

Standing Committee Report Summary

Implementation of Insolvency and Bankruptcy Code- Pitfalls and solutions

- The Standing Committee on Finance (Chair: Mr. Jayant Sinha) submitted its report on the subject ‘Implementation of Insolvency and Bankruptcy Code (IBC)-Pitfalls and Solutions’ on August 3, 2021. The IBC was enacted in 2016 and provides a time-bound process for insolvency resolution of corporate debtors. Key observations and recommendations made by the Committee include:
 - **Role of IBC:** The Committee noted that the average time to resolve insolvency reduced from 4.3 years to 1.6 years between 2017 and 2020, since the implementation of the IBC. The Committee observed that low recovery rates with delay in resolution process point towards a deviation from the original objectives of the Code. For instance, haircuts (amount in dues forgone) of up to 95% were seen during the resolution process. The Committee recommended providing greater clarity to strengthen creditor rights. It also suggested having a benchmark for haircuts comparable to global standards.
 - **Delays in National Company Law Tribunal (NCLT):** The Committee noted that 13,170 IBC cases involving nine lakh core rupees are pending before the NCLT. 71% of these have been pending for more than 180 days. To address this delay, it recommended creating dedicated benches of the NCLT for matters related to IBC. To minimise delays and change in ownership of assets, it also suggested the NCLT to accept applications by defaulters within 30 days of filing, and transfer control of the company to a resolution process. The Committee observed that more than 50% of the sanctioned strength of the NCLT is vacant and recommended: (i) analysing required capacity based on projected number of cases, (ii) planning recruitment in advance, (iii) providing for virtual hearings to address backlogs, and (iii) administering training programmes for members. It also recommended ensuring that only High Court judges are appointed as judicial members of the NCLT.
 - **PIRP for all:** The Committee recommended that Pre-Packaged Insolvency Resolution Process (PIRP) introduced for Micro, Small, and Medium Enterprises (MSMEs) should also be extended to corporates, after due review. PIRP can only be initiated by the debtor, with prior approval of unrelated financial creditors. The debtor continues to manage the company during PIRP, unlike CIRP.
- **MSMEs:** The Committee noted that MSMEs were negatively impacted by the COVID-19 pandemic. It observed that under the current mechanism, they are considered as operational creditors, whose claims are addressed after secured creditors. It recommended instituting additional protections for MSMEs, considering the current economic situation.
- **Resolution plan:** The Committee noted that bidders may be more interested in acquiring selected business units or assets instead of the entire business. It observed that under the IBC, the resolution professional does not have flexibility to dispose the corporate debtor across multiple bidders. It noted that such flexibility is given under regulations, and recommended amending the IBC to clarify that such resolutions may be also achieved for CIRP.
- **Home owners:** The Committee noted that homebuyers often face difficulties in meeting thresholds established under the IBC for initiating a resolution process. To aid mobilising of home owners, it recommended real-estate owners to provide information of other homebuyers to the initiator of insolvency proceedings.
- **Committee of creditors:** The Committee noted that the committee of creditors have significant discretion in accepting resolution plans submitted after the deadline. It observed that this may create procedural uncertainty and suggested amending the IBC to refuse acceptance of late bids
- **Insolvency professionals:** The Committee recognised the role of insolvency professionals or resolution professionals as intermediaries in the Corporate Insolvency Resolution Process (CIRP). It observed that Insolvency Professional Agencies and the Insolvency and Bankruptcy Board of India had taken disciplinary action on 61% of the 203 professionals inspected since 2016. To address issues concerning professionals, it recommended establishing a single regulator for them, instead of multiple agencies, who may have a conflict of interest as competitors and regulators.
- **Cross border resolution:** To address cross-border insolvency, the Committee recommended expedited adoption of cross border insolvency framework.

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