Resolution Plan of IBC

What is the issue?

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Insolvency and Bankruptcy Code (IBC) 2016 will play an important role in ease of doing business.

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What are the elements of Insolvency and bankruptcy code?

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- **Quasi-judicial bodies:** An insolvency proceeding can be commenced by any creditor by filing an application with the Adjudicating Authority (AA) at the National Company Law Tribunal (NCLT).
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- Insolvency proceedings can be initiated on admission of the application by the NCLT.
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- **Professionals:** After which the lenders have to form a committee of creditors (CoC) and appoint an insolvency professional (IP) to act as a resolution professional (RP) and run the borrower's business in the interim period.
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- **Deliberate committee:** To arrive at a resolution, the Code prescribes preparation and submission of a "resolution plan" within a rational timeline of 180-270 days from the commencement of insolvency proceedings.
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What are characteristic features of resolution plan?

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- **Objective:** To maximise eventual returns to the creditors.
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- **Approval:** The responsibility of approving a resolution plan rests with the CoC, which will approve it with not less than 75 per cent voting in favour of it.
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- Where a plan approved by the CoC is subsequently approved by the AA, the final plan will be binding on the corporate debtors, involved in the resolution plan.
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- **Immunity:** The NCLT is not expected to reject a plan on the ground that, it is not feasible to implement the plan from a practical or economic/commercial point of view.
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- The NCLT is not meant to investigate into the technical and economical complexity of the plan.
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What are the issues with Resolution Plan?

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- There are certain areas around the resolution plan which remain unaddressed by the Code.
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- There is lack of clarity on whether the CoC can approve more than one plan by a majority, and whether the AA can request modifications in plans approved by the CoC.
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- The Code is also silent on changes that may be required after approval of a final plan by the AA.
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- Clarity is also required on whether consent of shareholders is required on the approved plan for sale of assets, mergers and amalgamation, as per the provisions of the Companies Act, 2013.
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What will be positive outcomes?

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- The resolution plan under the IBC is expected to be more objective,

flexible and resolution-oriented.
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- A good resolution plan should be based on a robust business strategy, and list material assumptions underpinning the business plan, including current laws.
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- It should also highlight key critical factors and milestones, and clearly define the implementation and monitoring mechanism.
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Source: Business Standard

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