



Delays in Corporate Insolvency

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Why in News

Recently, the **Parliamentary Standing Committee on Finance** has noted the delays in corporate insolvency under the **Insolvency and Bankruptcy Code (IBC), 2016**.

- It has called out the Ministry of Corporate Affairs (MCA) on persistent vacancies in **National Company Law Tribunals (NCLTs)**.
- Earlier, the government introduced the **Insolvency and Bankruptcy Code (Amendment Bill), 2021** in the Lok Sabha which introduces an alternate insolvency resolution process for **Micro, Small and Medium Enterprises (MSMEs)** called the **Pre-packaged Insolvency Resolution Process (PIRP)**.

Insolvency and Bankruptcy Code

- It is a reform enacted in 2016. It **amalgamates various laws relating to the insolvency resolution of business firms**.
- It **lays down clear-cut and faster insolvency proceedings** to help creditors, such as banks, recover dues and prevent bad loans, a key drag on the economy.

Key Words

- **Insolvency:** It is a situation where **individuals or companies are unable to repay** their outstanding debt.
- **Bankruptcy:** It is a situation whereby a **court of competent jurisdiction has declared a person or other entity insolvent**, having passed appropriate orders to resolve it and protect the rights of the creditors. It is a legal declaration of one's inability to pay off debts.

Key Points

- **Major Concerns:**

- **Vacancies in NCLT:**

The combined strength of the current NCLT benches around the country is currently **only 29 members against the total sanctioned strength of 63 members.**

- **Delays in Approvals:**

- The committee noted that **delays in the admission of insolvency cases by NCLTs** and the **approval of resolution plans** were the key reasons behind the non-adherence of timelines under the IBC.
- Delays on the part of the NCLT in admitting cases **allowed defaulting owners the opportunity to divert funds** and transfer assets.

- **Decisions Challenged:**

A number of high profile cases under the IBC saw multiple decisions being challenged by stakeholders. Many of these **appeals are frivolous attempts to slow down insolvency proceedings.**

- **Delayed Plans:**

Cases in which creditors have **evaluated resolution plans submitted after the specified deadline** would disincentive bidders from bidding within prescribed timelines and that such plans also contribute to delays and value destruction.

- **Recommendations:**

- **Timely Action:**

NCLT should be required to admit a defaulting company into insolvency proceedings and hand over control to a resolution professional within 30 days.

- **Ministry should take Responsibility:**

The MCA, as the nodal ministry, should **take greater responsibility to streamline the operational processes in NCLT/National Company Law Appellate Tribunal (NCLAT)** while constantly monitoring and analysing the workflow, disposal and outcomes with regard to resolutions, recoveries, time taken, etc.

- **Amendment to IBC:**

The IBC be amended to provide MSMEs, which are operational creditors under the IBC, with **greater protection in the current economic environment.**

- The IBC currently **prioritises financial creditors over operational creditors.**
- **Financial creditors** are those whose relationship with the entity is a pure financial contract, such as a loan or a debt security.
- **Operational creditors** are those whose liability from the entity comes from a transaction on operations.

- **About:**

- The Central Government constituted National Company Law Tribunal (NCLT) under **section 408 of the Companies Act, 2013 in 2016.**
- It has been set up as a **quasi-judicial body to govern the companies registered in India** and is a successor to the Company Law Board.
- It **consolidates all powers to govern the companies registered in India.**

With the establishment of the NCLT and NCLAT, the **Company Law Board under the Companies Act, 1956 has now been dissolved.**

- It is bound by the rules laid down in the **Code of Civil Procedure** and is **guided by the principles of natural justice**, subject to the other provisions of this Act and of any rules that are made by the Central Government.
- The Tribunal and the Appellate Tribunal **has the power to control its own procedure.**

- **Appeals:**

Appeal from order of Tribunal **can be raised to the NCLAT.** Appeals can be made by any person aggrieved by an order or decision of the NCLT, **within a period of 45 days** from the date on which a copy of the order or decision of the Tribunal is received by the Appellant.

National Company Law Appellate Tribunal

- **About:**

- The NCLAT was **constituted under Section 410 of the Companies Act, 2013** to hear appeals against the orders of the National Company Law Tribunal (NCLT).
- It is also the **appellate tribunal for orders passed by the NCLT(s) under Section 61** of the IBC, 2016, and for orders passed by the **Insolvency and Bankruptcy Board of India (IBBI)** under Sections 202 and 211 of the IBC.

- **Appeal:**

Any person aggrieved by any order of the NCLAT may file an **appeal to the Supreme Court.**

Source: IE