

# Insolvency and Bankruptcy Code – Trends and Impact

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**ABSTRACT:** Insolvency and Bankruptcy Code, 2016 has brought tremendous changes in the Indian business sector. Prior to this code, India did not have any effective mechanism, market led and time bound insolvency acts. In India, insolvency reforms were suddenly took changes with the enactment of the IBC, 2016 on May 28, 2016 and it effects from on December 1, 2016. On January 17, 2017, the first Corporate Insolvency Resolution Process (CIRP) was filled. Improve business regulation to make the business easier is the endeavor of every nation. Every year the World Bank conducts an annual examination to grade the “Ease of Doing Business” in about 200 countries and grade them on the basis of ten sets of parameters. “Resolving Insolvency” is one among them. India’s rank is 142 in “Ease of Doing Business” for the year 2015. India’s rank is 137 in terms of resolving insolvency. After implementation of IBC, India’s rank is 77<sup>th</sup> up by 65 places in the aggregate ranking and 108<sup>th</sup> on “Resolving Insolvency”. As per the importance of IBC, the study is focused to understand the following objectives: To understand the conceptual framework of IBC To analyze the trend of cases admitted and resolved under IBC To analyze the sector wise, Category wise admitted cases under IBC To know the trend of Recovery through various mechanisms To know the trend of Realization of CIRPs of select corporate Debtors This study is based on secondary data, which was collected from Reports of Reserve Bank of India, Insolvency and Bankruptcy Board of India, Ministry of Corporate Affairs etc..

**KEYWORDS:** Insolvency Bankruptcy Code, Corporate Insolvency Resolution Process, Insolvency, Insolvency Professional, National Company Law Appellate Tribunal (NCLAT), Operational Creditors (OCs), Financial Creditors (FCs), Insolvency Law Committee.

## I. INTRODUCTION

Insolvency and Bankruptcy Code, 2016 has brought tremendous changes in the Indian business sector. Prior to this code, India did not have any effective mechanism, market led and time bound insolvency acts. In India, insolvency reforms were suddenly took changes with the enactment of the IBC, 2016 on May 28, 2016 and it effects from December 1, 2016. On January 17, 2017, the first Corporate Insolvency Resolution Process (CIRP) was filled.

Improve business regulation to make the business easier is the endeavor of every nation. Every year the World Bank conducts an annual examination to grade the “Ease of Doing Business” in about 200 countries and grade them on the basis of ten sets of parameters. “Resolving Insolvency” is one among them. India’s rank is 142 in “Ease of Doing Business” for the year 2015. India’s rank is 137 in terms of resolving insolvency. After implementation of IBC, India’s rank is 77 up by 65 places in the aggregate ranking and 108 on “Resolving Insolvency”.

Various laws have been passed since independence to deal with Insolvency and Bankruptcy cases in India. In fact there used to be exist different laws govern the insolvency of different types of entities in India. Provincial Insolvency Act 1932 was covered the Insolvency of Individuals, Insolvency of Limited Liability Partnership Act was governed by Limited Liability Partnership Act 2008, Finally insolvency of the companies there used to exist multiple pieces of legislations to dealt with it, there were Indian Companies Act 1956, which was later replaced with Companies Act 2013, which govern the insolvency & winding up of a companies. In 1985, in the era of industrial failure, The Sick Industrial Companies Act 1985 was also enacted in order to bailout the sick companies. Additionally, “Recovery of Debts Due to Banks and Financial Institution Act 1993” and the “Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002” were enacted in post liberalization to grant special rights to the banks and other secured creditors for recovery of debt.

Due to the existence of various legislations to deal with insolvency of companies, partnerships and individuals. So many institutions/laws have had jurisdiction over the insolvency and bankruptcy process. The Company Law Board eye cards the debt recovery tribunals and the "Board of Industrial and Financial Reconstruction" dealt with the insolvency of the institution they governed. The entire framework India's insolvency and bankruptcy structure overlapping, intricate and very complicated, which in turn lead to the problem of systematic dealings, it took companies 4 to 5 years to resolve their operations, not only that the Sick Industrial Companies Act, The Debt Recovery Act, and SARFAESI Act which enacted to improve the debt recovery process but not produce the desired result, it is widely known fact that Indian Banking Industry is possessed with huge Non Performing Assets, thus the need was felt to derive, efficient and consolidated insolvency law, that can bring stability in Indian financial system. The Provincial Insolvency Act 1920 which dealt with individuals as really a century old and that been revamped which suit to the present needs. All these necessitated the need for consolidated legal framework to deal with insolvency and bankruptcy to improve the debt management in the country. This leads to the introduction of IBC, 2016. The code has been introduced with an objective to address the structural problems which were hampering the efficient recycle of the capital, it also seek the rebalance the rights of creditors by giving them much needed remedy to take timely and effective action against defaulters.

This code is applicable to Companies, Limited Liability Partnerships (LLPs), Personal Guarantors to Corporate Debtors (CDs), Partnership Firms, individuals and other body corporate. It is not applicable to Banks, Financial Institutions and Insurance Companies.

The important features of IBC, 2016 are consolidated law, Time bound, Creditors driven insolvency process, Maximization of value of assets and revival of corporate entities.

## **II. REVIEW OF LITERATURE**

The literature obtained by Researcher in the form of articles, reports of various committees, newsletters of IBBI is reviewed in this part.

Hareesh Kolichala (2019)<sup>1</sup> Union Bank of India, Kolkatta was focused on IBC impact on Banking Sector. The advent of Insolvency legislation, "IBC,2016", is indeed a big shot in the arm for banking industry. Speed is essence of this Code. There is a clear behavioural change of the Corporate Debtors who paid up the defaulted amounts to the Banks to avoid resolution proceedings thanks to Insolvency Code. As on 30.9.2018, as per the study by reputed rating agency ICRA, 52 Resolution Plans had been approved by the NCLTs and the Financial Creditors/Banks had received Rs.58,400crores. In respect of applications filed by financial creditors before the NCLT under IBC,2016, applications were withdrawn before admission of 12 loan accounts in which banks have recovered an amount of Rs 449.76 crore till September 2018. Now, clearly there is hope for Banks to resolve NPAs quickly.

Rajesh Ojha (2019)<sup>2</sup>has analysed the journey of IBC. It has been over two years since the IBC, 2016 was implemented in India. The Code has brought about a dramatic change in the manner in which the insolvency and bankruptcy proceedings in the country would be handled in a time bound manner. The Code is expected to resolve the non-performing asset (NPA) crisis and the resultant slowdown in the availability of credit in the economy. An entirely new ecosystem has come into being as a result of which a host of opportunities have opened up for finance and legal professionals . The CIRP's cases admitted, the number of resolution professionals registered, amount of recoveries made by the financial creditors in the cases resolved so far have been progressively increasing over the years whereas in certain cases the banks have had to take a sizeable haircut also. In order to understand the journey of the IBC, 2016 thus far a questionnaire based survey was carried out amongst the registered insolvency professionals in the country to ascertain their views on the various facets of the Code and the difficulties faced in its implementation.

Rajesh Ojha (2019)<sup>3</sup> has analysed the Corporate Insolvency & Bankruptcy under the IBC, 2016. The IBC, 2016 has radically altered the insolvency law landscape in India. The clear shift of control from the shareholders and promoters to the creditors enables the recovery process to much more smoothly and effectively. There is also a restriction on the completion of the corporate insolvency resolution process. Failure to do so may lead to the liquidation of the corporate debtor. The code over a period of time shall go a long way in resolving the distressed assets in Indian Banking System. There by resulting in an effective and profitable banking system in India.

MS Sahoo (2017)<sup>4</sup> Chairman Insolvency Bankruptcy board of India, has analysed that, the IBC envisages a complementary role for the participants and adherence to timeliness often requires mutual cooperation. A very long insolvency resolution period is likely to push the corporate towards liquidation while reducing its

liquidation value. As more resolutions go through, the process would get standardized. The CIRP, therefore needs to be completed as quickly as possible, not later than 180 days.

After reviewing the above literature, researcher found that, there are no comprehensive studies covered the trends of activities under IBC. Therefore, this study is relevant at the present context and presented on the following objectives.

### **III. OBJECTIVES**

In the view of consolidated law for insolvency and bankruptcy for corporates, Partnerships and Individuals the paper is focused to understand the following objectives:

- To understand the conceptual framework of IBC
- To analyze the trend of cases admitted and resolved under IBC
- To analyze the sector wise, Category wise admitted cases under IBC
- To know the trend of Recovery through various mechanisms
- To know the trend of Realization of CIRPs of select corporate Debtors

### **IV. METHODOLOGY**

The data has been collected from the secondary source. The reports of Insolvency and Bankruptcy Board of India (IBBI), Reserve Bank of India (RBI), Ministry of Corporate Affairs (MCA), National Company Law Tribunal (NCLT) etc. and also collected the information from the quarterly bulletins of IBBI. Simple statistical tools like ratios, correlation are used to analyse the trend of the CIRP initiations, sectoral distribution of CIRPs, Voluntary liquidation etc..

### **IV. RESEARCH PERIOD OF THE STUDY**

The period of the study is covered for three years i.e January 2017 to September 2019. IBC, 2016 was come into force from December 2016 and first case was filed under IBC on 17 January 2017. Data is available upto September 2019 only. Hence, select period is appropriate to analyse the events occurred between January 2017 to September 2019. However, Recovery through various mechanisms is compared between before and after IBC. Therefore, researcher use the data from 2007-08 to 2018-19 to analyse the trend of recovery through various mechanisms.

### **V. LIMITATIONS OF THE STUDY**

Researcher was not able to get the actual figures of information to analyse the recovery through various mechanisms. Therefore, it has analysed only through the recovery percentages interms of amount filed.

### **VI. HYPOTHESES**

**Ho<sub>1</sub>**: There is no significant relationship between Number of admitted claims and closure by Number of Appeals.

**Ho<sub>2</sub>** : There is no significant relationship between Number of admitted claims and closure by Number of Withdrawals.

**Ho<sub>3</sub>** : There is no significant relationship between Number of admitted claims and closure by Number of Approval of Resolution Plans.

**Ho<sub>4</sub>**: There is no significant relationship between Number of admitted claims and closure of Number of Commencement of Liquidation.

### **VII. THE CONCEPTUAL FRAMEWORK OF IBC, 2016**

The primary objective of IBC is:

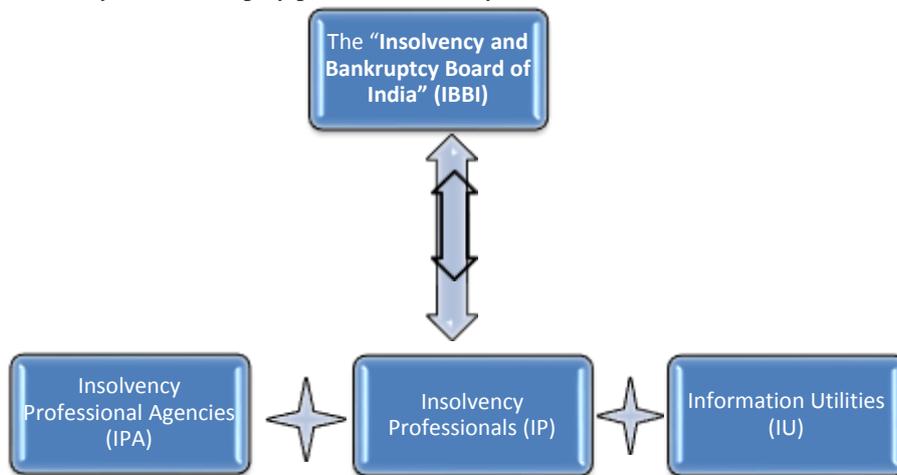
- To consolidate and amend the laws relating to insolvency of corporate, partnership firms, and individuals in time bound manner,
- Maximization of value of the assets of the firm is the second order objective and
- The third objective is
  - Promoting entrepreneurship,
  - Availability of credit and
  - Balancing the interests of all its stakeholders.

**A. Basic Structure of the IBC**

This code has 255 sections and 5 parts. Part I is “preliminary which basically includes definitions”, Part II focuses on the “insolvency resolution and liquidation for corporate”, Part III deals with “insolvency resolution and bankruptcy for individuals and partnership firms”, Part IV focuses “on regulation aspects of Insolvency Professionals, Agencies and Information Utilities”, and Part V deals with the “miscellaneous aspects”.

**B. Institutional Framework under the IBC**

Institutional framework is the main pillar for effective implementation of any act. For the IBC there four pillars to support the Insolvency and Bankruptcy process effectively.



Insolvency and Bankruptcy Board of India was established on 1<sup>st</sup> October, 2016. This board is regulating the working of Insolvency Professional Agencies (IPAs), Insolvency Professionals (IPs), and Information Utilities (IUs). It is also entrusted with the task of overseeing the insolvency proceedings in the country. It is the apex body in the area of insolvency and bankruptcy like RBI in the area of Banks, SEBI in the area of Securities market. The board has 10 members and is headed by chairman and other members are representing from Reserve Bank of India, Ministry of Finance (MOF) and Ministry of Corporate Affairs (MCA) and Law.

Insolvency Professional Agencies are comes under the next level of hierarchy. The Insolvency Professionals have to be registered with IPAs. IPAs will conduct the examinations and certify the IPs. Institute of Chartered Accountants of India (ICAI), and Institute of Cost Accountants of India (ICAI) (formerly known as ICWAI), Institute of Company Secretaries of India (ICSI) are the three IPAs are registered with IBBI.

The certified professionals (IPs) are the heart of the entire insolvency process. The Insolvency Professionals will conduct the insolvency resolution process, by taking over the management of the company, controls the assets of the company, assist creditors in the collection of relevant information, they will become liquidators and manage the liquidation process, if the company fails to revive. These insolvency professionals have to be registered with IPAs. Advocates, Chartered Accountants, Cost Accountants, Company Secretaries, those who are having 10 years of experience in their respective fields and having passed the insolvency examination can act as IPs. Even graduates, who are having 15 years of experience are also eligible to become IPs. Entities like LLPs, partnership firms or even a company can also be registered as IPs provided majority of their partners or whole time directors are registered as IPs.

Information Utilities (IUs) are the key innovation of IBC framework. IUs are meant to collect, collate and disseminate financial information related to debtors. National e- Governance is the only Information Utility is registered till now.

**C. Corporate Insolvency Resolution Process (CIRP)**

As per the Part II of Chapter II of the IBC Corporate Insolvency Resolution Process can be initiated by Financial Creditors (FC), Operational Creditors (OC) (Including Government/ Employees or workmen) or the Corporate Debtor (CD) itself by filing an application to the adjudicating Authority i.e National Company Law Tribunal when a corporate debtor makes a default whether in part or whole or an installment of the amount debt or interest thereon of a minimum of Rs. 1 lakh.

**Table 1**

**Trend of ‘Corporate Insolvency Resolution Process’ (CIRP)**

Quarter	Opening Cases	Admitted Cases	Closed by				Closing Cases	Percentage change
			Appeal/Review	Withdrawal Under 12A	Approval of Resolution Plan	Commencement of Liquidation		
January–March,17	0	37	1	0	0	0	36	
April–June,17	36	129	8	0	0	0	157	336
July – September,17	157	233	18	0	2	8	362	131
October–December,17	362	147	38	0	7	24	440	22
January–March,18	440	195	20	0	11	59	545	24
April–June,18	545	246	20	1	14	52	704	29
July – September,18	704	243	30	27	29	87	774	10
Oct – December,18	774	275	8	36	17	82	906	17
January–March,19	906	374	20	19	22	86	1133	25
April–June,19	1133	294	14	19	27	93	1274	12
July – September,19	1274	369	9	14	27	96	1497	18
		2542	186	116	156	587		
<b>Correlation</b>			<b>0.10</b>	<b>0.58</b>	<b>0.79</b>	<b>0.83</b>		
<b>P value</b>			<b>0.77</b>	<b>0.06</b>	<b>0.00</b>	<b>0.00</b>		
<b>Accept/Reject Null Hypo.</b>			<b>Accepted</b>	<b>Accepted</b>	<b>Rejected</b>	<b>Rejected</b>		

(Source: Compiled the information from [www.ibbi.gov.in](http://www.ibbi.gov.in))

Table 1 reveals that the, since the enactment of IBC in December 2016 to till the end of September 2019, 2542 corporate Debtors (CDs) have been admitted into Corporate Insolvency Resolution Process (CIRP). Out of

these, 186 cases have been closed by Appeal and 116 cases have been closed by withdrawn under 12A. As many as 587 CDs have been ended in liquidation while the resolution plans have been approved 156 cases. From January – March 2017 to October – Dec 2018, Operational Creditors (OC) are initiated more number of CIRPs than Financial Creditors (FCs) and Corporate Debtors. In the quarter period October – December 2018, 153 CIRPs are initiated by OCs compared FCs are 106, CDs are 16 initiated out of 275.

FCs are initiated more CIRPs than OC & CDs during last quarter i.e July – Sept 2019. Overall OCs are initiated 1232 (48.47 percent of total admitted cases), FCS are initiated 1086 (42.70 percent of total admitted cases) and CDs are initiated 224 (8.81 percent of total admitted cases) out of 2542 CIRPs.

By the end of September 2019, there are 1497 outstanding cases under the IBC of which resolution in 35.74 percent of the cases were pending for more than 270 days. 21.64 percent cases are pending between 180 to 270 days, 18.44 percent of cases are pending between 90-180 days and 24.18 percent cases are pending less than 90 days. Number of cases undergoing are increasing from one quarter to another quarter. At the beginning of the code, only 36 cases were ongoing by end of the first quarter but they are increased to 1497 cases within a span of three years. We can expect that, this problem will also be gradually tackled with timely amendments made to the code. Correlation Coefficient has been calculated to test the hypotheses.

The relationship between Admitted cases and closed by Appeal cases is very weak as R Value is 0.10 but there is a technically a positive relation. Hence, null hypothesis is to be accepted as ‘p’ value is greater than 0.05.

The relationship between Admitted cases and closed by withdrawal cases is a moderate positive relationship which means there is a tendency for high admitted cases go with high withdrawal cases as R Value is 0.58. Hence, null hypothesis is to be accepted as ‘p’ value is greater than 0.05.

The relationship between Admitted cases and closed by Approval cases is a strong positive relationship which means there is a tendency for high admitted cases go with high approval cases as R Value is 0.79. Hence, null hypothesis is not able to accept as ‘p’ value is less than 0.05.

Correlation Coefficient has been calculated to test the relationship between variables. The relationship between Admitted and closed by Liquidation cases is a strong positive relationship which means there is a tendency for high admitted cases go with high liquidation cases as R Value is 0.83. . Hence, null hypothesis is not able to accept as ‘p’ value is less than 0.05.

**Table 2**

**Sector-wise Distribution of Corporate Debtors under Corporate Insolvency Resolution Process as on 30<sup>th</sup> September 2019**

S.No.	Sector	No. of Cases Admitted		
		Closed Cases	Ongoing Cases	Total Cases
<b>I</b>	<b>Cases of Manufacturing Companies</b>	<b>450 (43.06%)</b>	<b>593 (39.62%)</b>	<b>1043 (41.03%)</b>
1	Food, Beverages & Tobacco Products	41	87	128
2	Chemicals and Chemical Products	48	50	98
3	Electrical, Machinery and Apparatus	41	46	87
4	Fabricated Metal Products	31	33	64
5	Machinery and Equipment	48	70	118
6	Textiles, Leather and Apparel Products	79	92	171
7	Wood, Rubber, Plastic and Paper Products	48	71	119
8	Basic Metals	82	101	183
9	Others	32	43	75
<b>II</b>	<b>Real Estate, Renting and Business Activities Companies</b>	<b>201(19.24%)</b>	<b>299(19.97%)</b>	<b>500</b>

				<b>(19.67%)</b>
1	Real Estate Activities	28	87	115
2	Computer and Related Activities	28	37	65
3	Research and Development	2	1	3
4	Other Business Activities	143	174	317
III	<b>Construction Companies</b>	88(8.42%)	186(12.42%)	274 (10.78%)
IV	<b>Wholesale &amp; Retail Trade</b>	117(11.19%)	133(8.89%)	250 (9.83%)
V	<b>Hotels &amp; Restaurants</b>	27(2.58%)	39(2.60%)	66 (2.60%)
VI	<b>Electricity &amp; Others</b>	22(2.10%)	47(1.13%)	69 (2.71%)
VII	<b>Transport, Storage &amp; Communication</b>	30(2.88%)	42(2.81%)	72 (2.83%)
VIII	<b>Others</b>	110(10.53%)	158(10.54%)	268 (10.54%)
	<b>Total</b>	<b>1045 (100%)</b>	<b>1497(100%)</b>	<b>2542</b>

*(Source: Compiled the information from www.ibbi.gov.in)*

Table 2 represents the sector wise distribution of Corporate Debtors under CIRP as on 30<sup>th</sup> September 2019. Out of the total 2542 admitted cases, 1045 cases are closed which consists of 186 cases closed by Appeal, 116 cases by withdrawal under 12A, 156 cases by Approval of Resolution plan and 587 cases by the commencement of liquidation.

Out of the 1045 closed cases, manufacturing Corporate Debtors are consists of 43.06 percent, real estate & Business Activities represents 19.24 percent and cases belonging to Electricity companies are placed lowest among the sectors i.e 2.10 percent.

In the ongoing cases also, Manufacturing Corporate Debtors are represents 39.6 percent out of 1497 cases. Electricity & others represents lowest among all at the rate 1.13 percent.

Out of the 2542 Admitted cases, 41 percent cases are related to manufacturing cases only.

**Table 3**

**Corporate Insolvency Resolution Process Yielding Resolution (Rs. in Crores)**

<b>Period</b>	<b>Total admitted claims of Financial Creditors</b>	<b>Value of Liquidation</b>	<b>Realization by Financial Creditors</b>	<b>Realization by Financial Creditors as % of their claims</b>	<b>Realization by Financial Creditors as % of their liquidation value</b>
April - June 2018	1231.06	99.07	211.6	17.19	213.58
July - Sept 2018	634.11	194.04	250.09	39.44	128.89
Oct - Dec 2018	7904.88	2848	6978	88.27	245.01
Jan - March 2019	4101.12	1095.02	1160.35	28.29	105.97

April - June 2019	5701.23	1621.41	1385.71	24.31	85.44
July - Sept 2019	78592.42	14789.63	27064.95	34.44	183.00

*(Source: Compiled the information from www.ibbi.gov.in)*

Table 3 shows the CIRPs yielding resolution by Financial Creditors. During the quarter April- June 2018, there is Rs. 1231.06 cr. worth of claims admitted from just three companies, their liquidation value is Rs. 99.07 Cr. But realization by Financial Creditors is about 17.19 percent of their claims. During Oct- Dec 2018, 88.27 percent of the admitted claims are realized by Financial Creditors. During the last quarter of the study i.e July – September 2019, Rs. 78592.42 Cr. worth of admitted claims by 27 Corporate Debtors out of this claim Financial Creditors are realized an amount of RS. 27064.95 Cr., which is equivalent to 34.44 percent of their claims and 183 percent in its liquidation value.

**Table 4**  
**Recovery Through Various Mechanisms**

Year	Recovery in % of amount filed	
2008-09	36.6	Avg. Recovery of DRT+SARFAESI+Lokadalats
2009-10	24	
2010-11	31.4	
2011-12	23.6	
2012-13	22	
2013-14	18.4	
2014-15	12.4	
2015-16	10.3	
2016-17	13.8	
2017-18	12.4	
	41.3	IBC
2018-19	46.1	

*(Source: Reports of RBI and IBBI)*

Table 4 shows the recovery through various mechanisms like Debt Recovery Tribunal (DRT), SARFAESI, Lokadalats and IBC. Before the IBC, all the mechanisms together, it has been recovered only 36.6 percent of an amount filed during the year 2008-09, in the 2015-16 , the percentage of recovery is only 10.3 percent and 2016-17 is 13.8 percent, where as 2017-18 percentage of recovery reached 41.3 percentage through IBC, 2018-19 it is 46.1 percent of amount filed recovered through IBC. This shows the efficiency of IBC in resolving the cases of insolvency. This is possible only through the structured institutional framework under IBC.

**VIII. CONCLUSION**

IBC, 2016 has made tremendous changes in the Indian business sector. Prior to this code, India did not have any effective mechanism, market led and time bound insolvency acts. Insolvency reforms in India were suddenly took shape after the enactment of the IBC, 2016 on May 28, 2016, which was effect from December 1, 2016. On January 17, 2017, the first Corporate Insolvency Resolution Process (CIRP) was filled.

As per the analysis there is a significant relationship between number of cases admitted and approval resolution, commencement of liquidation. 41 percent of the cases are admitted for Corporate Insolvency Resolution Process from manufacturing companies only. The study shows the clear impact of IBC on recovery of loans. 2017-18 and 2018-19, more than 40 percent of the claims recovered through IBC earlier this rate was very low. It is concluded that the IBC 2016, has been provided for the ultimate economic freedom, addresses honest business failures and promotes inclusive growth. Finally we can say that one code, which has multiple benefits.

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