
IMPACT OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 ON THE NON- PERFORMING ASSETS

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ABSTRACT

This research paper analyzes the impact of the Insolvency and Bankruptcy Code 2016 on the economy of India. In the years as between 2008- 2015, there were an increasing number of non- performing assets. An expert committee was appointed by the government to look into the matter which suggested the creation of the insolvency and the bankruptcy code. The bill was passed and obtained the President's assent in 2016. The code rests on pillars such as the insolvency professionals, adjudicating authorities, etc. The code has reduced the number of non- performing assets. Non- performing assets hampers the growth of an economy by disturbing the lending power of banks. The code has brought a drastic change with respect to the debtor-creditor relationship that now instead of the creditor chasing the debtor; the debtor is chasing the creditor to clear the dues. The debtor does not want to lose the management of its assets. The code aims to consolidate and amend laws related with insolvency of the corporate persons, individuals and partnerships firms to introduce an efficient and time bound mechanism. In this paper the use of data, graph is done to analyze the impact, before and after, of the code. Through this the research paper concludes that the impact of the Insolvency and Bankruptcy Code has been tremendous with respect to the reduction in the non- performing assets. The research paper depicts a graph, whereby it is shown that in the scheduled commercial banks, the greatest amount of non- performing assets, from past is recovered by the advent of the insolvency and bankruptcy legislation of the year 2016 (other than the debt recovery tribunal, Lok Adalat, The Securitisation and Reconstruction of financial assets and enforcement of security interest act 2002). People, now, trust the recovery mechanism of the non- performing assets.

Keywords: insolvency and bankruptcy, non- performing assets, scheduled commercial banks

INTRODUCTION

The Insolvency and Bankruptcy Code 2016 aims to consolidate the various laws relating to the insolvency of individuals or sole proprietorships, partnership firms, LLP's¹ and of companies. If the liabilities of an individual or sole proprietorship, partnership firm, limited liability partnership or of company are more than their assets than they will become insolvent and subsequently they may approach legal authority for declaring them bankrupt.

NON- PERFORMING ASSETS

The Reserve Bank of India started with the asset quality reviews by 2015 to put a sort of pressure on the banks to work upon their balance sheets and clean them so that we can move beyond the level of non- performing assets and work towards increasing our economy. When the borrower of a loan is not able to pay his liabilities in the form of principal or interest amount, then it may eventually become a non- performing asset for the bank. If the amount to be paid is not paid till the due date it becomes a bad loan and if the bad loan is extended beyond ninety days it becomes a non- performing asset.

The non- performing assets are not good for the economy, they hamper the progress of an economy. The credit creation function of the banks is hampered due to non- performing assets. The people who have surplus money with them and wish to deposit in banks either due to safety purposes or to receive interest form the money deposited by them, deposit in the banks. From the money deposited by the people, the bans after keeping aside the cash reserve ratio and the statutory liquidity ratio lend money to the persons in need in the form of loan and charge interest on them. If the loans, which are the assets for the banks become non- performing asset, it will affect the lending power of banks and would also hamper their liabilities, creating bank run and many such unfavorable events. It also hampers the growth of an economy by hampering the investment projects; growth of primary sector (farming, buying of seeds, modern machines, et cetera); secondary sector (industries, production process, et cetera) and tertiary sector (technological research, infrastructure for hospitals, teaching, et cetera). It may also be said that it affects the environment and health of people also because organic products are bit expensive for one to afford. In the primary sector, farmers due to lack of funds are compelled to buy low grade chemical fertilizers, chemical insecticides and pesticides and even low grade seeds and machines. It affects the health of people consuming those crops because they are grown in the

¹ Limited Liability Partnership.

environment of harmful chemical fertilizers, insecticides and pesticides. Low grade machines may cause harmful health effects to the farmers as well. Chemical contained fertilizers, insecticides; pesticides are also harmful to the environment. The chemicals drain into the rivers and cause water pollution. Therefore, non- performing assets have multitude of negative impacts on a country as a whole.

AIM OF THE INSOLVENCY AND BANKRUPTCY CODE 2016

The insolvency and bankruptcy code 2016 came into force with an aim to increase entrepreneurship. Many people are afraid that if they start a business and cannot continue the business then they will have to become a part of the insolvency process. But after the insolvency and bankruptcy code 2016, the insolvency resolution process had become far too easy, stress free and time efficient. Today, the people need not be afraid in starting a business. Even if due to some unfavorable circumstances, their business is going in loss or that they are declared bankrupt, they need not worry and may start a new business after insolvency resolution process. This code² provides distinct insolvency resolution process for individuals and partnerships with unlimited liabilities with that of companies and limited liability partnerships.

FEATURES OF THE INSOLVENCY AND BANKRUPTCY CODE 2016

Under the insolvency and bankruptcy code 2016, for individuals and unlimited partnership firms, application may be presented to the Debt Recovery Tribunal and for companies and limited liability partnerships; application may be presented to the National Company Law Tribunal. The appellate authority of the debt recovery tribunal is the debt recovery appellate authority. The appellate authority of the national company law tribunal is the national company law appellate tribunal.

The mechanism under the Insolvency and Bankruptcy Code 2016 may be given by an example which is as follows: suppose there is a company named xyz limited. There are some creditors who gave money in xyz limited and they want to take their money back, and therefore they claim their money from xyz limited, but the xyz limited company is not able to pay back the money. Therefore, the creditors may approach and file an application in the national company law tribunal for initiating corporate insolvency resolution process.

² The Insolvency and Bankruptcy Code, 2016.

The national company law tribunal will wait for one- eighty days (however, the period of one- eighty days may be increased to more days if the committee of creditors via a meeting authenticates such increase in the number of days and tells such information to the resolution professional and the resolution professional makes an application in front of the national company law tribunal to increase days and if the authority which adjudicates that matter thinks fit, may increase the number of days maximum to ninety days) for a company to bring in a resolution plan (the national company law tribunal will via order, declare a moratorium, public announcement and will appoint an interim resolution professional and after the constitution of the committee of creditors a resolution professional will be appointed by them) and if no company brings up any appropriate resolution plan to save the company from being declared as bankrupt, in the time period of one eighty days (but if it seems that the corporate insolvency resolution process can't be done in one eighty days then the national company law tribunal by an application made to the authority may extend the number of days) then the national company law tribunal can declare it as bankrupt, the company will be closed and the creditors with appropriate persons who have to be paid from such closing will be paid the appropriate amount, the process of liquidation will take place in accordance with the insolvency and bankruptcy code 2016.

But suppose if some other company, for instance, abc limited wants xyz limited company to revive back. The company, abc limited thinks that they can buy xyz limited company and may expand their business and can make profit out of the xyz limited company. abc limited company may also think that they may merge with xyz limited company or may create a subsidiary. Therefore, the abc limited company will appoint an insolvency professional to make a resolution plan to save the company from winding up and to make the company reach new heights. If the resolution plan which abc limited submits, is approved as workable by the committee of creditors, then the national company law tribunal will pass an order to that effect and if the committee of creditors do not approve that resolution plan and no other plan comes to save the company then the xyz limited company would be closed.

IMPACT OF THE INSOLVENCY AND BANKRUPTCY CODE 2016 ON THE NON-PERFORMING ASSETS

The impact of the Insolvency and Bankruptcy Code 2016 may be seen in the way the data of the non performing assets over the years have been:

TIME PERIOD (in years)	Non Performing assets in the Scheduled Commercial Banks recovered through Debt Recovery Tribunal (recovered in percentage approximately).	Non Performing assets in the Scheduled Commercial Banks recovered through Lok Adalat (recovered in percentage approximately).	Non Performing Assets in the Scheduled Commercial Banks recovered through Securitisation and Reconstruction of financial assets and enforcement of security interest act 2002 (recovered in percentage approximately).	Non Performing Assets in the Scheduled Commercial Banks recovered through the Insolvency and Bankruptcy Code 2016 (recovered in percentage approximately).
From 2013 to 2014	10%	6%	27%	-
From 2014 to 2015	7%	3%	16%	-
From 2015 to 2016	9%	4%	17%	-
From 2016 to 2017	24%	4%	7%	-
From 2017 to 2018	5%	4%	32%	50%
From 2018 to 2019	4%	5%	15%	46%
From 2019 to 2020	Little greater than 4%	4%	27%	46%

Table 1: Table showing and comparing the impact of the Insolvency and Bankruptcy Code 2016 on the Indian economy, with respect to the retrieval/recovery of the non-performing assets of the Scheduled Commercial Banks.³

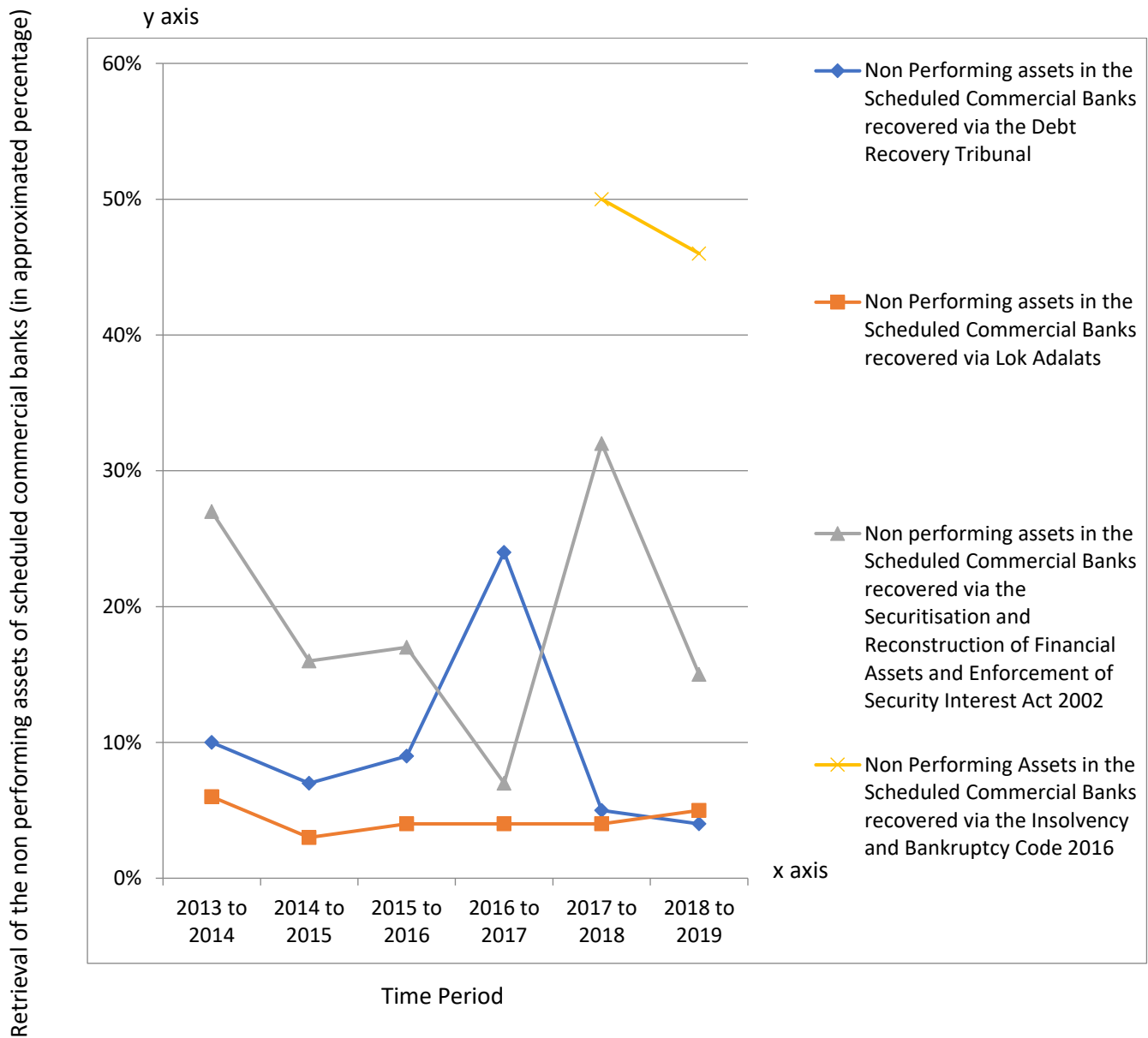


Figure 1: Graph depicting the impact of the Insolvency and the Bankruptcy Code 2016 on the Indian economy, with respect to the retrieval/recovery of the non-performing assets of the Scheduled Commercial Banks.

From the above table and the graph depicting the impact of the Insolvency and the Bankruptcy Code 2016 on the economy of the India, it may be inferred that the effect of the Insolvency and the Bankruptcy Code 2016 has been great with respect to the non-performing assets of the

³ Annual Report 2019- 2020, the Insolvency and Bankruptcy Board of India.

scheduled commercial banks. From the year two thousand and thirteen to the year two thousand and fourteen the debt recovery tribunal retrieved ten per cent of the non performing assets of the scheduled commercial banks, in the year from two thousand and fourteen to the year two thousand fifteen the percentage was seven per cent, in the period between two thousand fifteen and two thousand sixteen it was nine per cent, and in further years it was twenty four per cent, five per cent, four per cent respectively in the time period of 2016-17, 2017-18 and 2018-19 respectively.

The Lok Adalats retrieved six per cent, three per cent, four per cent non performing assets respectively in 2013-14, 2014-15 and 2015-16 year time period. The Securitisation and Reconstruction of financial assets and enforcement of security interest act of 2002 retrieved twenty seven per cent, sixteen per cent, seventeen per cent, seven per cent, thirty two per cent, fifteen per cent and twenty seven per cent of non-performing assets in the year 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20 respectively.

The Insolvency and Bankruptcy Code 2016 came into force in the year 2016 and its impact may be clearly inferred from the year two thousand and seventeen to two thousand and eighteen. So, in between 2017 and 2018 approximately fifty per cent of the non performing assets were retrieved of the scheduled commercial banks through the Insolvency and Bankruptcy Code 2016. Similarly, in the time between 2018 and 2020 approximately forty six per cent of the non performing assets were retrieved.

The Insolvency and the Bankruptcy Code 2016 is cost as well as time effective and therefore is of great importance.

CONCLUSION

Therefore, it may be said that the Insolvency and the Bankruptcy Code 2016 has a significant impact on the economy of India. The aim behind this code may be stated to increase the entrepreneurship and the start ups. The entrepreneurs or the creditors need not be afraid of the insolvency and the bankruptcy process now because it has become easy. Adequate protection of the employees is also ascertained by this particular code. Approximately fifty per cent of the retrieval of non- performing assets of the scheduled commercial banks is a great achievement of the code.

REFERENCES

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