Expediting IBC Processes

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Genesis of the Code

The business reforms of the 1990s unleashed a wave of economic freedom, ushering in a market economy, powered by competition and innovation. Inefficient firms came under existential pressure to adapt or exit, while innovation rapidly rendered traditional business models obsolete. Many firms, having outlived their economic relevance, slipped into financial distress. Without a structured exit mechanism, they remained trapped in a *chakravyuha*, a maze without escape. Scarce resources, including capital and entrepreneurial talent, were locked in unviable ventures. while zombie firms littered the economic landscape, dragging down productivity and growth.

Even businesses with fundamentally sound models struggled to recover in the face of inadequate resolution tools. There was no coherent system that could distinguish viable from unviable enterprises, nor facilitate the timely rescue of the former and the efficient closure of the latter. As a result, both languished in operational paralysis, which deterred investment, discouraged entrepreneurship, and stifled innovation.

Out of this moment of reckoning emerged the Insolvency and Bankruptcy Code, 2016 (IBC/Code), a decisive response to years of silent decay, enacted on 28th May 2016. The Code introduced a time-bound, creditor-in-control, market-driven process to rescue viable enterprises and liquidate those beyond recovery. It aimed to unlock capital and entrepreneurial energy trapped in unviable ventures, restore creditor discipline, and send a clear message: failure is not a stigma but an essential feature of a vibrant economy. Most importantly, it institutionalised the freedom to fail, arguably the ultimate economic freedom, by enabling swift, efficient, and dignified exit.

Core Objective

The long title of the Code sets out its objective: *"reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons,..."* For corporate entities, the Code envisages stress resolution in two ways, first by the rescue of the company through a resolution plan, failing which, by the closure of the company through liquidation.

A company is under stress if it is not performing well; the resources at its disposal are underutilised. If the company has a viable business, it should be possible to revive it. The Code provides for corporate insolvency resolution process (CIRP) that enables the market to find a feasible and viable resolution plan to revive the company as a going concern. If such a plan is approved, the company gets a new lease of life, and resources are put to optimal use. If the company has an unviable business, the market is unlikely to find a resolution plan. In such a case, the company undergoes liquidation, which releases resources, including entrepreneurs, as per the priority rule, for optimal use elsewhere.

The Centrality of Timelines

Timeliness is what makes IBC valuable. The Code enables the initiation of a CIRP at the earliest and mandates its time-bound completion. While the Code permits 180 days for the completion of a CIRP, it allows for a one-time extension of up to 90 days by the Adjudicating Authority (AA) in deserving cases. It further provides that a CIRP shall be completed within a period of 330 days from the insolvency commencement date. The Code, read with regulations, provides timelines for each task in a CIRP. Though timelines are not so prescriptive in the case of the liquidation process, the Regulations mandate the liquidator to liquidate the corporate debtor within one year from the liquidation commencement date, with intermediate timelines for different tasks.

The rationale of the timeline is straightforward. When a company defaults, it is in distress and needs urgent resolution. During the CIRP, an insolvency professional exercises the powers of the Board of Directors and manages the operations of the corporate as a going concern. However, the period is marked by significant uncertainty regarding the future ownership and control of the company. If this state of limbo persists for too long, it can erode organisational capital, such as employee morale, customer confidence, supplier relationships, and institutional knowledge, ultimately making resolution difficult. A prolonged CIRP increases the likelihood of liquidation and simultaneously depresses the liquidation value. In contrast, timely liquidation helps preserve asset value and facilitates the efficient redistribution of resources to stakeholders, avoiding the costs of prolonged uncertainty and litigation. More broadly, timely resolution not only maximises the value of the company's assets but also ensures that economic resources are swiftly redeployed to more productive uses, enhancing overall economic efficiency.

Timelines in Practice

The Code clearly mandates that if a resolution plan is not received within the prescribed CIRP period, the corporate debtor must proceed into liquidation. In the early days of implementation, this message was both clear and consistently enforced. Despite the market and institutional ecosystem still being in a formative stage, the process moved with notable efficiency. The first CIRP that concluded with a resolution plan took 191 days, while the first liquidation order was issued in 193 days. In 2017-18, 23 CIRPs that ended in approved resolution plans averaged 243 days, and 91 CIRPs ending in liquidation

orders averaged 234 days, both well within the then-maximum allowable duration of 270 days.

However, over time, a shift in perception took root: that the survival of a company was inextricably linked to the livelihoods of many, and therefore, every possible effort must be made to revive it, even at the cost of time, value, and statutory mandate. As this sentiment gained traction, so did the practice of seeking and granting exceptions, carve-outs, and judicial exclusions from the prescribed timelines. In the absence of any real consequences for missing statutory deadlines, procedural discipline began to erode, and complacency set in across the ecosystem.

By the quarter ending March 2025, the impact of this drift was stark. 107 CIRPs concluded, either with resolution plans or liquidation orders, took an average of 788 days, more than four times the intended 180-day benchmark. Eight corporate liquidations concluded with dissolution orders took an average of 870 days, far exceeding the prescribed 365-day timeframe. Similarly, 53 voluntary liquidations concluded with dissolution orders averaged 714 days, well beyond the intended limit of 270 days.

As of 31st March 2025, the delays had become deeply entrenched and systemic: 87% of ongoing CIRPs had already exceeded 270 days; 82% of ongoing liquidations had gone beyond one year; and 50% of voluntary liquidations had crossed the 270-day mark. These delays permeate the entire insolvency lifecycle: from the admission of applications to the approval of resolution plans and eventual dissolution, wherever required, undermining the IBC's core objective of time-bound resolution.

Jurisprudence on Timelines

In the initial years, the judiciary firmly upheld the sanctity of timelines under the Code. The Supreme Court affirmed that time is of the essence of the Code (*Innoventive Industries Ltd. v. ICICI Bank* (2017) and *M/s. Surendra Trading Company v. Juggilal Kamlapat Jute Mills Co.* (2017). In *ArcelorMittal India Pvt. Ltd. (2017),* the Court went a step further, holding unequivocally that the timeline for completion of the CIRP is mandatory and cannot be extended beyond the statutory limit. For this ruling, it relied on the primary objective of the Code, the literal language of section 12(1), and provisions of section 33 that provide for mandatory liquidation in the event no resolution plan is received within the prescribed time. The Court also urged all stakeholders to adhere closely to the model timeline set out in Regulation 40A of the CIRP Regulations.

In the same judgment, the Court addressed whether time lost in litigation could be excluded from the overall CIRP timeline. It invoked the legal maxim *actus curiae neminem gravabit* -the act of the court shall prejudice no one - to clarify that delays caused by judicial proceedings should not render the resolution process infructuous. It held that where a resolution plan is ultimately upheld on appeal, the time spent in litigation ought to be excluded from the CIRP duration. If the time taken in legal proceedings is not excluded, a good resolution plan may have to be shelved, resulting in corporate death, and the consequent displacement of employees and workers. The jurisprudence thus legitimised judicial exclusions, supplementing the one-time 90-day extension already permitted under the Code.

This position received further reinforcement in *Swiss Ribbons Pvt. Ltd.* (2019), where the Supreme Court noted: "*... the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark... The primary focus of the legislation is to ensure revival and continuation of the corporate debtor... from a corporate death by liquidation.*" his interpretation gave rise to a widely accepted understanding that "resolution" under the Code primarily refers to resolution through a resolution plan, thereby reinforcing the belief that every possible effort must be made to avoid liquidation.

However, this growing emphasis on revival began to clash with the Code's foundational objective of time-bound resolution. The Parliament took note of mounting delays, especially those caused by prolonged litigation, which threatened to erode the value of distressed assets. Speaking in the Rajya Sabha, the Hon'ble Finance Minister remarked that the original intent of the quick resolution of stressed assets was getting diluted over time. To address this, the August 2019 amendment to the Code mandated that the CIRP must be completed within 330 days from the insolvency commencement date, including both extensions granted under the Code and any time consumed in legal proceedings related to the resolution process.

This amendment was subsequently challenged before the Supreme Court in *Committee of Creditors of Essar Steel India Limited* (2019). The Court examined whether imposing a rigid outer limit of 330 days, without exceptions, violated constitutional rights. It held that litigants should not be penalised for delays beyond their control, particularly when caused by the Tribunal's inability to decide cases on time. Accordingly, while upholding the overall framework of the 330-day limit, the Court struck down the word "mandatorily", declaring it manifestly arbitrary under Article 14 and an unreasonable restriction on the right to carry on business under Article 19(1)(g) of the Constitution. As a result, a CIRP should ordinarily be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings.

Expediting IBC Processes

Delays are pervasive across the insolvency process: from admission into the process, to approval of resolution plans, to recovery through avoidance transactions, and finally, to release of assets via liquidation. The problem is systemic, with almost every stage and stakeholder contributing to the protracted timelines, undermining the very objective of a swift and effective insolvency resolution framework. To fast-track insolvency proceedings, a comprehensive set of reforms is urgently needed.

Enforceable Timelines: Every task undertaken by key stakeholders - creditors, resolution professionals (RP), the Committee of Creditors, the resolution applicants, and the AA - must have a firm timeline, with clear consequences for deviation. Time sensitivity is critical at every stage. A stressed company must be admitted into the process before it turns unviable. A resolution plan must be approved before it runs out of money. Resources locked in unviable companies must be released before the

value dissipates. Likewise, value lost through avoidance transactions must be clawed back before recovery becomes impractical. However, in practice, the AA often takes years to admit applications, approve resolution plans, pass dissolution orders, or rule on avoidance matters. These delays are not just procedural: they fundamentally compromise the Code's purpose of timely resolution and value maximisation. To address this, the law must lay down specific timelines for each of the AA's interventions. It must also articulate well-defined legal principles, such as 'supervening impossibility' to guide the AA in granting extensions or exclusions. Without such discipline, statutory time limits risk becoming aspirational rather than binding, undermining the Code's credibility and effectiveness.

Avoid Judicial Dilution: The judicial practice of treating procedural provisions as directory must not extend to the core timelines prescribed under the IBC. These timelines are not mere procedural niceties: they are central to the Code's architecture. Courts must not dilute the legislative mandate by interpreting critical deadlines as discretionary. Any such relaxation opens the door to tactical delays by parties seeking to exploit procedural loopholes, thereby undermining the Code's intent and eroding the rule of law by allowing judicial discretion to override clear legislative command.

While the judiciary plays an essential role in interpreting and safeguarding statutes, it must exercise institutional restraint and avoid encroaching upon the domain of legislative intent. Courts must resist the temptation to rewrite or reshape statutory provisions under the guise of interpretation. The message must be unambiguous: efforts toward revival cannot override the fundamental requirement of timeliness. If a CIRP reaches the statutory limit, the AA must mandatorily pass a liquidation order. Even a few instances of strict enforcement will send a strong signal to the market, incentivising compliance and realigning behaviour to respect the Code's timelines.

Institutional Capacity of the Adjudicating Authority: The National Company Law Tribunal, which serves as the AA under the Code, suffers from significant capacity constraints relative to its workload. These constraints span across bench strength, subject-matter expertise, infrastructure, technological tools, institutional culture, and case management systems. Originally established with 63 members to oversee company law matters, it has since been tasked with adjudicating complex insolvency cases under the IBC, without any addition to the capacity.

To ensure timely resolution, there is a pressing need for a dedicated and unified AA for insolvency, liquidation, and bankruptcy matters across corporates and individuals. Such specialisation would enhance consistency, efficiency, and domain expertise in decision-making. Moreover, given that insolvency proceedings are not adversarial and that commercial decisions are outside the AA's mandate, single-member benches are sufficient for most cases. Instituting single-member benches would immediately double the AA's functional capacity, without compromising the quality of adjudication.

Addressing concerns around expertise, a full Bench of the Supreme Court in *State Bank of India & Ors.* (2024) candidly observed: *"The Members often lack the domain knowledge required to appreciate the nuanced complexities involved... Filling such vacancies with experts having adequate domain knowledge in the field must be prioritized."* To build deeper expertise, members should be appointed for longer tenures and provided with adequate legal, technical, and research support. The selection process must prioritise technical competence and specialised knowledge over institutional background or affiliation. In parallel, modernising the apparatus and procedures of the AA is imperative. Routine administrative tasks, such as checking filings for completeness, accuracy, and regulatory compliance, should be delegated to trained registry staff, freeing up judicial members to focus on substantive adjudication. Case management, listing, and scheduling must be entirely IT-driven, ensuring transparency, accountability, and procedural discipline.

Adjudication rules must consciously avoid the trappings of conventional courts. They should restrict adjournments, discourage frivolous filings, and limit the time available to parties to present their case, all aimed at maintaining procedural discipline and preserving the time value of resolution.

Wherever possible, simpler, non-contentious processes, such as voluntary liquidation and the fresh start process, should be handled administratively, outside the purview of the AA. Similarly, pre-packaged insolvency resolutions, which require minimal judicial oversight, should be actively promoted to reduce the burden on the Tribunal.

While some of these reforms necessitate structural changes in the medium to long term, immediate relief can be achieved by expanding the capacity of the AA. A back-of-the-envelope calculation, based on the U.S. model and applied to the current caseload in India, suggests that the AA would require around 360 members (assuming two-member benches) to function effectively, a stark contrast to the current sanctioned strength of just 63.

Role of State Agencies: The Code provides that a resolution plan, once approved by the AA, is binding on all stakeholders, including the Central and State Governments. Any claim not addressed in the resolution plan stands extinguished, allowing the resolution applicant to take over the company free of past encumbrances and start with a clean slate. Despite this explicit mandate, some tax authorities fail to file their claims within the prescribed timelines. They then attempt to revive extinguished claims even after the resolution plan has been approved, triggering rounds of litigation up to the Supreme Court.

Moreover, the Code imposes a statutory moratorium from the insolvency commencement date, which prohibits the initiation or continuation of any proceedings, including the execution of judgments, against the corporate debtor. This is essential to preserve the value of the enterprise and maintain stability during the resolution process. Yet, some State agencies disregard the moratorium, proceeding with enforcement actions that directly undermine the objectives of the IBC and prolong the process.

To address these systemic disruptions, there is an urgent need to institutionalise compliance by public

authorities. This may include the issuance of binding 'dos and don'ts' for them, clearly outlining their obligations during insolvency proceedings. Additionally, government departments must be made accountable for violations of moratorium provisions, and their conduct should be subject to regulatory review or penalties, where appropriate.

Role of Professionals: The IBC has ushered in a new era of professionalism in insolvency resolution. It gave birth to two new regulated professions - insolvency professionals and registered valuers - and mobilised the expertise of other professionals such as chartered accountants, advocates, and company secretaries. Market participants place significant trust in these professionals and often rely on their guidance when making critical decisions. It is imperative that these professionals exercise their responsibilities with utmost integrity and diligence. Misguiding stakeholders into actions that unnecessarily prolong the resolution process, without any commensurate benefit to the stakeholders or the process, undermines the very objective of the IBC.

Stress resolution resembles a well-coordinated orchestra, with the insolvency professional as the lead sutradhar. She is responsible not only for performing certain functions independently but also for orchestrating timely contributions from a diverse set of stakeholders. This demands careful planning, scheduling of activities in accordance with statutory timelines, and continuous engagement to ensure that each stakeholder fulfils their role effectively and on time.

Role of Promoters: Promoters often adopt delaying tactics at both the admission and post-admission stages. Section 66(2) of the Code is a potent but underutilised tool that can discourage promoters from deferring admission. It holds directors personally liable for the consequences of the delayed commencement of the insolvency proceeding. If invoked in a few cases, it would deter promoters from resisting or delaying admission, while incentivising them to voluntarily initiate CIRP.

Post-admission, the RP often faces stiff resistance from promoters in taking control of the company, delaying the transition, and hampering the progress of the resolution process. While section 19(2) empowers RPs to approach the AA for directions in cases of non-cooperation, the practical effectiveness of this remedy is constrained by procedural delays and weak enforcement mechanisms. To address this concern, the law must be fortified with swifter and stricter consequences for promoter misconduct. This should include disqualification from holding directorships in the future, ineligibility to act as a resolution applicant, debarment from access to bank credit, and expedited adjudication of non-cooperation complaints.

Role of Committee of Creditors: In the creditor-in-control model under the IBC, the CoC plays a central role in steering the CIRP to timely completion. However, the process is often hampered by delays in convening meetings, voting on proposals, and resolving inter-creditor issues. Internal decision-making within banks and financial institutions at times affects timely approvals for critical matters such as the appointment of the RP, interim financing, and resolution plan evaluation. These delays can derail the strict timelines prescribed under the Code, undermining its objective of swift resolution. To avoid such outcomes, CoC representatives must be empowered in advance to vote on scheduled agenda items, with internal processes aligned to statutory deadlines. Prompt voting on emergent issues and adherence to clear internal timelines are essential. A code of conduct, evolved in consultation with financial creditors, can instill procedural discipline and reinforce the shared responsibility of the CoC in meeting the resolution timeline.

Conclusion

We must pull out all the stops to arrest the ongoing 'process slowdown' in insolvency resolution. Strict adherence to timelines will rescue more viable companies, preserve more value, and restore greater market confidence than any amount of procedural flexibility ever can. In the life of a distressed enterprise, every single day counts; each delay diminishes value, erodes organisational capital, and narrows the path to revival. Let us not squander time, for that is, in the words of Benjamin Franklin, the stuff life is made of.