



No Modification in the Resolution Plan Under IBC: SC

Why in News

Recently, the [Supreme Court \(SC\)](#) held that the [Committee of Creditors \(CoC\)](#) approved resolution plan under the [Insolvency and Bankruptcy Code \(IBC\)](#) submitted to the [National Company Law Tribunal \(NCLT\)](#) cannot be modified.

- Earlier, in July 2021 the government introduced the [Insolvency and Bankruptcy Code \(Amendment Bill\), 2021](#) in the Lok Sabha.

Key Points

▪ SC's Ruling:

- **No Modifications:** The **adjudicating authority cannot allow modifications or withdrawals of Resolution Plans** approved by the Committee of Creditors at the behest of the successful Resolution Applicant, **once the plan is submitted to it.**
- **Timely Completion:** [Corporate Insolvency Resolution Process \(CIRP\)](#) carried out under the IBC **must be completed within 330 days** as laid down by the Code.
 - It quoted a report of the Parliamentary standing committee on finance which stated that **71% cases are pending for more than 180 days before NCLT (National Company Law Tribunal).**
 - And asked the NCLT and the [National Company Law Appellate Tribunal \(NCLAT\)](#) to stick to this, and should therefore, while deciding IBC matters, **respect the deadline** keeping in mind the effect of such delays on the insolvency resolution process.
 - Judicial **delay was one of the major reasons for the failure of the insolvency regime** that was in effect **prior to the IBC.**
 - The **time limit can be extended only in exceptional circumstances** as otherwise, the **open-ended** process for further negotiations or a withdrawal, **would have a deleterious impact on the Corporate Debtor**, its creditors, and the economy at large as the liquidation value depletes with the passage of time.

▪ Insolvency Resolution Process in India:

- **Eligibility:** Under IBC, companies (both private and public limited company) and Limited Liability Partnerships (LLP) **can be considered as defaulting corporate debtors.**
 - A corporate debtor is any corporate organization which owes a debt to any person.
- **Default Amount:** The IBC can be triggered if there is **a minimum default of Rs 1 Crore.** This process can be triggered by way of filing an application before the NCLT.
- **Resolution Initiation:** The process can be **initiated by two classes of creditors** which would include financial creditors and operational creditors.
 - **Creditors:** A Creditor means any person to whom a debt is owed and includes a financial creditor, an operational creditor, etc.
 - **Financial Creditors:** The financial creditor in simple terms is the institution that

- provided money to the corporate entity in the form of loans, bonds etc. E.g. banks.
- **Operational Creditors:** An operational creditor is the entity who has a claim for providing any of the four categories to the defaulted corporate- goods, services, employment and Government dues (central govt, state or local bodies).
 - **Appointment of Interim Resolution Professional:** As soon as the matter is admitted by the NCLT, the NCLT proceeds with the appointment of an **Interim Resolution Professional (IRP)** who takes over the management of the defaulting debtor.
 - **Committee of Creditors (CoC):** A committee consisting only of the financial creditors i.e. the CoC is formed by the IRP.
 - **Only operational creditors having aggregate dues of at least 10%** of the total debt are invited into the meeting of CoC (**Operational creditors are not a member** of CoC). The operational creditors don't have any voting power.
 - **Corporate Insolvency Resolution Process (CIRP):** It includes **necessary steps to revive the company such as raising fresh funds for operation**, looking for a new buyer to sell the company as a going concern, etc.
 - The CoC takes a decision regarding the future of the outstanding debt owed to it. The resolution plan can be implemented only if it has been approved by 66% of the creditors in the CoC.
 - The IBC (Amendment Bill), 2021 introduced an alternate insolvency resolution process for **Micro, Small and Medium Enterprises (MSMEs)** with defaults up to Rs 1 crore called the **Pre-packaged Insolvency Resolution Process (PIRP)**.
 - **Liquidation Proceedings:** In the event a resolution plan is not submitted or not approved by the Committee of Creditors (CoC), the CIRP process is deemed to have failed. In such a situation the liquidation proceedings commences subject to the order of the tribunal.

Way Forward

- Some of the issues faced in the implementation of IBC can be eased by:
 - **Conducting timely colloquium for judges of NCLT and increasing interaction** between practitioners from various jurisdictions.
 - NCLTs according to **higher priority to applications filed in respect of avoidable transactions** such as extortionate, preferential, undervalued, and fraudulent transactions.
 - NCLTs **discourage frequent adjournments and ensure timeliness** of the resolution process.
- Focus should be on **sensitizing various government and statutory authorities** about the treatment of government and statutory dues under IBC **to reduce the scope for litigation and consequent delay** in the resolution of companies under corporate insolvency.

Source: IE