Confederation of Indian Industry

CORPORATE FINANCE & RESTRUCTURING

India’s M&A and Distressed Opportunity Landscape

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Foreword

Over the past decade, India's corporate landscape has experienced rapid change, which has impacted the way companies have performed, as measured by their change in market capitalization.

Some corporates that were near the top of the league table a decade ago have experienced significant operating and financial difficulty thereafter, impacting their ability to generate value for stakeholders. Companies that were able to adjust their business practices and maintain flexibility when it came to managing their capital structures, M&A activity and group vision, have continued to outperform their peers. Those companies that remained rigid in their business models or did not employ prudent governance policies have suffered.

Also, a closer look at loan stress in the system shows that asset heavy sectors such as metals, mining, construction, engineering and infrastructure have not fared well, experiencing the highest stressed loans ratios.

Since the 1980s, numerous restructuring / rehabilitation regimes were implemented in India, but with limited success. The introduction of the Insolvency and Bankruptcy Code, 2016, ("IBC") has been a positive move as it presents a single court process to reorganize and achieve insolvency resolution in a time bound manner. Introduction of the IBC allows a systematic approach for both strategic companies and investors to acquire distressed assets within a specified timeframe.

PE funds are planning to earmark billions of dollars to invest in Indian companies. This money is expected to help companies pare debt levels while also making growth capital available. In addition, buyers may also look at acquisitions from companies / promoters looking to sell non-core assets. In today's environment, we are seeing significant activity with respect to non-core asset sales, including from the government's end, in an effort to deleverage and maintain a sharper focus on the core business. These dynamics shall provide for interesting opportunities for interested buyers.

In this report, we start by providing insights on the changing Indian corporate landscape and some interesting takeaways. Then we discuss the India M&A market and discuss various trends across different deal categories, and also explore non-core asset sales activity. Next, the report looks at the trends and statistics of fund flows and fund activity. The report then goes on to summarize the various restructuring regimes that came and went, and how those led to the formulation of the IBC and then introduce the recently published 7 June, 2019 RBI Circular. Finally, the report addresses approaching distressed M&A from the buy-side and its key considerations

We hope that the report makes for insightful reading!

CONFEDERATION OF INDIAN INDUSTRY (CII)

ALVAREZ AND MARSAL INDIA PVT. LTD.

India's Corporate Landscape

MOVEMENT IN THE TOP 100 LISTED ENTITIES

"Change is the only constant." Over the past 10 years, the Indian business landscape has witnessed significant change as well as variation in the way companies have performed — operationally and financially.

We believe a good way to judge a company's value creation over the past 10 years is to evaluate the change in its market capitalization. We compared the list of top 100 companies in the Indian equity market in terms of market capitalization between 14 August 2009 and 14 August 2019, which is our study period.

Churning Decade: 2009 Versus 2019

Our study revealed that out of the top 100 listed companies in 2019, 60 were among the top 100 listed companies in 2009 as well. Out of these 60 companies, 36 outperformed the NIFTY50 (market capitalization grew at a CAGR of more than 9.2 percent) and 24 underperformed the NIFTY50 but were able to maintain their position in the top 100. Some examples of outperformers are Ultratech Cement, Asian Paints, Kotak Mahindra Bank, HDFC Bank and TCS.

Of the 40 companies that exited the top 100 list of 2009, names included leading PSUs such as MMTC, BHEL and SAIL, as well as corporates such as Reliance Communications.

Breaking the Barrier: New Entrants

Out of the 40 new entrants in the top 100 list in 2019, there are 26 companies that were listed in 2009. These include Bajaj Finance, Eicher Motors, Bajaj Finserv, IndusInd Bank and Berger Paints. The remaining 14 new entrants in the top 100 list for 2019 were not listed in 2009, including HDFC Life Insurance, Avenue Supermarts, SBI Life Insurance, Interglobe Aviation (Indigo) and Bandhan Bank.

Top 10 Companies in the Indian Equity Market in Terms of Market Capitalization in 2009 and 2019, and Their Ranks in 2019 and 2009, Respectively

#	Top 10 in 2009	2019 Rank	#	Top 10 in 2019	2009 Rank
1	Reliance Industries	2	1	TCS	9
2	ONGC	16	2	Reliance Industries	1
3	NTPC	23	3	HDFC Bank	19
4	MMTC	NA	4	HUL	21
5	Bharti Airtel	13	5	HDFC	16
6	NMDC	82	6	Infosys	7
7	Infosys	6	7	ITC	13
8	SBI	10	8	Kotak Mahindra	40
9	TCS	1	9	ICICI Bank	12
10	BHEL	NA	10	SBI	8

Source: A&M research

The companies that were able to adapt to the requirements of changing business practices have continued to outperform their peers, while those companies that remained rigid in their business model or did not employ prudent governance policies, operational or financial, have been adversely affected on the Indian stock market.

Conglomerates and large groups such as BHEL, Vodafone Idea, Jindal Steel & Power, amongst others, have exited the top 100 list. Notable companies such as Punj Lloyd, Reliance Communications, Jaiprakash Associates, and others not only exited the top 100 but also went into distress.

Another trend that led to the current distress situation is the outbound acquisitions done by some Indian companies. Suzlon-Senvion (2007), Essar-Zimbabwe Iron and Steel (2011), and Cox & Kings-Holidaybreak (2011) are a few such examples of when companies tried to expand through inorganic growth.

Select Companies that Exited the Top 10 List Between 2009 and 2019 and Went Into Distress

SELECT COMPANIES	
Reliance Communications	Suzlon Energy
Reliance Infrastructure	CG Power and Industrial Solutions
Reliance Capital	Puni Lloyd
Jaiprakash Associates	Lanco Infratech

Source: A&M research

The central themes around the companies that exited the top 100 list between 2009 and 2019 are:

1. Pursued organic and / or inorganic expansion through leverage
2. Generally, did not hive off any sizeable non-core assets when the stress started to build up
3. Public sector undertakings such as MMTC, BHEL, SAIL and NMDC

On the other hand, the central themes around the companies that outperformed the NIFTY50 or were new entrants in the top 100 list in 2019 are:

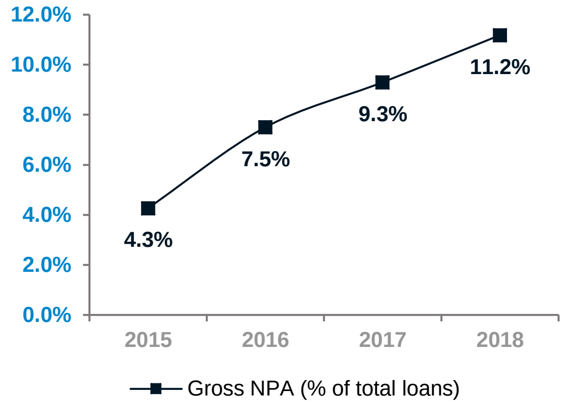
1. Timely acquisitions either in the existing sector of operation or for opportunistic diversification. For example, Reliance Industries entered the telecom business through Jio (2011–12) and closed over 10 transactions to expand its presence in the sector.
2. Promoter equity infusion for a healthy capital structure
3. A number of financial services companies featured in the list of top 100 owing to their sensible financial governance practices

ASSET HEAVY SECTORS IN STRESS

A closer look at loan stress in the system shows that asset heavy sectors such as metals, mining, construction, engineering and infrastructure have not fared well.

The RBI crackdown on banks in 2016 brought out the true picture of stressed assets in the Indian corporate lending space.

Historical Gross NPAs

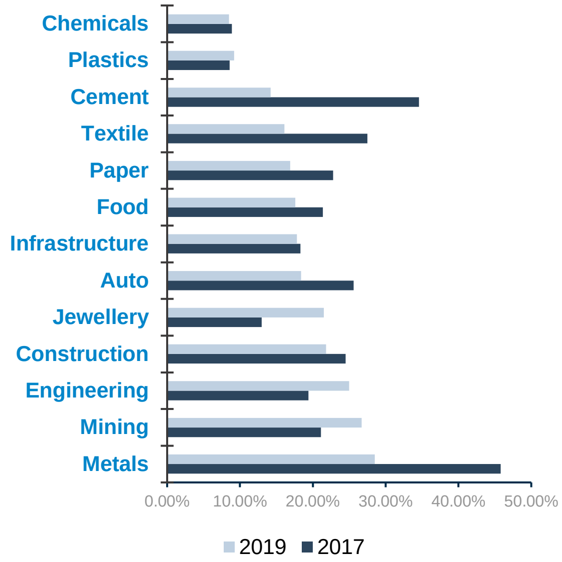


Source: RBI

As of March 2017, NPAs in large borrower accounts accounted for more than 86 percent of NPAs in scheduled commercial banks' loan portfolios.

As of March 2019, the top five sectors accounting for more than two-thirds of the corporate loan book included asset heavy sectors such as infrastructure (36.4 percent), metals (11.5 percent), chemicals (6.9 percent), textile (6.5 percent) and engineering (5.7 percent). These same sectors have witnessed the greatest levels of stress. As of March 2019, metals (28.5 percent), mining (26.7 percent), and engineering (25.0 percent) are the top three sectors when we look at stressed loans as a ratio of credit offtake.

Stressed Loans as a Ratio of Credit Offtake (2017 and 2019)



Source: RBI Financial Stability Report, June 2019

INDIA'S BUSINESS HOUSES

Since independence, India has been on a roller coaster ride owing to changes in the political and geopolitical scenarios, liberalization, privatization, and a myriad of corporate practices brought in. However, one feature of our economy that remained constant is the supremacy of family-controlled business houses.

There has been considerable churn in the top business houses powering India's economy since the 1950s, as shown in the table below.

Prominent Business Houses in the Indian Corporate Market Over the Years (In No Particular Order)

1950s	1990s	2019
Tata	Tata	Tata
Birla	Birla	Aditya Birla
Mahindra	Mahindra	Mahindra
Singhania	Ambani	Mukesh Ambani
Wachand	Bajaj	Vedanta
Thapar	Modi	Bharti
Kirloskar	TVS	Murugappa
Mafatlal	Goenka	Adani
Shriram	Nanda	JSW
Khatau	Ruia	Rahul Bajaj

Source: Publicly available information, A&M Analysis

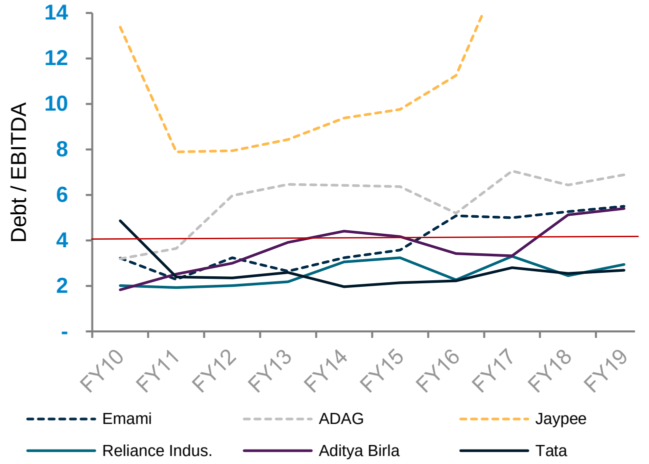
It is possible that India is about to witness yet another revamp of the league table owing to multiple business reforms, banking regulations, foreign capital flows, large scale bankruptcies, etc. Sparked by an economic downturn in recent years, many business houses are reeling under stress due to high leverage, poor financial performance, and the inability to compete with sleek and agile standalone companies disrupting their respective sectors.

Delayed recognition of bad loans and regulatory tolerance led to indebted firms and conglomerates not facing the pressures of a faulty capital structure. Tightened banking norms and the RBI crackdown on stressed assets has brought the stress out in the open. A few groups such as Jaypee Group, Anil Dhirubhai Ambani Group, Lanco and Essar, which were great wealth creators of the past, have been subject to insolvency.

A trend amongst stressed business houses is that the promoters sell off non-core assets to pare debt levels, but they wait until the last moment to sell, and more often than not the sale proceeds are insignificant. This not only affects the operational performance of group companies but also reduces the value of the asset being sold. Some business houses are so highly levered that the sale of non-core assets proves to be a temporary solution, generating enough cash to stay out of debt trouble for a short period. The need for such business houses is an early objective assessment of businesses, timely monetization of assets that can be parted with and course correcting overall leverage.

We studied the Debt / EBITDA ratios of prominent conglomerates to see how they have fared over the past 10 years — FY10 to FY19.

Debt / EBITDA Ratio Trends of Select Business Houses from FY10 to FY19 (Solid Lines for Stressed Groups and Dashes for Outperforming Groups)



Source: A&M Analysis

Note: In the case of Jaypee, a few years with negative EBITDA and abnormal Debt / EBITDA ratios have been omitted.

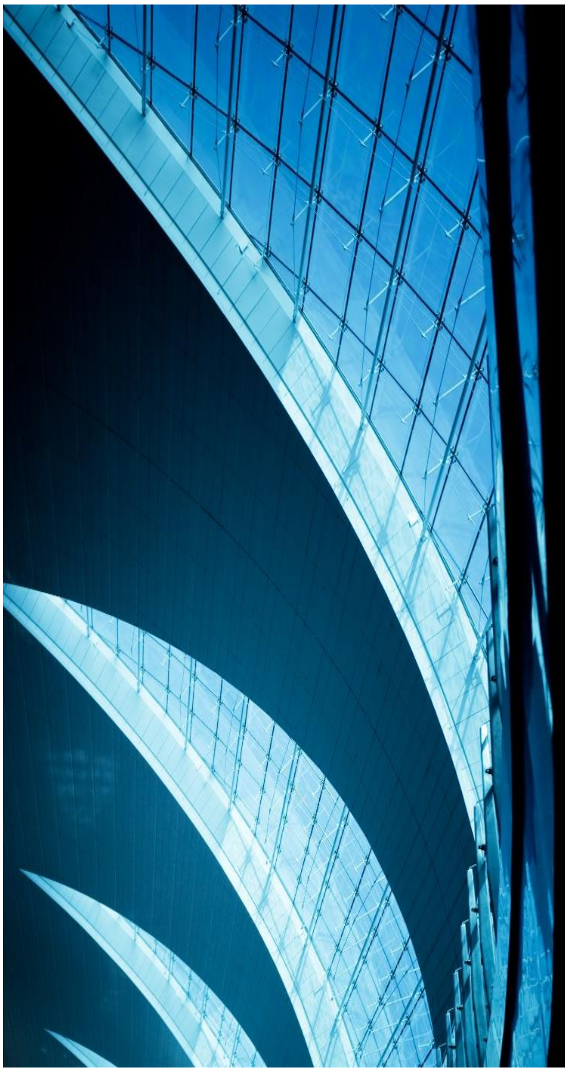
KEY THEMES AROUND DISTRESSED AND OUTPERFORMING ENTITIES

The central themes around the entities in distress are:

- Delays in rightsizing their capital structure
- Continued use of capital for acquiring companies even though they already have stressed balance sheets
- Inability to sell off sizeable non-core assets when stress sets into the group financials, and instead waiting too long until matters become worse

On the other hand, the central themes around outperforming entities are:

- Maintaining a constant check on their capital structure and Debt / EBITDA ratios to keep leverage under control
- Driving acquisitions and asset sales as per the long-term vision of the group
- Adapting to the changing corporate landscape



India M&A Overview

2018 — A RECORD YEAR

2018 witnessed the highest deal value historically in India. Deal value peaked at USD 95.4 Bn in 2018 as compared to USD 61.9 Bn in 2017 (c. 54 percent increase). This was driven by multiple billion-dollar transactions including Walmart-Flipkart (USD 16.0 Bn), Idea Cellular-Vodafone India (USD 12.6 Bn), ONGC-Hindustan Petroleum (USD 5.7 Bn) and Tata Steel-Bhushan Steel (USD 5.2 Bn).

These three deals contributed c. 41 percent of total deal value for 2018.

Despite the 2018 boom, the first eight months of 2019 have been light in terms of deal value, clocking in c. USD 32.5 Bn. The effect of elections and a tempered economic environment are likely contributors to the limited deal activity in 2019 so far. In line with that, deal volume has also been light in 2019 thus far, at 167.

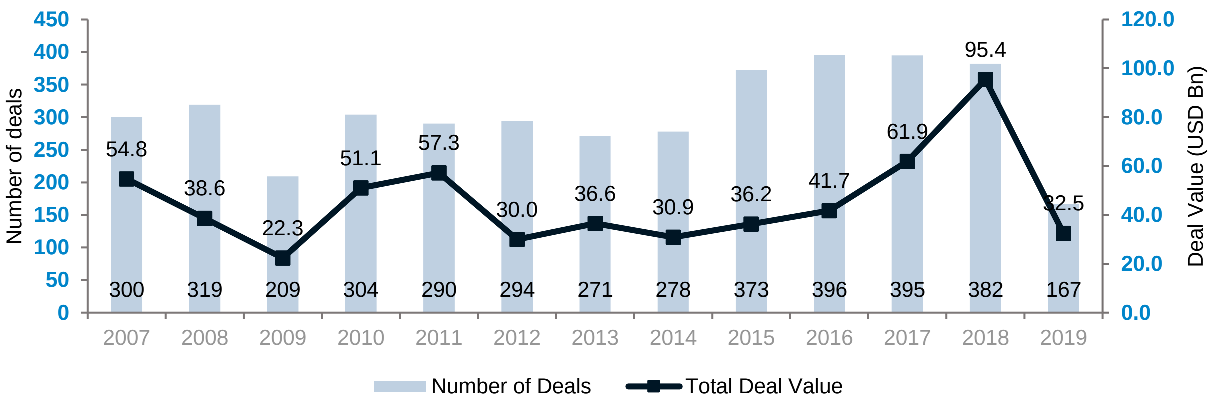
Over the past 10 years, four of the top 10 deals were completed in 2018. These four deals were between large groups within their sectors, implying a growing theme around consolidation. The most recent blockbuster deal in the Indian M&A space was Walmart's acquisition of Flipkart.

Top 10 Deals for Past 10 Years (USD Bn)

Year	Acquirer	Target	Deal Value
2018	Walmart	Flipkart	16.0
2018	Idea Cellular	Vodafone India	12.6
2007	Vodafone International	Hutchison Essar	11.1
2007	Tata Steel	Corus	10.3
2013	Vedanta	Sterlite Industries	10.2
2010	Bharti Airtel	Zain Africa	9.0
2011	Vedanta	Cairn India	8.6
2017	Grasim Industries	Aditya Birla Nuvo	7.9
2018	ONGC	Hindustan Petroleum	5.7
2018	Tata Steel	Bhushan Steel	5.2

Source: Mergermarket. Note: Deal value in table above is consideration paid except for schemes of amalgamation where it is EV of target

Deal Value and Volumes



Source: Mergermarket. The above data captures the following: 1) transactions taken as of closing date, 2) excludes minority PE transactions, and 3) 2019 data is through August

TRANSACTION TRENDS (FROM 2007 TO AUGUST 2019)

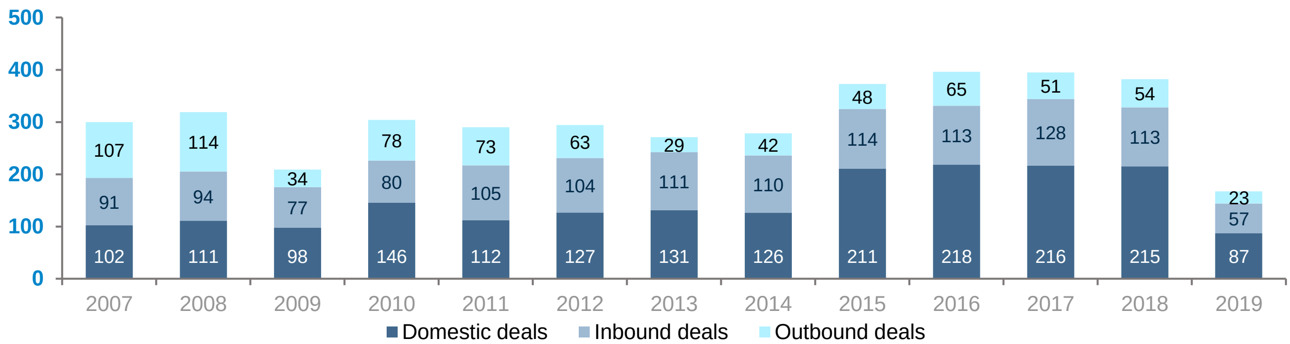
Inbound Transactions

- Since 2015, inbound deals have generally increased by value and volume has remained in line. In 2018, inbound deals represented about 34 percent of the total transaction value. This highlights a growing interest in the Indian market by international players.
- Some of the largest inbound deals have been Walmart-Flipkart (2018, USD 16.0 Bn), Vodafone International-Hutchison Essar (2007, USD 11.1 Bn) and Vedanta-Cairn India (2011, USD 8.6 Bn)

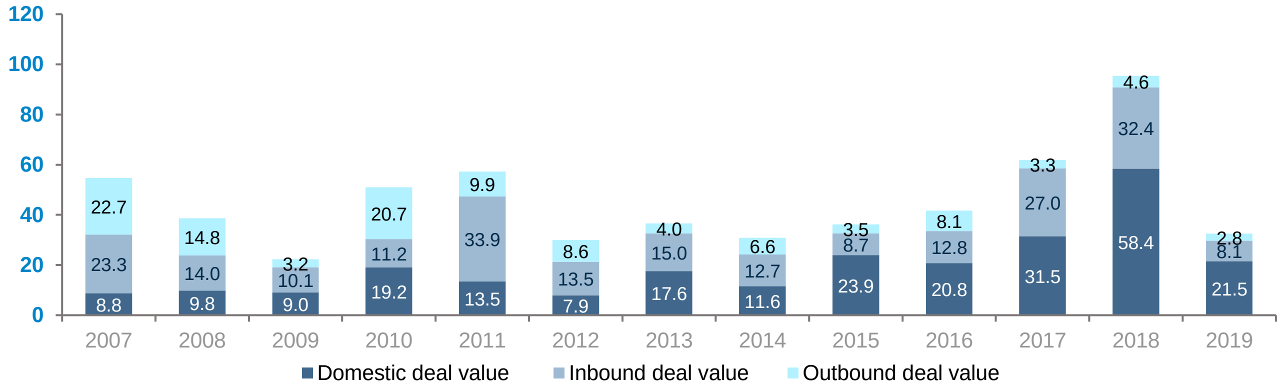
Outbound Transactions

- In 2007 and 2008, Indian companies were heavily acquiring companies outside of the country. Outbound deal value contributed c. 41 percent and c. 38 percent of total deal value for 2007 and 2008, respectively. However, post 2011, the share of outbound deal value against total deal value has been smaller and was c. 5 percent in 2018.
- This decline suggests growing interest for deals within the domestic market itself.
- Some of the largest outbound deals have been Tata Steel-Corus (2007, USD 10.3 Bn) and Bharti Airtel-Zain Africa (2010, USD 9.0 Bn) .

Deal Volumes: Inbound, Outbound And Domestic



Deal Values: Inbound, Outbound And Domestic (USD Bn)



Source: Mergermarket. The above data captures the following: 1) transactions taken as of closing date, 2) excludes minority PE transactions, and 3) 2019 data is through August

Domestic Transactions

- This segment has witnessed high growth, with deal value growing at a strong CAGR of c. 68 percent between 2016 and 2018. When compared to 2014, domestic transaction value increased from USD 11.6 Bn (37 percent of cumulative deal value) to USD 58.4 Bn in 2018 (61 percent of cumulative deal value).
- Between 2017 and 2018, cumulative deal value jumped from USD 31.5 Bn to USD 58.4 Bn, almost a 90 percent increment. The introduction of the IBC process was a strong contributor to this growth.
- Some of the largest domestic deals have been Idea Cellular-Vodafone India (2018, USD 12.6 Bn), Vedanta-Sterlite Industries (2013, USD 10.2 Bn) and Tata Steel-Bhushan Steel (2018, USD 5.2 Bn), the latter being a deal completed with the IBC regime.

DISTRESSED M&A ACTIVITY

When the Insolvency and Bankruptcy Code, 2016 ("IBC") was implemented, a list of the 12 largest defaulters in corporate India was prepared, against whom banks had been asked to initiate bankruptcy proceedings by the RBI. These companies owed a combined total of c. USD 40 Bn in debt.

Out of the 12 companies, only three cases have reached resolution and the rest are either ongoing, the process has restarted, or are under liquidation.

List of "Dirty Dozen" and Their Status

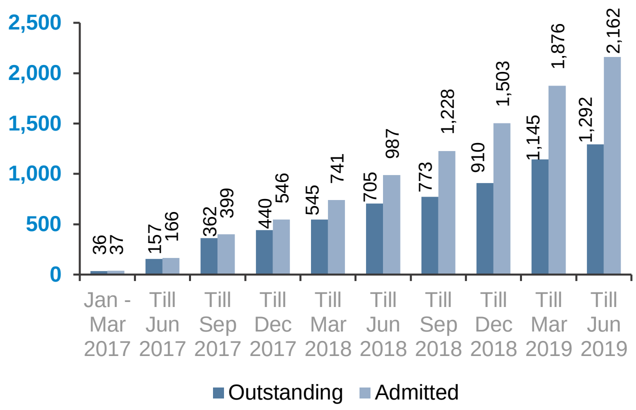
Corporate Debtor	Status
Bhushan Steel	Resolution completed
Electrosteel Steels	Resolution completed
Monnet Ispat & Energy	Resolution completed
Bhushan Power and Steel	NCLT approved JSW plan (September 2019)
Jyoti Structures	Revised resolution plan approved by NCLT
Era Infra	Ongoing process
Jaypee Infratech	Process restarted
ABG Shipyard	Under liquidation
Lanco Infra	Under liquidation
Amtek Auto	Supreme Court has stayed liquidation proceedings
Essar Steel	Under litigation
Alok Industries	Under litigation

Source: Publicly available information as of 11 September, 2019

Cases Admitted Under IBC

Between January 2017 and June 2019, admitted cases have gone up from 37 to 2,162. Out of the 2,162 cases, 1,292 cases are still outstanding.

Cases Admitted Under IBC



Source: Insolvency & Bankruptcy Board of India (IBBI) quarterly newsletter - January - March 2019 publication

Deal Activity

The introduction of the Insolvency and Bankruptcy Code, 2016 "("IBC") has played a key role in attracting the interest of both domestic and international players, and has been another contributor to deal flow. Over the past two years, 2018 and 2019, more than 12 cases have closed with an aggregate value exceeding USD 10 Bn.

Large Bankruptcy Cases That Have Successfully Closed Under the IBC Process During 2018 Include:

Year	Bidder	Target	Deal Value (USD Bn)
2018	Tata Steel	Bhushan Steel	5.2
2018	UltraTech	Binani Cement	1.1
2018	Vedanta	Electrosteel Steels	0.8
2018	JSW Steel and AION Capital Partners	Monnet Ispat & Energy	0.4

Source: Publicly available information

Case Study: Tata Steel's Acquisition of Bhushan Steel

Background

- Bhushan Steel produces various downstream steel products from its plants based in Uttar Pradesh, Maharashtra and Odisha.
- Bhushan Steel was categorized as one of the "Dirty Dozen" distressed companies to be resolved under the IBC regime.

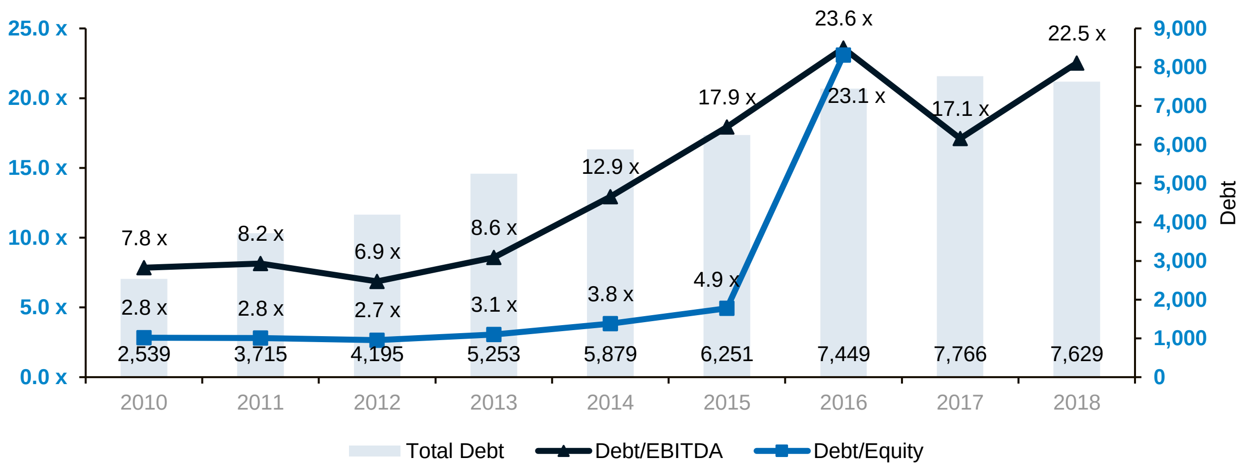
Pre-NCLT Stage

- The company's debt ballooned from USD 2,539 Mn in FY10 to USD 6,251 Mn in FY16.
- In FY16, Debt / EBITDA reached an unstainable level of 23.6x and Debt / Equity touched 23.1x.
- As per reports, the promoters accumulated debt to expand their business through borrowed money. A decline in global steel prices driven by weakening global and domestic steel demand played a role in the decline in performance.
- In October 2014, the company looked at selling its non-core assets to alleviate its debt burden. It hired ICICI to find buyers for three or more of its oxygen plants based in Odisha.
- In January 2016, Bhushan Steel defaulted on its loan payment to SBI.

NCLT Stage

- In July 2017, Bhushan Steel was admitted into insolvency based on an application filed by SBI.
- Admitted claims comprised financial claims of USD 8,407 Mn and operational claims of USD 306 Mn.
- At the phase for submission of EOIs, bidders that submitted a Resolution Plan included Tata Steel, JSW Steel and Liberty House (disqualified due to late submission).
- Tata Steel offered upfront cash of USD 4,980 Mn towards financial creditors and USD 171 Mn toward operational creditors whereas JSW's offer was significantly lower.
- At the end of June 2018, the CoC formally declared Tata Steel as H1, and under the CIRP rules, the bidders were invited for negotiations.
- After JSW submitted its revised offer, Tata Steel's offer remained higher, and the CoC declared it as the H1 for the second time.

Historical Financial Metrics (USD Mn)



Source: CapIQ, publicly available information

Non-Core Asset Sales

Over the past five years ending 31 March 2019, the consolidated debt of all BSE-listed companies has increased by 13.2 percent while corporate earnings have remained almost constant. This has made it necessary for companies to find solutions to reduce debt as high leverage limits future growth prospects.

LARGE COMPANIES DIVESTING NON-CORE ASSETS

With the economic slowdown hindering profits of companies and increasing debt levels, and with the unavailability of traditional sources of capital, selling non-core assets has been a route adopted by cash-strapped entities to generate funds.

Companies including Glenmark Pharma, Tata Power, Indian Hotels (Taj), Emami Group and Larsen & Toubro have announced plans to divest non-core assets to free funds for reallocation into their core businesses.

Glenmark Pharma recently declared it wants to divest a number of non-core assets and conduct a stake sale of its R&D unit, which was spun off, to raise capital, reduce debt and reallocate funds. Due to the large expenditure on drug development and capital expenditure over the years, the company had accumulated net debt of USD 506 Mn as of 30 June 2019. To pare its debt, the company sold its orthopedic and pain management businesses to True North Enterprise in 2018 and is rumored to be in discussions with a financial investor to sell a minority stake in its API business.

Tata Power recently announced plans to divest non-core assets including international businesses - a hydro plant in Zambia and wind project in South Africa. The company plans to raise up to USD 400 Mn through the sale of non-core assets to reinvest into other energy segments of its business and deleverage. Additionally, the company forecasts a significant increase in demand for power-related businesses in India. Tata Power expects these factors, along with the availability of funds to pare debt, to help realize its growth ambitions in India.

The luxury hotel group owned by Tata Group, Indian Hotels (Taj), has been paring back debt over the past few years by selling assets which include apartments purchased for executives of Tata Group. In early August 2019, the hotel chain announced plans to offload some assets and aims at becoming asset light during the next few years by reducing stake in properties to 50 percent by 2022, from 70 percent at present. The push to reduce borrowings is also being implemented in other Tata Group companies such as Tata Motors and Tata Steel, which are restructuring their portfolios to gain traction in European markets.

Recently, Emami Group announced plans to become a zero-debt company by exploring various options, from divestment to taking the business to the public, to monetize assets. Over the last few years, Emami had expanded its business interest to include personal and health care products, paper, hospitals, edible oils, bio-diesel, cement, real estate, retail chains, power and art through a combination of equity and leverage. To date, the promoters have already divested 20 percent of equity interest in Emami for c. USD 400 Mn to pare Group debt.

Larsen & Toubro recently completed the sale of its electrical and automation business to French based Schneider Electric for USD 2.1 Bn cash consideration. This deal is significant because it signals the company's intent to streamline operations by selling off its non-core assets. The CEO and MD stated, "The divestment of E&A business is in line with L&T's stated intent of unlocking value within the existing business portfolio to streamline and allocate capital and management focus for creating long term value for our stakeholders."

BANKS SELLING NON-CORE ASSETS

Like other entities, banks have also initiated the process of unlocking value from non-core investments.

To raise funds and achieve targeted profits in FY19–20, several Indian banks are planning on selling non-core assets, with a focus on offloading real estate assets. Allahabad Bank recently put up for sale a property based in South Mumbai and is planning to sell 11 commercial office spaces in various cities in India to raise around USD 57–64 Mn. Allahabad Bank plans on using these funds to raise capital and reinvest funds in its core banking.

Similarly, Indian Overseas Bank ("IOB") sold six properties including five at overseas locations to raise USD 18 Mn. IOB has also put 26 properties up for sale which are valued at approximately USD 111 Mn. Additionally, IOB has identified non-core assets worth USD 10 Mn which it plans on selling in FY19–20.

Other banks have also announced plans to raise capital through the sale of non-core assets, including PNB, which has identified multiple assets including its housing finance arm which it hopes to sell for USD 1,229 Mn during FY19-20.

Banks Have Recently Put Their Non-Core Assets Up for Sale

Entity	Non-Core Assets for Sale
State Bank of India	Plans to raise USD 3,714 Mn this fiscal year from the sale of non-core assets including its stake in NSE, SIDBI, CDSL, and other public entities
IDBI	Invited bids for its stake in 17 companies, including Haldia, Petrochemicals, OCM and TN Industrial Explosives for an undisclosed floor price
Canara	Invited bids for its stake in 73 companies without specifying the size of the stake or the floor prices
Dena	Plans on selling 14 properties worth USD 66 Mn
Bank of India	Looking to raise c. USD 143 Mn by selling stakes in STCI Finance, SIDBI, and Star Union Dai-Ichi Life Insurance

Source: Publicly available information

GOVERNMENT SELLING NON-CORE ASSETS

In its second stint, the NDA government plans on monetizing idle assets in order to raise USD 15 Bn to meet its disinvestment targets for FY19-20. This encompasses strategic and minority stake sale in Central Public Sector Enterprises ("CPSE").

On 5 July 2019, Finance Minister raised the disinvestment target from USD 12.8 Bn in the preliminary budget to USD 15.0 Bn in the FY19-20 budget. She stated that "Strategic disinvestment of select CPSEs will continue to remain a priority for the government. The government would not only re-initiate the process of strategic disinvestment of Air India but would offer more CPSEs for strategic participation by the private sector." She further stated that the government plans on achieving this target by reducing its stake to under 51 percent in public sector units.

The Department of Investment and Public Asset Management has been tasked with expediting the process of selling non-core assets such as land, buildings and operational assets held by state-owned enterprises.

To initiate the process, NITI Aayog has identified around 35 CPSEs for an outright sale. This list includes the following nine CPSEs:

1. Pawan Hans
2. Scooters India
3. Air India
4. Bharat Pumps & Compressors
5. Project and Development India
6. Hindustan Prefab
7. Hindustan Newsprint
8. Bridge and Roof Co.
9. Hindustan Fluorocarbons

In light of the same, the government has already provided in-principle approval for the strategic sale of 24 of these CPSEs, including HLL Lifecare, Bharat Earth Movers, Bhadrawati, Nagarnar Steel Plant of NMDC, Central Electronics and Ferro Scrap Nigam.

During FY19–20, the government has collected over USD 1,765 Mn by divesting stakes in state-owned companies such as Rail Vikas Nigam and CPSE Exchange Traded Fund. In FY18–19, the government exceeded its disinvestment target by c. USD 714 Mn, primarily due to the 51.11 percent stake sale of oil refiner HPCL to ONGC for USD 5,274 Mn

The Government Failed to Meet Its Disinvestment Targets for the Three Years Prior to FY17–18 (USD Bn)

Year	Target	Collections
FY19–20	15.00	NA
FY18–19	11.43	12.14
FY17–18	100.00	100.06
FY16–17	8.07	6.61
FY15–16	5.86	3.43
FY14–15	6.20	3.48

Source: Department of Investment and Public Asset Management

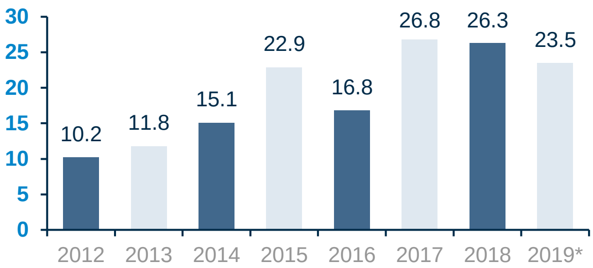
The government hopes that monetization through the sale of assets during the current financial year will alleviate financial needs of the next fiscal year.

Private Equity Landscape

STRONG MOMENTUM IN INVESTMENTS

Over 2017 and 2018, the Indian PE market saw investment value reach its second-highest level over the past several years.

Historical PE / VC Investments by Value (USD Bn)

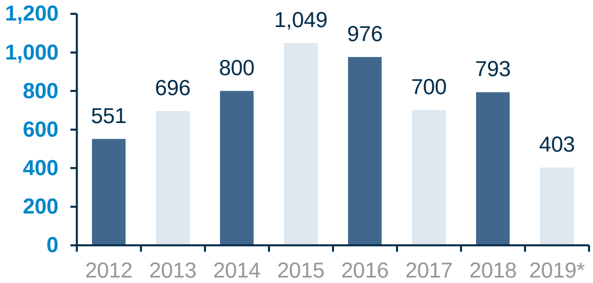


Source: Bain Private Equity Report 2019, VCCEdge

**Data from January through August 2019 per VCCEdge*

Despite deal volume being higher in 2018 (793) as compared to 2017 (700), average deal size had remained flat.

Historical PE / VC Investments by Volume



Source: Bain Private Equity Report 2019, VCCEdge

**Data from January through August 2019 per VCCEdge*

In 2018, consumer technology and BFSI constituted about 40 percent of total deal value. The investments across sectors have varied over time. After the 2014–15 boom, the Indian market saw multiple investments in early-stage internet and e-commerce companies.

In 2016, there was a dip in investments as consumer tech players struggled to find the right combination of product-market fit and profitability. Also, there was a lack of mega deals in 2016, whereas 2015 saw big ticket transactions, including Mphasis-Blackstone (USD 1.1 Bn).

In 2018, the top 10 investments constituted 32 percent of the total deal value.

Top 10 PE / VC Investments in 2018 (USD Bn)

Company	Industry	PE Investors	Deal Value
HDFC Bank	BFSI	GIC Pvt. Ltd., Azim Premji Foundation, PI Opportunities, KKR, Carmignac Gestion, OMERS	1.74
OYO Rooms	Consumer technology	Greenoaks Capital, Lightspeed Venture Partners, Sequoia, SoftBank Vision Fund	1.00
Swiggy	Consumer technology	DST Global, Naspers Ventures, Meituan-Dianping, Coatue, Tencent Holdings, Wellington Management, Hillhouse Capital	1.00
Star Health and Allied Insurance	BFSI	Madison Capital Partners, WestBridge Capital India Advisors	0.93
Prayagraj Power	Energy	Resurgent Power Ventures	0.83
Vishal Retail	Consumer/retail	Kedaara Capital, Partners Group	0.73
Aditya Birla Retail	Consumer/retail	Amazon.com; Samara Capital	0.58
Byju's	Consumer/retail	General Atlantic, CPP Investment Board, Naspers Ventures	0.54
Ramky Enviro Engineers	Engineering and construction	KKR Asian Fund III	0.53
Paytm	Consumer technology	Alibaba Group, SoftBank Vision Fund	0.45
Total			**8.33**

Source: Bain Private Equity Report 2019

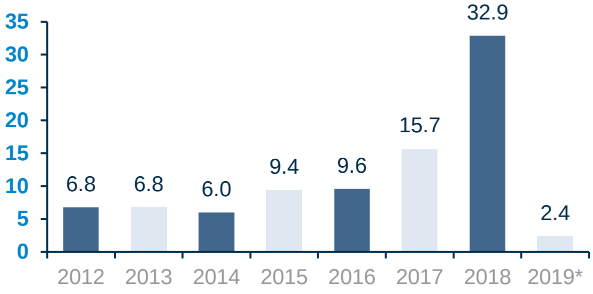
Per reports, PE / VC investments in India crossed USD 8 Bn in July 2019, the highest fund deployment in a month by PE / VC funds. The recently announced USD 3.7 Bn deal between Brookfield and a subsidiary of Reliance Industries has the potential to be one of the largest PE / VC deals in India.

RECORD YEAR FOR PE / VC EXITS

2018 was the best year for exits — PE / VC exits were at USD 33 Bn in 2018 as compared to USD 16 Bn in 2017. The increase was inflated by the Walmart-Flipkart deal, for a consideration of USD 16 Bn, about 50 percent of total value in 2018. Even after excluding the transaction, 2018 remains one of the best years for exits over the past several years.

During the first half of 2019, PE exits have been subdued with open market exits and IPOs impacted by the volatility and liquidity concerns in the capital markets.

Historical PE / VC Exits by Value (USD Bn)



Source: Bain Private Equity Report 2019, VCCEdge

**Data from January through August 2019 per VCCEdge*

Consumer tech and BFSI remain the biggest contributors to exit values. In 2018, the top 10 exits accounted for about 70 percent of the total exit value.

Top 10 PE / VC Exits in 2018 (USD Bn)

Company	Industry	PE Investors	Deal Value
Flipkart	Consumer technology	GIC, Kalaari Capital, Tiger Global, IDG Ventures India, Accel India, PremjiInvest, SoftBank, Sofina, Naspers, Others	16.00
Intelenet Global Services	IT and IT enabled services	Blackstone Advisors India Pvt. Ltd.	1.00
RMZ	Real estate	Baring Private Equity Partners India; Qatar Investment Authority	1.00
GlobalLogic	IT and ITES	Apax Partners	0.96
Star Health and Allied Insurance	BFSI	Tata Capital, Sequoia Capital India, ICICI Venture,	0.93
Orange Renewable	Energy	AT Capital Pte. Ltd.	0.85
Vishal Retail	Consumer/retail	TPG Capital	0.73
Ostro Energy	Energy	Actis	0.70
GMR Airports Holdings	Other	Standard Chartered PE, JM Financial, SBI-Macqua	0.48
Indus Towers	Telecom	Providence	0.45
Total			23.1

Source: Bain Private Equity Report 2019

Public markets remain the most preferred mode for exits, although there was an increase in strategic exits primarily driven by consumer tech.

DISTRESSED OPPORTUNITIES

It is estimated that PE funds are planning to earmark as much as USD 100 Bn to invest in Indian companies, according to sources. This money is expected to help companies pare back debt levels given considerable leverage at certain entities today, and also provide growth capital. In addition, funds may also look at acquisitions from companies / promoters in quest of selling non-core assets to pare debt levels while seeking to retain a narrower focus for their business. These dynamics shall provide for interesting opportunities for interested buyers.

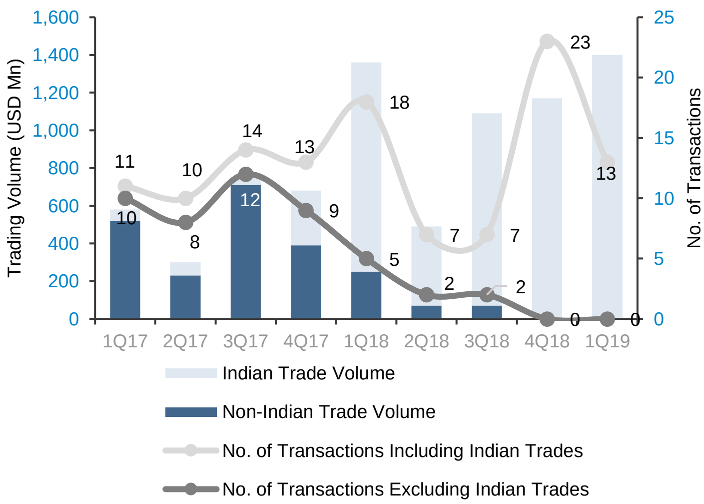
Introduction of IBC has also created newer dimensions to the Indian distressed M&A space. While strategic investors seem to have the edge currently, PE / distressed funds are also actively exploring various structures to fund-distressed situations, such as creating consortiums to buy out distressed companies, asset reconstruction companies, AIFs, etc.

Over the next few years, investors are anticipating high levels of activity in healthcare, financial services and TMT.

- Financial services include NBFCs, HFCs, private banks and insurance companies
- TMT includes consumer internet and e-commerce

As an indicator of interest in the Indian distressed market, we are seeing strong momentum in secondary market trading in distressed loans as seen in Debtwire's Q1 2019 APAC ex-Japan distressed loan trading report. This is a signal that distressed players are continuing to look toward India, within the Asia-pacific region, to deploy capital in an effort to realize returns.

Single-Name Distressed Loan Trading Activity



Source: Debtwire's Q1 2019 APAC ex-Japan distressed loan trading report

ENTRY OF DISTRESSED ASSET FUNDS

With the IBC framework in place, opportunities in the stressed asset space have led to an influx of foreign capital through various global hedge funds and distressed investors.

Several partnerships have been formed over the past two years to specifically invest in the distressed market, including:

- In January 2019, Edelweiss raised USD 1.3 Bn primarily from Caisse de dépôt et placement du Québec (CDPQ)
- In February 2019, Kotak Special Situations Fund received a commitment of c. USD 500 Mn from Abu Dhabi Investment Authority (ADIA)

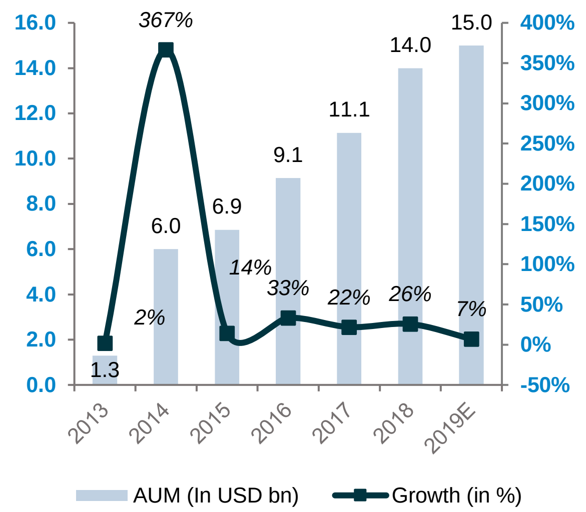
Some significant loan transactions include:

- Acquisition of c. 90 percent of the debt outstanding of Jayaswal Neco by BAML, ACRE, and other funds
- Acquisition of c. USD 570 Mn of the debt outstanding of GTL Infrastructure by Edelweiss ARC and Oaktree Capital

Advent of ARCs

As per regulations introduced in 2014, an asset reconstruction company can purchase a stressed asset from a lender under the 15:85 structure, whereby 15% of the net value of the asset is paid upfront while security receipts ("SR") are issued for the balance.

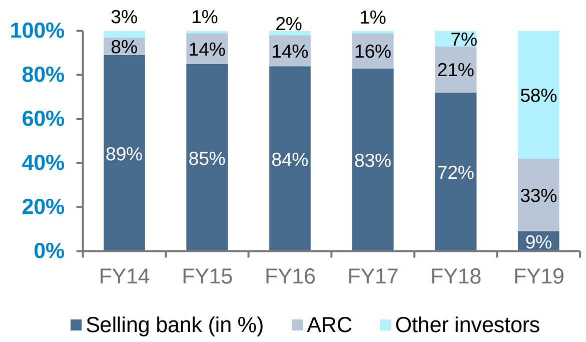
AUM Trend of ARCs (USD Bn)



Source: Crisil Report, AUM for ARCs is SRs outstanding

Between FY17 and FY19, the share of SRs held by institutional investors grew from 1 percent to 58 percent, and the share for ARCs grew from 16 percent to 33 percent, indicating rising interest in stressed assets by investors.

Trend of SR Subscribers (USD Bn)

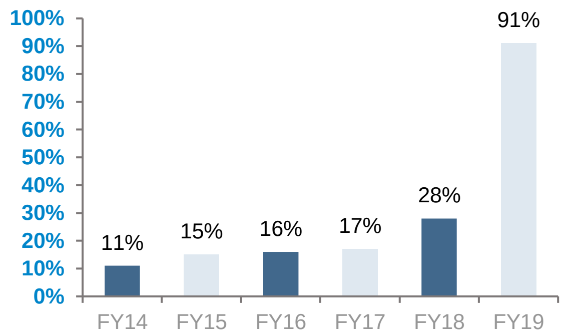


Source: Crisil Report

Key Trends in ARC Market

- Larger players are expected to continue to dominate the market due to large capital reserves and smaller players are expected to continue to consolidate with them
- Cash is expected to continue to be a larger proportion of the acquisition cost

Cash as a Proportion of Acquisition Cost



Source: Crisil Report, data represents c. 75% of AUM industry

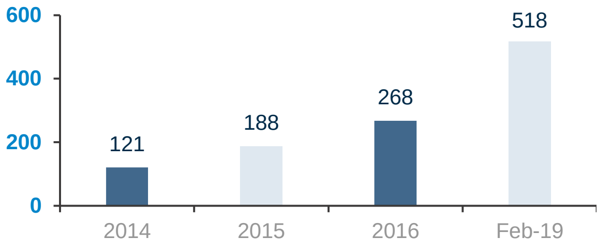
Leading global PE players such as KKR, Blackstone, Apollo Global Management, and Canadian pension fund Caisse de dépôt et placement du Québec (CDPQ) have invested in ARCs to tap into the Indian distressed market.

Alternate Investment Funds ("AIF") Growth

The number of AIFs has shot up from 268 in 2016 to about 518 in February 2019. The growth of AIFs has benefitted from the reforms made in the policy framework set by the Indian Government, such as:

- Exempting them from IPO lock-ups
- Clarity of tax classification
- Allowing AIFs with foreign capital to be classified as domestic capital, thereby removing FDI and pricing regulations

Registered AIFs in India

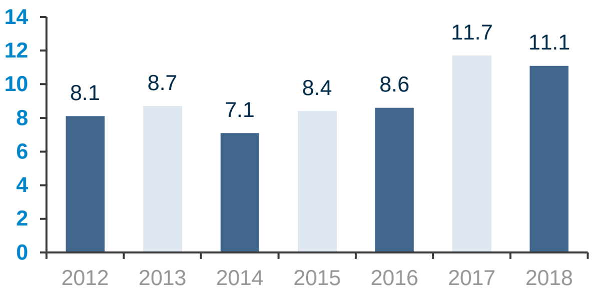


Source: Bain Private Equity Report 2019

Availability of Dry Powder

Dry powder availability in India is believed to be more than adequate to ensure that high-quality deals do not lack capital.

India-Focused Dry Powder (USD Bn)



Source: Bain Private Equity Report 2019

Increasing Interest of Sovereign Funds

The recent boom in the Indian market has seen the entry and expansion of leading global players such as Walmart, Schneider, Amazon, etc. Apart from strategics, there has been a strong interest shown by sovereign wealth funds such as GIC, CPPIB, ADIA, Temasek, etc., which have been part of billion-dollar transactions. This trend is expected to continue.

Rise in Number of Control Deals

Over the past five years, control deals grew at an annual average rate of 50 percent to USD 9.9 Bn in 2018. This increase is directly correlated with the increase in the size of investments.

Growth in buyout opportunities is being driven by several tailwinds such as succession issues within promoter families and introduction of regulations such as the IBC.

Number of control deals is expected to continue and projected to account for 50 percent of total PE investments in India in the next two to three years.

Despite the optimistic outlook of the India PE market, investors have some concerns going forward, including:

- High asset pricing driven by increase in capital availability
- Weakening of economic growth compounded by trade wars
- Competition of deals

It is believed that as fund sizes and the corresponding quantum of funds deployed into India increase, PE funds will be more aggressive in chasing larger deals with greater control and an increased operational role.

Restructuring Regimes

Prior to the enactment of the IBC, there were a number of restructuring / rehabilitation regimes that were introduced over the past decades. These regimes had limited success as determined by the time that was needed to resolve cases and the largely unsuccessful outcomes of these processes.

The section below covers:

- A summary of the regimes that existed prior to the enactment of the IBC
- An overview of IBC and the salient points with respect to it
- A summary of the RBI Circular published on 7 June 2019

RESTRUCTURING REGIMES IN INDIA PRIOR TO THE INSOLVENCY AND BANKRUPTCY CODE, 2016

1. Board for Industrial and Financial Reconstruction ("BIFR") – 1985

BIFR was setup by the Government of India as the apex body under the Sick Industrial Companies Act, 1985 (SICA) to handle cases of only sick companies owning industrial undertakings. Under SICA, a company was entitled to refer its matter for revival to BIFR based on its balance sheet (negative net worth) and not based on default, and such a company was termed a Sick Industrial Company ("SIC"). Only medium-sized and large industrial companies in distress could approach BIFR for formulation of a revival or rehabilitation plan. The appellate tribunal for these SIC cases was Appellate Authority for Industrial and Financial Reconstruction ("AAIFR"). However, such SIC cases used to languish for decades in BIFR / AAIFR with no closure. Hence, after 18 years, a SICA Repeal Act was enacted in 2003, which finally led to BIFR being dissolved after another 13 years in 2016.

2. Debt Recovery Tribunal ("DRT") – 1993

DRTs were set up by the Government of India as dedicated tribunals under the Recovery of Debt Due to Banks and Financial Institutions Act, 1993 ("RDDBFIA") for expeditious adjudication of debt recovery proceedings for banks and FIs. However, unlike BIFR, RDDBFIA provides no revival / rehabilitation of the defaulting entity. Under RDDBFIA, a bank or FI can file a suit in DRT for recovery of its dues, known as Original Application. After recording of evidence, final arguments are heard by DRT and if in order, a decree is passed by DRT in favor of the bank or FI. The minimum threshold limit of default is USD 18,600. The total prescribed time for disposing an application for debt recovery is

180 days from the date of application but practically the time taken is very long. The appellate tribunal for these DRT cases is Debt Recovery Appellate Tribunal ("DRAT").

4. Corporate Debt Restructuring ("CDR") – 2001

The CDR mechanism was the first formal restructuring mechanism that was introduced in India in 2001. It was introduced by RBI as a voluntary, non-statutory mechanism and as an out-of-court process. It allowed a financially distressed company with two or more lenders (which could be either banks or FIs) and aggregate debt exposure not exceeding USD 1 Mn to restructure its debt with the super-majority consent of its lenders. Such restructuring was binding on the remaining lenders, provided they were members of the CDR system. The CDR mechanism was based on debtor-creditor agreements ("DCA") and inter-creditor agreements ("ICA"), which provided the legal basis for the whole mechanism. One of the most important clauses of the DCA was the standstill clause, as a result of which all parties agreed not to initiate any legal action against each other, normally for a period of 90 to 180 days. There were many cases that went through this mechanism; however, not many cases were resolved and there were too many post-CDR failures.

4. Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act ("SARFAESI") – 2002

In 2002, SARFESI was enacted by the Government of India for the enforcement of security interest by secured lenders without intervention of court. However, unlike BIFR, SARFAESI provides no revival / rehabilitation of the defaulting entity. SARFAESI enables secured lenders to exercise powers to take possession of their charged securities / assets, sell them by enforcing their security interest without the intervention of the courts and reduce NPAs by adopting measures for their recovery or reconstruction. It is the enabling provision regarding resolution of debt through an Asset Reconstruction Company ("ARC"). When any borrower defaults in repayment of a secured debt, and its account is classified by the secured lender as an NPA, the secured lender may require the borrower by notice in writing to discharge its liabilities in full within 60 days, failing which the lender is entitled to initiate action. Upon receiving a notice, no borrower can sell, transfer or lease the secured assets mentioned in the notice without the consent of the lenders. DRTs are the appellate authority for appeals filed against proceedings initiated by secured creditors under SARFAESI. Major drawback of SARFAESI is there are no rights available to unsecured lenders under this regime.

5. Joint Lenders' Forum ("JLF") and Corrective Action Plan ("CAP") – 2014

In February 2014, RBI issued a circular that enabled formation of JLF in stressed accounts before the accounts become NPAs, along with guidelines for reporting and classification of stressed accounts in different categories of delay (SMA-0, SMA-1 or SMA-2). The mechanism was an out-of-court process. As per the circular, lenders were mandated to form a JLF as soon as any of the lenders classified an account as SMA-2 with aggregate exposure greater than USD 14 Mn. But they could also form JLF even if above two conditions were not met. In case of these stressed accounts, JLF was supposed to take up formulation of a CAP (having three options — Rectification, Restructuring or Recovery) with the consent of the majority of JLF members. The number of cases that were resolved by this mechanism turned out to be few in number and the desired results could not be achieved.

6. Flexible Structuring of Long-Term Project Loans to Infrastructure and Core Industries ("5:25 Scheme") – 2014

In August 2014, RBI issued the 5:25 Scheme as an out-of-court process, which enabled banks to lend and restructure debts for large projects in only infrastructure and core industries for a longer period of 20–25 years, with an option of refinancing them every 5–7 years. Since banks were typically not lending beyond 10–12 years, cash flows of infrastructure firms were stretched as they could not meet shorter repayment schedules. With this scheme, cash flows were expected to match the repayment schedule and long-term infrastructure projects were expected to become viable. The number of cases that were resolved by this scheme turned out to be few in number and the desired results could not be achieved.

7. **Strategic Debt Restructuring Scheme ("SDR") – 2015**

   In June 2015, RBI issued SDR guidelines as an out-of-court process, for effecting change of management by lenders, with the objective that shareholders should bear the first loss as compared to lenders. It enabled the lenders to effect a change of management by conversion of their entire or portion of debt into equity and thereafter transfer the same in favor of a new promoter within a specified window and consider refinancing of debt to the new promoter. However, this scheme could not be forced upon old cases. Besides, finding a new promoter was a challenge, and banks were not comfortable toward taking a steep discount for debt-equity conversion and also with the need for refinancing. Once again, the number of cases that were resolved by this scheme turned out to be few in number and the desired results could not be achieved.

8. **Scheme for Sustainable Structuring of Stressed Assets ("S4A") – 2016**

   In June 2016, RBI issued S4A guidelines as an out-of-court process to enable banks to prevent further increase in NPAs, particularly in case of large borrowers. The scheme was applicable to projects that had commenced commercial production and had an exposure of more than USD 71 Mn. The scheme envisaged bifurcation of debt into a sustainable portion (not below 50 percent of the aggregate debt) and an unsustainable portion (to be converted into equity or quasi-equity instruments to enable the lenders to enjoy the upside when the borrower turns around). The sustainable portion of debt was to be ascertained on the basis of its serviceability out of the cash flows of the entity (present and the future six months' cash flows) without altering the prevailing repayment stipulations for each existing debt facility. The scheme was intended to provide a fresh lease of life to stressed borrower accounts that had a viable business model. However, since current cash flows of the company were taken as a basis to ascertain sustainable debt, there were not enough companies that could come under its purview.

- Out of the aforesaid regimes, only DRT and SARFAESI are currently in practice.

INSOLVENCY AND BANKRUPTCY CODE, 2016

The IBC was introduced as a mechanism to reorganize and achieve insolvency resolution in a time bound manner for maximization of value of assets to promote entrepreneurship, availability of credit and interests of all stakeholders.

IBC Ecosystem Structure

- **Adjudicating Authority ("AA"):** Authority to entertain or dispose any insolvency application, approve / reject resolution plans, decide in respect of claims or matters of law / facts thereof. For corporate insolvency, National Company Law Tribunal ("NCLT") is the AA.
- **Information Utilities ("IU"):** Centralized repository of financial and credit information of borrowers, used to validate information and claims of creditors
- **Insolvency Professionals ("IP"):** Licensed professionals regulated by the IBBI (see below). They are appointed by the creditors and assume the powers of the suspended board of directors and conduct and oversee the resolution / liquidation process.
- **Insolvency and Bankruptcy Board of India ("IBBI"):** Apex body for promoting transparency and governance in the administration of the insolvency process, setting up its infrastructure, and accrediting IPs and IUs
- **Committee of Creditors ("CoC"):** Consists of financial creditors who appoint and supervise actions of IPs and are also meant to approve resolution plans, amongst other items

Key Aspects of IBC

- The IBC has resulted in a paradigm shift from existing "debtor in possession" model to a "creditor in control" regime.
- This is a result of consolidating all existing insolvency-related laws as well as amending multiple legislations including the Companies Act.
- The IBC has an overriding effect on all other laws relating to insolvency and bankruptcy.
- The IBC aims to resolve insolvencies in a strict time bound manner; the evaluation and

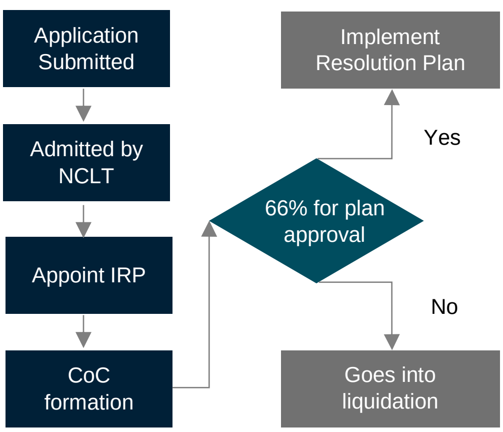
viability determination must be completed within 180 days (extendable up to 330 days with approval).

- The process provides for a moratorium period of 180 days (extendable up to 330 days with approval) for the company.
- The IP takes over the management affairs of the company and oversees the insolvency process (IPs to be accredited by the IBBI).
- There is a clearly defined "order of priority" or waterfall mechanism. The waterfall has rendered government dues junior to most others, which is significant.
- IBBI has been established as an independent body for the administration and governance of insolvency and bankruptcy law, and IUs as a depository of financial information.

Corporate Insolvency Resolution Process ("CIRP") Under IBC

If a plea for insolvency is submitted to the NCLT by financial or operational creditors (payment default threshold of USD 1,429) or the corporate debtor itself, and is admitted by the NCLT, then CIRP is initiated. There will be an Interim Resolution Professional ("IRP") appointed with the approval of NCLT. The CoC will later vote and decide on who the IP will be (The IRP can be selected to be the IP by the CoC.).

CIRP Structure



Resolution Plan Overview

A Resolution Plan is a binding, bid document. It lays out the terms of the proposal including payment structure to various lenders, business plan along with its assumptions, transaction structure, etc.

Generally, the broad categories included in a Resolution Plan put forward by a resolution applicant are below. The specific details will be included in the request for the resolution plan issued by the IP.

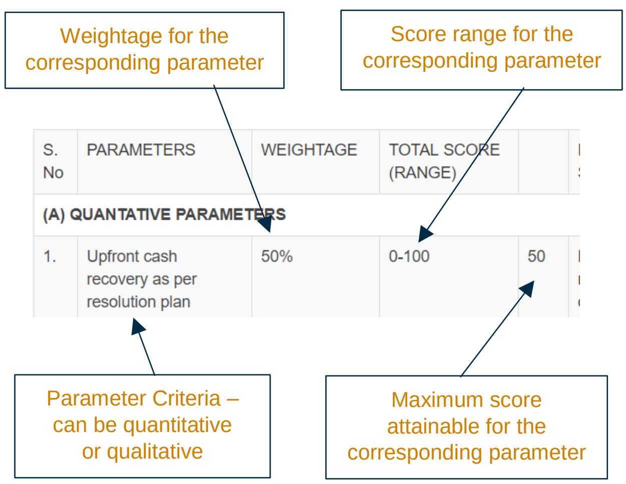
- **Transaction Structure:** Structure to acquire the corporate debtor whether done through an SPV or standalone. One structure is to set up a SPV and infuse funds into it and merge the corporate debtor into the SPV.
- **Business Plan:** Details of financial assumptions, projections and business plan for the corporate debtor
- **Timelines:** The plan should lay out the term of the plan, its implementation schedule, required approvals and the timelines in which such approvals will be obtained
- **Prior Experience:** In managing / turning around of companies, including managerial competence, technical abilities, key management personnel experience, etc.

Evaluation Matrix Overview

The evaluation matrix refers to a set of parameters and the manner in which these parameters are to be applied when considering and scoring a Resolution Plan for approval by the CoC. The evaluation matrix will be included in the request for resolution plans issued by the IP.

There are two types of parameters evaluated — quantitative and qualitative. The sum of the scores of these parameters in the matrix is 100.

Sample Component of an Evaluation Matrix



RESERVE BANK OF INDIA CIRCULAR DATED 7 JUNE 2019

Background

RBI released a new circular on 7 June 2019 ("New RBI Circular") to deal with stressed assets after the Supreme Court on 2 April 2019 struck down the RBI's earlier circular dated 12 February 2018 ("Old RBI Circular"), which mandated lenders to start resolution even if there was a default of one day. Under the New RBI Circular titled *Prudential Framework for Resolution of Stressed Assets*, defaults are to be recognized within 30 days. During this review period of 30 days, lenders may decide on the resolution strategy, including the nature of the resolution plan and its implementation.

Applicability

The New RBI Circular applies to banks (scheduled commercial banks and small finance banks), FIs as well as NBFCs, unlike the Old RBI Circular which did not apply to NBFCs. However, the framework of the New RBI Circular still revolves around banks and FIs and it seems have been made applicable to NBFCs, only to bind them by the proceedings in case of borrowers having multiple lenders.

Specifically, the provisions of the New RBI Circular apply to the following entities:

1. Scheduled commercial banks (excluding regional rural banks)
2. All India term financial institutions (NABARD, NHB, EXIM Bank and SIDBI)
3. Small finance banks
4. Systemically important non-deposit taking non-banking financial companies (NBFC-ND-SI) and deposit taking non-banking financial companies (NBFC-D)

More Flexibility for Lenders

The New RBI Circular provides greater discretion to lenders and, unlike the Old RBI Circular, does not require referring borrowers en masse for insolvency resolution. Although RBI can still refer specific borrowers to IBC under select provisions of the Banking Regulation Act, the New RBI Circular gives freedom to banks, FIs and NBFCs to decide the Resolution Plan for any borrower.

Resolution Options

The options under the Resolution Plan now include restructuring, sale of exposure to other entities, change of management / ownership of borrower, as well as reference to IBC.

Timelines

The timeline for default under the New RBI Circular is the same as under the Old RBI Circular, i.e., default is on Day 1. The timelines pursuant to default under the New RBI Circular can be divided into two periods: i) a Review Period of 30 days, and ii) a Resolution Plan Implementation Period of 180 days. The timelines are also dependent on aggregate exposure (including all fund-based, non-fund-based and investment exposure with lenders) of the borrower. The lenders can either resolve the stress through a Resolution Plan or take legal actions for resolution / recovery.

The Review Period is to commence no later than:

- The Reference Date, if in default as on the Reference Date; or
- Date of first default after the Reference Date

The Reference Date is based on the aggregate exposure of lenders (only Nos. 1, 2, and 3 per the list under Applicability):

- For aggregate exposure of USD 286 Mn and above – 7 June 2019
- For aggregate exposure between USD 214 Mn and 286 Mn – 1 January 2020
- For aggregate exposure less than USD 214 Mn – to be announced

Since the Reference Date for small and medium loan exposures is to be announced, this currently leaves out accounts with such exposure out of the scope of the New RBI Circular for now.

Once a borrower is reported to be in default (by any lenders mentioned in Nos. 1, 2 and 3 under Applicability), the Review Period of 30 days begins, and the lenders are to take a prima facie review of the borrower account. During the Review Period, lenders may decide on the resolution strategy, including the nature, approach for implementation of the Resolution Plan, etc., and may also choose to initiate legal proceedings for insolvency or recovery. In cases where the Resolution Plan is to be implemented, the lenders shall enter into an ICA within the Review Period, to provide for the ground rules for the finalization and implementation of the Resolution Plan (valid for borrowers having more than one lender, including ARCs).

The ICA must provide for the approving authority of the Resolution Plan, the rights and duties of the majority lenders, and safety and security of the dissenting lenders.

The Resolution Plan Implementation Period of 180 days, which is not a hard timeline as there is no long stop date by which the Resolution Plan should be implemented. However, if the 180 day timeline is breached, the impact is additional provisioning of 20 percent required for a period up to one year from the end of the Review Period and 35 percent provisioning (15 percent additional) required for a period beyond one year from the end of the Review Period.

Conditions to Implement a Resolution Plan

The conditions for implementing a Resolution Plan are as follows:

1. In cases with multiple lenders involved, approval of 75 percent of the lenders by value and 60 percent of the lenders by number must be obtained.
2. The Resolution Plan must be independently rated — where the aggregate exposure is USD 14 Mn or above, at least from one credit rating agency (“CRA”), and where the aggregate exposure is USD 71 Mn or above, at least from two CRAs. The rating obtained from the CRAs must be RP4 or better.
3. The borrower should not be in default as on the 180th day from the end of the review period.
4. A Resolution Plan involving restructuring / change in ownership shall be deemed to be implemented only if:
    - All the legal documents have been executed by the lenders in consonance with the Resolution Plan;
    - The new capital structure and/or changes in the terms and conditions of the loans get duly reflected in the books of the borrower; and
    - The borrower is not in default with any of the lenders.

Other Aspects

Some common instructions from the Old RBI Circular have been retained in the New RBI Circular as follows:

1. Identification of an account under various Special Mention Accounts. Where the default in account is between 1–30 days, the same must be treated as SMA-0. Where the default is between 31–60 days, it must be reported as SMA-1. Where the default is between 61–90 days, it must be reported as SMA-2.
2. Reporting requirements to Central Repository of Information on Large Credits (CRILC) for accounts with aggregate exposure of USD 0.7 Mn will continue.
3. The framework requires the lenders to adopt a board approved policy in this regard.

4. For actions by the lenders with an intention to conceal the actual status of accounts or evergreen the stressed accounts, they will be subjected to stringent supervisory / enforcement actions as deemed appropriate by RBI, including, but not limited to, higher provisioning on such accounts and monetary penalties. Further, references under IBC can also be made.
5. Disclosures under notes to accounts have to be made by the lenders with respect to accounts dealt with under these directions.
6. The scope of the term “restructuring” has been expanded.
7. Sale and leaseback transaction involving the assets of the borrower shall be treated as restructuring if the following conditions are met:
   - The seller of the assets is in financial difficulty;
   - Significant portion, i.e., more than 50 percent, of the revenues of the buyer from the specific asset is dependent upon the cash flows from the seller; and
   - 25 percent or more of the loans availed by the buyer for the purchase of the specific asset is funded by the lenders that already have a credit exposure to the seller.
8. If borrowings / export advances (denominated in any currency, wherever permitted) for the purpose of repayment / refinancing of loans denominated in same / another currency are obtained:
   - From lenders that are part of Indian banking system (where permitted); or
   - With the support (where permitted) from the Indian banking system in the form of guarantees / standby letters of credit / letters of comfort, etc.,

   Such events shall be treated as “restructuring” if the borrower concerned is under financial difficulty.

   - Exemptions from SEBI (ICDR) regulations with respect to pricing of equity shares.

Exceptions

Project loans where date of commencement of commercial operations (“DCCO”) has been deferred will be excluded from the scope of the circular.

Withdrawal of Earlier Instructions

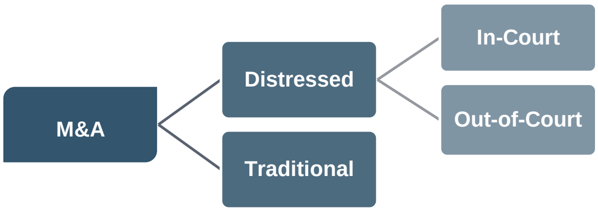
The following instructions, earlier issued by the RBI, have been withdrawn with immediate effect:

Framework for Revitalizing Distressed Assets, CDR Scheme, 5:25 Scheme, SDR Scheme, Change in Ownership outside SDR, and S4A Scheme stand withdrawn with immediate effect.

Accordingly, JLF as mandatory institutional mechanism for resolution of stressed accounts also stands discontinued.

Approaching Distressed M&A from the Buy-Side

M&A occur in both distressed as well as non-distressed environments / scenarios, with each situation posing its own challenges and requirements.



Running an Out-of-Court Distressed M&A Process Versus a "Traditional" M&A Process

- **Timelines:** Distressed M&A transactions warrant to move at a much faster pace than traditional M&A on account of dwindling liquidity, looming maturities or pending defaults. If a company continues to be in a distressed state for long, lenders may eventually drag the company into bankruptcy court for non-payment of dues. The negative taint associated with a company in bankruptcy can deter customers and suppliers from doing business or downgrading terms of business, destroying value. In addition, court processes are usually long, carried out under legal oversight, and can be costly, which can all lead to further value destruction of a company.
- **Data Quality:** In distressed situations, the process cannot be expected to be as smooth as in a regular M&A process, as access to information and management is less than adequate given the environment at the company. This can result in poor data quality and less than ideal management time required to conduct extensive due diligence.
- **Valuation:** Conventional valuation metrics such as profit multiples, etc., need to be looked at carefully when applied to a distressed firm. It is important to normalize earnings and prospects for the company for when it exits distress. This adds some uncertainty when valuing a stressed business. Liquidation value can serve as a potential benchmark to evaluate tangible assets such as land, buildings and machinery.
- **Complexity:** Distressed processes are generally more complicated than traditional M&A. It is harder to gain insight of the business. Consideration must be given to whether one should buy the company as a going concern, with limited due-diligence and avoiding insolvency, or whether to buy select assets.
- **Operations-Related:** From an operations standpoint, the most significant challenges in a distressed process are retaining key employees and managing relations with key customers and suppliers. Such challenges rarely occur in a healthy M&A process.

BUYER CONCERNS IN A DISTRESSED M&A PROCESS

Given the challenges faced in running a distressed process mentioned in the earlier section, buyers should keep the following in mind with regard to their approach:

- **Risk Concerns:** First priority is to conduct a thorough evaluation of the risks involved in the transaction. In situations of distress, it is important to manage the process such that key management personnel as well as other key employees can be retained for the future. It is also important to focus on customer and supplier relationships and evaluate any business impact due to the current scenario and how any business disruption can be minimized. Any potential lasting effects of a distress period in a company's life is important to consider.
- **Information Requests:** Given the additional items that management would likely be dealing with during a period of stress, as well as the likelihood of limited resource availability at the company, buyers need to be extremely well organized and prepared with sharply focused due diligence information request lists.
- **Liquidity Concerns:** Generally, management is overly optimistic. By the time a liquidity crunch / shortfall is identified, it is too late to

consider a structured approach to address the issue. Therefore, buyers entering these situations often see liquidity disappear through the process. The liquidity position needs to be carefully monitored to avoid a big downside event for the company during the process.

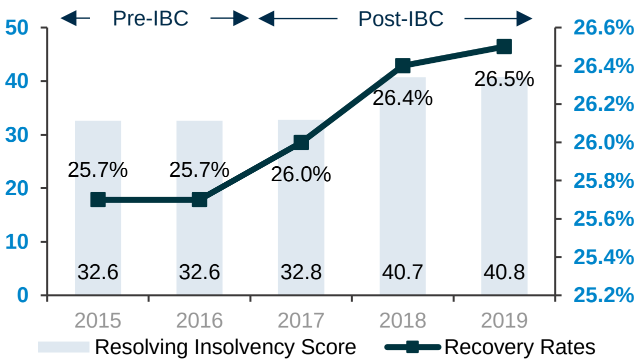
- **Pricing and Closing Concerns:** Critical elements in a distressed transaction are pricing and closing. Issues that affect price include adjustments, holdbacks, indemnities, representations and warranties, etc., while issues that affect closing are conditions precedent, potential defaults, etc. It is possible that heavy negotiations around some of these items, amongst others, as well as resistance will be experienced.
- **Negotiating with Lenders Instead of Selling Shareholders:** Contrary to a few shareholders in a traditional M&A situation, distressed M&A transactions typically involve negotiating with a large number of lenders who have exposure to the company. Added to this is the complexity of managing expectations and drawing upon different packages for different types of lenders, secured versus unsecured versus bondholders, etc. These lenders carry differential charges as collateral on various assets of the company.

IN-COURT RESOLUTION

In-court restructurings, including M&A, are carried out under the IBC guidelines and are within the purview of the NCLT.

As per World Bank, post-implementation of IBC, India's resolving insolvency score has gone up from 32.6 in 2016 to 40.8 in 2019, indicating some success of the IBC framework.

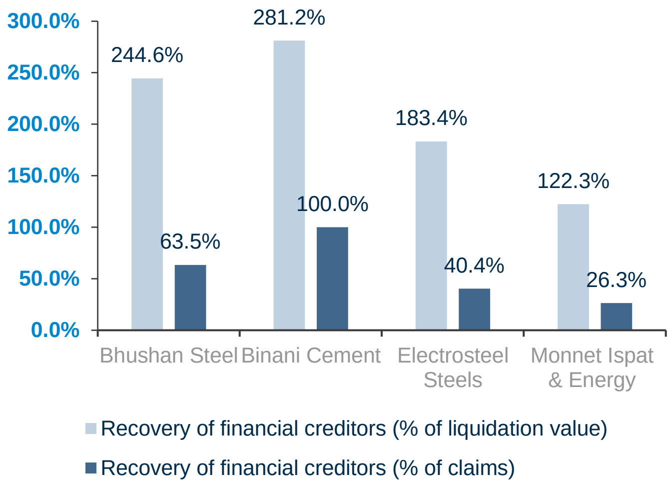
Insolvency Score Pre- and Post-IBC



Source: World Bank reports – Ease of doing business

Since the inception of the IBC in 2016 through May 2019, the top five Corporate Debtors accounted for c. 80% of total admitted financial claims and c. 90% of the total recovery for financial creditors. For these top five cases, the recovery for financial creditors has exceeded 120% of the liquidation value and for Binani Cement and Bhushan Steel, this value is over 240 percent.

Financial Creditor Recovery in Top IBC Cases



Source: IBBI Newsletters, publicly available information

Despite the success of IBC, there are challenges and concerns. Details of key issues and challenges are laid out below.

- Generally speaking, a process run out-of-court will not be bound by legal oversight, insolvency-related costs, and the rules and regulations of the IBC process, amongst other things. For these reasons, in many situations an out-of-court process will be the preferred route.

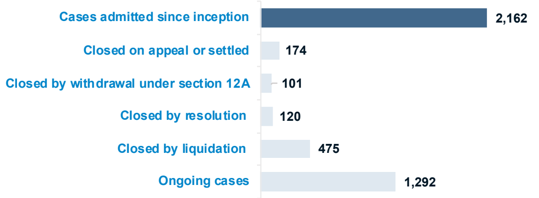
Key Issues / Challenges Faced in IBC

Source: IBBI Quarterly Newsletter, June 2019

Item | **Issues / Challenges**

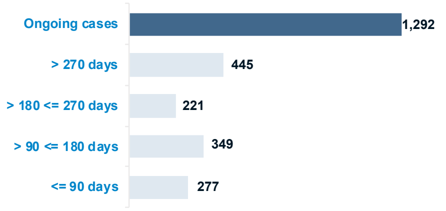
Backlog of admitted cases

- Since inception, a total of 2,162 cases have been admitted into the NCLT of which only 40 percent have been closed, either through liquidation, appeal, withdrawal or resolution. The remaining 1,292 cases are still still under CIRP.



Adherence to timelines

- Out of the 1,292 ongoing cases, about 34 percent of cases have exceeded 270 days, the prescribed time limit for presenting a Resolution Plan, failing which the company goes into liquidation. This is compounded in large / complex cases such as Essar Steel, Bhushan Steel, etc.



Judicial Infrastructure

- Currently, the NCLT has 12 benches with 16 judicial members along with nine technical members. This is insufficient to handle the large number of cases in backlog.

Role of CoC

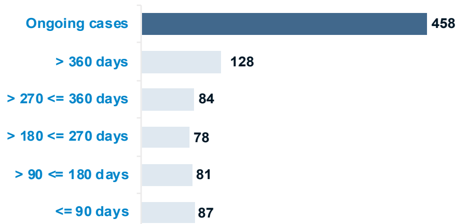
- CoC holds several responsibilities and its decisions have serious implications on the corporate debtors as a "going concern"
- Its decisions have led to delays in process completion, and the conflicts of interest in failing to agree on a sustainable plan within the prescribed timeframe have led to the liquidation of companies.

Market for Secondary Assets

- India has a limited organized market for secondary / used assets such as plant and machinery. This limits lenders' ability to take possession of such assets as there is lack of a buyer's market.

Liquidation under "going concern"

- Out of the 475 cases in liquidation, only 17 are closed
- The balance of 458 cases are ongoing of which 128 have exceeded one year. This indicates a lack of buyers / investors for the assets under liquidation.



Confederation of Indian Industry

The Confederation of Indian Industry (CII) works to create and sustain an environment conducive to the development of India, partnering industry, Government, and civil society, through advisory and consultative processes.

CII is a non-government, not-for-profit, industry-led and industry-managed organization, playing a proactive role in India's development process. Founded in 1895, India's premier business association has more than 9100 members, from the private as well as public sectors, including SMEs and MNCs, and an indirect membership of over 300,000 enterprises from 291 national and regional sectoral industry bodies.

CII charts change by working closely with Government on policy issues, interfacing with thought leaders, and enhancing efficiency, competitiveness and business opportunities for industry through a range of specialized services and strategic global linkages. It also provides a platform for consensus-building and networking on key issues.

Extending its agenda beyond business, CII assists industry to identify and execute corporate citizenship programmes. Partnerships with civil society organizations carry forward corporate initiatives for integrated and inclusive development across diverse domains including affirmative action, healthcare, education, livelihood, diversity management, skill development, empowerment of women, and water, to name a few.

India is now set to become a US$ 5 trillion economy in the next five years and Indian industry will remain the principal growth engine for achieving this target. With the theme for 2019-20 as 'Competitiveness of India Inc - India@75: Forging Ahead', CII will focus on five priority areas which would enable the country to stay on a solid growth track. These are - employment generation, rural-urban connect, energy security, environmental sustainability and governance.

With 68 offices, including 9 Centres of Excellence, in India, and 11 overseas offices in Australia, China, Egypt, France, Germany, Indonesia, Singapore, South Africa, UAE, UK, and USA, as well as institutional partnerships with 394 counterpart organizations in 133 countries, CII serves as a reference point for Indian industry and the international business community.

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