

## AUTOMATION OF PERSONAL INSOLVENCY: SCULPTING PAYMENTS BANKS AND ADJUDICATING AUTHORITIES FOR FRESH START PROCESS

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### Abstract

*The Insolvency and Bankruptcy Code 2016 has been held as a landmark economic reform of India. Unlike previous regimes, it provides time-bound resolution of insolvent entities by providing easy exit options. However, such ease of entry is not available for individuals facing personal insolvency, especially those with low income and assets. Furthermore, the present regime does not provide a single-window solution and imposes high transaction costs on the debtor, making the debt payment unsustainable. This can be seen from the fact that on 31 March 2014 (RBI), cases amounting to INR 1,415 billion were pending at the Debt Recovery Tribunal (DRT) – a designated adjudicating authority that'd implement personal insolvency. The present study addresses this issue using existing Payments Bank and Adjudicating Authority institutions. Both institutions will act as pillars towards an automated Fresh Start Process that'd give time-bound relief to the individual debtor. The paper further explores the strengths and weaknesses of executing this proposed model under a fresh start process.*

**Keywords:** Insolvency, Bankruptcy, Debt Recovery Tribunal, Personal Insolvency, Fresh Start Process, IBC 2016. **JEL Classification(s):** K35, K40, K20

## INTRODUCTION

Personal Insolvency is a situation where individuals cannot repay their outstanding debt. The law pertaining to personal insolvency administration is yet to be notified under the Insolvency and Bankruptcy Code, 2016 (hereinafter "IBC"). IBC also contains provisions for the Fresh Start Process<sup>2</sup> (from now on, "FSP"). This process comes into action if an individual subject to specific eligibility criteria wants to discharge all his current liabilities systematically and controlled.<sup>3</sup>

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<sup>2</sup> Insolvency and Bankruptcy Code, Chapter II - Sections 80 to 93

<sup>3</sup> Nair. "Shamed Can Start Afresh." Business Standard. Business-Standard, May 15, 2016. [https://www.business-standard.com/article/pf/shamed-can-start-afresh-116051500837\\_1.html](https://www.business-standard.com/article/pf/shamed-can-start-afresh-116051500837_1.html).

There are four pillars of India's Insolvency Infrastructure<sup>4</sup>. The first pillar of institutional infrastructure is a class of regulated persons – the 'Insolvency Professionals'. They assist in the completion of insolvency resolution, liquidation and bankruptcy proceedings. The second pillar of institutional infrastructure is 'Information Utilities', which collect, collate, authenticate and disseminate financial information. They would maintain electronic databases on lenders and terms of lending, thereby eliminating delays and disputes when a default occurs. The third pillar of the institutional infrastructure is adjudication. The NCLT is where corporate persons' insolvency cases will be heard, while DRTs are the forum for insolvency proceedings related to individuals and partnership firms. These institutions, along with their Appellate bodies, viz., the National Company Law Appellate Tribunal (NCLAT) and the Debt Recovery Appellate Tribunal (DRAT), respectively, will seek to achieve smooth functioning of the bankruptcy process. The fourth pillar is the regulator, 'Insolvency and Bankruptcy Board of India'. This body has regulatory oversight over insolvency professionals, insolvency professional agencies and information utilities.

Given the challenges in implementing the fresh start process, this paper recommends automating the process by sculpting payment banks (as resolution service providers) and Debt Recovery Tribunals (as adjudicating authorities).

Several reasons warrant special moulding of resolution service providers and DRTs for a fresh start process. Firstly, the code imposes strict eligibility criteria for individuals who can benefit from the fresh start process. For example, the debtor's gross annual income should not exceed INR 60000/- and the aggregate value of qualifying debts should not exceed INR 35000/-; he must not own a dwelling unit. Secondly, the process is entirely new for India and comes with challenges, such as covering the length and breadth of India with minimum cost exposure at all levels to debtors. Thirdly, 100% automation of the adjudication process is a novelty and demands a fast and trackable mechanism. Lastly, existing infrastructure must be tapped to provide single-window access to the debtor.

Such sculpting of existing infrastructure must aim to discourage moral hazard, minimise the need for interpretation of laws leading to appeals, and provide knowledge of financial inclusion after the fresh start process is completed. It must also be conscious that part II of the IBC 2016 (concerning the Fresh Start Process) is implemented in its essence while also being mindful of the present challenges of Debt Recovery Tribunals.

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<sup>4</sup> Reserve Bank of India - Publications. Accessed January 31, 2020.  
<https://www.rbi.org.in/scripts/PublicationsView.aspx?id=18060>.

## 1. LITERATURE REVIEW

### 2.1 Overview

Debt discharge is the fundamental aspect of FSP. It dates back to the Code of Hammurabi; for instance, the debtor's life and freedom made insolvent by misfortune were protected from the creditors.<sup>5</sup> This insolvency relief is, therefore, designed to offer relief to "honest but unfortunate" debtors, casualties of volatile economic and social conditions beyond debtors' control.<sup>6</sup>

Notably, unmanageable debt burdens cause a host of problems for debtors. Constant anxiety arising from inability to pay or from harassment by creditors can cause severe emotional and other issues for debtors, including depression and social withdrawal. Overwhelming debt burdens might cause debtors to be unable to concentrate on work and other responsibilities, thus preventing them from responsibly managing their financial distress and plunging them into a descending spiral of failure.<sup>7</sup>

Without FSP, economic agents remain in the unpleasant condition of being 'bankrupt' and cannot embark on any new business until all past debts are cleared<sup>8</sup>. Discharge under FSP prevents any future income from being claimed to settle old unpaid debts. Thus, economic agents can benefit from a "fresh start" without any fear of seeing the results of their efforts being eroded by the legacy of old failures. It gives such debtors a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.<sup>9</sup> It comes with one goal, i.e., to restore the debtor to economic productivity and viable participation in the open credit economy. This standard calls for making discharge broadly available since feasible economic participation is restored by lifting the burden of impossible debt.<sup>10</sup>

### 2.2 Fresh Start Process – Available Models

<sup>5</sup> Levinthal, L. E. "The Early History of Bankruptcy Law." *JSTOR*, 1918, 230. [https://www.jstor.org/stable/3314078?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/3314078?seq=1#metadata_info_tab_contents).

<sup>6</sup> Garrido, José M. "Law and Development in the Treatment of the Insolvency of Natural Persons: The World Bank Report on the Treatment of the Insolvency of Natural Persons." *Global Insolvency and Bankruptcy Practice for Sustainable Economic Development*, 2016, 95–138. [https://doi.org/10.1057/9781137515759\\_4](https://doi.org/10.1057/9781137515759_4).

<sup>7</sup> Working Group on Personal Insolvency by Insolvency and Bankruptcy Board of India ("IBBI"), August 2017

<sup>8</sup> Supra point 5.

<sup>9</sup> Burton, Brian D., Thomas E. Rutledge. "New York DFS Unveils Two New Divisions Focused on Consumer Protection, Financial Enforcement, and Cybersecurity: Page 8 of 53." *Business Law Today* from ABA. Accessed January 31, 2020. <https://businesslawtoday.org/topic/banking-law/page/8/>.

<sup>10</sup> Ramsay. "International Paradigms of Personal Insolvency and the Second Wave of Personal Insolvency Law Research." *Academia.edu* - Share research. Accessed January 31, 2020. [https://www.academia.edu/32684782/International\\_Paradigms\\_of\\_Personal\\_Insolvency\\_and\\_the\\_Second\\_Wave\\_of\\_Personal\\_Insolvency\\_Law\\_Research](https://www.academia.edu/32684782/International_Paradigms_of_Personal_Insolvency_and_the_Second_Wave_of_Personal_Insolvency_Law_Research).

### 2.2.1. United Kingdom

FSP in the UK comes with Debt Relief Orders (“DRO”). It is for people with relatively low levels of debt who own few assets and have low surplus income. If one lives in England or Wales, one’s total debts must be less than £20,000 or Northern Ireland, less than £15,000. One must have less than £1000 in assets, cannot have one own home, and must have less than £50 left each month after paying regular household expenses. One must have also lived or worked in the UK in the last three years, not have previously applied for a DRO in the previous six years and cannot already be involved in other insolvency procedures. Debt Relief Orders do not cover all forms of debt; while they include overdrafts, credit cards and unpaid utility bills, they do not include student loans or child support arrears. Once a person has provided all the relevant information to the DRO-approved intermediary and paid the £90 fee, the insolvency intermediary will submit your DRO application to the Insolvency Service. The Insolvency Service will decide on the application within ten working days.<sup>11</sup>

### 2.2.2. Germany

Debtors can be discharged from residual debt after six years of good behavioural conduct and good faith. Especially after July 2014, a debtor who has paid at least 35% of total debt can already get discharged of residual debt after three years. This reform aimed to facilitate an earlier “fresh start” for unfortunate debtors.<sup>12</sup>

### 2.2.3. USA

American households can choose between two bankruptcy procedures: Chapter 7 and Chapter 13. Approximately 70 per cent of consumer bankruptcies are filed under Chapter 7. Under Chapter 7, all unsecured debt is discharged in exchange for non-collateralized assets above an exemption level. However, debtors are not obliged to use any future income to repay debts. Debtors who file under Chapter 7 are not permitted to refile under Chapter 7 for six years, although they may file under Chapter 13.<sup>13</sup> Filers must pay the bankruptcy court filing fee (roughly \$200). A typical Chapter 7 bankruptcy takes about four months. Chapter 13 permits debtors to keep their assets in exchange for a promise to repay part of their debt over the next 3 to 5 years. The debtor’s plan must repay unsecured creditors at least as much as they would have received under Chapter 7. In order to qualify for Chapter 13, individuals must have a

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<sup>11</sup> Ibid

<sup>12</sup> König, Nadja. “Personal Insolvency Dynamics in Germany and The UK: A SUR-TAR Approach.” *Econstor*, no. 2 (2016).

<sup>13</sup> L Livshits, J MacGee, M Tertilt; “Consumer bankruptcy: A fresh star” in American Economic Review, 2007 - aeaweb.org

regular income, their secured debts must be less than \$807,000, and their unsecured debt can be at most \$270,000.

#### **2.2.4. India**

The IBC proposes a concept of a Fresh Start, aimed at providing debt relief to the poorest. A debtor with a gross annual income of less than Rs.60,000, assets less than Rs.20,000, qualifying debts of less than Rs.35,000, and no home ownership will be eligible for a complete waiver of obligations. Only the debtor can trigger this process. The default has to be on “qualifying debts”. Suppose the debtor has triggered the process through a resolution professional (RP). In that case, the DRT will only check if there is a disciplinary proceeding against the RP and allow the RP if no such proceeding is found. If the debtor triggers the process without an RP, the IBBI must nominate an RP.<sup>14</sup> The Code specifies a list of particulars that must be submitted with the application. On examination of the information, the RP will recommend that the DRT accept or reject the application. The DRT will get the application based on the RP recommendation. A moratorium will be applicable on all the applicant's creditors for six months to provide a conducive environment for the process. The DRT shall pass a discharge order for the qualifying debts by the end of the moratorium period. The details of the discharge order will be forwarded to the IBBI for record-keeping. The motivation behind the fresh start seems to be the difficulties in the transaction costs of the IRP-bankruptcy route being larger than the debt at stake for low-income, low-asset debtors. The Fresh Start also provides an insurance function with a more systematic debt waiver.<sup>15</sup>

### **2.3 Debt Recovery Tribunals – History and Performance**

The Hon’ble Supreme Court in *Union Bank of India versus Satyawati Tondon*<sup>16</sup> has detailed the history and performance of the Debt Recovery Tribunal. It says that DRT was formed with a view to give impetus to the industrial development of the country; the Central and State Governments encouraged the banks and other financial institutions to formulate liberal policies for granting loans and other financial facilities to those who wanted to set up new industrial units or expand the existing units. Many hundred thousand took advantage of easy financing by the banks and other financial institutions, but many did not repay the loan amount, etc. Not only this, but they also instituted frivolous cases. They succeeded in persuading the Civil Courts to pass orders of injunction against the steps banks and financial institutions took to recover

<sup>14</sup> R Sane, “The way forward for personal insolvency in the Indian Insolvency and Bankruptcy Code” - Available at SSRN 3309470, 2019 - papers.ssrn.com

<sup>15</sup> Ibid

<sup>16</sup> (2010) 8 SCC 110

their dues. Due to a lack of adequate infrastructure and insufficient workforce, the regular Courts could not accomplish the task of expeditiously adjudicating the cases instituted by banks and other financial institutions for recovery of their dues. As a result, several hundred crores of public money got blocked in unproductive ventures. To redeem the situation, the Government of India constituted a committee under the chairmanship of Shri T. Tiwari to examine the legal and other difficulties banks and financial institutions face in recovering their dues and suggest remedial measures. The Tiwari Committee noted that the existing procedure for recovery was very cumbersome and indicated that special tribunals be set up for recovery of the dues of banks and financial institutions by following a summary procedure. The Tiwari Committee also prepared a draft of the proposed legislation, which contained a provision for the disposal of cases in three months and conferment of power upon the Recovery Officer for expeditious execution of orders made by adjudicating bodies. The Committee on the Financial System, headed by Shri M. Narasimham, further examined the issue. In its First Report, the Narasimham Committee also suggested setting up special tribunals with special powers to adjudicate cases involving the dues of banks and financial institutions. Considering the reports of the two Committees and taking cognisance of the fact that as of 30-9-1990, more than 15 lakh cases filed by public sector banks and 304 cases filed by financial institutions were pending in various Courts for recovery of debts, etc., amounting to Rs.6000 crores, the Parliament enacted the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the DRT Act'). The new legislation facilitated the creation of specialised forums, i.e., the Debts Recovery Tribunals and the Debts Recovery Appellate Tribunals, for expeditious adjudication of disputes relating to recovery of the debts due to banks and financial institutions. Simultaneously, the jurisdiction of the Civil Courts was barred, and all pending matters were transferred to the Tribunals from the date of their establishment.”

While analysing the provisions of the DRT Act, the court found that the primary object of that Act was to facilitate the creation of special machinery for speedy recovery of the dues of banks and financial institutions. This was also the reason why the DRT Act not only provides for establishment of the Tribunals and the Appellate Tribunals with the jurisdiction, powers and authority to make summary adjudication of applications made by banks or financial institutions and specifies the modes of recovery of the amount determined by the Tribunal or the Appellate Tribunal but also bars the jurisdiction of all courts except the Supreme Court and the High Courts about the matters specified in Section 17 of the DRT Act. The Tribunals and the Appellate Tribunals have also been freed from the shackles of procedure contained in the Code of Civil

Procedure. To put it differently, the DRT Act has not only brought into existence a special procedural mechanism for speedy recovery of the dues of banks and financial institutions but also made provision for ensuring that defaulting borrowers are not able to invoke the jurisdiction of Civil Courts for frustrating the proceedings initiated by the banks and other financial institutions.”

In the own views of the Hon’ble Supreme Court - for a few years, the new dispensation worked well, and the officers appointed to man the Tribunals worked with great zeal to ensure that cases involving the recovery of the dues of banks and financial institutions were decided expeditiously. However, with time, the proceedings before the Tribunals became synonymous with those of the regular Courts, and the lawyers representing the borrowers and defaulters used every possible mechanism and dilatory tactic to impede the expeditious adjudication of such cases. In November 2014, Raghuram Rajan, Governor of the Reserve Bank of India, emphasised that<sup>17</sup> DRTs were expected to enable the "expeditious adjudication and recovery of debts" within one hundred and eighty days of filing the case. “Though the law indicates that cases before the DRT should be disposed of in six months”, only about a fourth of the cases pending at the beginning of the year were disposed of during the year – suggesting a four year wait even if the tribunals focus only on old cases. The amount recovered from cases decided in 2013-14 under DRTs was Rs. 30,590 crores, while the outstanding value of debt sought to be recovered was a massive Rs. 2,36,600 crores. Thus, recovery was only 13% of the amount at stake.

The total number of cases filed in DRTs by scheduled commercial banks up to March 2014 was 1,50,503, and the amount involved was 2,601 billion. The total amount recovered up to March 2014 was 427 billion, which amounted to only 16.43% of the total amount involved. Looking at the monumental task on hand with as many as 66,971 cases involving 1,415 billion pending before them as of 31 March 2014 (all figures in INR)<sup>18</sup>

At the end of December 2015, 59,645 cases involving ₹ 3.74 trillion of bank loans were pending before DRTs, according to data from the government’s financial services department.<sup>19</sup>

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<sup>17</sup> The Reserve Bank of India - Speeches of the RBI Governor. Accessed January 31, 2020. [https://www.rbi.org.in/scripts/BS\\_SpeechesView.aspx?Id=929](https://www.rbi.org.in/scripts/BS_SpeechesView.aspx?Id=929).

<sup>18</sup> Gandhi, R. Deputy Governor - Reserve Bank of India: “Banks, Debt Recovery and Regulations - a Synergy.” The Bank for International Settlements, January 9, 2015. <https://www.bis.org/review/r150109f.htm>.

<sup>19</sup> Nair, Vishwanath. “Pending Cases Pile up at Debt Recovery Tribunals.” Livemint., August 27, 2015. <https://www.livemint.com/Politics/hNLONGGdDhODVNmiRyxHIM/Pending-cases-pile-up-at-debt-recovery-tribunals.html>.

As of June 2018, around 38,376 cases of debt of Rs 10-20 lakh are pending with DRTs, accounting for 38% of the total cases but for merely 4% in value terms. This number is rising as the recent data indicates that cases of less than Rs 20 lakh have touched 41% of total cases. Since 80-85 per cent of non-performing assets (NPAs) cases in the range of Rs 10-20 lakh are fully secured. Therefore, the government has decided to double the pecuniary limit to Rs 20 lakh for filing applications with DRT.<sup>20</sup>

The consequences of the delays in obtaining judgements because of repeated protracted appeals imply that when recovery occurs, the enterprise has usually been stripped clean of value. The present value of what the bank can hope to recover is a pittance. This skews bargaining power towards the borrower who can command the finest legal brains to work for him in repeated appeals or the borrower who influences to obtain stays from local courts - typically the large borrower. Faced with this power asymmetry, banks are tempted to cave in and take the unfair deal the borrower offers. The bank's debt becomes junior debt, and the promoter's equity becomes super equity. The promoter enjoys riskless capitalism - even in these times of very slow growth, how many prominent promoters have lost their homes or have had to curb their lifestyles despite offering personal guarantees to lenders?<sup>21</sup>

The expectation from DRTs and DRATs is very high. This is so because these institutions were set up for a specific purpose. The underlying goal is to improve credit culture. If the borrower gets the message that he cannot delay recovery and get away with it, repayment culture is expected to improve. That will provide more funds to lend. If the lending and recovery cycle goes smoothly, the economy will grow. In this process, DRTs and DRATs have a considerable role to play.<sup>22</sup>

Notably, the computerisation of records of cases being handled across all 39 DRTs and five Debt Recovery Appellate Tribunals has commenced. The e-DRT software, for which a successful pilot has already been concluded, has features similar to the e-court software, which include e-filing, e-payment of fees, uploading of orders and viewing case status in process.<sup>23</sup>

## **2.4 Payments Banks**

A payment bank is like any other bank but operates on a smaller scale without involving any credit risk. In simple terms, it can carry out most banking operations but can't offer advance

<sup>20</sup> ET Bureau. "Finance Ministry Moves to Declutter DRTs to Ease Debt Recovery." *The Economic Times*. Economic Times, September 11, 2018.

<https://economictimes.indiatimes.com/news/economy/finance/doubling-limit-for-filing-drt-cases-will-expedite-bad-loan-recovery-finance-ministry/articleshow/65771430.cms?from=mdr>.

<sup>21</sup> Supra point 19.

<sup>22</sup> Supra point 20.

<sup>23</sup> Supra see pt.22

loans or issue credit cards. It can accept savings and demand deposits (up to one lakh), offer remittance services, mobile payments, transfer/ purchases and other banking services like ATMS, Net banking and third-party fund transfer.<sup>24</sup>

The Reserve Bank of India gave in-principle approval to 11 Payments Bank in 2015, upon the recommendation of the Nachiket Mor Committee, which observed that nearly 60% of Indians in 2013 did not have functional bank accounts.<sup>25</sup>

Therefore, creating payment banks aims to meet the financial inclusion target. These banks will be helpful for low-income households, migrant labourers, small businesses, and other unorganised sector entities. They will provide remittances/payment services to low-income groups. They will provide deposits, transfers and savings facilities in a secured and technology-enabled environment.<sup>26</sup>

The primary source of revenue for Payments Bank is transaction fees. For example, payment banks charge customers a fee for making a transaction, say transferring money to another bank or withdrawing money from their account. Secondly, they will likely get a fair amount of revenue from the payment merchants for facilitating remittances and bill payments. For example, when a customer makes an online payment for an electricity bill using a payments bank account, the bank charges the issuer of the bill (electricity board in this case) for facilitating the services. Like commercial banks, payment banks make money through commissions from transactions through point-of-sale (PoS) terminals and resultant MDR (merchant discount rate). Interest arbitrage is another way to make money: payments bank can deposit cash with other bank and government deposits and offers a higher interest rate than they provide to their customers.<sup>27</sup>

#### **2.4.1. List of Approved Payments Bank by Reserve Bank of India**

##### **Fino Payments Bank**

Fino, which was initially formed as a domestic remittance and payments company under the guidance of ICICI Bank, later became an independent entity with expertise in extended banking

<sup>24</sup> "What Is Payments Banks? Definition of Payments Banks, Payments Banks Meaning." The Economic Times. Accessed February 1, 2020. <https://economictimes.indiatimes.com/definition/payments-banks>.

<sup>25</sup> "Jan Dhan Imbibes All 5 Ps of Financial Inclusion: Product, Place, Price, Protection and Profit." Economic Times Blog, September 1, 2014. <https://economictimes.indiatimes.com/blogs/et-commentary/24197/>.

<sup>26</sup> Reserve Bank of India - Press Releases. Accessed February 1, 2020. [https://www.rbi.org.in/scripts/BS\\_PressReleaseDisplay.aspx?prid=32615](https://www.rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=32615).

<sup>27</sup> Ideas For India. "Explainer: India's Payments Banks." Ideas For India. Accessed February 1, 2020. <https://www.ideasforindia.in/topics/money-finance/explainer-india-s-payments-banks.html>.

hours and digital payments.<sup>28</sup> Investors in Fino Paytech include ICICI Group, BPCL, Blackstone, and IFC, among others.<sup>29</sup> Fino Payments Bank has extended banking hours that enable one to do banking transactions conveniently. It has 100,000+ banking points, 410 bank branches and a fleet of doorstep bankers across 14 states. This allows Fino Payments Bank to enable banking transactions at the convenience and place of choice. With biometric/OTP usage, doing banking transactions gets easier. The Bank allows you to transfer money instantly to any bank account across India. Its debit card lets you withdraw from ATMs nationwide and shop at online and offline merchants.<sup>30</sup>

#### **India Post Payments Bank (IPPB):**

IPPB comes from the Ministry of Communications, with 100% equity owned by the Government of India. It has a vast network with 80% rural penetration and 1,30,000 access points pan-India, nearly 2.5 times the number of bank branches in rural India. Allows customers to make digital transactions with the help of QR Cards and biometric authentication. It also has IPPB's Doorstep Banking Services, and ease of delivery is facilitated by the relaxation of banking; plus, their last-mile delivery agent is armed with financial knowledge and equipped with a smartphone and biometric device, enabling them to offer financial services and guidance with relative ease. IPPB aims to train its last-mile delivery staff to provide financial advice to customers. Modelled as a digital bank, its vast network is supplemented by available physical infrastructure to provide last-mile banking services.

#### **Jio Payments Bank:**

Reliance Industries Limited was granted an in-principle approval by the Reserve Bank of India ('RBI') to establish a new Payments Bank under the Banking Regulation Act 1949. It then partnered with the State Bank of India to support this ambitious initiative of building Payments Bank capabilities for every Indian, and accordingly, Jio Payments Bank Limited was incorporated in November 2016. By December 2019, Reliance Jio added over 91 lakh new subscribers in October, taking its total subscriber base to 36.43 crore.<sup>31</sup> Reliance Jio is yet to

<sup>28</sup> Bhakta, Pratik. "Fino Payments Bank Launches Operations." *The Economic Times*. Economic Times, July 17, 2017. <https://economictimes.indiatimes.com/small-biz/money/fino-payments-bank-launches-operations/articleshow/59631530.cms>.

<sup>29</sup> Fino Pay Tech Press Releases. Accessed February 1, 2020. <http://www.finopaytech.com/media-lounge/press-releases/news/32>.

<sup>30</sup> Ibid

<sup>31</sup> Jio Payments Bank | About Us. Accessed February 1, 2020. <https://www.jiopaymentsbank.com/about-us.html>.

open its Jio Payments Bank services to the public. Once it does, we can expect the functions of the Payments Bank to be added to the MyJio app as well.<sup>32</sup>

### **Airtel Payments Bank:**

Airtel Payments Bank boasts 30 million customers, 500 thousand banking points with deep penetration in rural areas, and INR 500 billion in Annual Payments. Their banking hours stretch from 9:00 a.m. to 9:00 p.m., and they offer 24\*7 customer support. Airtel Payments Bank is a fully digital and paperless bank. Its banking points will offer bank account opening services and cash deposit and withdrawal facilities. It has quick and paperless account opening using Aadhaar-based e-KYC. This requires no documents; only the customer's Aadhaar number is needed. The customer's Airtel mobile number will be their bank account number. The interest rate of 7.25 % p.a. on deposits in savings accounts, the highest in India, is provided by Airtel Payments Bank. Alongside money transfers to any bank account in India, it also offers Personal Accidental Insurance of Rs. 1 Lac with every Savings Account. Easy deposit and withdrawal facility across a vast network of Airtel retail outlet<sup>33</sup>

### **Paytm Payment Bank:**

PayTM Payments recently launched the Program 'Asha Kiran' to provide. We aim to educate 1 million rural women about financial services and bring 200,000 women into formal banking systems by 2020<sup>34</sup>. In terms of figures, By April 2019, Airtel Payments bank had 44 million savings bank accounts and aimed to grow to 100 million by next fiscal. They have more than Rs 400 crore in deposits in their savings bank accounts and Rs 1,700 crore in deposits for the wallet. Further, they had Rs 25,000 crore being transacted on the payments bank platform every month. They aim to cross Rs 50,000 crore before the end of this fiscal. They currently have 250 million wallet accounts and expect this to grow to 350 million by the end of this fiscal year. Today, they have grown to a network of 200,000 business correspondents in more than 650 districts across India.<sup>35</sup>

### **Automation Procedures: Using MTNL and BSNL**

<sup>32</sup> Kudikala, Chakri. "MyJio App Gets JioCinema and JioTV Integration with Latest Mini Apps Feature." TelecomTalk. Accessed February 1, 2020. <https://telecomtalk.info/jiocinema-jiotv-integration-myjio-app/243325/>.

<sup>33</sup> "India's Leading Provider of Mobile Services in India." Airtel. Accessed February 1, 2020. <https://www.airtel.in/press-release/12-2016/airtel-payments-bank-rolls-out-pilot-services-in-andhra-pradesh-and-telangana>.

<sup>34</sup> "Empowering Rural Women with Technology and Knowledge to Build a Better Future." Paytm AshaKiran - Empowering Rural Women to Build Better Future. Accessed February 1, 2020. <https://www.paytmbank.com/ashakiran>.

<sup>35</sup> Bhalla, Tarush. "100M Saving Accounts. 350M Wallets – behind Paytm and Its Ambitious Payments Bank Business." YourStory.com, April 3, 2019. <https://yourstory.com/2019/04/paytm-payments-bank-ceo-satish-gupta>.

The capacities of loss-making public-sector enterprises, including MTNL and BSNL, can be utilised for automation and linking of Adjudicating Authorities and payment banks as Resolution Service Providers.

## **Proposed Model**

### **A. Basis of the model**

FSP will also serve as social legislation. Lending transactions implicitly include a moral obligation of repayment. This obligation of reciprocity is derived from both social pressures and religious doctrines around mercy. Therefore, morally speaking, it should be a vehicle for forgiving people in need while preventing abuse and avoiding obligations.

The Bankruptcy Law Reforms Committee report serves as a guiding light for the model. In its Volume I: Rationale and Design, it claimed to be concerned about the adverse impact of the lack of recovery frameworks on the credit market. Hence, it was motivated by the potential impact a personal insolvency law could have on the same. Towards this end, the BLRC articulated the following goal<sup>36</sup>s:

*Providing a fair and orderly process for dealing with the financial affairs of insolvent individuals:* The BLRC suggested that stakeholders' active participation required that the re-negotiation be fair and orderly. This is related to the idea that the process should enable both debtor and creditor to participate with the least possible delay and expense, with a certain predictability to the outcome.

*Providing effective relief or release from the financial liabilities and obligations of the insolvent:* There was recognition by the BLRC of the idea that the debtor will only meaningfully participate in the process if participation will allow for the possibility of discharging all debt. This chance at discharge might encourage households to take more risks and engage in entrepreneurial ventures.

*Providing the correct ex-ante incentives:* The participants in the process will naturally want to maximise their value first. The BLRC believed that it was likely that either the creditors or the debtor would game the system to their advantage. This could skew incentives and lead to a poor credit market. The processes, therefore, need to be designed such that individuals are not able to strategise during the process of bankruptcy unfairly.

### **About the Model and how it works:**

*Section by Section Appraisal of IBC 2016 in the Context of Payments Bank and Adjudicating Authorities for Fresh Start Process:*

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<sup>36</sup> Supra see pt.16

The fresh start process facility is only available to persons with a maximum gross annual income of INR 60,000. The aggregate value of the assets of the debtor does not exceed INR 20,000; the aggregate value of the qualifying debts does not exceed INR 30,000; he is not undischarged insolvent and does not own a dwelling (irrespective of its encumbered status); fresh start process - bankruptcy process is not subsisting against him, and no previous new start order has been made against him in the last 12 months.<sup>37</sup>

**Application of Fresh Start Order:** When an application is filed under section 80 by a debtor, an interim moratorium shall commence from the date of filing of said application. During this period - any legal action /proceeding pending in respect of any of his debts shall be deemed to have been stayed; no creditor shall initiate any legal action or proceeding regarding such obligation. Such application is supported by an affidavit containing A list of all debts owed by the debtor, with names of creditors and interest payable; a list of security held in respect of any obligations; Financial information of the debtor and his immediate family up to two years before the date of application; Particulars of the personal details of the debtor, as may be prescribed; Reasons for making the application; Particulars of any legal proceeding, which has been commenced against the debtor; confirmation of no previous FSP under IBC 2016 against the debtor.<sup>38</sup>

*We propose that the debtor intends to trigger a fresh start process to the nearest payment bank. Such payments bank, upon being prima-facie satisfied that the applicant debtor fulfils all eligibility above criteria and documents - recommends commencement of ad-interim moratorium digitally to adjudicating authority in a detailed form.*

**Appointment of resolution professional:** When an application for FSP is triggered through a resolution professional, the adjudicating authority shall direct IBBI to provide for within seven days if there are no pending disciplinary proceedings against the resolution professional.<sup>39</sup>

*Since payment banks here act as resolution service providers, we propose that resolution professionals do not need separate appointments.* The banking regulator already regulates the payments bank – the Reserve Bank of India; IBBI can independently regulate further determination of the provision of resolution services.

**Examination of application by resolution professional:** The resolution professional shall examine the application within ten days of his appointment and submit a report to the Adjudicating Authority, either recommending acceptance or rejection of the application. The

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<sup>37</sup> Section 80 of IBC 2016

<sup>38</sup> Section 81 of IBC 2016

<sup>39</sup> Section 82 of IBC 2016

resolution professional may call for such further information or explanation in connection with the application as may be required from the debtor or any other person who, in the opinion of the resolution professional, may provide such information. The debtor or any other person, as the case may be, shall furnish such information or explanation within seven days of receipt of the request under sub-section. The resolution professional shall presume that the debtor cannot pay his debts at the date of the application if – in his opinion, the information supplied in the application indicates that the debtor cannot pay his debts. He has no reason to believe that the information provided is incorrect or incomplete, or he has reason to believe that there has been no change in the debtor's financial circumstances since the date of the application enabling the debtor to pay his debts. The resolution professional shall reject the application if, in his opinion – the debtor does not satisfy the conditions specified under section 80, or the obligations disclosed in the application by the debtor are not qualifying debts or the debtor has deliberately made a false representation or omission in the application or concerning the documents or information submitted. The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report to the Adjudicating Authority under the sub-section and give a copy of the information to the debtor.<sup>40</sup>

*We propose that* the payments bank, through its last mile representative, examine the completion of the application and submit the report online to adjudicating authorities. On the written instructions of the payment bank, the previous mile representative may call for more information if needed. If, in the opinion of the payments bank, there is no reason that the information provided may be incorrect or there would be a change in the financial circumstances of the individual, the payments bank may accept the application; otherwise, reject it. The rejection shall be based on three grounds alone, i.e., firstly, the debtor does not satisfy the eligibility conditions, or secondly - the debts disclosed in the application by the debtor are not qualifying debts; or lastly, the debtor has deliberately made a false representation or omission in the application or concerning the documents or information submitted. The same shall be presented with a detailed report to the adjudicating authority.

**Admission or rejection of application by Adjudicating Authority:** The Adjudicating Authority may pass an order either admitting or rejecting the application within fourteen days from the date of submission of the report by the resolution professional. The order passed shall

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<sup>40</sup> Section 83 of IBC 2016

state the amount accepted as qualifying debts by the resolution professional and other amounts eligible for discharge under section 92 for the fresh start order.<sup>41</sup>

*We propose that* the adjudicating authority may inspect the report of the payments bank in terms of the credentials of the applicant debtor, and the order as may be passed be communicated to the payments bank and applicant debtor.

**Objections by creditor and their examination by resolution professional:** Any creditor mentioned in the order of the Adjudicating Authority may, within a period of ten days from the date of receipt of the order, object only given grounds, i.e. inclusion of a debt as a qualifying debt; or incorrectness of the details of the qualifying debt with the resolution professional. The resolution professional shall consider every objection made under this section. The resolution professional shall examine the complaints under the sub-section and either accept or reject the complaints within ten days of the date of the application. The resolution professional may determine any matter that appears to be relevant to making a final list of qualifying debts. He shall, after that, prepare an amended list of qualifying debts for the discharge order and complete an application to the Adjudicating Authority for directions or take any other steps about the debtor.<sup>42</sup>

*We propose that* if a creditor has any objections, he may submit his objections to the respective payments bank acting as a resolution service provider. The payments bank must be conscious that such complaints must be raised on three grounds, as enlisted above.

**Application against decision of resolution professional:** The debtor or the creditor who is aggrieved by the action taken by the resolution professional may, within ten days of such determination, make an application to the Adjudicating Authority challenging such action on any of the following grounds: firstly, that the resolution professional has not allowed the debtor or the creditor to make a representation; secondly, that the resolution professional colluded with the other party in arriving at the decision; thirdly, that the resolution professional has not complied with the statutory requirements. The Adjudicating Authority shall decide the application within fourteen days of such application and make an order as it deems fit. Where the application under the sub-section has been allowed by the Adjudicating Authority, it shall forward its order to the Board, and the Board may take such action as may be required against the resolution professional.<sup>43</sup>

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<sup>41</sup> Section 84 of IBC 2016

<sup>42</sup> Section 86 of IBC 2016

<sup>43</sup> Section 87 of IBC 2016

*We propose that* the application against the payments bank as a resolution service provider should be made directly with the adjudicating authority online on the abovementioned grounds. If the adjudicating authority admits such an application, it shall duly notify RBI and IBBI to take desirous action on resolution service providers online. RBI and IBBI shall, after that, take action as deemed fit.

**Replacement of resolution professional:** Where the debtor or the creditor thinks that the resolution professional appointed is required to be replaced, he may apply to the Adjudicating Authority for the replacement of such resolution professional. The Adjudicating Authority shall, within seven days of the receipt of the application, make a reference to the Board for the replacement of the resolution professional; after that, the Board shall, within ten days of the receipt of a connection from the Adjudicating Authority, recommend the name of insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending. The Adjudicating Authority shall appoint another resolution professional for the fresh start process based on the recommendation of the Board. The Adjudicating Authority may give directions to the resolution professional to share all information with the new resolution professional regarding the fresh start process and to cooperate with the new resolution professional in such matters as may be required.<sup>44</sup>

*We propose that the* application for the replacement of resolution service providers should be made online with the adjudicating authority. The adjudicatory authority may reference IBBI, which would recommend another payment bank near the applicant's debtor or creditor.

**Directions for compliance of restrictions:** The resolution professional may apply to the Adjudicating Authority for any of the following tips: firstly, compliance with any regulations; secondly, case of non-compliance by the debtor or non-compliance of the debtor's duties. The resolution professional may apply to the Adjudicating Authority for directions about any other matter under this Chapter for which no specific provisions have been made.<sup>45</sup> The grounds above should also be available with resolution service providers if they wish to seek directions in the complaint of given restrictions under the code.

### **What can be the challenges?**

The legal construct of a discharge of past debt does not insulate families from experiencing financial hardship again and struggling with the same situations, such as job loss, leading to their over-indebtedness. There should be a bar on the same family or its members seeking FSP

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<sup>44</sup> Section 89 of IBC 2016

<sup>45</sup> Section 90 of IBC 2016

in turns for at least eight years. Should a moratorium be applicable towards invalidation of the judgement of the superior courts that changes the debtor's status quo during the moratorium's operation? Excessive delegation of the mandate of resolution professionals may be challenging unless supported by counter-checks and balances. Payments Bank must not be entangled in the procedural aspect of FSP alone; otherwise, benefits from its relative expertise, accountability, flexibility, accessibility, reliability, and uniformity may be skewed. The adjudicating authority must not approach a generalist approach but rather a specialist approach while dealing with FSP cases, which will be entirely admitted online grey areas exist, viz. procedure as to appeals relating to appeals the question of law, interpretation of the law, local rulemaking, conflicting decisions applicable to similar situations. The primary intent behind making the procedure online is transparency, which is the fundamental aspect of this project and mustn't be compromised. Authorities should place maximum efforts to keep FSP away from litigation cobwebs. Lack of legal precedence may leave the FSP in the initial years exposed to pendency and delays and writ applications filed in superior courts.

### **Suggested Policy Proposals**

Suppose the debtor continues to engage in superfluous expenditures and lavish lifestyle compared to his economic well-being when filing for FSP. In that case, the same should be considered as a ground for malefic intentions, and his application should be rejected likewise. Saving money in the aftermath of bankruptcy helps insulate families from future financial shocks. Payments Bank can also facilitate the same as a critical stakeholder in the process. Payments Bank can offer the debtor/his family access to social schemes and programs that the government provides once they receive a Debt Discharge Order. For example, sudden job loss, declining incomes, illness or chronic health problems may push a debtor into FS; all efforts, therefore, must be made to introduce the debtor to welfare schemes of the government. To prevent another financial collapse, payment banks can use their trained staff to financially educate the debtor about the risks of similar events and how to avoid them. Before providing a final discharge order, the rate and amount of his future resources should be estimated reasonably regarding his ability to obtain, retain, and continue employment and the expected pay rate. Any unearned income or other wealth which the debtor can be expected to receive should also be taken into account.

### **Summary**

To achieve the goal of the Fresh Start Process goal, the government will need to analyse the process in a broad, comprehensive fashion to determine the most critical and pressing changes

to maintain a balance between the debtor's need for a fresh start and the obligation to pay debts. The right to a discharge forces creditors to raise interest rates, discouraging some debtors from engaging in risky investments whose cost is externalized on the taxpayer. On another view, discharge is justified because debtors frequently take on more debt than they want to. They do so because they are misinformed about the law or their future resources or because cognitive error prevents them from recognizing the risks accompanying debt.

FSP should serve only one goal—to restore the debtor to economic productivity and viable participation in the open credit economy. Its purpose must be to improve debtors' future economic functioning to minimise the economic impact of debt on society as a whole—that is the appropriate concern of those who structure the bankruptcy system.

The constraints placed on the bankruptcy discharge should thus be designed to “prevent skewing of economic decisions, including decisions both to lend and to borrow, by the intrusion of factors irrelevant to financial decisions. A ready mechanism that is not procedurally or legally heavy can be an ideal choice for this.

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