

Issues with the Insolvency and Bankruptcy Code (IBC)

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Context: India's G20 Sherpa, Amitabh Kant, recently called for reforms to improve India's insolvency resolution framework by reducing delays and increasing creditor recovery. This aligns with growing calls for enhancing the effectiveness of the Insolvency and Bankruptcy Code (IBC).

Background: In addition to Amitabh Kant, other key stakeholders, including RBI Governor Shaktikanta Das and the Parliament's Standing Committee on Finance, have raised concerns about the current inefficiencies in the IBC and emphasized the need for reforms.

Reforms and Issues in the Insolvency and Bankruptcy Code (IBC):

- **Introduced in 2016**, the IBC was designed to streamline the rescue and reorganization of distressed companies through a time-bound process, with a primary focus on keeping them as going concerns.
- Despite its success in promoting credit discipline, the IBC faces major challenges, including **lengthy delays, a backlog of cases, and significant creditor haircuts**, which have hindered its effectiveness.

Delays in the Resolution Process:

- The average time for case resolution at the National Company Law Tribunal (NCLT) has increased to **716 days in FY24**, up from **654 days in FY23**, compared to the target timeline of **330 days**.
- The Standing Committee on Finance (Feb 2024) pointed out the negative impact of these delays on the value of stressed assets.
- RBI Governor Shaktikanta Das also raised concerns over delays in case admission, with the average time to admit cases increasing from **468 days in FY21** to **650 days in FY22**, resulting in a loss of asset value.

Impact of Delays on Debt Recovery:

- There is a clear inverse relationship between the time taken for resolution and recovery rates:
 - Resolutions within **330 days** see a **49.2% recovery** of admitted claims.
 - Resolutions between **330-600 days** have a **36% recovery** rate.
 - Resolutions beyond **600 days** yield just **26.1% recovery**.
- Extended delays also lead to a growing number of cases heading towards liquidation, with **44% of closed cases** ending in liquidation as of March 31, 2024.

Steep Haircuts for Creditors:

- Ravi Mital, Chairperson of the Insolvency and Bankruptcy Board of India (IBBI), noted that creditors often approach the IBC too late, with cases losing more than **50% of their value** before admission.
- While **84% recovery** is achievable based on fair value, delays significantly reduce this figure.

Legal and Procedural Challenges:

- The NCLT often takes several months to admit cases, despite the legal requirement to do so within **14 days**.
- A **2022 Supreme Court ruling** clarified that the 14-day admission timeline is procedural, allowing NCLT to consider other factors, which has contributed to further delays.

Key Concerns and Recommendations:

- **Second-generation reforms** are needed to address procedural inefficiencies, personnel shortages, and judicial bottlenecks.
- Clarification of key legal principles, particularly around the **Committee of Creditors' commercial judgment** and **priority of claims**, is essential.
- Ensuring **timely case admission** is crucial to preventing value erosion and allowing the IBC to fulfill its goal of restructuring distressed assets rather than forcing liquidation.

These reforms are critical to making the IBC a more effective tool for resolving insolvency and protecting the interests of creditors.

