

## FRAUD CASES UNDER IBC CROSS RS 40,000 CRORE

Relevant for: Indian Economy | Topic: Issues relating to Growth & Development - Banking, NPAs and RBI

Resolution professionals (RPs) handling various corporate [insolvency](#) resolution programmes under the insolvency and [bankruptcy](#) framework have reported a large number of fraudulent transactions. These transactions, reported in over 110 companies under resolution, are worth over Rs 40,000 crore, according to a senior official familiar with the development.

That is almost the Rs 42,885 crore banks have realised from the resolution processes in the entire quarter of April -June. Bulk of these recoveries came from two accounts – [Bhushan Steel](#) (Rs 35,771 crore) and Electrosteel (Rs 5,320 crore).

The numbers showed that frauds, which include siphoning of funds, transactions with related parties and fictitious persons, were widespread in cases that have been referred to the National Company Law Tribunals (NCLT) across the country. Apart from adversely impacting the recoveries for the lenders, these cases are also making the lives of the RPs complicated and risky as cornered promoters turn hostile.

“It shows that at least 15 per cent of the accounts have seen frauds of some nature or other. Typically, the reports come after the IP (insolvency professional) had spent some time in the company and studied the books. So, the number is likely to go up,” the official added.

About 716 companies are currently under resolution, according to latest data from IBBI. Of these about 480 companies are in advanced stages of three months or more.

### **Powers of RPs**

Of the big 12 cases that were referred to the NCLT by the Reserve Bank of India (RBI) last year, fraud has been reported under at least ten.

Under provisions of Insolvency and Bankruptcy code ( [IBC](#)), the RP is required to file an application under Section 66 of the Act to the adjudicating authority, which is the respective NCLT. The authority would then pass an order.

However, detecting fraud itself is not easy.

Section 18 of the Code cast a duty on the RP to collect information relation to the assets, finance or operations of the corporate debtor for the last two years and then to determine the financial position of the corporate debtor.

The Code provides him the power under Section 20 to appoint accountants, legal or other professional to perform his obligations under the Code. In several cases RPs have appointed forensic auditors.

The Code under Section 17 and 19 also provide the power to control the books of accounts and to seek any information from the promoters as well as the government department.

Banks and other creditors can also report such dubious transactions to the professional who is under obligation to act on them and report to adjudicating authority for remedial measure failing which the insolvency professional is liable for disciplinary action.

In the event of failure of the insolvency professional to act on such dubious transactions, the creditor also can file the application with the adjudicating authority.

"Though the RPs are keen to complete the resolution and exit, they are taking this obligation under the act seriously, which is reflecting in the increasing number of applications under Section 66," the official added.

### **Promoters actions under scanner**

So far, NCLT has passed order in only one fraud case. This pertains to the [Jaypee Infratech](#) matter, wherein Anuj Jain, the RP, reported that transactions of mortgage of land totaling 858 acres belonging to the company to secure debt of its parent Jaiprakash Associates was fraudulent. The transactions entered into by the promoters and promoters during the look-back period of two years were declared fraudulent.

The NCLT also ordered that the security interest created by Jaypee Infra in favour of Jaypee Associates be released.

The other big 12 cases where fraud has been reported is Bhushan Steel, which has been sold off to the [Tata group](#). Though there is no order from NCLT in the matter yet, the Serious Fraud Investigation Office under the ministry of corporate affairs has taken cognizance of the matter and arrested Neeraj Singhal, the erstwhile promoter of Bhushan Steel.

### **Dangerous profession**

As such cases and complaints mount, the life of RPs have become risky. "It has become a dangerous profession," the official said.

There are several instances of non-cooperation and hostility, where matters have gone to police and courts. In some cases, RPs have alleged that the promoters are instigating workers against the RP, making him a demon who has come to take away their jobs.

Mamta Binani, a senior company secretary and a practising RP, said promoters objections and non-cooperation with the RP emanated from two broad reasons. "Firstly, they do not want to lose the company they have built. Secondly, they are scared of the look-back period of two years, where their past actions would come under scrutiny. They know eventually they have to cede control. But they want to buy time to either destroy or tamper with records."

These delaying tactics have affected the overall resolution process. The average time taken for the cases that have seen resolution so far is 235 days. This overshoots the 180-day timeline mandated by law by close to two months. Among the 716 resolutions currently under process, over 300 have crossed the 180-day mark, while 183 are over 90 days but less than six months old.

In a recent instance of a hotel company, the RP has to go all the way to the Supreme Court to get a direction against the promoter to cooperate in the resolution and not to instigate workers. Several cases are stuck in appeals in NCLT and appellate levels.

In July, Devendra Jain, a Mumbai-based insolvency professional, who was dealing with a company running a collective investment scheme, was kidnapped by the investors of the scheme. They were under the impression that since the RP has been appointed, he is responsible for getting them their money back.

Binani said RPs have also learnt from their experiences. "These days we try to understand the promoter beforehand. We try and land up as a team. Sometimes, these help. But, in smaller centres and remote areas where people believe political power can help, there are still issues."

RPs also move NCLT when things get out of hand. But, given the load on the tribunals, hearing could take weeks, killing precious time. "This is a major hurdle," Binani said. The government is in the process of doubling the strength of the NCLT by hiring 30 more members.

Professionals say promoters have also indulged in filing frivolous complaints against the RPs to keep them in a state of intimidation or under pressure.

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