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## **FROM BIFR TO NCLT: EVOLUTION OF CORPORATE INSOLVENCY RESOLUTION IN INDIA.**

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### **ABSTRACT:**

India's approach to corporate insolvency resolution has evolved from the framework established under the sick industrial companies act, 1985 to the current system governed by the Insolvency and Bankruptcy Code, 2016. The board of industrial and financial reconstruction was created to facilitate the revival of sick industrial companies. However, its effectiveness was compromised due to more delays, complicative procedures, and insufficient participation from creditors. The Insolvency and Bankruptcy Code established the National Company Law Tribunal as the adjudicating authority, leading to a streamlined resolution process with fixed timelines. The shift from BIFR to NCLT was intended to improve asset value and promote economic stability. This article critically examines the transformation from BIFR to NCLT and it also evaluates the impact on companies' insolvency resolution in India.

### **KEYWORDS:**

Corporate Insolvency, BIFR, NCLT, Revival, Sick industries, Resolution.

## **1. INTRODUCTION:**

The rapid rise of industries in India after independence brought about the challenge of industrial distress. Starting in the 1970s and early 1980s, numerous medium and large-scale enterprises faced severe financial difficulties, which resulted in shutdowns, job losses, and a decrease of public funds invested by banks and other financial institutions.

To reduce the problem which is faced by those companies and which is harmful for the country's economic development also, the Government of India implemented the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). The main aim of SICA was to identify industrial sickness at its initial stages and facilitate the timely revival of such sick companies. India's initial effort to counter corporate distress was taken through the sick industrial companies act, 1985, which made a decision to the formation of BIFR. However, the BIFR was ineffective due to more delays, procedural complexities, and insufficient participation from creditors. Consequently, the necessity for a creditor-driven, timely, and market-oriented insolvency framework became apparent.

To reduce this issue, India implemented the Insolvency and Bankruptcy Code in 2016 (IBC). Acknowledging these challenges, India initiated a comprehensive reform of its insolvency framework, which culminated in the passing of the Insolvency and Bankruptcy Code, 2016 (IBC). The IBC abolished the Board for Industrial and Financial Reconstruction (BIFR) and transferred all authority regarding corporate insolvency resolution to the National Company Law Tribunal (NCLT). Following the establishment of the IBC in 2016, the jurisdiction over corporate insolvency was moved from the BIFR to the NCLT.

## **2. CONTENT OF RESEARCH:**

### **2.1 BIFR:**

In 1987, With reference to sick industrial companies act, 1985, the quasi-judicial body which is named as the board for industrial and financial reconstruction came into existence in India. BIFR was a government agency and also a division of the Ministry of Finance. The main responsibility of BIFR, providing financial and legal assistance to industrial companies which

are facing sickness. The aim is to recover and remove industrial sickness and shut down, liquidation in case there is no possibility of recovery.

### 2.1.1 EVOLUTION OF BIFR:

In India, the industrial sickness started before independence itself. The Government of India faced many difficulties to resolve this problem in the starting stages. The committee was constituted named Tiwari committee in 1981 and Tiwari was the chairman of the committee. This Committee recommended broader legislation to reduce industrial sickness. Through the recommendation of the result, the government enacted SICA, which was enforced in 1985 and BIFR also established in 1987.

The Bill was introduced in 2011 for amendment, because of non-achievement of objective and purpose by BIFR. In 2003, the Act was repealed by IBC, 2016. The quasi-judicial bodies also replaced, BIFR replaced by NCLT and AAIFR replaced by NCLAT.<sup>1</sup>

### 2.1.2 REASON FOR ESTABLISHMENT OF BIFR:

The main reason for enactment of this act was to provide assistance through revival and rehabilitation of sick industrial companies. Parliament of India enacted this Act, for the decrease of industrial sickness to reduce the companies facing difficulties financially and they are not able to pay their debts. The BIFR was set up with the aim to provide a mechanism for the financial and operational assistance to sick companies and rehabilitate and revive those companies.<sup>2</sup>

### 2.1.3 FUNCTIONS OF BIFR:

The following are the main functions of the BIFR:

- 1) To declare an industry or a company as a sick industry or company.
- 2) To provide directions to manage a sick industry.
- 3) To provide financial and operational restructuring.
- 4) To pass orders on various matters.
- 5) To monitor the implementation of order.
- 6) To provide assistance and guidance.

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<sup>1</sup> **Government of India**, *Report of the High-Level Committee on Industrial Sickness* (T. Tiwari, Chairman, 1981)

<sup>2</sup> **Board for Industrial and Financial Reconstruction (BIFR)**, *Establishment Notification*, Ministry of Finance, Govt. of India, Jan. 1987

- 7) To coordinate with other agencies.
- 8) To provide information and assistance.

#### **2.1.4 CHALLENGES FACED BY BIFR IN PROVIDING ASSISTANCE AND SOLUTION:**

BIFR faces many challenges while providing assistance to revive the sick companies,

##### **1. Lack of resources:**

The lack of resources in findings, staff, officers, experts to handle the cases effectively. BIFR doesn't have measures to handle those resources.

##### **2. Complexity of cases:**

The industrial sickness may be a complex problem for BIFR to handle those cases. Many sick industries face complex and high numbers of financial and other operational difficulties.

##### **3. Resistance from stakeholders:**

The Rehabilitation plans by the BIFR were criticized by employees, shareholders, creditors and other persons. This is the main reason why BIFR faces difficulties in implementing those plans.

##### **4. Lack of compliance:**

Not all industrial companies complied with terms and conditions. Some of them are not following the plans provided by BIFR and the terms also. Finally, it may affect the process of insolvency resolution.

##### **5. Changing economic conditions:**

The economic conditions such as market demand, competition in the market, and other conditions may affect the rehabilitation plan. So, the successful implementation of plans depended on factors which are listed above. If the above listed conditions change, the plan should be revised accordingly.

##### **6. Scope of BIFR's authority is limited:**

BIFR had only limited jurisdiction to deal with business matters. These jurisdictions are less to the companies and it does not move to any other businesses. The BIFR can't address every

factor in the list. It may contribute to a company's financial distress according to those factors.<sup>3</sup>

## 2.2 NCLT:

In the mid 2010s, India faced a huge number of NPA's (Non-performing assets). The committees and reports concluded that the measures taken had failed to produce a timely, predictable manner of outcomes. The NCLT is a specialized body of the government of India. It was a quasi-judicial body established to deal and adjudicate disputes related to company insolvency and law related to the company. The IBC was enacted in 2016. This Act was designed to meet these goals by creating some measures and an adjudicatory mechanism.

After the enactment of the insolvency and bankruptcy code, 2016 (IBC), The NCLT became the principal and main adjudicating authority in matters such as corporate liquidation, insolvency and resolution. It has many boards that are Company law board (CLB) and BIFR.<sup>4</sup>

### 2.2.1 ROLE OF NCLT UNDER THE IBC:

Under the IBC, the NCLT acts as the backbone of the corporate insolvency resolution regime by:

1. It enforces the time-bound resolution for corporate insolvency. (normally 180 days may extend to 330 days including litigation)
2. It ensures the creditor-driven decision-making with the Help of the Committee of Creditors.
3. It also provides judicial oversight while respecting the commercial wisdom of creditors.<sup>5</sup>

## 2.2 role of insolvency professionals:

There were no independent bodies which are professional to manage the insolvency of companies during the BIFR period. Only government authorities handle the process, so that it is slow and less efficient. The IBC created insolvency professionals. They are experts who are trained and registered. If a company goes into insolvency the IPs will take control of management, collect claims, and protect assets. They are neutral between the company and

<sup>3</sup> **Government of India**, *Report of the High-Level Committee on Industrial Sickness* (T. Tiwari, Chairman, 1981)

<sup>4</sup> **Insolvency and Bankruptcy Board of India**, *Discussion Paper on Corporate Insolvency Resolution Process* (2018)

<sup>5</sup> **Section 7, 9,10,12 ,60**, Insolvency and Bankruptcy Code, 2016 (India)

creditors. This improved transparency, accountability and efficiency in resolving corporate distress.

### **2.3 time bound resolution vs endless proceedings:**

The delay is the only reason for weakening the BIFR. Cases are continued for many years without resolutions, where the values of the company's assets are reduced. Less effectiveness in appeals and no proper time limits. Opposite to this IBC provides a time bound process. CIRP must generally be completed within 180 days, which may extend up to 330 days including legal proceedings. This time limit aims to protect the assets value and faster recovery. Delays are still happening, the IBC is much faster than BIFR.

### **2.4 Impact on banking and NPA crisis:**

Prior to IBC, Indian banks faced many Non-performing Assets(NPA) problems. Recovery mechanisms like BIFR and DRT are not effective to handle large corporate defaults. On this result bad loans are increased. After the IBC, banks got strong recovery tools. Large corporate defaults are solved through NCLT. This improved the credit system and banking system. All recovery systems are more effective than before.

### **2.3 rights of operational creditors:**

Operational creditors means people including suppliers, employees, and government authorities. There is very limited protection and no full payments were received under BIFR. But in IBC operational creditors can initiate insolvency proceedings of a company by default. At least liquidation values should be paid to them under a resolution plan. But they don't have voting rights in the creditors committee, where there are financial creditors. The positions are improved from BIFR.

### **2.3 COMPARISON BETWEEN BIFR AND NCLT:**

#### **Institutional Shift: From BIFR to NCLT (and NCLAT)**

The quasi-judicial body called national company law tribunal (NCLT) was made into existence by companies act, 2013 for dealing with companies matters only and specialized in company law. The NCLT was formally constituted and came into effect in June 2016. After enactment of the IBC, 2016 several older forums like BIFR were removed and pending cases in BIFR were transferred to NCLT/NCLAT appellate structure. After these matters, the NCLT became the principal and highest judicial forum for adjudication relating to insolvency



petitions, appointing interim resolution professionals, approval of resolution plans, and adjudication of disputes under the IBC. This system of shift of specialist adjudication with the modern insolvency code represented a structural consolidation aimed at speed and expertise resolution for corporate insolvency.

India's move from BIFR/SICA to IBC/NCLT reflects a broader term of global trend shifting from state-led, protective rehabilitation to market-oriented, creditor-led insolvency regimes that prioritize quick, value-maximizing outcomes. The Indian experience towards this change shows that legislative reform must be matched by institutional capacity, predictable appellate jurisprudence, and complementary reforms in banking, taxation, and corporate governance to sustain investor confidence. The design of IBC, 2016 has clear timelines and professional roles. But its success only depends upon the efficient implementation of the rehabilitation plans and refinement through case law and regulatory adjustments.

Aspects	BIFR	NCLT
<b><i>Governing Law</i></b>	SICA, 1985	IBC, 2016 & Companies Act, 2013
<b><i>Approach</i></b>	Revival-oriented, administrative	Resolution-oriented, judicial
<b><i>Timelines</i></b>	No strict timelines	Statutory time limits
<b><i>Control</i></b>	Promoter-centric	Creditor-driven
<b><i>Recovery</i></b>	Low and uncertain	Higher and structured
<b><i>Scope</i></b>	Sick industrial companies only	All corporate persons

### IMPACTS OR CONSEQUENCES OF SHIFT:

The transition from BIFR to NCLT has significantly increased the rate of India's corporate insolvency ecosystem. It has:

1. Reduction in delays in companies' insolvency resolution.
2. Management is made more accountable and responsible.
3. Improves recoveries for creditors.

4. Formation of a structured market for defective assets

### **3. CONCLUSION:**

Over a long period, the BIFR faced many difficulties in carrying out its order, including delays in decision-making, legal challenges and other issues. With the enactment of the Bankruptcy and Insolvency Code 2016, in India the BIFR was replaced by the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) for bankruptcy and liquidation procedures.

BIFR replaced NCLT centric insolvency regime transition under the IBC, 2016 outlines the fundamental restructuring of India's corporate insolvency law. The BIFR's main responsibility is to provide financial assistance to the industrial companies facing difficulties financially and operationally and reconstruct the management of the company. Even though BIFR had a welfare-based approach aimed at industrial rehabilitation, its structural inefficiencies and other problems like prolonged proceedings undermined its effectiveness in addressing corporate sickness.

The IBC, administered through the NCLT, has introduced a unified, creditor-in-control model characterised by strict timelines, professional management, and enhanced transparency. This shift from BIFR to NCLT has strengthened the confidence of the creditor, increased rates of recovery, and other contribution credit discipline in the corporate sector. Apart from these, they faced many challenges such as judicial backlog, capacity constraints. Regardless of these concerns, the evolution from BIFR to NCLT demonstrates India's commitment for corporate insolvency with global best practices, thereby ensuring economic stability, sustainable corporate growth and other ease of doing business.

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