



Insolvency Advisory Services

The Indian banking system is facing a crisis in the form of burgeoning gross non-performing assets (GNPA) which account for ~14% in public sector bank assets and 4% in private sector bank assets, with a staggering 79% year on year growth as of March 2016¹. India has been plagued with a multiplicity of laws and regulations dealing with insolvency and bankruptcy proceedings² that have made the resolution process expensive and time consuming—the average time required to resolve an insolvency case has been around 5 years, with an average recovery rate of 26%. Contrast this with high income countries in the Organisation for Economic Co-operation and Development (OECD), with an average resolution time of 1.7 years and a recovery rate of 73%, or with China, which has an average resolution time of 1.7 years and a recovery rate of 36.9%, indicating that India is far behind the global resolution time and recovery rate averages.

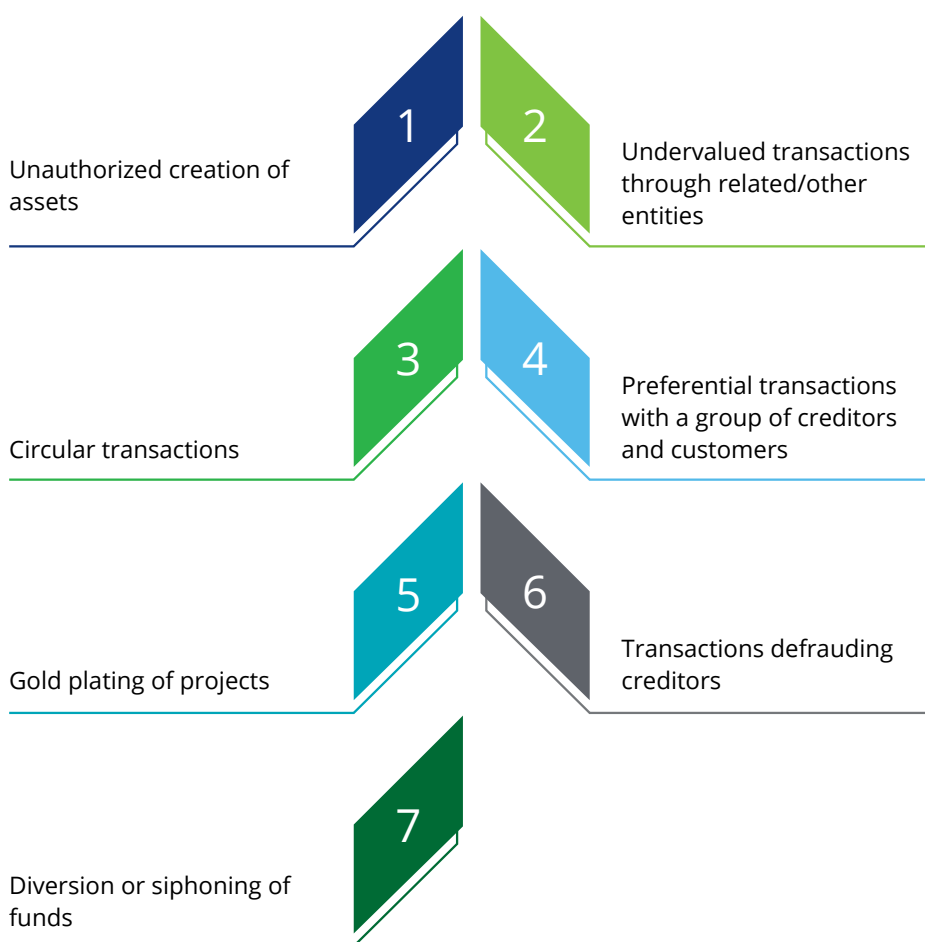
In this context, the Insolvency and Bankruptcy Code 2016 ('IBC' or 'the Code') is set to be a game changer, seeking to deal with insolvency and liquidation proceedings in a time bound and efficient manner in order to maximize value of assets and enhance investor confidence by providing an efficient framework to deal with business failures. Further, the Code also brings about a paradigm shift from a "Debtor in Possession" to a "Creditors in Control" regime, with creditors exercising timely control in the event of a default in the repayment of any debt, including interest.

Under the Code, the key driver of the insolvency resolution process would be insolvency professionals (IPs) who would have a multifaceted role and various responsibilities in the proceedings.

Considering the fact that the IBC contains provisions on avoidance transactions, fraudulent or wrongful trading, and protecting business

value during the insolvency period, IPs would be expected to unearth and report transactions of questionable nature. Therefore, they have to be equipped with forensic skills or need support from an expert. Deloitte's Forensic practice in India can assist insolvency and resolution professionals (IRPs) in a variety of ways to fulfill their statutory obligations under the IBC.

What insolvency professionals should watch out for:



¹ Source: 'The Insolvency and Bankruptcy Code, 2016 – Game Changer', published by the Confederation of Indian Industry, March 2017

² SARFAESI Act 2002, Recovery of Debts due to Banks and Financial Institutions Act 1993, The Provincial Insolvency Act 1920 and debt restructuring processes such as CDR, SDR, S4A

How we can help

Forensic claims review and adjudication (Section 18 and 35)

We can assist the resolution professional (RP) with the claims review and adjudication process using our proprietary forensic methodologies, including but not limited to:

- Claims collation and administration process
- Forensic review of claims to determine authenticity of proofs
- Assessing unliquidated claims or potential damages



Assistance in ongoing monitoring of operations (Section 18)

We can assist RPs with examination of ongoing transactions during the insolvency resolution period to identify potential indicators of diversion, siphoning of funds, fraudulent or wrongful transactions, or other such issues which are improper in nature. Our proprietary forensic tools can analyze voluminous transactional data from multiple sources on a periodic basis.



Due diligence on bidders

We can assist RPs and the Committee of Creditors (COC) in conducting due diligence with our extensive experience in assessing and analyzing the reputation, integrity, and ownership structures of companies, their principal shareholders and management through our business intelligence capabilities. Using both publicly available information and a network of external resources, we identify background information on track record, financial capability, reputation, opaque corporate structure, undisclosed hidden relationship with corporate debtor, tax evasion, default on obligations and other such reputation concerns.



Compliance and monitoring of insolvency resolution plan

We can assist RPs or the National Company Law Tribunal (NCLT) as an independent expert with monitoring of compliance with the agreed resolution plan in the following ways:

- Monitoring business transactions and payments to determine end use of funds in order to identify any potential diversion or siphoning of funds during implementation of resolution plan
- Reviewing whether terms of the agreed resolution plan have been complied with by relevant stakeholders



Forensic review of specific transactions (Preferential, Undervalued and Extortionate, Fraudulent or Wrongful Trading)

Sections 43 to 51 and Section 66 of the Code stipulate that RPs or liquidators have to file avoidance of specified transactions with the adjudicating authority, including transactions which are preferential, undervalued and/or extortionate in nature, and fraudulent or wrongful transactions carried out with an intent to defraud creditors within a period of two years preceding the insolvency commencement date.

We use forensic methodologies such as data analytics, document review, market intelligence, etc., to help RPs investigate such transactions—often hidden under multiple complex layers—and conduct background checks on the entities involved to help identify any undisclosed relationship with the corporate debtor.



Asset tracing (Section 18)

We use a sophisticated array of tools and resources to analyze financial systems and reconstruct records to find where funds have been used to create undisclosed assets. Our asset tracing exercise involves the following elements:

- Verification of asset ownership either through enquiries or documented evidence
- Family tree/layering of disclosed/undisclosed entities and structures to understand potential corporate ownership
- Proof of ultimate beneficial ownership trail, or evidence that assets represent proceeds of a fraud or other crime



Liquidation analysis and support (Section 59)

Our forensic experts can help liquidators realize maximum value from the estate in various ways, including but not limited to the following:

- Setting up a robust, compliant and monitored liquidation process
- Review of financial and accounting records to determine the appropriateness of complex accounting adjustments impacting asset valuation
- Review of bidding process for transparent and competitive evaluation to optimize liquidation proceeds
- Monitoring fund distribution in compliance with the Code



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