

THE UNFULFILLED PROMISE OF TIME-BOUND RESOLUTION

A Critical Analysis of Systemic Delays under the Insolvency and Bankruptcy Code, 2016

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ABSTRACT

When India enacted the Insolvency and Bankruptcy Code in 2016, it was making a deliberate and ambitious shift, moving away from a broken and fragmented system towards a single, unified framework built around one core idea: resolving corporate insolvency quickly. Section 12 of the Code reinforced this objective by setting a strict outer limit of 330 days, inclusive of any time spent in litigation. The legislative message was clear. However, the reality that has unfolded since then tells a very different story. In FY 2023–24, the average Corporate Insolvency Resolution Process (CIRP) took approximately 716 days to conclude, more than double the statutory limit.

This paper examines the reasons behind this gap and considers what would be required to meaningfully address it. The analysis is structured around three key problem areas: delays at the admission stage, inefficiencies during the resolution process itself, and the disruptive impact of litigation. In doing so, it draws on judicial decisions, institutional data from the Insolvency and Bankruptcy Board of India (IBBI), and comparative insights from jurisdictions such as the United Kingdom, Singapore, and the United States. The central argument advanced is that delays under the IBC are neither accidental nor exceptional; rather, they are the predictable outcome of a mismatch between a well-designed statutory framework and an institutional ecosystem that has not yet adapted to support it.

Keywords: *Insolvency and Bankruptcy Code 2016, CIRP, Section 12, NCLT, Committee of Creditors, judicial delay, comparative insolvency law, IBBI*

I. INTRODUCTION

India's insolvency landscape prior to 2016 was, in many ways, deeply dysfunctional. Companies in financial distress could continue to operate under the protective cover of the Sick Industrial Companies Act for years, often without meaningful progress towards resolution. Creditors, on the other hand, were left to pursue recoveries through overburdened tribunals under the RDBFI Act. While SARFAESI provided banks with enforcement mechanisms, it did little to facilitate comprehensive restructuring of distressed businesses. Taken together, these frameworks created a system in which delays were not merely incidental but were, in effect, incentivized.

Recognizing these systemic shortcomings, the Bankruptcy Law Reforms Committee, in its 2015 report, proposed a fundamentally different model. It envisioned a unified, time-bound insolvency process in which decision-making authority would shift from courts and debtors to creditors. Parliament translated this vision into the Insolvency and Bankruptcy Code, 2016, giving it concrete form through Section 12. Under this provision, insolvency resolution was to be completed within 180 days, extendable to 270 days by the Committee of Creditors (CoC), with an absolute outer limit of 330 days, inclusive of any litigation.

The ambition underlying this framework was undeniable. Yet, the outcomes have not matched expectations. Data published by the IBBI for FY 2023–24 reveals that the average duration of CIRP stands at approximately 716 days. Even in cases where resolution plans are successfully approved, the process takes an average of 582 days. Perhaps most strikingly, liquidation intended as a measure of last resort, has emerged as the most common outcome of completed CIRPs. This paper seeks to examine why this has occurred and what structural changes may be necessary to address it.

II. THE STATUTORY FRAMEWORK: WHY TIMELINESS ISN'T OPTIONAL

A. The Architecture of Urgency

The IBC does not merely encourage timely resolution; it embeds urgency into the very structure of the statute. The preamble explicitly commits to resolving insolvency “in a time-bound manner,” and this language is not merely symbolic. It functions as a guiding principle that informs the interpretation of every provision within the Code.

This emphasis on timeliness is grounded in economic logic. As the Bankruptcy Law Reforms Committee observed, delays in resolving financial distress lead to progressive erosion of value. Employees leave, contractual relationships weaken, assets depreciate, and the business as a whole becomes less viable. The 180-day timeline was therefore not arbitrarily chosen but was designed to ensure that resolution occurs before such deterioration becomes irreversible.

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The statutory framework that operationalizes this objective is, in design, both structured and interconnected. Section 7 enables financial creditors to initiate insolvency upon default, with the adjudicating authority required to confirm such default within fourteen days. Section 9 provides a similar mechanism for operational creditors. Section 14 imposes a moratorium, effectively freezing all external proceedings and preserving the corporate debtor's asset base. Section 12 governs the resolution timeline, while Section 33 provides for liquidation in the event of failure.

Taken together, these provisions create a system of controlled urgency, one in which each stage of the process is designed to lead logically and efficiently into the next.

B. Section 12 and the 2019 Amendment

At the centre of this framework lies Section 12, which governs the timeline for the Corporate Insolvency Resolution Process. Initially, the provision allowed for a 180-day period, extendable by 90 days upon approval of the Committee of Creditors. However, judicial practice in the early years of the Code revealed a tendency to treat this timeline as flexible rather than binding, with extensions frequently granted in complex cases.

In response, Parliament introduced the 2019 Amendment, which imposed an absolute outer limit of 330 days, explicitly including time spent in litigation. This amendment served three key doctrinal purposes. First, it reinforced certainty by providing stakeholders with a clearly defined endpoint. Second, it introduced proportionality, reflecting a legislative judgment, that 330 days strikes an appropriate balance between thoroughness and efficiency. Third, it emphasized finality by preventing the use of litigation as a tool to indefinitely extend proceedings.

However, the amendment also brought into focus a deeper tension within the insolvency framework. Certain cases, particularly those involving large and complex corporate structures, may genuinely require more time for effective resolution. The imposition of a rigid timeline in such situations raises questions about whether efficiency is being prioritised at the expense of substantive fairness.

C. What Happens When the Clock Runs Out: Section 33

Section 33 functions as the enforcement mechanism of the time-bound framework, triggering liquidation where resolution is not achieved within the prescribed period. In theory, it serves a dual purpose: providing an orderly exit for non-viable businesses and creating a strong incentive for timely resolution.

In practice, however, liquidation has emerged not as a last resort but as a predominant outcome. A majority of completed CIRPs have ended in liquidation rather than successful resolution. This trend is problematic for two reasons. First, liquidation typically results in significantly lower recoveries for creditors, indicating substantial value destruction. Second, it suggests that failures in earlier stages of the process are preventing viable resolution opportunities from being realised.

The relationship between Sections 12 and 33 is therefore critical. When the timeline under Section 12 is consistently breached, the deterrent effect of Section 33 is weakened, and the system as a whole begins to lose coherence.

III. WHAT OTHER COURTS HAVE DONE TO THE TIMELINE

A. The Oscillation between Efficiency and Fairness

Courts have never been entirely comfortable with the IBC's strict emphasis on timelines. The instinct to ensure procedural fairness in complex commercial disputes has consistently pulled against the legislative commitment to time-bound resolution. In the early years of the Code, this tension was particularly visible, with courts often treating timeline provisions as directory rather than mandatory—that is, as goals to strive for rather than limits that must be strictly enforced.

The Supreme Court's decision in *Essar Steel India Ltd. v. Satish Kumar Gupta* (2019) marked a significant attempt to restore discipline. In this case, the Court reaffirmed the primacy of the Committee of Creditors' commercial judgment and cautioned against excessive judicial interference in insolvency proceedings. It acknowledged the importance of adhering to the 330-day cap. At the same time, however, it left room for "exceptional circumstances," thereby preserving a degree of judicial flexibility. This opening, though limited in principle, has since been relied upon in a wide range of cases, often stretching the intended boundaries of exception.

A more complex challenge emerged with the Supreme Court's decision in *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.* (2022). Here, the Court suggested that adjudicating authorities may exercise discretion in admitting applications under Section 7, even where default is established. This marked a departure from the earlier understanding that admission was largely a mechanical process once default was proven. By introducing discretion at the threshold stage, the judgment effectively created an additional layer of potential delay at the very beginning of the insolvency process. Unsurprisingly, this development has attracted significant criticism for undermining the predictability and speed that the Code sought to establish.

B. The Admission Stage: Where Delays Begin

Sections 7 and 9 of the IBC were designed with the intention of ensuring a swift and objective admission process. The adjudicating authority is required to ascertain the existence of default within fourteen days, after which the insolvency process formally begins. In theory, this creates a clear and efficient entry point into the CIRP.

In practice, however, the admission stage has become one of the most contested and delay-prone phases of the entire process. Disputes frequently arise over issues such as the assignment of debt, the locus standi of applicants, the completeness of documentation, and, in the case of operational creditors, the existence of a “pre-existing dispute.” Each of these issues has generated substantial litigation, often resulting in prolonged hearings before the CIRP even commences.

What makes this particularly problematic is the structure of incentives. A debtor seeking to avoid insolvency has every reason to contest admission at every possible stage. More importantly, the time consumed in pre-admission litigation does not count towards the 330-day limit. As a result, delays at this stage effectively occur “off the clock,” undermining the integrity of the time-bound framework. This situation is further aggravated by institutional constraints. The NCLT, already burdened with a heavy caseload, is often unable to adhere to the fourteen-day timeline. As a result, what was intended to be a swift threshold determination has, in many cases, become a prolonged preliminary battle.

C. The Commercial Wisdom Doctrine and Its Limits

One of the most influential judicial developments under the IBC is the doctrine of the “commercial wisdom of the Committee of Creditors.” Beginning with *Swiss Ribbons* (2019) and reinforced in subsequent decisions such as *Essar Steel*, the Supreme Court has consistently held that courts should not interfere with the commercial decisions of the CoC, including the approval or rejection of resolution plans. In principle, this approach is sound. Financial creditors are better positioned than courts to evaluate the viability of a resolution plan and to make informed commercial decisions. Limiting judicial interference helps preserve the creditor-driven nature of the insolvency framework and prevents unnecessary delays caused by prolonged litigation.

However, the doctrine is not without its limitations. By restricting judicial scrutiny, it has also reduced oversight over how the CoC conducts its decision-making process. In situations where dominant creditors influence outcomes or where internal disagreements lead to prolonged negotiations, the absence of meaningful oversight can contribute to delay. Moreover, it becomes difficult to hold the CoC accountable when inefficiencies arise within its own functioning. Thus, while the doctrine of commercial wisdom plays a crucial role in maintaining the integrity of the creditor-in-control model, it also highlights the need for internal procedural discipline within the CoC.

IV. INSTITUTIONAL AND STRUCTURAL BARRIERS

A. The NCLT Capacity Problem

The National Company Law Tribunal occupies a central position within the IBC framework. Every stage of the insolvency process from admission to approval of resolution plans and liquidation, ultimately depends on its functioning. However, the Tribunal is currently operating under significant strain. It is important to note that the NCLT was not designed exclusively as an insolvency tribunal. In addition to insolvency matters, it handles a wide range of company law disputes, including mergers, oppression and mismanagement cases, and other corporate matters. Following the introduction of the IBC, the volume of cases increased dramatically, but this expansion was not matched by a corresponding increase in institutional capacity.

As a result, the Tribunal now operates with limited benches across multiple jurisdictions, with certain benches, particularly in major commercial centres bearing a disproportionate share of the workload. The consequences are visible in everyday functioning. Hearings are frequently adjourned due to lack of availability, admission orders are delayed, and resolution plans await approval for extended periods.

These delays are largely administrative rather than substantive. They do not arise from the complexity of cases but from systemic capacity constraints. Nevertheless, their cumulative impact on the insolvency timeline is significant.

B. The Committee of Creditors: When Coordination Fails

The effectiveness of the IBC’s creditor-in-control model depends heavily on the functioning of the Committee of Creditors. The underlying assumption is that creditors, acting collectively, will make timely and commercially sound decisions. In practice, however, coordination within the CoC is often challenging. Insolvency cases, particularly those involving large corporate entities, typically include a diverse group of creditors with varying interests. These may include secured and unsecured creditors, banks with different exposure levels, and financial institutions with differing risk appetites.

Reaching the required voting threshold for approval of a resolution plan, currently set at 66%, often involves extensive negotiation and compromise. These deliberations can span multiple meetings, each contributing to delays in the overall process. Another issue is the lack of detailed procedural regulation governing CoC functioning. While the IBC and IBBI regulations outline the broad framework, they provide limited guidance on how meetings should be conducted or how delays should be minimized. This regulatory gap allows inefficiencies to persist within the decision-making process.

C. Litigation as a Delay Mechanism

Litigation remains one of the most significant contributors to delay under the IBC. The Indian legal system is characterized by a strong tendency towards appellate review, with parties frequently challenging adverse decisions at multiple levels. Although the appellate structure under the IBC is relatively streamlined—moving from the NCLT to the NCLAT and then to the Supreme Court—the practical operation of this structure often results in extended timelines. Appeals are frequently admitted, stays are granted, and disposal timelines are not always adhered to.

The 2019 Amendment sought to address this issue by including litigation within the 330-day limit. The intention was to discourage unnecessary appeals by ensuring that time spent in litigation would directly affect the resolution window. However, enforcement of this principle has been inconsistent, and courts have continued to grant extensions in complex cases. As a result, litigation remains a powerful tool for delaying insolvency proceedings, often undermining the very objective of time-bound resolution.

V. WHAT OTHER COUNTRIES GET RIGHT

A. The United Kingdom: Speed Through Pre-Packs

The United Kingdom, for instance, has developed the concept of pre-packaged administration, which allows the terms of sale of a distressed business to be negotiated prior to the formal commencement of insolvency proceedings. Once the administrator is appointed, the transaction is executed almost immediately. This approach significantly reduces the time that would otherwise be spent navigating formal procedural requirements and, more importantly, preserves the operational continuity of the business. By minimizing disruption, it also helps maintain the value of the enterprise, which is often lost during prolonged insolvency proceedings.

Pre-packs drew criticism over transparency, specifically, the risk of connected parties acquiring assets at undervalue. The 2021 Administration Regulations addressed this by requiring independent scrutiny of pre-pack sales to connected parties. The result is a framework that achieves speed without sacrificing accountability — a balance India's IBC has so far struggled to strike.

B. Singapore: Innovation and Cross-Border Sophistication

Singapore's Insolvency, Restructuring and Dissolution Act, 2018 is widely regarded as one of the Asia-Pacific's most sophisticated restructuring frameworks. Singapore has built a flexible toolkit that includes restructuring moratoriums, super-priority rescue financing, cross-class cram-downs, and judicial management as an alternative to formal insolvency. The framework accommodates diverse restructuring needs without sacrificing creditor protections.

Singapore has taken a somewhat different approach, focusing on flexibility within its insolvency framework. Its regime incorporates mechanisms such as cross-class cram-downs, which allow restructuring plans to be implemented even when certain classes of creditors dissent. This reduces the possibility of individual stakeholders delaying the process by withholding consent. Additionally, Singapore's adoption of the UNCITRAL Model Law on Cross-Border Insolvency reflects its recognition of the increasingly global nature of corporate operations. By enabling coordination across jurisdictions, it avoids delays that typically arise in multi-jurisdictional insolvency cases.

C. The United States: The Culture of Reorganization

The United States, through its Chapter 11 framework, emphasizes reorganization rather than liquidation. The debtor-in-possession model allows existing management to retain control of the company during the restructuring process, subject to oversight by creditors and the court. This continuity often facilitates quicker decision-making and reduces disruptions to business operations. Furthermore, the widespread use of pre-packaged and pre-negotiated bankruptcies allows companies to enter formal proceedings with a restructuring plan already in place, thereby significantly shortening the duration of the process.

What becomes evident from these comparative frameworks is that efficiency in insolvency resolution is not achieved solely through rigid timelines. Rather, it depends on a combination of institutional capacity, procedural innovation, and a legal culture that discourages delay. These jurisdictions demonstrate that timely resolution requires not only a well-drafted statute but also a supporting ecosystem that enables its effective implementation.

VI. WHAT NEEDS TO CHANGE

A. Fix the NCLT

Everything else in this reform agenda ultimately depends on having an NCLT that is capable of handling its caseload efficiently. At present, this remains one of the most critical bottlenecks in the insolvency framework. Addressing this requires, first and foremost, a substantial increase in bench strength. Dedicated insolvency benches should be established in all major commercial centres, staffed by members who possess specialised expertise in insolvency law as well as corporate finance. The current arrangement where insolvency matters compete for limited hearing time alongside general company law disputes is structurally misaligned with the time-sensitive design of the Code.

Beyond expanding bench capacity, there is an equally pressing need to modernize the Tribunal's case management infrastructure. The adoption of digital filing systems, maintenance of electronic records, and implementation of standardized workflows across all benches would significantly reduce administrative delays that are unrelated to the merits of the case. Such reforms would streamline

procedural efficiency and ensure greater consistency in handling matters. In addition, accountability mechanisms need to be strengthened. The Insolvency and Bankruptcy Board of India (IBBI) should be empowered to publish quarterly data reflecting NCLT adherence to statutory timelines. Transparency in this regard would not only highlight performance gaps but also create an institutional incentive to improve efficiency.

B. Regulate the Committee of Creditors

The functioning of the Committee of Creditors requires a more structured and regulated approach if delays within the resolution process are to be meaningfully addressed. At present, while the broad framework governing the CoC exists, the absence of detailed procedural guidance often allows deliberations to extend indefinitely. To address this, the IBBI should introduce comprehensive procedural regulations governing CoC operations. These should include clearly defined maximum intervals between meetings, strict deadlines for the evaluation of resolution plans, and specific obligations on resolution professionals to identify and flag avoidable delays attributable to the CoC. The objective should be to ensure that the internal decision-making process remains efficient and does not devolve into prolonged and open-ended negotiations.

While the existing 66% voting threshold is appropriate as a general standard, the framework must also account for the possibility of strategic behaviour by minority creditor groups. In certain cases, such groups may use their voting power to extract disproportionate recoveries, thereby delaying the process. Given that collective action problems in creditor decision-making are well recognized in economic theory, the regulatory framework should incorporate safeguards to mitigate such outcomes.

C. Restore Discipline to the Admission Stage

The fourteen-day timeline for admission under Sections 7 and 9 of the IBC was intended to ensure swift initiation of insolvency proceedings. However, in practice, this requirement has not been consistently enforced. Restoring discipline at this stage is therefore essential to preserving the integrity of the overall timeline. To achieve this, NCLT members should be required to record specific reasons whenever the statutory timeline is not adhered to. This would introduce a level of procedural accountability that is currently lacking. In parallel, the IBBI should publish bench-level data on admission timelines, thereby enabling performance monitoring across jurisdictions.

The issue of discretion introduced by the *Vidarbha Industries* decision also requires urgent clarification. Legislative intervention may be necessary to reaffirm that admission under Section 7 should be based solely on the establishment of default, without the introduction of additional discretionary considerations. This would restore predictability and prevent unnecessary delays at the threshold stage. For operational creditors proceeding under Section 9, the concept of a “pre-existing dispute” continues to generate significant litigation. A more precise, bright-line definition is required. One possible approach would be to mandate that any such dispute must be documented in writing prior to the issuance of the demand notice. This would substantially reduce ambiguity and limit the scope for strategic disputes being raised solely to delay admission.

D. Reform the Appellate Framework

The appellate framework under the IBC plays an important role in safeguarding the integrity of the process, but it has also emerged as a significant source of delay. Addressing this requires both structural and behavioural reforms. At the institutional level, the National Company Law Appellate Tribunal (NCLAT) should be subject to performance monitoring mechanisms that carry meaningful consequences for failure to adhere to disposal timelines. Ensuring timely resolution of appeals is critical to maintaining the overall efficiency of the insolvency process.

The granting of stays on CIRP proceedings must also be approached with greater caution. Such stays should be genuinely exceptional and limited to cases involving serious questions of law or a clear risk of irreparable harm. Even in such cases, they should be accompanied by a requirement for expedited disposal of the appeal, so that the delay introduced is minimized.

At the level of the Supreme Court, the introduction of practice directions specifically tailored to insolvency appeals could help establish clearer benchmarks for timely adjudication. These directions should reflect the time-sensitive nature of the Code and reinforce the importance of adhering to statutory timelines. More broadly, there is a need for a shift in the legal culture surrounding insolvency litigation. The current tendency to treat every procedural step as an opportunity for challenge is fundamentally incompatible with a time-bound framework. Achieving this shift will require judicial leadership, consistent articulation of guiding principles by the apex court, and firm enforcement of statutory standards.

E. Expand Pre-Packaged Insolvency

The introduction of the pre-packaged insolvency framework for Micro, Small, and Medium Enterprises (MSMEs) in 2021 represents a constructive step towards improving efficiency within the insolvency regime. However, its potential remains underutilized, and there is a strong case for extending this model to larger corporate entities. A well-designed pre-packaged insolvency process, drawing from established practices in jurisdictions such as the United Kingdom and the United States, would allow the negotiation phase of resolution to take place prior to the formal commencement of CIRP. This would ensure that once the process is initiated, it focuses primarily on administrative and adjudicatory steps, thereby significantly reducing the time required for completion.

At the same time, appropriate safeguards must be incorporated to ensure transparency and prevent misuse. These may include disclosure requirements, oversight mechanisms, and protections for minority stakeholders. In addition, greater integration between the Reserve Bank of India’s framework for out-of-court resolution of stressed assets and the IBC is necessary. At present, the transition

from an unsuccessful out-of-court process to formal CIRP often results in duplication of effort and loss of value. Establishing clear and structured transition mechanisms would help preserve value and improve overall efficiency.

F. Adopt the UNCITRAL Model Law on Cross-Border Insolvency

The absence of a comprehensive cross-border insolvency framework in India represents a significant gap, particularly in the context of increasingly globalised business operations. As Indian companies expand internationally and foreign creditors acquire larger stakes in Indian corporate debt, the need for an effective mechanism to address cross-border insolvency issues has become more urgent. The IBBI has already taken a step in this direction by drafting Cross-Border Insolvency Rules. However, the process must now move towards formal legislative adoption of the UNCITRAL Model Law on Cross-Border Insolvency. This framework has been successfully implemented in several jurisdictions, including the United Kingdom, Singapore, the United States, and Australia, without causing disruption to their domestic legal systems.

VII. Conclusion

The Insolvency and Bankruptcy Code, 2016 represents a significant advancement in India's insolvency regime, both in terms of its conceptual framework and its legislative design. Its emphasis on time-bound resolution reflects a clear understanding of the importance of timeliness in preserving value and ensuring economic stability. In theory, the Code establishes a structured and efficient process that addresses many of the shortcomings of the pre-existing regime. However, the experience of implementation reveals a more complex reality. Despite the presence of clearly defined timelines, delays continue to persist at various stages of the insolvency process. These delays are not the result of a single deficiency but arise from a combination of institutional limitations, procedural inefficiencies, and behavioural factors. The interaction of these elements creates a systemic challenge that cannot be addressed through isolated reforms.

The findings of this paper suggest that bridging the gap between legislative intent and practical outcomes requires a more holistic approach. Strengthening institutional capacity, particularly within the NCLT, is essential to ensure timely adjudication. Improving the functioning of the Committee of Creditors and introducing greater procedural discipline would enhance the efficiency of decision-making. Reducing litigation-induced delays through targeted reforms would further support the objective of time-bound resolution.

At the same time, it is important to recognize that insolvency law operates within a broader legal and economic context. The tension between efficiency and fairness is inherent in any system that seeks to balance competing interests. While strict timelines are necessary to prevent delays, they must be applied in a manner that does not compromise the principles of justice. Ultimately, the success of the IBC depends not only on the strength of its statutory provisions but also on the effectiveness of its implementation. The Code has laid a strong foundation for a modern insolvency framework in India. The challenge now lies in ensuring that this framework functions as intended, so that the promise of time-bound resolution is realised in practice.

Keywords: *Insolvency and Bankruptcy Code 2016, CIRP, Section 12, NCLT, Committee of Creditors, Judicial Delay, IBBI*

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