

# Delay in Insolvency and Bankruptcy Resolution

written by Aurelia Menezes | December 16, 2023



The Insolvency and Bankruptcy Code, 2016 ("**Code**") was enacted to resolve and adjudicate disputes pertaining to insolvency and bankruptcy in India. The insolvency regime in India is regulated by the Insolvency and Bankruptcy Board of India (IBBI). The primary function of the Code is to provide a solution to the companies that are in distress. The Code helps in providing better exits to all parties concerned, but of late, due to backlog of cases in the National Company Law Tribunal (NCLT), it has not been able to pass speedy resolution and many companies are not being rescued in a time bound manner.

It is a matter of great concern when companies in distress have been liquidated rather than being rescued. Creditors suffer the most financially if or when a company is liquidated, it is because creditors don't receive the entire sum that was lent as debt because the value of the company's assets depreciates the longer it is stuck in the resolution process, creditors are put in a situation where they will have to take huge haircuts. Similarly, a distressed corporate debtor is in the position of default in making prompt repayment of debt due to lack of demand, recession, inflation, high rate of interest on borrowings, etc. Delayed resolution further deteriorates the ability of the corporate debtor to negotiate, reduces the valuation of the corporate debtor, causes commercial uncertainty, and leads to an expensive

liquidation process.

## **The following are the reasons for delay in Insolvency and Bankruptcy resolutions:**

- **Dearth of Insolvency Resolution Professionals:** Insolvency professionals are certified professionals/persons who are involved in assessing the financial position of a company. They evaluate and analyze whether a company is in a position to revive itself or not. For the year 2023, there are only 892 registered Insolvency Resolution Professionals (IRPs) for January to June 2023 period[\[1\]](#). When we compare this figure with the number of cases pending before NCLT which is almost 13,000 cases[\[2\]](#), it is evident that we are indeed facing a dearth of IRPs, which has unfortunately helped in delaying the procedure.
- **Lack of adequate information utilities:** Information Utilities (IU) are professional organisations, which provide financial data especially debt and defaults relating to the corporate debtor to the relevant stakeholders like IRPs, creditors, etc. When uniform data is made available to all concerned stakeholders, it is easier to limit the time required for Insolvency Resolution Process. National E-Governance Services Limited is the only registered IU in India[\[3\]](#) and it is not possible to have authentic data without IU. Hence, the presence of only one registered IU has its fair share in delaying the procedure.
- **Non-adherence by NCLT and National Company Law Appellate Tribunal (NCLAT) to timelines:** When there is default in repayment of debt, CIRP must be mandatorily completed within a period of 330 days from the insolvency commencement date including time taken in litigation by the corporate debtor pertaining to resolution process[\[4\]](#). At present, an average duration of 653 days is required for resolution[\[5\]](#), which is way beyond the maximum prescribed period fixed as per the code. Moreover, the Hon'ble Supreme Court of India had asked the NCLT and NCLAT to strictly adhere to the timelines and to clear all pending resolution plans.[\[6\]](#)
- **Limited Judicial bench strength:** The sanctioned strength of NCLT and NCLAT is 63 and 12 respectively, considering the pendency of cases it is high time that the sanctioned strength must be increased so as to meet the requirements of speedy resolutions and disposal of cases. At present there are 8 vacancies in NCLT, which must be filled at the earliest so as to mitigate the effects of piling up of cases. The Central Government must consider increasing the bench strength to avoid piling of cases and to prevent delays in resolution.

## Remedies:

- Strict adherence to timelines prescribed in the code.
- Bench strength of adjudicating authorities must be increased adequately.
- Vacancies, if any, in NCLT/NCLAT must be filled without any delay.
- It is essential to build a force of well-qualified Insolvency professionals.

## Conclusion:

The code has no doubt brought about a revolutionary change in borrower's behavior and corporate borrowing. However, delays in resolution continue to be a major cause for concern in solving insolvency and bankruptcy disputes. Delay in resolution of cases has been one of the drawbacks in the implementation of the code. This has led to long drawn legal processes, large haircuts taken by creditors and huge pendency of cases for a long period.

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[1] [IBBI Issues Final List Of Insolvency Professionals For 2023 \(cornerofficejournal.com\)](https://cornerofficejournal.com)

[2] <https://insolvencytracker.in/2023/03/13/over-21000-cases-pending-with-nclt-govt/>

[3] [Insolvency and Bankruptcy Board of India \(ibbi.gov.in\)](https://ibbi.gov.in)

[4] Section 12(3) of Insolvency and Bankruptcy Code, 2016

[5] [IBC Recoveries Declining, Resolution Timelines Getting Prolonged: Crisil - News18](#)

[6] Ebix Singapore Private Ltd. v. Committee of Creditors of Educomp, Civil Appeal No. 3224 of 2020.

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