

**BANKRUPTCY CODE
&
S4A
(SUSTAINABLE STRUCTURING OF
STRESSED ASSETS)**



debt

**Arun Kumar Jagatramka
Chairman and Managing Director
Gujarat NRE Coke Ltd**

A noble attempt

- The government needs to be applauded in trying to bring about the much needed insolvency code
- Has tried to address important failings of the past
- It has attempted in introducing one comprehensive law for corporate insolvency
- It sets a time frame of 180 days for insolvency resolution, with a 90-day extension if judged necessary, to be followed by liquidation
- **However, absence of some significant provisions takes the sheen off an otherwise much-needed reform**

CHALLENGE OF MISUSE AND MISCHIEF

- A single small creditor (operational or financial) can make an application to initiate corporate insolvency
- While the major creditors might be working out a revival plan, the small creditor having no stake in revival may force liquidation to the detriment of creditors and stakeholders
- To safeguard the interest of all creditors – Basic minimum requirement should be - 50% or 60% creditors needed to trigger the code
- This is required to stop misuse and mischief



"This is Mr. Alonzo W. Eldridge, Your Honor — Mr. Eldridge is suing *everybody* for negligence."

CHALLENGE OF SUDDEN BANKRUPTCY

- Sudden bankruptcy may lead to lot of MISTRUST and DIFFICULTY in doing business
- Sudden bankruptcy may result in other creditors caught off-guard
- Creditors who have extended credit recently would get a raw deal
- Unsecured creditors would not get the chance to progressively work out ways in recovering a part of the debt



Misuse by Promoters

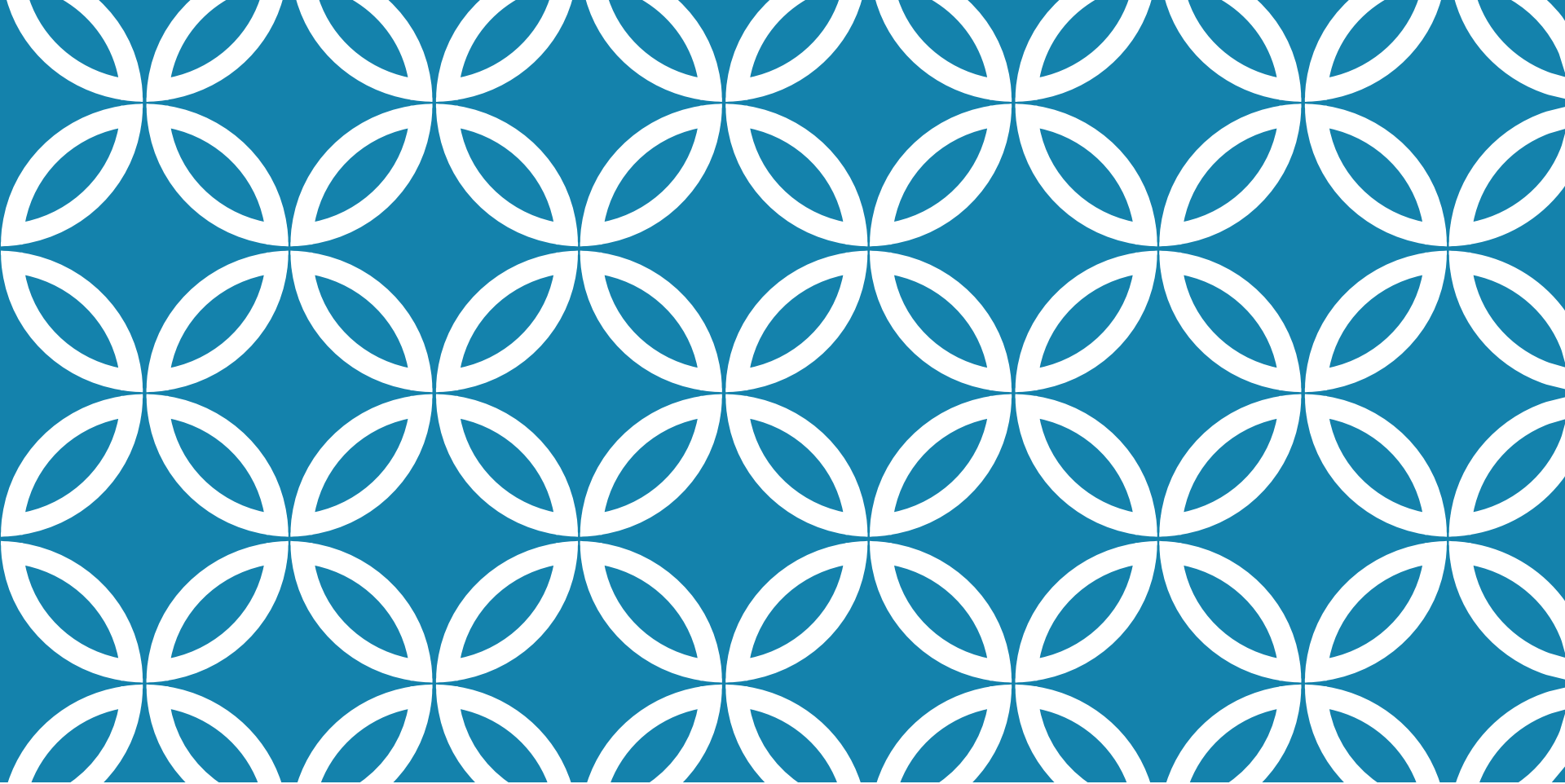
- ▶ Promoters may also misuse the system by filing an application to initiate corporate insolvency
- ▶ Initiation of corporate insolvency process would provide relief to the promoters against any existing legal proceedings or arbitration
- ▶ The bankruptcy code should not provide anyone with an easy way out to avoid the rule of law or become a means for misappropriation of funds



TILTED IN FAVOUR OF CREDITORS

- Tilts heavily in favour of creditors, depriving debtors of fair participation and a level playing field
- The code does not even require the corporate debtor to be heard before ordering the commencement of proceedings and the takeover of the management and debtors' powers by the insolvency professional
- It is contrary to principles of natural justice and not conducive to the business environment of the Indian economy.





**SUSTAINABLE
STRUCTURING OF
STRESSED ASSETS (S4A)**



CDR - WHY IT FAILED



- A surge in reference to CDR cell was noticed in 2012-13 and 2013-14
- Today there are hardly a few successful exits from CDR because:
 - Restructuring was often done just to delay the classification of an account as NPA rather than making efforts to make it viable
 - The interest of banks is in maintaining the account as standard instead of ensuring revival and sustainable operations
 - The expected upturn in the economy did not materialise during 2014 – 2015 which was crucial to success of CDR cases
 - The large number of companies turning NPA and failing in CDR proves that the ailment was not at promoters end but at a more systemic issue governed by the external economic environment
 - Most CDR cases were half baked solutions with short term solution instead of longer term revival plans

SDR - COULD NOT TAKE OFF

- SDR or strategic debt restructuring was invoked in a few companies but it did not succeed
- It is not the job of the banks to run a company nor it is easy to get so many strategic investors for the huge number of companies who are in this crisis
- A new management oblivious of the challenges and complexities of the business would not have the magic wand to bring a turnaround
- Is unjust to hang existing management for problems due to industry wide recession



S4A - Too late and Half Baked

- This should have been announced a year ago when most CDR cases were on the verge of failure
- Would have then saved the banks and the financial system from the crisis that it is faced with today
- Most of the stressed accounts have already turned NPA
- The current scheme needs to be more flexible to be effective and workable - Half baked solutions do not help in times of crisis



THE DILEMMA OF HALF – SUSTAINABLE AND UNSUSTAINABLE



- The 50% criteria may result into certain inefficiencies or overstretching
 - A debtor whose sustainable debt can be more than 50% may restrict it to 50%
 - A debtor whose sustainable debt is less, say, 40% would stretch it to 50% to fall in the scheme, which ultimately may result into failure of the entire exercise
- Instead, the sustainable debt may be carved out based on an independent TEV study and final decision taken by the high powered committee looking at best possible options



Need for more flexibility for success

- **Elbow room in deciding the repayment schedule – may be allowed to stretch if needed to match the future cash flows**
- **Flexibility in lowering loan rates, since interest rate are trending down**
- **Encouragement for banks – The portion of sustainable debt may be allowed to be treated as standard. This would act as a huge impetus for banks to make it a success**