Flaws in IBC

What is the issue?

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- The Insolvency and Bankruptcy Code (IBC), 2016 was enacted with the intention of improving the **ease of doing business** in India
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- The code is however said to have certain loopholes that goes against this principle.
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What is IBC?

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- It aims to overhaul laws relating to reorganisation and **insolvency resolution** of corporate persons, partnership firms, and individuals.
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- It attempts to ease the process of recovery of money by operational and financial creditors in a timely manner.
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- It places the onus on **professionals** to put forth the resolution plans.
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How does it operate?

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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 committee will have 180 days to evaluate the proposals from various interested parties on how to either revive the company or enable liquidation.
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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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- Insolvency professional agencies will train and regulate these professionals.
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- The **Debt Recovery Tribunal** act as adjudicating authorities for individuals and unlimited partnership firms, and **National Company Law Tribunal** would deal with companies and limited liability entities.
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- **Insolvency and Bankruptcy Board of India** will be the overall regulator.
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What are the shortcomings?

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- The code fails to provide adequate safeguards to protect the rights of the company before handing over the management to the resolution professional.
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- The Code rides substantially on the **unquestionable word of the creditors.**
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- The Code fails to provide any opportunity to the corporate **debtor to make a representation** at any stage of the resolution process.
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- The Code is also deficient in providing criteria for the qualification of the interim and of the final **insolvency resolution professionals.**
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- It also leaves too much discretion in the hands of the IP.
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- It allows for any person to access the information memorandum put together by the insolvency professional without restricting competitors or imposing any **confidentiality obligations.**
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- This goes against the right to business.
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- The Code fails to define a resolution applicant. All such **resolution plans** are placed before the financial creditors and is implemented by way of an order by the NCLT.
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- If the financial creditors fail to arrive at a consensus, the default plan is to liquidate the company.
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- The Code prohibits withdrawal of the application once it has been admitted.

This means that there is no scope for settlement.
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What could be done?

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- The code must be robust, decentralized, less costly, inclusive and speedy.
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- This would help businesses exit sooner and capital to be redeployed faster to productive firms, thereby improving economic output and employment.
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- The code should encourage decentralization, reduce the role of courts or insolvency professionals and allow for a greater role for a market-friendly approach.
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Source: The Hindu

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