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NOAH's ARC: ROLE OF IBC ON ASSET RECONSTRUCTION COMPANIES IN NPA ALLEVIATION

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Annotation: *This article discusses the role of Asset Reconstruction Companies (ARCs) in respect to NPAs and distressed assets. ARCs were the sole avenue for distressed assets until 2013 and the introduction of IBC in the Indian ecosystem changed the role of ARCs as also how NPAs are dealt with. The restructuring process of NPAs under ARC aims at regaining the value of the asset which aligns with the objective of IBC also of value maximization. IBC has revolutionized the way for dealing with distressed assets and this article discusses the change in functioning and how IBC supplements the functions of ARCs.*

Key words: *NPAs, ARCs, distressed assets, RBI, investors, value maximization.*

Introduction

Based on human behaviour and statistical probabilities, bad loans are the part and parcel of the economy, no matter their undesirability. Banks refer to such loans as Non-Performing Assets (NPAs) and how the banks and nations deal with them are reflected in their economies. The Indian Governments promise to make the nation a 5 trillion-dollar economy is very much attached to the dealing on NPAs. Such assets are considered to be loans that default in payment for over 90 days.

Among the major strategies to combat the issue of NPAs, the Insolvency and Bankruptcy Code 2016 has played a tremendous role in its alleviation. With Gross Non-Performing Assets (GNPA) of banks witnessing an improvement of around 2% between 2018 and 2019.[1] This was the first time in the past seven years that the NPAs witnessed a decline primarily due to the timely resolution of stressed assets and other related policies by the IBC and the Reserve Bank of India (RBI).[2] However, it is also important to mention the correlation of the reclassification of highly NPA-infested IDBI Bank (averaging at 30% of its total loans[3]) as a private bank[4] to the declining GNPA ratio.[5]

Until 2013, the stressed assets market was dominated by Asset Reconstruction Companies (ARCs), and the introduction of IBC and RBIs prudential stressed asset resolution framework has given ARCs a crucial role in ensuring the NPAs become operational and are sold

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[1] GNPA ratio in 2018 stood at 11.2% and by September 2019 at 9.1%.
[2] *Report on the Trend and Progress of Banking in India 2018-19.* Reserve Bank of India. Dec 24, 2019.
[3] *With 32% NPAs on its books, IDBI Bank is now the bad loan King in India: Ring a bell, dear LIC policyholder?* Firstpost. Nov 15, 2018.
[4] Effective on January 21, 2019.
[5] *Report on the Trend and Progress of Banking in India 2018-19*. Reserve Bank of India. Dec 24, 2019.

at a better value at an opportune time for the benefit of lenders and other stakeholders. to the issue of NPAs. This is because barring a fewlarge assets, most distressed assets are still looking for strategic buyers, or distressed M&A investors want to acquire the assets at throw-away prices.

ARCs are ideal for many sectors facing the problem of distressed assets such as power, engineering, and more obscure sectors where investor interest is relatively low. In this article, the discussion will be around the impact IBC has over the vastly looming issue of NPAs via the role of Asset Reconstruction Companies.

Review of Literature

Fuentes and Maquieira (1999)[i], the paper undertook an in-depth analysis of loan losses in the Chilean credit market due to the reasons such as the composition of lending by type of contract, cost of credit, volume of lending and default rates. The researchers empirically analyzed and examined different variables which may affect loan repayment: (a) limitations on the access to credit; (b) collection technology; (c) macroeconomic stability; (d) bankruptcy code; (e) pre-screening techniques; (f) the judicial system; (g) information sharing; and (h) major changes in financial market regulation. They concluded that satisfactory performance in terms of loan repayments of the Chilean credit market, hinges on a good information sharing system, macroeconomic performance, advanced collection technology and major changes in the financial market regulation.

Reddy, P.K. (2002)[ii]**,** studies the handling of NPAs through the experiences of other Asian nations. This paper further looks into the impact of the reforms on the level of NPAs and suggests mechanisms for handling the problem of NPAs by drawing on experiences from other countries. It says that the changes are necessarily required for tackling the NPA problem by spanning the entire gamut of judiciary, polity and the bureaucracy to be truly effective.

Ranjan, R., Chandra Dhal, S. (2003)[iii]**,** this paper makes an empirical investigation into the nonperforming loans of the Indian commercial banks. It evaluates how nonperforming loans are influenced by economic and financial factors. The results show that the credit variables have a significant effect on the nonperforming loans of the banks. It also suggests that better credit culture and favourable macroeconomic and business conditions lead to the reduction of the NPAs.

Das & Ghosh (2004)[iv] empirically analyzes the issue of corporate governance in the banking system of India and the non-performing loans of the Indian Public Sector Banks on the basis of various indicators such as size of the assets, operating efficiency, and Indian macroeconomics conditions and credit growth. The authors have used the data of the banking systems of the period 1996-2003. The findings of the researchers reveal that the CEOs of the banks having poor performance are likely to have higher turnover than the CEOs of the well-performing banks.

Meenakshi, R., Mahesh, H. P., (2010)[v]**,** the present study is an exploratory paper which examines the trends of NPAs at global level, one interesting observation is that most of the countries which fall under the category of higher "NPA/Total Loan" ratio are in the Asian region. It also examines the trend of NPAs in India from various magnitudes and also identifies the problem of NPA and recovery mechanisms to a great extent. This study also shows that NPA in the priority sector is higher than non – priority sector. The role of joint liability groups (JLGs) or self-help groups (SHGs) in enhancing the loan recovery rate is also discussed in this paper. This exploratory research paper explains that merely recognizing the NPA problem and self-monitoring can reduce the level of NPA to a great extent.

Cirmizi, E., Klapper, L. F., Uttamchandini, M. (2010)[vi], this research paper accounts that the financial crisis of the year 2008 was followed by an economic downturn globally, reduction in cross-border lending, credit crunch, decrease in foreign remittances, trade finance and Foreign direct investment (FDI) and the crisis adversely affected the businesses all around the world. The paper points out that the 2008 crisis consequently led to the increase in corporate insolvencies in the corporate and financial sectors and hence, the paper highlights the importance of effective and efficient insolvency and bankruptcy laws in the economy. The paper discusses the challenges of introducing and implementing bankruptcy reforms, summarizes the empirical and theoretical literature on the bankruptcy design, and presents examples of how policymakers have been trying to use the current economic downturn of the 2008 financial crisis as an opportunity to engage in meaningful reform of the bankruptcy procedures.

Sriniwas, K. T. (2013), the paper emphasis to identify NPAs in commercial banks in India. This study uses the data from 1966-67 to 2011-12 and the data is gathered from the secondary sources. This paper highlights the various general reasons which convert advances/ assets into NPA and also give robust suggestion to overcome the problem of rising NPAs.

Joesph, A.L., Prakash, M. (2014)[vii], this paper mentions that a healthy and sound banking system is very essential for an economy in order to grow and exist in this competitive environment. It then mentions that the RBI and other regulatory bodies have taken several policies to develop the functioning of the banking sector. It says that the best indicator for the health of the banking industry in an economy is its level of NPAs and NPAs in the Indian banking sector have become a major concern for the Indian economy. NPAs have a direct impact on the profitability, liquidity and solvency position of the bank. Higher NPA indicates inefficiency of the bank and lower NPA indicate better performance and management of funds. This paper basically deals with the trends of rising level of NPAs in the banking industry, the factors that mainly contribute to NPA in the banking industry and also provides some suggestions to overcome the problem of NPA in the banking industry.

Arora, N., and Ostwal, N. (2014)[viii] conducted study on which deals with the concept of Non-performing assets and analyze the classification of loan assets of public and private sector banks. It also analyzes the comparison of loan assets of Public sector and private sector banks. The study concluded that private sector banks are improving due to decline in NPAs ratio compare to Public sector banks due to recovery management done in NPAs and suggest that there is need to check the NPAs of public sector banks so that Indian banking system becomes efficient and that the NPAs are a threat for the banks.

RBI Report (2016)[ix], this report of the Reserve Bank of India assessed that the burden of non-performing assets has put the Indian banking industry under stress which has increased sharply during the year 2015-2016. The Asset Quality Review (AQR) of the banks was conducted during 2015-16 for supplementing the supervisory processes, apart from the prudential regulatory measures. This was done to address the concern over the increasing level of NPAs. The report analyzed that the banks were making efforts to reduce their NPAs through various legal channels like Lok Adalats, DRTs and invocation of SARFAESI and evaluated that the public sector banks are burdened with a high concentration of NPAs as they could recover Rs 197.57 billion as against Rs 278.49 billion during the previous year. The banks had tried to reduce their stressed assets by them to the Asset Reconstruction Companies (ARCs).

Laveena, Guleria K. S. (2016)[x], the paper deals with NPA problem and understands the causes of NPAs. It discusses the magnitude of the issue of NPA over the last three years and also discusses the effect of NPA on the Indian economy. It says that the large number of NPAs erode the value of assets in banks and suggest that as the credit defaults have increased then ultimately the net worth of the banks have decreased. This growth of NPA level also decreases the shareholders' value and profits.

Moli, P.A. (2017)[xi]**,** this study analyzes the problems and solutions taken for controlling and managing the problem of NPAs in both the private and public sector banks which will help in improving the financial position of the banks in India. It is based on the secondary data retrieved from the RBI and various journals and reports. It also identifies the causes and impacts of NPAs in the Indian banking system.

Report of Insolvency Law Committee on Cross Border Insolvency (2018)[xii], the committee noted that with respect to cross border insolvency the existing provisions (Sections 234 and 235) of the IBC did not provide a comprehensive framework. The committee in its report attempted to deliver a comprehensive framework for the cross border insolvency which is based on the UNCITRAL Model Law on Cross-border insolvency 1997. The committee made research and the report provides recommendations and modifications necessary in the context of India for this purpose. The committee recommended increasing foreign investments for positive signaling to global investors, creditors, International Organizations, Governments and multinational corporations with regard to the financial sector reforms of India, along with protecting domestic market and giving flexibility and providing mechanism for cooperation between courts and insolvency professionals.

Srivats, K.R. (2018)[xiii], the present write up says that according to the experts the investors globally are likely to take a positive view of the centre's plan of ushering in the cross-border insolvency framework. Its approval will result in more cross border deals and will help India in making an attractive FDI target as the IBC will reduce the risk associated with the insolvency. It reported that there is an increase in the FDI inflows in 2017-18 to $61.96 billion as compared to $60.08 billion in 2016-17. The Indian Government is taking the initiative to provide for the provisions for cross-border insolvency in the Code for making IBC a more comprehensive framework. It mentions that the cross-border insolvency framework will help India in further enhancing ease of doing business, providing a mechanism of cooperation between India and other countries in insolvency resolution, protect global investors, increase Mergers and Amalgamations deals involving India and make India an attractive FDI destination by giving certainty and increased predictability to the foreign investors. The purpose of this write up is to recognize the importance of the cross-border insolvency laws on the enhancement of the FDI inflows in India.

Jason, J. (2018)[xiv], this research paper recognizes the impact of the cross-border insolvency laws on the foreign direct investment of a nation. It has made an analysis of two figures that are the scores given by the World Bank: (i) for the legal rights of creditors in a given state and (ii) data of FDI inflows of the countries. The result of the analysis shows that the countries with more developed legal rights for the creditors are inclined to have higher levels of FDI. According to this study, many economies have increased FDI inflows from one year to another immediately after the revisions and updates made in their insolvency laws. The individuals and corporations engaged in FDI consider insolvency law as a significant factor in making FDI decisions. The purpose of this study is to explore the impact of cross-border insolvency laws on the FDI and understand the impact of the insolvency laws on the FDI decisions of corporations and individuals.

Research Methodology

The research on the present study is a Doctrinal Research involving review of the earlier insolvency and bankruptcy laws that existed before the advent of IBC and the present insolvency and bankruptcy legislation in India and its impact on the economic development of India. The present study is Empirical and Economic Policy Research. The research design is exploratory is chosen for this study. Since the study has to explore the impact of IBC on the Indian Economy, therefore, it is exploratory in nature.

Analysis and Results

The Issue of NPAs

One of the primary transactions that take place in banks is monetary lending. The management of the aspects of giving loans is considered focal to a bank’s growth and its trust among the people associated with it. The performance of loans is, thus, usually classified into two types – (i). Standard Assets (regular payments made by the borrower), and (ii). Non-Performing Assets (payment defaults made by the borrower). Of course, the concern of the latter is significant because the Gross NPAs of banks have increased from 2.3% in 2008 to 9.3% in 2017 (Refer to Chart 1, Figure 1) and return on Assets declined from 1.1% in 2008 to 0.4% in 2017 (Refer to Chart 1, Figure 2), and stood at INR 10.35 lakh crore by March 2018.[6] These figures show that the increasing NPAs reduce the Bank’s ability to generate future credit and thus lowering its profitability and the public trust in it.

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[6] *Why the stimulus won’t work: Public sector banks are not equipped to implement Covid stimulus package.* The Times of India. Jun12, 2020.

Figure 1: Gross NPAs (% of total loans)

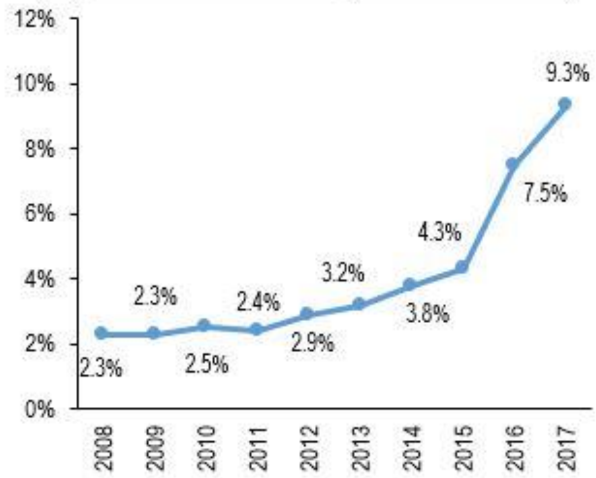
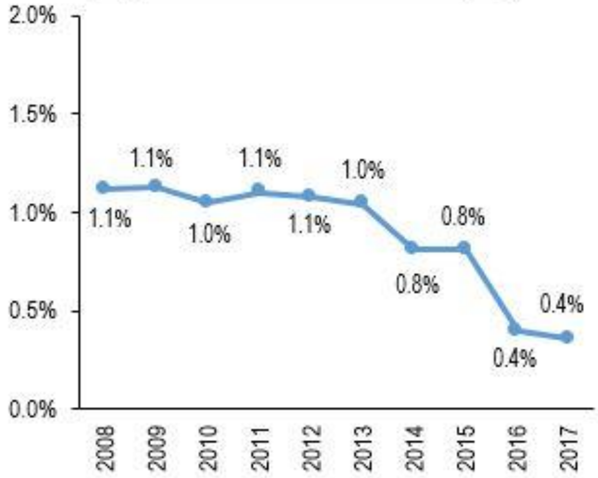


Figure 2: Return on Assets (%)



Source: Reserve Bank of India; PRS.

Chart 1

The rising issue of NPAs is strongly linked to the wrongdoing of Promoters/ Owners of businesses using the financial instruments from the Bank for their personal benefit by committing fraud. The insincerity of the leaders of the business leads to cases of insolvency and the recovery by means of resolution or liquidation is generally not palpable to the amount lost by the investors and other stakeholders of the business. Also, Banks cannot be expected to micro-manage the borrower and the way they use their funds. But there is another reason that contributes to the problem- the relaxed lending norms allow the Banks to skip conducting financial and credit rating analysis towards big corporate businesses, due to the estimated profitability.[7]Furthermore, a domino effect was witnessed with the delay in environmental permits affecting the power, iron, and steel sectors, following in raw materials price fluctuations and supply shortage, thus catalysing the rise of NPAs.[8]

1. Sectoral Distribution of NPA

The Corporate/ Industry sector has seen a rapid increase in NPAs over the years and by September 2019 took the biggest share, amounting to two-thirds of the total NPAs at 17.4%. While agriculture sector has also witnessed a gradual incline since March 2017, the services sector remains relatively stable between 4-7% GNPA ratio, and the retail loans sector maintains a low GNPA ratio.

Within the industrial sector, the largest chunk of NPA is taken by large industry, although it has decreased significantly from ~25% to ~18% over the period of March 2018- September 2019. This can be linked to the dealing of stressed assets of "twelve large accounts" within IBC between 2017-2019, with the acquisition of Essar Steel duringCIRP for USD 6 billion by Arcelor Mittal and Nippon Steel Corporation, making it the largest deal by value for 2019. Of the other "Large Accounts"- Bhushan Steel, accounted for more than half of the value of the distressed assets ~ USD 10 billion, and Electrosteel Steels valued at ~USD 300 million.[9]

[7]*Non-Performing Assets in Indian Banks.* Corporate Finance Institute.
[8] Ibid
[9]*Mergers And Acquisitions Trend In 2019 And Outlook For 2020*. Inc42+. Jan1, 2020.

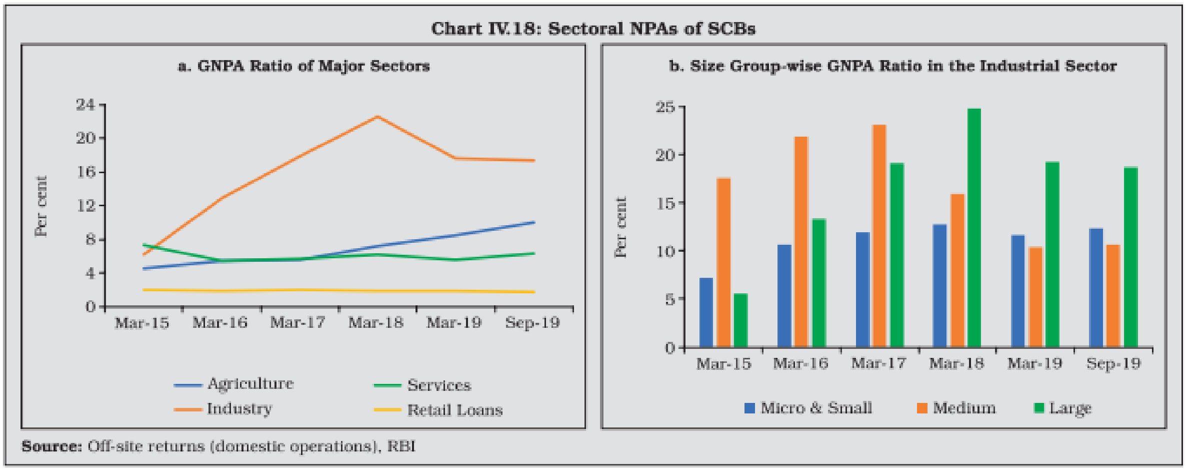


Chart 2

Source: RBI[10]

The Role& Practice of ARCs This issue of NPA is the subject of much discussion within the banking sector with the RBI releasing revised framework for stressed assets to over a period of time with the latest coming into effect on June 7, 2019- *Prudential Framework for the Resolution of Stressed Assets*.[11] Since the suspension of IBC due to the COVID-19 induced lockdown, the state-run banks are putting NPAs worth INR 20,000 for sale to the Asset Reconstruction Companies.[12]

It is important to note that ARCs were the sole avenue for distressed assets until 2013, and in an effort to open up investor opportunities, the entire distressed assets ecosystem witnessed an influx of regulations and measures. Briefly, ARCs buy NPAs from banks and financial institutions at a fair value, which allows the latter to clean up their balance sheets, allowing the banks to focus on regular banking activities. ARCs came into existence after the enactment of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. Since then ARCs have undergone many regulation changes under the RBI.ARCs majorly fund their NPA investments with Security Receipts (SR), along with bonds and debentures. ARCs issue SRs to Qualified Institutional Buyers (QIBs) under an agreed scheme that allows the QIB to have a right, title or interest in the financial asset bought by ARC.[13]

The restructuring process of NPAs under ARC aims at regaining the value of the asset within a maximum of the five-year time period from the date of asset acquisition. The various measures are as follows:

i. Taking over or changing the management of the business of the borrower (in IBC terms- Corporate Debtor).[14]
ii. Sale or lease of part or whole of the business of the borrower.[15]
iii. Rescheduling of payment of debts payable by the borrower.[16]
iv. Enforcement of security interest.[17]
v. Settlement of dues payable by the borrower.[18]
vi. Taking possession of secured assets.[19]

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[10] *Report on the Trend and Progress of Banking in India 2018-19.* Reserve Bank of India. Dec 24, 2019.
[11] RBI Notification on *Prudential Framework for the Resolution of Stressed Assets.* June 7, 2019.
[12] *No IBC and Covid NPAs coming, PSBs may sell Rs 20k-cr bad loans.* The Economic Times. Jun 2, 2020.
[13] Section 7 of the SARFAESI Act 2002.
[14] Ibid Section 9 (a)
[15] Ibid Section 9 (b)
[16] Ibid Section 9 (c)
[17] Ibid Section 9 (d). Note- ARCs cannot enforce the security interest unless at least 75% by value of the secured creditors agree to the exercise of this right.
[18] Ibid Section 9 (e)
[19] Ibid Section 9 (f)

NPA Distillation

In the fiscal year 2017-18, NPA recovery via some major channels amounted to INR 40,352 crores, standing at 14.9% of the amount claimed. Of this, the majority of the cases fell in the lap of LokAdalats and the least fell with IBC (NCLT) but the recovery ratio of these two channels was reversed: with LokAdalats at 4% and IBC at ~50%. The numbers really reveal the success of the IBC in NPA alleviation with cases referred to IBC in 2017-18 stood at 0.0002% of the total cases but held 12.2% of the total amount recovered. (Refer to Table 1). It gets more interesting with the data of the fiscal year 2018-19 showing that while the IBC case ratio stayed at 0.0002%, the amount recovered with IBC stood at 56.1% of the total (Refer to Table 2).[20]

2017-2018				
Recovery Channel	**No. of cases referred**	**Amount Claimed (in INR crores)**	**Amount Recovered (INR in crores)**	**% of Recovery to cases referred**
LokAdalats	33,17,897	45,728	1,811	4
DRTs	29,345	1,33,095	7,235	5.4
SARFAESI Act	91,330	81,879	26,380	32.2
IBC	704	9,929	4,926	49.6
Total	34,39,276	2,70,631	40,352	14.9

Table 1
Source: RBI

2018-2019				
Recovery Channel	**No. of cases referred**	**Amount Claimed (in INR crores)**	**Amount Recovered (in INR crores)**	**% of Recovery to cases referred**
LokAdalats	40,80,947	53,506	2,816	5.3
DRTs	52,175	3,06,499	10,574	3.5
SARFAESI Act	2,48,312	2,89,073	41,876	14.5
IBC	1,135	1,66,600	70,819	42.5
Total	43,82,569	8,15,678	1,26,085	15.5

Table 2
Source: RBI

In its essence, the restructuring measures under by ARCs work with the IBC in perfect harmony. IBC mechanisms allow ARCs to churn capital faster and enhance returns since it allows a creditor-friendly domain thus enabling distressed asset investors to benefit via ARCs. Also, the behavioural nudges places under the IBC has instilled a better sense of credit discipline among the stakeholders. The significance of the time-bound resolution of distressed assets under IBC is a promising factor to affect the workings of ARCs and they can get rid of NPAs at a faster rate.[21]

Factually, IBC holds a better recovery rate on NPAs than any other legal mechanism, and with its introduction, the sale of NPAs to ARCs decelerated in the banking norms but picked up soon after (Refer to Chart 3) as the ARCs also dealt with distressed assets that underwent the IBC mechanism and resulted in liquidation processes.

[20] Data provided by *Report on the Trend and Progress of Banking in India 2018-19*. Reserve Bank of India. Dec 24, 2019.
[21] *Bolstering ARCs.* CRISIL (An S&P Global Company). August 2019.

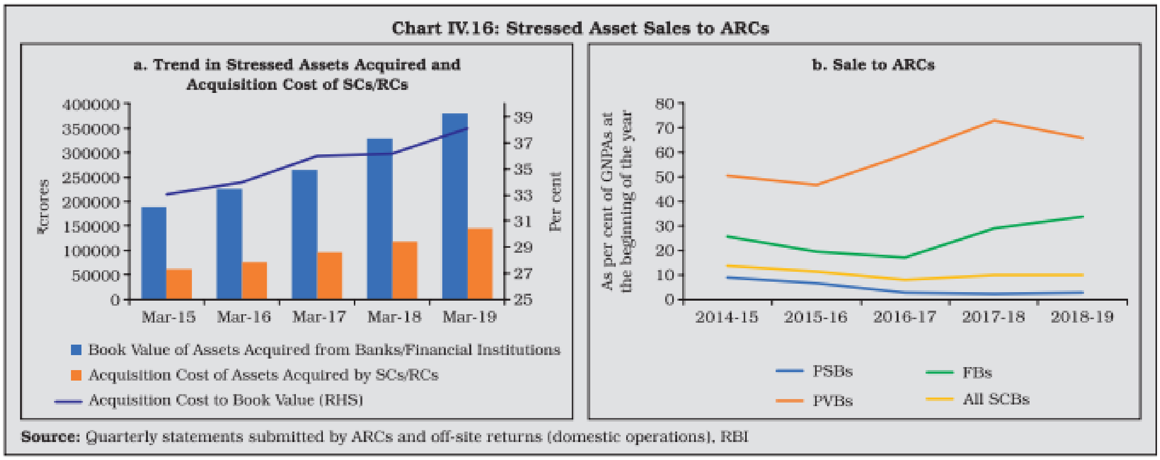

Chart 3
Source: RBI[22].

Conclusions and Recommendation

One of the biggest banes of the Indian economy is the NPAs and the IBC mechanism is a continuous work in progress in redefining the distressed assets market sphere. If IBC is the guiding mechanism, ARCs are the executioners. To reach the USD 5 trillion economy requires an economy to innovate ways of dealing with NPAs and ARCs are set to bring in sizable investors in the stressed assets sector. The game-changing aspects of the Code with its fast-paced resolutions, increase in judicial benches, transparency of information via information utility and increasing number of Insolvency Professionals are creating a thriving ecosystem for the flourishing of the distressed assets market and in turn enabling the ARCs to execute and restructure NPAs as a faster and efficient pace. Albeit, adherence to the IBC timelines still remains a challenge, it can be accosted to the adjustment of the human tendencies which have only recently discovered the benefits and policies introduced by the IBC.

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