



## Delay in Resolutions under IBC

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A number of hurdles have delayed the debt resolution at Essar Steel India Ltd. under the Insolvency and Bankruptcy Code (IBC).

### Resolution Process under IBC

- The IBC requires a **corporate insolvency resolution process (CIRP) to be completed in 180 days**, which can be **extended by another 90 days** to a maximum of 270 days.
- **Status:** As on 31<sup>st</sup> March 2019, out of total 1143 cases that were undergoing resolution under the IBC, a total of 548 cases exceeded the 180-day deadline.

### Reasons Behind Delay in the Resolution Process

- **Burdening the NCLT** and the appellate tribunals with matters relating to the Companies Act and Competition Act along with the IBC is probably one reason.
- **Limited number of Information Utilities (IUs) in the ecosystem.** The IUs provide access to credible and transparent evidence of default, which helps in expediting the process of ascertaining a default for initiating the resolution process. As of now, there is **only one information utility - National eGovernance Services Ltd** - which was registered with Insolvency and Bankruptcy Board of India (IBBI) in September 2017.
- **Lack of appropriate bids** to takeover companies, differences among the lenders, **legal challenges** posed by existing promoters and operational creditors are among the other reasons behind delay in resolutions under the Insolvency and Bankruptcy Code (IBC).

### IBC vs DRT/SARFAESI

Financial Creditors have witnessed a **recovery rate of 43% under IBC** resolution process. In the existing regime of **DRT/SARFAESI** (Debt Recovery Tribunal/Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest), **banks recover less than 20 % of the stuck loans** with significant delays.

## Suggestions

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- Digitisation of the NCLT platform, proactive training/on-boarding of judges, lawyers and other intermediaries will help in the effective implementation of the code.
- **Pre-packed insolvency arrangements** that is allowing the sale of a business (subject to the approval of a majority of the creditors) as a going concern prior to the appointment of an administrator or insolvency professional, can be considered.

**Note:** The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) empowers Banks/Financial Institutions to recover their non-performing assets without the intervention of the Court.