

Why India's new bankruptcy law is reshaping big business

Fresh insolvency rules are designed to redraft the rules of capitalism but are becoming bogged down in legal challenges

Simon Mundy in Mumbai YESTERDAY

After a nationwide manhunt, Neeraj Singal was finally tracked down and seized by fraud investigators at an upscale New Delhi hotel in 2014. Accused of involvement in the bribing of bankers, a charge Mr Singal denies, the scion of the Bhushan Steel empire was hauled off for questioning.

Within days he was released on bail and returned as the controlling shareholder of Bhushan, built by his father from a door hinge producer into one of [India's largest industrial groups](#). Four years on, the case remains stuck in India's overloaded courts system, with no sign of resolution.

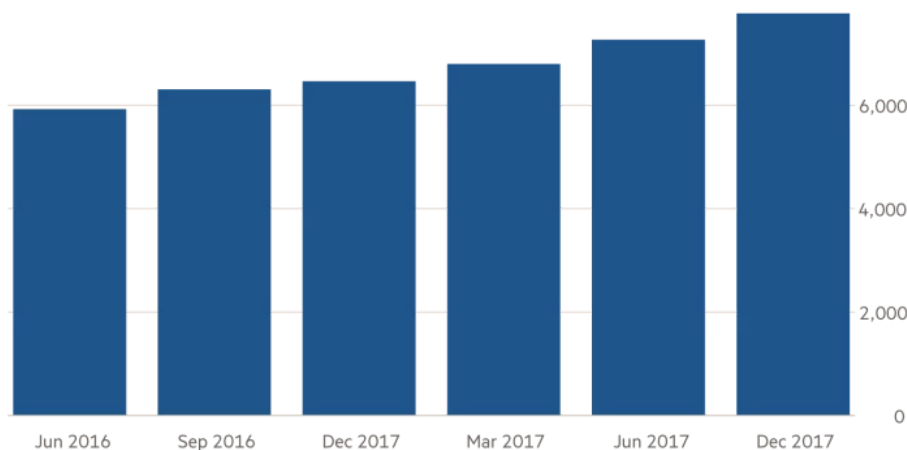
Mr Singal is one of a group of businessmen whose wealth grew exponentially after a series of liberalising reforms in the 1990s. There was a time when the "promoters", or controlling shareholders, of India's top companies were widely seen as beyond the law. The more controversial of these tycoons weathered criminal allegations and financial reverses while keeping a firm grip on some of India's biggest businesses.

"No big businessman had been put behind bars, and they knew they could ward off their lenders through very lengthy legal processes," says Prabodh Agarwal, chief financial officer at IIFL Holdings, a financial group. "They were always going to stay in charge."

Yet Mr Singal has just had his prized steel business, with an annual capacity of 5.6m tonnes but debts of nearly \$7bn, torn from his grasp. It is the biggest scalp so far in a [major overhaul of India's bankruptcy system](#), widely seen by analysts as a redrafting of the rules of capitalism in the country.

Bad loans at state-controlled Indian banks

Rupees (bn)



Source: Credit Suisse

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The new law promises to deal swiftly with failing companies, removing the owners and blocking them from trying to buy back the businesses out of bankruptcy. Its architects set a nine-month time limit for the entire process — making it on paper one of the world's fastest bankruptcy regimes, and striking a marked contrast with the [sluggish pace](#) of other Indian legal processes.

Hopes of swift progress have, however, been undermined by a series of legal challenges that have prolonged the first cases, among them Bhushan Steel. Critics argue that the process's strict rules on eligibility restricts the pool of available buyers for troubled assets.

Yet senior figures in government and the business community argue that this will prove one of India's most important reforms — ushering in a new era of accountability for promoters and

speeding up national development by putting vital industrial assets under competent management — critical to the economic ambitions of the government of [prime minister Narendra Modi](#).



Sanjeev Gupta, whose Liberty House Group is bidding for Indian assets © FT montage; Jeremy Sutton-Hibbert

“There are 100 families that account for everything — it’s a tiny elite,” says Sanjeev Sanyal, principal economic adviser in India’s finance ministry. Mr Modi “is carrying out the equivalent of the French Revolution,” he adds. “The insolvency and bankruptcy code is the equivalent of the guillotine.”

From western Gujarat state to tribal areas of Odisha in India’s east, the country’s steel companies were at the vanguard of a huge wave of debt-fuelled corporate investment over the past decade, betting on rising demand in a fast-growing economy. Indian steelmakers invested about \$40bn in new capacity between 2007 and 2016, according to Kotak Institutional Equities, only to be hit by falling prices as Chinese rivals ramped up exports.

Several steel companies are now among the major cases in the first wave of bankruptcy hearings under the new law and have attracted powerful bidders from steel baron Lakshmi Mittal of European steel giant ArcelorMittal to mining tycoon Anil Agarwal, and from the [Tata conglomerate](#) to the fast-rising [UK entrepreneur Sanjeev Gupta](#).

This contest will alter the competitive landscape in a vital sector, as the government pushes for a near tripling of steel output to 300m tonnes by 2030.

But the impact of the law goes well beyond the steel sector. It will have far-reaching implications for the creaking balance sheets of India’s state-owned banks, saddled with \$116bn of [non-performing loans](#). It also signals a much tougher operating environment for the captains of industry, amid a broader crackdown on corporate corruption promised by Mr Modi.



The downfall of the tycoon Vijay Mallya after the failure of Kingfisher Airlines gripped the Indian media © FT montage; AP; Reuters

“These companies have defined the promoters’ identities,” says Amit Tandon, co-founder of Mumbai-based Institutional Investor Advisory Services. “This is like a part of them being surgically removed.”

When India’s parliament passed the new insolvency and bankruptcy code in May 2016, the country was gripped by the flight to London of [drinks tycoon Vijay Mallya](#), the self-proclaimed “king of

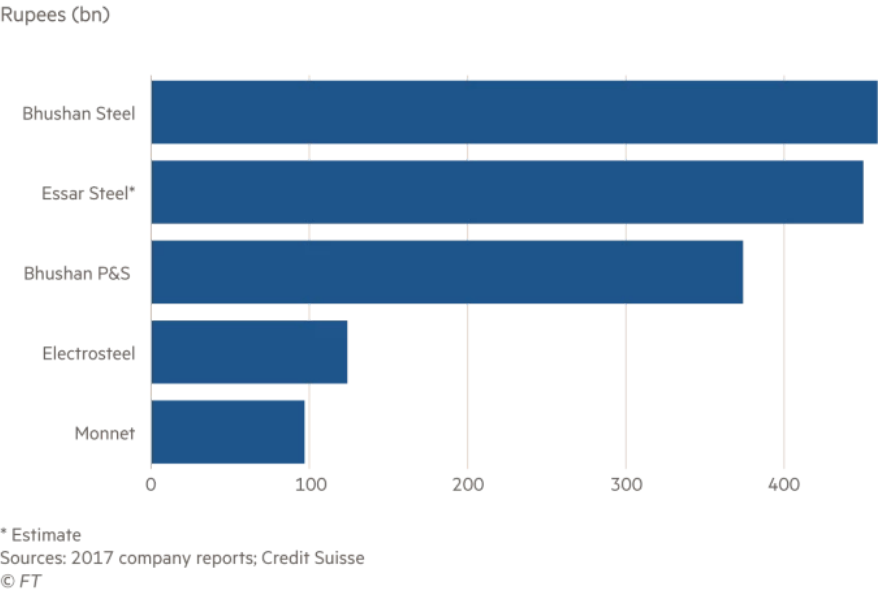
good times”. His sudden departure followed the failure of his foray into aviation, with Kingfisher Airlines defaulting on debt of \$1.3bn in 2012.

The fiasco helped expose the unhealthy relationship that had developed between India’s state-owned and private banks and major corporations, with the latter securing loans for risky projects, and persuading their lenders to defer repayment indefinitely when those projects failed. Critics argued that India’s dysfunctional insolvency system incentivised bankers to keep their ailing borrowers in business rather than force bankruptcy proceedings.

According to World Bank data published before the new code was introduced, creditors typically had to write off three quarters of the debt in Indian insolvency cases, which on average took more than four years to resolve — compared with a year or less in the best-performing nations.

“There were multiple laws that a promoter could take shelter under, and the banks had very little enforcement capability,” says Abizer Diwanji, financial services head for EY in India. “By the time winding up came it could have been 10 or 15 years in some cases.”

Indian steel producers’ debt



Under the new law any creditor owed as little as Rs100,000 (\$1,400) can file an insolvency petition against a defaulting company. If this is accepted by a court, the management must be removed immediately, and the company liquidated within nine months if no buyer can be found.

Lenders were slow to make use of the new system, so India’s central bank decided to force their hand. Last July it ordered banks to launch insolvency proceedings against 12 of the biggest corporate defaulters. Five were steel companies, among them Mr Singal’s Bhushan Steel.

Almost 10 months on several of these vital test cases are bogged down in bitter lawsuits underscoring the difficulty of the reform process. The highest-profile is that of Essar Steel — once [the prize asset](#) of the billionaire brothers Shashi and Ravi Ruia, who rose from traders in the port city of Chennai to rank among the most powerful Indian tycoons.



Shashi and Ravi Ruia with their steel plant in Hazira. The brothers are struggling to maintain their grip on their Essar empire © FT montage; handout
Over more than two decades, Essar built its Hazira steel plant on the shore of the Arabian Sea in Gujarat into one of India's largest — only to struggle with repayments on its debt of nearly \$7bn. When the company was pushed into insolvency, the Ruia's involvement with it looked at an end — particularly after the government tightened the law in October, to bar any owner of a defaulting company from the bidding process.

But in their dogged effort to stay involved, the Ruia's are putting the law to its sternest test yet. One of the bids filed before the February 12 deadline was from Numetal Mauritius, a consortium led by Russia's VTB Bank, a long-time Essar financier, alongside a trust controlled by a Ruia family member.

There was a second bid, from ArcelorMittal. "This law opens up a lot of opportunities," says Mr Mittal's son Aditya, the company's chief financial officer. "It's created a process to deal with assets that otherwise could remain struggling for a long period."

Both bids were rejected by the administrator: Numetal's because of its association with the Ruia's, and ArcelorMittal's because of a large minority stake it had until recently held in Uttam Galva, another defaulting steelmaker. Both appealed, and a court has delayed a final decision until late July at the earliest.

This has pushed Essar's resolution process far beyond the strict 270-day limit. And it has kept alive the possibility that the Ruia's — who have previously clung on to companies by persuading their bankers to take writedowns — could ride out the storm again.



Aditya Mittal, chief financial officer of ArcelorMittal © FT montage; Bloomberg

Such an outcome "would show that there has been a change for those who are less powerful than the Ruia's, but not for the really powerful guys," says a senior figure in Mumbai's financial sector.

While some owners fight to remain involved in their failing enterprises, the new bankruptcy code has opened opportunities for healthier companies.

Despite its rocky performance in the UK, the domestic business of Tata Steel — a key unit of India's largest conglomerate by sales — has remained profitable. As the insolvency process got under way, it decided to reunite, under the Tata banner, the Bhushan steel empire that was divided by a 2011

family split. Creditors selected Tata as the winning bidder for both Neeraj Singal's Bhushan Steel and Bhushan Power & Steel, controlled by his estranged brother.

While Tata has now taken control of Bhushan Steel, Mr Singal is still pursuing a last-ditch attempt to block the takeover. And its bid for his brother's Bhushan P & S faces a rival offer from an expatriate entrepreneur who sees in the new bankruptcy law a chance to return to India. Punjab-born Sanjeev Gupta has spent most of his life in the UK and is a prominent figure in its troubled steel industry, through his fast-growing Liberty House group.

Recommended Although it missed the deadline to bid for Bhushan P & S, Liberty went to court to argue that its bid should be considered. An argument that the court endorsed last month by reopening the race, a decision that broke the 270-day resolution process for Bhushan P & S.

The implementation of the new process amounts to "organised chaos", says Mr Gupta, who is also seeking to buy a shipyard and an automotive parts company under it. "For much bigger transactions in the US or Europe, I was spending a fraction of . . . the time I'm spending on these transactions," he says.

Delays have also hit two other big steel cases: the acquisition of Electrosteel Steels by Mr Agarwal's London-listed [Vedanta Resources](#), and that of Monnet Ispat by local rival JSW Steel.

Despite the teething problems, the new system has already had a major impact on corporate India, says Sanjay Nayar, India head for the private equity firm KKR. "It will take some time to clean the system, but this is a great reform and it's getting smoothed out with every case. Clearly the balance of power has shifted."

Additional reporting by Amy Kazmin in New Delhi

Telecoms Ambani falls short in sealing Reliance settlement

When Anil Ambani met reporters on December 26 last year, he conveyed a sense of triumph. "I am really happy and I should say very, very proud that we have been able to achieve this," he said. One of India's best-known businessmen was referring not to the success of a new business venture, but to an agreement with restive creditors of his ailing telecoms business Reliance Communications.

RCom's case has exemplified what is seen as an important side effect of India's new bankruptcy code, pushing company owners to take the initiative in resolving their debts rather than being forced into insolvency proceedings. Yet it now appears that Mr Ambani's efforts were insufficient to avoid that outcome.

Having fallen behind Bharti Airtel and Vodafone, RCom took a further hit in the mobile price war launched in 2016 by Reliance Jio, controlled by Mr Ambani's brother Mukesh, with whom he had split their father's Reliance empire in 2005.

RCom's initial gambit was a merger with another struggling operator, Aircel. But that deal was abandoned in October after delays, prompting China Development Bank — RCom's biggest creditor — to file a petition seeking insolvency proceedings. CDB withdrew its case after RCom's announcement, two days after Mr Ambani's December press conference, that it would sell most of its [core assets to Jio](#).

But Sweden's Ericsson was still pursuing insolvency action against RCom over \$150m owed for management services — and on May 16 a [court accepted its petition](#) to begin bankruptcy proceedings.

RCom appealed against the verdict, but Ericsson's pursuit has already delayed the asset sale to Jio, which was scheduled to be completed by March. If RCom's assets are sold, the Ambanis' fraternal relationship could threaten the Jio takeover, given rules against bids from parties related to the outgoing owner.