
EY
FICCI
Reviving Stressed assets in
POWER
SECTOR

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A INTRODUCTION

Power sector in India has observed a tremendous growth in the last five years. Both energy consumption as well as power capacity addition has contributed to this demand in the power sector. Electricity Act, 2003 brought about several changes in the business ecosystem within power sector. One of the largest transformation is possibly the inclusion of private sector in Generation, Transmission and Distribution. This revolution has led to capacity addition outpacing energy demand. Energy demand and supply deficit has seen a sharp fall from 8.71% in 2012-13 to 0.7% in 2017-18. This decline has also affected Plant load factors (PLF) of the thermal power stations. The overall PLF of Thermal power plants has fallen from 78.8 percent in 2006-07 to 59.88 percent in 2017-18.

While thermal projects are already affected by decline in PLF, some of the plant also suffered from coal supply issues. After the cancellation of 204 coal mines by the Hon'ble Supreme Court in 2014, many of these thermal power projects got stalled without adequate coal supply. In addition, many projects were setup without firm coal linkages from Coal India Limited (CIL) leading to high cost of generation.

These issues coupled with many other bottlenecks lead to a large thermal power capacity falling under stressed assets.

Keeping large stressed capacity in mind, The Government of India had constituted a High Level Empowered Committee (HLEC) on 29th July 2018 to consider issues related to Stressed Thermal Power Projects. The committee had multiple rounds of meeting and shared its recommendations in November, 2018.

FICCI organised a workshop to deliberate on the issues leading to stress in power sector and share recommendations of the panel discussion conducted during the workshop. Points deliberated during the workshop and recommendations of the panel are shared in this report.

Workshop was conducted in three parts:

Session 1: Reconfiguring the Power Market

Session 2: Financial Re-engineering to deal with Power Sector Stress

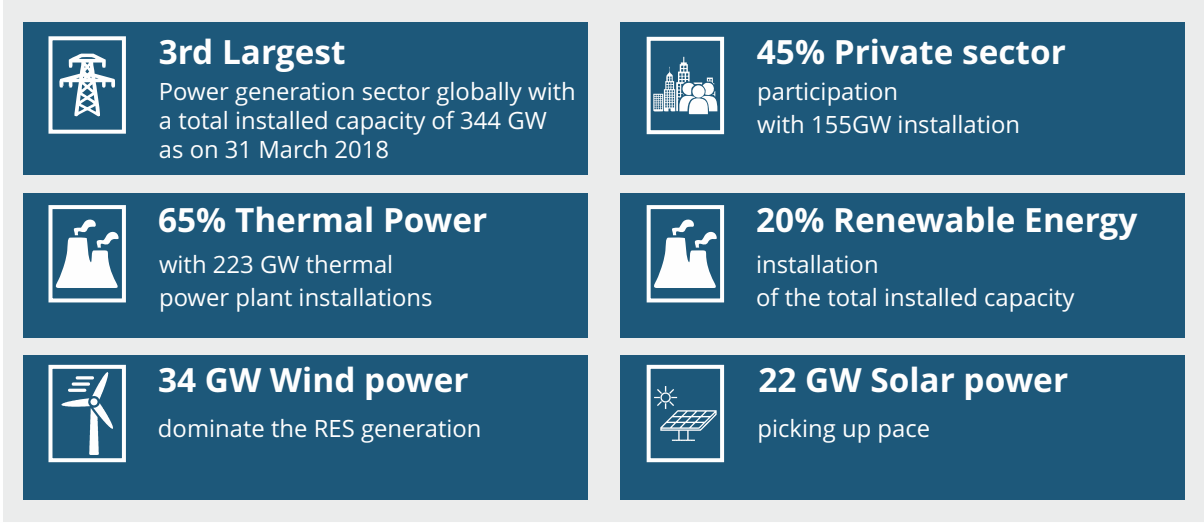
Session 3: Developing an Institutional Framework for Resolution of Stressed

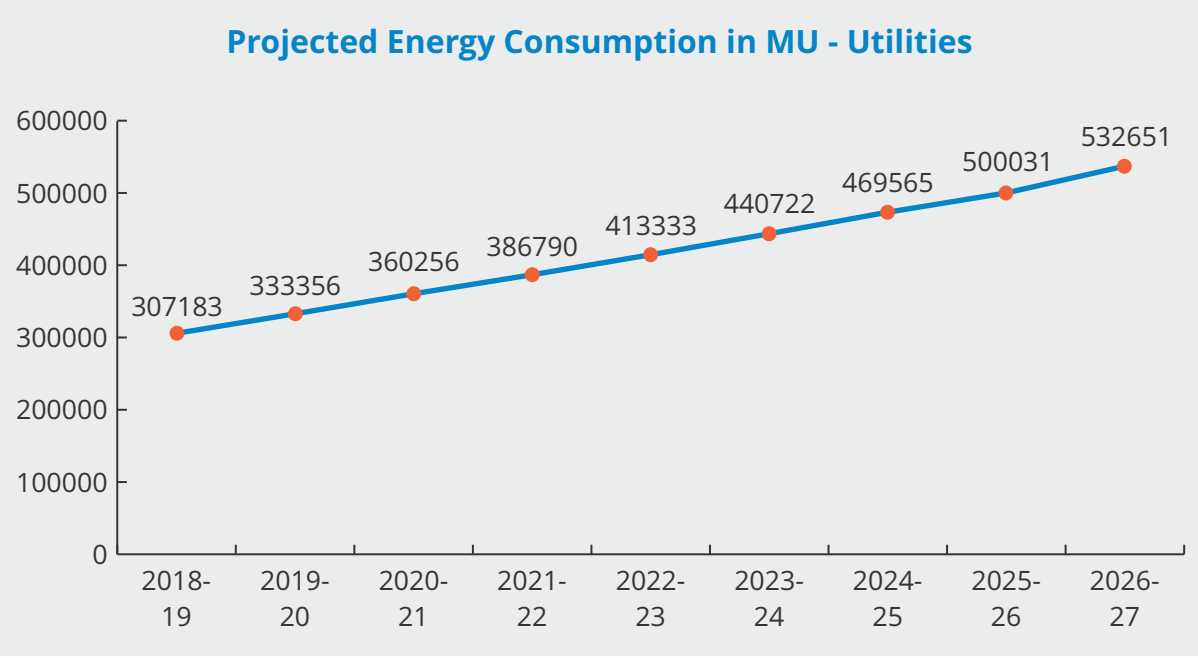
Context for each session and key issues are summarised in the next section.

B

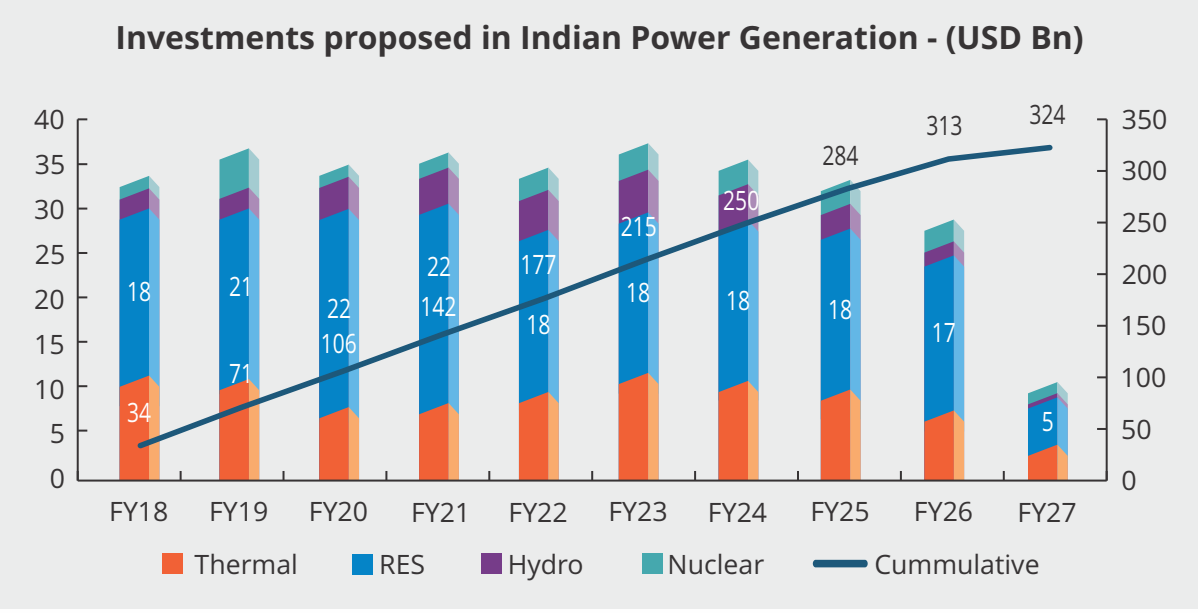
STRESS IN POWER SECTOR

- Power is an essential commodity for a developing economy such as India. India is the third largest producer and third largest consumer of electricity in the world, with the installed power capacity reaching 344.69 GW as of August 2018. The country also has the fifth largest installed capacity in the world;
- Regulatory landscape of India power sector has evolved significantly in the recent past. There is now progressive legislative framework in the form of Electricity Act and National Electricity Policy resulting in growth in power generation and capacity - with proper enactment of several policies, the trend is likely to continue in the future.
- The government targets capacity addition of around 100 GW under the 13th Five-Year Plan (2017–22);
- Wind energy is estimated to contribute 60 GW, followed by solar power at 100 GW by 2022. Further, target for renewable energy has been increased to 175 GW by 2022;
- While India continues to be dependent upon thermal power (~64% of installed capacity as at August 2018), recent government policies having significant push towards RES, has led to commissioned thermal power projects lying idle in absence of long term PPAs. Considering that no significant addition in thermal capacity has been approved in recent past, PPAs for thermal plants are likely to increase with increase in Industrial demand and per capital demand in the country.

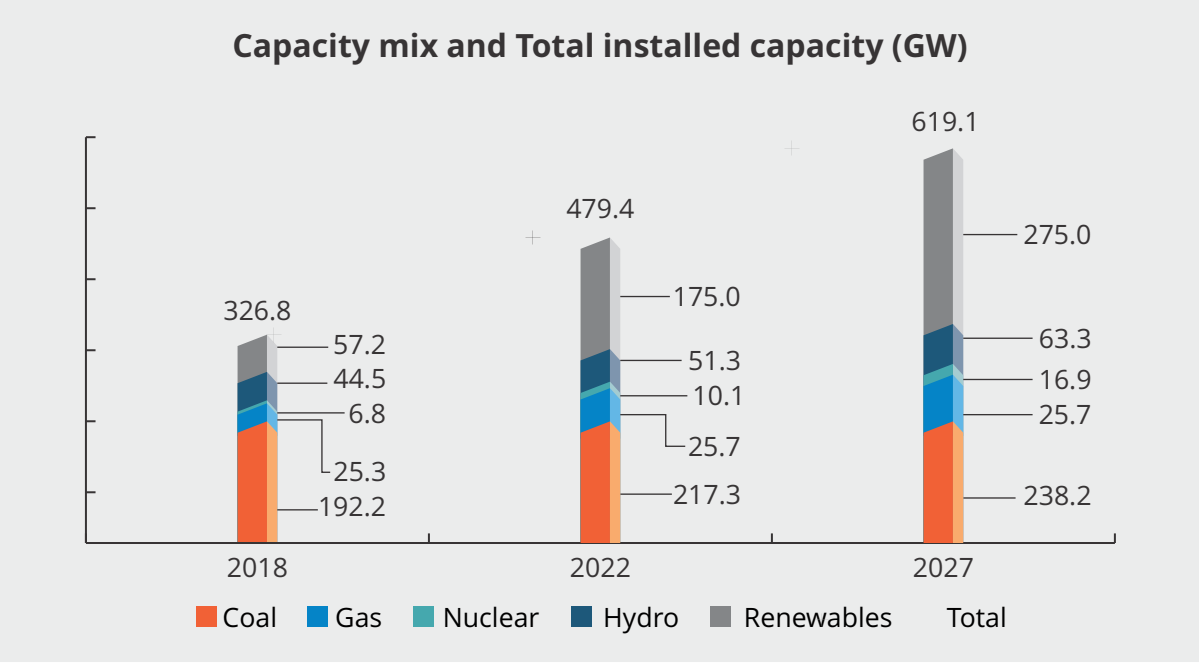




As per 19th EPS, electricity demand to grow at healthy~8.6% CAGR lead by rising disposable income, industrial and infrastructure growth.

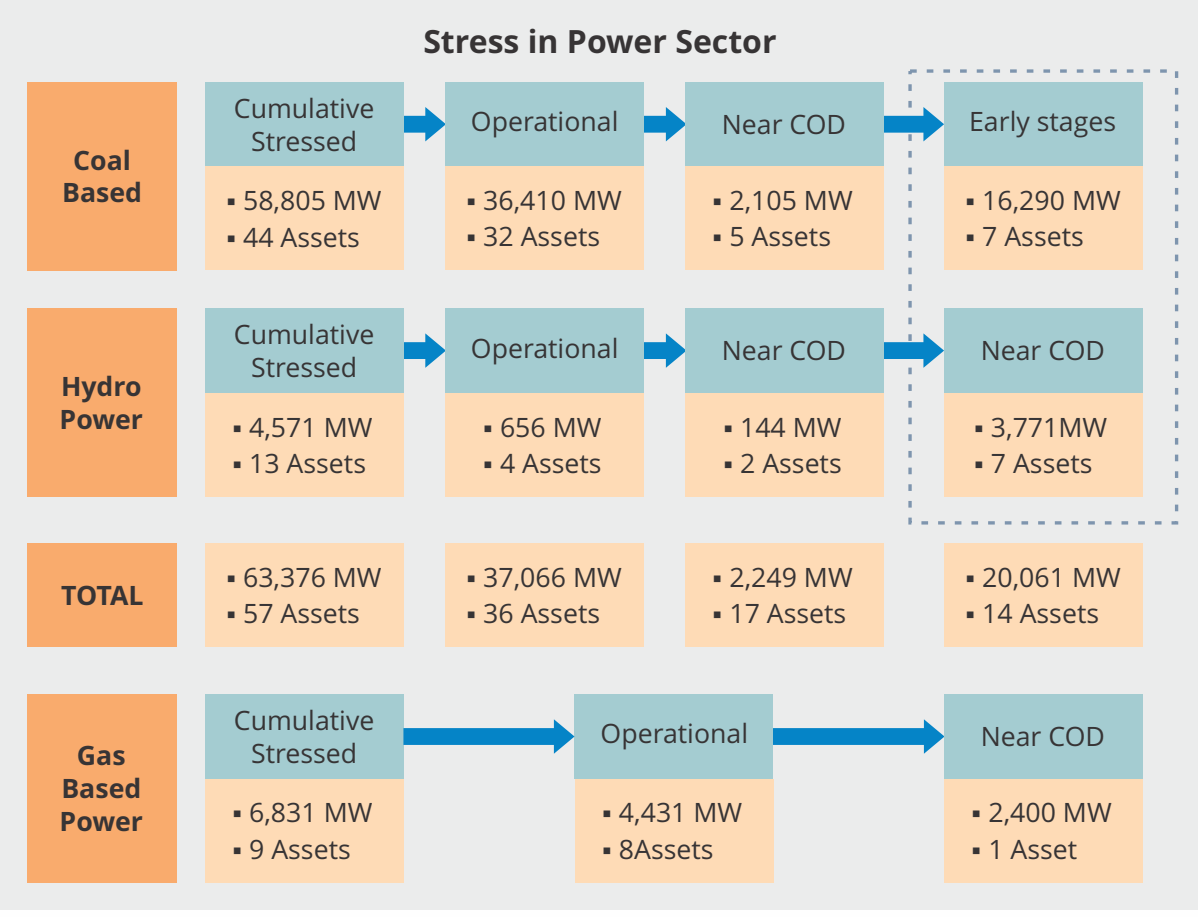


- USD 324 billion investments are proposed in power sector over next 10 years
- While thermal segment growth is impacted by financial stress fuel and issues, growth in generation to be lead by Renewable segment owing to aggressive government policies
- Capacity additions to be lead by RE owing to strong policy push, private sector investment and incremental power demand.
- 44% Share of Renewables in the capacity mix by 2027


Capacity mix and Total installed capacity (GW)
326.8
57.2
44.5
6.8
25.3
192.2
479.4
175.0
51.3
10.1
25.7
217.3
619.1
275.0
63.3
16.9
25.7
238.2
2018
2022
2027
Coal
Gas
Nuclear
Hydro
Renewables
Total

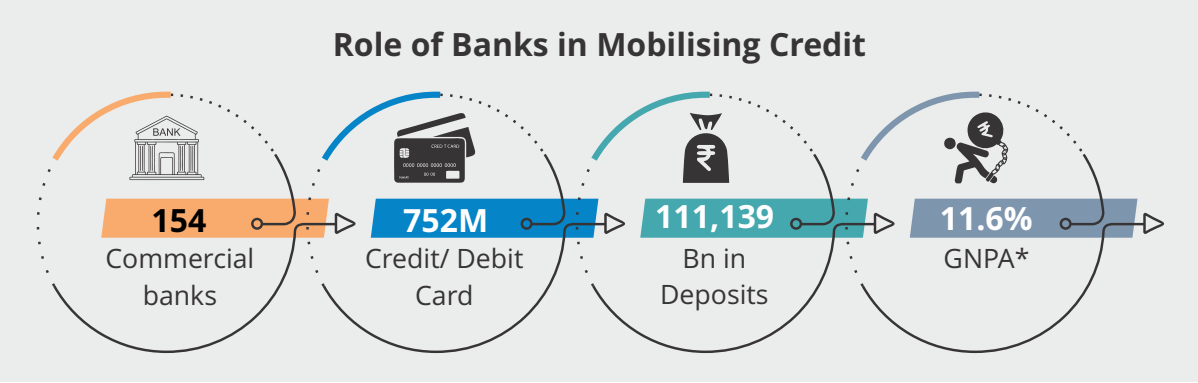


STRESS IN POWER SECTOR

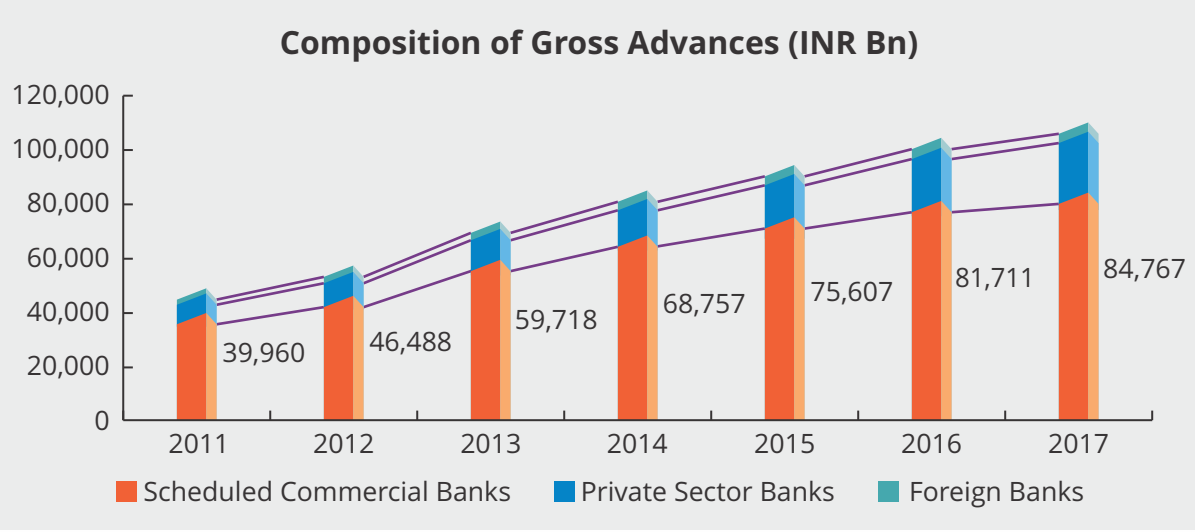


It is relevant to note that approximately 17GW of under construction power plant are stalled for more than 3 years period indicating a huge blockage of funds. Further, there is huge capacity ~19,000 MW (43% of total capacity) yet to be tied up for PPAs which is causing the stress in thermal power sectors causing economic slowdown. In the next section, key factors attributing to stress in power sector are summarised.

OVERVIEW OF INDIAN BANKING SECTOR



- Traditional dominant position of state owned banks remains unchanged what with considerable improvement in access to banking with ongoing efforts of the government to promote financial services and simulate expansion in the unbanked sphere;
- However, ongoing financial fraud and scandals following a number of high profile scams have resulted in tighter control being imposed by the banking regulator to rein in rouge elements in the banking sector as well as improve public sentiments and attempt to bring back foreign institutional investors by boosting the investment climate in the country;
- Towards this attempt, the government is in the process of recapitalization of public sector banks to the tune of INR 2,110 Bn to provide impetus to the sector.

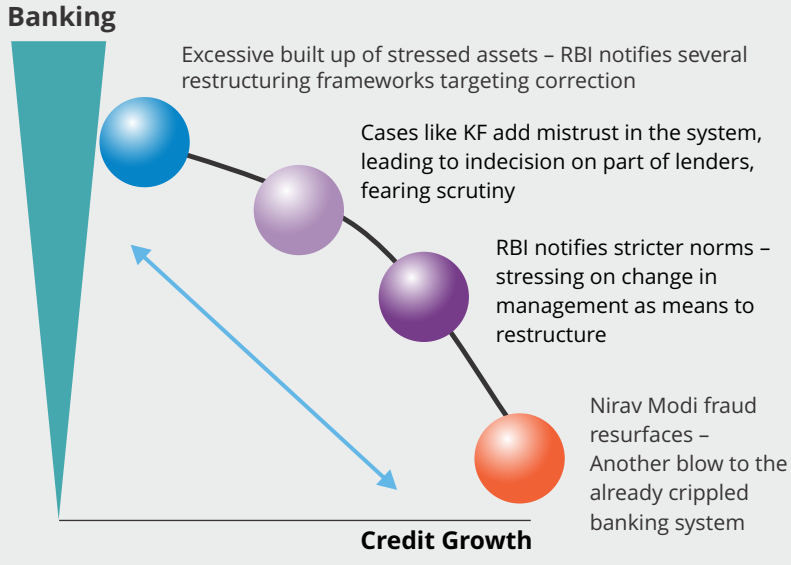


The banking sector is still largely fragmented with state owned companies holding major share in the market. However, a process of consolidation has already culminated with the largest bank, State Bank of India, merging with six associate banks, thus creating an even stronger market leader

* As per RBI Financial Stability report (Jun 2018)

Temporary standstill due to stress built up and high profile frauds

- Banking sector has been facing unprecedented turmoil due to surfacing NPAs, banking frauds and dynamic regulatory scenario due to multiple directives issued by RBI;
- Lenders have become hesitant in addressing the stressed accounts with the risk of commercial decision being challenged at a later stage by multiple government bodies/ agencies.



Similarities may be drawn with the global financial crisis in 2008, when the global economy plummeted into free fall.

Regulators took various strict decisions to improve credit culture and avoid similar situations to reoccur.

Such actions slowed credit growth in the short to medium term, however, were essential for the upliftment of the overall credit culture.

Banking exposure in Power Sector

- As per the 37th Standing Committee Report on Energy (2017-18), the scheduled commercial banks in India currently have an exposure of over INR 5,650 Bn as at March 2018 with Power Generating companies comprising 86% of the gross loans and advances.
- The committee identified 34 stressed power assets with a total exposure of INR 1745 Bn (32% of total exposure in power sector).

Particulars (INR Cr)	Mar-17			Jun-17		
	Gross Loans and Advances	GNPAs at the end of period	Restructured Std. Advances	Gross Loans and Advances	GNPAs at the end of period	Restructured Std. Advances
Generation	4,71,334	31,194	53,066	4,82,965	34,244	55,557
Transmission	25,358	2,102	3,574	24,299	2,617	433
Distribution	51,386	1,008	4,369	51,761	1,080	4,868
Total	**5,48,078**	**34,304**	**61,009**	**5,59,025**	**37,941**	**60,858**

Source: 37th Standing Committee Report on Energy

Key Power market challenges for IPPs

1

Coal supply issues

Non availability of fuel due to cancellation of coal blocks & projects set up without linkage

2

Regulatory and policy issues

Regulatory issues such as Re-negotiation of PPAs has lead to loss of confidence in the investors

3

Contractual

Contractual & Tariff related disputes

4

Lack of Long terms PPAs

Delay in project implementations leading to cost overrun

Coal Supply issues

Old Regime (LoA-FSA)

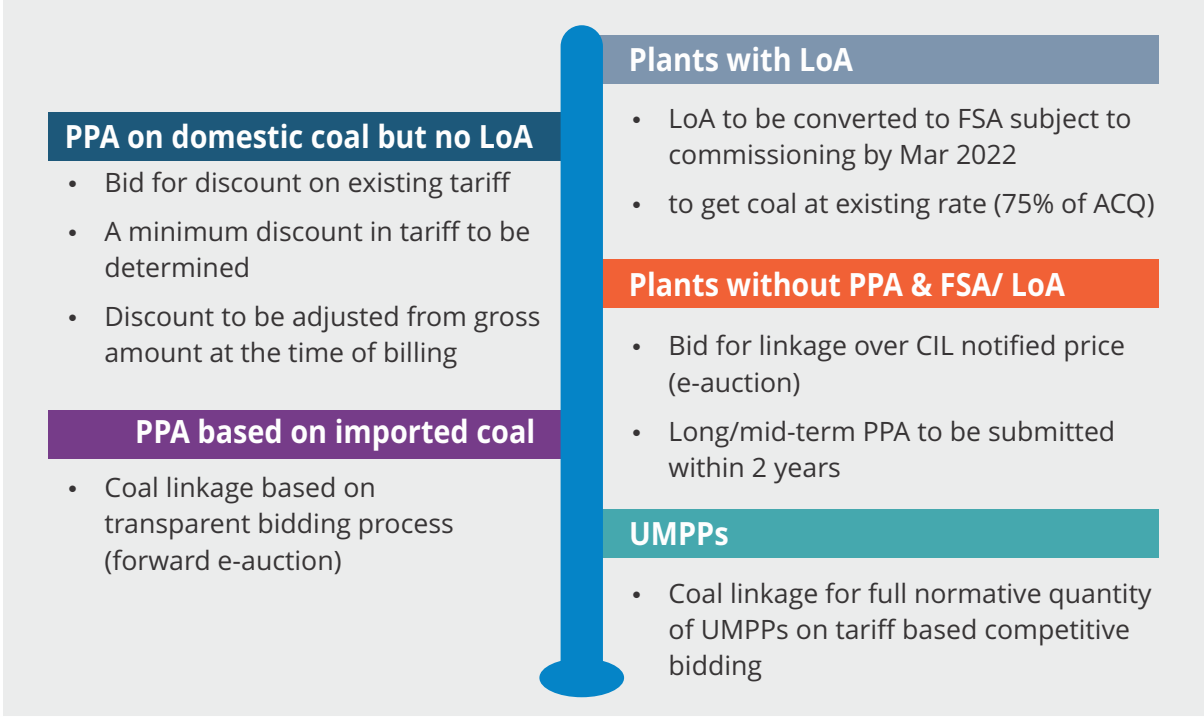
- Coal linkages to the power sector were governed by provisions of the New Coal Distribution Policy (2007)
- All coal consumers had to apply to the Standing Linkage Committee (SLC) for coal linkages, which assured them 100% of its normative fuel requirement, if the LoA is approved.
- The LoAs stated that the linkage would be converted into legally binding FSA once consumer meets key milestones like achieving financial closure, obtaining clearances etc.

Issues in the old regime

- LoAs were issued to 108GW capacity however CIL signed FSA with TPPs of only 78GW
- TPPs with capacities of 28GW were unable to get FSAs despite having LoAs
- Additionally, about 10 GW of operational/ under construction projects which did not have any linkages
- This lead to some TPPs procuring coal at premium leading to losses

The new coal allocation policy for power sector, 2017-SHAKTI

SHAKTI proposes to replace the old linkage allocation policy with more transparent bidding-based linkages. It segregates coal-based power plants in India in the following categories and stipulates different mechanisms to provide fuel supply to plants, which don't have FSAs/ coal linkages.



Fuel availability issues leading to stress:

- Fuel accounts for a large proportion (around 55-60%) of operating cost of thermal power plants (~81% of conventional power installed base).
- Historically, over 2011-14, domestic coal availability has been a major issue as total non-coking coal production grew merely by 1.7% owing to stringent environmental regulations. This partly contributed to a decline in PLFs, which stood at 60% in 2016-17 from 75% in 2010-11.
- Players were compelled to rely more on expensive imported coal (~110% higher for comparable grade of domestic coal), who's share peaked at 24% in 2014-15 from 11% in 2010-11. This in turn adversely impacted returns of players.
- On the gas front too, domestic availability sharply reduced after production from Reliance Industries' KG-D6 gas field plummeted. Consequently, gas based PLF reduced significantly to ~22% in FY16 from ~40% in Fy13.

However, initiatives such as SHAKTI leading to improvement in performance of power companies:

- Over the last 18-24 months, coal production has improved with faster clearances and land acquisition. While the government announced the SHAKTI (Scheme for Harnessing and Allocating Koyla Transparently in India) scheme to improve coal supplies to the power sector, availability of fresh PPAs (pre-condition for domestic coal linkage) and discount to be offered on existing PPAs would be key monitorables.
- To alleviate stress, the government announced the 'Scheme for utilisation of gas based power generation capacity'. However, it was unable to provide an impetus as envisaged with PLFs continuing to languish at ~22% in 2016-17. Thus, debt servicing ability of most gas based power plants has been extremely challenging.

Delays in project execution leading impacting financial viability of the projects:

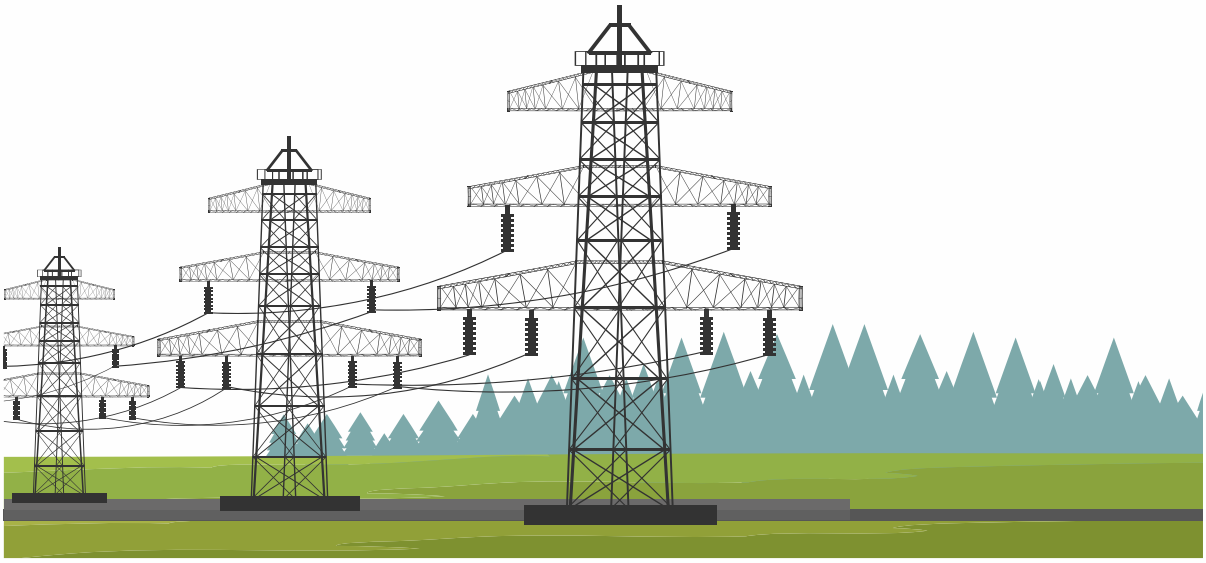
- Power projects are highly capital intensive and have a long gestation period. Therefore, completion of projects in a time bound manner is very critical for developers to avoid the huge time and cost overruns. In the past, thermal power projects have witnessed significant cost overruns on account of delay in receipt of clearances, land acquisition and financial closure. In fact, in certain projects, there has been cost overruns of as high as 67% resulting in project cost escalating to Rs 7.5 crore/MW as compared to initially envisaged Rs 4.5 crore/MW.
- Hydro power projects have also been crippled due to execution challenges like securing necessary approvals (environmental and forest clearances), land acquisition and relocation of people habitant in the area, inadequate infrastructure for power evacuation and logistical issues have constantly hampered the pace of project execution.

- Moreover, any delays in commissioning date of projects further raises the cost of the project. This in turn escalates the power tariff, thereby increasing power purchase cost for discoms, which are reluctant to buy costly power from such projects.

Regulatory and policy issues:

- The micro level policies governing the fuel cost pass-through, mega power policy, competitive bidding guidelines are not in consonance with the macro framework like The Electricity Act 2003 and the National Electricity Policy.
- Renegotiation of power purchase agreements of renewable energy projects adversely impacting investor confidence. This also questions bankability of such PPAs.
- Denial of compensatory tariff on account of changes in International laws/policies.
- Backing down of MUST RUN renewable energy during low demand.

UPERC Renegotiated Tariff for 80MW Solar Projects			
Developer		Tariff (Rs/kWh)	
	Capacity (MW)	Quoted	Proposed
Adani Green Energy	50	8.44	5.21
Sahashtradhara Energy	5	8.37	5.21
Pinnacle Air	5	8.48	5.21
Awadh Rubber Prop Madras Elastomer	5	8.444	5.21
Technical Associates	10	8.33	5.21
Sudhakara Infratech	5	7.68	5.21



OVERVIEW OF REGULATORY FRAMEWORK

Policy impetus for addressing stressed power assets

Power sector has been one of the key contributor to the NPA menace faced by the Indian banking sector today. The Reserve Bank of India (RBI) had come up with the CDR scheme way back in 2001, however, it did not achieve its purpose as money was lent to financially unhealthy firms which were unlikely to pay the loans back.

To counter the above, RBI came out with following debt restructuring schemes in the last 3 to 4 years to resolve the NPA crisis in the banking sector:

S4A

- Bifurcation of debt into Part A (sustainable) and Part B (un-sustainable)
- Failed as it covered only operational projects with no change in interest rate and repayment schedule

SDR

- Conversion of part outstanding into equity for further divestment to new investor;
- Failed due to lack of investor interest due to legal framework and valuation mismatch between Banks and Investors. Further, there was resistance from existing promoters/ management

Change in Management

- Initiated to induct new investor as single largest shareholder;
- Failed as it was not a time bound process and resistance from existing management owing to possibility of dilution

5/25- Flexible structuring

- Initiated to refinance outstanding debt in-line with project life;
- Failed as refinancing did not help in cases of long pending projects.
- Interest reset risk on refinancing if the project isn't doing well

In addition to the above, RBI had also introduced the concept of Joint Lenders Forum (JLF), which mandated that lenders adopt measures for early identification of stressed accounts and try and resolve it. However, due to complexities involved in resolving stressed account, JLF which was an excellent mechanism could not achieve the purpose with which it was initiated.

The abovementioned schemes were renounced via 12 February 2018 circular of RBI, which superseded all previous circulars in this regard. The said circular has made it mandatory for stressed assets to adhere to strict timelines for resolution of stressed assets, failing which, RBI has directed the lenders to proceed under the Insolvency and Bankruptcy Code, 2016 (IBC) against all assets where default persist beyond a period of 6 months.

The circular requires banks to finalise a resolution plan in case of a default on large accounts of INR 2,000 crore and above within 180 days from the cut-off date of 1 March 2018 or date of default (whichever is later), failing which insolvency proceedings will have to be invoked against the defaulter. The said circular also mandates one-day default trigger for resolution of stressed assets.

Issue to be addressed - Should there be a special dispensation to the power sector in relation to extension of the "one-day" default period considering the delays in payments from discoms usually results in delays in payment of instalments?

In view of the above, the government machinery along with the lending community has been working since early 2018 to find possible ways to revive the stressed power assets. Some of the major developments in this regard have been highlighted below:

Government initiatives taken towards revival of stressed power sector

Operational initiatives:

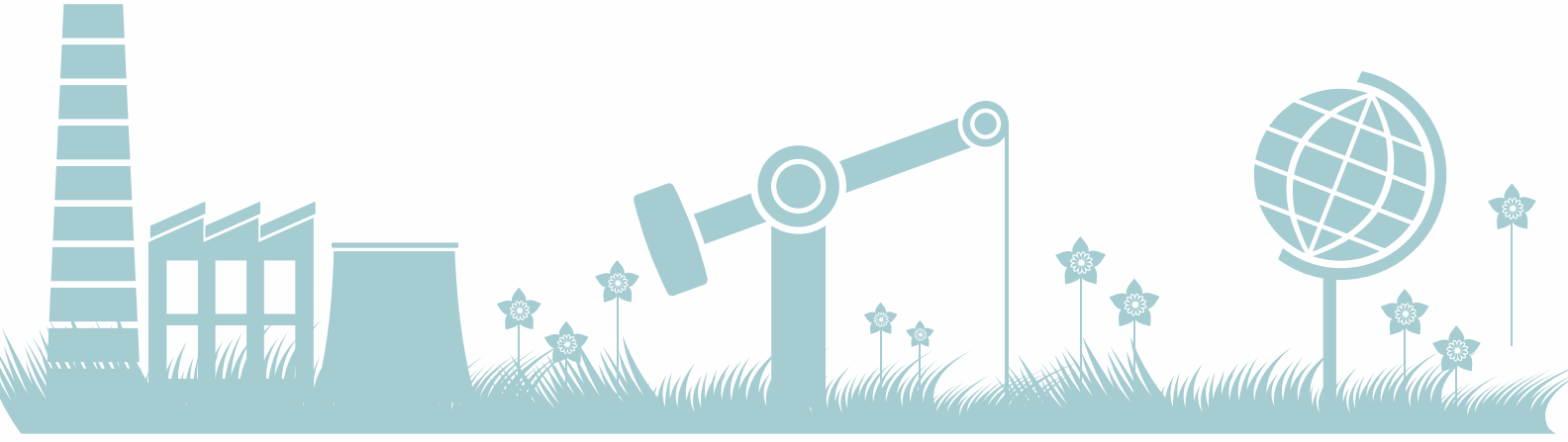
- Constitution of a high-level committee comprising Secretaries in the Ministries of Power, Coal and Department of Financial Services and headed by NITI Aayog's CEO Mr. Amitabh Kant to address the problem of NPAs in India's power sector;
- DUGJY (Deendayal Upadhyaya Gram Jyoti Yojana) – To enable rural electrification and provide electricity to the un-electrified parts of the country through development of infrastructure relating to distribution of electricity;
- Integrated Power Development Scheme (IPDS) – IPDS, a flagship Scheme of the Ministry of Power, was approved on November 20, 2014 with a total outlay of INR 32,612 Cr and is aimed at ensuring 24X7 power for all;

- Shakti (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) – Ministry of Power has launched SHAKTI which aims to reform the bureaucratic and non-transparent process of coal allocation for power projects;
- UDAY (Ujwal Discom Assurance Yojana) – To enable revival of DISCOMS to enable 24x7 power for all. The scheme was intended to resolve problems relating to financial health persisting in DISCOMS;

Financial initiatives:

- **FDI policy** - 100% FDI is allowed under automatic route for power generation projects (except atomic energy), transmission, distribution and trading;
- **SAMADHAN** – Under SAMADHAN (Scheme of Asset Management and Debt Change Structure), the bankers' consortium shortlisted 11 power plants with an overall capacity of over 12 GW, which are either complete or nearing completion. This scheme is an effort to avoid liquidation of these plants at throwaway considerations;
- **SASHAKT** – As part of the scheme, lenders entered into an Inter Creditor Agreement (ICA) in relation to loans above INR 50 Cr. The ICA permits the lead lender to formulate the resolution plan and all decisions are to be guided by majority lenders, i.e. those with 66% share in the aggregate exposure. The other key aspect comprised parking of stressed assets in an asset management company (AMC). Lenders will be able to transfer NPAs onto the books of the AMC immediately, and ARCs will have the opportunity to revive the asset resulting in quicker exit in comparison to IBC which usually stretches beyond the mandated 270-day period.

Multiple initiatives have been taken to revive power assets facing financial stress, however the same have not fructified as expected. The power producers are still facing issues in relation to coal availability, long term PPA tie up which is directly impacting their cash generating abilities to service outstanding debt.



FINANCIAL RE-ENGINEERING

- Due to inherent sectoral issues i.e. non-availability of adequate fuel, lack of or delay in execution of PPAs, along with issues relating to land acquisition, environmental approvals etc., resolution plans achieved under RBI frameworks and/ or IBC are likely to be sub-optimal and may lead to large haircuts for lenders which are state owned banks and also state owned companies i.e. Power Finance Corporation Limited and Rural Electrification Corporation Limited.
- In addition to the above factors, delays in obtaining various clearances results in extension of the construction periods of power assets. As a consequence, a major part of the disbursement by the lenders goes towards servicing of the IDC component of the project.
- Considering the above factors, following questions may need to be addressed prior to the discussion on Financial re-engineering:
  - Why is financial re-engineering the need of the hour for the power sector?
  - Will only financial re-engineering resolves the issues plaguing the power sector?
  - Will investors/ funds flock to the sector without resolving fundamental issues?
  - Shouldn't sectoral issues be addressed and resolved first to provide an enabling environment for the sector to flourish?

Infrastructure funds/ lenders/ Pension funds to only invest in power assets to avoid cash flow mismatch of commercial banks

- In India, commercial banks and specialised infrastructure financing institutions are the major source of financing for the infrastructure segment including power sector. While traditionally PFC, REC, IDBI, ICICI, IIFCL, IDFC, IL&FS etc. were mandated to provide financing to the sector (of which ICICI, IDBI and IDFC have become banks), scheduled commercial banks also took exposure in infrastructure projects including thermal power assets in order to cater to the demand of the sector coupled with lack of viable alternatives.

- Traditionally banks were not meant for long term funding, which is usually required along with moratorium in the initial period to stabilize in case of large infra projects including Power projects with long gestation period;
- While internationally, institutions such as World Bank, Asian Development Bank, Pension Funds, International Finance Corporations, etc. have funded long term projects/ infrastructure projects, there is lack of availability of viable alternatives in India;
- Government and Power ministry may consider to create special funds for investing in infrastructure projects by way of long term infrastructure bonds/ funds. Once such recent initiative has been incorporation of National Investment and Infrastructure Fund Limited (NIIFL);
- These bonds/ funds will assist in replacing existing commercial banks thereby assuring alignment in cash flows with debt servicing obligation.

Question: How will Government/ Power Ministry create a pool of funds either solely funded by government or through Public Private Partnership in order to issue infrastructure bonds for providing capital support to infrastructure sector?

New modes of funding thermal power assets

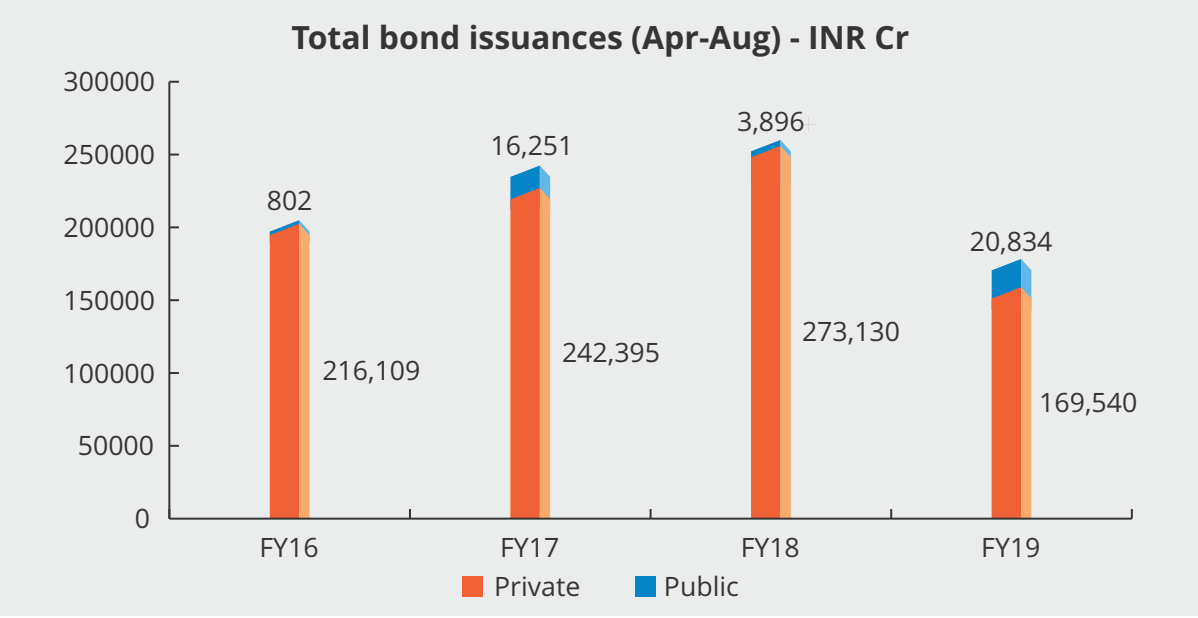
- Should we consider merits of proposing equipment financing as one of the long term financing solution towards funding thermal power assets;
- Should norms be relaxed for pension funds, insurance and/ or provident funds to invest in power projects?

Question: How can equipment manufacturers provide long term financing, either backed by financial institutions or government regulations/ subsidy? New means to be explore to avoid cash flow mismatch situation for power projects.

Roadmap from Indian Banking to International Bond Market

- Should we look at alternative source of funding including but not limited to exploring international bond market to fund the infrastructure projects in the country, thereby replacing exposure of existing commercial banks;
- Recent developments in bond market for power sector include countries like Bangladesh who are proposing to raise funds for power for state-run power companies by issuing bonds in Singapore's debt instrument market;
- While the corporate bond market in India is slowly gathering pace owing to competitive interest rate, infrastructure industry has not used long term bonds as a preferred means of finance. Further, historically only A rated companies used to avail of the bond market, however, the trend has bene changing in the recent past.

- Following is a snapshot of recent movement in the bond issuance between April to August of FY16 till FY19. It is pertinent to note that proportion of bond issuance in Electricity sector has dropped significantly from 6.7% in FY16 to 1.3% in FY19 during the April to August period:



Source: CARE report on Corporate Bond Performance, September, 2018

- With the external commercial borrowings turning out to be an expensive route for the corporates in a falling rupee scenario and incremental bank credit (Apr – Aug) growing at a slow pace of 1.9% during FY19, corporates will now have to mandatorily resort to this route to raise additional finances starting 1 April 2019;
- The Securities and Exchange Board of India (SEBI) has recently announced certain reforms to make the capital market more efficient, transparent and lower cost for the investors. One of the key reforms would require large firms (*having borrowings in excess of INR 100 Cr*) to borrow 25% of their incremental borrowings from the bond market effective 1 April 2019.
- In addition to the above, better tax treatment for debt mutual fund investors has led to steady inflows in the domestic mutual fund industry (*domestic mutual funds are now one of the biggest lenders in bond market*). Further, the government and RBI have been continuously introducing reform measures to ensure higher participation in the corporate bond market. The same is likely to structurally help the long overdue development of the Indian fixed income market.

Question: How will India move towards international bond market for funding infrastructure projects both for refinancing the existing projects as well as providing capital for new capex requirement towards capacity enhancement?

The funding means to be in line with the project gestation. Foreign exchange hedge cost might be a constraint for promoters in opting for international bonds.

Warehousing of power plants to create value

- Power sector is under financial distress, as a result of which, multiple assets have been put up for divestment by their respective lenders;
- As per estimates, valuation garnered so far is not in line with expectations of lenders and maybe lower than the capital originally infused to fund these projects, resulting in value erosion for all stakeholders;
- Should these assets be housed under a fund (as envisaged under SASHAKT and PARIVARTAN schemes) with moratorium on debt servicing in order to preserve value and initiate divestment process upon revival of the power sector?

Question: What will be the mechanism to park power plants under a special purpose fund and provide moratorium for such period to preserve value for the asset?

The proposal to factor in for maintenance needed for such plants both operating and non-operating cases?

Preserve value for stakeholders

- Power assets have multiple stakeholders namely promoters, lenders, customer (both private and state owned), DISCOMS and end consumer. Power assets facing financial stress are adversely impacting all stakeholders;
- While both lenders and promoters have taken steps to revive the assets, overall revival would require efforts from additional stakeholders by way of providing policy changes, fuel availability and breather in debt servicing;
- Policy makers and power regulators might consider adopting to faster means of providing approvals for power assets to assist in cash generating abilities of power assets. They may want to consider merits of tariff revision, pass through of fuel cost to consumer which have a direct bearing on the cash generating abilities of power plants;
- Open market driven pricing approach might help in insulating the power plants from any fluctuation in fuel prices.

Question: What can be possible policy related changes involving all stakeholders in order to initiate an overall resolution plan for the stressed power plants?

Mechanism for seeking approval on tailor made solution for each plant to be assessed.

G ECOSYSTEM OF INSOLVENCY AND BANKRUPTCY CODE

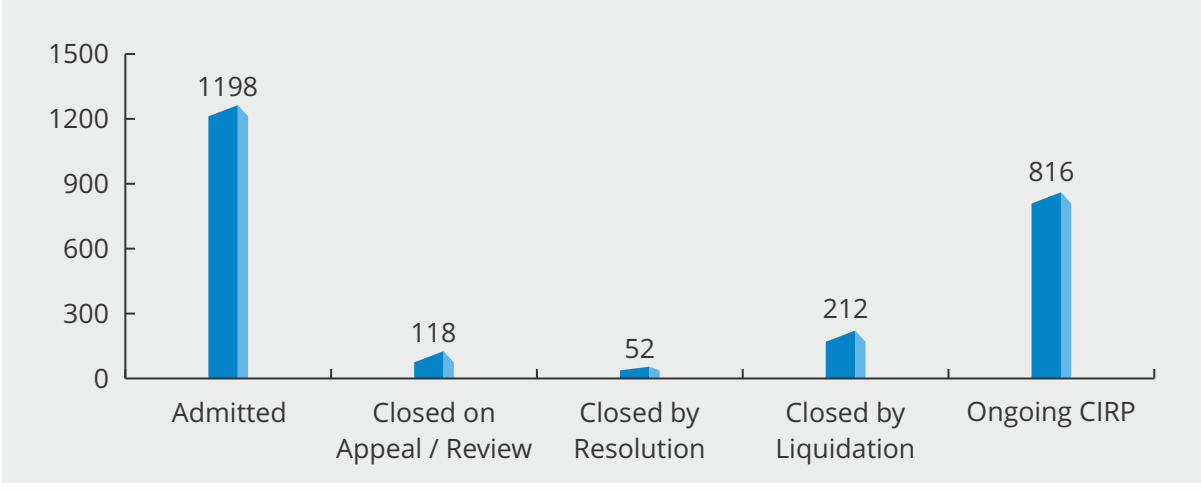
Snapshot of Insolvency and Bankruptcy Code, 2016

- Insolvency and Bankruptcy Code, 2016 (IBC, or the Code) has been a key milestone in Indian economy considering that both Government and RBI were trying to combat the NPA situation in order to improve credit situation of the country.
- Since 2014, RBI has cracked down significantly on the stressed loans situation accumulated in the banking system over time through an AQR process, bringing to light the seriousness of the problem. This has been supplemented by very progressive and constructive initiatives such as the Joint Lenders Forum (JLF), Strategic Debt Restructuring — with and without change in control — and S4A. These frameworks, though unable to address all situations, are a step forward toward a resolution culture. Default resolution is and will always remain unique to each situation. The Code, from that respect, is timely as it focusses on a turnaround plan with a deadline, which, if not met, results in liquidation. This forces creditors to act in unison or face consequences (one of the significant drawbacks of the earlier schemes) and avoids arbitrages available due to multiple regulations. While the Code is hailed as one of the best, the devil lies in the detail. Timely action by all stakeholders and dealing with owner-managers would underpin the success of the Code.\
- However, introduction of a new law comes with own set of challenges owning to continuous development basis practical challenges faced during implementation. Key matters requiring attention of policy makers have been highlighted below:

Challenges faced by RP	▪ Immunity against legal action ▪ Resistance from stakeholders ▪ Lack of awareness on moratoriums ▪ Support of operational creditors
Lack of clarity of law and inter-statue harmony	▪ Tax liability on loan waivers ▪ Provisioning norms for interim financing ▪ ICD norms for convertible instruments
Disposal of viable business/ assets	▪ Should law permit disposal of assets/ business as part of resolution plan? ▪ Or should primacy continue to be given to survival of the debtor ▪ Should there be flexibility to focus on either rescue of the debtor as a going concern or enabling the viable parts of the business to survive
Investigation of antecedent transactions	▪ Limited time and resource available with the RP for investigations ▪ Should there be a separate authority responsible for undertaking such investigations on directors/ promoters of the corporate debtor
Process of inviting resolution plan	▪ No defined process for inviting resolutions plans ▪ Extension of timelines/ resolution applicants not adhering to timelines ▪ Prone to litigations wherein any aggrieved applicant may file a case

Snapshot of ongoing Corporate Insolvency Resolution Process (CIRP) cases

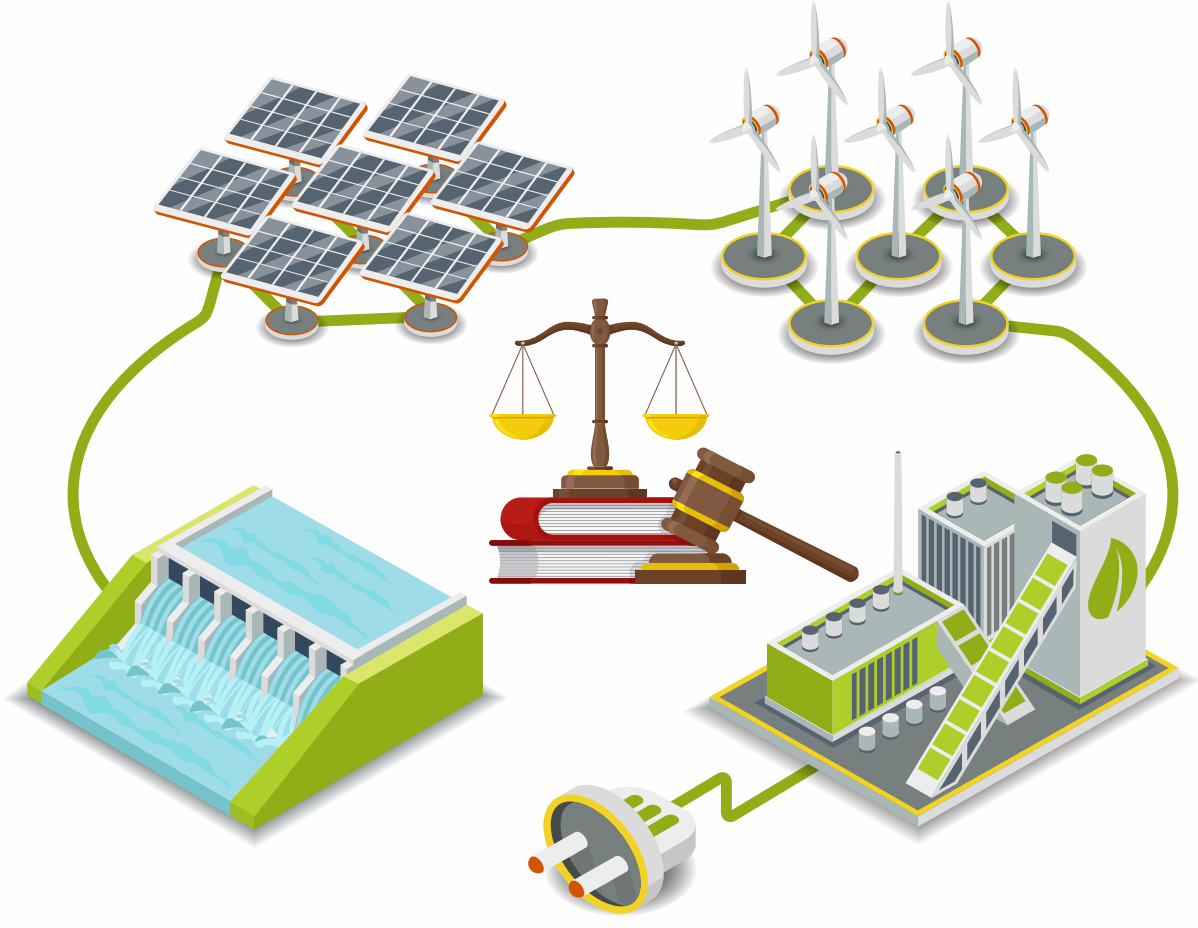
As at quarter end September 2018, a total of 816 corporates were undergoing CIRP processes, out of which over 29% (238 cases) have exceeded the 270 days threshold limit. Snapshot of the ongoing cases as below:



Liquidation has commenced in over 18% cases undergoing CIRP, and Financial Creditors (FC) managed to realise 26% against the claims admitted for accounts that yielded resolution during Jul-Sep 18 quarter. Sub-optimal recovery provided for avenues to be explored towards modification in the regulatory framework.

Cases undergoing CIRP process have not resulted in expected recovery for the lenders, further the cases where resolution has been achieved are by way of debt reduction to the existing lenders. It is pertinent to note that stressed power assets are facing financial difficulties due to multiple factors including but not limited to coal availability, PPA tie ups, timely payment from DISCOMS etc. Unless these external factors are addresses at the time of resolution, CIRP process along with potential debt reduction might not result in desired results as it would not improve the operational profitability of the these projects.

What will be the mechanism towards resolution of overall operational aspects of stressed power plants along with debt reduction in the CIRP process?



4 DEVELOPING AN INSTITUTIONAL FRAMEWORK FOR RESOLUTION OF STRESSED ASSETS

Legal framework to minimize litigations/ scrutiny

- Lenders, either with or without the incumbent promoters, have been making efforts towards restructuring the stressed accounts. However, resolution either in the form of restructuring under the RBI circular or under CIRP is facing challenges.
- Any new law is prone to have teething troubles – but it is the judiciary's and the regulator's responsibility that this law is not abused by the unscrupulous to stall decisions. However, as recent cases have demonstrated, innumerable cases have been filed by litigious corporates/ investors and other stakeholders to stall the process.
- The above results in sluggish decision making as even commercials decisions made are now being subject to strict scrutiny ignoring merits of each case.

Question: How can we prepare a conducive environment for healthy restructuring to take place, keeping in mind interests and means of resolving bottlenecks with minimal ligations?

How can we streamline decision making process in banks?

Modifications to 12 February 2018 RBI circular for power sector

- The Reserve Bank of India (RBI) Circular issued on February 12, 2018 has made it mandatory for the stressed assets to adhere to strict timelines for resolution of stressed assets, failing which the entities will be referred under the CIRP process;
- The circular requires banks to implement a resolution plan within 180 days from the cut-off date of March 1, 2018 or date of default (whichever is later) for cases above INR 2,000 Cr;
- Should the government along with RBI propose a tailor made solution towards tackling the bad loan situation in power sector?
- Should stressed power assets be segregated into categories such as plants without PPAs, plants without FSA, under construction plants etc. to identify specific solution addressing key aspects towards sustainable resolution?

How do we roll-out regulatory framework towards providing tailor made solution for resolution of stressed power assets, keeping in view macro-economic factors including but not limited to coal availability, PPA tie ups, project approvals etc.

Insulating new investors by ring fencing liabilities and relaxation in taxation norms for stressed accounts upon takeover;

- Investors currently are looking at Indian stress market with great interest in order to infuse capital in sectors which did not attract enough traction previously;
- Further, even though there has been significant interest from both domestic and global investors/ funds, not many deals have seen completion due to ambiguity over contingent liabilities and taxation impact upon such investment involving reduction in debt;
- Should government/ regulatory authorities evaluate and consider giving certain benefits/ clarity on matters such as non-levy of taxation on the reversal of financial / operation liabilities?
- Should successful bidders be 'ring fenced' from unknown liabilities post acquisition and provided clarity on treatment of financial claims related to Corporate Guarantees/ Letter of Comfort etc.?
- Various regulatory authorities (i.e. ICAI, SEBI, MCA) may come out with guidance on how to deal with various compliances (including relaxation on the applicability of various accounting standards, listing requirements, publication of quarterly results etc.) during the CIRP period or for cases undergoing financial restructuring.

Question: How can we insulate the incoming investor from impact of contingent liability and taxation impact on the transaction?

Framework to be created for ring fencing the liability for the incoming investor to ensure their interest are protected on the investment made.

Insulating lenders from investigations/ litigations for taking commercial decision on stressed assets

- Lenders are being extra cautious while evaluating any restructuring plan/ deals prior to according their approvals. Accounts with merit might be missed out due lack of flexibility in the system;
- Compliance with all aspects of RBI guidelines and circulars leave little room for decision making by the lenders which might be a pose as a hindrance on in taking commercial decisions

Question: How can we insulate the lenders by not penalizing them for taking commercial calls basis merit of each account?

Mechanism on price discovery/ valuation might assist them in taking informed decisions.

Ease divestment decision making for lenders by benchmarking price of assets

- As per various reports, it may appear that banks are facing challenges in the form of low recovery for all assets undergoing restructuring due to inadequate mechanism for price discovery and difference between investors and lenders expectation on asset valuation;
- Presently, the financial creditors/ lenders are looking for upfront cash as part of the resolution plan for stressed assets. Roll over of sustainable debt along with equity upside as part of the resolution plan is given a lower weightage. This will result in (a) Decline in share of successful resolutions as a % of total number of stressed asset cases and b) Lower number of bidders for stressed assets;
- Time taken to arrive at final decision on divestment is longer than anticipated in most cases owning to price discovery on H1 basis. Additional time spent on transactions might shrink the interest of a potential buyer/ investor.

Question: What changes can be proposed in the divestment guidelines for the lenders in order to assist them in fast tracking the divestment decision, keeping in mind investor interest?

Regulator may consider empanelment of Investors/ Funds basis MoU in order fast track the divestment process.

Impact of IBC on power assets and timely resolution both under IBC and from NCLT/ NCLAT

- IBC was envisaged as a time bound process (i.e. maximum time allowed for CIRP is 270 days). However, there is no time bar on the time taken by NCLT to approve/ disapprove the plan in a time bound manner, which may defeat the purpose of resolution of stressed assets in a time bound manner and maximisation of shareholders value;
- Delays are also owing to bandwidth constrains of NCLT/ NCLAT;
- Should power assets which are already facing financial stress for past couple of years be subjected to another 6-9 months in finding suitable resolution under IBC?
- Do potential investors have complete clarity on the operational future of power plants? While they are keen on buying outstanding debt at a discount, visibility on future PPAs and fuel availability may be key towards providing comfort to the incoming investor;

Question: What can be a carve out structure/ process flow within the ambit of CIRP process tailor made for power sector assets?

Regulators might want to consider curing power assets completely outside the purview of IBC?

SUMMARY OF RECOMMENDATIONS OF HIGH LEVEL EMPOWERED COMMITTEE ON STRESSED THERMAL POWER PROJECTS

The Government of India had constituted a High Level Empowered Committee (HLEC) on 29th July 2018 to consider issues related to Stressed Thermal Power Projects. Subsequently, the HLEC held meetings on 31st August, 14th September, 28th September and 06th November 2018. HLEC has endeavoured, through its recommendations, to improve financial viability and operational efficiency of the stressed assets.

1. **Coal Allocation/Supply:**

   a. Coal Linkage for short term PPA

      Linkage coal may be allowed to be used against short term PPAs and power be sold through Discovery of Efficient Energy Price (DEEP) portal following a transparent bidding process.

   b. Coal Supply in case of termination of PPAs due to Payment default by DISCOMs:

      A generator should be able to terminate PPA in case of default in payment from the DISCOM with the facility to use linkage coal for short term PPAs for a period of maximum of 2 years or until they find and another buyer of power under long/medium term PPA, whichever is earlier.

   c. Procurement of bulk power by a nodal agency against pre-declared linkages:

      A nodal agency may be designated which invite bids for procurement of bulk may power for medium term for 3 to 5 years in appropriate tranches, against pre declared linkage by Coal India Limited (CIL).

   d. PSU to act as an aggregator of power

      NTPC can act as an aggregator of power, i.e., procure power through transparent competitive bidding process from such stressed power plants and offer that power to the DISCOMs against PPAs of NTPC till such time as NTPC's own concerned plants/units are commissioned.

   e. Increase in quantity of coal for special forward e-auction for power sector:

      Ministry Of Coal may earmark for power, at least 60 per cent of the e-auction coal, and this should be in addition to the regular coal requirement of the power sector.

   f. Linkage to be provided at notified prices without bidding

      The generator should be required to bid only once, for the procurement of PPA and linkage should be granted at notified price without any further bidding, to the extent of incremental coal production.

g. Non-accrual of short supplies of coal

If there is a shortfall in the supply of coal and it is attributable to the Ministry of Coal or Railways; such shortfall need not lapse and be carried over to the subsequent months up to a maximum of three months.

h. ACQ to be determined based on efficiency:

Upper ceiling for the ACQ/MW may be prescribed by the CEA on the basis of efficiency parameters and irrespective of the capacity and actual consumption of that plant, the coal may be supplied on that basis.

2. Facilitate sale of power of the stressed power plants

a. Retirement of old and inefficient Plants

Old and high heat rate plants not complying with new environment norms may be considered for retirement in a phased and time-bound manner at the same time avoiding any demand/supply mismatch

3. Regulatory & DISCOM payment issues

a. Mandatory payment of Late Payment Surcharge (LPS)

Late Payment Surcharge be mandatorily paid in the event of delay in payment by the DISCOM.

b. Payment Security mechanism for IPPs

PFIs providing the Bill Discounting facility may also be covered by TPA i.e. in case of default by the DISCOM, the RBI may recover the dues from the account of States and make payment to the PFIs.

4. Other recommendations

a. Cancellation of PPA/FSA/LTOA post NCLT scenario:

PPAs, FSA and LTOA for transmission of power, EC/FC clearances, and all other approvals including water, be kept alive and not cancelled by the respective agencies even if the project is referred to NCLT or is acquired by any other entity. All of these may be linked to the plant and not the Promoter.

b. Cancellation of PPA for non-compliance of COD :

In case there is a delay in the commissioning of a project, the DISCOMs may be advised not to cancel the PPAs signed with the Generator and the same be kept on hold for a certain period of time.

c. Low utilization of Gas plant capacity due to paucity of natural gas:

In order to revive gas based power plants, Ministry of Power and Ministry of Petroleum & Natural Gas may jointly devise a scheme in line with the earlier e-bid RLNG Scheme (supported by PSDF).[1]

[1]Source: Report of High Level Empowered Committee to address issues of Stressed Thermal Power Projects, November 2018

WORKSHOP ON REVIVING STRESSED ASSETS IN POWER SECTOR

Based on the above context, FICCI organised a workshop on Reviving Stressed Assets in Power Sector on 18th December 2018. The workshop started with a keynote address from by Mr S N Sahai. A brainstorming discussion was conducted in each session followed by summary in the form of set of recommendations of the panel.

Following esteemed panel was present for the sessions:

Session 1: Reconfiguring the Power Market

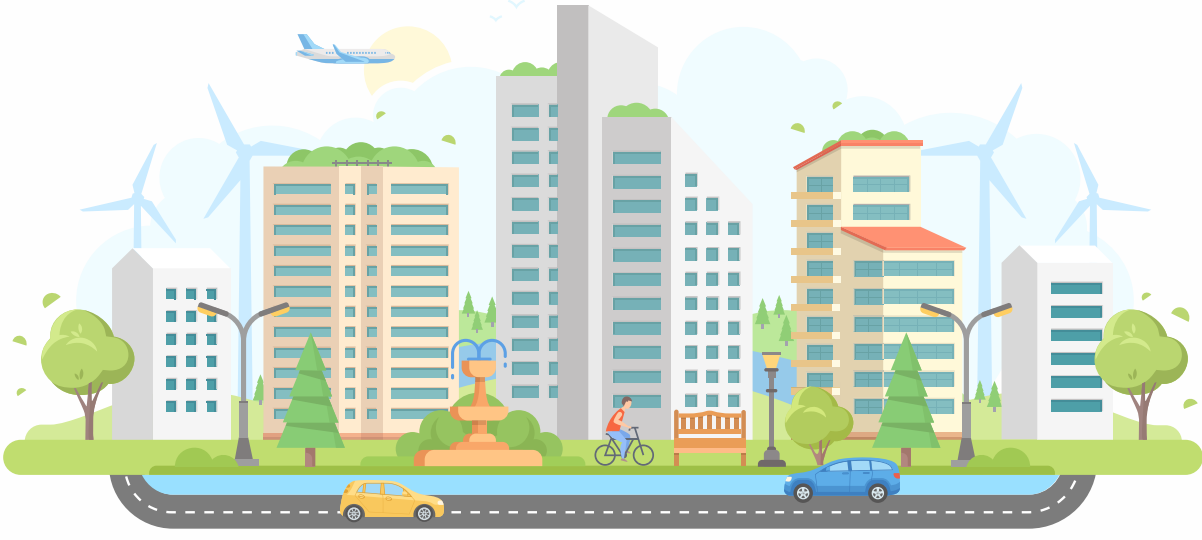
	Panellists – Session 1	
1.	Mr Prabir Neogi	Chairman, FICCI Power Committee and Chief Executive - Corporate Affairs
2.	Mr Somesh Kumar	Partner, Ernst & Young LLP
3.	Dr Somit Dasgupta	Member (planning), CEA
4.	Mr Ashish Basu	CEO- Energy Corporate (Coal), GMR Energy
5.	Mr Sanjeev Seth	CEO – India Power Corporation Ltd. (Formerly know DPSC Ltd.)
6.	Mr Rabi Chowdhury	MD Generation, CESC Ltd.
7.	Mr Satish Jindal	CEO (Power Trading), JSW Energy Ltd
8.	Mr Satyanarayan Goel	Managing Director and Chief Executive Officer, Indian Energy Exchange Ltd. (IEX)

Session 2: Financial Re-engineering to deal with Power Sector Stress

	Panellists – Session 2	
1.	Dr P.V. Ramesh	CMD, REC
2.	Mr R.K. Bansal	CEO, Edelweiss
3.	Mr Nitin Jain	Partner, Ernst & Young LLP
4.	Dr Fareed Ahmed	Executive Director, Punjab & Sind Bank
5.	Mr Rajat Agrawal	Managing Director, Blackrock
6.	Mr Manish Aggarwal	Partner, KPMG

Session 3: Developing an Institutional Framework for Resolution of Stressed Assets

	Panellists – Session 3	
1.	Ms. Archana Agrawal	Joint Secretary, Ministry of Power
2.	Mr Dinkar Venkatasubramanian	Partner, Ernst & Young LLP
3.	Mr Ashwani Kumar	Co-Chairman, FICCI Power Committee and Chief Executive Officer, IL&FS Ltd.
4.	Mr Sumant Batra	President, Society of Insolvency Practitioners of India
5.	Mr Amit Kapur	Parner, J.Sagar Associates
6.	Ms. Pooja Mahajan	Chandhiok & Mahajan
7.	Mr G. Subbarao	CEO – Group Corporate Affairs, GMR Energy Ltd.
8.	Mr Sameer Ganju	Adani Power Ltd.
9.	Mr S. Balaji	Head - Strategy & Policy Advocacy, GMR Energy Ltd.



DELIBERATIONS AND RECOMMENDATIONS OF THE WORKSHOP

Key deliberations in Session 1: Reconfiguring the power market	
De-regulation of power market	▪ Decide on suitable market design allowing adequate proportion of long term and short term contracts
Revisit the Procurement strategy of DISCOMs	▪ Demand projection are not met. Financing health of DISCOMs in poor shape. ▪ Portfolio of DISCOM (Long term / Medium / Short term) be needs re-design. ▪ Assess the procurement strategy of DISCOMs considering the changing energy mix and demand uncertainties ▪ PPAs should be strictly honoured by all parties. There should be penalty for deviation by DISCOM.
Accurate projections and indicators for the investors	▪ Market instruments like futures /forward markets to be established to signal investors on the sector growth for better investment planning ▪ Digital solutions and analytics may be used to more accurately understand the Long/medium/short term energy requirements
Powering gas based generation	▪ Examine short term / spot sales via proposed gas trading platform and price discovery mechanism for serving peaking and balancing through Ancillary markets

Recommendations of the Session 1:

- **De-regulation of power market**
  - Allow flexible PPA terms and enable market play for fine tuning contracts
- **Revisit the Procurement strategy of DISCOMs**
  - Efficiently assess and arrive at a mix of Long term and short term and develop a revised plan for optimum mix
- **Accurate projections and indicators for the investors**
  - Market instruments like futures /forward markets to be established to signal investors on the sector growth for better investment planning

- **Dispense with administered mechanisms**
  - Establish a coal market to replace e-auctions and establish framework for transparent price discovery
  - Explore commercial mining to generate additional coal

Key deliberations in Session 2: Financial Re-engineering to deal with Power Sector Stress	
Assets where resolution can be implemented	Conscious efforts need to be put to identify assets where sustainable resolution can be implemented Not all assets have same issues, hence resolution would also vary for each class of assets
Shift in thought process	Infrastructure assets have long gestation period and significant capital has been invested keeping in mind overall economic well being Thought process of lenders needs to be shifted from debt recovery towards overall resolution considering the interest of all stakeholders and to preserve value of assets While debt recovery is important, same cannot be done efficiently without keeping sustainable resolution in mind
Changes in source of funding	Power assets in the country have not been funded in the most efficient manner Ideally investment should have been done through dedicated infrastructure funds, who can absorb the impact of long gestation period of power assets The funding environment towards investment in infrastructure projects needs an overhaul, with an objective to induct bonds and infrastructure funds as the means of financing such projects.

Recommendations of the Session 2:

- **Identify and segregate power assets which can be salvaged**
  - Put aside power assets which either are under-construction/ dormant or do not have tied-up capacities and/ or coal linkage
- **Change in mindset amongst lenders is the need of the hour**
  - Move away from recovery mindset towards resolution mindset; which was always the original intent of IBC
- **Change in regulatory environment which allows lenders to lend and support distressed assets**
- **Develop long term capital market/ bond market**
  - Involvement of infrastructure funds/ pension funds/ insurance companies
  - Develop an enabling environment through policy changes to attract such funds

- **Create enabling environment for investment**
  - Lenders should be empowered to re-engage in the power sector to bridge any funding gap
  - Developed markets tend to finance infrastructure projects is largely funded from bonds/ pension funds to the extent of 90% - India can be a 75% bonds/ 25% banks market
- **Power sector can be revived provided**
  - There is certainty in revenue streams – PPAs are not terminated and offtake commitments are met by power procurer;
  - Coal linkages are not cancelled; supply ensured to IPPs with tied-up capacities;
  - Pass-through of increases in input costs;
  - Improving DISCOMs delinquencies – subsidy transfer through DBT or funding of such subsidies by the State governments
  - Ensuring DISCOMs are regular in making payment to IPPs – LCs mechanism

Key deliberations in Session 3: Developing an Institutional Framework for Resolution of Stressed	
Limitations of resolution process	IBC, a process to resolve assets / companies. However, IBC cannot work if issues impacting underlying sustainability of assets are not solved Process delays and litigations hindering timely resolution
Legal & lenders issues	Sanctity of existing concessions, say PPAs and FSAs post implementation of Resolution plan remains to be tested 100% Lender approvals under Feb 12 RBI Circular is a practical challenge Practical challenges of lenders to approve resolutions with hair-cuts in light of increased public scrutiny
Sector fundamentals	Lack of long term PPAs Inadequate visibility of coal linkages DISCOM delinquencies' – Renegotiation of PPAs, delayed payments as well as non-payment of Late payment surcharge Regulatory delay – Delays by regulator / APTEL in resolution of regulatory matters Market rules to be consistent for private and public / state owned companies
Issues specific to incoming investors	Lack of indemnities in respect of uncertainties/ contingent liabilities (coal availability, Land acquisition issues, Tariff disputes, etc) Funding of new debt and working capital Regulatory CAPEX & CAPEX for completing U/C projects

Recommendations of the Session 3:

- **Pre-packs**
  - Lenders could consider Pre-negotiated resolution plans (Pre-packs), to be approved by a certain threshold of lenders); promoter involvement to be discussed as relevant
  - Plan to be put in front of NCLT for confirmation within 30-60 days
  - Pre-packs amendments are being considered in IBC
- **Achieving consensus among lenders**
  - More feasible bilateral restructuring policy to be worked out (before the IBC option is actioned) – lender threshold (60% - 75% approvals to cram down the others) and lender mind set (to approve such viable plans) to change
- **Exploring avenues with States**
  - Acquisition of stressed assets by State Generators, a possible solution to be explored keeping into consideration the existing regulations including National Tariff Policy,
  - May solve long term PPA problem
- **Exceptions for power sector**
  - On creating exceptions – Precedence on exception of applicability of Section – 29A for MSME sector. However, any exception may have to be within the IBC framework (eg. Pre packs) and not as a substitute to IBC
  - Sectoral issues have to be resolved via a specific policy for the sector
  - Robust research required on finding precedents to support the IBC institutional mechanism



STATUS OF STRESSED POWER PLANTS UNDER 40TH PARLIAMENTARY COMMITTEE REPORT

S. No	Developer	Project	State	Operational Capacity (MW)	Status	Restructuring status*
1	Adani Power Maharashtra Limited	Tirora TPP Ph I & II	Maharashtra	3,300	Operational	Resolved
2	RKM Powergen Private Limited	Uchpinda TPP	Chhattisgarh	1,440	Operational	
3	Essar Power (Mahaan) Limited	Mahan	MP	1,200	Operational	
4	KSK Mahanadi Power Company Ltd.	Akaltara	Chhattisgarh	1,200	Operational	To be referred to NCLT
5	Damodar Valley Corporation	Raghunathpur TPP	W.B	1,200	Operational	Resolved
6	Coastal Energen Private Limited	Mutiara TPP	T.N	1,200	Operational	To be sold to ARC/ Investor
7	DB Power Limited	Baradhra	Chhattisgarh	1,200	Operational	Resolved
8	GMR Kamlanga Energy Limited	Kamalnga	Odisha	1,050	Operational	Resolved
9	Kanti Bijlee Utpadan Nigam Ltd.	Muzzaffarpur TPP	Bihar	610	Operational	Resolved
10	Adani	Korba West	Chhattisgarh	600	Operational	Referred to NCLT
11	GMR Energy (P) Limited	EMCO Warora	Maharashtra	600	Operational	
12	Madhucon	Simhapuri Energy Ltd.	A.P	600	Operational	
13	Adhunik Power & Natural Resources Ltd.	Mahadev Prasad TPP Ph-I	Jharkhand	540	Operational	Resolved: Sold to ARC
14	Jaypee Power Ventures Pvt Limited	Bara	U.P	1,980	Operational	Acquired by Resurgent Power

S. No	Developer	Project	State	Operational Capacity (MW)	Status	Restructuring status*
15	Jaypee Power Ventures Pvt. Limited	Nigrie	M.P	1,320	Operational	Being restructured under Samadhan scheme
16	Avantha Power (Jhabua)	Seoni Jhabua	MP	600	Operational	Re-bidding initiated by lenders
17	GVK Industries Limited (Goindwal Saheb)	Goindwal Saheb	Punjab	540	Restructuring	Resolved but under stress
18	Jaypee Power Ventures Pvt Limited	Bina	M.P	500	Operational	Being restructured under Samadhan scheme
19	GMR Chhattisgarh Energy Limited	Raikheda	Chhattisgarh	1,370	Operational	To be restructured
20	Jindal India Thermal Power Limited	Derang	Odisha	1,200	Operational	To be referred to NCLT
21	Lanco	Lanco Amarkantak Power	Chhattisgarh	1,320	NCLT	To be referred to NCLT
22	Lanco	Lanco Vidarbha TPP	Maharashtra	1,320	NCLT	
23	Lanco	Lanco Babandh Power	Odisha	1,320	NCLT	Referred to NCLT
24	Lanco	Lanco Anpara C	U.P	1,200	NCLT	To be referred to NCLT
25	RattanIndia Nasik Power Limited Ph-1	Nasik TPP Ph I	Maharashtra	1,350	Not Operational	
26	Ind Bharath Energy (Utkal) Ltd.	Utkal	Odisha	700	Not Operational	To be referred to NCLT
27	Vandana Vidyut Limited	Salora TPP	Chhattisgarh	270	Not Operational	Admitted to NCLT
28	East Coast Energy	Bhavanpadu	AP	1,320	Stalled	Admitted to NCLT
29	Athena Chattisgarh Power (P) Limited	Singhitarai	Chhattisgarh	1,200	Stalled	Admitted to NCLT
30	Essar Power (Jharkand) Limited	Tori	Jharkhand	1,200	Stalled	

S. No	Developer	Project	State	Operational Capacity (MW)	Status	Restructuring status*
31	Visa Power Limited	Deveri TPP	Chhattisgarh	1,200	Stalled	Admitted to NCLT
32	Monnet Power Company Limited	Malibrahmani	Odisha	1,050	Under Construction	Admitted to NCLT
33	SKS Power Generation (Chhattisgarh) Ltd.	Binjkote TPP	Chhattisgarh	600	Stalled	Acquired by Agritrade
34	KVK Nilachal Power (P) Limited	Nilachal	Odisha	350	Under Construction	Referred to NCLT



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