DEBT RECOVERY LAWS IN INDIA: A COMPARATIVE STUDY

A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS

SUBMITTED BY

PANKHURI SRIVASTAVA

1200990017

SCHOOL OF LEGAL STUDIES

UNDER THE GUIDANCE OF

MS. TRISHLA SINGH

ASSISTANT PROFESSOR

SCHOOL OF LEGAL STUDIES

SESSION 2020-21

CERTIFICATE

This is to certify that the dissertation titled, “DEBT RECOVERY LAWS IN INDIA: A COMPARATIVE STUDY” is the work done by PANKHURI SRIVASTAVA under my guidance and supervision for the partial fulfilment of the requirement for the Degree of **Master of Laws** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

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Date: 7-7-2021
Place- Lucknow

PANKHURI SRIVASTAVA
1200990017
LL.M. (2020-21)
(CORPORATE AND COMMERCIAL LAW)

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PANKHURI SRIVASTAVA

1200990017

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LIST OF ABBREVIATIONS

- AAIFR- APPELLATE AUTHORITY FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION
- ARC- ASSET RECONSTRUCTION COMPANIES
- BIFR- BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION
- BLRC- BANKRUPTCY LAW REFORMS COMMITTEE
- CDR- CORPORATE DEBT RESTRUCTURING
- CIRP- CORPORATE INSOLVENCY RESOLUTION PROCESS
- DRT- DEBT RECOVERY APPELLATE TRIBUNAL
- DRT- DEBT RECOVERY TRIBUNALS
- IBA- INDIAN BANKS ASSOCIATION
- IBC- INSOLVENCY AND BANKRUPTCY CODE
- IRCI- INDUSTRIAL RECONSTRUCTION BANK OF INDIA
- NCLAT- NATIONAL COMPANY LAW APPELLATE TRIBUNAL
- NCLT- NATIONAL COMPANY LAW TRIBUNAL
- NPA- NON-PERFORMING ASSETS
- RBI- RESERVE BANK OF INDIA
- RDDBFI- RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT
- ROI- RETURN ON INVESTMENT
- SARFAESI- SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT
- SICA- SICK INDUSTRIAL COMPANIES ACT

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CHAPTER -I
INTRODUCTION

The most important business of bank is to accept money as deposit and lend it to the people in the form of short term or long term loans. These loans are treated as assets of banks as it generates income. Banks play a vital role in national economic development by extending loans to the potential sectors for their own as well as country's development. The risk involved in this lending activity is known as credit risk which when not managed properly causes Non-Performing Assets.

All loan and advances of banks are assets. The loan or lease, which is not meeting its stated interest or principal repayment of the secured debt to the designated lender, is called as a Non-Performing Asset. A 'Non Performing Asset' means an asset of a borrower, which has been arranged by a bank or financial institution as substandard, doubtful or loan asset. The borrower has not paid any previously-agreed payments or the Principal amount, making the loan account non-performing.

NPA is a threatening term for banking sector and all financial institutions today as it weakens the financial position and becomes a hindrance for its survival. The trouble of NPAs in the Indian banking industry is in the most alarming situation. Mounting NPAs and the reduction in the NPA recovery leads to the poor recycling of funds; it directly influences the lending decisions in the Banks. Bankers were becoming reluctant to financing into major activities due to the threatening of NPAs.[1]

The Section 2 (g) of the RDDBFI Act defines the term debt. The "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank of a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application.[2]

Factors responsible for creation of NPA-

1.Complete performance of the economy- How the economy runs is a major factor affecting

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[1]Alamelumangai, Sudha(2019), Recovery Of Npas Through Debt Recovery Channels In Indian Banks - An Analysis

[2] Bare act, Recovery of debts due to banks and financial institutions act, 1993

the level of Non-Performing Assets of the banks. When the economy is low and is in a recessionary phase, the borrowers, mainly commercial ones, find it difficult to repay the loans.

2.Cyclicality of the business- The cyclicality of the business directly influences the repayment capability of the banks. Thus, it has an impact on the amount of Non –Performing Assets of the banks.

3.Technological inactivity- The technological inactivity is a factor which affects the repayment abilities of the manufacturing firms. The effectiveness of the manufacturing entity in raising funds impacts the repayment abilities of the firm.

4.A managerial inadequacy to deal with the changing business environment- This is the most important factor in determining the repayment capability of the borrower.

5. Financial indiscipline and intentional defaults- Intentional default is the biggest reason why non-repayment of loans occurs. Due to lack of interest, many of the defaulters do no repay the loan.

With the increasing levels of NPA in India over the years, reforming the legal framework for debt recovery and bankruptcy has become an absolute necessity. Debt recovery is the method of making people or companies to pay the money that they owe to other peoples or companies, when they have not repaid the debt at the time that was scheduled.[3]

For the debt recovery, various laws had been implemented with the provision of following acts-

1.Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016.

2.Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI)

3.Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI)

4.Depositories Act, 1996 (Depositories Act)

5.Sick Industrial companies Act, 1985 (SICA)

6.Indian Stamp Act, 1899 (Stamp Act)

Initially, in 1993, Debt Recovery Tribunals were introduced in India under RDDBFI to

[3] https://dictionary.cambridge.org/dictionary/english/debt-recovery

reduce the burden of the courts for debt recovery and provide for specialized assistance in adjudication. However, as time passed, even these tribunals became overburdened due to various reasons. To speed up this process the SARFAESI was enacted in 2002 enabling banks and institutions to take the possession of the collateral security in case of a default. The basic difference between RDDBFI and SARFAESI Act is that it provides for frameworks of special forums and reliefs and remedies which banks can undertake.[4]

It is very important to recover debts for the following reasons-

1.A bank's money can be termed 'public money'. This is because, in case of Public Sector banks, it is the Government's money that runs the banks and the capital infusion is done by the government. In case of Private Sector Banks, it is the capital of the millions of investors that steers the bank. Moreover, the funds of the banks are intended to be served to the general public and for the commercial initiatives that largely influences the people, who depends on it. When money is trapped, a bank faces difficulty in funding projects, which it could earlier do.

2.NPAs affect the profitability of the bank; hence debt recovery is made essential to ensure that it functions smoothly.

3.If the bank succumbs to a financial crisis, it will leave the employees, management, and all the stakeholders in the dark.

4.A large amount of NPA will tarnish the image of the bank, and can discourage investors.

5.ROI of the bank decreases, if the NPA is not recovered speedily

6.Cost of Capital (interest) gets stranded. It is the bank's prime source of income[5]

OBJECTIVE OF THE STUDY

- To examine the effectiveness of the debt recovery laws present in India.
- To study the recovery of debt through various laws.
- To test the changing trends in the process of recovery laws adopted and implemented by banks for recovery of dues.
- To study the impact of NPAs on Banks.
- To find the preventive as well as curative measures to overcome the increasing problem of

[4] https://www.arrms.in/blogs-news/debt-recovery/debt-recovery-the-legal-framework/

[5] Unny (2011), A Study on the Effectiveness of Remedies Available For Banks in a Debt Recovery Tribunal - A Case Study on Ernakulam DRT

NPA.

- To know the recovery of NPAs through various channels.
- To examine the existing structure of the financial system of banks and its various components and to improve the efficiency and effectiveness of the system with particularly reference to the economy of operations, accountability and profitability of the commercial banks and financial institutions.

HYPOTHESIS

The debt recovery laws which are present in India to recover the debts are efficient enough. The effective tribunals and the time bound disposal of the cases will surely help in the fast disposal of debt recovery cases. This will lead to the less pendency of cases and lowers the burden of the tribunals. There is fair possibility that recent amendments in SARFAESI Act 2002 and Insolvency & Bankruptcy Code 2016 would bring down enormous figure of NPA.

RESEARCH METHODOLOGY

This research is purely based on doctrinal method of research. In the doctrinal method of research, the statutory provisions of the Recovery of Debts Due to Banks and Financial Institutions Act and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are interpreted and analyzed. The existing case laws with regard to the provisions have also been interpreted. The study is done based on secondary data. The secondary data have been collected from published material of the subject from the various sources of publication, i.e. Reserve Bank of India annual report, monthly bulletins of RBI, articles and research papers published in the journals of Indian Bank Association, Indian institute of bankers, National Institution of Bank Management, institute of Chartered Accountants, Books, articles published in financial newspapers and internet.

The present study will be concentrated on the examination of the efficacy of recovery laws relating to Banks and Financial Institutions. It will also examine the issues and challenges in the implementation of the various Acts present for debt recovery. This study will also suggest measures to strength the provisions in the existing recovery laws for delivering justice to all.

RESEARCH QUESTION

Non performing advances reflect the overall quality of the bank's loan book and most important indicators of its financial health. Rising NPA over the years has become major concern of banking sector.

In the pursuit of the hypothesis, following research questions have been framed-

1.What are the various laws available for debt recovery in India?

2.The debt recovery laws are properly implemented or not?

3.What are the various laws available for debt recovery in USA?

4.What are the various strategies to recover the bad debt?

5.Whether DRTs are efficient enough to solve the dispute arising from NPA?

6. What are the steps taken by RBI and Government in last few years to curb NPA?

REVIEW OF LITERATURE

Alamelumangai and Sudha (2019), investigated "the significance of recovery tribunals on reduction of NPA". The period of study was 13 years i.e. from 2005-2017. The study finds that effective debt recovery channels play a vital significant role in minimizing the NPA of the nation.

Anupam Panigrah, Suman Kalyan Chaudhury (2017), in their study entitled, "The Impact of SARFAESI Act 2002 in reducing Non-Performing Assets". It concluded that the introduction of SARFAESI Act has notably reduced the NPA level of the Banks in India.

Raza (2016), The aim of this research paper is two-fold: firstly, to study the functioning of the Debt Recovery Tribunals and secondly, to analyze the laws of the Debt Recovery Tribunals in India. For the sake of convenience, this paper has been divided into eleven parts, each dealing with the issue(s) separately. The paper starts with the introductory discussion on the Debt Recovery Tribunals and the related aspects of it. Further, the laws of the Debt Recovery Tribunals and the importance of recovery have been discussed in the light of the dicta of Indian Judiciary. The study also finds that banks have expressed their dissatisfaction with the system that was instituted to ensure speedy recovery.

Phadnis and Prabhala (2015), aims at "the origin and functioning of the Indian credit

recovery infrastructure”. India’s 1985 SICA Act put in place a debtor friendly regime in which defaulting borrowers could delay resolution for long periods of time and strip assets of value. The debt recovery tribunals in the 1990s attempt to create a more creditor friendly regime but their effectiveness is limited by restrictions on their scope. The SARFAESI Act, enacted in 2002, permits seizure of secured assets and has been the most effective means of recovery.

CHAPTER II
HISTORICAL BACKGROUND

HISTORY OF DEBT RECOVERY

The origin of the current day human institutions lie deeply buried in the past. The same is true with a country's law and legal institutions. The legal system of a country at a present is not the creation of one man or of one day; it represents the cumulative result of the endeavor, experience, thoughtful planning and patient labour of a large number of people through generations. To understand and appreciate the present legal system appropriately, it is necessary, therefore, to acquire historical knowledge of the course of its growth and development. To explain 'why it is so', one has to pierce deep into the past and take cognizance of the factors, stresses and strains which have been moulded and shaped legal development. To understand 'how it is so', one must appreciate the problems and the pitfalls which the administrators had to face in the past, and the manner in which they sought to deal with them. If we were to confine our attention exclusively to the law as it is, our understanding of it is bound to be deficient as it is not possible to appreciate its present ordering without some familiarity with its past. The truth is that the traditions of the past have made our modern legal system what it is, and still live in it. Without a proper historical background, it may be difficult to appreciate as to why a particular feature of the system is as it is. The historical perspective throws light on the anomalies that exist here and there in the system.[6]

2.2 DEBT RECOVERY IN ANCIENT INDIA

The concept of payment and recovery of debts was a traditional practice existed in Ancient India.

"What debt must be paid, and what not be paid, by whom, where and in what ways it is to be paid, and the rules governing advancing and recovering of loans constitute the title Runadanam i.e. Payment of Debts".

Theories behind repayment of the debts:-

The law imposing the liability to repay the debt incurred by a person has a philosophical

[6] Ranganath, Recovery of debts in india

origin. The concept of and the duty to repay it originates from the Vedas. In the Vedic literature, the duty to pay off one's debts has been clearly laid down. But the idea of debt (runa) was not understood in the sense of payment of money or loan taken from another. It was understood as an obligation of an individual to the source from which every type of benefit was received by him including his own coming into existence. There were three kinds of debts recognized by the Vedas and which were required to be discharged by every person which are Duty towards God (Deva runa), duty towards ancestors (Pitru runa) and duty towards sages (Rishi runa). In fact the entire ancient law of the Hindus, not merely the law regulating 'payment of debts', is based upon the celebrated rule or philosophy of 'Three Debts' (runatraya). In ancient days interpretation (Mimamsa), that the golden rule of interpretation of any of the provisions of the Dharmasastras was, that interpretation which was in conformity with the rule of the 'Three Debts' alone should be given. Later, the Mahabharata refers to one more debt i.e., the duty towards society or humanity, which was recognized as the 'Fourth Debt'.

Rule of three debts-

Jaimini[7] declared that there are three fundamental principles which serve as the key to the interpretation of the Smritis[8]. They are that every Hindu is under a duty to discharge the following three kinds of debt-

1. Devaruna- Debt due to God by perfoming religious sacrifices.
2.Rishiruna- Debt due to Saints by the acquisition of and imparting knowledge.
3. Pitraruna- Debt due to parents by becoming a householder and maintaining the continuity of the family institution and tradition by begetting children.

Kinds of interest:-

Every person who gives loan to another was entitled to take interest at the agreed rate but not exceeding the rates authorized by law. The smritis regulated the money transaction by prescribing various restrictions regarding provisions of interest and recovery of interest. Subject to the law laid in Dharmasastras a debtor in a loan transaction was at liberty to agree to pay interest at any rate. Six types of interest were recognized which are as follows-

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[7] **Jaimini** was an ancient Indian scholar who founded the Mīmāṃsā school of Hindu philosophy.

[8] **Smriti** (Sanskrit: स्मृति, IAST: *Smṛti*), literally "that which is remembered" are a body of Hindu texts usually attributed to an author, traditionally written down, in contrast to Śrutis (the Vedic literature) considered authorless, that were transmitted verbally across the generations and fixed.

1. Kalika: Interest payable periodically.
2. Kayika: Interest to be paid in the form of manual labour.
3. Chakravriddhi: Interest on interest, i.e. compound interest.
4. Bhogalabha: Profit derived out of enjoyment of property belonging to the debtor, such as house, field etc. (This is the similar to the loan by effecting mortgage with possession in lieu of interest. The same was called Abhiboga by Gautama, namely a transaction in which the complete enjoyment of the article or mortgaged property is provided in lieu of interest).
5. Shikhavriddhi: The interest payable every day until the principal is paid. In view of its ever growing nature day by day it was called Shikavriddhi (growing like hair).
6. Karita: Interest payable in any other manner as agreed by the debtor.[9]

Rules for repayment:-

The rules According to Smirits for regulating repayment of loans were:

a) Acknowledge of part payment: When the debtor made a part-repayment of a loan, the receipt of it must be given by the creditor in writing at the bottom of the document, or he should issue a separate receipt under his signature.

b) Creditor to return bond or acknowledge receipt after repayment: When the money is repaid, the creditor should return the bond or he must execute a document for having received the amount in full satisfaction of the debt.

c) Repayment to be done in the presence of witnesses: If a debt was borrowed in the presence of witnesses, the repayment should also be made in the presence of witnesses. The smritis nowhere provide that if repayment is not made in the presence of persons who were witnesses to the loan, the plea of repayment should not be accepted. Therefore, it appears that the above provision for repayment in the presence of some witnesses was only suggested as a safer course to be adopted by a debtor.

d) Liability for failure to acknowledge receipt: A creditor receiving part payment of a debt must give a receipt for it to the debtor. If he does not give a receipt, although he has been asked to give it, he shall lose the remainder of the sums due. Further, the debtor shall be entitled to interest on the amount so paid, at the same rate at which it was payable to the

[9].legalservicesindia.com

creditor.

When payment becomes due:-

The Smritis made a specific provision regarding the repayment of a loan:

A loan should be repaid-

(1) on demand if no time for repayment is fixed; or

(2) when it became due, if it is agreed that it should be repaid after the expiry of any specified period, or

(3) when interest ceases, on its amount becoming equal to the principal.

The first condition corresponds to a loan advanced taking on demand-note; the second to a term loan, and the third was imposed obviously because of the rule of damdupat, as accrual of further interest would stop from the day when it became equal to the principal and the creditor was, entitled to recover the whole amount or to take a fresh bond by capitalizing the interest with the principal.

Mode of recovery of debts:-

Specific provisions were made prescribing the procedure for recovery of loans where the debtors, having acknowledged the debts, failed to repay.

A debt which is acknowledged by a debtor might be recovered by the creditor in the following manner:

(i) by friendly or moral persuasion i.e., by putting pressure through kinsmen or friends, or by threatening to go on fast unto death;

(ii) by clever methods i.e., by borrowing any article from the debtor and withholding it, or withholding an ‘Anavahita deposit’ if any;

(iii) by the use of physical force such as subjecting the debtor to physical restraint;

(iv) by confining any dependent of the debtor such as his wife, son or cattle;

(v) by extracting manual labour from him, if debtor is indigent;

(vi) by squatting at the door of the debtor.

Facility of Installment to a debtor in difficulty:-

If a debtor has not been able to make repayment due to misfortune, he shall be made to discharge the debt gradually according to his means, as and when he earns the income i.e. we can say at the installments.

No permission to the forcible methods when debt not admitted:-

When a person refused to admit the debt, the creditor's remedy was only through legal proceeding and not by self-recovery methods.

(i) A debtor, who claims judicial investigation of his liability, shall not be subjected to any restraint by the creditor, i.e., use forcible methods. If the creditor puts the debtor under restraint, he shall be fined according to law.

(ii) Without informing the king, a creditor who proceeds to recover a debt in a doubtful case should be punished and shall also lose his right to recover the amount in a suit.

To recover the debts, it was lawful for a creditor to adopt various forcible methods. But, at the same time, the provisions specifically restricted the right of a creditor to adopt forcible methods only when the debtor admitted the debt, as is clear from the opening words, "which is acknowledged by the debtor". Therefore it follows that the moment a debtor disputed his liability totally, or even agreed to pay any amount found due by the court, the creditor had no option except having recourse to a judicial proceeding.

Penalty for resorting to forcible methods when debt not admitted:-

Adopting forcible methods when the debt or liability was disputed was an act disfavoured by law and the creditor doing so was liable to be punished by the imposition of fine. Rule of Katyayana was strict against creditors resorting to forcible recovery methods against debtors who claimed investigation into their liability.

A creditor who harasses a debtor who claims investigation in a court would lose his claim and would incur a fine equal to the claim.

The above rule shows the importance of law to judicial proceedings and also sets its face roughly against a creditor taking law into his own hands, by providing penalty for such illegal acts, which was a heavy as double the claim amount i.e., he not only loses his right for the recovery of the debt, but was also liable to pay an equal amount as fine.

Prohibition on taking manual work:-

Though one of the methods of recovery of debt was by way of taking manual work from a debtor, provided that a Brahmin debtor should not be forced to do a manual work. Katyayana modified this rule and said that a creditor should not compel a debtor belonging to a caste higher than his own to do a manual work. Katyayana also provided that even while taking

manual work a debtor should not be forced to do dirty work, and a creditor violating this rule was liable to be punished and the debtor would be released from the debt.

Ban of arrest in certain cases:-

There were several restrictions on the right of the creditor to arrest a debtor for forcing the recovery of debt.

One about to marry, one tormented by illness, one about to offer a sacrifice, one afflicted with a calamity, one accused by another, one employed in king's service, artisans while engaged in their own occupation, soldiers during warfare, an infant, a messenger, one who is about to give charity, cowherds in tending cattle, cultivators in the act of cultivation, one fulfilling a vow(performing a special religious obeisance), one who is harassed (by personal difficulties or calamities) shall neither be liable to be arrested nor summoned by the king to attend the Court during that period.

According to Kautilya, the agriculturalist when they are actually involved in cultivation, and Government servants when they are on Government duty, should not be arrested or put under restraint for recovery of debts. Though the right of creditor to use forcible methods including the right to arrest a defaulting debtor was recognized by law, it may be seen that even the methods which could be adopted were specified. Any other type of force used by a creditor which was not authorized by law would have attracted the provisions of criminal law. Further, the rule prohibiting the use of force when debt was not admitted and immunity from arrest in several cases indicate the anxiety of the law to prevent harassment to debtors at the hands of dishonest creditors as also the reasonable and human approach. The rule preventing the use of forcible methods when debt was not admitted virtually left the debtor in choice of subjecting forcible method on himself. A debtor could either deny the debt or claim an investigation of his liability in a court of law and deprive the creditor's right to resort to forcible methods lawfully.

Further, rules regarding immunity from arrest prescribed by Narada and Kautilya placed public interest above individual interest. If an agriculturist is arrested during the cultivating season and thereby prevented from cultivating his lands, naturally there would be loss of production of food grains which would not only be a personal loss to the agriculturist but also a loss to the state. Similarly, if Government servants were arrested when they are discharging their official duty, public interest would suffer. Immunity from arrest under other circumstances was based on humanitarian consideration which weighed more with law gives

than the personal right of a creditor. Further the prohibition against arresting a person which is accused by another indicates that if the defendant had a counter suit or claim he could not be arrested.

Law made it obligatory to allow repayment by installment by a debtor who was in financial difficulty. We find this principle incorporated in Order 20 Rule 11 of CPC.[10]

Rules regarding priority of debts:-

The Smriti texts also made provision for deciding the priority regarding recovery of debts when a person had contracted several loans.

Where several debts are executed in writing on the same day the king should treat them all as equal, so far as the security, protection and enjoyment are concerned; in other cases (i.e. where the debts are not of the same day) they should be paid in order of dates.

But when there are several debts, whatever is incurred first should be paid first but a debt owed to a king or a Kshatriya[11] should be paid after the debt owned to a Brahmin.

Where a creditor establishes that a particular article was manufactured by the debtor with the money or materials of the creditor, the debtor should give that money recovered by sale of the article to the creditor alone and not otherwise.[12]

2.3 DEBT RECOVERY IN MODERN INDIA

The Committee on the Financial System has examined the setting up of the Debt Recovery Tribunals with special powers for the adjudication of matters related to debt and speedy recovery for the successful implementation of the financial sector reforms. An urgent need was, therefore, felt to work out a suitable process through which the dues, to the banks and financial institutions could be recovered. In 1981 a committee under the Chairmanship of Shri Tiwari had examined the legal and other difficulties, faced by banks and financial institutions and suggested remedial measures including changes in law. This committee also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. Keeping in view the recommendations of the

[10] https://indiankanoon.org/

[11] **Kshatriya** (Hindi: क्षत्रिय) (from Sanskrit *kṣatra*, "rule, authority") is one of the four varna (social orders) of Hindu society, associated with warriorhood.

[12] http://www.legalservicesindia.com/article/164/Recovery-of-Debts-in-Ancient-India.

above Committees, the Recovery of Debts due to Bank and Financial Institutions Bill, 1993 was introduced in the Parliament.
Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in non-performing assets, the value of which decreases with the time. The setting up of Special Tribunals will not only fulfill a long-felt need, but also will be an important step in the implementation of the Report of Narasimham Committee. On 30th September, 1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts. Recovery of debts involved more than Rs.5622 crores in dues of Public Sector Banks and about Rs.391 crores of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country. The Bill seeks to provide for the establishment of Tribunal and Appellate Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions.

Recovery channels

In India, all scheduled commercial banks follow two way recovery methods which are popularly known as legal and non-legal measures. Recovery channels are purely run in the context of legal enactments followed by the orders of courts. Banks can file a suit against the erring companies or borrower when the loans become due. A debt recovery process in civil courts was long and inconvenient. Bankers felt the need of a suitable mechanism which helps to recover the dues without delay. In 1991, the Committee on the Financial System commanded by Shri M. Narasimham suggested for the enactment of the "Recovery of Debts Due to Banks and Financial Institutions Act, 1993". The Act established two types of agencies i.e., Debt Recovery Tribunals and Debt Recovery Appellate Tribunals and conferred upon them special powers for adjudication of matters related to bad debts.
1.Debt Recovery Tribunal- The Debts Recovery Tribunal has a complete power to pass comprehensive orders and can travel beyond the civil procedure Code to provide fair justice. The Tribunal clears all pending cases of the District Court under the Recovery of Debts Due to Banks and Financial Institutions Act 1993. It also enables the cases pending in the civil courts that involved with debt amount Rs.10 lakhs will automatically transferred to DRTs. The Tribunal also has a Recovery officer who helps in executing the recovery certificates as passed by the Presiding Officer. DRT can hear cross suits, counterclaims and allow set offs.

However, DRT cannot hear claims of damages or deficiency of services or breach of contract or criminal negligence on the part of the lenders. Thus, the DRT followed the efficient legal procedure emphasizing speedy disposal of the cases and fast implementation of the final order.

2.Lok Adalat- Lok Adalat is a forum where disputes/cases pending in the court of law or at a pre-litigation stage are settled under Legal Services Authorities Act, 1987. Lok Adalat has proved as an effective institution for settlement of dues in respect of smaller loans. The Indian Banks Association (IBA) has been issuing guidelines to member institutions for taking up of cases for settlement with Lok Adalats. The ceiling on the amount of coverage under Lok Adalats would be Rs.10 lakhs and above. This scheme includes both suits filed and non-suit filed accounts in the doubtful and loss category. Lok adalat were functioning at different levels, which are State level, High court level, District level and Taluk level and conducted at the equal interval which given below.

- Mega Lok Adalats at the District Court Centres - At least once in every month
- Regular Weekly Lok Adalats at all Court Centres- Every week subject to the convenience of the DLSA/TLSCs.
- National Lok Adalat - To be conducted bi -monthly on Second Saturdays and other days as directed by the National Legal Services Authority (NALSA).

3.Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002- The SARFAESI Act was passed in the year 2002 as per the recommendation of the Narasimham[13] committee II. It recommended for enacting a new legislation in order to regulate the securitization and reconstruction companies and to empower the banks and financial institutions to take possession of the secured assets directly from the borrowers and dispose it to realize the due without delay of legal proceedings. It came into force on 17th December, 2002. SARFAESI Act facilitates to realize long-term assets, manage problems of liquidity and asset liability mismatches and to improve recovery by exercising powers to take possession of securities. According to this ordinance, if corporate borrower defaults on its loans for 180 days, the Banks/FIs can intimate the borrower for the repayment by issuing a notice. Bank/FIs can proceed with the acquisition of assets in 60 days of the non-repayment after the issue of notice. The Bank further proceed to issue a possession notice under section 13 (4) of the Act, then it will proceed to take physical possession of the property under Section 14 of the Act through District Magistrate; the Magistrate Court appoints an Advocate

[13] The Report on Banking Reforms, 1991, submitted to the Government of India

Commissioner to take physical possession of the property and the Bank officials to accompany him. Then the Bank will proceed to sell the property/secured interest and the Bank is supposed to strictly comply with the provisions of the Act. The stringent provisions under SARFAESI Act, 2002, one can undermine the rights of the borrower and his right to property. According to the Report on Trend and Progress of Banking in India, 2012-13, among the three channels for NPA recovery, the largest amount was recovered through the SARFAESI Act. NPAs recovered through this Act accounted for about 80 per cent of the total amount of NPAs.

4. Asset Reconstruction Companies- Asset reconstruction companies are set up, and registered with the Reserve Bank of India (RBI) as a securitization company and reconstruction company to acquire distressed secured financial assets. The underlying idea of bringing ARCs under SARFAESI Act is to enable banks to clean up their balance sheets, pass on the burden of recovery to an agency which could help faster resolution of NPAs. SARFAESI Act permits ARCs to purchase financial assets through an agreement with the banks. Banks and Financial institutions may receive bonds/ debentures in exchange for NPAs transferred to the ARCs. Certain value can be paid in the form of Security Receipts (SRs). Latest regulations instruct that ARCs should give 15% of the value of assets in cash. Bond or debentures can have a maximum maturity of six years and should have a rate of interest at least 1.5% above the RBI bank rate. SARFAESI Act stipulates various measures that can be undertaken by ARCs for asset reconstruction.

5. Insolvency And Bankruptcy Code- A comprehensive bankruptcy framework is a crucial factor for the strong Banking sector. Insolvency and Bankruptcy Code, 2016 was drafted by a specially constituted 'Bankruptcy Law Reforms Committee' (BLRC) under the Ministry of Finance. IBC is the single law that deals with insolvency and bankruptcy by consolidating and amending various laws relating to reorganization and insolvency resolution. The IBC covers individuals, companies, and partnership firms. The four pillars of the IBC 2016 are Insolvency Professionals, Information utilities, Adjudicating authorities and Insolvency and Bankruptcy Board of India.[14]

[14] https://www.researchgate.net/

CHAPTER-III
STATUTORY PROVISIONS

IMPLEMENTATION OF DEBT RECOVERY LAWS PROVISION WITH DIFFERENT ACTS

3.2 SICK INDUSTRIAL COMPANIES (SICA) ACT, 1985.

The Sick Industrial Companies Act of 1985 was an important part of legislation dealing with the issue of uncontrolled industrial sickness in India. The Sick Industrial Companies Act was enacted in India to detect unviable ("sick") or potentially sick companies and to help with their revival, if possible, or their closure, if not. This measure was taken to release investment locked up in hopeless companies for productive use elsewhere. The Sick Industrial Companies Act was enacted in 1985 to address a chronic problem in the Indian economy i.e., the industrial sickness. The act defined a sick industrial unit as one that had existed for at least five years and had incurred accumulated losses equal to or exceeding its entire net worth at the end of any financial year.[15]

Factors of Industrial Sickness

The Sick Industrial Companies Act identified a number of internal and external factors responsible for this epidemic. Internal factors within the organizations included mismanagement, overestimation of demand, wrong location, poor project implementation, unwarranted expansion, personal extravagance, failure to modernize and poor labor-management relationships. External factors included an energy crisis, raw materials shortage, infrastructure bottlenecks, inadequate credit facilities, technological changes, and global market forces.

Industrial Sickness and its impact upon the Economy

Widespread industrial sickness impacts the economy in a number of ways. It can result in loss of government revenue, tying up scarce resources in sick units, increasing non-performing assets held by banks and financial institutions, increasing unemployment, loss of production and poor productivity. SICA was implemented to correct the adverse socioeconomic consequences.

[15] SICA, 1985

SICA Legislation and Provisions

An important SICA provision was the establishment of two quasi-judicial bodies–the Board for Industrial and Financial Reconstruction, and the Appellate Authority for Industrial and Financial Reconstruction. BIFR was set up as an apex board to spearhead handling the industrial sickness issue, including reviving and rehabilitating potentially sick units and liquidating non-viable companies. AAIFR was set up to hear appeals against BIFR orders.

Revocation of the Sick Industrial Companies Act

SICA was repealed and replaced by the Sick Industrial Companies (Special Provisions) Repeal Act of 2003, which diluted some SICA provisions and plugged certain loopholes. A key change in the new act was that apart from combating industrial sickness, it aimed to reduce its growing incidence by ensuring that companies did not resort to a sickness declaration merely to escape legal obligations and gain access to concessions from financial institutions.

The repeal of SICA came into full effect on December 1, 2016. It was fully repealed, in part, because some of its provisions overlapped with the Companies Act of 2013. The Companies Act included the creation of the National Company Law Tribunal and the National Company Law Appellate Tribunal. The NCLT can hear cases related to the management of a company, mergers, and rehabilitations of companies, among other issues. Adding to the NCLT's authority is the Insolvency and Bankruptcy Code of 2016, which states that corporate insolvency processes can be initiated before the NCLT.

Magnitude of Industrial Sickness

The extent of the problem of sickness of Indian industry has been increasing in serious proportion. Economic Survey 1989-90, in this connection observed that "Growing incidence of sickness has been one of the continuing problems faced by the industrial sector of the country. Substantial amount of loanable funds of the financial institutions is locked up in sick industrial units causing not only wastage of resources but also affecting the heavy growth of the industrial economy". At the end of March 2003, there were nearly 1.71 lakh sick or weak industrial units on the rolls of scheduled commercial banks. More than 1.67 lakh of these units were in the small scale (SSI) sector which constitute about 98 per cent of their total number. Again total number of non-small scale units covered under SICA, 1985 was 3,396 at the end of March 2003. Total outstanding bank credit locked in all these 1.71 lakh sick units

was to the extent of Rs 34,815 crore out of which the amount involved in SSI sick unit was Rs 5,706 crore. Again the amount of outstanding credit locked in non-SSI sick unit was Rs 29,109 crore.

The total number of non-SSI weak units (not covered under SICA) stood at 420 at the end of March, 1997 and their amount of outstanding credit was to the extent of Rs 1,564 crore. The RBI statistics shows that at the end of March 1988, every seventh small-scale unit of the country was sick.. At the end of March 2003, although small scale industries accounted for 98.0 per cent of the total sick and weak units but their share in the aggregate locked up bank credit was only 16.4 per cent. In respect of sick SSI units, the bank credit outstanding at the end of September 1991, accounted for nearly 16.2 per cent of the total credit to small scale industries. The ratio was 17.9 percent for sick or weak large and medium scale industrial units.

Out of 2427 non-SSI sick and weak industrial units, 1896 (i.e., about 81 per cent) units were in the private sector which locked 72.7 per cent of the total outstanding bank credit to non-SSI sick or weak units. If we look at industry-group wise then it can be seen that the incidence of sickness and weakness in the non-SSI sector in terms of credit outstanding was highest in textiles (i.e., 25.0 per cent) followed by engineering (18.3 per cent), chemicals (7.0 per cent), iron and steel (6.2 per cent), electrical (5.5 per cent) and paper (4.5 per cent).

As per the available information compiled by RBI, the number of sick and weak units as at the end of March 2003, both SSI and non-SSI, declined to 1.71 lakh from 2.65 lakh as at the end of March 1996. However; the amount of outstanding bank credit increased marginally to Rs 34,815 crore as at the end of March 2003 from Rs 13,748 crore as at the end of March 1996. As on 31st March 2003, 3396 non-SSI sick units accounted for 83.6 per cent of the total outstanding bank credit. SSI sick units accounted for the balance 16.4 per cent.

However, the problem of industrial sickness has been growing over the years. Thus the total number of sick/weak units in the large and medium sector which was 2,269 in 1990 gradually rose to 4,454 at the end of March 2008.

Outstanding bank credit against those units also increased from Rs 6,926 crore to Rs 32,283 crore over the same period. Besides, total number of sick/weak units in the SSI sector which

was 2, 18,828 at the end of March 1990 gradually declined to 85,591 at the end of March 2012.

Again the outstanding bank credit against those units rose from Rs 2,427 crore to Rs 6,790 crore during the same period. In the meantime, the Reserve Bank of India revised the definition of sickness of MSE units in November 2012. According, total number of sick/weak small scale units reached to 2, 49,903 at the end of March 2013 and the outstanding amount of bank credit due against these units was Rs 12,800 crore.'

Another serious problem that has been revealed from the viability status of these sick units is that the number of non-viable units is increasing at a very high rate. At the end of March 1991 out of the total number of 22.4 lakh sick units, only 17081 units are identified as viable units which constituted nearly 7.60 per cent of the total and the remaining 91.7 per cent units are identified as non-viable sick units. It is further found that the viability of sick units was lower in the SSI sector (7.3 per cent) than the non SSI sector (40.3 per cent). Thus about 91.7 per cent of small sick units were not viable and the bank credit blocked in these units was to the extent of 71.5 per cent.

Again out of the total 2377 non-SSI sick units viability study was completed for 1915 units and out of which 941 were found viable and 974 units were found as non-viable. However, the nursing programme covered about 82 per cent of the viable units of SSI sector and about 61 per cent of the viable units of non-SSI sector.

Recent viability study of these sick industrial units reveals that of the 2, 49,903 sick MSE units at the end of March 2013, only 4,599 units with outstanding bank credit of Rs 3,224 are found viable and another 12,779 MSE units with outstanding bank credit of Rs 3,926 crore are potentially viable. Thereby, the remaining 2, 32,525 MSE units with outstanding bank credit of Rs 5,650 crore are classified as non-viable.

Analysis of Sickness according to industry:

Industry-wise study of sickness reveals that among the non-SSI weak units, weakness is very much deep rooted among five industries, i.e., textile, electrical, iron and steel, engineering and chemicals. These five industries accounted for more than 58 per cent of the total outstanding bank credit locked in this category of industries.

Among the non-SSI sick and weak units, five industries, i.e., textiles, paper, iron and steel, engineering and chemicals accounted for locked up total bank credit of Rs 5,956 crore which was about 59.0 per cent of the total outstanding bank credit locked in this category of units. Moreover, in the entire non-SSI category of industries, total amount of bank credit locked up in 2,368 sick and weak units was Rs 10,178 crore as on 31st March, 1997.

Sickness in SSI Sector:

As on 31st March, 1999, there were 3.06 lakh sick SSI units. These units were those who obtained loans from banks. An amount of Rs 4,313 crore was blocked in these units. Of these only 18,692 units were considered potentially viable by the banks with their outstanding bank credit amounting to Rs 377 crore. The banks had identified 271,193 units with outstanding bank credit amount to Rs 3,746 crore as non-viable.

Study of Industrial Sickness according to the state:

It is very important to study the position of industrial sickness according to states in India. Regarding the non- SSI sick units, Maharashtra is having the maximum number of 340 units followed by West Bengal (216), Andhra Pradesh (225), Gujarat (174), Uttar Pradesh (170), Tamil Nadu (141) and Karnataka (110).

It is also observed that these seven industrially advanced states jointly constitutes 70.6 per cent of the total number of non-SSI sick units and 74.2 per cent (Rs 6,388 crore) of total outstanding bank credit (Rs 8,614 crore) of Non- SSI sick units as on 31st March, 1997.

Thus, the degree of industrial sickness also varied between different regions of the country. Industrial sickness is very much acute in the states like Maharashtra and West Bengal. These two states accounted nearly 28.5 per cent of the total number of sick units in the non-SSI category and 30.7 percent of the total credit outstanding.

Again in respect of SSI sick units, Maharashtra and West Bengal accounted about 30.9 percent of the total sick units under this category and the total credit outstanding in these two states at the end of March 1997 was to the extent of Rs 1,136 crore.

These regions are facing concentration of sickness because these regions are characterized by the existence of industries in textiles, engineering goods and jute which are generally very much affected by industrial sickness.

Since its beginning in May 1987 and till the end of December 2006, BIFR, which was set up to resolve the problem of industrial sickness, has received 6,991 references including 296 Central and State Public Sector Undertaking (CPSUs and SPSUs), under the Sick Industrial Companies (Special Provision) Act, 1985.

Out of the 296 references of public sector undertakings, 213 (91 CPSUs and 122 SPSUs) registered up to December 2006, rehabilitation schemes were sanctioned for only 28 CPSUs and 26 SPSUs. It was recommended that 29 CPSUs and 40 SPSUs be wound up, 9 CPSUs and 14 SPSUs were declared no longer sick.

The gross disposal of cases by BIFR which declined from 188 in 1997 to 141 in 1998 had gone up to 179 in 1999 and further to 385 in 2000 and 293 up to December 31, 2001 due to an increase in the number of Benches to 3 from July 1999. As on March 31, 2006, the gross disposal of cases was 3,426. During 2006-07, as on Sept. 30, 2006, the gross disposal of cases reached the level of 4,115.

Finally, as per information compiled by RBI from commercial banks, as on 31st March 2001, there were 252,947 sick/weak units consisting of 2,49,630 units in the SSI sector and 3,317 units in the non-SSI sector.

Among these 3,317 units, the private sector, public sector and joint/co-operative sector accounted for 2,942 units, 255 units and 106 units respectively. The number of sick SSI units has decreased from 3, 04,235 units to 2, 49,630 units.

But the number of sick/weak units in the non-SSI sector has increased from 3,164 to 3,317. However, there is an overall increase of 10.4 per cent in total number of non-SSI sick/weak units as compared to that of previous year. The total bank credit blocked in the sick units has increased from Rs 23,656 crore (as on March 31, 2000) to Rs 25,775 crore (as on March 31, 2001).

They accounted for around 6.7 per cent of the total bank credit and 13.3 per cent of the total bank advances to industry. The small scale sector has Rs 4,506 crore (17.5 per cent) blocked in its units while the non-SSI sector has Rs 21,270 crore (82.5 per cent). Bank credit blocked

in the non-SSI sector in private, public and joint/co-operative units was Rs17,705 crore, Rs 2,986 crore and Rs 537 crore Rs 42 crore respectively.[16]

Elements of Industrial Sickness:

The causes which are mostly responsible for industrial sickness in India are broadly classified into external and internal causes.

The following are some of the internal and external causes of industrial sickness:
Internal Causes:
The internal causes which include various factors related to the industrial units itself include:
(a) Faulty location of industrial unit;

(b) Defective planning of the production in the absence of market analysis;

(c) Inaccurate selection of plants and machineries and adoption of obsolete technology particularly in the small scale sector;

(d) Acute financial problem due to weak equity base and lack of adequate support from banks;

(e) Incompetent entrepreneurs having no knowledge about costing, marketing, accounts etc;

(f) Labour problems like strikes and lock-outs arising from strained industrial relation over the issues like wages, bonus, industrial discipline etc.; and

(g) Management problems resulting from managerial decisions in connection with production, marketing, finance, materials, maintenance, personnel management etc.

External Causes:
The external causes of industrial sickness include:
(a) Power cuts imposed by the state governments;

(b) Shortage of raw materials and other inputs due to its inconsistent supply;

[16] https://www.economicsdiscussion.net/

(c) Recession in the market resulting from steep fall in the quantum of demand for industrial products aggravated by credit restraints and resulting in unsold stocks and losses to industrial units; and

(d) Frequent changes in the government policy in connection with industrial licensing, taxation, power tariff, imports, exports etc. All these external factors are equally responsible for growing industrial sickness among the industrial units of the country.

In 1984, the Tiwari Committee submitted its report on industrial sickness in India. In the report, it was identified the faulty management was the most important cause of sickness. Thus the committee concluded that, “Taking into account the finding of all the studies a broad generalization regarding important causes of industrial sickness emerges. It is observed that the factor most often responsible for industrial sickness can be identified as ‘management’. This may take the form of poor production management, poor labour management, lack of professionalism, dissensions within management, or even dishonest management.

The Economic Survey, 1996-97, while underlining the causes of industrial sickness, observed that “The reasons for industrial sickness are internal factors such as project appraisal deficiencies, project management deficiencies and several external factors like shortage of raw materials, power crisis, transport and financial bottlenecks, changes in Government policy, increase in overhead cost etc. Marketing problems in the form of market saturation, product obsolescence and demand recession are also to be held responsible.”

Results of Industrial Sickness:

Industrial sickness has been resulting in serious consequences in an under-developed labour-surplus economy like India,

These consequences of industrial sickness include:

(a) Aggravating unemployment problem through the closure of industrial units;

(b) Widespread labour unrest due to closure, threatening industrial environment of the country;

(c) Wastage of huge resources invested in these sick units;

(d) Creating disincentive among the entrepreneurs and investors due to widespread closure of units;

(e) Creating adverse impact on the other related units through backward and forward linkages;

(f) Causing huge financial losses to banks and other term lending institutions and locking up huge funds into these sick industrial units; and

(g) Resulting huge loss of revenue to Centre, State and Local governments.

Reformative Measures to Deal with the Problem of Industrial Sickness:

Industrial sickness is a serious problem faced by the country at large. This has affected the health of industries working under both public and private sector. Thus in the meantime various incentives, conclusions, doles etc. have been offered to these sick units for their revivals.

Various measures for revival and rehabilitation are given which are as follows:

(i) Measures Taken by Banks:

In order to revive and rehabilitate the sick industrial units, the commercial banks granted various concessions of these units which include:

(a) Granting additional working capital;

(b) Recovering proper moratorium on payment of interest and

(c) Freezing a part of the understanding in the accounts of these units.

Besides, banks have also taken various steps on the organisational front by setting up sick industrial undertaking cell, state-level inter-institutional committees, a standing coordinating committee (constituted by RBI) from coordinating various issues related to commercial banks and term-lending institutions and a special cell within rehabilitation finance division of IDBI.

(ii) Measures Taken by the Government:

In order to deal with the problem of industrial sickness, the government laid down various guidelines in October, 1981 for the guidance of administrative machineries.

The main features of these guidelines are:

(a) The administrative ministries in the government have been given specific responsibility for taking remedial action and preventing industrial sickness.

(b) In order to take corrective action for preventing incipient sickness, the financial institutions will strengthen the monitoring system and may take over the management of unit for its revival,

(c) Whenever the banks and other financial institutions fail to prevent sickness of a sick unit thereafter reporting the matter to the government they recover their outstanding dues with normal banking procedures.

(d) In order to nationalize the undertaking, the management of the unit may be taken over under the provisions of Industries (Development and Regulation) Act, 1951 for six months period.

In order to provide management support and financial assistance through different banks and financial institutions, the Government has taken over management of 15 industrial undertakings on January 1, 1989 under the provision of Industries (Development and Regulation) Act. But this measure failed to revive these sick units.

Concession Provided by the Government:
The Government has also made provision for certain concessions for assisting the revival process of sick units. These include:

(a) Amendment of Income Tax Act in 1977 by adding the section 72A for giving tax benefit to healthy units taking over sick units for its revival;

(b) Introduction of margin money scheme for the revival of sick units in January 1982.

Later on in June 1987, a liberalised margin money scheme was introduced for reducing the sickness of small scale sectors where the amount of assistance was raised from Rs 20,000 to Rs 50,000.

Industrial Reconstruction Bank of India:

In order to revive and rehabilitate sick units, the Industrial Reconstruction Corporation of India (IRCI) was set up by the Government with its authorised capital of Rs 2.5 crore. This corporation was set up for providing financial assistance, managerial and technical assistance

to the sick units directly and also for securing financial assistance from other financial institutions and government agencies for the revival of sick units and also to provide merchant banking services for amalgamation, merger etc.

Again on March 20, 1985 the IRCI was converted into a statutory corporation and renamed it as Industrial Reconstruction Bank of India (IRBI) for rehabilitating sick units with the authorised capital of Rs 200 crore and paid up capital of Rs 50 crore. At the end of March 1991, total amount of assistance sanctioned by IRBI was Rs 1,262 crore out of which Rs 923 crore was disbursed.

Steps for Early Detection of Sickness:

In order to detect sickness of those companies not covered under SICA, 1985 at an early stage, the Reserve Bank has taken various corrective steps such as advising "the banks to take necessary steps in respect of any industrial units and monitoring certain industries through its standing committees where sickness is widespread.

Excise Loan:

In October 1989, the Government introduced a scheme for the grant of excise loan to sick and weak industrial units which were further liberalised in September 1990. As per this scheme the selected sick units will become eligible for excise loan upto 50 per cent of the excise duty paid by the unit for last 5 years.[17]

Board of Industrial and Financial Reconstruction (BIFR):

The Board for Industrial and Financial Reconstruction (BIFR) was set up in January 1987 under the sick Industrial Companies (Special Provision) Act, 1985 (SICA) in order to save potentially viable companies. The decision of BIFR is final as it has its binding on all concerned.

From 15th May 1987, the Board came into force. In December 1991, public sector enterprises were brought within the purview of BIFR through an amendment of the SICA.

Since the inception of Board and upto the end of September-2006, the BIFR has received 6,991 references under section 15 of SICA. Out of these 1,573 cases were rejected on scrutiny. Of the 5,418 references registered, 1,707 cases were dismissed as not maintainable,

[17] https://www.investopedia.com/

revival schemes were also sanctioned or approved in 760 cases and 1,303 cases were recommended to the concerned high Courts for winding up. 485 companies are declared no longer sick and discharged from the purview of SICA on their net worth turning positive after implementation of their scheme.

The Board also ordered the sale of one unit. Moreover, draft schemes were formulated and circulated in 36 cases and show cause notices were issued for winding up in respect of 65 cases. At the end of September 2006, the proportion of cases effectively decided to those registered by the BIFR was about 78.5 per cent and the ratio of companies on the revival path to those on the path of liquidation was estimated at 2: 1.

Since its inception in May 1987 and till the end of September 2006, the BIFR has received 6,991 references under SICA, 1985. The gross disposal of cases by BIFR declined from 188 in 1997 to 141 in 1998. Moreover it rose to 3,318 in 2004. As on March 31, 2006, the gross disposal of cases was 3,426. During the year 2006-07, as on September, 30, 2006, the gross disposal of cases reached to 4.115.

The BIFR has so far received 7,158 references under the SICA, 1985. These references include 297 from Central and State public sector undertakings (CPSUs and SPSUs). Out of the total references received, 5,471 were registered under Section 15 of the SICA, 1,857 references were dismissed as non-maintainable under the Act, 825 rehabilitation schemes were sanctioned and 1,337 companies were recommended to be wound up. Of the 297 references for public sector undertakings, the references of 92 CPSUs and 122 SPSUs were registered upto December 31, 2007.'

The review further observed that the maximum sick companies registered were from the western region (563), followed by southern region (558 cases), the northern region (447 cases) and the eastern region (285 cases). Among the States, Maharashtra had the majority of cases at 290, followed by Andhra Pradesh (250), Uttar Pradesh (191) and West Bengal (177).

About 47 per cent of the sick companies registered with the board were from these four states. According to the review, the maximum impact of industrial sickness is felt in the textile sector with 301 cases being reported from that sector alone, followed by paper and pulp sector with 138 and chemicals with 118 cases.

The Reserve Bank has been placing emphasis on a systematic approach to the detection of industrial sickness at the incipient stage and timely formulation of rehabilitation packages in respect of those sick/weak non SSI units which are found to be potentially and commercially viable.

The RBI continues not only to monitor the performance of individual banks through their half-yearly returns but also guide the banks and financial institutions in implementation of sanctioned rehabilitation packages.

Conclusion to Industrial Sickness:

Thus considering the gravity of the problem of industrial sickness, the government has taken various measures. However, some critics observed that the coverage of SICA 1985 is not adequate and some unscrupulous entrepreneurs are trying to turn their units sick deliberately for extracting various concessions and reliefs.

Thus government agencies should be careful enough in detecting in genuine sick industrial units and to start revival process in correct time.

The BIFR was recently under fire from the Parliamentary Standing Committee on Industry for "having failed to serve the purpose for which it was created." It has called for immediate restructuring of the BIFR as well as National Renewal Fund (NRF) so both could deal with growing industrial sickness in an effective manner.

The committee is of the opinion that because of delayed decisions taken by the BIFR, banks stopped giving working capital to these PSUs, thus compounding the crisis. The Committee observed that 26 loss making PSUs were referred to BIFR. It added that the board took too much time to take decisions on these companies.

The sub-committee has called for speeding up work of the BIFR to make it cost effective. It has found that at present the process followed by the BIFR was time consuming and thus was proving costly for workers and trade unions. It has suggested decentralising the BIFR with the creation of regional branches in the states, where the incidence of industrial sickness is quite high.[18]

[18] https://www.bcasonline.org/

3.3 RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (RDDBFI) ACT, 1993

Recovery of Debts Due to Banks and Financial Institutions (RDDBFI Act), 1993 is an Act to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to Banks and Financial Institutions and for matters connected therewith or incidental thereto.

The "Recovery of Debts because of Bank and Financial Institution Act, 1993 under this Act Debt Recovery Tribunals and Debt Recovery Appellate Tribunals were set in the mood for recouping stressed assets for banks and financial institutions. The councils and investigative tribunals were not bound to Civil Procedure Code and were guided on the Principles of Natural Justice. These councils could direct their very own method like it had the ability to choose about its place of sitting. Any methodology before these tribunals was considered to be Legal Proceedings.

The following are some provisions contained in the Act:

1. Composition of Tribunal: DRTs comprised of one individual officer known as Presiding Officer, who was named by notice of the Central Government. The Presiding Officer held the renowned office for a term of 5 years or until he accomplishes the age of 62 years whichever is prior.

2. The jurisdiction of tribunals extended, where the amount of debt to any bank or financial institution or to a consortium of bank and financial institution is ₹ 10 lakh or as notified by the central government.

3. The procedure and powers of tribunals and appellate tribunals, the tribunals and re-appraising tribunals were not bound by the Civil Procedure Code and were guided by the Principles of Natural Justice. Banks or financial institutions making application to a tribunal or an intrigue may approve a legitimate specialist or any of its officials to go about as managing official and each individual so approved by it might display its case before the council and redrafting tribunal.

4. Modes of Recovery of Debts, after disposal of the application, the tribunals

issue a certificate to the recovery officer to recover the amount. The Recovery Certificate is conclusive and the parties could not dispute or make an objection.

5. The debts to be recovered should have arisen during the course of business activity. Thus the claim of the bank against its employee will not be maintainable. The law of limitation did apply as it was in the cases of a suit in courts.[19]

Debt recovery tribunals

The Tribunal was created in the year 1993, as a result of the Recovery of Debts Due to Banks and Financial Institutions Act. It was established to facilitate speedy trial of the cases and swift execution of verdicts. These tribunals are the quasi-judicial institutions set up to process the legal suits filed by banks against defaulting borrowers. Recovery of dues to the banks had become a serious problem as large amount of public money were blocked because of the non-performing assets. Such tribunals were supposed to exercise their jurisdiction, power and the authority conferred on them as provided under Chapter III of the Act. Limitations as given under the Limitations Act were also applicable to the DRT. According to Section 18 of the Act, no other court except the High Court and Supreme Court (exercising jurisdiction under Article 226 and Article 227 of the Constitution of India) will have jurisdiction to adjudicate matters concerning recovery of debts due to banks and financial institutions. However, the Tribunal can only take up matters having a value more than `10 lakh. Appeals filed against the proceedings initiated by secured creditors under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act can also be taken up by the Debt Recovery Tribunal.

The Central Government has notified 33 tribunals in the following regions. Kolkata with three tribunals, Allahabad, Delhi with three tribunals, Jaipur, Bangalore, Ahmadabad, Guwahati, Patna, Chennai with two tribunals, Mumbai with three tribunals, Hyderabad, Jabalpur, Ernakulam, Chandigarh, Lucknow, Aurangabad, Nagpur, Cuttack, Ranchi, Visakhapatnam and Coimbatore.

Objective of the Debt Recovery Tribunal

The main focus or aim of the Tribunal is to

[19] Bare act, recovery of debts due to banks and financial institutions

1. Avoid delay in the adjudication proceeding.

2. To facilitate speedy recovery of assets.

Constituents of a Debt Recovery Tribunal

A Debt Recovery Tribunal is headed by a Presiding Officer, who acts as the Judge of the Tribunal. It also consists of a number of staff in the Registry. The Registry is responsible for accepting applications and filing of cases with the DRT. The Registry is headed by a Registrar. It is the Registrar's mandate to perform the functions of a Judicial Officer till the case is transferred to the Presiding Officer for the final hearing. The Registrar is assisted by an Assistant Registrar. The Act also accounts for the post of Recovery Officers who are to execute the decree.

Duties and Powers of the Recovery Officer

1. Execute the final decree

2. Post the final decree, to realise the debt amount and deposit it back with the bank

3. Conduct public auction according to Section 25 to 28 of the RDB Act.

4. The merits of the Certificate, or the amounts mentioned in the Certificate cannot be agitated before the Recovery Officer.

5. The Recovery Officer does not have the powers to add or remove people whose onus it is to satisfy the certificate. The Recovery Officer can, however, enlarge the area of persons from whom he may attempt to satisfy the Certificate, subject to provisions of the Rules, i.e. the new persons must be holding sums on behalf of the Certificate debtor.

Duties of the Registrar

1. Registry accepts all the original applications and securitisation applications, and files them

2. The Registry passes the file to the Registrar, who performs further scrutiny

3. He performs the initial functions of the Tribunal in the primary stage of the Course of Action.

4. The Registrar has the duty to issue summons, Show-Cause Notices and make the defendants aware of the suit filed against them

5. The Registrar also collects the reply to the issued Show-Cause notices.

Procedures followed by the Debt Recovery Tribunal

1. Section 19 of the RDB Act deals with the procedure for filing a case with the DRT

2. An application can be filed in the Tribunal on a case, within the jurisdiction of it, on the recovery of debts from a person or an entity

3. If two or more banks have a case on the same matter, the latter banks can join the former or first bank (on the filing of application)

4. A fee is prescribed by the Act, which shall be paid by the applicant. The minimum fees to file an application is 12,000 and the maximum is 1, 50,000.

DRT Proceedings in a Nutshell

Following are the proceedings for the Tribunal:

1. An original application along with the documents of evidentiary value and the required fees is filed with the Registry.

2. The Registry reviews the application, checks for any flaws, accepts or rejects it.

3. The file then passes to the Registrar for further scrutiny of the application.

4. If the application is registered, a summons is issued by the Registrar.

5. If the defendant does not appear, the case becomes ex-parte.

6. Else, the defendant is required to file a Written Statement within 90 days of the summons.

7. Proof-Affidavit is filed by the applicant.

8. A Hearing Date is set by the Registrar under the directions of the Presiding Officer.

9. A Stay Petition may be served by the defendant.

10. Counter-Proof Affidavit is filed by the defendants.

11. Final Hearings on the case will be done

12. The Final Order/Decree is made by the Presiding Officer.

13. A Recovery Certificate made by the Tribunal will be passed on to the Recovery Officer of the Tribunal who has the responsibility of recovering the amount and hand it over to the bank.

Facts Concerning Procedure Followed by the DRT

1. On receipt of an application, the Tribunal shall issue summons, requiring the defendant to show cause within 30days of the service of summons as to why the relief prayed for should not be granted. S.19 (4).

2. A Counter–claim can be filed by the applicant through a written statement against the application and the acts of the applicant, attached with the necessary documents of evidentiary value.

3. Sec.19 (12) - The Tribunal shall give an interim order in the form of an injunction, stay or attachment.

4. The tribunal can appoint a Receiver. Section 19 of the RDB Act clearly lines up the procedure to be followed - initially by the applicant and then by the Tribunal in the process of dispensing cases.

Debt Recovery Appellate Tribunal

The Debt Recovery Appellate Tribunal is also established as a result of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. The DRAT has the appellate jurisdiction on all matters concerning the recovery of debts in India. There are currently 5

DRATs in India. They are in Mumbai, Delhi, Chennai, Kolkata and Allahabad. The Judge in a DRAT is addressed as Chairperson. An appeal can be made against a decision by the DRT within 45 days from the date of passing of the decree, by depositing 75 per cent of the claim or any such amount as fixed by the DRT.[20]

3.4 SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITIES INTEREST (SARFAESI) ACT, 2002

The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 is an Indian law. It allows banks and other financial institution to auction residential or commercial properties (of Defaulter) to recover loans. The first asset reconstruction company (ARC) of India, ARCIL, was set up under this act. Under this act secured creditors (banks or financial institutions) have many rights for enforcement of security interest under section 13 of SARFAESI Act, 2002. If the borrower of financial assistance makes any default in repayment of loan or any installment and his account is classified as Non-performing Asset by secured creditor, then secured creditor may require before expiry of period of limitation by written notice.

It is the SARFAESI Act that brought a greater change in the debt recovery scenario in the country. One of the important changes that SARFAESI has brought is that it allowed the banks to take over possession from the defaulter, without going through the stringent court procedure, once the loan account has been categorised as a Non-Performing Asset. The SARFAESI Act allows the Secured Creditor to sell or lease the secured asset, or appoint a Receiver to take care of the asset which is classified as a NPA. The bank can take the possession of the secured asset within 60 days of serving the notice to the defaulter with the assistance of the Chief Judicial Magistrate. Under the SARFAESI, if the loan account has been classified as a NPA, the authorised officer from the bank can start the proceedings. The bank can demand the full loan amount be repaid along with interest payments, even if the borrower has agreed to pay the overdue amount. Rather than regularising the account, the bank seeks that the entire amount be payable and the bank advances are always repayable on demand. But, nothing can stop the bank from halting the proceedings and continuing with the loan account if it has been regularised by the borrower by paying the over-due amount. The SARFAESI Act is applicable for all the Scheduled Commercial Banks. However,

[20] RDDBFI Act, 1993

Cooperative Banks are not allowed to invoke their powers using SARFAESI Act after a Supreme Court ruling. An Amendment was made to the Act, which entitled the borrower to make an application of objection to the authorized officer of the bank before the 60 days' notice period allowed by the bank. Supreme Court in Mardia Chemicals Case upheld the Constitutional validity of SARFAESI Act but struck down Section 17(2) of the Act which provided for the deposit of 75 per cent of the claim before the appeal is admitted by the Tribunal. After the Supreme Court verdict, an amendment was made to the SARFAESI Act. According to this amendment, the secured creditor may be able to take over the possession of the property only if the reasons for non-acceptance of the objection raised by the borrower are furnished to him. If an asset has been taken over by the bank, then an application can be placed before the DRT without any deposits. On receipt of the application of objection, the bank has to reply back, within seven days to the borrower or defaulter explaining why the charges mounted shall persist. However, if the objection is rejected by the bank, the borrower or defaulter is free to approach the High Court by invoking Article 227 of the Constitution. If the rejection to the objection made by the bank is proper and satisfies the Writ Court, then the High Court may reject the writ application. If the total due amount is not realised by the sale of the secured asset, then the secured creditor is allowed to approach the Debt Recovery Tribunal.[21]

Working of SARFAESI

The SARFAESI Act, 2002 gives powers of "seize and desist" to banks. Banks can give a notice in writing to the defaulting borrower requiring it to discharge its liabilities within 60 days.

If the borrower fails to comply with the notice, the Bank may take recourse to one or more of the following measures:

1. Take possession of the security for the loan
2. Sale or lease or assign the right over the security
3. Manage the same or appoint any person to manage the same

The SARFAESI Act also provides for the establishment of Asset Reconstruction Companies (ARCs) regulated by RBI to acquire assets from banks and financial institutions. The Act

[21] Legislative.gov.in

provides for sale of financial assets by banks and financial institutions to asset reconstruction companies (ARCs). RBI has issued guidelines to banks on the process to be followed for sales of financial assets to ARCs.

Historical background

The previous legislation enacted for recovery of the default loans was Recovery of Debts due to Banks and Financial institutions Act, 1993. This act was passed after the recommendations of the Narsimhan Committee – I was submitted to the government. This act had created the forums such as Debt Recovery Tribunals and Debt Recovery Appellate Tribunals for expeditious adjudication of disputes with regard to ever increasing non-recovered dues. However, there were several loopholes in the act and these loopholes were mis-used by the borrowers as well as the lawyers. This led to the government introspect the act and this another committee under Mr. Andhyarujina was appointed to examine banking sector reforms and consideration to changes in the legal system .

This committee recommended to enact a new legislation for the establishment of securitization and reconstruction companies and to empower the banks and financial institutions to take possession of the Non-performing assets.

Thus, via the SARFAESI act, for the first time, the secured creditors were empowered to recover their dues without the intervention of the court.

However, as soon as the act was passed, its implementation was challenged in the court and this delayed its coming into force for 2 years.

Rights of borrowers

1. The SAFAESI act was able to provide the effective measures to the secured creditors to recover their long standing dues from the Non-performing assets, yet the rights of the borrowers could not be ignored, and have been duly incorporated in the law.
2. The borrowers can at any time before the sale is concluded, remit the dues and avoid losing the security.
3. In case any unhealthy/illegal act is done by the Authorized Officer, he will be liable for penal consequences.

4. The borrowers will be entitled to get compensation for such acts.

5. For redressing the grievances, the borrowers can approach firstly the DRT and thereafter the DRAT in appeal. The limitation period is 45 days and 30 days respectively

Conditions for enforcing the rights by the creditor

The Act stipulates four conditions for enforcing the rights by a creditor.

1. The debt is secured

2. The debt has been classified as an NPA by the banks

3. The outstanding dues are one lakh and above and more than 20% of the principal loan amount and interest there on.

4. The security to be enforced is not an Agricultural land.

Methods for recovery

According to this act, the registration and regulation of securitization companies or reconstruction companies is done by RBI. These companies are authorized to raise funds by issuing security receipts to qualified institutional buyers (QIBs), empowering banks and Fls to take possession of securities given for financial assistance and sell or lease the same to take over management in the event of default.

This act makes provisions for two main methods of recovery of the NPAs as follows:

1. Securitisation: Securitisation is the process of issuing marketable securities backed by a pool of existing assets such as auto or home loans. After an asset is converted into a marketable security, it is sold. A securitization company or reconstruction company may raise funds from only the Qualified Institutional Buyers by forming schemes for acquiring financial assets.

2. Asset Reconstruction: Enacting SARFAESI Act has given birth to the Asset Reconstruction Companies in India. It can be done by either proper management of the business of the borrower, or by taking over it or by selling a part or whole of the business or by rescheduling of payment of debts payable by the borrower enforcement of security interest in accordance with the provisions of this Act.

Further, the act provides Exemption from the registration of security receipt. This means that when the securitization company or reconstruction company issues receipts, the holder of the receipts is entitled to undivided interests in the financial assets and there is not need of registration unless and otherwise it is compulsory under the Registration Act 1908.

However, the registration of the security receipt is required in the following cases:

1. There is a transfer of receipt

2. The security receipt is creating, declaring, assigning, limiting, extinguishing any right title or interest in an immovable property.[22]

Asset Reconstruction Company

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has come into force with effect from 21st June, 2002 for creation / operation of the Asset Reconstruction Companies. The act aims on securitization and empowering banks and financial institutions to take the possessions of the securities and sell them without intervention of the court.

The Act aim to regulate securitization and reconstruction of financial asset and enforcement of security interest and for the matters connected with it.

a. Assets Reconstruction Companies means the company formed and registered under the Companies Act, 1956 for the purpose of asset reconstruction.

b. Every Asset Reconstruction Company shall make an application for registration to the Reserve Bank of India (RBI). The forms and manner of application are to prescribe by the RBI.

c. The RBI shall conduct inspection of books of accounts of the company for the purpose of considering the application for registration.

d. Asset Reconstruction Company having their own fund not less than 2 crore rupees or such other amount not less than 15 % of total financial assets acquired.

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[22] SARFAESI Act, 2002

e. Asset Reconstruction Company shall commence their business after obtaining the certificate of registration under SARFAESI Act, 2002.

Measures of Asset Reconstruction

The Asset Reconstruction Company may take following measures within the guidelines of Reserve Bank of India:

a. Change in or take-over of the management of the borrower.

b. Sale or lease of a part or whole of the business of the borrower.

c. Re-scheduling of payment of debts payable by the borrowers.

d. Enforcement of security interest in accordance with the provisions of the Act.

e. Settlement of dues payable by the borrowers.

f. Taking the possession of secured asset in accordance with the provision of the Act.[23]

Proposed amendments to the SARFAESI Act

The government had approved bill to amend the act. The Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Bill, 2011, amends two Acts — SARFAESI Act 2002, and Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (DRT Act). Via these amendments:

Banks and asset reconstruction companies (ARCs) will be allowed to convert any part of the debt of the defaulting company into equity. Such a conversion would imply that lenders or ARCs would tend to become an equity holder rather than being a creditor of the company.

The amendments also allow banks to bid for any immovable property they have put out for auction themselves, if they do not receive any bids during the auction. In such a scenario, banks will be able to adjust the debt with the amount paid for this property. This enables the bank to secure the asset in part fulfillment of the defaulted loan.

[23] https://www.indialawoffices.com/

Banks can then sell this property to a new bidder at a later date to clear off the debt completely. However lenders will be able to carry this property on their books only for seven years, as per the Banking Regulation Act, 1949.[24]

3.5 CORPORATE DEBT RESTRUCTURING (CDR)

Corporate Debt Restructuring is a scheme evolved by the Reserved Bank of India (RBI) through a circular issued on 23rd August, 2001 for implementation by banks and Financial Institutions (FIs) for realisation of amount of debt from the debtors who are not able to pay the amount in full.

It is based on a voluntary agreement between the debtor & creditor (DCA) or the creditor & creditor (ICA) whereby approval of 75% creditors i.e. Super Majority is required. It covers the multiple banking accounts and consortium or syndication of accounts where aggregate outstanding is Rs. 100 million.

The objective of the Corporate Debt Restructuring (CDR) framework is to ensure timely and transparent mechanism for restructuring the corporate debts of viable entities facing problems, outside the purview of BIFR, DRT and other legal proceedings, for the benefit of all concerned. In particular, the framework will aim at preserving viable corporates that are affected by certain internal and external factors and minimize the losses to the creditors and other stakeholders through an orderly and coordinated restructuring programme.[25]

Structure of CDR

CDR system in the country will have a three tier structure:

- CDR Standing Forum and its Core Group
- CDR Empowered Group
- CDR Cell

CDR Standing Forum

The CDR Standing Forum would be the representative general body of all financial institutions and banks participating in CDR system. All financial institutions and banks

[24] https://legislative.gov.in/
[25] https://blog.ipleaders.in/

should participate in the system in their own interest. CDR Standing Forum will be a self-empowered body, which will lay down policies and guidelines, and monitor the progress of corporate debt restructuring. The Forum will also provide an official platform for both the creditors and borrowers (by consultation) to amicably and collectively evolve policies and guidelines for working out debt restructuring plans in the interests of all concerned.

The CDR Standing Forum shall comprise of Chairman & Managing Director, Industrial Development Bank of India Ltd; Chairman, State Bank of India; Managing Director & CEO, ICICI Bank Limited; Chairman, Indian Banks' Association as well as Chairmen and Managing Directors of all banks and financial institutions participating as permanent members in the system. Since institutions like Unit Trust of India, General Insurance Corporation, Life Insurance Corporation may have assumed exposures on certain borrowers, these institutions may participate in the CDR system. The Forum will elect its Chairman for a period of one year and the principle of rotation will be followed in the subsequent years. However, the Forum may decide to have a Working Chairman as a whole-time officer to guide and carry out the decisions of the CDR Standing Forum. The RBI would not be a member of the CDR Standing Forum and Core Group. Its role will be confined to providing broad guidelines

The CDR Standing Forum shall meet at least once every six months and would review and monitor the progress of corporate debt restructuring system. The Forum would also lay down the policies and guidelines including those relating to the critical parameters for restructuring (for example, maximum period for a unit to become viable under a restructuring package, minimum level of promoters' sacrifice etc.) to be followed by the CDR Empowered Group and CDR Cell for debt restructuring and would ensure their smooth functioning and adherence to the prescribed time schedules for debt restructuring. It can also review any individual decisions of the CDR Empowered Group and CDR Cell. The CDR Standing Forum may also formulate guidelines for dispensing special treatment to those cases, which are complicated and are likely to be delayed beyond the time frame prescribed for processing.

A CDR Core Group will be carved out of the CDR Standing Forum to assist the Standing Forum in convening the meetings and taking decisions relating to policy, on behalf of the Standing Forum. The Core Group will consist of Chief Executives of Industrial Development Bank of India Ltd., State Bank of India, ICICI Bank Ltd, Bank of Baroda, Bank of India, Punjab National Bank, Indian Banks' Association and Deputy Chairman of Indian Banks'

Association representing foreign banks in India. The CDR Core Group would lay down the policies and guidelines to be followed by the CDR Empowered Group and CDR Cell for debt restructuring. These guidelines shall also suitably address the operational difficulties experienced in the functioning of the CDR Empowered Group. The CDR Core Group shall also prescribe the PERT chart for processing of cases referred to the CDR system and decide on the modalities for enforcement of the time frame. The CDR Core Group shall also lay down guidelines to ensure that over-optimistic projections are not assumed while preparing / approving restructuring proposals especially with regard to capacity utilization, price of products, profit margin, demand, availability of raw materials, input-output ratio and likely impact of imports / international cost competitiveness.[26]

CDR Empowered Group

The individual cases of corporate debt restructuring shall be decided by the CDR Empowered Group, consisting of ED level representatives of Industrial Development Bank of Inida Ltd., ICICI Bank Ltd. and State Bank of India as standing members, in addition to ED level representatives of financial institutions and banks who have an exposure to the concerned company. While the standing members will facilitate the conduct of the Group's meetings, voting will be in proportion to the exposure of the creditors only. In order to make the CDR Empowered Group effective and broad based and operate efficiently and smoothly, it would have to be ensured that participating institutions / banks approve a panel of senior officers to represent them in the CDR Empowered Group and ensure that they depute officials only from among the panel to attend the meetings of CDR Empowered Group. Further, nominees who attend the meeting pertaining to one account should invariably attend all the meetings pertaining to that account instead of deputing their representatives.

The level of representation of banks/ financial institutions on the CDR Empowered Group should be at a sufficiently senior level to ensure that concerned bank / FI abides by the necessary commitments including sacrifices, made towards debt restructuring. There should be a general authorisation by the respective Boards of the participating institutions / banks in favour of their representatives on the CDR Empowered Group, authorising them to take decisions on behalf of their organization, regarding restructuring of debts of individual corporates.

[26] https://taxguru.in/

The level of representation of banks/ financial institutions on the CDR Empowered Group should be at a sufficiently senior level to ensure that concerned bank / FI abides by the necessary commitments including sacrifices, made towards debt restructuring. There should be a general authorisation by the respective Boards of the participating institutions / banks in favour of their representatives on the CDR Empowered Group, authorising them to take decisions on behalf of their organization, regarding restructuring of debts of individual corporates.

The CDR Empowered Group would be mandated to look into each case of debt restructuring, examine the viability and rehabilitation potential of the Company and approve the restructuring package within a specified time frame of 90 days, or at best within 180 days of reference to the Empowered Group. The CDR Empowered Group shall decide on the acceptable viability benchmark levels on the following illustrative parameters, which may be applied on a case-by-case basis, based on the merits of each case:

- Return on Capital Employed (ROCE),
- Debt Service Coverage Ratio (DSCR),
- Gap between the Internal Rate of Return (IRR) and the Cost of Fund (CoF),
- Extent of sacrifice.

The Board of each bank / FI should authorise its Chief Executive Officer (CEO) and / or Executive Director (ED) to decide on the restructuring package in respect of cases referred to the CDR system, with the requisite requirements to meet the control needs. CDR Empowered Group will meet on two or three occasions in respect of each borrowal account. This will provide an opportunity to the participating members to seek proper authorisations from their CEO / ED, in case of need, in respect of those cases where the critical parameters of restructuring are beyond the authority delegated to him / her.

The decisions of the CDR Empowered Group shall be final. If restructuring of debt is found to be viable and feasible and approved by the Empowered Group, the company would be put on the restructuring mode. If restructuring is not found viable, the creditors would then be free to take necessary steps for immediate recovery of dues and / or liquidation or winding up of the company, collectively or individually.

CDR Cell

The CDR Standing Forum and the CDR Empowered Group will be assisted by a CDR Cell in all their functions. The CDR Cell will make the initial scrutiny of the proposals received from borrowers / creditors, by calling for proposed rehabilitation plan and other information and put up the matter before the CDR Empowered Group, within one month to decide whether rehabilitation is prima facie feasible. If found feasible, the CDR Cell will proceed to prepare detailed Rehabilitation Plan with the help of creditors and, if necessary, experts to be engaged from outside. If not found prima facie feasible, the creditors may start action for recovery of their dues.

All references for corporate debt restructuring by creditors or borrowers will be made to the CDR Cell. It shall be the responsibility of the lead institution / major stakeholder to the corporate, to work out a preliminary restructuring plan in consultation with other stakeholders and submit to the CDR Cell within one month. The CDR Cell will prepare the restructuring plan in terms of the general policies and guidelines approved by the CDR Standing Forum and place for consideration of the Empowered Group within 30 days for decision. The Empowered Group can approve or suggest modifications but ensure that a final decision is taken within a total period of 90 days. However, for sufficient reasons the period can be extended up to a maximum of 180 days from the date of reference to the CDR Cell.

The CDR Standing Forum, the CDR Empowered Group and CDR Cell is at present housed in Industrial Development Bank of India Ltd. However, it may be shifted to another place if considered necessary, as may be decided by the Standing Forum. The administrative and other costs shall be shared by all financial institutions and banks. The sharing pattern shall be as determined by the Standing Forum.

CDR Cell will have adequate members of staff deputed from banks and financial institutions. The CDR Cell may also take outside professional help. The cost in operating the CDR mechanism including CDR Cell will be met from contribution of the financial institutions and banks in the Core Group at the rate of Rs.50 lakh each and contribution from other institutions and banks at the rate of Rs.5 lakh each.[27]

[27] https://rbi.org.in/

3.6 INSOLVENCY AND BANKRUPTCY CODE, 2016

Insolvency and Bankruptcy Code (IBC) 2016 was implemented through an act of Parliament. It got Presidential assent in May 2016. Centre introduced the IBC in 2016 to resolve claims involving insolvent companies.

The bankruptcy code is a one stop solution for resolving insolvencies, which previously was a long process that did not offer an economically viable arrangement. The code aims to protect the interests of small investors and make the process of doing business less cumbersome. The IBC has 255 sections and 11 Schedules. IBC was intended to tackle the bad loan problems that were affecting the banking system.

The IBC process has changed the debtor-creditor relationship. A number of major cases have been resolved in two years, while some others are in advanced stages of resolution. It provides for a time-bound process to resolve insolvency. When a default in repayment occurs, creditors gain control over debtor's assets and must take decisions to resolve insolvency. Under IBC, debtor and creditor both can start 'recovery' proceedings against each other.

Companies have to complete the entire insolvency exercise within 180 days under IBC. The deadline may be extended if the creditors do not raise objections on the extension. For smaller companies, including startups with an annual turnover of Rs 1 crore, the whole exercise of insolvency must be completed in 90 days and the deadline can be extended by 45 days. If debt resolution doesn't happen the company goes for liquidation. IBC was intended to tackle the bad loan problems that were affecting the banking system.
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smaller companies, including startups with an annual turnover of Rs 1 crore, the whole exercise of insolvency must be completed in 90 days and the deadline can be extended by 45 days. If debt resolution doesn't happen the company goes for liquidation.[28]

Background

In India, the legal and institutional machinery for dealing with the bad debt has not yet been in line with global standards. The recovery action of the creditors, either through the Contract Act or through the special laws such as the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, has not been able to get the desired outcomes. Similarly, action through the Sick Industrial Companies (Special Provisions) Act, 1985 and the winding up provisions of the Companies Act, 1956/Companies Act, 2013 have neither been able to aid the recovery for lenders nor aided in the restructuring of firms. Laws dealing with individual insolvency, Presidential Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 are almost a century old. This has hampered the confidence of the lenders over the period of time. The 'Insolvency and Bankruptcy Code, 2016 is considered the biggest economic reform next to GST. The Insolvency and Bankruptcy Code 2016 is landmark legislation consolidating the regulatory framework governing the restructuring and liquidation of persons (including incorporated and unincorporated entities). The objective of the new law is to promote entrepreneurship, availability of credit, and to balance the interests of all stakeholders by consolidating and amending the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner and for maximization of value of assets of such persons and matters connected therewith or incidental thereto. It aims to consolidate the laws relating to insolvency of companies and limited liability entities (including limited liability partnerships and other entities with limited liability), unlimited liability partnerships and individuals, presently contained in a number of legislation, into a single legislation. Such consolidation will provide for greater clarity in the law and facilitate the application of consistent and coherent provisions to different stakeholders affected by the business failure or inability to pay the debt.[29]

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[28] https://www.business-standard.com/
[29] https://www.ijedr.org/

Features of the code

1. Comprehensive Law: Insolvency code is a comprehensive law which envisages and regulates the process of insolvency and bankruptcy of all persons including corporate, partnership, LLP's and individuals.
2. No multiplicity of law: The code has withered away from the multiple laws covering the recovery of debt and insolvency and liquidation process and present singular platform for all the relief's relating to recovery of debts and insolvency.
3. Low time resolution: The code provides a low time resolution and defines fixed time frames for insolvency resolution of companies and individuals. The process is mandated to be completed within 180 days, extendable to a maximum of 90 days. Further, for a speedier process, there is a provision for fast track resolution of corporate insolvency within 90 days. If insolvency cannot be resolved, the assets of the borrowers may be sold to repay the creditors.
4. One window clearance: It has been drafted to provide one window clearance to the applicant whereby he gets the appropriate relief at the same authority unlike the earlier position of law where in case the company is not able to revive the procedure for winding up and liquidation has to be initiated under separate law governed by separate authorities.
5. Clarity in the process: The code provides for a clear-cut process with respect to the insolvency and bankruptcy. The structure of the code is very specific and 180 days is mandated for the complete insolvency resolution process.
6. One chain authority: There is one chain of authority under the code. It does not even allow the civil courts to interfere with the application pending before the adjudicating authority, thereby reducing the multiplicity of litigation. The National Company Law Tribunal (NCLT) will adjudicate the insolvency resolution for companies and the Debt Recovery Tribunal (DRT) will adjudicate the insolvency resolution for individuals.
7. Priority to the interest of workmen and employees: The code also protects the interest of workman and employees. It excludes dues payable to workmen under the provident fund, pension fund and gratuity fund from the debtor's assets during liquidation.
8. New regulatory authority: It provides for constitution of a new regulatory authority "insolvency and bankruptcy board of India" to regulate professionals, agencies and information utilities engaged in the resolution of insolvencies of companies, partnership firms and individuals. The board has already been established and has started functioning.

9. Promote entrepreneurial activity: The code promotes entrepreneurial activity in India because of its revival mechanism and fast resolution process.[30]

Corporate insolvency resolution process

Corporate insolvency resolution is a process during which financial creditors assess whether the debtor's business is viable to continue and the options for its rescue and revival. If an insolvency resolution fails or financial creditors decide that the business of debtor cannot be carried on profitably and it should be wound up. The debtor will be undergoing liquidation process and the assets of the debtor are realized and distributed by the liquidator. The insolvency resolution process provides a collective mechanism for lenders to deal with the overall distressed position of the corporate debtor. This is a significant departure from the existing legal framework under which the primary onus to initiate a reorganization process lies with the debtor and lenders may pursue distinct actions for recovery, security enforcement and debt restructuring.

In order to above these facts the regulations regarding "The Corporate Insolvency Resolution Process "are as follows:

The corporate insolvency resolution process may be initiated on application to NCLT:

- By a financial creditor, either by itself or jointly with another financial creditor, meaning a creditor for the financial facility (which is a broadly worded expression including financial lease and hire purchase transactions, which are treated as financial transactions under applicable accounting standards).
- y an operational creditor, meaning a creditor other than a financial creditor or a person whom an operational debt.
- By the corporate debtor himself, that is the company itself.
- The occurrence of Default: Default means non-payment of debt when whole or any part of the installment has become due and not repaid by the debtor. The minimum amount of default by the debtor is Rs 1 lakh.
- Roadmap after Admission of Application: The insolvency resolution process, after an application has been admitted by the adjudicating authority will entail the following steps-

[30] Anant, Mishra, 2019- A Study Of Insolvency And Bankruptcy Code And Its Impact On Macro Environment Of India

- Declaration a moratorium period-This will prohibit actions such as, institution of suits, continuation of pending suits/ proceedings against the corporate debtor including execution of any judgment, decree or order; disposal/encumbering of corporate debtor's assets or rights/interests therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor, etc. One of the most important features of bankruptcy law is the grant of the moratorium during which creditor action will remain stayed, while the bankruptcy court takes a view on the possibility of rehabilitation. In the chapter on Sick Companies under the Companies Act 2013, there is no provision for an automatic moratorium – it merely empowers the NCLT to grant a moratorium up to 120 days. The Code talks about a mandatory moratorium – thereby, it serves almost like the automatic moratorium under global bankruptcy laws. The moratorium will continue throughout the completion of the resolution process – which is 180 days as mentioned above. However, if in the meantime, the creditors' committee resolves to approve liquidation of the entity, then the moratorium will cease to have an effect. Explicitly, the moratorium before liquidation applies to the enforcement of security interests under the SARFAESI Act as well. A moratorium also applies when an order for liquidation has been passed by the adjudicating authority.
- Appointment of an Interim IP- Issuance of the public announcement of the initiation of insolvency resolution process and call for the submission of claims. Interim IP inter alia takes over the management and powers of the board of directors of the corporate debtor, and collects all information relating to assets, finances and operations of the corporate debtor for determining its financial position; collates all claims submitted by the creditors and constitutes a Committee of Creditors ("COC"). The Committee of Creditors thereafter either resolves to appoint the interim IP as the IP or replaces the interim IP by appointing a new IP, in accordance with the prescribed procedure. This IP shall be appointed as the liquidator for the process. The IP will then take over the management and assets of the corporate debtor, and can exercise the wide powers granted to it, in the manner prescribed under the Code. It will prepare an information memorandum in relation to the corporate debtor, on the basis of which the resolution applicant will prepare a resolution plan. IP will scrutinize the resolution plan and present it to the Committee of Creditors. The Committee of Creditors approved plan will be submitted to the adjudicating authority, for its acceptance, and it is only when

the adjudicating authority, gives it a final nod that the resolution plan becomes binding upon all the stakeholders and the insolvency resolution process of the corporate debtor is initiated. In case the adjudicating authority rejects the plan, the liquidation process of the corporate debtor will commence.

- Timeline for the process: Resolution Professional is appointed, after the Admission of an application by the adjudicating authority, to conduct the entire corporate insolvency resolution process and manage the corporate debtor during the period. Resolution Professional shall prepare information memorandum for the purpose of enabling resolution applicant to prepare a resolution plan. A resolution applicant means any person who submits a resolution plan to the resolution professional and upon receipt of resolution plan. Resolution Professional shall place it before the creditors' committee for its approval. Once a resolution is passed, the creditors' committee has to decide on the restructuring process that could either be a revised repayment plan for the company, or liquidation of the assets of the company. If no decision is made during the resolution process, the debtor's assets will be liquidated to repay the debt. The resolution plan will be sent to NCLT for final approval and implemented once approved.

Corporate liquidation procedure

The Corporate Liquidation Procedure commences with the appointment of a Liquidator. The process starts with winding up order involving the realization of the assets and distribution of proceeds among creditors and other stakeholders. As mentioned in figure, according to Section 14 of IBC no suit can be instituted against the Corporate Debtor. Based on the priority a security creditor may receive proceeds from the sale of assets by enforcing with the secured assets as per applicable laws. Claims of the creditor will be considered subordinate to the unsecured creditors to the extent of the deficit. All the distribution shall be done in the manner laid down in the Code. Once all the assets of the Corporate Debtor are liquidated the NCLT passes an order to finally liquefy the corporate debtor.[31]

[31] Ijedr 2019

CHAPTER-VI

COMPARATIVE STUDY

4.2 DEBT RECOVERY IN USA IN HISTORICAL PERIOD

In the seventeenth and eighteenth centuries, one of the factors that propelled emigration from England to the American colonies was the harsh enforcement of early English bankruptcy laws. Fear of debtors' prison—where debtors were kept without bedding, blankets, coal, or access to medical care until their debts could be paid—drove "shiploads" of Englishmen to relocate to the colonies. At the time, English bankruptcy laws gave the right of action to the creditor, not the debtor, and granted discharge only to merchants and traders. By contrast, the early bankruptcy laws of the American colonies allowed for voluntary bankruptcy, taking the position that it was the debtor, rather than the creditor who needed assistance.

At the time the U.S. Constitution was drafted, discontent with Britain's practices surrounding debt was at its peak. While the Constitution did not do away with debtors' prisons, it did grant the federal government the authority to issue bankruptcy laws. The first bankruptcy statute, passed by near unanimous consent of Congress and signed into law by John Adams in 1800, allowed debtors to discharge their debts and provided for their release from prison upon surrender of nonexempt assets. It also granted people the right to sue for damages if they had been erroneously accused of owing debt.

Through most of the nineteenth century, the bulk of America's economy was subsistence agriculture. However, there was not much credit available for farmers other than that offered by local merchants, who would sometimes barter goods for produce, or extend credit based on the promising crops of the farmer.If the farmers suffered a crop failure, they would lose the ability to barter or obtain credit for merchandise, and would frequently move their family westward seeking more favorable land and pastures. Debt collection and its regulation would come to play a significant role in the westward settlement of the United States. For example, the Panic of 1819 touched off a depression that drove settlers to migrate to Texas, where they found refuge from debtors' prisons. Texans recognized that "desperate fortunes had driven many of their countrymen to enwrap themselves in the protective folds of the Lone Star Flag," and established strong legal protections for borrowers. Many of these legal protections survive to this day. For example, the Texas Constitution bans wage garnishment for most debts and regulates home equity loans.

In urban areas, the second half of the nineteenth century saw the rise of loan sharks who made high-interest, short-term loans. Also known as "salary lenders," these individuals made loans to employees on a Monday that needed to be repaid that Friday. Annualized interest rates of more than 1000% were common and were frequently even higher for African-American borrowers. A commonplace collection tactic was for creditors to "employ a 'bawler-out'—usually a woman with a stentorian voice and rich vocabulary" who would station herself outside the borrower's workplace and loudly take the borrower to task for failing to repay the loan. Debt collectors not only used humiliation as a cudgel to induce borrowers to settle, but they also confronted relatives and friends.

In the wake of the Panic of 1893 and the resulting economic depression, Congress enacted a new bankruptcy law. The Bankruptcy Act of 1898 eased restrictions on discharge policies for borrowers, allowed for consumers to file for voluntary bankruptcy, and also provided protections against involuntary bankruptcy. These reforms made it more difficult for creditors to use bankruptcy to collect debts.

By the early the 1900s, one in five American workers owed money to salary lenders.[27] In an attempt to curb salary lending and promote licensed lending, two-thirds of the states adopted versions of the Uniform Small Loan Law published in 1916. Small loan businesses sprang up under the new laws. Simultaneously, during the 1920s, corporations such as Sears, General Motors, and Steinway & Sons began making installment loans to purchase high-priced consumer goods like cars, washing machines, pianos, and sewing machines. One survey in 1928 found that forty-one percent of respondents purchased an item on installments. Household debt rose steadily through the 1920s.

In the 1930s, the consequences of defaulting on an installment contract were generally harsh. Goods were repossessed if payments were 30 days late. Items were resold but no surplus was returned to the consumer, resulting in a loss of wealth where large deposits and short repayment terms usually meant significant financial investment over a short period of time.

In 1939, at the end of the Great Depression, the American Collector's Association (now ACA International) was founded "to bring together third–party collection professionals to advance the credit and collection industry." Debt collectors began to use the telephone to collect debts as early as the 1940s, and by the 1960s some collection agencies began to use automated systems to interact with debtors. In the 1950s and 60s, groups of creditors in a region began

pooling information about consumers with delinquent accounts, forming early credit reporting companies.

In 1968, the National Conference of Commissioners on Uniform State Laws developed the Uniform Consumer Credit Code to remedy "impediments to the free flow of credit." Concerned about the impact on consumers, fifty-five consumer experts gathered in June 1969 at a meeting co-sponsored by the newly formed National Consumer Law Center (NCLC). As a result of that meeting, NCLC undertook the drafting of a National Consumer Act that was released in 1970. The National Consumer Act served as a model for state reforms, including the Wisconsin Consumer Act in 1973. State reform efforts and proposed revisions to the Uniform Consumer Credit Code informed NCLC's drafting of the Model Consumer Credit Act, which contained a section specifically addressing consumer protections in debt collection.

While some states had amended their laws by the mid-1970s to protect consumers from abusive debt collection practices, "13 states, with 40 million citizens, ha[d] no debt collection laws" and "another 11 states . . . provide[d] little or no effective protection." This left nearly forty percent of the American population without "meaningful protection from debt collection abuse."

In 1975, Congressman Frank Annunzio of Chicago introduced a bill to protect consumers from abusive debt collection that bore a striking resemblance to NCLC's Model Consumer Credit Act. In 1977, the bill passed the House by one vote and the Senate by voice vote with bipartisan support in both houses. The Fair Debt Collection Practices Act (FDCPA) was signed by President Carter on September 20, 1977, and became law in 1978.

Since the FDCPA's passage, many states have passed or amended state debt collection statutes. These state statutes are discussed in more detail in § 10.2 and Appx. D, infra.

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which created the Consumer Financial Protection Bureau (CFPB) and gave it enforcement and rule-making authority over debt collectors. The Bureau has announced that it is considering new debt collection rules.[32]

[32] https://library.nclc.org/

4.3 DEBT RECOVERY IN USA IN MODERN PERIOD

The US Constitution gives the US Congress the authority to enact laws on the subject of bankruptcy for the country. In exercising this authority, legislators have passed several laws on the subject of bankruptcy, the most recent being the Bankruptcy Reform Act of 1978, which largely governs the country's current bankruptcy laws.

The US Bankruptcy Code is also referred to as Title 11 of the United States Code. Is governs the procedures that businesses and individual must follow when filing for bankruptcy in the United States Bankruptcy Courts.

History of the US Bankruptcy Code

The first bankruptcy law in the United States came into being in 1800. This law was repealed in 1803 and was followed by the Act of 1841. The 1841 law was repealed in 1843 and was succeeded by the Act of 1867, which was amended in 1874 and was later repealed in 1878. The Nelson Act of 1898 became the first modern bankruptcy legislation in the country.

The next modern bankruptcy law was enacted in 1978 by the Bankruptcy Reform of 1978. The Bankruptcy Abuse Prevention and Consumer Protection Act (2005) is the most recent amendment to the 1978 law.

Contents of the US Bankruptcy Code (Title 11)

Businesses and individuals seeking relief under the US Bankruptcy Code are allowed to file a petition under the Bankruptcy Code chapters 7, 9, 11, 12, 13, and 15.[33]

Chapter 7 – Liquidation

Chapter 7 of the Bankruptcy Code is the most common form of bankruptcy in the United States, and it covers the process of liquidation. It involves the appointment of a trustee by the bankruptcy court to collect the non-exempt assets of the debtor. The trustee is tasked with selling the assets and distributing the proceeds to creditors in order of preference. Businesses and individuals in the United States can file for bankruptcy under Chapter 7.

[33] https://www.usbankruptcycode.org/

In the case of businesses, a troubled company may file or be forced by creditors to file for bankruptcy. After the petition is filed, the business ceases to exist unless the court-appointed trustee decides to continue operations. In the case of a large company, the trustee may decide to sell an entire division to another company to raise funds to pay the creditors. Secured creditors are usually paid first because the company's assets act as collateral for the credit advanced to the liquidating company.

Individuals who own property, run a business, or reside in the United States may file for liquidation in a federal court under Chapter 7. These individuals may be allowed to keep certain exempt properties, but the value of properties that may be classified as exempt varies from one state to another. Other assets are sold by the trustee to repay creditors.

While the court may discharge certain unsecured debts, other forms of debts are exempted from the discharge. These debts may include tax arrears for the last three years, child support, property taxes, student loans, and fines imposed by a court of law.

An amendment was made to the bankruptcy law in 2005 with the passing of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005. The amendment was intended to limit consumer debtors from filing bankruptcy in general. Supporters of the amendment claimed that the change would protect certain creditors such as credit card companies from losses resulting from bankrupt customers.[34]

Chapter 9 – Reorganization of Municipalities

Chapter 9 of the Bankruptcy Code deals exclusively with municipalities and how to help them in the restructuring of their debts. A municipality, in this case, refers to a political subdivision or a public agency of a state. The US Bankruptcy Code requires that, for a municipality to be a debtor in a Chapter 9 bankruptcy, it must be authorized to be a debtor by state law, a government officer, or an organization allowed by state law to give such authorizations. Only 12 states specifically authorize bankruptcy, while 12 others approve Chapter 9 bankruptcy after the municipalities have met certain stringent rules.

Before the Chapter 9 bankruptcy came into being, the only remedy for troubled municipalities was for the creditors to pursue an action of mandamus to force the

[34] US bankruptcy Code

municipality to raise taxes. An amendment to the Bankruptcy Act in 1934 extended the bankruptcy code to include municipalities (the law was declared unconstitutional by a US court in 1935 but a similar law was passed by the US Congress in 1937).

The 2008 financial crisis eventually led to many municipal bankruptcies, six in 2010, 13 in 2011, and 12 in 2012. The largest municipality to file for bankruptcy was Detroit, Michigan on July 18, 2013. Other large municipalities that have filed for Chapter 9 bankruptcy include Jefferson County (Alabama) in 2011 and Stockton (California) in 2012.

Chapters 11, 12, and 13 – Reorganization

Unlike Chapter 7 that deals with the process of liquidation, Chapters 11, 12, and 13 deal with the reorganization of the debtor's assets. Usually, the bankruptcy court will allow the debtor to keep some or all of their assets and use them to pay debts owed to creditors.

Chapter 11 bankruptcy is available to businesses, whether a sole proprietorship, partnership, or corporation. Individuals can also file for Chapter 11, but it is most popular among corporate entities. The debtor remains in charge of the business as a debtor in possession but under the oversight of the bankruptcy court.

Chapter 12 of the Bankruptcy Code is only applicable to family farmers and fishermen. It provides additional benefits such as higher debt ceilings that are not provided by Chapters 11 and 13. Chapter 12 was added to the bankruptcy code in 1986 by the Family Farmer Bankruptcy Act of 1986 that came as a response to the tightening of agricultural credit.

Chapter 13 provides a reorganization plan to individuals who do not want to go through a Chapter 7 bankruptcy. Individuals get an opportunity to reorganize their financial affairs while under the protection of the bankruptcy court. Chapter 13 plans are typically for three to four years, but may not exceed five years.

Chapter 15 – Cross-Border Insolvency

Chapter 15 of the bankruptcy code allows for the cooperation between United States courts, foreign courts, and other authorities involved in cross-border insolvency cases. During certain bankruptcy proceedings in foreign countries, a business or individual may have a connection

to assets located in more than one country. Cross-border insolvency focuses on the choice of law rules, jurisdiction rules, and the enforcement of judgment rules.[35]

4.4 COMPARISION BETWEEN DEBT RECOVERY LAWS OF INDIA AND USA

4.4.1 History

(USA) “The first bankruptcy law in the United States came into being in 1800. This law was repealed in 1803 and was followed by the Act of 1841. The 1841 law was repealed in 1843 and was succeeded by the Act of 1867, which was amended in 1874 and was later repealed in 1878. The Nelson Act of 1898 became the first modern Bankruptcy Act in the country. The next modern bankruptcy law was enacted in 1978 by the Bankruptcy Reform of 1978. The Bankruptcy Abuse Prevention and Consumer Protection Act (2005) is the most recent amendment to the 1978 law.” (Aghion, Phillipe, Oliver Hart and John Moore, 1992)

(INDIA) The Companies Act, 1956 (“Companies Act”), Sick Industrial Companies (Special Provisions) Act, 1985, and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), Insolvency and Bankruptcy Code (IBC), 2016

4.4.2 Recent Bankruptcy Code

(USA) The content of US bankruptcy code is divided in six chapters under the Title 11: The US Bankruptcy Code is allowed to file a petition under the Bankruptcy Code chapters 7, 9, 11, 12, 13 and 15 for corporates and individuals seeking relief.

Chapter 7: Liquidation It covers the process of liquidation and involves the appointment of a trustee by the bankruptcy court to collect the non-exempt assets of the debtor. The trustee is tasked with selling the assets and distributing the proceeds to the creditors in order of preference. Businesses and individuals in the United States can file for bankruptcy. An amendment was made to the bankruptcy law in 2005 with the passing of “the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005”. The amendment was intended to limit consumer debtors from filing bankruptcy in general. Supporters of the amendment claimed that the change would protect certain creditors such as credit card companies from losses resulting from bankrupt customers.

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[35] https://corporatefinanceinstitute.com/

Chapter 9: Reorganization of Municipalities This chapter of “the bankruptcy law deals with municipalities and how to help them in the restructuring of their amount outstanding. A municipality refers to a public agency of a state. It must be authorized to be a borrower by state law, government officer, or an organization allowed by state law to give such authorizations. Before this Chapter of bankruptcy code, the only remedy for troubled municipalities was for the creditors to take an action through court order to force the municipality to raise taxes. An amendment to the Bankruptcy Act in 1934 extended the bankruptcy code to include municipalities. The 2008 financial crisis eventually led to many municipal bankruptcies, six in 2010, thirteen in 2011, and twelve in 2012. The largest municipality to file for bankruptcy was Detroit, Michigan on July 18, 2013.” (Aghion, Phillipe, Oliver Hart and John Moore, 1992)

Chapters 11, 12, and 13: Reorganization “The Chapter 7 that deals with the process of liquidation, Chapters 11, 12, and 13 deal with the reorganization of the debtor’s assets. Usually, the insolvency court will enable the account holder to keep a few or the majority of the benefits and use them to pay obligations owed to creditors. Chapter 11 is for businesses, whether a sole ownership, partnership, or corporation. Individuals have Chapter 11. Chapter 12 of this Code is only related to family farmers and fishermen. It provides additional benefits such as higher debt ceilings that are not provided by Chapter 11 and 13.

Chapter 15: Cross-Border Insolvency Chapter 15 of this code allows for the cooperation between American courts, foreign courts, and other authorities involved in cross-border liquidation cases.

(INDIA) The “Insolvency and Bankruptcy Code, 2016” (hereinafter IBC) aims to combine and amend the laws relating to bankruptcy resolution of unlimited and limited liability companies, partnerships and individuals. The main aim of this law is at providing revival and resolution in a limited time period for maximizing the value of debtor’s assets. The Code has put a principal framework to aid sick enterprises to either wind up their business or make a revival plan, and for investors to exit. Another important element of the Code is that it does not make any differences between the rights of international and domestic creditors or between classes of financial institutions. The Code has sought to balance the interest of all the concerned parties including alteration in the order of priority of payment of Government dues. The Code repeals the “Presidency Towns Insolvency Act, 1909”, and "Provincial Insolvency Act, 1920”, as well as amends 11 laws, including: “Indian Partnership Act 1932”,

"The Companies Act 2013", "Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002", "Limited Liability Partnership Act, 2008", "Sick Industrial Companies (Special Provisions) Repeal Act 2003". To avoid any further litigation in bankruptcy proceedings, the Code will have superseding effect over all other laws. It is specifically provided that civil courts or authority not to have authority and also cannot grant any injunction. The IBC as a new law, substituting over a dozen laws, when applied post the infrastructure being put in place, will show to be the most important step in evolving the regimen of recovery of bad debts.[36]

4.4.3 Insolvency Resolution Process

The law makes a noteworthy departure from the existing resolution by shifting the charge on the creditor to initiate the bankruptcy resolution process against the company debtor. Under the existing legal outline, the primary obligation to initiate a resolution process lies with the debtor, and creditor may follow separate actions for regaining, security enforcement and debt reformation.

Insolvency Resolution and Liquidation Process for Corporates

If the default is above Rs.1 Lakh to Rs.1 Cr, the creditor may initiate insolvency resolution process.

- The Insolvency Resolution Process- A financial creditor may initiate corporate insolvency resolution process in case a corporate debtor default. An application can be made to the "National Company Law Tribunal" (hereinafter NCLT) for starting the resolution process. Operational creditors have to give notice of 10 days to corporate debtor before approaching the NCLT. If corporate debtor fails to repay dues then the operational creditor can approach NCLT. This process shall be accomplished within 180 days of receiving of application by NCLT. Upon receiving of application by NCLT, Creditors' claims will be frozen for 180 days, during this time NCLT will hear proposals for revival. Thus, no coercive proceedings can be launched against the corporate debtor in any other under any other law, until approval of resolution plan or until initiation of liquidation process. NCLT appoints an interim Insolvency Professional (IP) upon confirmation by the Insolvency and Bankruptcy Board within 14 days of acceptance of application. Interim IP holds office for 30 days only.

[36] Desai (2003), Bankruptcy Laws- A comparative analysis: United States and India

Interim IP takes control of the debtor's assets and company's operations, collect financial information of the debtor from information utilities. NCLT causes public notice to be made of the initiation of corporate insolvency process and calls for submission of claims by any other creditors.

- Liquidation- The beginning of liquidation process takes place on failure to submit the resolution plan to the NCLT within the given period, or rejection of resolution plan for non-compliance with the requirements of the Code, or decision of creditors' committee based on vote of majority, or contravention of resolution plan by the debtor. During this process, no other proceedings shall be instituted by or against the debtor; except through the liquidator on behalf of corporate debtor with permission of the NCLT. The Resolution Professional will act as liquidator. Creditor can appeal to the arbitrator within the time of 14 days
- Fast Track Insolvency Resolution Process- The Code has provision of fast track insolvency resolution process for corporate debtors. The process shall be completed in 90 days it may extendable by 45 days.
- Voluntary Liquidation of Corporate Person- The Code offers for voluntary liquidation proceedings by corporate who intends to liquidate by own and not made any default and can pay all debts from proceeding of liquidation. Once the debtor is completely wound up and assets liquidated, the NCLT passes an order for its disbanding.[37]

Insolvency Resolution for Individuals & Partnership Firms

For this there is no specific mandatory period specified within which the resolution decision has to be done. If the default is above Rs. One Thousand and up to Rs.1 lakh, the Code applies. The Code has following distinct processes:Fresh Start Process- Under this process, eligible debtors can apply to the Debt Recovery Tribunal (DRT) for discharge from certain debts not more than a specified threshold, permitting them to start afresh. The fresh start process is only available to and not available for corporates. A professional appointed by the DRT who will examine the application, receives claims from creditors, accepts or rejects the application and submits a report with reasons to the DRT. On the basis of the report, the DRT will take decision of accepts or rejects the application.

- Insolvency Resolution Process- The insolvency resolution process consists of preparation of a repayment plan by the debtor, for approval of creditors. If approved, the

[37] US Bankruptcy laws

DRT passes an order binding the debtor and creditors to the repayment plan but if the plan is rejected or fails, the debtor or creditors may apply for a bankruptcy order. Upon confirmation received from the Board, DRT shall appoint resolution professional. The resolution professional shall examine insolvency application and submit his report to DRT with his recommendation to admit or reject it. DRT shall admit or reject the application within 14 days. DRT shall issue public notice inviting claims from all creditors within 21 days of such notice. Creditors shall register claims with resolution professional. Resolution professional shall prepare a list of creditors. The resolution professional shall summon a meeting of creditors to approve, modify or reject the repayment plan by a majority of more than 75% votes. The resolution professional prepares a report of the meeting and submits to DRT.

- Bankruptcy- The process is similar to liquidation of corporate. When application for insolvencies rejected by the DRT or the repayment plan is not submitted in time or the repayment plan fails or does not fulfill requirements of the Code, or the repayment plan is contravened, the creditor or the debtor himself may apply to DRT for bankruptcy of the debtor. The application cannot be withdrawn except with the leave of the tribunal. The DRT will pass an order, thereby indicating commencement of bankruptcy proceeding.[38]

[38] Shamim, 2019, BANKRUPTCY LAWS: A COMPARATIVE STUDY OF INDIA AND USA

CHAPTER –V

RECENT TRENDS

5.2 DEBT RECOVERY BILL 2016

The DRTs and DRATs were set up as specialized tribunals under the "Recovery of Debts Due to Banks and Financial Institution Act 1993." The DRTs were not able to keep up the ongoing trend due to certain factors such as the long-drawn process and prolonged vacancies, etc.

The expanding Non Performing Assets in India with years has involved concern which required transforming the legitimate structure for obligation recuperation. With 7,686 willful loan defaulters, 69,659 pending cases, a statistic that was further compounded by the much-publicized case of Vijay Mallya, where the liquor baron defaulted on amount close to 9,400 cr., With the increasing bad debts or stressed assets in the banking and financial institutions, the government introduced the Debt Recovery Bill in the Parliament back in 2016.

The enactment of "Insolvency and Bankruptcy Code, 2016" the Indian parliament passed "Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provisions (Amendment) Act, 2016" to enhance the efficiency of debt recovery laws. This Act keeps to alter four laws:

- RDDBFI 1993
- SARFAESI 2002
- INDIAN STAMP ACT 1899
- DEPOSITARIES ACT 1996

Key features of Debt Recovery Bill 2016:

1. **Faster debt-recovery process**

SARFAESI allowed secured creditors to take possession of collateral with the assistance of the district magistrate without the intervention of courts or tribunals. However, no timeline was prescribed to complete the process. The Act has fast tracked this process by introducing a time limit of 30 days within which the process will have to be completed by the district magistrate.

2. RBI and the Role of ARC

SARFAESI regulates the establishment and functioning of Asset Reconstruction Companies ("**ARCs**"). ARCs purchase NPAs from banks at a discount, allowing banks to recover partial payment for outstanding loan accounts. Previously, the Reserve Bank of India ("**RBI**") was only empowered to determine policy and issue directions to the ARCs (or securitisation company) and call for information relating to the business or affairs of such ARCs (or securitisation company). The Act empowers the RBI to audit and inspect ARCs, remove its chairman/any director and appoint its officials to the board of the ARCs and regulate the fees charged by ARCs to banks at the time of acquiring assets.

The RBI has been empowered to impose penalties on the ARCs for non-compliance of its directives. If the payment is not paid by the ARC within the stipulated time period, RBI may cancel the registration of the ARC. These measures are likely to act as a deterrent against non-compliance of the RBI's directives by the ARCs and encourage investments into ARCs.

With the recent opening up of 100% foreign direct investment in ARCs, the stage is set for the growth of ARCs as intermediaries for dealing with stressed assets and building a robust secondary market for distressed debt in India, which will remove NPAs from the balance sheets of Indian banks by building a robust secondary market for distressed debt in India.

3. Secured creditors

The Act provides that where the secured creditors have acquired majority stake in a company by conversion of debt into shares, secured creditors shall not be liable to restore the management of the business to the debtor even after realisation of the entire outstanding dues of the borrower. This is likely to deter the borrowers from defaulting on the loans and instill the fear of losing the business to the secured creditor upon a default.

4. Integrating records

The Act seeks to integrate records on property rights in various registration systems with the records of the Central registry and set up a Central database of these rights. Secured creditors will not be able to take possession of the collateral unless it is registered with the Central

registry. Further, these secured creditors, after registration of security interest, will have priority over all other claimants including claims of Central Government, State Government, tax authorities or any other local authority in repayment of the dues. This will create a wave of confidence among the banks and financial institutions.

5. **Compulsory deposit for appeal**

In a bid to discourage frivolous appeals made with an intention to delay recovery, the Act mandates the deposit of 50% of the amount of debt before an appeal is entertained. This amount can be reduced to 25% but cannot be waived completely. This is a departure from the earlier regime that allowed complete waiver of such deposit. Also, the time for filing an appeal has been reduced from 45 to 30 days.

6. **Raising the infrastructure**

The Act provides that the Presiding Officers of the DRTs and the Chairpersons of the DRAT shall be eligible for reappointment and has increased their age of retirement from 62 years to 65 years for DRT and from 65 years to 67 years for DRAT. The Act further provides that the Central Government may authorize the Presiding Officers of tribunals established under other laws to also perform functions of Presiding Officers of DRT and authorize the Chairmen of appellate tribunals established under other laws to perform the functions of the Chairmen of DRATs. This is an attempt to ensure that there are no delays in disposing off the matters due to insufficient number of Presiding Officers/Chairmen. The practicability of this provision is questionable as most tribunals in India are overburdened.

The Act provides for various filings to be made in the electronic form, which is expected to help speed up the process.

7. **Relaxation in Stamp duty**

The Act provides that stamp duty will not be charged on transactions undertaken for transfer or assignment of financial assets in favour of ARCs for the purpose of securitization or reconstruction. The will help reduce transaction costs.

8. **Transfer of shares**

The Act introduces a new section in the Depositories Act to enable the depository to register any issue of new shares in favour of any bank or financial institution or ARC on receipt of intimation from a depository participant. This will be by converting part of their debt into shares.[39]

5.3 THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ORDINANCES, 2021

The President promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 on 4th April 2021. The Cabinet had approved on 31st March 2021 the proposal to make amendments in the Insolvency and Bankruptcy Code, 2016 (Code), through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021.

The amendments aims to provide an efficient alternative insolvency resolution framework for corporate persons classified as micro, small and medium enterprises (MSMEs) under the Code, for ensuring fast, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of MSMEs businesses and which preserves jobs. The initiative is based on a trust model and the amendments honour the honest MSME owners by trying to ensure that the resolution happens and the company remains with them.

It is expected that the incorporation of Pre-Packaged insolvency resolution process for MSMEs in the Code will relieve the sufferings faced by MSMEs due to the impact of the pandemic & the unique nature of their business, duly recognizing their importance in the economy. It provides an efficient alternative insolvency resolution framework for corporate persons classified as MSMEs for timely, efficient & cost-effective resolution of distress thereby ensuring positive signal to debt market, employment preservation, ease of doing business and preservation of enterprise capital. Other expected impact and benefits of the amendment in Code are lesser burden on Adjudicating Authority, assured continuity of business operations for corporate debtor (CD), less process costs & maximum assets realization for financial creditors (FC) and assurance of continued business relation with CD and rights protection for operational Creditors (OC).

[39] https://www.advayalegal.com/

The Amendment Ordinance seeks to amend sections such as 4, 5, 11, 33, 34, 61, 65, 77, 208, 239, 240 & insert new sections such as 11A, 67A, 77A and a new chapter as IIIA on Pre-Packaged insolvency resolution process for MSMEs in the Code based on recommendations made by the Insolvency Law Committee (ILC).[40]

Insolvency is a situation where individuals or companies are unable to repay their outstanding debt. The Code provides a time-bound process for resolving the insolvency of corporate debtors (within 330 days) called the corporate insolvency resolution process (CIRP). The debtor himself or its creditors may apply for initiation of CIRP in the event of a default of at least one lakh rupees. Under CIRP, a committee of creditors is constituted to decide regarding the insolvency resolution. The committee may consider a resolution plan which typically provides for the payoff of debt by merger, acquisition, or restructuring of the company. If a resolution plan is not approved by the committee of creditors within the specified time, the company is liquidated. During CIRP, the affairs of the company are managed by the resolution professional (RP), who is appointed to conduct CIRP.

1. **Pre-packaged insolvency resolution**: The Ordinance introduces an alternate insolvency resolution process for micro, small, and medium enterprises (MSMEs), called the pre-packaged insolvency resolution process (PIRP). Unlike CIRP, PIRP may be initiated only by debtors. The debtor should have a base resolution plan in place. During PIRP, the management of the company will remain with the debtor.

2. **Minimum default amount**: Application for initiating PIRP may be filed in the event of a default of at least one lakh rupees. The central government may increase the threshold of minimum default up to one crore rupees through a notification.

3. **Debtors eligible for PIRP:** PIRP may be initiated in the event of a default by a corporate debtor classified as an MSME under the MSME Development Act, 2006. Currently, under the 2006 Act, an enterprise with an annual turnover of up to Rs 250 crore, and investment in plant and machinery or equipment up to Rs 50 crore, is classified as an MSME. For initiating PIRP, the corporate debtor himself is required to apply to the adjudicating authority (National Company Law Tribunal). The authority must approve or

[40] Ministry of corporate affairs

reject the application for PIRP within 14 days of its receipt.

4. **Approval of financial creditors**: For applying for PIRP, the debtor needs to obtain approval of at least 66% of its financial creditors (in value of debt due to creditors) who are not related parties of the debtor. Before seeking approval, the debtor must provide creditors with a base resolution plan. The debtor must also propose the name of the RP along with the application for PIRP. The proposed RP must be approved by at least 66% of the financial creditors.

5. **Proceedings under PIRP**: The debtor will submit the base resolution plan to the RP within two days of the commencement of the PIRP. A committee of creditors will be constituted within seven days of the PIRP commencement date, which will consider the base resolution plan. The committee may provide the debtor with an opportunity to revise the plan. The RP may also invite resolution plans from other persons. Alternative resolution plans may be invited if the base plan: (i) is not approved by the committee, or (ii) is unable to pay the debt of operational creditors (claims related to the provision of goods and services).

6. A resolution plan must be approved by the committee by a vote of at least 66% of the voting shares. A resolution plan must be approved by the committee within 90 days from the commencement date of PIRP. The resolution plan approved by the committee will be examined by the adjudicating authority. If no resolution plan is approved by the committee, the RP may apply for termination of PIRP. The authority must either approve the plan or order termination of PIRP within 30 days of receipt. Termination of PIRP will result in the liquidation of the corporate debtor.

7. **Moratorium**: During PIRP, the debtor will be provided with a moratorium under which certain actions against the debtor will be prohibited. These include filing or continuation of suits, execution of court orders, or recovery of property.

8. **Management of debtor during PIRP**: During the PIRP, the board of directors or partners of the debtor will continue to manage the affairs of the debtor. However, the management of the debtor may be vested with the RP if there has been fraudulent conduct or gross mismanagement.

9. **Initiation of CIRP**: At any time from the PIRP commencement date but before the approval of the resolution plan, the committee of creditors may decide to terminate PIRP and instead initiate CIRP in respect of the debtor (by a vote of at least 66% of the voting shares).

Amendments carried out through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 Annexure 1

1. The provisions related to pre-packaged insolvency resolution process are as Chapter IIIA in Part II of the Code.

2. The pre-packaged insolvency resolution process shall be available only for micro, small or medium enterprises (MSMEs). (Section 54A)

3. Amend section 4 of the Code to insert a new proviso giving power to the Central Government to specify a different minimum amount of default for initiation of the pre-packaged insolvency resolution process subject to a maximum of ₹1 crore.

4. Section 5 of the Code to be amended to make consequential changes to various definitions and insertion of new definitions for the pre-packaged insolvency resolution process.

5. Amend section 11 to make changes pursuant to the inclusion of Chapter IIIA to disentitle certain persons from filing an application for initiating corporate insolvency resolution process.

6. Insert a new section 11A to provide the manner of disposal of simultaneous applications for initiation of pre-packaged insolvency resolution process and corporate insolvency resolution process, pending against the same corporate debtor.

7. Sections 33 and 34 are to be amended to provide for passing of liquidation order in case of violation of the resolution plan approved by the Adjudicating Authority. The insolvency professional to be appointed as the resolution professional shall be proposed and approved by unrelated financial creditors. (Section 54A)

8. The management of corporate debtors shall issue a declaration for initiating pre-packaged insolvency resolution process and the members or partners shall pass an appropriate resolution to that effect. (Section 54A)

9. The unrelated financial creditors by vote of not less than sixty-six per cent in value of the financial debt due to them, shall approve initiation of this process and the corporate debtor shall share a base resolution plan with such creditors at this stage. (Section 54A)

10.The insolvency professional will perform the required duties, which will commence from the date on which his name is proposed in the declaration and approved by the unrelated financial creditors. (Section 54B)

11.Adjudicating Authority shall either admit or reject the application for initiation of pre-pack within fourteen days from the date of filing of the application. (Section 54C)

12.The pre-packaged insolvency resolution process will be completed within one hundred and twenty days out of which ninety days' time has been given to the resolution professional to file the resolution plan with the Adjudicating Authority and thirty days time has been given to the Adjudicating Authority to approve the resolution plan. If no resolution plan is approved by the committee of creditors, then the resolution professional shall apply to the Adjudicating Authority to terminate the pre-packaged insolvency resolution process. (Section 54D)

13.The Adjudicating Authority shall declare a moratorium and the provisions of section 14(1) and (3) shall apply during the pre-packaged insolvency resolution process.

14.The Adjudicating Authority shall appoint the resolution professional and cause a public announcement to be made by him. (Section 54E)

15.The resolution professional shall conduct the pre-packaged insolvency resolution process, perform and exercise the required duties and powers and the management of the corporate debtor shall extend all assistance and cooperation to the resolution professional during the process.

16.The fees and expenses of the resolution professional shall be subject to limits or conditions imposed by the committee of creditors. (Section 54F)

17.The corporate debtor shall submit the list of claims and preliminary information memorandum and persons responsible for any omission of any material information or inclusion of any misleading information thereof shall be liable to pay compensation to persons sustaining any loss or damage. (Section 54G)

18.The management of affairs of the corporate debtor shall continue to be vested with the Board of Directors or the partners, subject to certain conditions and restrictions. (Section 54H)

19.The committee of creditors is to be constituted by the resolution professional based on the list of claims confirmed by him. (Section 54I)

20.The Adjudicating Authority shall pass an order vesting the management of the corporate debtor with the resolution professional if the affairs of the corporate debtor are carried out in a fraudulent manner or if there has been gross mismanagement. (Section 54J).

21.The committee of creditors may approve the base resolution plan submitted by the corporate debtor if it provides for the full payment of the claims of operational creditors. If the base resolution plan does not provide for such full payment or is not approved by the committee of creditors, prospective resolution applicants shall be invited to submit resolution plans. The resolution plan selected by the committee of creditors pursuant to such invitation is to compete with the base resolution plan, and accordingly, a resolution plan may be approved by the committee of creditors. Where the base resolution plan of the corporate debtor is being approved and does not provide for full payment of claims of the creditors, the committee of creditors may consider dilution of rights of the promoters in the corporate debtor and otherwise, provide reasons for the same. The provisions of Sections 29 and 30(1), (2) and (5) are to apply to the pre-packaged insolvency resolution process. (Section 54K).

22.If an order vesting the management of the corporate debtor with the resolution professional has been passed and the resolution plan approved by the committee of creditors does not provide for a change in management or control of the corporate debtor, the Adjudicating Authority will pass a liquidation order. (Section 54L).

23.The order of the Adjudicating Authority approving a resolution plan may be appealed on the grounds mentioned in Section 61(3). (Section 54M).

24.The Adjudicating Authority shall pass an order terminating the pre-packaged insolvency resolution process if the committee of creditors approves such termination by a vote of sixty six percent of its voting share. (Section 54N).

25.The committee of creditors may decide to initiate a corporate insolvency resolution process against an eligible corporate debtor by a vote of sixty six percent of its voting share. (Section 54-O).

26.Certain provisions of Chapter II and Chapters III, VI and VII are to apply to Chapter IIIA for the pre-packaged insolvency resolution process with suitable modifications (Section 54P).

27.Amend Section 61 to provide for appeal against the liquidation order and the order for initiation of corporate insolvency resolution process passed during pre-packaged insolvency resolution process under Chapter IIIA.

28.Amend Section 65 to insert a penalty for fraudulent or malicious initiation of pre-packaged insolvency resolution process.

29.During the pre-packaged insolvency resolution process, where an officer of the corporate debtor manages its affairs with the intent to defraud its creditors or for any fraudulent purpose, penalty may be imposed upon such officer. (Section 67A).

30.Explanation to Section 77 is to be omitted as a similar explanation has been added to the new section 77A of the Code.

31.To provide punishment for offences related to pre-packaged insolvency resolution process. (Section 77A).

32.Amend section 208 to insert actions taken by the resolution professional during the pre-packaged insolvency resolution process and actions taken before the initiation of pre-packaged insolvency resolution process.

33.In view of the above amendments, consequential changes are to be made to Sections 239 and 240 of the Code for ensuring enabling provisions for framing rules and regulations.

34. Amend Section 240A to apply exemptions of Section 29A for micro, small and medium enterprises to the pre-packaged insolvency resolution process.[41]

[41] https://static.pib.gov.in/

5.4 CASE LAWS.

SATYAM SCAM[42]

When the 2008 recession hit the world, India was only going through a financial crisis but also an ethical crisis. Imagine a hypothetical scenario in the stock market where the very basic financials provided to you by a company are manipulated. This was what happened with Satyam Computer Services.

The Satyam scam was finally exposed early in 2009. Analysts dubbed the scam as India's own Enron. Today, we take a look at the scandal that hit the nation in the midst of a recession was carried out, its effects, and how it was dealt with.

Satyam Computer Services Ltd was founded in 1987 in Hyderabad by brothers, Rama Raju and Ramalinga Raju (henceforth Raju). The name in the ancient Indian language Sanskrit meant 'Truth'. The firm began with 20 employees offering IT and BPO services across various sectors.

The initial success of the company soon led to it getting listed and opting for an IPO in the BSE in 1991. Post this, the company soon got its first Fortune 500 client- Deere and Co. This further allowed the business to grow rapidly into becoming one of the top players in the market.

Satyam soon became the fourth largest IT software exporter in the industry after TCS, Wipro, and Infosys.

At the peak of its success, Satyam employed more than 50,000 employees and operated in 60+ countries. Satyam was now seen as the prime example of an Indian Success story. Its financials too were perfect. The firm was worth $1billion in 2003. Satyam soon went on to cross the $2billion mark in 2008.

During this period the company had a CAGR of 40%, operating profits averaging 21% with a 300% increase in its stock price. Satyam was now an example to other companies as well. It was showered with accolades from MZ Consult for being a 'leader in Indian Corporate

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[42] Writ Petition No.37487 of 2012

Governance and Accountability, the 'Golden Peacock Award' for Corporate Accountability in 2008. Mr. Raju too was revered in the industry for his business acumen and was awarded the Ernest and Young Entrepreneur of the Year Award in 2008.

Late in 2008, the board of Satyam decided to takeover Maytas a real estate company owned by Mr. Raju. This did not sit well with the shareholders which led to the decision being reversed in 12 hours, impacting the stock price. On December 23rd the World Bank barred Satyam from doing business with any of the banks' direct contacts for a period of 8 years.

This was one of the most severe penalties imposed by the World Bank against an Indian outsourcing company. The World Bank had alleged that Satyam had failed to maintain documentation to support fees charged to its subcontractors and the company also provided improper benefits to the banks' staff.

But were these allegations true? At this point, Satyam was India's crown jewel! Just 2 days later Satyam replied demanded the World Bank to explain itself and also apologize as its actions had damaged Satyams investor confidence.

As the investors were still coping up with the failed acquisition of Maytas and the allegations by the World Bank on January 7th, 2009 the markets received the resignation by Mr. Raju and along with it a confession that he had manipulated accounts of Rs. 7000 crores. Investors and clients all around the World were left shocked. This just couldn't be happening!

In order to understand the scam, we would have to go back to 1999. Mr. Raju had begun inflating the quarterly profits in order to meet the analyst expectations. For eg the results announced on October 17, 2009, overstated quarterly revenues by 75% and profits by 97%. Raju had done this along with the company's global head for internal audit.

Mr. Raju used his personal computer to create a number of bank statements in order to inflate the balance sheet with cash that simply did not exist. The company's global head for internal audit created fake customer identities and fake invoices in order to inflate the revenue. This, in turn, would allow the company easy access to loans and the impression of its success led to an increase in the share price.

Also, the cash that the company had raised from the markets in the US never even made to the balance sheets. But this was not sufficient for Raju, he went onto create records for fake employees and would withdraw salaries on their behalf.

The increased share price drove Raju to get rid of as many shares as possible and maintain just enough to be a part of the company. This allowed Raju to make profits from their sales at high prices. He also withdrew $3 million every month as salaries on behalf of employees that did not exist.

But where did all this money go? Although Raju had set up a great IT company, he was also interested in the real estate business. The real estate business in the early 2000s was booming in Hyderabad. It was also rumored that Raju knew the plan(route) for a metro that was to be built in Hyderabad. The foundation of the metro plans was laid in the year 2003. Raju soon diverted all the money into real estate with hopes to make a good profit once the metro was functional. He also set up a real estate company called Maytas.

But unfortunately, just like every other sector the real estate sector too was hit badly during the recession of 2008. By then almost a decade of manipulation of the financial statements had led to the hugely overstated assets and underreported liabilities. Nearly $1.04billion in bank loans and cash that the books showed was nonexistent. The gap was simply too big to fill!

By now whistleblowing attempts were also starting to arise. Company director Krishna Palepu received anonymous mails by the alias Joseph Abraham. The mail exposed the fraud. Palepu forwarded it to another director and to S. Gopalkrishnan a partner at PwC – their auditor. Gopalkrishnan assured Palepu that there were no truths in the mail and a presentation would be held before the audit committee in order to assure him on 29th December. The date was later revised to 10th January 2009.

Despite this Raju had a last resort. The plan included a takeover of Maytas by Satyam which would bridge the gap that had accumulated over the years. The new financials would justify that the cash had been used to purchase Maytas. But this plan was foiled after shareholder opposition. This forced Raju to put himself at the mercy of the law. Raju later mentioned It was like riding a tiger, not knowing how to get off without being eaten.

The next big question while studying this big scandal is how was Ramalinga Raju able to get away with Satyam Scam in a company of over 50,000 employees?

The answer to this lies in the miserable failure of PriceWaterhouseCoopers(PwC) their auditor. PwC was the external auditors to the company and it was their duty to examine the financial records and ensure that they are accurate. It is surprising how they did not notice 7561 fake bills after auditing Satyam for almost 9 years.

There were multiple red flags that the auditors could have caught upon. Firstly a simple check with the banks would have revealed that the bills were not valid and the cash balances were overstated. Secondly, any company with that big of cash reserves as Satyam would at least invest them in an interest yielding account.

But that was not the case here. Despite these obvious signs, PwC seemed to be looking the other way. Suspicion towards PwC was later increased when it was found out that they were paid twice the fees for their services.

PwC was not able to detect the fraud for almost 9 years but Merrill Lynch discovered the fraud as part of their due diligence in merely 10 days.

Two days after the confession was made Raju was arrested and charged with criminal conspiracy, breach of trust, and forgery. The shares fell to Rs.11.50 on that day compared to heights of Rs.544 in 2008. The CBI raided the house of the youngest Raju sibling where 112 sales deeds to different land purchases were found. The CBI also found 13,000 fake employee records created in Satyam and claimed that the scam amounted to over Rs. 7000 crores.

PwC initially claimed that their failure to catch the fraud was due to the reliance placed by them on information provided by the management. PwC was found guilty and its license was temporarily revoked for 2 years. Investors too became vary of other companies audited by PwC. This resulted in their share prices of these companies falling by 5-15%. The news of the scam led to the Sensex falling by 7.3%

The Indian stock markets were now in turmoil. The Indian government realizing the impact this could have on the stock markets and future FDIs immediately spurted to action. They

began investigating and quickly appointed a new board to Satyam. The board's goal was to sell the company within the next 100 days.

With this aim, the board appointed Goldman Sachs and Avendus Capital to help fast track the sale. SEBI appointed retired SC justice Barucha to oversee the transaction in order to instill trust. Several companies bid on April 13, 2009. The winning bid was placed by Tech Mahindra who went onto buy Satyam for 1/3rd of its value before the fraud was revealed.

On 4th November 2011, bail was granted to Raju and two others accused. In 2015 Raju, his 2 brothers, and 7 others were sentenced to 7 years in prison.[43]

VIJAY MALLYA SCAM

Vijay Mallya is an Indian businessman at present fighting extradition from the UK. Mallya, who owes 17 Indian banks an estimated Rs 9,000 crore, is accused of fraud and money laundering in the country.

Also a former Rajya Sabha member, Mallya is the ex-chairman of United Spirits. He currently continues to serve as chairman of United Breweries Group. Previously, he also served as chairman of Sanofi India and Bayer CropScience, among other companies.

Of all his businesses, Vijay Mallya's name is most closely associated with now defunt Kingfisher Airlines. The airline company, launched in 2005, proved to be his undoing, as its business model floundered in 2008, when a global recession and soaring fuel prices brought it to a grinding halt.

Facing heat from lenders following the collapse of the airline, Mallya fled to the UK in 2016. Mallya has publicly offered to make good on his debts and said he has been doing so since 2016.

Mallya inherited UB Spirits, known for the Kingfisher beer brand, from his father and turned it around into India's biggest spirits maker. He became the chairman of UB Group at the age of 28.

[43] https://tradebrains.in/satyam-scam/

However, most other businesses of the group were not as successful, Kingfisher Airlines being the biggest failure.

Started in 2005, Kingfisher Airlines was grounded in 2012 after a burgeoning debt burden made it impossible for the beleaguered airline to continue operations. The airline is also being investigated for suspected diversion of funds and financial irregularities.

Mallya left the country on March 2, 2016, the day a clutch of public-sector banks moved the Debt Recovery Tribunal against him. In January 2019, he was declared a fugitive economic offender under the Fugitive Economic Offenders Act.
Mallay has denied all allegations and publicly offered to repay the full principal amount he owes the lenders.

Just before leaving the country in 2016, Mallya wrote an open letter defending himself. "All enquiries conducted have failed to find evidence of misappropriation of funds by Kingfisher Airlines or myself," Mallya said. "Despite pledging blue-chip securities and depositing significant amounts in court, a successful disinformation campaign has ensured my becoming the poster boy of all bank NPAs."

The Indian government is making all efforts to extradite Mallya from the UK. In February 2019, UK Home Secretary approved the extradition. The case is now pending in the London High Court, where Mallya filed an appeal against the order. The appeal has been listed for a three-day hearing from February 11, 2020.[44]

THE PNB SCAM

The Punjab National Bank scam relates to fraudulent letter of undertaking worth Rs 10,000 crore issued by the bank.
The key accused in the case were jeweller and designer Nirav Modi, his maternal uncle Mehul Choksi, and other relatives and some PNB employees. Nirav Modi and his relatives escaped India in early 2018, days before the news of the scam became public. PNB scam has been dubbed as the biggest fraud in India's banking history.

[44] https://www.business-standard.com/

Bankers used fake Letters of Undertakings (LoUs) at PNB's Brady House branch in Fort, Mumbai. The LoUs were opened in favour of branches of Indian banks for import of pearls for a period of one year, for which Reserve Bank of India guidelines lay out a total time period of 90 days from the date of shipment. This guideline was ignored by overseas branches of Indian banks. They failed to share any document/information with PNB, which were made available to them by the firms at the time of availing credit from them.

Nirav Modi got his first fraudulent guarantee from PNB on March 10, 2011 and managed to get 1,212 more such guarantees over the next 74 months.

The Enforcement Directorate (ED) recovered bank token devices of the foreign dummy companies used by the fugitive diamond trader to transfer the fraudulent funds.

The probe agency found that Nehal Modi, brother of Nirav Modi had destroyed the devices and had even secured a server located at United Arab Emirates (UAE) soon after the scam broke out. These dummy firms had been receiving the fraudulent PNB LoUs and were based out in British Virgin Island and other tax havens.

The enforcement agency has so far seized movable and immovable properties to the tune of Rs 2362 crore in the PNB fraud case.

PNB employees misused the SWIFT network to transmit messages to Allahabad Bank and Axis Bank on fund requirement. While all this was done using SWIFT passwords, the transactions were never recorded in the bank’s core system — thereby keeping the PNB management in the dark for years.

On 29 January 2018, PNB lodged a FIR with CBI stating that fraudulent LoUs worth Rs 2.8 billion (Rs 280.7 crore) were first issued on 16 January. In the complaint, PNB had named three diamond firms, Diamonds R Us, Solar Exports and Stellar Diamonds.

As of 18 May 2018, the scam has ballooned to over Rs 14,000 crore.[45]

Finance Minister Nirmala Sitharaman on 18 MARCH 2021 said that fugitive businessmen Vijaya Mallya, Nirav Modi and Mehul Choksi are "coming back" to India" to face the law. The government is pursuing extradition of Mallya and Modi from the UK while Choksi is believed to be in Antigua.

Vijay Mallya, Nirav Modi, Mehul Choksi are all coming back to face law of the land, Sitharaman said in the Rajya Sabha while replying to a debate on the insurance amendment

[45] Business standards

bill.

Mallya, an accused in bank loan default case of over Rs 9,000 crore involving his defunct Kingfisher Airlines, is in the UK since March 2016.
Nirav Modi and his maternal uncle Choksi fled the country allegedly after committing fraud in the public sector lender Punjab National Bank. Modi is accused of committing a fraud of USD 2 billion (around Rs 14,500 crore) in the PNB.[46]

[46] The economic times

CONCLUSION

The Banking Industry has been operating in India since the early stage of civilization. Bona fide transactions of Banking Industries are beneficial for world economy. A strong banking sector is important for flourishing economy. The failure of the banking sector may have an adverse impact on other sectors. Non-performing assets are one of the major concerns for banks in India. NPAs reflect the performance of banks. A high level of NPAs suggests high probability of a large number of credit defaults that affect the profitability and net-worth of banks and also erodes the value of the asset. The NPA growth involves the necessity of provisions, which reduces the overall profits and shareholders' value. Money loaned is one of the major functions of Banks, and "What is own, must be repay" is the universal law. But, since last two decades, Banks are facing problems in recovery of loans and fluctuating NPA levels and thereby decline in profitability of commercial sector banks. It was observed that the long run of cases has directly impacted the NPA recovery and Bankers felt that the introduction of DRTs and SARFAESI Act may resolve these issues and provide adequate strength to the Banks to expedite recovery of dues. DRTs performed well and helped Banks and Financial Institutions to recoup enormous pieces of their debts, however, this advancement was not viable when it came to huge and incredible borrowers. Quick disposal of cases keeps the bankers far from the provisional burden. Recovery of NPAs had improved after increasing the number of DRT centers. The newly introduced bankruptcy framework IBC 2016 has also helped to resolve the corporate defaults in a timely manner. After 2 huge scams i.e. Vijay Mallya scam and Nirav Modi scam, it was very necessary for India to bring a debt recovery law that is strict and efficient enough to recover the bad debt.

SUGGESTIONS

With all the discussed amendments, acts and new regulations one thing that is clear is that law wise we have achieved what was required to make our Banking industry robust again, now the only thing that would be game changer is the compliance and effective functioning of institutions which have been entrusted with implementation of above said acts and regulations.

To improve the debt recovery, it is suggested that

- The time bound disposal of cases through the courts should be done.
- The government should ensure that time bound disposal of the cases to be done mandatorily by adding the clauses in the Act and making it a law.
- Tribunals should be made more effective and facilitate fast disposal of debt recovery.

BIBLIOGRAPHY

- Alamelumangai, Sudha(2019), Recovery Of Npas Through Debt Recovery Channels In Indian Banks - An Analysis
- https://blog.ipleaders.in/
- https://corporatefinanceinstitute.com/
- https://corporatefinanceinstitute.com/
- https://dictionary.cambridge.org/dictionary/english/debt-recovery
- https://legislative.gov.in/
- https://library.nclc.org/
- https://library.nclc.org/fdc/0102
- https://rbi.org.in/
- https://taxguru.in/
- https://www.arrms.in/blogs-news/debt-recovery/debt-recovery-the-legal-framework/
- https://www.bcasonline.org/
- https://www.business-standard.com/
- https://www.ibpsguide.com/
- https://www.ijedr.org/
- https://www.indialawoffices.com/
- https://www.investopedia.com/
- https://www.usbankruptcycode.org/

- Ranganath, Recovery of debts in india
- Shamim(2019), bankruptcy laws: a comparative study of India and usa
- Unny (2011), A Study on the Effectiveness of Remedies Available For Banks in a Deb
- Recovery Tribunal - A Case Study on Ernakulam DRT
- www.cppr.in