

Preamble—the most important part of the Code

From the various statements that appeared in the Press, I was led to believe that IBC 2016 was enacted with a view to enable the Banks to recover their money.

In fact, this impression was confirmed when banker after banker started saying that this Law will help them recover their money. A news item in Financial Express confirmed my view that there is a broad agreement that this Law has helped the Banks in India to garner more recoveries via IBC 2016. [Financial Express](#) reported on 29th December, 2018 as under –

1. Debt recovery: IBC 3 times better.
2. The Average recovery by banks based on the amount filed through the Insolvency and Bankruptcy Code was 41.3% in FY 18 against 12.4% through other mechanisms such as SARFAESI Act, Debt Recovery Tribunals and Lok Adalats, a RBI report has said.
3. The Report on Trend and Progress of Banking in India (2017-18) said the average recovery through the IBC is improving gradually, pointing to the need and efficiency of such a channel.

But is “recovery” the objective of the Code ? Not at all.

To understand the objective behind this Code, we need to go through the preamble of the Code which is as under:

- An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

When I went through the preamble again and again. I nowhere found the word "Recovery ". On the contrary, **I sensed that following is the explicit objective.**

- To resolve insolvency by consolidating & amending the existing laws---
in a time bound manner.

Let us try to know how the above objective is paramount and how the rest of the objectives are by-product of this main objective.

1. In the resolution phase, every effort—by law---has to be made to handle the issue as a " going concern " which means the value of the assets of the enterprise is preserved or at least not allowed to go down the drain. So one of the stated objective of the Code viz. maximization of assets of the enterprise is served.
2. Secondly, the Code ensures that the new promoter brings in new capital and he —either with or without the existing promoter— runs the enterprise as per approved Resolution Plan and saves the extinction of the enterprise. This way—one more objective viz to promote entrepreneurship is sought to be achieved. In case the efforts to revive the enterprise fails, liquidation facilitates the exit of the erstwhile promoter/s. Even in liquidation there is an effort to sell the business as a going concern which saves the organization capital. In this manner also, twin objectives of maximization of value of the assets and promotion of entrepreneurship are ensured. It can be safely said that the Code has ensured the " ease of exit " and has also ensured " ease of entry " of new entrepreneurs, thus facilitating promotion of entrepreneurship and at the same of time achieving the unstated objective of " ease of doing business ".

3. Thirdly, if an enterprise faces insolvency problems, that invariably reflects in non-servicing of debt. This forces the concerned bank to stop further application of interest. It also results in identification of the advance / asset as sub-standard which forces the concerned bank to put aside some portion of its profits to take care of what would be bad debt. So the banks are affected both ways. One is loss of future interest and second is dent in the profits of that particular year. If this state of affairs continues beyond tolerable limits, banks will be short of funds available for lending and it naturally results in contraction of credit to those who are in need of it. So under such circumstances, once the enterprise is stress free, the credit availability—to the market in general-- is either restored or increased. Assuming the worst and the enterprise does enter liquidation phase, the sale of business. This type of issues are also resolved and hence credit availability—through supplier-- is also ensured. All in all, successful resolution ensures availability of credit. Thus the objective of making credit available is also fulfilled.

4. Fourthly and lastly, in resolution stage, the Code envisages that suppliers and workers as also employees [operational creditors] are taken care of while plan for resolution is finalized via National Company Law Tribunal. Further even in liquidation above category of creditors are taken care of while settling their dues. So resolution / liquidation does take care of all the stake holders.

From the above discussion, it is crystal clear that nowhere the Code states recovery as the objective in a direct manner.

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Does it mean that recovery is not at all the focus?

While reconciling both the above statements, it can be safely be argued that **recovery is the by product** or consequence of resolution / liquidation.

While ending this discussion, it would be worthwhile to refer to an interview given by one of the IBC 2016 law makers Mr. Bahram Vakil which appeared in [Economic Times](#) on 28th December, 2017. He has stated that IBC 2016 is not a recovery mechanism. He says for recovery there are options like DRT and Sarfaesi etc. The Supreme Court in its judgment [Para 15] in the case of Transmission Corp V Equipment Conducts pronounced on 23.10.2018 says this much. For detailed judgment access the Page Supreme Court Judgement.

" IBC is not intended to be substitute to a recovery forum."

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