Ordinance to Amend the IBC

What is the issue?

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- Insolvency and Bankruptcy Code (IBC) came into force in 2016 with the goal of easing the resolution of stagnant corporate debt.
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- Recently, an ordinance was passed, which significantly amends the original law and risks defeating the very intent of IBC.
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What is the intent of the amendment?

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- IBC was enacted to ensure time bound corporate debt resolution through proceeding initiated by either the creditor or debtor with the 'National Company Law Tribunal – NCLT'.
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- In the original IBC, there was a possibility for defaulters to apply as bidders in the liquidation (auctioning assets) process.
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- This would have helped them regain control of their own companies with a reduced loan burden than before.
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- This was seen as a clever way to gain loan reductions that could possibly impact the credibility of the insolvency resolutions.
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- It has hence been considered necessary to prohibit unscrupulous defaulters from submitting resolution plans under IBC.
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- The current ordinance specifies the categories of persons who are deemed ineligible henceforth to ensure credible debt resolution.
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What is the problem with the amendment?

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- **Purpose of IBC -** IBC is not merely an instrument for liquidation.
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- Instead, it is also envisioned as an enabling legal framework for the “reorganisation and insolvency resolution of corporate entities”.
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- It fact, it even prescribes a time bound procedure for “maximising the asset value of such entities and to promote entrepreneurship”.
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- **Amendment -** Wilful defaulters have put creditors to substantial financial hardships and barring them from bidding is a good move.
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- But the category of people barred under the current ordinance is too broad and risks defeating the very objectives of IBC.
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- The ordinance’s scope & wording is such that all loans that have become NPAs can be branded as wilful default.
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- Even, the promoters and members of the management board of companies whose loan accounts are classified as non-performing for just 1 year (or more) have also been barred from bidding.
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- Notably, the amendments have been made with retrospective effect to also cover the more than 600 cases already referred to NCLT.
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- **The Business –** Also, the complete barring of all original owners from bidding for assets might not make economic sense.
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- This is because they would have a better knowledge of the market dynamics and might have nurtured a clientele that might be difficult to emulate for other bidders.
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- Barring them could potentially prolong debt servicing as the new management might take time to set in.
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Do all NPAs necessarily mean wrong intent?

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- The central bankers have often pointed out that not all bad loans are a result of intentional default on the borrower's part.
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- Companies in some sectors have struggled to service debts due to unpredictable external factors that adversely impacted their finances.
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- Promoters of such firms from should be given a chance to restructure and turnaround their business.
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- Barring them merely because their loans have turned sour is unfair to both the entrepreneur and the enterprise itself.
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- **Steel Industry's Case -** Steel companies were among the worst hit in the wake of the global downturn in commodity prices.
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- It has been reported that the promoters of some of these debt-laden steelmakers were considering participating in bids.
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- They wanted to restructure debts and their businesses and were hoping to run them again – which the current amendment hinders.
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What is the way forward?

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- The ordinance is expected to be tabled in the winter session of the parliament in December.
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- It needs to be debated thoroughly and a more rationale debt resolution framework needs to be evolved.
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- Else, instead of solving the NPA problem, IBC could aggravate it.
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- The robustness of the insolvency framework is bound to have a significant impact on investments in the economy.
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Source: The Hindu

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