



Issues in IBC

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*This article is based on **"Bankruptcy cases must account for the time value of money"** that appeared in The Livemint on 7th August 2019. It talks about issues in Insolvency and Bankruptcy Code and way forward.*

Recently, the government has extended the final deadline for resolution of insolvency and bankruptcy cases from the **current 270 days to 330 days**. Another 60 days have been given so that courts can settle last-minute litigation. **Since the new 330-day deadline is not binding on courts, the new deadline may not be viable.**

As of 2015, **Insolvency resolution in India took 4.3 years** on an average against 1 year in the United Kingdom and 1.5 years in the United States of America . Sooner the money comes back into the banking system, the sooner it can be re-deployed it into the economy. Thus, **to expedite the recovery of loans Insolvency and Bankruptcy Code (IBC) was enacted.**

Impact of IBC

- IBC is a vast improvement on the two earlier laws legislated to recover bad loans —the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB).
 - Before IBC, resolution processes took an average of 4-6 years, after the **enactment of IBC, they came down to 317 days.**
 - **Recoveries are also higher: 43% after the IBC, against 22% before it.**
- However, the out of 12 big default cases referred to the National Company Law Tribunal (NCLT) in early 2017 by the Reserve Bank of India, **not even half have been resolved yet.**
 - Many big cases, involving thousands of crores, including Essar Steel and Bhushan Power, have exceeded the 270-day resolution limit by a mile, crossing **two years.**
 - This has forced the government to set a new 330-day limit, which will include

time taken in addressing legal challenges.

- IBC leads to **'value destruction' of profitable businesses.**
 - Creditors are likely to prefer selling off the firm's assets to cut their losses rather than evaluate the risk of letting the company run its operations.
 - The assets of such a firm are more **valuable if kept together as a functioning unit.**

Reasons for the Delay in the IBC Resolution Process

- **Slow judicial process** in India allows the resolution processes to drag on, this was the same reason for slow recovery under SICA or RBBD.
- **Lack of capacity:** There are inadequate benches to hear and resolve disputes quickly at the **National Company Law Tribunal (NCLT)**.
- These factors lead to the **erosion of public money.**
 - For example: If inflation is 4%, every year's delay effectively reduces the recovery by the same proportion.
 - The time value of delays in the Essar case, assuming an inflation rate of 4%, and where the final bid is worth over ₹42,000 crore, is close to ₹5 crore a day.

Way Forward

- The government may ask the Supreme Court to frame rules to ensure that NCLT judges are accountable for delays and set up a system to evaluate the efficiency of judges in the bankruptcy courts.
- Non-judicial commercial experts in NCLT should be increased and more NCLT benches to be created.
- IBC law must **differentiate between "Financially distressed" firms and "Economically distressed" firms.**
 - A financially distressed firm should be sustained either by **restructuring it among existing claimants** or by **selling it to new investors.**
 - In the event of a restructuring of a financially distressed firm, a new professional board should be put in place.
 - If the company is turned around the losses of the banks would be far lower than through the distress sales that are now taking place.
 - As banks are getting 30-40% of their outstanding dues through the NCLT route.
 - This is a win-win situation for all stakeholders.
 - The company which is economically distressed should be liquidated.

The old saying that justice delayed is justice denied is even more relevant for IBC cases, the fundamental thing that needs to change at the judicial end, including the quasi-judicial part of the NCLT appellate processes, is that judgements must be delivered in commercial time

and not judicial time.

Drishti input

IBC is a big leap compared to previous insolvency laws, however, a lot more needs to be done for its successful implementation. Comment.
