



EDITORIAL: THE HINDU

GENERAL STUDIES 3: ECONOMY

DATE: 20.01.2025

GENERAL STUDIES 2: GOVERNANCE

RECASTING INSOLVENCY RESOLUTION

KNOW THE BASIC:

Insolvency and Bankruptcy Code 2016 (IBC 2016)

What is IBC 2016?

1. **Legislation:** Enacted in 2016 based on the T.K. Vishwanathan Committee Report.
2. **Purpose:** Consolidates laws related to insolvency resolution for businesses and firms.
3. **Objective:** Streamlines insolvency procedures to help creditors recover dues and reduce bad loans.
4. **Nickname:** Known as the "exit law of India."

Key Concepts

- **Insolvency:** Inability to repay outstanding debt obligations.
- **Bankruptcy:** A legal status declared by a court for insolvent entities, enabling resolution and creditor protection.

Institutional Mechanism of IBC

1. **Insolvency Professionals (IPs):** Licensed professionals managing insolvency resolution processes and debtor assets.
2. **Insolvency Professional Agencies (IPAs):** Certify IPs and enforce their code of conduct.
3. **Information Utilities (IUs):** Maintain financial information on debts for creditors.
4. **Adjudicating Authorities:**
 - **NCLT (National Companies Law Tribunal):** Handles companies' insolvency cases.
 - **DRT (Debt Recovery Tribunal):** Handles individual insolvency cases.
5. **Committee of Creditors (CoC):**



- Lenders' committee making decisions on resolution plans.
- Requires at least **66% approval** for decisions.

6. Insolvency and Bankruptcy Board of India (IBBI):

- Regulates IPs, IPAs, and IUs.
- Includes representatives from RBI and ministries (Finance, Corporate Affairs, and Law).

Insolvency Resolution Process (IRP)

1. **Initiation:** Triggered by debtor or creditor filing before NCLT.
2. **Appointment:** NCLT appoints an IP to administer the process.
3. **CoC Formation:** Financial creditors are identified, and CoC is constituted.
4. **Resolution Plan:**
 - CoC prepares a plan for debt restructuring or liquidation.
 - Plan approval requires a **66% majority** vote in CoC.

Insolvency and Bankruptcy (Amendment) Act, 2021

1. **Pre-packaged Insolvency Resolution Process (PIRP):**
 - Introduced for MSMEs with defaults up to ₹1 crore.
 - Offers a quicker and less expensive resolution process.

Introduction to the IBC and Its Significance

- **Overview of the IBC:**
 - Enacted in 2016, the Insolvency and Bankruptcy Code (IBC) is a critical legal framework designed to resolve insolvency cases in a structured and time-bound manner.
 - It replaced a fragmented system, consolidating laws related to insolvency and bankruptcy.
- **Initial Achievements:**
 - Improved India's global business reputation by addressing non-performing assets (NPAs) and defaulters effectively.



- Provided a legal tool for financial creditors, operational creditors, and stakeholders to address insolvencies.
- **Emergence of Challenges:**
 - As the law matured, issues such as delays, capacity constraints, and procedural inefficiencies surfaced.
 - The Supreme Court's observations in the Jet Airways case highlighted these systemic challenges.

Challenges in the Institutional Framework

1. Overburdening of Tribunals

- **Dual Responsibilities of NCLT/NCLAT:**
 - The National Company Law Tribunal (NCLT) and its appellate body, the National Company Law Appellate Tribunal (NCLAT), manage both insolvency cases under the IBC and matters under the Companies Act.
 - This dual role results in a significant backlog, delaying resolutions and increasing pendency.

2. Structural Limitations of NCLT

- **Outdated Tribunal Framework:**
 - The NCLT structure, conceptualized in 1999 and implemented in 2016, does not align with the economic complexity of the present day.
 - With only 63 sanctioned members working across multiple benches, the tribunal is unable to handle the volume and complexity of cases effectively.

3. Operational Inefficiencies

- **Inadequate Functioning of Benches:**
 - Certain NCLT benches do not operate for the full working day.
 - Members are frequently assigned cases from other benches, disrupting the continuity and efficiency of proceedings.
- **Rising Resolution Timelines:**
 - The average time for insolvency resolution increased from 654 days in FY2022-23 to 716 days in FY2023-24, far exceeding the 330-day limit prescribed by the IBC.



Deficiencies in Domain Expertise and Integrity

1. Lack of Specialized Knowledge

- Tribunal members often lack expertise in insolvency law, finance, and corporate restructuring, making it challenging to handle complex cases effectively.
- The Jet Airways case underscored the need for tribunal members with specialized knowledge.

2. Bureaucratic and Procedural Hurdles

- **Ineffective Case Listings:**
 - Absence of a reliable system for urgent case listings creates delays.
 - Excessive discretion exercised by registry staff disrupts case management.
- **Threats to Judicial Integrity:**
 - Instances of defiance of Supreme Court orders by tribunal members weaken the credibility of the judiciary.

Procedural Inefficiencies

1. Mandatory Hearings

- Requiring hearings for all applications, including routine progress reports, unnecessarily clogs the system and delays outcomes.

2. Limited Use of Alternative Dispute Resolution (ADR)

- Alternative mechanisms such as mediation and arbitration remain underutilized, adding to the caseload of tribunals.

Proposed Solutions for Reform

1. Mandatory Mediation Mechanism

- Instituting mandatory mediation before the initiation of insolvency proceedings can reduce the burden on tribunals and encourage out-of-court settlements.

2. Specialized Benches

- Establishing dedicated benches for specific case types, such as large corporate insolvencies or cross-border insolvencies, can enhance expertise and efficiency.

3. Strengthening Tribunal Infrastructure



- Increasing the number of courtrooms and ensuring the availability of adequately trained and permanent staff are critical for smooth tribunal operations.

Adopting a Hybrid Model

- Combining judicial expertise with domain-specific knowledge can address the complexities of insolvency cases effectively.
- Experts in finance, corporate governance, and restructuring could be included as members or advisors in the decision-making process.

Conclusion

- India's insolvency regime must evolve to become a catalyst for economic growth rather than merely a mechanism for debt resolution.
- Reforms in institutional capacity, procedural efficiency, and infrastructure are critical for restoring confidence in the system.
- A robust and efficient insolvency framework is essential to attract foreign investments and strengthen India's economic foundations.

Source: <https://www.thehindu.com/opinion/op-ed/recasting-insolvency-resolution/article69115872.ece#:~:text=Above%20all%2C%20India's%20insolvency%20regime,a%20bold%20reimagining%20is%20now.>