

**8<sup>th</sup> Annual Day of the Insolvency and Bankruptcy Board of India  
(IBBI)**

**Speech | India's G20 Sherpa Mr. Amitabh Kant**

Chief Justice (Retd.) Shri Ramalingam Sudhakar, Hon'ble President, NCLT, Shri Ravi Mittal, Chairperson IBBI, Dr. V Anantha Nageswaran, Chief Economic Advisor, Ministry of Finance, Shri Sandip Garg, Member, IBBI, Esteemed guests, and distinguished colleagues,

Today, we gather to celebrate the 8th Annual Day of the Insolvency and Bankruptcy Board of India (IBBI), an institution that has become a cornerstone of corporate governance and economic stability in our nation.

Established on October 1, 2016, under the Insolvency and Bankruptcy Code, 2016, the IBBI is entrusted with the imperative responsibility of implementing a transformative framework for insolvency resolution and reorganization.

It plays a pivotal role in promoting entrepreneurship, enhancing access to credit, and balancing stakeholder interests.

From its outset, the IBC has marked a significant shift in India's approach to financial distress. Once, we were often characterized by the notion that India transitioned from "socialism without an entry" to "capitalism without an exit."

This paradigm shifted with the introduction of the IBC, which provided a much-needed mechanism to address insolvency issues in a time-bound and efficient manner.

The IBC, passed in May 2016, has played a transformative role in the Indian economy. At the time of its enactment, we were grappling with a twin balance sheet crisis, where Non-Performing Assets (NPAs) were hovering close to 12%.

This resulted in the choking of fresh credit, which is the jet fuel for any economy, stalling economic growth.

The IBC emerged as a lighthouse of a new era, ushering in what J. Nariman eloquently paraphrased from John Milton, as a "Defaulter's Paradise Lost."

It engendered a culture of corporate accountability and credit discipline. Credit contract regained their sanctity. A behavioural shift occurred where borrowers realised they needed to repay their debts.

NPAs are now at the historic low, bank balance sheets are robust, credit is growing at a healthy clip, and growth is back on track. As per June 2024 RBI's report, the Gross NPA ratio of Scheduled Commercial Banks stands at 12 years low of 2.8% and Net NPA ratio to 0.6% for year ending March 2024

The IBC was successful because the entire ecosystem and the institutional infrastructure – from regulators, including the newly created IBBI, the legislature, the courts, the banks, and the market came together and played their part.

However, as we look at 2024, we must acknowledge some concerns regarding the present functioning of the IBC, indicating a need for a second generation of reforms. Analysis of IBBI's own data shows that insolvency resolution at the National Company Law Tribunal averaged 716 days in the last fiscal years, up from 654 days in 2022-23.

More concerning is the average time taken for the admission of cases, which stood at 468 days in FY21 and increased to 650 days in FY22. I understand that an amendment to the Code is under consideration, wherein the Record of Default certificate issued by the Information Utility would be sufficient to substantiate default without any further deliberations. This would expedite the admission process and bring it in line with the time prescribed in the Code

Recovery from defaulters under the Insolvency and Bankruptcy Code decreased in 2023-24 from the previous year, although 42% more cases saw resolution during that financial year. The rate of recovery fell to 27% of the creditors' admitted claims in 2023-24 from 36% in the previous year, pulling down the cumulative recovery since the IBC was introduced in 2016 to 32%. However, the recovery to creditors during the first quarter ending July 2024 has again climbed to over 31%. In absolute terms, the cumulative recovery from resolved firms stood at ₹3.36 lakh crore.

However, recovery touched 85% of the fair value of stressed companies when admitted for resolution and 161.8% of the liquidation value. I understand that the creditors are applying for admission under IBC more than two years after the account has been NPA. Delay in filing applications would lead to a loss of value for the asset. The IBBI studies show that about 50% of value is eroded before the companies are admitted in IBC. Therefore, it is necessary that the creditors should apply for admission as early as possible. Moreover, the IBC allows for withdrawal in case of settlement with creditors post admission.

As we know, there is an inverse relation between time and value, and accordingly, the delays are depressing the value recovered.

Credible threats of IBC that Corporate Debtors may change hands has changed the behaviour of debtors. Till March 2024, more than 28000 applications for initiation of resolution process of corporate debtors having underlying default of more than Rs 10 lakh crore were withdrawn before the admission of resolution application

The institutional infrastructure needs significant augmentation to improve admission and resolution timelines. The environment in which NCLT works has to be made more conducive to productivity. It has to be brought on par with the kind of support existing in US or UK Bankruptcy Court System.

Recent rulings regarding the IBC have deviated from the established position regarding:

- i. The supremacy of the commercial wisdom of the committee of creditors.
- ii. The established waterfall of dues with the state dues being subordinated.
- iii. The requirement for the NCLT to admit a petition when a financial debt exists, without exercising any measure of discretion.

Furthermore, substantive changes to the IBC on issues of cross-border insolvency, creditor rights, sector-specific nuances, and pre-packs are necessary.

The Hon'ble Finance Minister is cognizant of this and, in her Budget Speech, stated, "Appropriate changes to the IBC, reforms and strengthening of the tribunal and appellate tribunals will be initiated to speed up insolvency resolution."

I will, in this speech, set out some of the reforms that could be considered to bolster the excellent foundation of the IBC as well as to strengthen the institutional infrastructure of the IBC.

But before that, it is IBBI Day, and so it is useful to take the long view and take stock of the IBC and the various institutions, including IBBI, and their role in making IBC the tremendous success that it is—so much so that the IMF called it a “big bang” reform.

You could say there are three phases of the development of IBC since its inception:

### **Phase I: 2016-2020**

-The IBC as a statute utilized a combination of international best practices and India-specific reforms, considering ground realities.

-It adopted a creditor-in-control model, which was distinct from the US’ Chapter 11 and somewhat similar to the UK system.

-The IBC sought to forge consensus among creditors and prevent holdouts by providing for cross-class cram down, ensuring that when 66% of creditors agree, it is binding on all.

-This model was protected by offering liquidation value, reflecting a World Bank best practice that has since been incorporated into the UK’s Corporate Insolvency and Governance Act 2020.

-The IBC also established a new institution—a new regulator, the IBBI, which has been agile, adaptive, and adept at responding to the challenges of this transformative new law, along with specialized courts and a class of professionals known as resolution professionals.

-All arms of government and regulators worked together to ensure its success, with the judiciary providing crucial decisions that upheld the constitutionality and the architecture of the Act.

### **Phase II: 2020-2022**

-A moratorium on new cases was issued in March 2020 due to the COVID-19 pandemic, barring creditors from filing applications.

-Provisions were added to specify that no applications for initiation of Corporate Insolvency Resolution Process (CIRP) for defaults occurring during the COVID period could ever be filed.

-A modified version of the IBC was utilized to resolve non-bank finance company distress—one of the largest cases was the resolution of DHFL.

-Through the IBC, financial sector resolution involved INR 85,000 crore while protecting depositor rights.

### **Phase III: 2022-Present**

Since the resolution of the last cases, there has been a significant slowdown in the process.

The capacity of the Tribunal is a major concern that impacts both speed and quality.

The ongoing resolution processes of the Central Bank are being utilized. Several important amendments, including those concerning cross-border insolvency and prepacks, are currently on hold.

The increased use of private credit may necessitate the review and adjustment of upcoming legal frameworks.

**Proposed Reforms:****Judicial / Tribunal Process Reengineering:**

- Justice delayed is justice denied; we need a breakthrough idea to fix this.
- It is essential to minimize judicial bandwidth on administrative matters while opening non-core functions to innovative non-sovereign or private players to deploy technology for improved court management.
- I believe that science and technology can solve pressing issues; for instance, look at how rapidly we evolved the COVID-19 vaccine.
- We need to open our doors to the private sector and cutting-edge technology while carefully preserving the core of the sovereign judicial functions.
- For example, the privatization of passport Seva Kendras has resulted in a seamless process, and similar models could work for court processes.
- Innovations from global examples, such as the autonomous His Majesty's Courts and Tribunals Services in the UK and the Court Administration Service in Canada, can guide us in transforming our judicial processes.
- With investments in private capital and future-ready innovations, judicial process reengineering could enhance the administration of justice in India, thus significantly reducing arrears.

**Clarifying Ambiguity on Key Legal Principles:**

- Important to clarify the position on government dues following the Rainbow case.
- The Rainbow Papers case highlighted the statutory priority of VAT vs. IBC, stating that the committee of creditors cannot secure their own dues at the cost of statutory dues owed to any Government.
- This seems to contradict the legislative intent behind the IBC, which aimed for lower priority for Government dues compared to secured lenders and financial institutions.
- A statutory amendment or reconsideration by a larger bench is required.

**Addressing Legislative Lacuna on Cross-Border Insolvency:**

- India has yet to adopt a cross-border insolvency framework, whether under the UNCITRAL Model Law on Cross-Border Insolvency Framework or otherwise.
- Sections 234 and 235 of the IBC provide only an enabling framework for cross-border insolvency, which is yet to be acted upon.
- The provisions allow bilateral or multilateral agreements for the enforcement of cross-border insolvency, but practical implementation is necessary.
- There have been innovations, like the protocol for cooperation established in the Jet Airways case, but with an integrating global economy, we will ultimately need a model law on cross-border insolvency.

**Proposed Amendments**

I understand that a comprehensive review of IBC was undertaken last year, and amendments are under consideration of the Government. These amendments are expected to reduce delays and increase the recovery to creditors. I am particularly enthused by proposed amendments which relates to use of IU certificate during admission, separate of bid and distribution during resolution approval and innovations such as creditor led insolvency resolution process. This creditor led insolvency resolution process is based on best international practices and will revolutionise the resolution process by reducing the load of NCLT while ensuring judicial oversight over the entire process.

**Conclusion:**

The progress we have made over the past eight years is commendable and has earned recognition.

However, as we step into the next phase of our journey, continuous dialogue, collaboration, and innovation will be essential to strengthening our insolvency framework.

Enhancing the IBC is a vital enabler of economic growth and creates a resilient and sustainable insolvency regime that upholds the interests of all stakeholders.

Together, with determination and clarity, we can further build upon the solid foundations of the IBC and the IBBI, assuring a brighter economic future for India.

Thank you for your attention and your ongoing commitment to the advancement of the insolvency and bankruptcy landscape in our country.

Here's to a future where our regulatory framework continues to evolve, adapting to the changing needs of our economy and society.

Thank you.