Amendments to IBC and its Impact

What is the issue?

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The government’s recent amendments to the IBC have received a mixed response.

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What is IBC?

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- “Insolvency & Bankruptcy Code (IBC), 2016” constituted a single window process for a time-bound settlement for corporate & individual loan defaults.
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- Either the creditor (banks) or the loaner (defaulter) can initiate insolvency proceedings by submitting a plea to the adjudicating authority.
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- The adjudicating authority for corporate insolvency proceeding is the “National Companies Law Tribunal (NCLT)”.
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- In the process, the defaulting company is either be sold to a potential buyer as a whole or it could get liquidated and have its assets auctioned.
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- The earnings so obtained is then used to settle the creditor, which would most certainly involve accepting a big loss due to under-recovery.
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What is the recent ordinance about?

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- Initially, in IBC, a promoter could declare insolvency for his firm and then participate in the bidding process for the same and acquire it.
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- This opened up the possibility of wilful default as the insolvency proceedings would help in getting a loan haircut (reduction).

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- Hence recently, IBC was amended by the government through an ordinance to deter such wilful defaulters from bidding either directly or indirectly.
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- Notably, the ordinance also excludes companies whose interest and charges are outstanding for a period of 1 year or more from the bidding process.
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- The amendment mandates the appointment of a 'Resolution Professional (RP)' for every case, to do the background checks for all bidding applications.
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- But some argue that disqualifying errant promoters from the bidding process will lead to further losses for banks.
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What are the possible outcomes?

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- **Positive -** Most loans that land up for in insolvency proceedings are likely to have already been restructured by the banks in the past.
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- The fact that repayment has failed even after such restructuring, raise serious questions on the credit-worthiness of the loaners.
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- Hence, barring promoters of such companies is only logical.
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- Thus, the ordinance creates the scope for disqualifying an existing promoter or including a rank outsider into the bidding process.
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- **Negative -** The Insolvency and Bankruptcy Board of India (IBBI) is the regulator, which was set up under the IBC.
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- But several advisory committees of the IBBI, entrusted with corporate insolvency & liquidation, are chaired by several top corporate leaders.
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- This could be tricky for the credibility of IBC and the recent ordinance may be misused to defeat the very objective of penalising the errant promoter.
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- Banks will only lose more, if these designs help in side-tracking loan recovery

and aid influential people to purchase distressed assets at low prices.
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Source: The Hindu

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