Addressing Issues with IBC

What is the issue?

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The slow pace of resolution under the Insolvency and Bankruptcy Code, is a growing cause for concern.

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What is IBC?

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- To address the issues Debt Recovery Tribunals (DRTs), which had prevented lenders from expediting recoveries, IBC was introduced in 2016.
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- According to IBC a financial creditor holds an important role in the corporate insolvency process, the Committee of Creditors (CoC) under IBC includes all financial creditors of a corporate debtor.
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- When a firm defaults on its debt, its control will shift to a committee of creditors.
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- The code has provisions for the creation of 'Insolvency Professionals' who would handle the commercial aspects of the resolution process.
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- The entire process is time-bound and must be completed within a period of 180 days (a one-time extension of 90 days is possible after the completion of 180 days).
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- Insolvency professional agencies will train and regulate these professionals and Insolvency and Bankruptcy Board of India will be the overall regulator.
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What are the recent improvements in IBC?

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- In a very recent ruling, the Supreme Court put to rest the uncertainty over time-barred debts.
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- Varying rulings by the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) had earlier created a lot of ambiguity over the matter.
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- The Supreme Court has now ruled that the Limitation Act, is applicable to the proceedings under the IBC.
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- Essentially no action under IBC is possible in respect of time barred debts (if the default has occurred over three years prior to the date of filing of the application).
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- IBC (Amendment) Ordinance, 2018, promulgated earlier this year, has sought to ensure non-entertainment of late bids and no negotiation with the late bidders.
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- The IBBI in its July amendment, laid down model timelines for the various stages in the resolution process.
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- For instance, the invitation of expression of interest (EOI) must happen within 75 days of commencement of the insolvency process and submission of EOI within 90 days.
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What are the issues with IBC?

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- **Resolution Timeline -** As of June 2018, a total of 977 cases have been admitted for the corporate insolvency resolution process (CIRP), of which only 34 cases have seen successful resolution; 91 cases were closed on appeal/review, 136 ordered for liquidation.
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- A chunk 716 cases are under CIRP of which nearly half have been under CIRP for over 180 days.
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- One of the crucial aspects of the IBC was time-bound resolution. But for most of the big cases and many more, the extended 270-day deadline has lapsed and resolution process is still ongoing.
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- As is becoming evident, several ongoing litigations are proving to be a drag on the timelines set under IBC.
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- **Limitation of Resources -** Currently, there are over 1,000 cases admitted by the NCLT under IBC and over 2,000 registered insolvency professionals (IPs).
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- But how many of these individuals are equipped to manage affairs of the business, cash flows, labour disputes etc, is critical.
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- **Implementation Challenges -** Since the IBC is still evolving and testing waters, there have been challenges at various stages right from admission of the case, expression of interest from parties, to submission of plans and final approval by the NCLT.
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What further measures needs to be taken?

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- Steady modifications in the Code may be required, undue delays in litigations is impacting the efficacy of the IBC process.
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- At the same time steady streamlining of the process is imperative that can lead to delay in the resolution process.
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- To address the issues with timeline IBC can follow the model timeline provided in the regulations.
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- It is hence essential that the resolution period of 180/270 days is strictly adhered to, allowing only a month or so spillover.
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- Apart from this courts must avoid intervening routinely, unless key points of law need clarification.
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- Lack of sufficient number of resources in terms of IPs, benches, judicial members, technical members at NCLT needs to be addressed.
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Source: Business Line

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