

A CRITICAL REVIEW OF CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER INDIA'S INSOLVENCY AND BANKRUPTCY CODE, 2016 IN RESOLUTION OF DISTRESSED ASSETS AND CONTAINMENT OF NON- PERFORMING ASSETS AND REDUCTION IN OCCURRENCE OF FRAUDS OF BANKS IN INDIA

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***Abstract** - The paper describes the Insolvency and Bankruptcy Code, 2016 of India and its role in resolution of distressed assets and how and in what manner it has helped in containing Non-performing assets and also how and to what extent it has contributed to reduction in occurrence of frauds in banks in India and appraises its efficiency against a number of benchmarks. The goal of the Code is to consolidate numerous legislations on the subject and provide a single, unified and vital platform for revival and/or liquidation of corporate and non-corporate bodies and self- proprietors. The main and substantial policy and procedural changes envisaged in the Code targets to salvage the movable and immovable assets engaged in the distressed organizations in a time-bound manner to protect the interests of not only creditors but also employees, workers, government dues and others involved. An attempt has been made to understand as to how far the corporate insolvency resolution process under the code is effective for resolving distressed assets and containing non-performing assets and occurrence of frauds in banks of India and why it is being recognized that bankruptcy law in India is not enough to manage the bad loan situation in India and more action is required on the NPAs than what is available through the Bankruptcy Code.*

Keywords: *Insolvency, Bankruptcy, Liquidation, Haircut, Fresh start, Calm period*

INTRODUCTION

Insolvency and bankruptcy, a subject being viewed as an object of academic pursuits and professional outlook has gained prominence in India and abroad. "A dialogue between two characters in a novel goes like this: 'How did you go bankrupt?' Bill asked. 'Two way mike said, gradually and then suddenly¹.'" If we attempt to have a look at most of the insolvency and bankruptcy cases in India and abroad it has happened that way. Corporate insolvency is an offshoot of Company law & in the case of bankruptcy of individuals, procedural laws are for debts or the estates of natural persons. The reforms in insolvency took place in India after in the pipeline for many years and these took a formal shape with the introduction & enactment of the Insolvency and Bankruptcy Code 2016. It is the failure of the corporate persons to service debt which has led to insolvency and the code and provides & helps in the resolutions to address resolution of distressed assets whenever it is feasible and liquidation where the same cannot be revised. After the introduction of the Code, some discipline has been observed in the corporate sector and certain big organisations have started to pay back their loans and are trying to make their balance sheets free of debt so that they may not face proceedings under IBC. Gross NPAs and Net NPAs as percentages of total debts are on the decline and cases of occurrence of frauds in banks are also substantially reduced. However, Code is not meant to be a debt recovery legislation²

Key recommendations of the Code made by Bankruptcy Law Reforms Committee

Bankruptcy Law Reforms Committee was formed and the key recommendations of the Code were made by it. The said Committee³ submitted its report dated November 4, 2015 to Late Sh. Arun Jaitely, the

then Finance Minister in the Government of India. In the Executive Summary of the BLRC at page ten of the Report has stated “The limited liability company is a contract between equity and debt. As long as the corporate debtor meets debt obligations, equity share holders have substantial control, and creditors have not much to say as to how the business should be carried out.”⁴ Along with lending to companies with limited liability, funds are lent to individuals, proprietorship firms, partnership firms and limited liability partnership registered under Limited Liability Partnership Act, 2008.

It is also observed that as long as the corporate debtor meets debt obligations, equity shareholders have substantial control, and creditors have not much to say as to how the business should be carried out. If default occurs, control of the corporate debtor is supposed to get transferred to the creditors and equity shareholders have no say. It has been further stated that the promoter stay in control of the company even after default committed in matter of payment of Interest and principal amount and to a limited extent, banks have power to repossess fixed assets which were pledged with by the companies. It has also been observed that due to poor recovery rates, the lenders are reluctant to take risk and concentrate funding in low risk, low growth industries and sectors. This results into lending concentrated in few sectors of the economy. The aforesaid committee was assigned the task of drafting a detailed consistent solution of bankruptcy and insolvency as “a single unified process which deals with bankruptcy and insolvency by persons other than financial firms. Multiple contradictory elements in the legal arrangements are complicating the process and the committee devised the strategy of repealing many existing laws⁵” dealing with bankruptcy. The Committee endeavoured for a modern law which is a simple, coherent and effective under Indian conditions. An important economic question in the bankruptcy process is what is to be done when the firms or corporate debtor defaults. We can think of many possibilities, one possibility is to negotiate a structuring of debt where the creditors/lenders accept a haircut on an NPV basis in the hope that the value negotiated exceeds the liquidation value, if this is not possible, then the firm or corporate debtor is liquidated. We can think of many hybrid structures of these broad categories. Banking Law Reforms Committee at page 12 of its report has observed “The Committee believes that there is only one correct forum for evaluating such possibility and making a decision: a creditors committee (CoC), where the financial creditors have votes in proportion to the amount of debt that they hold”⁶. “In the past, laws in India have brought arms of the Government (legislative, executive or judiciary) into this question. It has also been observed that the appropriate disposition of a defaulting firm is a business decision and only the creditors should make it”⁷.

Preamble of Code

It has been observed that The Insolvency and Bankruptcy Code, 2016 has been enacted with a view to fast track Corporate Insolvency Resolution Process and if the same is not feasible, to order liquidation of the same in the best interest of all. Preamble⁸ of the Insolvency and Bankruptcy Code, 2016 is as follows:

An Act to consolidate and amend the laws relating to reorganization and insolvency of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India and for matter connected therewith or incidental thereto.

Authorities, Applicability, Resolution Professional, under the IBC, 2016

Insolvency Bankruptcy Board of India (IBBI), a regulatory authority was established on October 1, 2016, “The Insolvency and Bankruptcy Code 2016” (IBC) has been notified in the gazette of India on May 28, 2016. National Company Law Tribunal (NCLT) which is an adjudicating authority (AA) under IBC has been constituted by the Central Government under Section 408 of Companies Act, 2013. Appeals against the orders of NCLT are filed with National Company Law Appellate Tribunal (NCLAT) and appeals against the orders of NCLAT are filed with Supreme Court of India on points of questions of law. NCLT is adjudicating authority for insolvency resolution and liquidation of corporate persons.

NCLT has also jurisdiction in respect of personal insolvency of guarantors of the corporate debtors. However, for insolvency resolution and bankruptcy of non-corporate bodies, the adjudicating authority is Debt Recovery Tribunal (DRT) and appeals against the order of DRT are to be filed in Debt Recovery Appellate Tribunal (DRAT) and appeals against the orders of DRAT are to be filed in Supreme Court on points of questions of law

The provisions of the Code are applicable to both corporate persons viz. Companies, Limited Liability Partnerships and Personal Guarantors, as well as to the non-corporate businesses run by individuals and partnership firms. IBC extends to the whole of India. Part III relating to individuals and the traditional partnership are not applicable to the State of Jammu and Kashmir (now Union Territories)⁹. Earlier the provisions of the Code were applicable on a default of one lakh rupees by the corporate debtor but for COVID-19, this has been increased to Rupee one crore by a notification¹⁰. “The corporate debtor means a corporate person who owes a debt to any person [(section 3(8) of IBC]”. Corporate persons under the provisions of the Code are registered corporate entities like companies and limited liability partnerships. “As per section 3(11) of the Code, debt means a liability or obligation in respect of a claim which is due from any person and it includes a financial debt and operational debt.” Financial Creditors, Operational Creditors and Corporate Debtors may apply for Corporate Insolvency Resolution Process (CIRP). Secured Creditors, Unsecured Creditors and Decree-Holders are also Creditors as per the Code. “According to section 12, the corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application to initiate such process.” However, it is also provided in the Code that the same can be extended by 90 days when approved by NCLT, and shall mandatorily be completed within a period of 330 days from the insolvency commencement date (section 12A of IBC). “As per section 11(b), a corporate debtor having completed corporate insolvency resolution process 12 months preceding the date of making of the application” is not entitled to make application. The adjudicating authority, NCLT declares the moratorium under the Corporate Insolvency resolution process.

Resolution professional (RP) plays an important role in the Code. “Resolution professional means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional (IRP)”¹¹ After Insolvency commencement date, IRP is appointed within 14 days. It has been provided that the IRP under the CIRP “shall be vested with the management of the corporate debtor and be responsible for receiving claims [section 15(b)]” and “have the authority to access the books of accounts, records and other relevant documents of corporate debtor available with [section 17(2) (d)]” the board of directors, information utility, depositor of securities. The notice to public shall include the concluding time for claim submission and all particulars of the interim resolution professional. Meetings of the Committee of creditors are presided over by the Resolution Professional. Duties undertaken by the resolution professional include, inter alia, to convene the committee meeting, to appoint accountants, legal or other professionals and to prepare information memoranda. Section 28 of the Code enlists various actions for which RP requires approval of the Committee of Creditors (CoC). However, he does not need approval of CoC to seek information from the Company’s bankers. The registered valuer is appointed by the RP within 7 days of appointment of resolution professional. In case, the corporate insolvency resolution fails, the Adjudicating Authority may order for liquidation of corporate person.

Regulator, Adjudicating Authorities, Appellate Authorities under the Code

On the recommendation of the BLRC, an Insolvency and Bankruptcy Board of India (IBBI) has been set up by the Central Government which regulates the functioning of Insolvency Professionals, Insolvency Professional Agencies, Insolvency Professional Entities, Information Utilities. Insolvency professionals (IPs) play an important role in the insolvency and bankruptcy system. IBBI conducts examination for Limited Insolvency Examination for insolvency professionals, registers insolvency professionals, insolvency professional agencies, information utilities and all these work under the supervision and oversight of IBBI. Further the appointment of Insolvency Professionals/ Resolution Professionals are made by the National Company Law Tribunal on the recommendations of the IBBI. Disciplinary

proceedings against the erring insolvency professionals and other entities are undertaken by IBBI as per mechanism provided in the Code.

Under the Code, “National Company Law Tribunal” (NCLT) is the adjudicating authority for corporate persons and “Debt Recovery Tribunal” (DRT) is the adjudicating authority for individuals and partnerships. Financial Creditor, Operational Creditor, Corporate Applicant are the entities which can initiate Corporate Insolvency Resolution Process and these can make applications to NCLT which can order for commencement of CIRP and appointment of Resolution Professionals and to declare moratorium. To facilitate the implementation of the Code, the Central Government has notified various Rules and Regulations. Individuals and partnership firms can initiate for bankruptcy proceedings before DRT.

National Company Law Appellate Authority (NCLAT) is the appellate authority with which appeal can be preferred by the party who is not satisfied with the order passed by NCLT in CIRP, Liquidation of the corporate persons. Debt Recovery Appellate Tribunal (DRAT) is the appellate authority with which appeal can be preferred by the party who is not satisfied by the order passed by DRT in case of individuals and partnership firms. Appeals against the orders of NCLAT and DRAT can be preferred on questions of law with Supreme Court of India which is the second and final appellate authority under the Code.

Lenders may scrap Bankruptcy Process

Sometimes lenders and corporate debtor wish to settle the matter even after initiating and admission of the application by NCLT for the Corporate Insolvency Resolution Process (CIRP). Section 12A of the “Insolvency and Bankruptcy Code, 2016” empowers the lenders to withdraw the application pending with NCLT provided 90% of the lenders agree on the same. In the past, IDBI Bank agreed to accept an out-of-court offer from Siva Industries and also agreed to withdraw bankruptcy proceedings against this company and majority of the creditors voted in favour of the resolution plan under section 12A of the Code. It is not expected for lenders to accept a settlement from promoters once a company has been admitted for bankruptcy proceedings as it is usually a last resort and secured creditors exhaust all options before they take a company to court. It is observed that the acceptance of offer of Siva Industries by the lender differs from the usual practice of rejection by creditors of such deals proposed by promoters seeking to withdraw their companies from bankruptcy proceedings. Atul Punj of Punj Lloyd, Videocon’s Venugopal Dhoot, Sanjay Singhal of Bhushan Power and Steel tried their best to override creditors to stall bankruptcy proceedings but of no avail.

Unlawful transactions entered into by the Companies prior to their admission into IBC

As per IBC, the Resolution Professionals are under an obligation to carry out an audit of all transactions undertaken by a company up to two years prior to the company’s admission into bankruptcy proceedings. The purpose of such an audit is to know if there are any unlawful transactions that have taken place and such transactions need to be reported to NCLT. Such transactions are termed as ‘avoidance transactions under IBC. Such transactions include preferential payments made to related entities of the promoter group without the knowledge of the creditors or bankers of the company thereby causing loss to the creditors. “Resolution Professionals of 700 companies have filed claims for recovery of Rs.1.6 lakh crore at the NCLT alleging unlawful transactions entered into by the companies prior to their admission into Insolvency and Bankruptcy Code proceedings”¹².

Speed is of essence in the working of Bankruptcy Code

“In the working of the Bankruptcy Code, speed is of essence. There are two reasons for the same. First, the ‘calm period’ can help an organization float, however, without the full clarity of ownership and control, significant decisions cannot be made.”¹³ Second, with every day, “the liquidation value tends to go down with time as many assets suffer from a high economic rate of depreciation. From the creditors prospective, a good realization can generally be obtained if the firm is sold as a going

concern.”¹⁴ It is true when delays induce liquidation, there is value destruction. If there is delay in liquidation, the realization is lower. For high recovery rate, there is need for identifying and combating the sources of delay. It is imperative that before the commencement of CIRP, all parties such as financial creditors, operational creditors, the corporate debtors need to have an accurate account of their claims. Before the introduction of the Code, considerable time used to be lost before all parties obtain this information and it used to take up years to resolve in courts. To solve this problem with the introduction of ‘information utilities’ undisputed and complete information is available to all persons involved within a day of commencement of CIRP. Another important source of delay before introduction of the Code was in the adjudicatory mechanism. This problem has been solved by setting up “National Company Law Tribunal (for corporate debtors) and Debt Recovery Tribunal (for individual and partnership firms)”.¹⁵

Literature Review

Dr.M.S.Sahoo, Chairperson, Insolvency and Bankruptcy of India, in his paper, “**The CoC dharmashould be maximization with fairness**” (2018), has observed that the Committee of Creditors has a statutory role, it can even write off dues of stakeholders. So, it must apply highest standards of duty of care. It must not only follow the due process, but also be fair towards all stakeholders and transparent in discharge of its responsibilities. In another paper, “**A Journey of Endless Hope**”. Dr. Sahoo has observed that prior to the enactment of the Code, India did not have any experience of a proactive, incentive-compliant, market-led, and time-bound insolvency law. Many institutions required for implementation of a state-of-art insolvency law, did not exist. The Code and the underlying reform, in many ways, was a journey into an uncharted territory-a leap into the known and a leap of faith. The entire regulatory framework in respect of corporate insolvency, both resolution and liquidation, and the entire ecosystem for corporate insolvency were put in place by the end of 2016, and the provisions relating to corporate insolvency process came into force on December 1, 2016. The first corporate insolvency resolution process (CIRP) commenced on January 17, 2019. There is, perhaps, no parallel anywhere in the world to the swift enactment and implementation of the Code.

Dr.Urjit Patel, the former Governor, Reserve Bank of India in his book “**Overdraft**” (2020) has cautioned that the limited progress so far on recoveries from loan defaulters under Insolvency and Bankruptcy Code could turn out to be a false dawn, and, therefore, India’s victory over crony capitalism is at the risk of being, at best, short-lived. “Undoubtedly, some reversals around regulation and execution of the IBC have occurred, which underscores that it is fragile.... The distinct possibility that promoters / sponsors would lose ownership rights over their defaulting businesses, which had reset incentives for timely debt servicing, has receded..” The book also refers to statements from government officials all of which suggested an unmistakable preference for settlements outside the IBC framework. The suggestions are that the IBC should not be the first resort for banks to pursue resolution and it should not be used in all cases. “If resolution outside the IBC is the preferred mode, then is the code a fifth wheel ?” Patel writes.

Sourav Sardar, in his paper “**The Insolvency and Bankruptcy Code- Not a Brittle Framework**” (2020) has stated that the Code is a major reform that was introduced by the Government of India in the year 2016. It completes the basket of economic freedoms by giving the freedom to exit businesses and its success can be gauged from the recent improvement in India’s rankings in the World Bank Ease of Doing Business Rankings from 77 to 63. The jump in India’s ranking from 136 to 52 on the ‘resolving insolvency’ parameter in the last three years has been the major contributor. The Government has come under criticism from none other than a distinguished figure like Dr. Urjit Patel, former Governor, Reserve Bank of India and presently Chairman, National Institute of Public Finance and Policy, New Delhi. Dr Patel alleges that the Government had gone on a soft pedal while driving the Code, thereby leading to a situation where the gains achieved on the behavioral front of “debtor be aware” by a tough implementation of the Code was probably lost. This assertion of Dr. Patel needs to be examined further as to whether the Code has been really

weakened due to the interventions of the Government or not.

Medha Shekhar in her paper on “**IBC - The Subtle Art of Resolving Insolvency**” it has been observed that one of the key qualitative outcome of the Code has been the significant behavioral change it has effectuated in the parties to a debt contract. Existing promoters and managers are now incentivized to keep the firms up and going at an optimum level due to the looming threat of being taken into CIRP under the Code, which will take away their control over the firm. The Code is not only encouraging them to avoid default but also settle default at the very first instance, outside the Code. There have been several instances where debtors have settled their debts voluntarily or settled immediately on the filing of an application for CIRP with the Adjudicating Authority, before the application is admitted. The Code is a beacon of hope for entrepreneurs to start anew in case of honest business failure. It has given a push to the entrepreneurial spirit of young India by providing a simplified exit strategy in case of genuine failure. This has also given a boost to Start-up ventures in the country.

B.Selvarajan, G.Vadivalagan in their paper “**A Study on Management of Non-Performing Assets in Priority Sector reference to Indian and Public Sector Banks (PSBs)**” (2013) it has been stated that Non-performing assets of banks are one of the biggest hurdles in the way of socio-economic development of India. The levels of NPAs of the banking system in India is still too high. It affects the financial standing of the banks so that it is a heavy burden to the banks. A vigorous effort has to be made by the banks to strengthen their internal control and risk management systems and to setup early warning signals for timely detection and action. The problem of NPAs is tied up with the issue of legal reforms. This is an area which requires urgent consideration as the present system that substantially delays in arriving at a legal solution of a dispute is simply not tenable. The absence of a quick and efficient system of legal redress constitutes an important ‘moral hazard’ in the financial sector, as it encourages imprudent borrowers.

David C.WEBB (1991) in his paper “**An Economic Evaluation of Insolvency Procedures in the United Kingdom: Does the 1986 Insolvency Act satisfy the Creditors’ Bargain**” it has been observed that the Creditors’ bargain view of insolvency law argues that solvency state rights should be preserved in insolvency states. In particular, command over assets should be the same in insolvent states as in solvent states. Adherents to this view argue that insolvency law should be an extension of commercial law. Insolvency is viewed as a financial problem of companies to be dealt with by commercial people. Because a company is insolvent and cannot pay its creditors does not mean that it should be discontinued. It may be that the business should be sold and settlement made upon creditors in accordance with their rights as specified in the original creditors’ bargain. This is seen as better than renegotiating the original creditors’ bargain. First, because the opportunity to negotiate contracts can lead to opportunistic behaviour by creditors and inefficient outcomes; and because renegotiation can be a long-drawn-out process, damaging to the business.

Herbert Smith Freehills LLP (2020) in their paper “**Governance: Changes to UK insolvency law could significantly reduce landlords’ recoveries in an insolvency process (UK)**” (2020), it has been stated that the Government on 20th May, 2020 published the Corporate Insolvency and Governance Bill which contains the most far-reaching reforms to UK insolvency law in over 30 years. The Bill has been introduced on an emergency basis in an attempt to ensure that otherwise financially viable companies survive during a period of unprecedented interruption and turmoil. However, it could upset the delicate balance between debtors and creditors under UK insolvency law. Many of the proposed reforms could have been achieved with less radical amendments to the Insolvency Act, 1986. Consultation with industry, practitioners or policy makers has been limited. Most fundamentally, the Bill introduces a debtor-in-possession insolvency procedure for the first time in English law. Introducing such sweeping reforms during a crisis risks unintended consequences.

Shantikanta Das, the Governor, Reserve Bank of India has stated that **the economic impact of the pandemic may result in higher Non-performing assets and capital erosion of banks.** A

recapitalization plan for public sector banks and private banks has, therefore, become necessary. The negative economic impact of Covid-19 will lead to increased defaults by borrowers. If one-twentieth of the loans which are likely to be under a moratorium as of 31st August 2020 are defaulted on, the overall quantum of bad loans in the Indian banking system would be close to 12 trillion. If one-fifth of them default once the moratorium is lifted, the quantum of bad loans would touch 20 trillion, more than double the current level. These are extremely conservative estimates, of course. Not surprisingly, former RBI Governor, Raghuram Rajan said recently, “The levels of NPA will be unprecedented six months from now. With increased defaults, banks will need to be recapitalized, that is more money will have to be invested in them to keep them going. In fact, there is already enough evidence of increased pressure in the banking system in the days ahead and of the impending storm.”

Alpha Partners in their paper “**India: Pre-Packs Save Financially Distressed Companies**” (2019) have stated that a pre-packaged administration is a pre-planned insolvency procedure wherein a company arranges to sell its assets to a buyer prior to filing for insolvency to facilitate the sale and the creditors and the shareholders approach a bankruptcy court with a pre-negotiated corporate reorganization plan (the “**Pre-pack**”). This sort of company rescue procedure significantly reduces the time taken in lengthy court proceedings for businesses undergoing financial distress. Alternatively, the business or material assets can also be sold to the existing directors/promoters operating under a new company, which is usually resorted to if the business is facing serious problems and creditor threats. The director/promoter of a failed business may wish to purchase its assets or business in order to form a new company. It has also been observed that the pre-pack set up helps in preserving the organizational capital of the corporate debtor as the process helps in facilitating creation of a platform for negotiation between creditors and external financiers. Consequently, the Pre-pack can seek to facilitate going concern sale of the business of the corporate debtor at ‘fair value’ during the insolvency resolution process and not merely break-up ‘liquidation value’. Fair value means the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the insolvency commencement date between a willing buyer and a willing seller in an arm’s length transaction. However, liquidation value on the other hand means the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date.

In the case **Innoventive Industries Ltd. v. ICICI Bank & Anr**¹⁶. Dr. Abhishek Manu Singhvi¹⁷ on behalf of the appellant, it was stated before the Apex Court that no repugnancy exists between the two statutes under Article 254 of the Constitution and each operates in its own field. Further, the Code is made under Entry 9, List III of the Seventh Schedule to the Constitution, whereas the Maharashtra Act, which is a measure for unemployment relief, is made under Entry 23, List III of the Seventh Schedule. Shri Harish Salve¹⁸, on behalf of ICICI Bank submitted before the Apex Court that when an application is made under Section 7 of the Code, the only limited scope of argument before the NCLT by a corporate debtor is that the debt is not due for any reason. According to Shri Salve, after an interim resolution professional has been appointed and a moratorium declared, the directors of the company are no longer in management and could not, therefore, maintain the appeal before the Court. He has also argued that it is obvious that the two Acts are repugnant to each other, inasmuch as they cannot stand together. The moratorium under the Maharashtra Act and the management taken over by the State Government cannot stand together with the moratorium imposed under the Central Act and takeover of the management by the interim resolution professional. The appeals, accordingly, stand dismissed. There shall, however, be no order as to cost. NCLT allowed the application under section 7 of IBC filed by ICICI Bank. NCLAT upheld the order of the NCLT. Supreme Court of India dismissed the appeal of Innoventive Industries Ltd.

In the case of **M/s Surendra Trading Company v. M/S. Juggilal Kamlapat Jute Mills Company Limited And Others**¹⁹ it was held by the Apex Court that provision for removing the defects within seven days is directory and not mandatory in nature. While interpreting the provisions to be directory in nature, at the same time, it can be laid down that if the objections are not removed within seven days, the applicant while re-filing the application after removing the objections, file an application in writing

showing sufficient cause as to why the applicant could not remove the objections within seven days.

In the case of **Mobilox Innovations Private Ltd Vs. Kirusa Software Private Ltd**²⁰, it has been observed that the present appeal raises questions as to the triggering of the Insolvency and Bankruptcy Code, 2016 when it comes to operational debts owed to operational creditors. The Hon'ble Apex Court while deciding the issue upheld that notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

In the case of **M/s Kapil Gupta & Anr. Vs. Indiabulls Housing Finance Ltd. & Anr.**²¹ the question which arose for consideration in this appeal is: Can NCLT permit withdrawal of application under Section 7 of IBC after its admission? The Hon'ble Apex Court while exercising its power under Article 142 of the Constitution of India set aside the order passed by the NCLT rejecting the plea of the parties seeking withdrawal of Insolvency Resolution Process after they reach an amicable settlement.

In the case of **Macquarie Bank Limited Vs Shilpi Cable Technologies Ltd.**²² In this present appeal two important questions arose for consideration. The first question is whether, in relation to an operational debt, the provision contained in Section 9(3)(c) of the Code is mandatory; and whether a demand notice of an unpaid operational debt can be issued by a lawyer on behalf of the operational creditor. The Hon'ble Apex Court explained that: The Court while deciding whether the provision contained in Section 9(3)(c) of the Code is mandatory upheld that procedure is the handmade of justice and a procedural provision cannot be stretched and considered as mandatory, when it causes serious general inconvenience.

In the case of **Vijay Kumar Jain Vs Standard Chartered Bank and Others**²³ The Hon'ble Supreme Court of India while allowing the writ petition and company appeal has observed that the statutory scheme makes it clear that though the erstwhile Board of Directors are not members of the Committee of Creditors, yet, they have a right to participate in each and every meeting held by the Committee of Creditors, and also have a right to discuss along with members of the Committee of Creditors all resolution plans that are presented at such meetings under section 25(2)(i).

The Apex Court further stated that it cannot be again said that Operational Creditors, who may participate in such meetings but have no right to vote, are vitally interested in such resolution plans, and must be furnished copies of such plans before hand if they are to participate effectively in the meeting of Committee of Creditors. This is for reason that under section 30(2)(b), repayment of their debts is an important part of the resolution plan qua them on which they must comment.

In the case of **Forech India Ltd v. Edelweiss Assets Reconstruction Co Ltd.**²⁴ it has been held by the Supreme Court of India that as a first step, when the Code was enacted, only winding up petitions, where no notice under Rule 26 of the Companies (Court) Rules was served, were to be transferred to NCLT and treated as petitions under the Code. However, on a working of the Code, the Government realized that parallel proceedings in the High Courts as well as before the adjudicating authority in the Code would stultify the objective sought to be achieved by the Code, which is to resuscitate the corporate debtors who are in red. In accordance with this objective, the Rules kept being amended, until finally Section 434 was itself substituted in 2018 in which a proviso was added by which even in winding up petitions where notice has been served and which are pending in the High Courts, any person could apply for transfer of such petitions to the NCLT under the Code, which would then have to be transferred by the High Court to the adjudicating authority and treated as an insolvency petition under the Code. This statutory scheme has been referred to, albeit in the context of Section 20 of the SICA.

In the case of **Swiss Ribbons Pvt. Ltd. v. Union of India**²⁵ it has been held that primary focus of

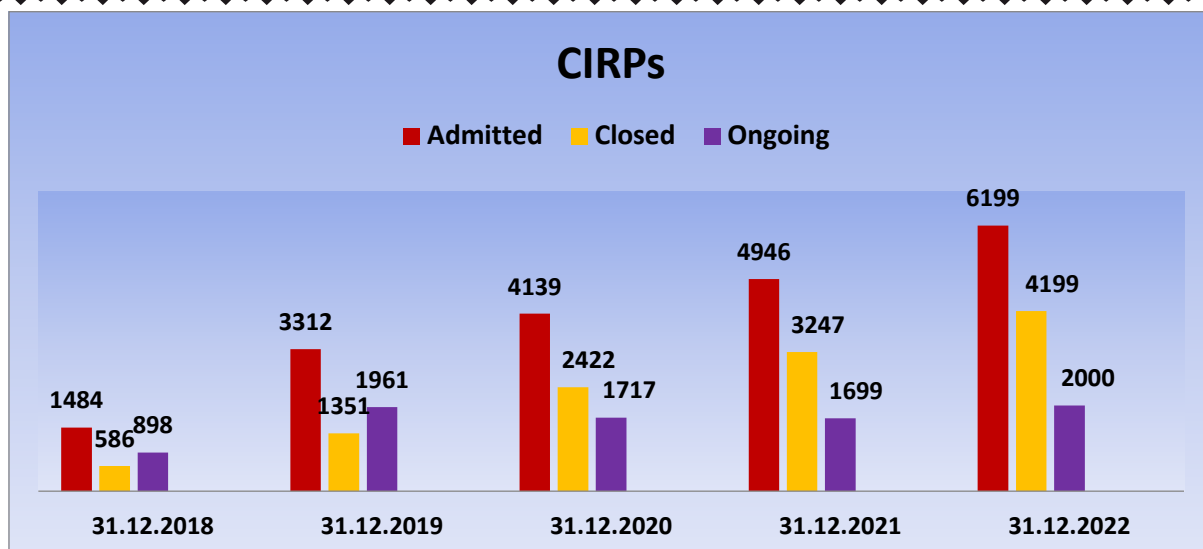
legislation is to ensure revival and continuation of corporate debtor by protecting corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts corporate debtor on its feet, not being a mere recovery legislation for creditors. Interests of corporate debtor have, therefore, been bifurcated and separated from that of its promoters/ those who are in management. Parliament introduced Section 29-A into IBC with a specific purpose, to ensure that among others, persons responsible for insolvency of corporate debtor do not participate in resolution process. Section 29-A has been enacted in larger public interest and to facilitate effective corporate governance.

In the case of *K.Sashidhar v. Indian Overseas Bank*²⁶ it has been held by the Supreme Court of India that upon receipt of a “rejected” resolution plan, adjudicating authority (NCLT) is not expected to do anything more, but is obligated to initiate liquidation process under section 33(1) of the Code. It has also been held, it is not open to Adjudicating Authority to entertain a revised resolution plan after expiry of statutory period of 270 days. Accordingly, no fault found with NCLAT for not entertaining such application.

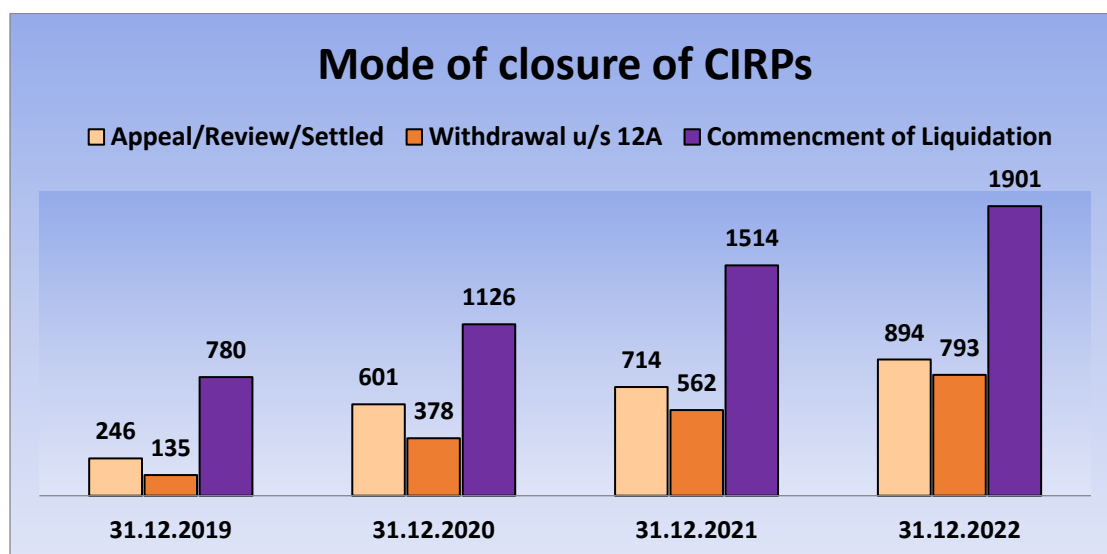
The Insolvency Resolution Process

The Code along with its regulations provide for a well- defined insolvency resolution process. In case of certain businesses, firms can be salvaged as a going concern. If this is possible, the revival of the concern through reorganization, change of management or expansion into new business lines or shrinking the size of business, or any other conceivable business model, the damage to various stakeholders minimizes. It is observed that under “the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI, 2002)”, debts rights are available for secured creditors only. In view of this, the Committee on Bankruptcy Reforms (2015) proposed “that any creditor whether financial or operational, should be able to initiate the insolvency resolution process (IRP) under the Code”²⁷. The aforesaid committee also proposed that whenever default takes place, IRP can be initiated and the same should be completed within 180 days. Insolvency professional (IP) is appointed who oversees the IRP. IP has been given substantial powers under the Code. The Committee also suggested that the IP appointed under the Code is to “make sure that assets are not stolen from the company and initiates a careful check of the transactions of the Company for the last two years, to look for illegal diversion of funds.”²⁸ It was also suggested by the committee that in case there is diversion of assets, the same would induce criminal charges. During the period “IRP is in process, the committee recommended for a calm period where creditors stay their claims”²⁹. It helps the firms a better chance to survive as a going concern. During this calm period of 180 days in which IRP is in operation, the CoC will analyze the affairs of the company and will get the proposals for resolution of the corporate debtor for consideration and make up its mind as to what has to be done which is in the best interest of all.

As per data available for CIRP, as on 31.12.2022, 6199 cases were admitted, out of which 4199 have been closed and 2000 have been ongoing as against on 31.12.2018, when 1484 cases were admitted out of which, 586 were closed and 898 were ongoing. It shows that cases admitted have gone by 418%, cases closed have seen a jump of 717% and the cases ongoing have gone up by 223% as on 31.12.2022 when compared to data as on 31.12.2018. It shows, there is a significant increase in the CIRPs.



If we have a look at the number of CIRPs closed during the aforesaid period, we come to know that closure of CIRPs may be due to appeal/ review settled, withdrawal under section 12A, approval of resolution plan and lastly on account of commencement of liquidation. As per data available, as on 31.12.2022, 4199 cases have been closed, out of which 894 cases were due to appeal / review settled, 793 cases were withdrawn under section 12A, 611 cases were closed due to approval of resolution plan and 1901 cases resulted into commencement of liquidation as against on 31.12.2019, when 1351 cases were closed, out of which, 246 were closed on account of appeal / review settled, 135 were withdrawn under section 12A and 190 were closed on account of approval of resolution plan and 780 resulted into commencement of liquidation.



Compiled from IBBI Newsletters from the period January, 2019 to December, 2022

As per data available as on 31.12.2022 in respect of CIRPs yielding resolution plan, it is observed that Realisation by Creditors as % of Liquidation Value is 197.2% in case of CIRP initiated by 96 Financial Creditors, 122.6% in case of CIRP initiated by Operational Creditors, and 147.5% in case of CIRP initiated by Corporate Debtors. If we have a look at the data of Realisation by Creditors as % of their claims, it is 32.4% when the CIRP is initiated by Financial Creditors, 16.7% when the CIRP is initiated by Operational Creditors and 18.3% when the CIRP is initiated by Corporate Debtors. Average time taken for Closure of CIRP, it is 588 days when the CIRP is initiated by Financial Creditors, 600 days when the CIRP is initiated by Operational Creditors and 530 days when the CIRP is initiated by Corporate Debtors.

Outcome of CIRPs initiated Stakeholder-wise, as on December 31, 2022

Outcome	Description	CIRPs initiated by			
		FCs	OCs	CDs	Total
Status of CIRPs	Closure by Appeal/Review/Settled	243	644	7	894
	Closure by Withdrawal u/s 12A	216	570	7	793
	Closure by Approval of Resolution Plan	340	216	54	610
	Closure by Commencement of Liquidation	851	849	201	1901
	Ongoing	1042	854	101	1997
	Total		2692	3133	370
CIRPs yielding Resolution Plans	Realisation by creditors as % of Liquidation Value	197.2	122.6	147.5	175.9
	Realisation by creditors as % of their Claims	32.4	16.7	18.3	30.4
	Average time taken for Closure of CIRP	588	600	530	587
CIRPs yielding Liquidations	Liquidation Value as % of Claims	6.5	9.1	9.2	7.1
	Average time taken for Closure of CIRP	457	429	388	437

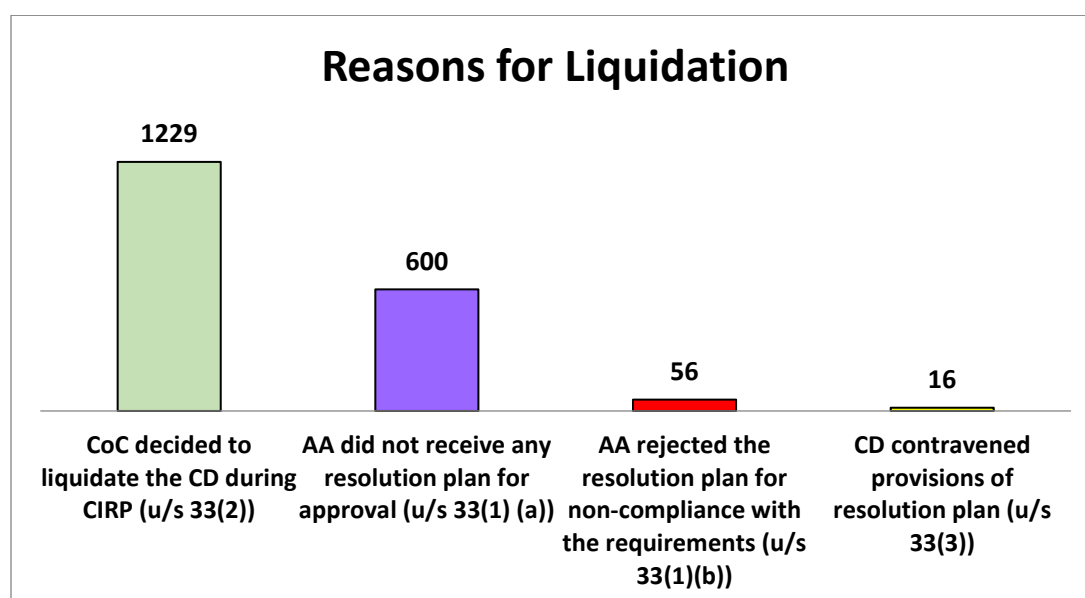
Note: This excludes four cases wherein applications filed by RBI were admitted u/s 227 of the Code.

Source : IBBI Newsletter - October - December 2022 Pg. No. 14

Similarly in respect of CIRPs yielding liquidation, data as on 31.12.2022 show that Liquidation Value as % of Claims is 6.5% in when the CIRP is initiated by Financial Creditors, 9.1% when the CIRP is initiated by Operational Creditors and 9.2% when the CIRP is initiated by Corporate Debtors. Average time taken for Closure of CIRP, it is 457 days when the CIRP is initiated by Financial Creditors, 429 days when the CIRP is initiated by Operational Creditors and 388 days when the CIRP is initiated by Corporate Debtors.

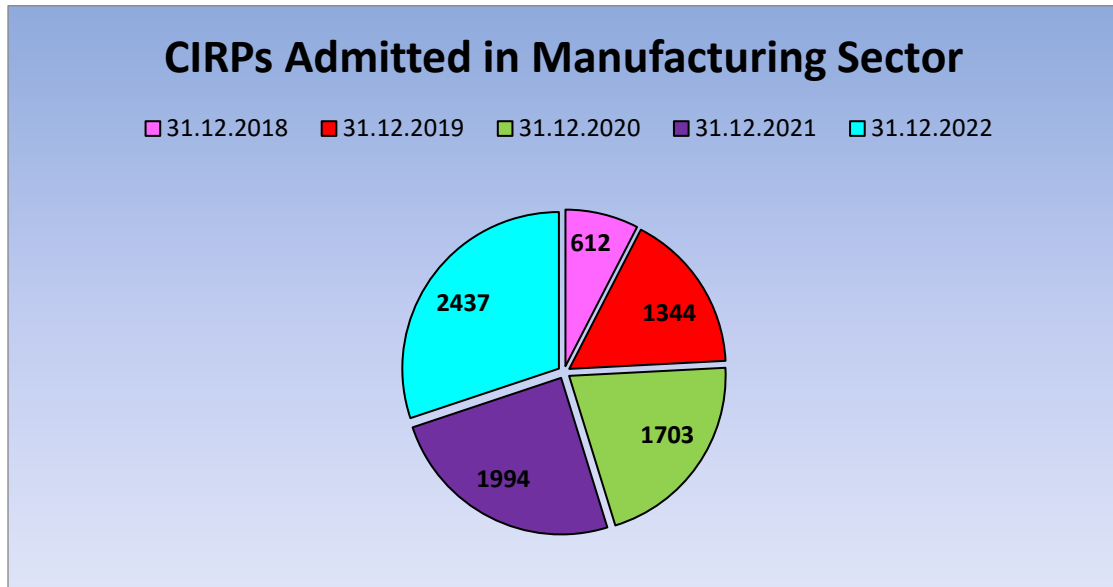
Insolvency Professional is appointed as a liquidator who leads the liquidation. In this way, the assets of the company come under the control of liquidator who holds these in trust. An important aspect herein is that the rights of secured creditors are respected and they have the choice of taking over their collateral assets and realizing the proceeds. The sale proceeds with the liquidator are distributed to various claimants through a well-defined waterfall. As per recommendations of the BLRC, the right of the Centre and “State Government in the distribution waterfall in liquidation has been kept at a priority below the unsecured financial creditors in addition to all kinds of secured creditors for promoting the availability of credit and developing”³⁰ the market for unsecured financing. In a sense, “the government will also be the beneficiary of this process as economic growth will increase”³¹ revenue.

As per data available, as on 31.12.2022, liquidation commenced in respect of 1901 cases and out of this, in 1229 cases, liquidation commenced where CoC decided to liquidate the corporate debtor during CIRP under Section 33(2) of the Code, in 600 cases, AA did not receive any plan for approval under Section 33(1) (a) of the Code, in 56 cases, AA rejected the resolution plan for non-compliance with the requirements under Section 33(1) (b) of the Code and in 16 cases, Corporate Debtor contravened the provisions of resolution under section 33(3) of the Code.

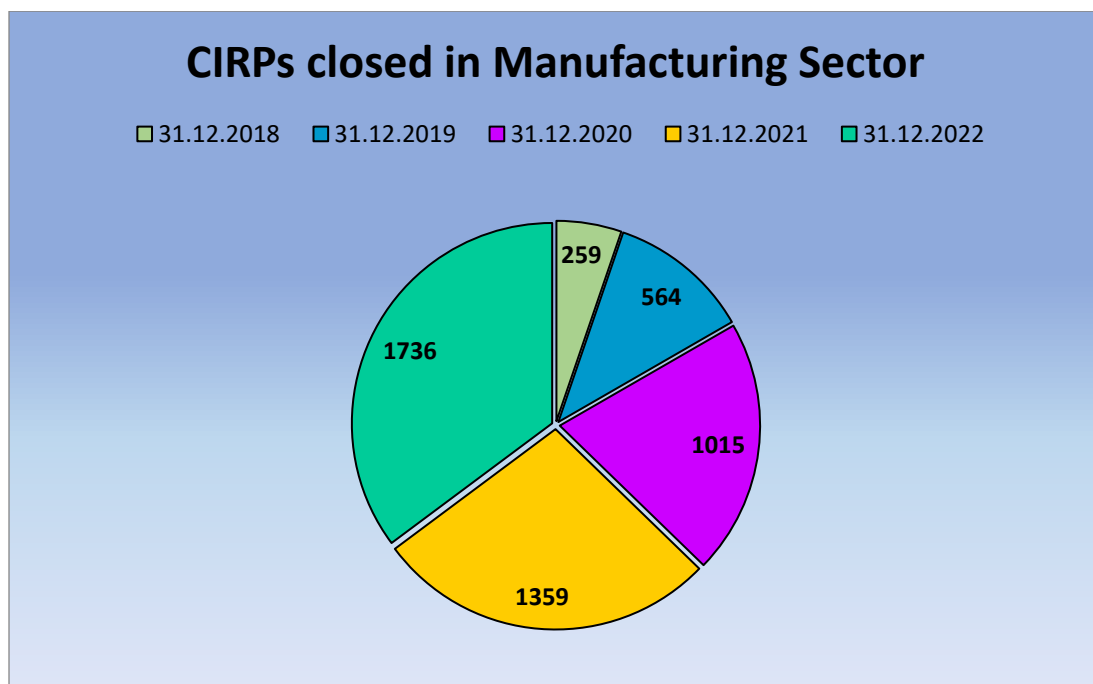


If we look at the CIRPs on the basis of Sectorial distribution, as per data available as on 31.12.2022, 6199 CIRPs were admitted and out of this 2437 (39%) relates to manufacturing sector followed by 1285 (21%) relating to real estate, renting and business activities and the balance 40% relates to others which comprise construction sector, wholesale & retail trade, transport, electricity, hotels and restaurants etc. As on 31.12.2021, 4946 CIRPs were admitted and out of this 1994 (40%) relates to manufacturing sector followed 989 (20%) relating to real Estate, renting and business activities and the balance 40% relates to others which comprise construction sector, wholesale & Retail Trade, transport, electricity, hotels and restaurants etc. As on 31.12.2020, 4139 CIRPs were admitted and out of this 1703 (41%) relates to manufacturing sector followed 816 (20%) relating to real estate, renting and business activities and the balance 39% relates to others which comprise construction sector, wholesale & retail trade, transport, electricity, hotels and restaurants etc. As on 31.12.2019, 3313 CIRPs were admitted and out of this 1344 (41%) relates to manufacturing sector followed 665 (20%) relating to real estate, renting and business activities and the balance 39% relates to others which comprise construction sector, wholesale & retail trade, transport, electricity, hotels and restaurants etc. As on 31.12.2018, 1484 CIRPs were admitted and out of this 612 (41%) relates to manufacturing sector followed 235 (16%) relating to real Estate, renting and business activities and the balance 43% relates to others which comprise construction sector, wholesale & retail trade, transport, electricity, hotels and restaurants etc.

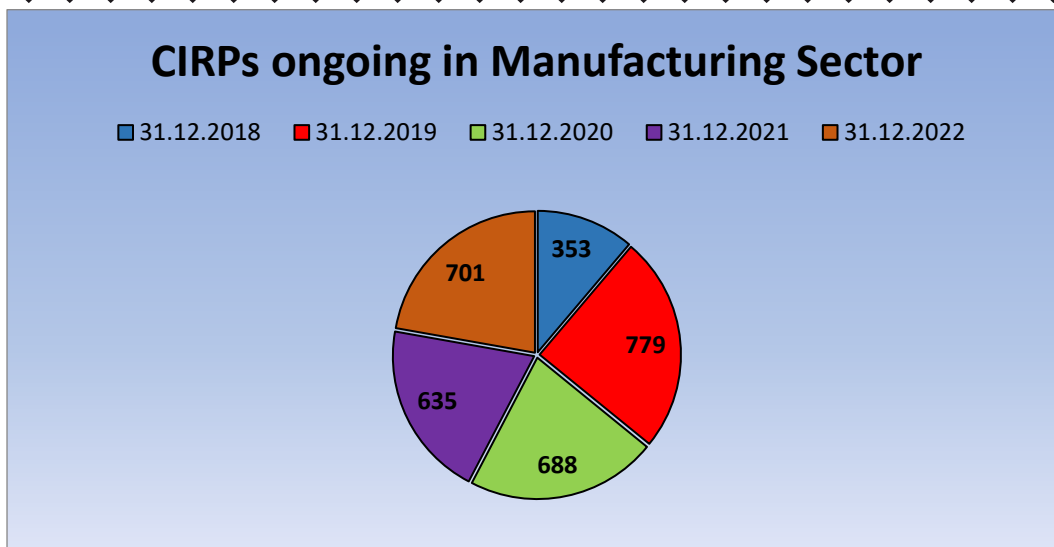
If we analyse the data from 2018 to 2022, we find that CIRPs in manufacturing sector shows a uniform pattern in percentage which is around 40%. Similarly, it is 20% in in case of real estate & business activities, 11% in construction Sector, 10% in wholesale & retail trade and balance 19% in hotels & restaurants, electricity, transport & others.



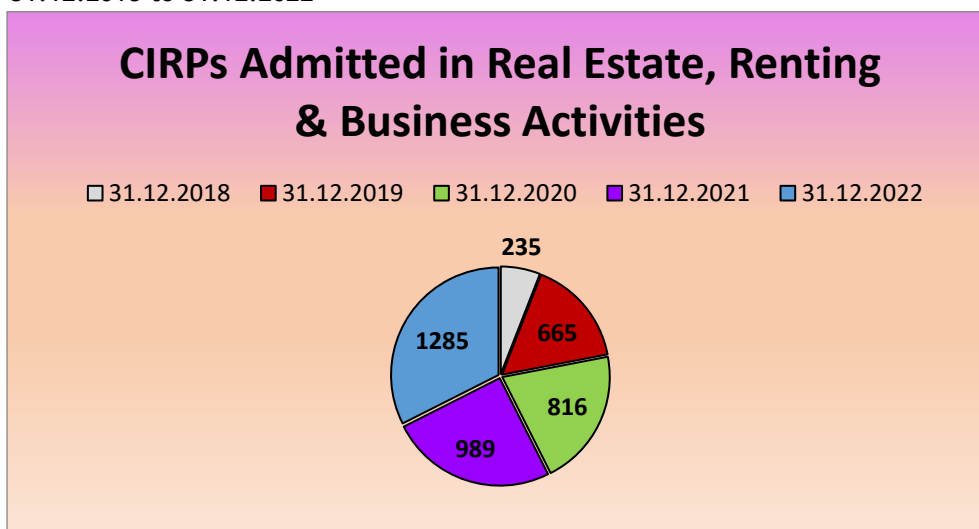
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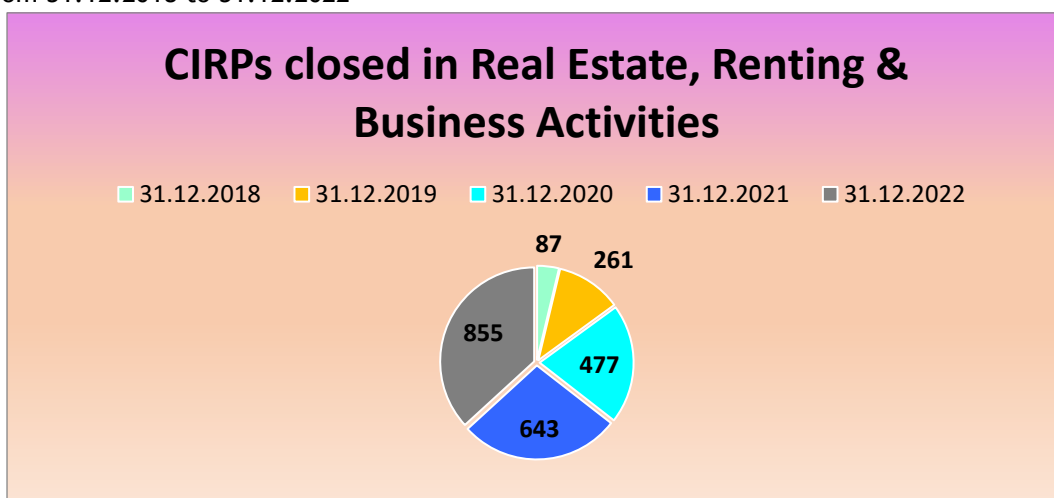
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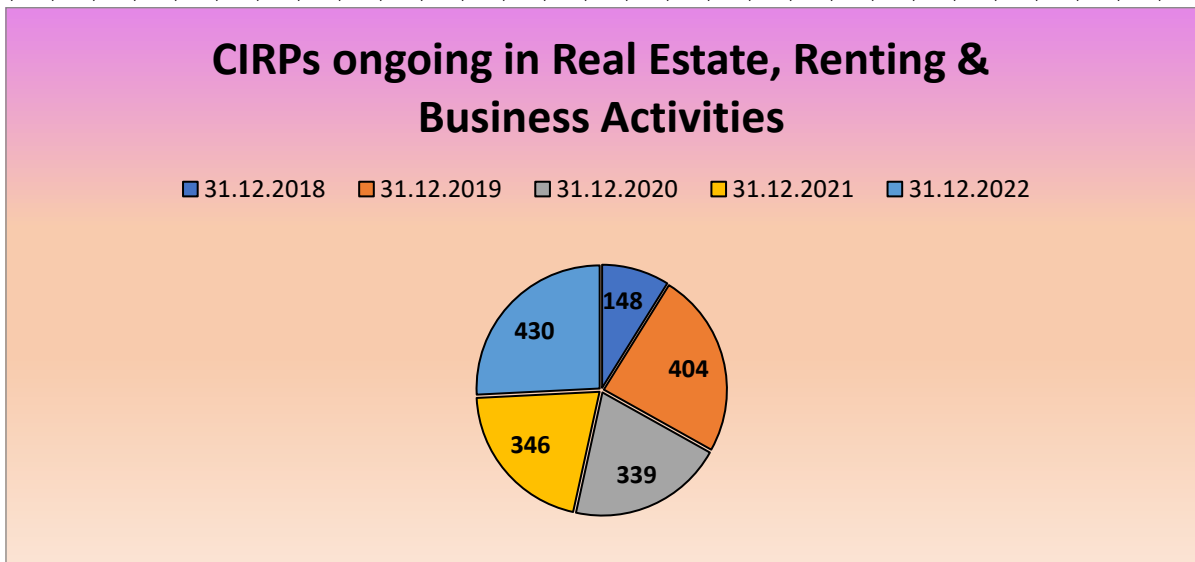
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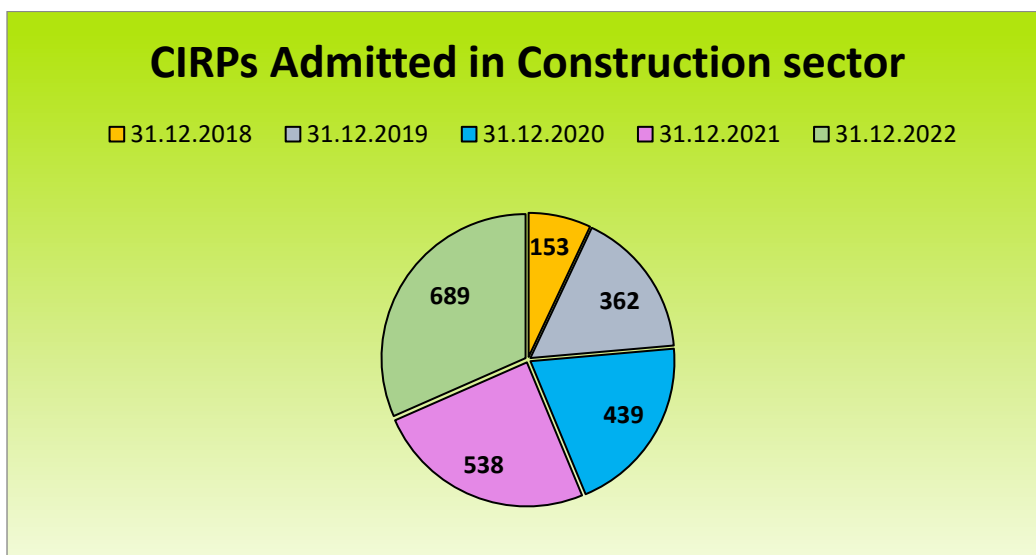
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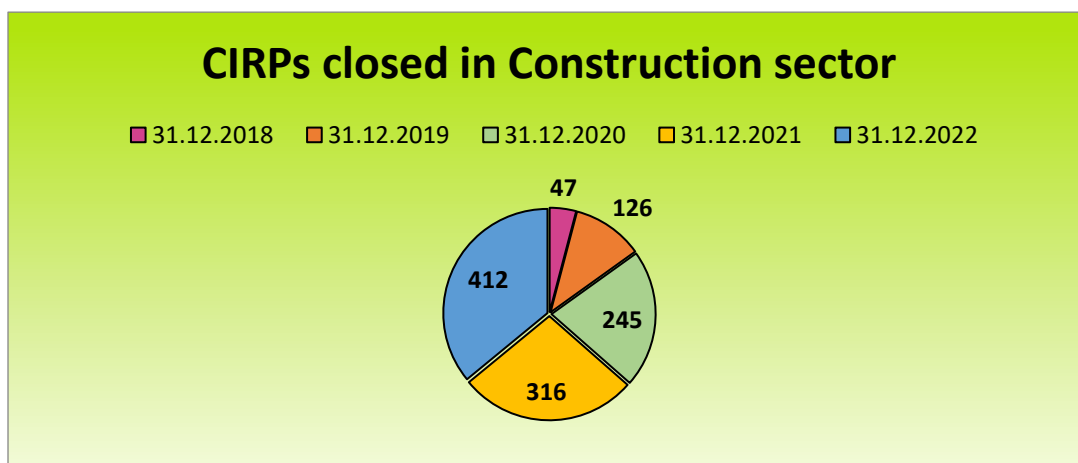
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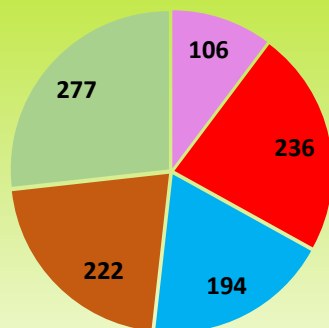


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CIRPs ongoing in construction sector

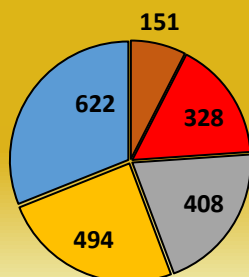
31.12.2018 31.12.2019 31.12.2020 31.12.2021 31.12.2022



Compiled from “Insolvency and Bankruptcy News” published by Insolvency and Bankruptcy Board of India from 31.12.2018 to 31.12.2022

CIRPs Admitted in Wholesale & Retail trade

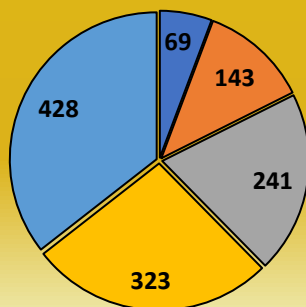
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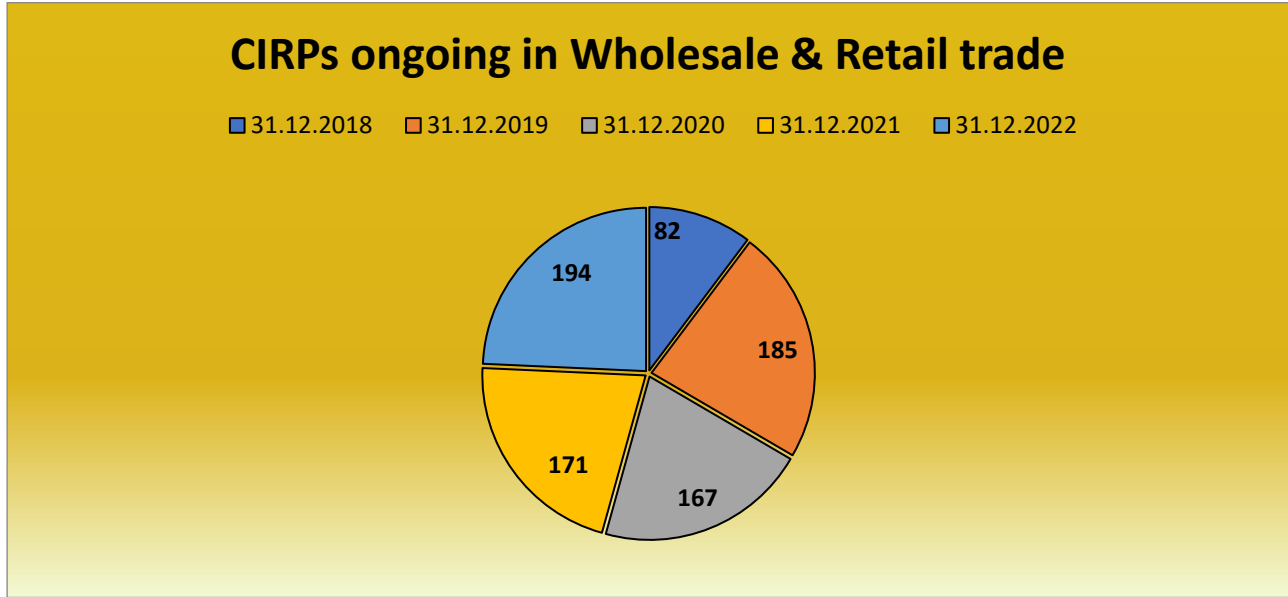
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CIRPs closed in Wholesale & Retail trade

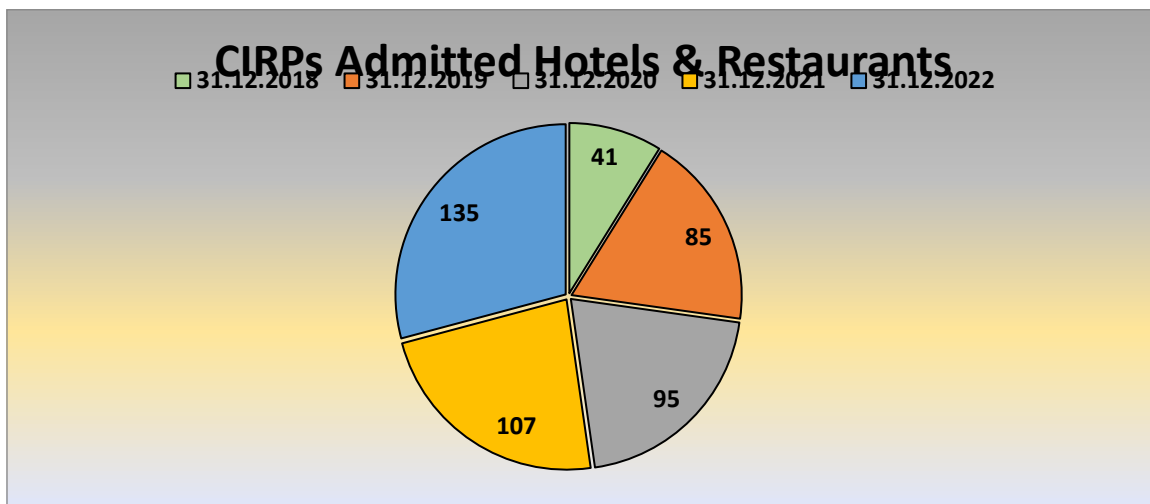
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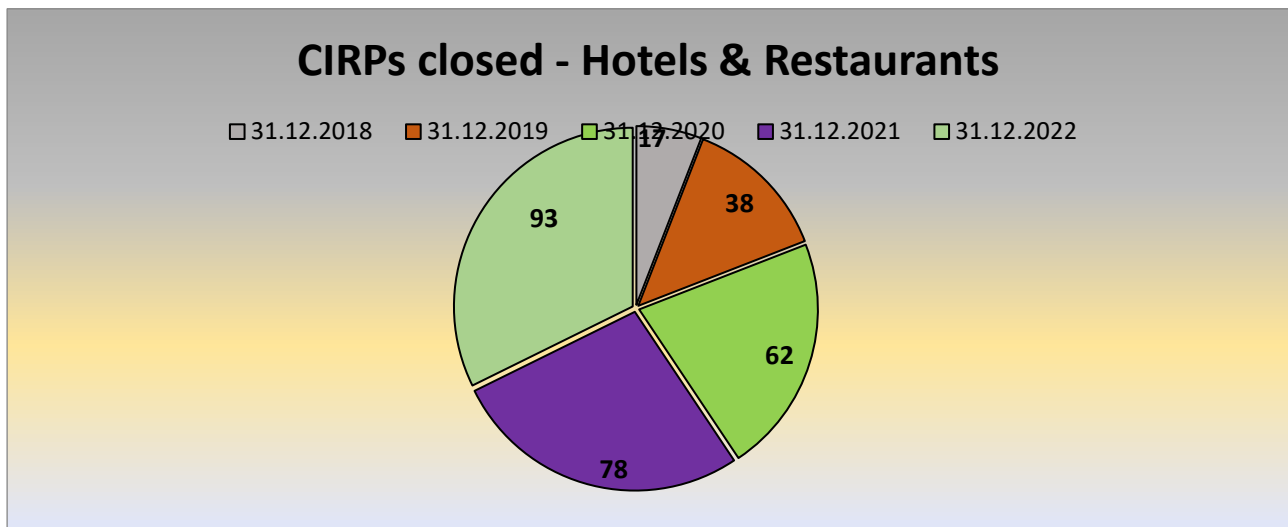
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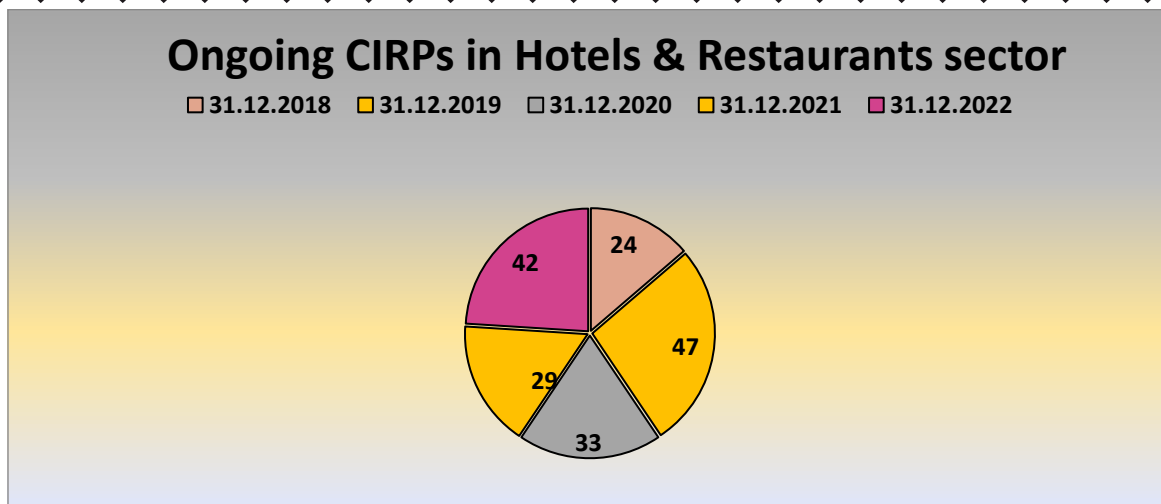
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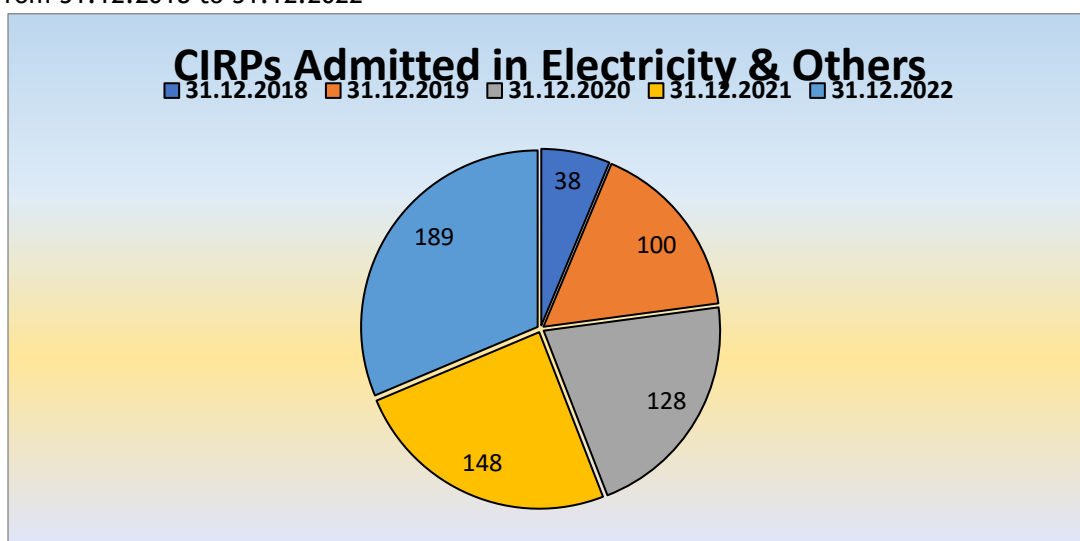
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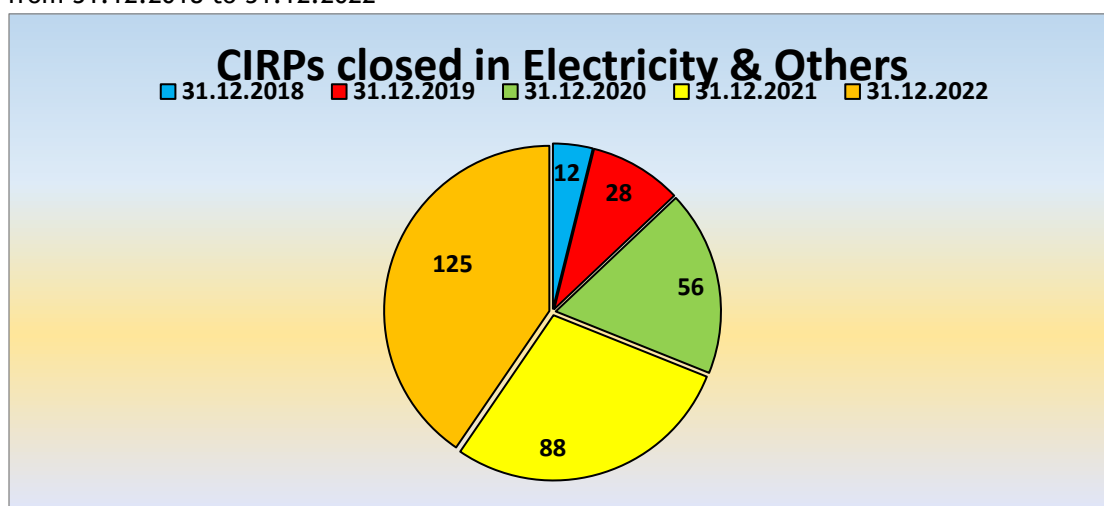
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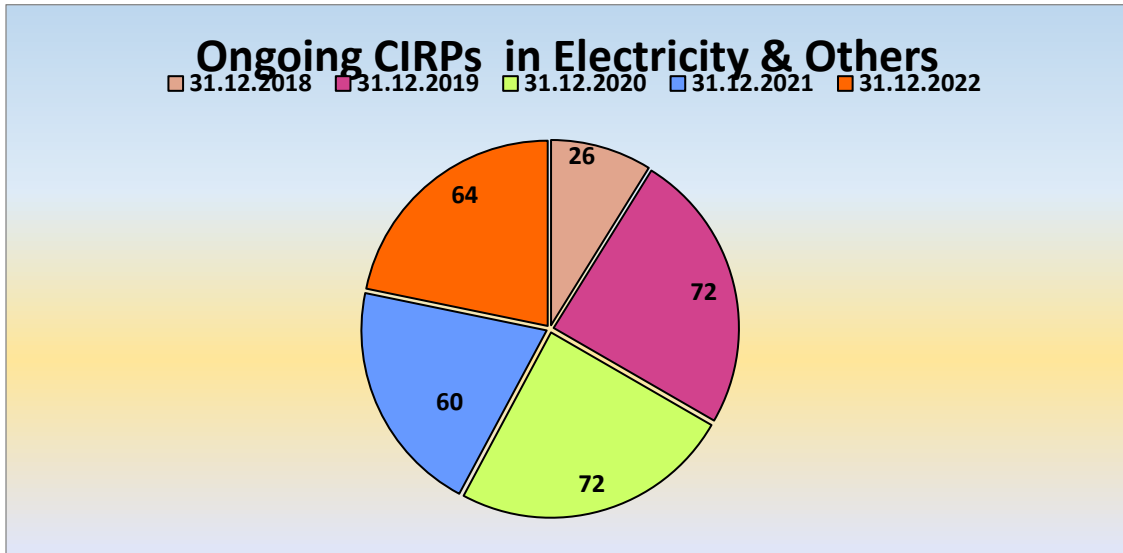
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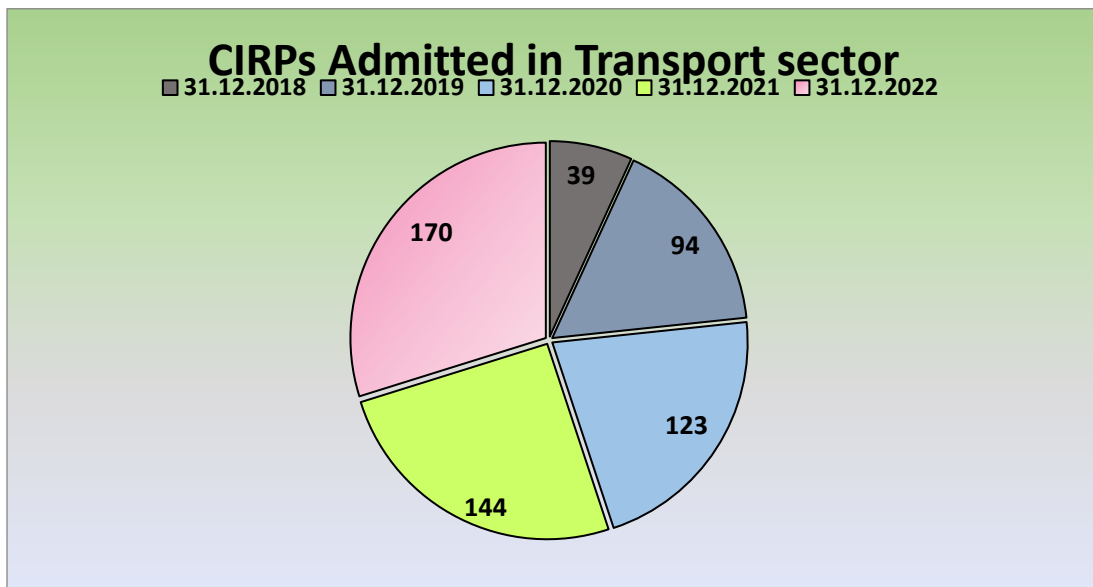
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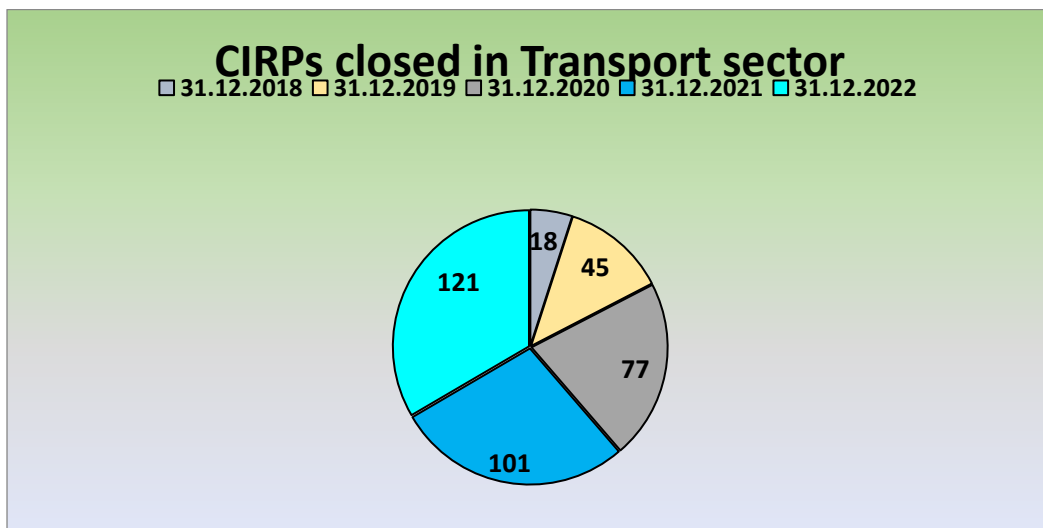
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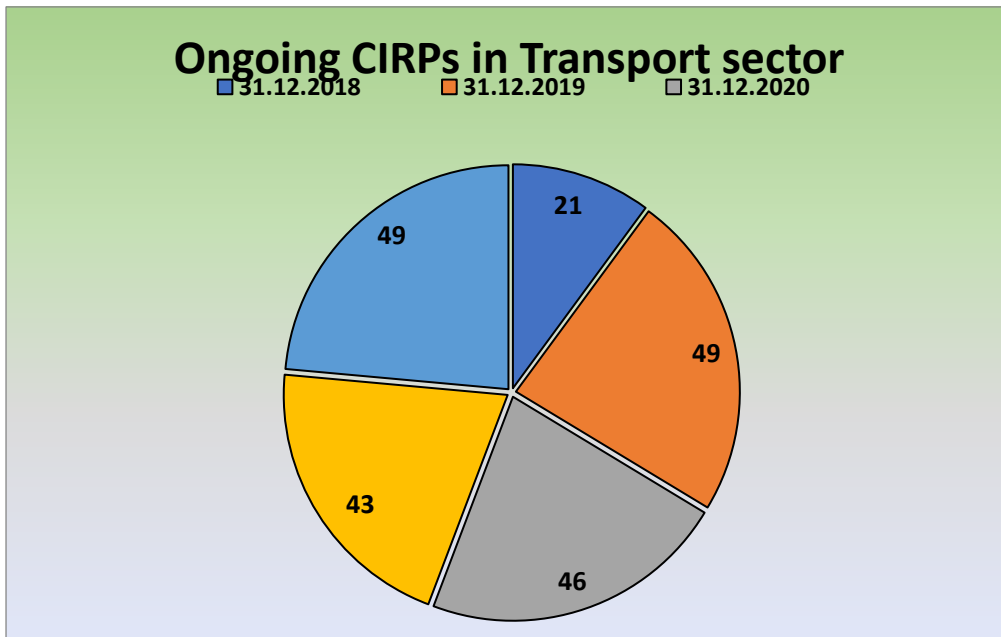
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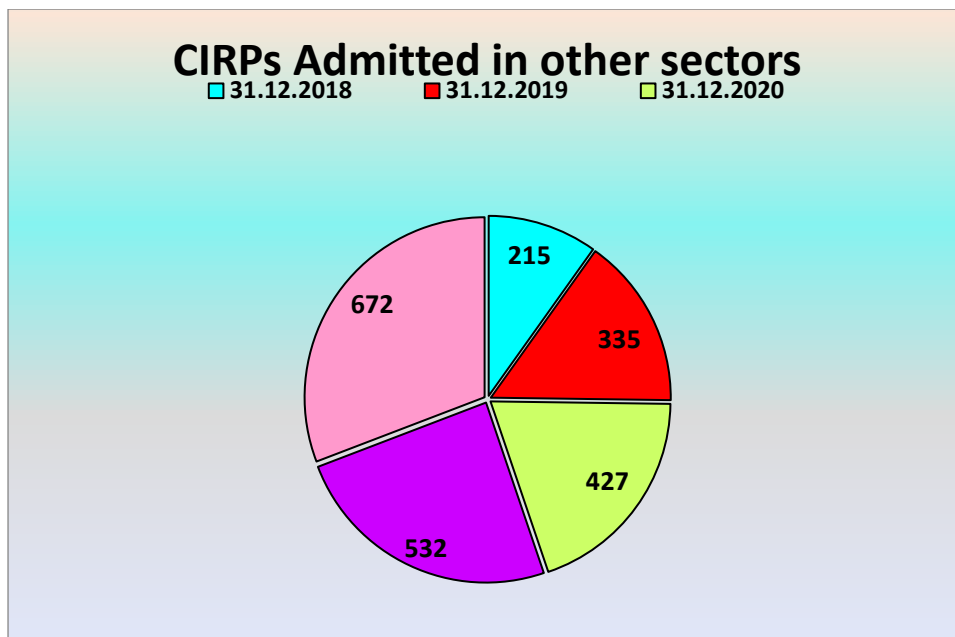
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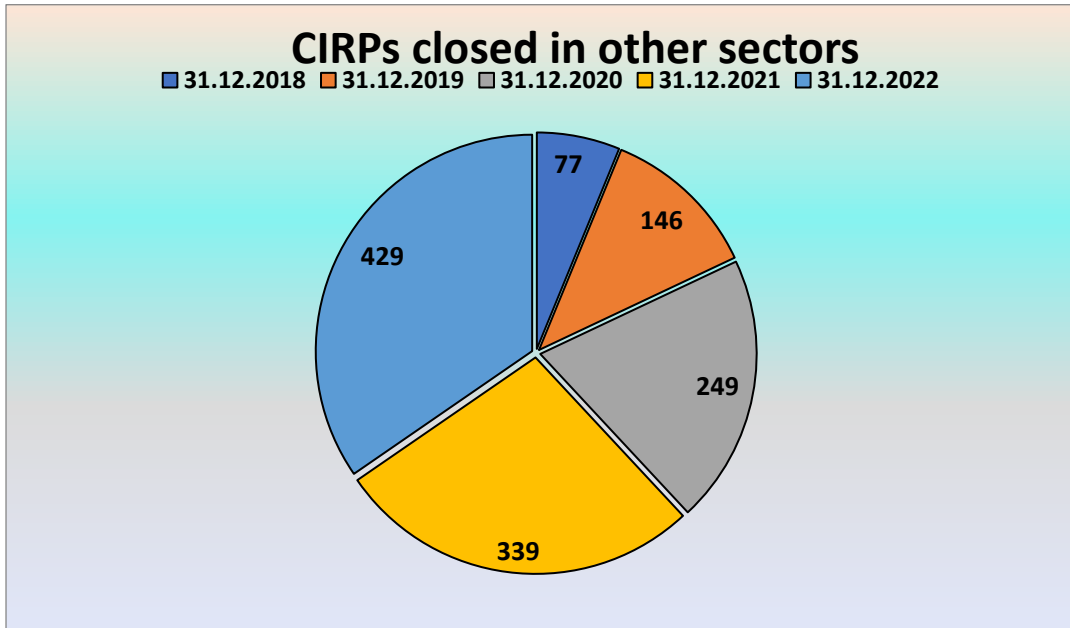
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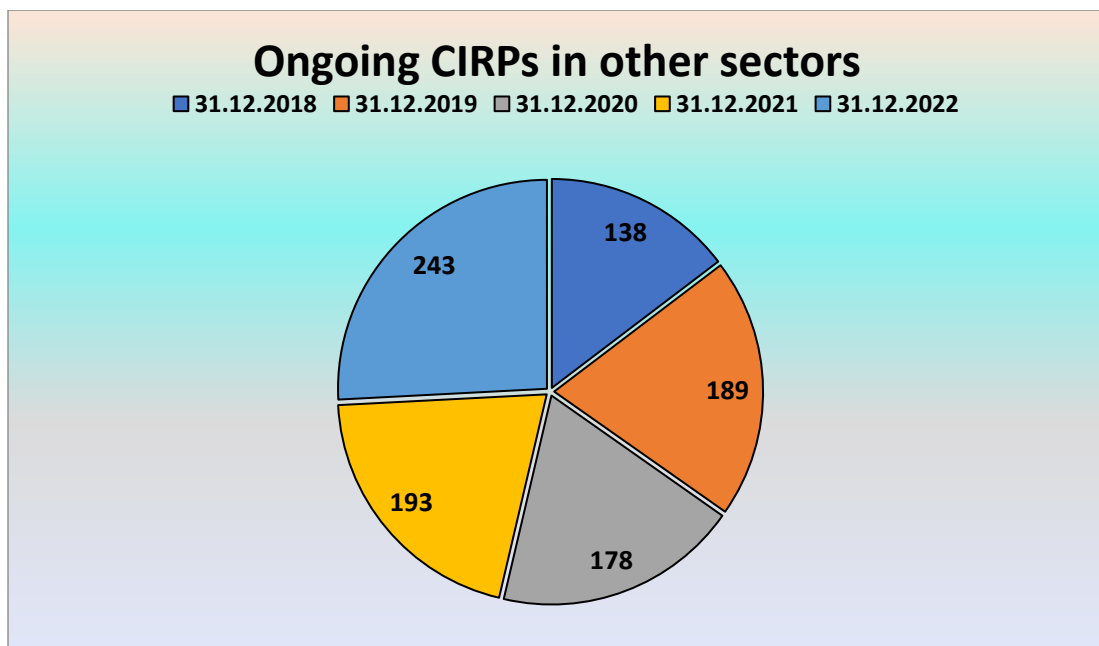
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Claims in Liquidation Process					
(Amount in ₹ crore)					
Stakeholders under Section	Number of Claimants	Amount of claims Admitted	Liquidation Value	Amount Realised	Amount Distributed
453 Liquidations where Final Report Submitted					
52	61	9245.33	427.21	439.27	426.19
53 (1) (a)	NA	NA			264.33
53 (1) (b)	2727	71141.29			2832.38
53 (1) (c)	3191	87.1			9.11
53 (1) (d)	534	5517.4	3684.54	3253.10#	46.58
53 (1) (e)	409	3864.8			20.79
53 (1) (f)	5099	4746.09			82.54
53 (1) (g)	0	0			0
53 (1) (h)	143	40.92			3.74
Total (A)	12164	94642.93	4111.75	3692.37#	3685.66
Ongoing 1243 Liquidations*					
53 (1) (a)	NA	NA			
53 (1) (b)	42912	643314.04			
53 (1) (c)	33067	1332.94			
53 (1) (d)	13085	137070.81			
53 (1) (e)	2945	36065.05	46867.21 **	Not Applicable	Not Applicable
53 (1) (f)	1979895	96918.21			
53 (1) (g)	83	1134.2			
53 (1) (h)	106072	3487.63			
Total (B)	2178059	919322.90			
Grand Total (A+B)	2190223	1013965.83	50978.96		

Inclusive of unclaimed proceeds of ₹6.71 crore under liquidation.

The claims worth ₹6,644 crore receivable by CD have been assigned to third parties as per agreed terms.

*Data for other liquidations are not available.

**Out of 1448 ongoing cases, liquidation value of only 1376 CDs is available. Liquidation value of 1158 CDs taken during liquidation process is ₹46867.21 crore and liquidation value of rest of the 218 CDs captured during CIRP is ₹5255.14 crore.

Details of Closed Liquidations							
(Amount in ₹ crore)							
Sl. No.	Name of CD	Date of Order of Liquidation	Amount of Admitted Claims	Liquidation Value	Sale Proceeds	Amount Distributed to Stakeholders	Date of Order of Dissolution/Closure
Part A: For Prior Period (Till September, 2022)							
1	Kisma E-Services Private Limited*	10-08-21	NC	NA	NA	NA	10-08-21
2	Novex Private Limited	04-09-19	2.29	0.05	0.16	0.08	17-08-21
3	PD Advisory Services LLP#	04-09-20	2.67	0.10**	0.01	NA	11-07-22
4	Nassco Trading India Private Limited*	27-09-22	18.56	-	-	-	27-09-22
5	Zenith Computers Limited	08-05-18	228.61	14.57	13.28	12.11	28-09-22
6	Nizamniya Construction Private Limited	27-01-22	0.14	0	0	0	28-09-22
7	Sri Gangadhara Steels Limited#	11-12-18	174.12	14.18	14.88	13.14	30-09-22
Part B: For October – December, 2022							
1	Dhanashri Tooling System Pvt. Ltd.	22-03-21	0.73	0.00	0	NA	11-10-22
2	P V S Textiles Private Limited	16-09-19	325.83	11.24	10.41	8.69	09-12-22
3	HDO Technologiess Limited	02-07-18	964.77	82.78	138.03	83.48	16-12-22
4	Hindusthan Ispat Private Limited	01-10-21	16.85	0	NA	NA	16-12-22
5	ALPS Liesure Holidays Private Limited##	01-10-19	10.39	11.11	10.93	9.91	21-12-22
6	BCC Estates Private Limited	13-07-18	1835.97	7.71	13	10.66	22-12-22
7	Nesa India Producer Company Limited	25-01-22	NC	NA	NA	NA	22-12-22
Total (October – December, 2022)			3154.54	112.84	172.37	112.74	NA
Total (Till December, 2022)			62285.60	2354.82	2359.45	2188.12	NA

Note: NA means Not realisable/ saleable, or No asset left for liquidation or Not applicable;

'0' means an amount below two decimals;

* Direct dissolution; Claims pertain to CIRP period;

NC means no claims received during CIRP/ liquidation process; itself.

** Liquidation value mainly consists of TDS refunds, which were received during the CIRP period

Liquidation as a going concern

Compromise or arrangement under section 230 of the Companies Act 2013

Source : IBBI Newsletter - October - December 2022 Pg. No. 16

High IBC haircuts or tonsures

It has been observed that in a number of cases, the lenders of the corporate debtors have agreed for higher haircuts as high as ninety-five per cent of the loan amounts. Notable cases in point are Siva Industries where lenders agreed to accept a 93.4% haircut to settle the dues of Rupee 4863 crores. Similarly, in the case of Videocon Group companies, there is 95.85% haircut taken by the lenders which

has been questioned but later on approved by the NCLT. The promoter of Videocon Group has filed a petition before NCLAT stating that the process undertaken by the resolution professional suffers from material irregularity as all assets have not been included in the Information Memorandum and the resolution plan is against the objective of IBC. It has also been submitted before NCLAT that the commercial wisdom by the Committee of Creditors (CoC) is arbitrary and irrational and does not reflect application of mind.

As per data issued by IBBI, banks have taken an average haircut of 80% in at least 363 major NCLT resolutions since 2017. House Panel of Parliament of India have taken serious note of the disproportionately large haircuts taken by the banks under the IBC and has cautioned the Government for taking some remedial action. On being questioned about the large haircuts, the Government told the panel that the lenders generally take large haircuts where liquidation values are very low. The panel recommended that since the insolvency process has fairly matured now, there is need to have a benchmark for the quantum of haircut, comparable to global benchmark

Need for examination of the function of the IBC and overhaul of the present system

The Parliamentary Committee set up to examine the working of functioning of the IBC recommended an overhaul of the system being followed and also to set a threshold rate of haircut for creditors. The Committee also recommended for establishing a new supervisory body to oversee resolution professionals. For quicker disposal of cases, the committee recommended that only high court judges be appointed to the NCLT. It has been observed that the low recovery rates due to high haircuts as much as 95% is deviation from the original objective of the Code. It has also been stated that 71% of the cases pending beyond the 180-day time frame as provided in the law is also a deviation from the stated objective of the Code.

IBC Amendment for a pre-packaged resolution process for MSME

The IBC amendment for a pre-packaged resolution process for the Micro, Medium and Small Enterprises sector has been passed. The IBC (Amendment) Bill, 2021 has brought in the Code will help pre-packaged insolvency resolution of MSMEs. This Bill replaced the Ordinance that was promulgated on April 04, 2021 which was done to provide needed relief to MSMEs severely impacted by the pandemic. The Bill has been passed keeping in view adverse situation faced by MSMEs due to pandemic which require an urgently needed help as pre-packaged is not only cost effective but most suitable for this sector. The added advantage of the pre-packaged solution for MSMEs is that it is hybrid in nature and instead of creditors, it will be the debtors who will be in control and both debtors and creditors are working as a team. It has blend of elements and virtues of both formal and informal insolvency proceedings. This will speed up the process and the resolution will be completed in 120 days. The amendments passed by the Parliament enabled the Government to notify the threshold of a default not exceeding Rupees one crore for initiating the pre-packaged resolution process. It has pegged the minimum threshold for default at Rupee ten lakh for initiation of insolvency process for MSMEs corporate debtor. It is reiterated that the Pre-packaged process makes it feasible to allow creditors and debtors, shareholders to come together with a view to identify a prospective buyer and to negotiate a resolution plan before approaching the NCLT. The expected advantages of this amendment are that it will lessen the burden of adjudicating authorities, will ensure continuity of business operations for corporate debtor. It will also help in reducing processing cost as well as maximum realization for financial creditors. These amendments also provide assurance of continued business relations with corporate debtor and will also pave the way for protection of rights of operational creditors.

“A pre-packaged administration is a pre-planned insolvency procedure wherein a company arranges to sell its assets to a buyer prior to filing for insolvency to facilitate the sale and the creditors and the shareholders approach a bankruptcy court with a pre-negotiated corporate reorganization plan, the ‘Pre-pack’. This sort of company rescue procedure significantly reduces the time taken in lengthy court proceedings for businesses undergoing financial distress.”³². “Consequently, the Pre-pack can seek to facilitate going concern sale of the business of the corporate debtor at ‘fair value’ during the insolvency resolution process and not merely break-up ‘liquidation value’.”

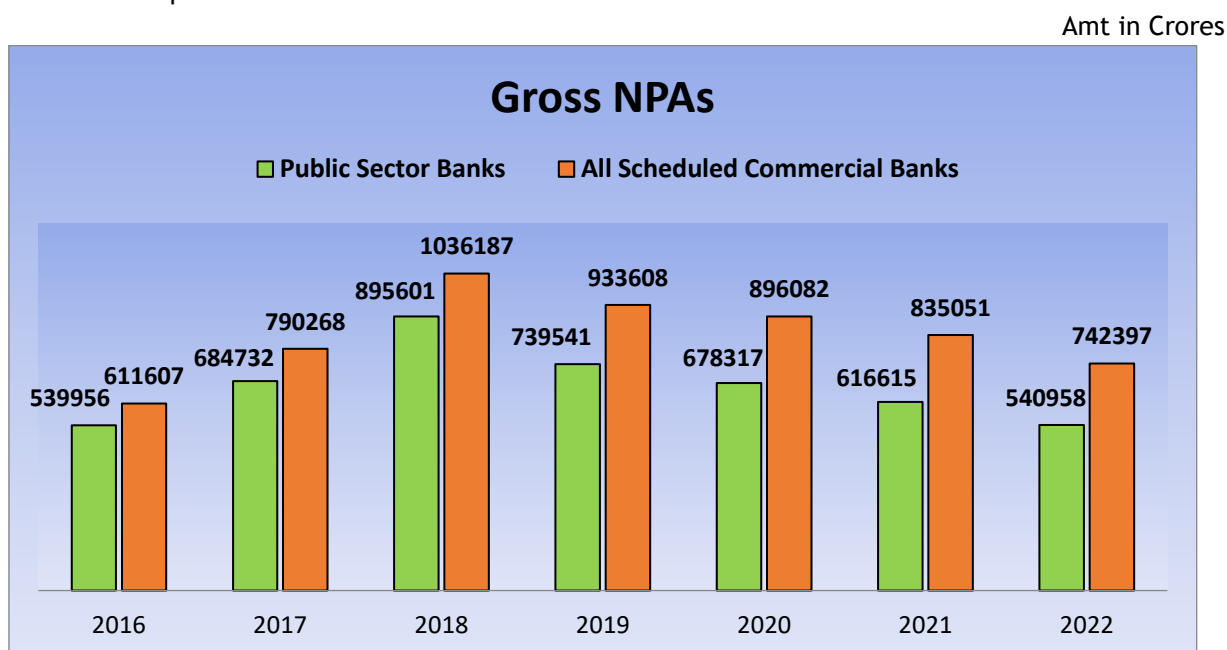
Need for Parity in Sections of IBC and SARFAESI Act

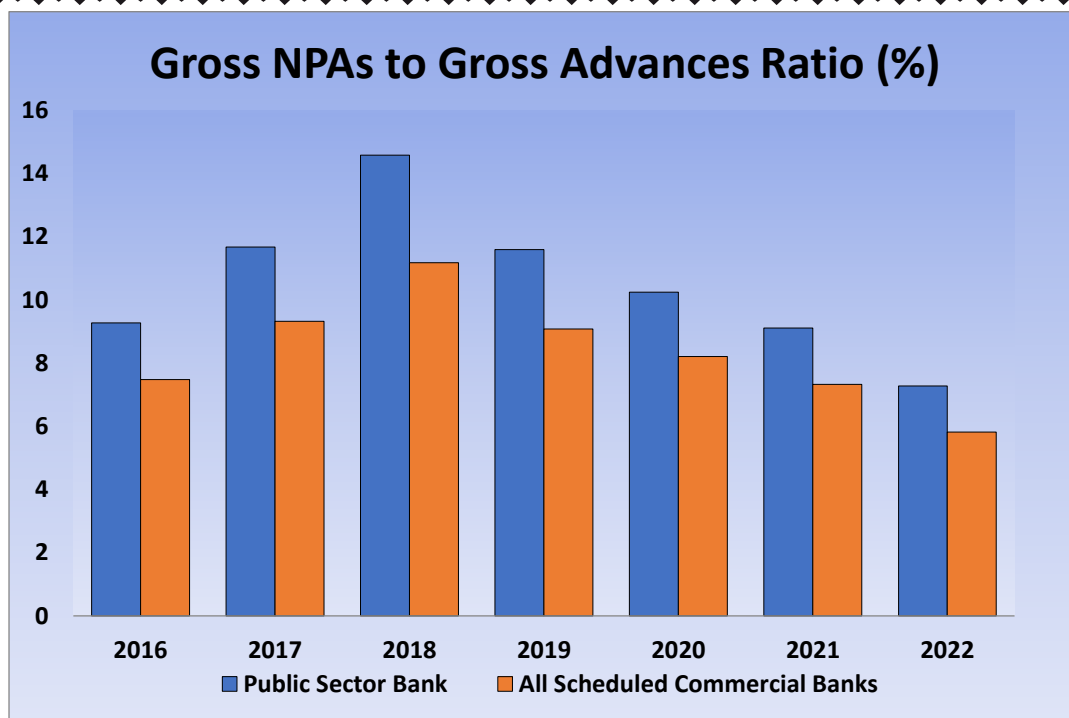
It has been observed that inconsistency in Sections of IBC and SARFAESI Act is creating hurdles in resolution plans of certain companies. Recently, Hon’ble High Court of Delhi has asked the Finance Ministry and the Reserve Bank of India to consider bringing parity in certain sections of the IBC and the SARFAESI Act which has created obstacles in the resolution plans of bankrupt telcos such as Reliance Communications (RCom) and Aircel. URARCL, an asset reconstruction company filed a writ petition before the High Court. It was also observed by the High Court that mere submission of resolution plan cannot be held illegal and stayed RBI’s proceedings in the matter.

BANK GROUP-WISE GROSS NON-PERFORMING ASSETS, GROSS ADVANCES AND GROSS NPA RATIO OF SCHEDULED COMMERCIAL BANKS Amount in Crores

Particulars	2016	2017	2018	2019	2020	2021	2022
	Public Sector Banks						
Gross NPAs	539956.34	684732.31	895601.30	739541	678317.01	616615.55	540958.21
Gross Advances	5821951.08	5866373.38	6141698.16	6382460.85	6615111.59	6770362.52	7433006.34
Gross NPAs to Gross Advances Ratio (%)	9.27	11.67	14.58	11.59	10.25	9.11	7.28
Private Sector Banks							
Gross NPAs	55853.12	91914.65	125862.89	180872.43	205847.82	202266.15	180742.11
Gross Advances	1972658.82	2266720.69	2725890.72	3442346.66	3776231.27	4097039.53	4700911.86
Gross NPAs to Gross Advances Ratio (%)	2.83	4.05	4.62	5.25	5.45	4.94	3.84
Foreign Banks							
Gross NPAs	15797.99	13621.05	13829.66	12182.59	10208.35	10199.06	13786.18
Gross Advances	376504.34	343611.18	363304.68	406881.31	436065.65	420616.71	476084.76
Gross NPAs to Gross Advances Ratio (%)	4.20	3.96	3.81	2.99	2.34	2.42	2.90
Small Finance Banks							
Gross NPAs	-	-	893.35	1012.84	1709.34	5970.66	6910.65
Gross Advances	-	-	35315.99	55396.43	91509.15	111589.22	140002.93
Gross NPAs to Gross Advances Ratio (%)	-	-	2.53	1.83	1.87	5.35	4.94
All Scheduled Commercial Banks							
Gross NPAs	611607.45	790268.01	1036187.20	933608.86	896082.52	835051.42	742397.15
Gross Advances	8171114.24	8476705.25	9266209.55	10287085.25	10918917.66	11399607.98	12750005.89
Gross NPAs to Gross Advances Ratio (%)	7.48	9.32	11.18	9.08	8.21	7.33	5.82

Compiled from “Annual Reports on Trend and progress of Banking in India” published by Reserve Bank of India for the period 2016 to 2022





NPAs of SCBs Recovered through Various Channels

Recovery Channel	2016-17				2017-18				2018-19			
	No. of cases referred	Amount involved	Amount recovered	Col. (4) as per cent of Col. (3)	No. of cases referred	Amount involved	Amount recovered	Col. (8) as per cent of Col. (9)	No. of cases referred	Amount involved	Amount recovered	Col. (12) as per cent of Col. (11)
1	2	3	4	5	6	7	8	9	10	11	12	13
Lok Adalats	3555678	36100	2300	6.3	3317897	45728	1811	4	4087555	53484	2750	5.1
DRTs	32418	100800	10300	10.2	29345	133095	7235	5.4	51679	268413	10552	3.9
SARFAESI Act	199352	141400	25900	18.3	91330	81879	26380	32.2	235437	258642	38905	15
IBC	37	-	-	-	704	9929	4926	49.6	1152	145457	66440	45.7
Total	3787485	278300	38500		3439276	270631	40352	14.9	4375823	725996	118647	16.3

Recovery Channel	2019-20				2020-21				2021-22			
	No. of cases referred	Amount involved	Amount recovered	Col. (4) as per cent of Col. (3)	No. of cases referred	Amount involved	Amount recovered	Col. (8) as per cent of Col. (9)	No. of cases referred	Amount involved	Amount recovered	Col. (12) as per cent of Col. (11)
1	2	3	4	5	6	7	8	9	10	7	8	9
Lok Adalats	5986790	67801	4211	6.2	19,49,249	28,084	1,119	4.00	85,06,648	1,19,005	2,777	2.30
DRTs	33139	205032	9986	4.9	28,182	2,25,361	8,113	3.60	29,487	47,165	12,114	25.70
SARFAESI Act	105523	196582	34283	17.4	57,331	67,510	27,686	41.00	2,49,475	1,21,642	27,349	22.50
IBC	1986	224935	104117	46.3	536	1,35,319	27311	20.20	885	199250	47421	23.80
Total	6127438	694350	152597	22	20,35,298	4,56,274	64,229	14.00	87,86,495	4,87,062	89,661	18.40

Source : RBI Website - Annual Publication

Occurrences of Fraud

The Occurrences of fraud as a proportion of the gross advances of public sectors banks dropped from a peak of 1.32% during the financial year 2013-14 to 0.05% during the financial year 2021-22. The improved detection and reporting accompanied with the comprehensive steps taken to check frauds have resulted in decline in the occurrences of such frauds.

Fraud Cases – Bank Group-wise

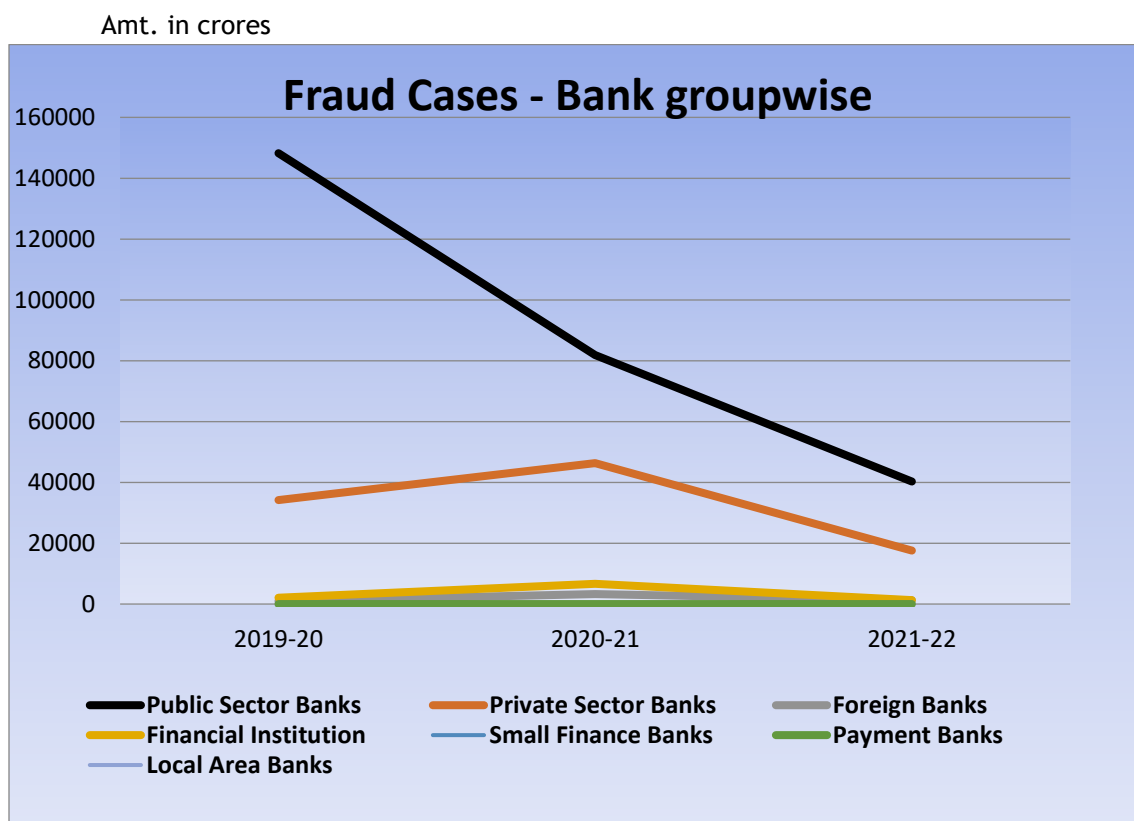
Year	Particulars	Public Sector Banks	Private Sector Banks	Foreign Banks	Financial Institutions	Small Finance Banks	Payments Banks	Local Area Banks	Total
2019-20	Number of Frauds	4410	3065	1026	15	147	38	2	8703
	Percentage of No. of Frauds	50.7	35.2	11.8	0.2	1.7	0.4		100
	Amount Involved (in crores)	148224	34211	972	2048	11	2		185468
	Percentage of Amt. Involved	79.9	18.5	0.5	1.1				100
2020-21	Number of Frauds	2901	3710	520	24	114	88	2	7359
	Percentage of No. of Frauds	39.4	50.4	7.1	0.3	1.6	1.2		100
	Amount Involved (in crores)	81901	46335	3280	6663	30	2		138211
	Percentage of Amt. Involved	59.2	33.5	2.4	4.9				100
2021-22	Number of Frauds	3078	5334	494	10	155	30	2	9103
	Percentage of No. of Frauds	33.8	58.6	5.5	0.1	1.7	0.3		100
	Amount Involved (in crores)	40282	17588	1206	1305	30	1	2	60414
	Percentage of Amt. Involved	66.7	29.1	2	2.2				100

Notes

1. The above data is in respect of frauds of `1 lakh and above reported during the period.
2. The figures reported by banks & FIs are subject to change based on revisions filed by them
3. Frauds reported in a year could have occurred several years prior to the year of reporting
4. Amounts involved reported do not reflect the amount of loss incurred. Depending on recoveries, the loss incurred gets reduced. Further, the entire amount involved is not necessarily diverted

Source: RBI Supervisory Returns

Compiled from RBI -Annual Reports on Trend and progress of Banking in India for the period 2019-20 to 2021-22





Frauds in Various Banking Operations Based on the Date of Occurrence

Particulars	Cases in number and amount in crores									
	Prior to 2014-15		2014-15		2015-16		2016-17		2017-18	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
Advances	6268	87374	1897	18168	1743	14570	1265	9550	1944	22793
Card/Internet	271	16	918	58	1173	43	1367	40	2168	105
Deposits	657	935	790	214	719	600	602	665	583	345
Cash	54	21	159	36	155	20	276	41	214	39
Others	236	450	161	33	133	165	132	50	162	167
Cheque/Demand Drafts	92	26	272	23	235	31	217	33	210	41
Off-Balance Sheet	23	1980	13	1720	11	1132	13	15023	11	1143
Clearing etc accounts	17	15	23	79	19	4	29	7	36	9
Foreign Exchange transactions	20	1004	18	3361	9	205	15	473	5	83
Non-resident accounts	15	16	16	3	6	0	7	1	0	0
Inter-branch accounts	5	2	2	0	4	9	4	1	3	0
Total	7658	91839	4269	23695	4207	16779	3927	25884	5336	24725

Particulars	2018-19		2019-20		2020-21		2021-22		2022-23 (Apr to Sep)	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
Advances	2129	40516	1947	32386	1477	14973	1112	6042	181	174
Card/Internet	2090	83	2717	144	2435	124	3849	120	1372	46
Deposits	550	163	495	402	387	524	328	82	57	20
Cash	275	64	392	38	457	58	745	82	245	49
Others	201	58	178	163	255	117	160	60	23	8
Cheque/Demand Drafts	165	28	205	70	156	164	160	25	27	6
Off-Balance Sheet	19	2927	8	423	8	31	1	26	0	0
Clearing etc accounts	26	206	16	2	9	3	14	2	5	0
Foreign Exchange transactions	5	145	8	135	4	2	9	8	5	2
Non-resident accounts	0	0	0	0	0	0	0	0	0	0
Inter-branch accounts	3	0	2	0	3	2	1	0	0	0
Total	5463	44190	5968	33763	5191	15998	6379	6447	1915	305

Compiled from RBI -Annual Reports on Trend and progress of Banking in India for the period 2016-17 to 2021-22

Frauds in Various Banking Operations Based on the Date of Reporting

Particulars	Cases in number and amount in ₹crore									
	2014-15		2015-16		2016-17		2017-18		2018-19	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
Advances	2251	17122	2125	17368	2322	20561	2525	22558	3603	64548
Card/Interest	845	52	1191	40	1372	42	2059	110	1866	71
Deposits	876	437	757	809	695	903	691	457	593	148
Cash	153	43	160	22	239	37	218	40	274	56
Others	179	162	176	146	153	77	144	247	200	244
Cheque/Demand Drafts	254	26	234	25	235	40	207	34	189	34
Off-Balance Sheet	10	699	4	132	5	63	20	16288	33	5538
Clearing etc accounts	29	7	17	87	27	6	37	6	24	209
Foreign Exchange transactions	16	899	17	51	16	2201	9	1426	13	695
Non-resident accounts	22	8	8	9	11	3	0	0	0	0
Inter-branch accounts	4	0	4	10	1	1	6	1	3	0
Total	4639	19455	4693	18699	5076	23934	5916	41167	6798	71543

Particulars	2019-20		2020-21		2021-22		2021-22 (Apr to Sep)		2022-23 (Apr to Sep)	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
Advances	4607	181865	3496	136429	3838	58303	1800	35034	2006	18746
Card/Interest	2677	129	2545	119	3596	155	1532	60	2321	87
Deposits	530	616	504	434	471	493	208	362	270	135
Cash	371	63	329	39	649	93	245	51	589	81
Others	250	173	278	54	300	100	157	47	119	136
Cheque/Demand Drafts	201	39	163	85	201	158	107	149	73	12
Off-Balance Sheet	34	2445	23	535	21	1077	10	612	5	283
Clearing etc accounts	22	7	14	4	16	1	9	1	11	2
Foreign Exchange transactions	8	54	4	129	7	7	1	0	10	3
Non-resident accounts	0	0	0	0	0	0	0	0	0	0
Inter-branch accounts	2	0	2	0	3	2	0	0	2	0
Total	8702	185391	7358	137828	9102	60389	4069	36316	5406	19485

- Refers to frauds of ₹1 lakh and above.
- The figures reported by banks & FIs are subject to change based on revisions filed by them. Source: RBI
- Frauds reported in a year could have occurred several years prior to year of reporting.
- Amounts involved reported do not reflect the amount of loss incurred. Depending on recoveries, the loss incurred gets reduced. Further, the entire amount involved is not necessarily diverted. Source: RBI

Compiled from “Annual Reports on Trend and progress of Banking in India” published by Reserve Bank of India from the period 2016-17 to 2021-22

As per Annual Report of RBI for the year 2021-22, an analysis of the vintage of frauds reported during 2020-21 & 2021-22 shows a significant time lag between the date of occurrence of a fraud and its detection, as per table given below which shows that 93.73% of the frauds in 2021-22 by value occurred in previous financial years as against 91.71% recorded in 2020-21.

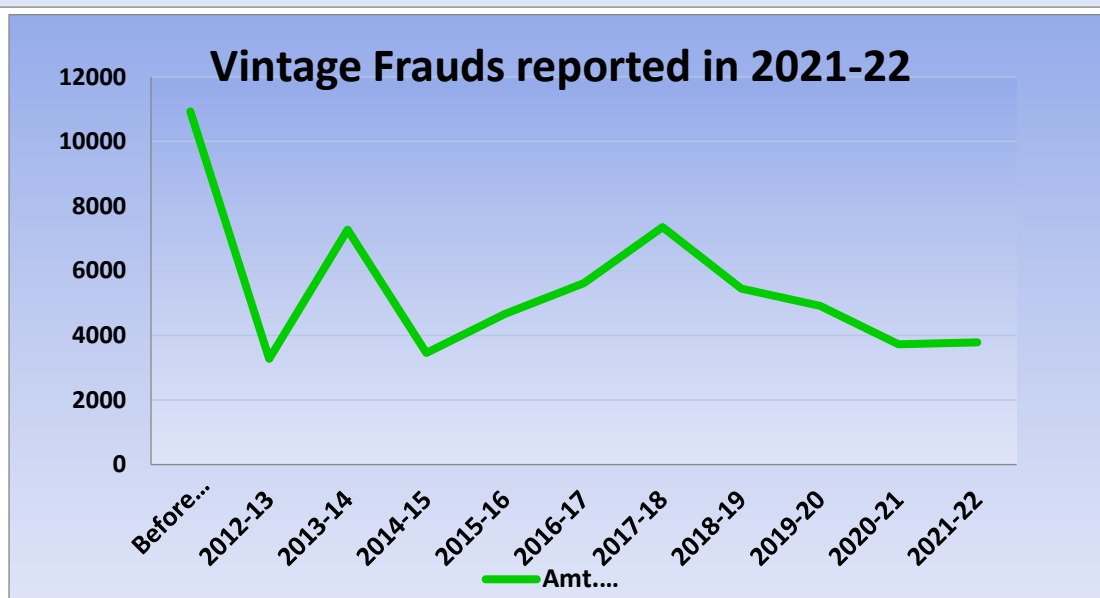
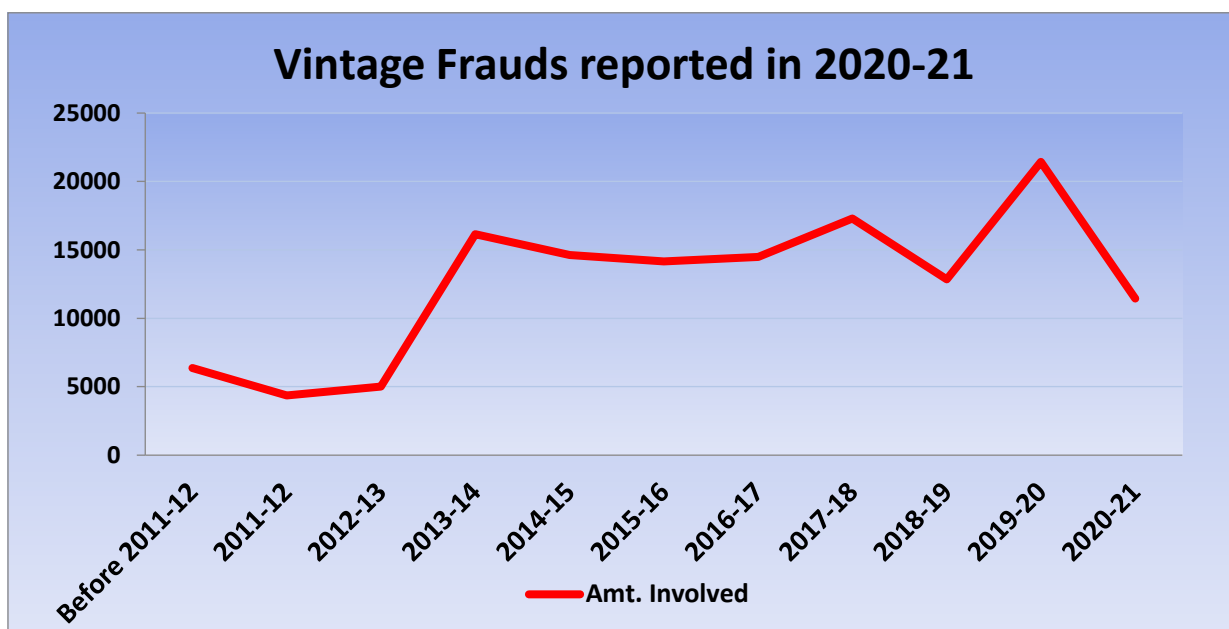


Vintage of frauds reported in 2020-21 & 2021-22

2020-21		2021-22	
Occurance of Fraud	Amount Involved	Occurance of Fraud	Amount Involved
Before 2011-12	6371	Before 2012-13	10930
2011-12	4365	2012-13	3272
2012-13	5016	2013-14	7270
2013-14	16143	2014-15	3451
2014-15	14635	2015-16	4661
2015-16	14167	2016-17	5620
2016-17	14486	2017-18	7346
2017-18	17293	2018-19	5448
2018-19	12851	2019-20	4912
2019-20	21432	2020-21	3719
2020-21	11452	2021-22	3785
Total	138211	Total	60414

Source: RBI Supervisory Returns.

Compiled from RBI -Annual Reports on Trend and progress of Banking in India for the period 2021-22



Willful defaulters

Out of 12,265 designated willful defaulters as of March, 2022, suits have been filed against 12076 (98.05%). FIRs have been lodged against 40.02% and SARFAESI action initiated against 75.5%.

CONCLUSION

The Code provides a single umbrella for speeding up of insolvency process. It is a legislation which facilitates the reorganization as well as the exit of weak businesses. With enactment of this Code in 2016, the focus has shifted from 'Debtors in Possession' to 'Creditors in Control'. Maximization of value and not maximization of price is the objective of the Code. Value improves if business is continued and assets are used more efficiently. Though recovery is incidental under the Code, its primary objective is rescuing companies in distress yet the state run lenders have recovered a sum of Rs.5.01 lakh crore in the last six fiscals. It is observed that the efficiency may improve from a change of management, technology, or product portfolio. It also improves on acquisition, or disposal of assets, businesses or undertakings, restructuring of the organization, business model, ownership or balance sheet. Hon'ble Supreme Court of India has passed a number of landmark judgments and these have filled the gaps in the Code.

If we have a look at the CIRP's yielding resolution plans as on 31st December, 2022, we come to know that realisation by creditors as percentage of liquidation value is 175.9% and realisation by creditors as percentage of their claims is 30.4%. Average time taken for closure of CIRP is 587 days. On the other hand, in case of CIRP's yielding Liquidations, Liquidation Value as percentage of claims is 7.1%. Average time taken for closure of CIRP in case of CIRP's yielding liquidation is 437 days.

Despite the recovery of 175.9% of the liquidation value, the financial creditors had to take haircut of 70 per cent as compared to their claims. This reflects the extent of value erosion that had taken place as compared to their claims when these companies entered the process. Nevertheless, as compared to other options, banks are recovering much better through IBC as per data released by Reserve Bank of India. Resolution process is required to be completed within a maximum period. The Hon'ble Apex Court has stated that it should not exceed 330 days. The adjudicating authority declares the moratorium under the Corporate Insolvency resolution process.

During 2019-20, a sum of Rs.1,52,597 crore was recovered out of total amount involved of Rs.6,94,350 crore and the recovery rate comes to 22%. Recovery through IBC was Rs.1,04,117 crore as against of amount involved of Rs.2,24,935 crore making recovery rate as 46.3% and the balance from Lok Adalats, DRTs and SARFAESI Act. However, this percentage has gone down to 23.8% in 2021-22 where recovery rate through IBC channel is Rs.47,421 crore against amount involved of Rs.1,99,250 crore and recovery through DRTs and SARFAESI Act is 25.70% and 22.50 % respectively.

Another important achievement of the IBC has been that bad loans or NPAs of Public Sector Banks have come down to Rs.5.41 lakh crore as of March 2022 and Gross Advances are Rs.74.33 lakh crores and Gross NPAs to Gross Advances Ratio is 7.28 %. However, Gross NPAs of All Scheduled Commercial Banks are Rs.7.42 lakh crores and Gross Advances are 127.50 lakh crores and Gross NPAs to Gross Advance Ratio is 5.82. However, Gross NPAs of Public Sector Banks as on March, 2018 were Rs. 8.95 lakh crores and Gross Advances were Rs.61.41 lakh crore and Gross NPAs to Gross Advance Ratio was 14.58%. Similarly, Gross NPAs of All Scheduled Commercial Banks were Rs.10.36 lakh crores and Gross Advances were Rs.92.66 lakh crores and Gross NPAs to Gross Advance Ratio was 11.18%.

The Code has helped in improvement in the recovery but there have been delays which is a cause of concern. The Code was enacted to give a quicker, time-bound alternative for recovery of bad loans for banks. 6195 cases were admitted in IBC, out of which 1901 (31%) cases ended in closure by commencement of liquidation.

The IBC needs to be overhauled and time-bound resolution is the objective of the IBC and unwarranted delays need to be avoided. Serious thoughts need to be given on substantial haircuts as high as 95%. CoC needs to be fair to all the stakeholders. Though commercial wisdom has been left to the CoC, yet there should be proper checks and balances and it is the duty of the adjudicating authorities to see whether all the relevant provisions of IBC are taken care of by the resolution professionals and the Committee of Creditors. Courts need to assure that unnecessary litigation and

resolutions professional and Committee of Creditors need to be accountable for their actions in the resolution process of the corporate debtor.

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