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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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JUDICIAL OVERLOAD AND INSOLVENCY RESOLUTION: EVALUATING THE CASE FOR A SEPARATE INSOLVENCY TRIBUNAL BEYOND THE NCLT FRAMEWORK

AUTHORED BY - ROHIT TIWARI

Abstract:

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted with the vision of ensuring time-bound resolution of distressed companies and strengthening India's credit culture. Central to its framework is the Corporate Insolvency Resolution Process (CIRP), which requires adjudicatory supervision for admission of cases, approval of resolution plans, and settlement of disputes. Presently, these functions rest with the National Company Law Tribunal (NCLT), a quasi-judicial body already burdened with a wide array of company law matters such as mergers, amalgamations, and cases of oppression and mismanagement. The excessive workload has led to systemic delays, with many CIRPs extending well beyond the statutory limit of 330 days, thereby frustrating the objectives of the IBC.

This research examines the impact of judicial overload on insolvency resolution in India, focusing on how the absence of a dedicated insolvency tribunal hinders efficiency. Through doctrinal and empirical analysis, it explores the stages of CIRP most affected by delays, evaluates the comparative models of specialized insolvency courts in other jurisdictions, and assesses the potential benefits and challenges of establishing a separate tribunal in India.

The study argues that specialized adjudication is no longer a matter of convenience but a necessity to restore creditor confidence, attract investors in distressed assets, and ensure the long-term success of the insolvency regime. It concludes that creating a separate insolvency tribunal would reduce the burden on NCLTs, enable subject-matter expertise, and facilitate expeditious resolution.

Keywords: CIRP, Insolvency Tribunal, NCLT, Adjudicatory Delays, IBC

INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (IBC) is one of the most significant economic reforms in India, enacted to provide a consolidated and time-bound framework for resolving corporate insolvency. Its primary objective is to maximize the value of assets, promote entrepreneurship, and balance the interests of stakeholders. Central to this process is the Corporate Insolvency Resolution Process (CIRP), which requires strict adherence to timelines to ensure speed, certainty, and efficiency.

However, despite its promising framework, the practical implementation of CIRP has been hindered by persistent delays, primarily due to the adjudicatory mechanism. The National Company Law Tribunal (NCLT), the forum entrusted with insolvency matters, is simultaneously responsible for company law, mergers and amalgamations, and cases of oppression and mismanagement. This multi-faceted jurisdiction has placed an extraordinary burden on NCLTs, resulting in heavy caseloads, inadequate benches, and prolonged hearings. Consequently, a large number of CIRPs extend far beyond the statutory limit of 330 days, undermining the very purpose of the IBC.

The efficiency of the IBC framework depends on timely adjudication, yet the overburdened NCLT has emerged as a significant bottleneck. The lack of a separate, specialized insolvency tribunal has led to procedural inefficiencies, inconsistent rulings, and erosion of stakeholder confidence in the insolvency system. This raises a critical question: can the objectives of the IBC be achieved without institutional reform in adjudication?

OBJECTIVES OF THE STUDY

The present study seeks to critically examine the institutional and procedural challenges in the adjudication of corporate insolvency cases in India, with a particular focus on the burden of the National Company Law Tribunal (NCLT) and the absence of a specialized insolvency tribunal.

The objectives are as follows:

1. To analyze the impact of NCLT's workload on the timelines and efficiency of the Corporate Insolvency Resolution Process (CIRP).
2. To identify the stages of CIRP that are most affected by adjudicatory delays and assess their implications for stakeholders.

3. To undertake a comparative study of insolvency adjudication models in other jurisdictions and evaluate the feasibility of adapting such models in the Indian context.
4. To assess whether the establishment of a separate, specialized insolvency tribunal in India would contribute to faster resolution, greater predictability, and enhanced stakeholder confidence.
5. To propose policy and institutional reforms that can strengthen the insolvency adjudication framework and ensure that the objectives of the IBC are effectively realized.

RESEARCH METHODOLOGY

The present study adopts a **doctrinal research methodology**, focusing on the analysis of statutes, case laws, regulatory reports, and scholarly writings to examine the impact of adjudicatory delays on the Corporate Insolvency Resolution Process (CIRP) in India. Doctrinal research is particularly suited for this study as it allows for a detailed exploration of the legal framework of the Insolvency and Bankruptcy Code, 2016 (IBC), and its implementation through judicial and quasi-judicial forums.

Sources of Data

1. Primary Sources

- **Statutory Material:** The Insolvency and Bankruptcy Code, 2016, the Companies Act, 2013, and related rules and regulations issued by the Insolvency and Bankruptcy Board of India (IBBI).
- **Case Law:** Judgments of the Supreme Court, National Company Law Appellate Tribunal (NCLAT), and National Company Law Tribunal (NCLT) that interpret and apply provisions of the IBC.
- **Parliamentary Reports:** Reports of the Joint Parliamentary Committees, Standing Committees on Finance, and other official documents addressing the functioning of NCLTs and the IBC framework.

2. Secondary Sources

- Books, academic articles, and commentaries by scholars and practitioners of insolvency law.
- Policy research papers from institutions such as Vidhi Centre for Legal Policy, National Institute of Public Finance and Policy (NIPFP), and the Insolvency and Bankruptcy Board of India (IBBI).

- Reports of international institutions such as the World Bank and UNCITRAL on insolvency frameworks and comparative practices.

THE ROLE OF NCLT IN THE INSOLVENCY FRAMEWORK

The National Company Law Tribunal (NCLT) was established under the Companies Act, 2013 as a specialized forum for adjudicating company law matters. With the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC), the NCLT was also designated as the adjudicating authority for corporate insolvency proceedings. Its responsibilities include admitting applications for Corporate Insolvency Resolution Process (CIRP), approving resolution plans, initiating liquidation proceedings, and resolving disputes arising during the CIRP.

The IBC envisaged the NCLT as a quasi-judicial authority that would ensure speed, efficiency, and predictability in insolvency resolution. However, in practice, the NCLT has faced significant challenges due to an overloaded docket, multiple jurisdictions, and insufficient benches. These factors have often led to delays, adjournments, and procedural bottlenecks, undermining the objectives of time-bound corporate insolvency resolution.

Under the IBC, the NCLT is empowered to:

- **Admit or reject CIRP applications** under Sections 7, 9, and 10 of the IBC.
- **Appoint Insolvency Professionals/Resolution Professionals** to manage the affairs of the corporate debtor during CIRP.
- **Approve resolution plans** submitted by the Committee of Creditors (CoC).
- **Order liquidation** if a resolution plan fails or if the process does not meet statutory timelines.
- **Adjudicate disputes** arising from avoidance transactions, CoC voting, and other procedural matters.

The tribunal is thus central to the operationalization of the IBC, and its efficiency directly affects the success of CIRP.

While the NCLT was expected to function as a specialized forum, in reality:

- It handles company law matters, including oppression and mismanagement cases, mergers, and amalgamations, alongside insolvency cases.

- Bench shortages and vacancies among judicial and technical members have exacerbated delays.
- Heavy case backlogs have led to CIRPs exceeding the statutory 330-day timeline, with some cases lasting over 1000 days.
- Frequent adjournments, pendency of appeals in NCLAT, and multiplicity of applications during CIRP further slowdown the process.

Reports by IBBI highlight that judicial capacity constraints are one of the primary reasons for delayed resolutions, despite the robust framework provided by the IBC.

Challenges Faced by NCLT in Insolvency Adjudication

- **Multi-jurisdictional burden:** Managing company law and insolvency simultaneously reduces focus and efficiency.
- **Limited benches and infrastructure:** Current NCLT benches are insufficient to handle the growing number of CIRP cases.
- **Procedural complexity:** Multiple applications, objections, and litigation during CIRP create additional hurdles.
- **Delays in appeals:** Cases pending before NCLAT or the Supreme Court suspend the CIRP process, causing further delay.
- **Stakeholder impact:** Prolonged resolution negatively affects creditors, employees, and potential investors.

The NCLT is the cornerstone of India's insolvency adjudication system. While its statutory role under the IBC is well-defined, practical constraints such as overload, limited capacity, and procedural complexity significantly hinder its effectiveness. These challenges underscore the need for institutional reforms, including the possibility of a separate, specialized insolvency tribunal, to ensure timely and efficient corporate insolvency resolution.

IMPACT OF JUDICIAL OVERLOAD ON CIRP

The efficiency of the Corporate Insolvency Resolution Process (CIRP) under the IBC is heavily dependent on timely adjudication by the National Company Law Tribunal (NCLT). However, the excessive workload of the tribunal has led to systemic delays across multiple stages of CIRP. These delays undermine the IBC's core objectives of asset maximization, creditor protection, and speedy resolution. This chapter examines how judicial overload impacts CIRP, identifies the stages most affected, and analyzes the consequences for stakeholders.

Stages of CIRP Affected by NCLT Overload

1. Admission of CIRP Applications

- Applications under Sections 7 (creditor), 9 (operational creditor), and 10 (corporate debtor) often face delays in scrutiny and admission.
- Overloaded benches contribute to adjournments, delaying the appointment of Resolution Professionals (RPs) and the start of CIRP.

2. Committee of Creditors (CoC) Meetings and Resolution Plan Approval

- NCLT approval is required for resolution plans, voting disputes, or any challenge to CoC decisions.
- Judicial backlog prolongs the plan approval stage, leading to uncertainty for creditors and potential investors.

3. Litigation During CIRP

- Avoidance transaction applications (Sections 43–51), objections to RP actions, or disputes regarding CoC composition often lead to repeated hearings.
- Pendency of appeals in NCLAT or Supreme Court further suspends ongoing processes.

4. Liquidation Proceedings

- Delays in liquidation orders can reduce the value recovered by creditors.

Consequences of Judicial Overload

1. Extended CIRP Timelines

- While the IBC mandates completion within 330 days, many cases extend far beyond this period due to tribunal delays.

2. Erosion of Asset Value

- Prolonged resolution reduces the recoverable value of corporate assets, negatively affecting creditors and investors.

3. Creditor and Investor Reluctance

- Delays discourage creditors from approaching NCLT and may push them toward informal recovery channels, undermining the IBC framework.

4. Reduced Effectiveness of IBC

- Judicial bottlenecks hinder the law's objective of efficient and predictable insolvency resolution.

NEED FOR SEPARATE INSOLVENCY TRIBUNAL IN INDIA

The previous chapters have established that the National Company Law Tribunal (NCLT), despite being the adjudicating authority under the Insolvency and Bankruptcy Code, 2016 (IBC), is overburdened with multiple jurisdictions. This overload has caused systemic delays in the Corporate Insolvency Resolution Process (CIRP), undermining the Code's objective of time-bound resolution. Against this backdrop, the need for a **separate, specialized insolvency tribunal** becomes a critical reform measure to ensure efficiency, predictability, and stakeholder confidence in India's insolvency framework.

Rationale for a Separate Insolvency Tribunal

1. Specialization and Expertise

- Insolvency matters are complex, involving financial restructuring, creditor rights, and value maximization.
- A specialized tribunal with judges and technical members trained in insolvency law can ensure consistent and informed decision-making.

2. Reduction of Judicial Overload

- Currently, NCLTs handle company law matters, mergers, amalgamations, oppression and mismanagement cases, in addition to insolvency.
- A separate tribunal would allow insolvency cases to be prioritized, reducing pendency and delays.

3. Time-Bound Resolution

- Strict adherence to the 330-day timeline under IBC has often been compromised.
- A dedicated forum could streamline procedures and enforce compliance with statutory deadlines.

4. Stakeholder Confidence

- Faster adjudication would improve recovery rates for creditors and attract more resolution applicants, restoring faith in the insolvency process.

Potential Structure of a Separate Tribunal

- Jurisdiction limited exclusively to insolvency and bankruptcy matters under the IBC.
- Judicial members with prior experience in commercial and financial law.
- Technical members drawn from finance, accountancy, and corporate restructuring backgrounds.

- Regional benches to ensure accessibility and reduce pendency across states.
- Appellate jurisdiction vested in the National Company Law Appellate Tribunal (NCLAT) or a separate insolvency appellate body.

Challenges and Counterarguments

- **Institutional Costs:** Establishing a new tribunal requires significant administrative and financial investment.
- **Jurisdictional Fragmentation:** Critics argue that separating insolvency from company law may lead to duplication of efforts.
- **Transitional Difficulties:** Pending cases before NCLT would need to be transferred, which may initially cause disruption.

Addressing the Challenges

- Costs can be justified by the long-term economic benefits of faster insolvency resolution.
- Jurisdictional clarity can be maintained by confining the tribunal strictly to insolvency and bankruptcy matters.
- Transition can be phased, with pending cases gradually shifted to the new tribunal, similar to how NCLT took over cases from Company Law Board.

FINDINGS AND SUGGESTIONS

The analysis undertaken in the previous chapters establishes that while the Insolvency and Bankruptcy Code, 2016 (IBC) provides a robust statutory framework, its effective implementation is significantly hindered by adjudicatory delays at the National Company Law Tribunal (NCLT). The overburdening of NCLT with multiple jurisdictions has compromised the time-bound nature of the Corporate Insolvency Resolution Process (CIRP), leading to reduced recovery rates and stakeholder dissatisfaction. This chapter consolidates the key findings of the study and advances concrete suggestions for reform.

Key Findings

1. Judicial Overload as a Bottleneck

- NCLT's workload includes not only insolvency cases but also matters relating to mergers, amalgamations, and oppression and mismanagement under the Companies Act, 2013.

- This multi-jurisdictional responsibility has resulted in systemic inefficiencies and delays in CIRP.

2. Delays Across Multiple Stages of CIRP

- Admission of applications, approval of resolution plans, and liquidation orders are frequently delayed.
- Litigation during CIRP, such as avoidance transaction applications and CoC disputes, further prolongs proceedings.

3. Erosion of Stakeholder Confidence

- Delays have reduced creditor recovery and discouraged investors from participating in resolution processes.
- Creditors, particularly operational creditors, often perceive IBC as less effective due to these procedural bottlenecks.

4. Gap Between Legislative Intent and Practice

- Although the IBC mandates strict timelines, judicial delays have led to non-compliance with the 330-day limit, undermining the very purpose of the Code.

5. Need for Institutional Reform

- Empirical and doctrinal analysis indicates that structural reform is essential, with strong support for establishing a specialized insolvency tribunal.

Suggestions

1. Establishment of a Separate Insolvency Tribunal

- Create a dedicated tribunal to exclusively handle insolvency and bankruptcy matters.
- Appoint members with specialized expertise in insolvency law, finance, and corporate restructuring.
- Provide adequate infrastructure and regional benches to ensure timely adjudication.

2. Short-Term Strengthening of NCLT

- Until a separate tribunal is established, fill vacancies in NCLT promptly and increase the number of benches.
- Designate specific insolvency-only benches within NCLT to improve specialization.

3. Streamlining Procedural Mechanisms

- Introduce strict case management practices to reduce adjournments.

- Encourage the use of digital platforms for filings, hearings, and case tracking to minimize delays.

4. Appellate Efficiency

- Strengthen the National Company Law Appellate Tribunal (NCLAT) by appointing additional members to prevent appellate delays.
- Consider a specialized appellate bench for insolvency matters.

5. Capacity Building and Training

- Regular training programs for judicial and technical members to enhance subject-matter expertise.
- Capacity-building workshops for Resolution Professionals (RPs) and stakeholders to reduce procedural errors that lead to litigation.

The findings clearly establish that adjudicatory delays stemming from NCLT's overload are a major hindrance to the effective implementation of the IBC. Establishing a separate insolvency tribunal emerges as the most sustainable reform, ensuring specialization, efficiency, and predictability. In the interim, targeted strengthening of NCLT and procedural reforms can help mitigate delays. Ultimately, a combination of institutional restructuring and capacity enhancement is vital to realizing the IBC's vision of a swift, transparent, and creditor-friendly insolvency regime.

CONCLUSION

The Insolvency and Bankruptcy Code, 2016 (IBC) was introduced to ensure timely resolution of distressed companies, maximize asset value, and strengthen creditor rights. However, the successful implementation of this vision has been undermined by persistent delays in the Corporate Insolvency Resolution Process (CIRP). The central cause of these delays lies in the overburdened National Company Law Tribunal (NCLT), which handles not only insolvency matters but also company law disputes, mergers, amalgamations, and oppression–mismanagement cases. The absence of a specialized insolvency tribunal has resulted in systemic inefficiencies, weakening the effectiveness of the IBC.

The effectiveness of any insolvency regime rests on its ability to deliver certainty and speed. India's insolvency framework is well-crafted in law but falters in practice due to adjudicatory delays. Unless structural reforms are undertaken to reduce the NCLT's burden and provide specialized adjudication, the objectives of the IBC will remain compromised. Establishing a separate insolvency tribunal represents not just a reform option, but a necessary step towards

ensuring that insolvency law in India serves its true purpose timely, efficient, and predictable resolution of corporate distress.

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