

Watching the RBI-12

Josh Felman, Varun Marwah and Anjali Sharma

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Watching the RBI-12

Context

The genesis of RBI-12

Motivation, objective, methodology

Analysis, case summaries

General observations

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- ▶ Conceptualising, designing and drafting the IBC.

A procedural law with 255 sections in its final form.

- ▶ Enacting IBC in Parliament.
- ▶ Creating the implementation infrastructure for corporate insolvency resolution and liquidation process.

IBBI, rules and regulations, IPAs and IPs, NCLT.

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 - IBBI, rules and regulations, IPAs and IPs, NCLT.
- ▶ By December 2016, cases started getting filed.

The reform process: India vs. other countries

- ▶ The pace of the Indian reform process exceptional.
- ▶ Similar reforms in other jurisdictions took longer.

Country	Committee process		Law enactment
	Committee formed	Report submission	
India	BLRC – March, 2015	Volume 1 and Volume 2 of the BLRC Report – November, 2015	IBC May, 2016
UK	Cork Committee on Insolvency Law Review – 1977	Report of the Committee on Insolvency Law and Practice – 1979	Insolvency Act, 1986
Singapore	Insolvency Law Review Committee – 2010	Report of the Insolvency Law Review Committee – 2013	Companies (Amendment) Act, 2017

The context of Indian insolvency reform

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2013 Credit Suisse Report: top 10 corporate houses, comprising 13% of corporate debt, facing debt servicing pressures and declining ICRs.

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- ▶ CMIE Prowess data → 1,850 non-financial firms with ICR < 1 in FY 15 and FY 16. Their borrowing Rs. 14.7 trillion.

The context of Indian insolvency reform

- ▶ Banks main source of debt financing. Corporate stress → bank stress.

	Stressed advances (% of total assets)			
	Mar-10	Mar-13	Mar-15	Mar-17
All SCBs (%)	6.9	8.8	10.9	12.2
PSBs (%)		10.9	12.5	16.2

Source: RBI

- ▶ Two distinct phases in policy strategy to solving this:
 1. Phase I: Restructuring strategy
 2. Phase II: Legal strategy

Phase I: restructuring strategy

- ▶ Experience of the prior legal regime + constraints on capital availability.
- ▶ CDR, 5/25, SDR, JLF, SSSSA.
- ▶ Outcome:

1. Little success in resolution of corporate stress.

Jain, Singh and Thomas (2015) find that performance of firms that received CDR worse than those of matched firms that did not.

2. Beneficial for banks as it delayed provisioning requirements.

Ahamed and Malik (2017) find CDR was beneficial for banks' stability.

- ▶ Commonly referred to as the *extent and pretend* strategy.

Phase III: legal strategy

- ▶ Legal change as a tool to solve commercial problems (corporate distress, bank NPAs).
- ▶ IBC, 2016 key features:
 1. Single, comprehensive law.
 2. Empirical trigger. Access to wide range of creditors.
 3. Time bound procedure – 180/270 days.
 4. Resolution as a commercial decision. Role of court to ensure that procedure is followed.
 5. Creditor in control model.
- ▶ Expected outcomes: procedural certainty, lower time to resolution, better value realisation.

- ▶ Legal strategy has been attempted before.

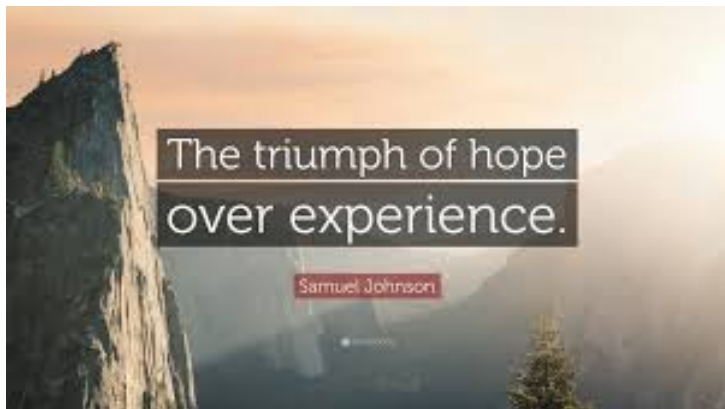
SICA, 1985: response to the problem of industrial sickness that plagued DFIs.

RDDBFIA, 1993: response to the high levels of banking NPAs in the period leading up to liberalisation (Vardhan and Sengupta (2017)).

- ▶ Proved to be ineffective (Sengupta, Sharma, Thomas (2017)).

(1) Inadequate implementation capacity, (2) case law eroded core design features, (3) law could not align incentives of parties.

IBC, 2016 as a resolution strategy



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The BR Amendment Ordinance, 2017

- ▶ Initial IBC case flow came mainly from non-bank creditors.

Month	Cases Admitted	Filed by		
		Debtor	Non-bank creditors	Banks
Jan-17	7	5	1	1
Feb-17	10	6	4	-
Mar-17	14	12	2	-
Apr-17	24	10	13	1
May-17	30	4	15	11
Jun-17	36	16	15	5
Total	121	53	40	18

Source: IBBI

- ▶ In May, 2017, Banking Regulation (Amendment) Ordinance promulgated. Introduced Section 35AA and 35AB.

In an August 19, 2017 speech, RBI Governor clarified the motivation for the Ordinance.

“The size and nature of the NPA problem necessitated concomitant measures to signal intent and commitment of the Government and the Reserve Bank to meet the challenge squarely. The IBC was in place but the required action in respect of the large stressed accounts was not forthcoming on the part of banks and JLFs. Part of the inertia may have to do with the initial days of the IBC; but part of it was also the typical (and severe) agency and moral hazard problems of not resolving NPAs when the banking sector is majorly government-owned.”

The genesis of RBI-12

Date	Event
4th May, 2017	BR (Amendment) ordinance promulgated
5th May, 2017	Central Government empowers RBI to issue directions to banks to initiate IBC proceedings against defaulters.
22nd May, 2017	RBI issues press release announcing formation of Internal Advisory Committee (IAC) to identify cases for IBC referral.
13th June, 2017	RBI issues another press release, an outcome of first IAC meeting. 12 accounts comprising 25% of banking system NPAs identified for IBC referral. Names of these accounts not mentioned in the release. Selection methodology: accounts with outstanding greater than Rs. 5,000 cr or more, with 60% or more classified as NPA.
April, 2017	1 account: Era Infra Engineering referred to NCLT in April, 2017.
July, 2017	5 accounts: Jyoti Structures, Alok Industries, Electrosteel Steels, Monnet Ispat and Energy and Bhushan Power and Steel referred by banks to IBC.
August, 2017	6 accounts: Amtek Auto, Bhushan Steel, ABG Shipyard, Essar Steel, Jaypee Infratech and Lanco Infratech referred by banks to IBC.

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Motivation

1. RBI-12 cases different from the other IBC cases.
Large and complex cases in a nascent law in early stages of ecosystem development.
2. Discourse around these has taken over the IBC agenda.
Case law, precedents and policy responses from these likely to change: (1) the design of IBC, (2) its implementation path.
3. **Successful resolution** of these cases will decide the future of IBC.
Measures of success: predictability, timeliness, value realisation.
4. No resolution alternative to IBC. **No Plan B.**
In Feb, 2018, RBI withdrew all earlier restructuring mechanisms. For large accounts, now only a 180 day window for restructuring, post which mandatory referral to IBC.

Objective

- ▶ To record how these 12 cases affect the three measures of IBC effectiveness:
 1. procedural certainty,
 2. time bound resolution, and
 3. value realisation, and hence incentives of participants to use IBC.
- ▶ To understand how these will impact the evolution of IBC.
- ▶ To compare, if possible, RBI-12 cases with the non-RBI cases in IBC.

Methodology

- ▶ Review each of the 12 cases from start to finish.
Sources of information: NCLT orders, media articles, exchange filings by listed debtors/creditors, CMIE Prowess data for RBI-12 companies.
- ▶ To capture details of:
 - ▶ Procedure
 - ▶ Conduct/actions by key participants
 - ▶ Litigation and precedents
 - ▶ Policy responses
 - ▶ Timelines at each stage
 - ▶ Resolution outcome

Data

- ▶ 483 cases admitted to IBC between Jan to Dec, 2017, including the RBI-12.
- ▶ 226 of these available in CMIE Prowess. Key financial variables available for 158 of these between FY 14 and FY 17.
- ▶ Used to compare the RBI-12 with non-RBI cases.

Workplan

- ▶ So far, detailed analysis of 6 cases:
 1. Bhushan Steel Ltd (BSL)
 2. Essar Steel India Ltd (ESIL)
 3. Electrosteel Steels Ltd (ESL)
 4. Jaypee Infratech Ltd (JIL)
 5. Amtek Auto Ltd (AAL)
 6. Monnet Ispat and Energy Ltd (MIEL)
- ▶ Ongoing tracking as cases evolve.
- ▶ Going forward: adding the remaining 6 cases to the analysis.

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RBI-12 vs. other IBC cases

Variable	(Rs. in crore)									
	Non-RBI					RBI-12				
	Count	Mean	Median	Max	Min	Count	Mean	Median	Max	Min
TL	146	1,207	315	15,172	1	12	25,394	17,524	66,376	5,105
Borrowing	142	764	226	6,996	0	12	16,067	8,544	43,406	2,900
Bank borr	132	602	141	6,271	0	12	10,905	6,044	29,603	201
CL	146	739	284	11,732	0	12	9,687	6,999	26,840	3,721
NFA	145	304	80	5,659	0	12	12,621	7,881	40,409	161
Investment	101	112	5	1,757	0	12	1,388	440	9,852	87
CA	146	552	120	9,198	1	12	5,614	4,719	15,637	1,031
Cash	146	35	6	1,591	0	12	202	133	700	63
Sales	137	729	206	24,573	0	12	6,012	2,686	16,533	681
Op profit	146	3	1	801	-1,558	12	917	442	2,744	-49
Cash profit	146	-80	-10	334	-2050	12	-745	-541	-61	-2,900

Source: CMIE Prowess

IBC outcomes, so far

Admission month	Non-RBI cases		RBI-12	
	Admitted	R/L (time)	Admitted	R/L (time)
Jan-17	7	4 (282)	-	-
Feb-17	10	5 (219)	-	-
Mar-17	14	8 (304)	-	-
Apr-17	24	8 (289)	1	-
May-17	30	11 (233)	-	-
Jun-17	36	10 (218)	-	-
Jul-17	38	5 (150)	5	1 (273)
Aug-17	83	13 (181)	6	-
Sept-17	94	7 (157)	-	-
Oct-17	41	4 (149)	-	-
Nov-17	49	-	-	-
Dec-17	57	1 (111)	-	-
Total	483	76 (219)	12	1 (273)

Source: IBBI

Case summary: Bhushan Steel Ltd (BSL)

- ▶ Admitted on: 3rd August, 2017 ; 270 days at: 30th April, 2018.
- ▶ Total debt: Rs. 79,000 cr. (Rs. 51,400 cr borrowings of which Rs. 35,000 from banks, Rs. 27,600 cr. of current liabilities)
- ▶ Claims admitted:
 - ▶ Financial creditors: filed Rs. 56,080 cr; admitted Rs. Rs. 56,005 cr.
 - ▶ Operational creditors: filed Rs. 3,127 cr; admitted Rs. 831 cr.
 - ▶ Employees and workmen: filed Rs. 1.6 cr; admitted Rs. 23.3 lakhs.
- ▶ Case status: 3 bids received: (1) Tata Steel, (2) JSW Living Pvt Ltd, and (3) Employees of Bhushan Steel.
CoC selected Tata Steel as the winning bidder. Resolution plan submitted to NCLT for approval.

Case summary: Bhushan Steel Ltd (BSL)

- ▶ Litigation:
 - ▶ NCLT:
 1. Bhushan Steel had opposed its admission application in NCLT contending that it did not fall under the RBI parameters.
 2. L&T has moved to the NCLT objecting to the resolution plan. It is seeking to be classified as “secured creditor” rather than an operational creditor.
 3. RP in the case of Bhushan Energy Ltd has moved to the NCLT contending that termination of its PPA with Bhushan Steel, and avoidance of payment, is against the contract.
 4. Earlier, employees of Bhushan Steel had moved to the NCLT objecting to TATA Steel eligibility under 29A. NCLT had directed the CoC to consider employees’ objections.
- ▶ Winning bid value: Rs. 35,200 cr in cash, along with 12.27 per cent of equity. TATA Steel bid approved by 99.8% CoC vote.
- ▶ Implied haircut: 38%
- ▶ Other highlights: Bhushan Energy Ltd (BEL), a 100% subsidiary of Bhushan Steel has been referred to IBC In Jan, 2018. The RP in BEL case has filed an objection to TATA Steel plan of terminating PPA between BSL and BEL.

Case summary: Essar Steel India Ltd (ESIL)

- ▶ Admitted on: 7th August, 2017 ; 270 days at: 7th May, 2018.
- ▶ Total debt: Rs. 80,700 cr. (Rs. 39,200 cr borrowings of which Rs. 23,500 from banks; Rs. 41,500 cr. of current liabilities)
- ▶ Claims admitted:
 - ▶ Financial creditors: filed Rs. 54,857 cr; admitted Rs. Rs. 49,213 cr.
 - ▶ Operational creditors: filed Rs. 24,044 cr; admitted Rs. 3,339 cr.
 - ▶ Employees and workmen: filed Rs. 20.2 cr; admitted Rs. 18 cr.
- ▶ Case status: 2 bids received from: (1) Mauritius based Numetal, led by (Russian) VTB Bank, and (2) ArcelorMittal India Pvt Ltd.
NCLT has asked the CoC to allow one month time to ArcelorMittal and Numetal to pay dues before disregarding their bids under 29A.

Case summary: Essar Steel India Ltd (ESIL)

- ▶ Litigation:
 - ▶ NCLT:
 1. ESIL had opposed its admission petition in NCLT on grounds that it was already under a debt restructuring scheme.
 2. ArcelorMittal and Numetal successfully challenged decision of CoC at the NCLT to disregard their bids for ineligibility under Section 29A. Numetal has appealed to NCLAT. Case listed for hearing today.
 3. Parallel proceedings at the NCLT with respect to ownership of Odisha Slurry Infrastructure Ltd with SREI Infrastructure.
 - ▶ High Court: Prior to Admission, ESIL challenged the RBI June 13 Press Release in Gujarat High Court.
- ▶ Policy changes: Section 29A IBC (Amendment) Ordinance.
- ▶ Other highlights:
 - ▶ Media reports suggest that Rs. 800 cr. of interim finance was offered by Edelweiss Group.
 - ▶ Forensic Audit Report submitted after the NCLT order has found further reasons for invalidating both bids under 29A.

Case summary: Electrosteel Steels Ltd (ESL)

- ▶ Admitted on: 26th July, 2017 ; 270 days at: 22nd April, 2018.
- ▶ Total debt: Rs. 19,000 cr. (Rs. 10,900 cr borrowings of which Rs. 5,400 from banks; Rs. 8,100 cr. of current liabilities)
- ▶ Claims admitted:
 - ▶ Financial creditors: filed Rs. 13,582 cr; admitted Rs. 13,395 cr.
 - ▶ Operational creditors: filed Rs. 1,688 cr; admitted Rs. 782 cr.
 - ▶ Employees and workmen: filed Rs. 0.24 cr; admitted Rs. 0.13 cr.
- ▶ Case status: 4 bids received from: (1) Renaissance Steel India Pvt Ltd, (2) Tata Steel, (3) Vedanta Ltd, and (4) Edelweiss Alternative Asset Advisors Pte acting as the investment advisor of EISAF II and EC Holdings, with support of Edelweiss ARC.
Resolution Plan submitted by Vedanta has been admitted by the NCLT, moratorium has been lifted.
Renaissance Steel has challenged Vedanta's bid under 29A.

Case summary: Electrosteel Steels Ltd (ESL)

- ▶ Litigation:
 - ▶ NCLT:
 1. The RP moved to the NCLT against Director of Mines for reinstating supply of coking coal and iron ore to ESL.
 2. Renaissance Steel had challenged the eligibility of Tata Steel under Section 29A during the moratorium period as well as when the Resolution Plan was placed before the NCLT.
- ▶ Winning bid value: Rs. 4,500 cr.
- ▶ Implied haircut: 68%
- ▶ Other highlights:
 - ▶ ESL's Resolution Professional (RP) penalised by the IBBI for disregarding the claims of an operational creditor.
 - ▶ Earlier, Renaissance Steel had raised an objection that the RP had not considered its objections about the 29A ineligibility of two other bidders.

Case summary: Jaypee Infratech Ltd (JIL)

- ▶ Admitted on: 14th August, 2017 ; 270 days at: 11th May, 2018.
- ▶ Total debt: Rs. 14,900 cr. (Rs. 9,500 cr borrowings; Rs. 5,400 cr. of current liabilities)
- ▶ Claims admitted: NA
- ▶ Case status: Initially 3 bids received: (1) a consortium of Kotak Realty Fund and Cube Highways, (2) Adani Group, and (3) Lakshadweep Pvt Ltd, a JV between Suraksha ARC and Dosti Realty.
Subsequently narrowed down to 2 bidders: Adani Group and Lakshadweep Pvt Ltd.
Bidding process is still underway. The home-buyers Public Interest Litigation (PIL) is pending at the Supreme Court.

Case summary: Jaypee Infratech Ltd (JIL)

- ▶ Litigation:
 - ▶ NCLT: JIL had opposed the admission petition, but objections were subsequently withdrawn.
 - ▶ Supreme Court: a PIL was filed contending Section 14 of the IBC does not address the interests of homebuyers and that their rights under the Consumer Protection Act, 1986 must not be curtailed as a result of Section 14.
- ▶ Policy changes:
 1. IBBI introduces a new “Form F” for submission of claims by creditors other than financial and operational creditors.
 2. Insolvency Law Committee (ILC) proposes giving home buyers financial creditor status.
- ▶ Other highlights: media reports suggest that the RP for JIL has moved to NCLT against JIL for wrongfully and fraudulently mortgaging assets of JIL to parent company Jaypee Associates. However, no court records available in this regard on the NCLT website.

Case summary: Amtek Auto Ltd (AAL)

- ▶ Admitted on: 2nd August, 2017 ; 270 days at: 29th April, 2018.
- ▶ Total debt: Rs. 15,700 cr. (Rs. 3,700 cr borrowings of which Rs. 1,800 from banks; Rs. 12,000 cr. of current liabilities)
- ▶ Claims admitted:
 - ▶ Financial creditors: filed Rs. 12,854 cr; admitted Rs. Rs. 12,605 cr.
 - ▶ Operational creditors: NA
 - ▶ Employees and workmen: filed Rs. 2.08 cr; admitted NA
- ▶ Case status: 2 bids received from: (1) Liberty House Group, and (2) Deccan Value.

Liberty House selected as winning bidder. Resolution plan submitted to the NCLT. RP has filed application to seek instructions from NCLT on eligibility of Liberty House under 29A.

Meanwhile Vedanta's challenge opposing ineligibility of Liberty House under 29A in the is yet to be listed.

Case summary: Amtek Auto Ltd (AAL)

- ▶ Litigation:
 - ▶ NCLT: AAL had opposed admission petition by highlighting procedural defects, and by pointing out that it had made progress in the JLF process.
- ▶ Winning bid value: Rs. 4,334 cr.
- ▶ Implied haircut: 66%
- ▶ Other highlights:
 - ▶ Interim finance of upto Rs. 100 crore from ECL Finance Ltd, a Mumbai based subsidiary of Edwelweiss Financial Services Ltd.
 - ▶ Corporation Bank moved to NCLT against Indian Overseas Bank for having violated the moratorium by allowing withdrawal of cheques, appropriating the amount lying in the current account of Amtek Auto by way of set off, despite there being clear instruction from the RP to debit freeze all accounts. The NCLT allowed the application and ordered Indian Overseas Bank to deposit the amount, which was lying in the credit of the current account of Amtek Auto.

Case summary: Monnet Ispat and Energy Ltd (MIEL)

- ▶ Admitted on: 26th July, 2017 ; 270 days at: 22nd April, 2018.
- ▶ Total debt: Rs. 15,100 cr. (Rs. 9,600 cr borrowings of which Rs. 6,400 from banks; Rs. 5,500 cr. of current liabilities)
- ▶ Claims admitted:
 - ▶ Financial creditors: filed Rs. 11,353 cr; admitted Rs. Rs. 10,237 cr.
 - ▶ Operational creditors: filed Rs. 639 cr; admitted Rs. 443 cr.
 - ▶ Employees and workmen: filed Rs. 0.22 cr; admitted NA
 - ▶ Other creditors: filed Rs. 19.1 cr; admitted Rs. 1.9 cr.
- ▶ Case status: 1 bid received from: AION-JSW consortium. Has been selected as the winning bidder.
Resolution plan has been submitted to the NCLT for approval.
ArcelorMittal has objected to the eligibility of the bidder under 29A.

Case summary: Monnet Ispat and Energy Ltd (MIEL)

- ▶ Litigation:
 - ▶ NCLT:
 1. Chhatisgarh State Electricity Board suspended supplying power to MIEL's Raipur Unit. NCLT ordered continuance of supply.
 2. MIEL sought to reinstate a Coal Mining and Development Agreement was terminated by the Central Government for failure to renew performance guarantee. Application was dismissed.
- ▶ Winning bid value: Rs. 3,750 cr.
- ▶ Implied haircut: 65%
- ▶ Other highlights: NCLT in Nov, 2017 suspended arbitration proceedings on a credit transaction involving Monnet in view of the moratorium. Monnet owed about Rs. 2.5 crore to a foreign supplier and an arbitration tribunal had ruled that arbitration proceedings should continue simultaneously.

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The good news

- ▶ Bids received in all cases.
Range of 1-4 bids. On an average 2 bids.
- ▶ Winning bidders selected in 4 out of 6 cases.
- ▶ Implied recovery rate of around 30 – 35% in 3 cases, and 62% in 1 case. Better than earlier estimates of less than 30% recovery.

The challenges

- ▶ On procedure:
 - ▶ The sequential process of EoI submission, bidding and final decision making not followed.
Anomalies: (1) bids without EoI, (2) bids after last date of submission, (3) bids outside IBC.
 - ▶ 29A eligibility becoming a stumbling block for closure of bids.
In all cases, winning bidders eligibility challenged under 29A.
 - ▶ Conflicting judgments on 29A eligibility adding to the confusion.
Liberty House a bidder in both AAL and ABG , has been adjudged eligible in AAL but ineligible in ABG case.
 - ▶ 29A has taken away promoter incentive for participation in the process.
Unclear whether this has affected quality of due diligence for bidders. In most cases bids by strategic bidders only.

The challenges

- ▶ On timelines:
 - ▶ Neither 180 nor the 270 day timeline likely to be met in most cases.
NCLT has already ruled that litigation time is not included in the IBC prescribed timeline.
 - ▶ No end game in sight:
 1. Even though in winning bids decided in 4 cases, unclear how long it will take for the bids to get NCLT sanction given the clutch of petitions against the bids/bidder.
 2. So far, liquidation order seems likely in 1 case – Alok Industries. Already under challenge by workmen.
 3. 29A eligibility is a major source of litigation, and timeline extensions.

The challenges

- ▶ On value realisation:
 - ▶ Around 90% of financial creditor claims getting admitted. Operational creditors and employee claims have a much lower admission rate.
 - ▶ Average of 2 bids. Implied haircuts greater than 60%.
 - ▶ No interim finance available. Restricts resolution only to entities that have positive cash flows.
As timelines get extended, this becomes a constraint.
 - ▶ Unclear how RBI asset classification norms will apply to debts of companies resolved under IBC.

Other concerns

- ▶ ILC recommends a one year period from CIRP closure for winner to get statutory approvals.

What happens to the resolution plan if all required approvals don't come through?

- ▶ In many cases tax dues getting crammed down. It is unclear whether this will lead to litigation.

Thank you

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