

Performance of IBC so far



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The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted with a view to introduce a modern regime to effectively resolve debt situations for both corporate and individual persons. So far, only the provisions of the IBC which deal with the insolvency of corporations have been notified and put in force. The performance of IBC has been a matter of public debate as to whether it has been successful or not in achieving its objectives

Among others, the IBC, in its preamble,¹ starts by emphasising resolution in a time-bound manner and maximisation of the value of assets as its objectives.

In this context, the resolution not only means arriving at a resolution plan, but a case can also be considered resolved even when it goes to liquidation. The IBC regime allows the market to choose between resolution through a resolution plan or liquidation. The outcome is better if the company is rescued and maintained as a going concern, if the process starts and concludes in a timely fashion.

Time-bound resolution

Timely resolution is of utmost importance in insolvency cases because the more time it takes, the lesser is the possible recovery from an insolvent company on account of depreciation of assets and expiry of certain intangible assets like leases, licenses, Intellectual Property Rights etc. Before the introduction of the IBC, it took more than 4 years on average for a case relating to insolvency to be concluded, which came down to 1.6 years by 2019², as per the latest available data provided by the world bank.³

The IBC provides that each case must be decided within a period of 180 days, which is extendable by another 90 days.⁴ Thus, ideally, any case under the IBC should be decided in 270 days. A further 60 days can be allowed for legal delays making it a total of maximum 330 days.

The Insolvency and Bankruptcy Board of India (IBBI) also periodically releases data which pertains to insolvency cases across the country. As per this the cases which are still underway, around 66% have already exceeded the statutory time limit of 270 days.⁵

Hence, even though there is a remarkable improvement in the amount of time taken for an insolvency case to be decided under the IBC regime when compared to the previous regime, it is certainly not a desirable outcome when the majority of the cases filed under the law, exceed the time limit which has been envisaged by the policymakers.

The situation with the IBC regime is that even though it has improved from the previous regime, there is still a lot of uncertainty as regards the time period in which the case

will eventually be concluded because it may well conclude in the statutory time period or may not be concluded even in twice that time period.

Some finer analysis of the data leads us to a silver-lining that the condition is certainly improving with time. The data from the past 6 quarters has been laid out in Table 1:

Table 1⁶

S no.	As On	Ongoing CIRPs	CIRPs ⁷ exceeding 270 days	Percentage of CIRPs exceeding 270 days
1.	Mar - 22	1852	1217	65.71
2.	Dec - 21	1699	1241	73.04
3.	Sep- 21	1640	1201	73.23
4.	Jun - 21	1682	1262	75.03
5.	Mar - 21	1723	1358	78.82
6.	Dec - 20	1717	1481	86.26

As can be clearly seen that the cases which take up more than 270 days, as mandated by the law, are steadily declining as a percentage of total cases over the period under consideration. Even though a declining trend can be noted, it can be reasonably argued that the proportion of such cases should not ideally be more than 5-10% to improve the confidence of the stakeholders.

Reasons for delay

It is no one's case that there is no undue delay in the IBC regime. It is, therefore, pertinent to examine the reasons for these delays. There are two stages to any insolvency case under the IBC regime, which eventually ends up in resolution. The first phase is from the admission of the case to the approval of the resolution plan by the Committee of the Creditors (CoC). The second phase starts with the approval of the resolution plan by the CoC and ends when the resolution plan is approved by the Adjudicating Authority (AA). The first phase is the time allocated for the market, where the regime allows a time period within which the market should be able to find a resolution applicant who is willing to take over the insolvent company or the CoC to take a call on liquidation. The second phase is the time taken by the legal and institutional machinery. Even at the admission stage, in certain cases, the AA took two years to admit an insolvency application. In certain other sets of cases, it took more than two years to approve a resolution plan. Recently, the Supreme Court has also held that it is not mandatory to admit an insolvency application even if there is a default in the case of *Vidharbha Industries Power Limited v Axis Bank*⁸.

Both of the abovementioned types of legal delays are very problematic. If there is a lot of time consumed at the admission stage, then the promoters of the company can simply alienate the assets of the company to the disadvantage of the creditors. On the other hand, even if the resolution plan is kept pending for two years, it may itself become non-viable on account of the passage of time by the time AA approves it. In this case, if the non-

viable resolution plan is to be mandatorily implemented, then the resolution applicant can itself become insolvent. Therefore, it is of utmost importance that the AA should be more prompt at all stages of any insolvency case. The first challenge is the capacity, and this can be overcome by simple measures like just reducing the strength of benches of AA to a single judge. This can immediately double the capacity of the AA. The AA should also make use of technology and better-equipped information technology infrastructure to dispose of the matters quickly. Moreover, a lot of administrative decisions can be shifted to the registry of the AA, and only adjudicatory questions should be heard by the bench.

The reasons for the delay in the first phase, where the market is not disciplined, can also be resolved by the strict implementation of rules by the AA. For instance, if the AA starts to order liquidation in cases where the market is not

able to come up with a resolution plan in time rather than entertaining the reasons for the delay, then the market, in other cases, will certainly become prompt.

Conclusion

It can be averred with conviction that the IBC has drastically improved upon the previous regime in terms of timely resolution of cases. We can also deduce that since there is now a relatively quicker resolution of cases, there will be favourable returns to the market in the future. However, it can also be seen that the IBC isn't fully able to achieve and implement what has been its purpose in terms of a time-bound resolution of cases, where the majority of cases are still not respecting the statutory time limit. The solutions for the same have to be innovative as discussed, like decreasing the bench strength and use of technology etc.

¹ Available at <https://ibbi.gov.in/uploads/legalframework/2022-04-28-181717-r28jw-af0143991dbbd963f47def187e86517f.pdf>

² World Bank data is only available till the year 2019.

³ "Time to resolve Insolvency (years)", World Bank, <https://data.worldbank.org/indicator/IC.ISV.DURS?locations=IN>

⁴ Section 12, Insolvency and Bankruptcy Code, 2016.

⁵ Table 5, Ibid.

⁶ IBBI Newsletters from Dec-20 to Mar-22

⁷ Abbreviation for 'Corporate Insolvency Resolution Process'

⁸ Civil Appeal No. 4633 of 2021