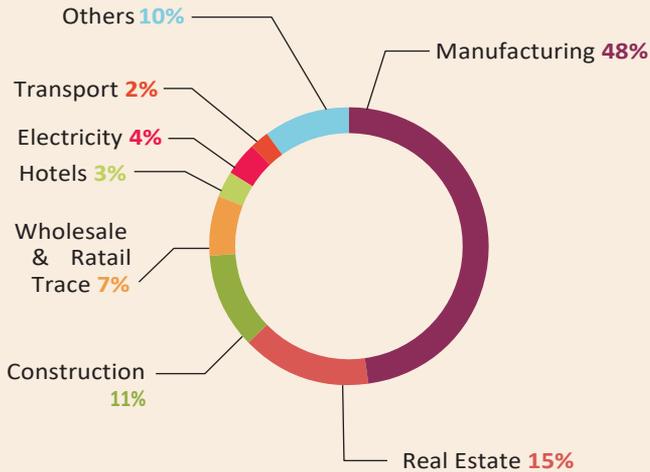
Sectoral Distribution of CIRPs: Admission



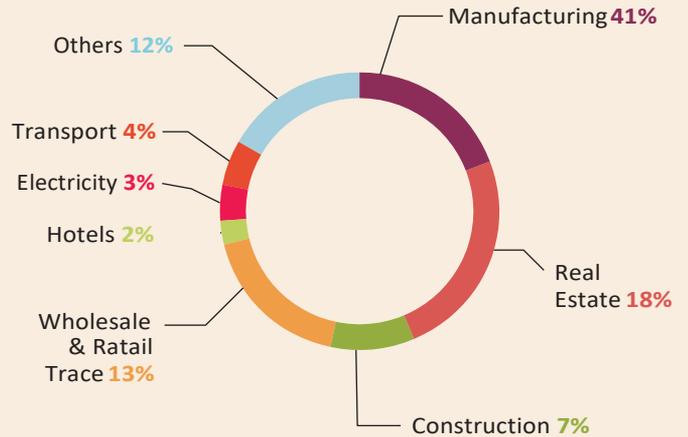
Sectoral Distribution of CIRPs: Appeal/Review/Settled/Withdrawn



Sectoral Distribution of CIRPs: Resoluton Plans



Sectoral Distribution of CIRPs: Commencement of Liquidation



¹Data from the E-newsletter published by the Insolvency & Bankruptcy Board of India for the Quarter ending March 2024 (Volume 30)

Challenges and amendments

The IBC has been amended several times after taking into consideration the requirements and feedback from various stakeholders and legal precedents. These amendments include classification of homebuyers as financial creditors, reduction of the voting threshold for approval of the resolution plans, clarification of minimum value in the resolution plan to be given to dissenting financial creditors, introduction of disqualifications for being a resolution applicant, pre-packaged insolvency resolution process for Micro, Small & Medium enterprises. These amendments have been critical to rectify and improve the various 'issues' (legal and procedural) identified in the legislative framework after its enactment, protect the stakeholders involved in the process and streamline the insolvency and liquidation process.

Proposed improvements

In keeping with its hitherto proactive approach (towards legislative reforms), the Ministry of

Corporate Affairs (MCA) has proposed several changes to the IBC framework vide a discussion paper dated January 18, 2023.

Key changes proposed under the discussion paper include:

- “automating” admission of insolvency petitions in cases of admitted debt and default in order curtail the discretion of the NCLT in admission of such applications. The said clarificatory amendment was intended in light of recent court decisions which granted NCLT the discretion beyond the basic debt and default checks for admitting a company into corporate insolvency resolution process. The proposed amendments seek to revert judicial approach to the original position, making admission into corporate insolvency resolution process by NCLT mandatory upon meeting the twin conditions of debt and default.
- A separate waterfall mechanism is proposed for distribution of proceeds in corporate insolvency resolution, where (i) creditors will receive proceeds up to the corporate debtor’s

¹ available at: [afdfbc1b8ebca9d0a06ed85a5ac26f23.xlsx](https://www.mca.gov.in/~/media/Files/Other/2024/03/20240323/afdfbc1b8ebca9d0a06ed85a5ac26f23.xlsx) (live.com)

liquidation value for their claims in the order of priority (under Section 53 of the IBC); (ii) any surplus over such liquidation value would be rateably distributed between all creditors in the ratio of their unsatisfied claims; and (iii) any remaining amount would be distributed to the shareholders and partners of the corporate debtor.

- Amendments are also contemplated to enable unrelated financial creditors of certain categories of corporate debtors (based on asset size) to select and approve a resolution plan through an informal out-of-court process (with the insolvency tribunal being approached only for its final approval, or a moratorium, if needed), subject to certain checks and balances.
- In addition, the existing framework for pre-packaged insolvency resolution process (PPIRP) (currently available only for medium, small and micro enterprises) to a broader range of corporate debtors (in addition to MSMEs). This is to be supplemented with some amends to streamline the PPRIP process.
- The discussion paper also proposes amendments to (i) enable the insolvency tribunal to admit an application for initiation of

corporate insolvency resolution process (CIRP) of a promoter of a real estate project but apply the CIRP provisions to only those projects that have defaulted; and (ii) enable the resolution professional to transfer ownership and possession of a plot, apartment or building to allottees with consent of the committee of creditors (CoC).

- Other proposed changes include (i) amendment/s to enable CoC to approve that individual or collective assets of the corporate debtor may be resolved in one or more resolution plans, with at least one of the plans providing for insolvency resolution of the corporate debtor as a going concern; and (ii) amendments to segregate the concept of the resolution plan from the manner of distribution of proceeds received from the successful resolution applicant(s), which plan can then be approved by the insolvency tribunal independent of the scheme of distribution.

These amendments have been proposed to improve emciency, reduce legal uncertainty and facilitate investments in India. These changes would ultimately have a significant impact in improving the ease of doing business in India.

(Views are Personal)