

Lenders' differences, legal challenges behind delay in resolutions under IBC

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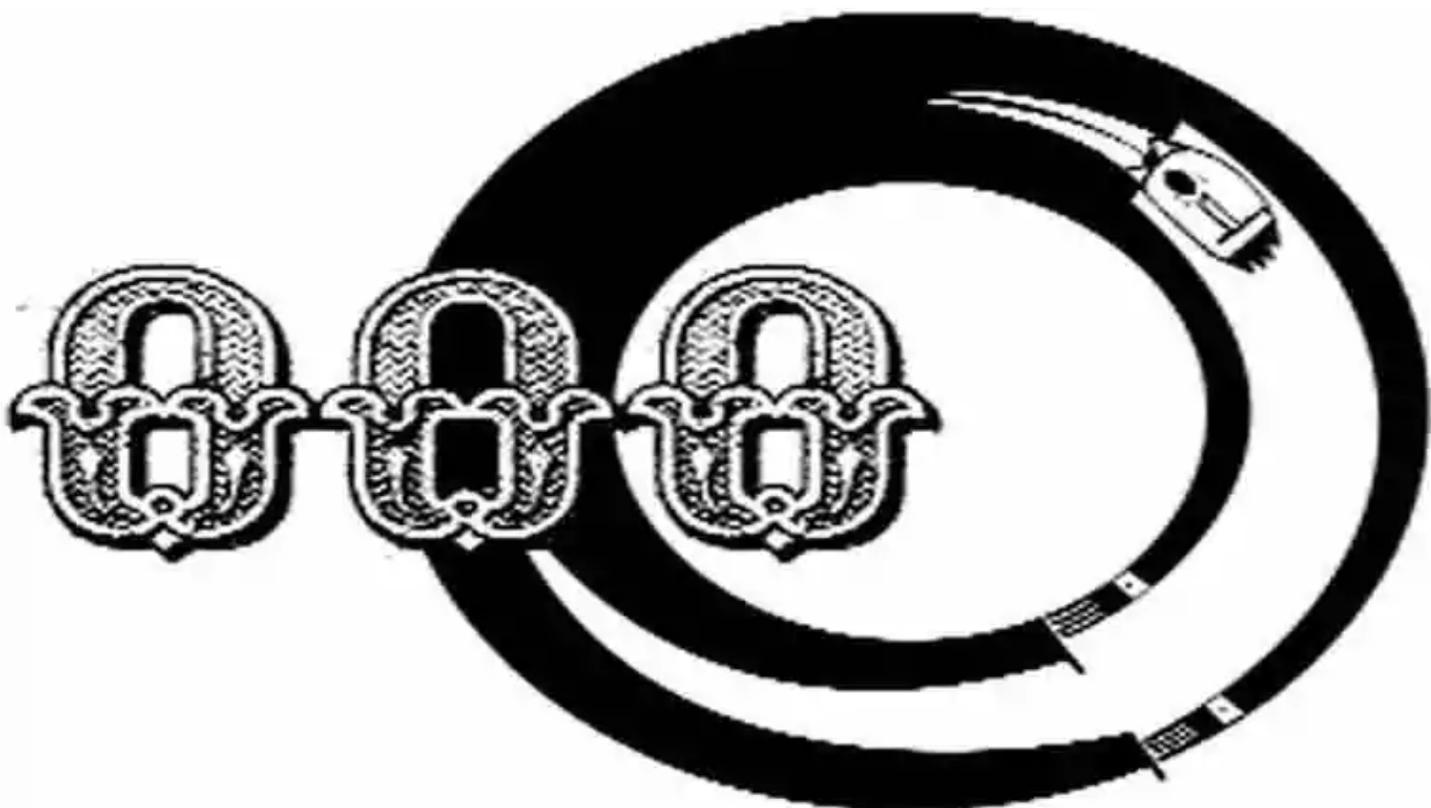
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IBC offers better recovery rate of 43% to financial creditors.

A number of hurdles have recently delayed debt resolution at Essar Steel India Ltd, which seemed just in sight a couple of months ago. Differences among lenders, legal challenges posed by existing promoters and operational creditors are among the reasons for slowing down resolution process under the Insolvency and Bankruptcy Code (IBC), with nearly half of the cases overshooting time limits set under the law.

The IBC requires a corporate insolvency resolution process (CIRP) to be completed in 180 days, which can be extended by another 90 days to a maximum of 270 days. These time limits were set in to ensure that recovery of non performing assets (NPAs) happen in a time-bound manner and banks are able to reduce the quantum of stressed assets of more than Rs 10 lakh crore. Even as there have been delays in nearly half of the cases, the IBC has offered better recovery rate of 43 per cent to financial creditors in the 93 resolution plans approved so far.

As on March 31, 2019, out of total 1143 that were undergoing resolution under the IBC, a total of 548 cases exceeded the 180-day deadline. This reflects that in nearly 48 per cent of the cases (or 548 CIRPs), resolution could not be achieved within 180 days. A total of 362 cases – or 31.67 per cent of the ongoing CIRPs – surpassed the outer limit of 270 days set out in the IBC. Lack of appropriate bids to takeover companies, differences among the lenders, legal

challenges posed by existing promoters and operational creditors are among the reasons resulting in delay.

362 CASES SURPASS LIMIT OF 270 DAYS

Status of CIRPs	No of CIRPs
Admitted	1858
Closed on Appeal/Review/Settled	152
Closed by withdrawal under Section 12A	91
Closed by resolution	94
Closed by resolution liquidation	378
Ongoing CIRPs	1143
>270 days	362
>180 days to <270 days	186
>90 days to <180 days	247
<90 days	348

Source: The Insolvency and Bankruptcy Board of India (IBBI)

Among the first 12 large NPA cases that the banks referred to various NCLT (National Company Law Tribunal) benches, the case of Essar Steel India Limited has been facing significant delay. The Essar Steel Asia Holding's plea Tuesday to reject ArcelorMittal's Rs 42,000 crore bid for Essar Steel added a fresh twist to the already stretched resolution process of the firm. While insolvency proceedings were initiated against Essar Steel India Limited in June 2017 and admitted in August 2017, it has breached the mandated 270 days resolution norm by almost a year.

Of the 12 large accounts that had combined outstanding claim of Rs 3.45 lakh crore, resolution plans were approved in six cases, including that of Essar Steel which is now facing fresh delays. The other cases are yet to successful resolution plans. In the case of Amtek Auto Ltd, for

instance, the approved resolution could not be implemented and the process has now started again.

The other five large cases wherein resolution has been implemented include Electrosteel Steels Ltd acquired by Vedanta Ltd, Bhushan Steel Ltd acquired by Bamnival Steel (a Tata group subsidiary), Monnet Ispat & Energy acquired by a consortium of JSW and AION Investments Pvt Ltd, Alok Industries Ltd acquired by Reliance Industries and JM Financial Asset Reconstruction Company Ltd and Jyoti Structures acquired by a group of high networth individuals. The recovery rate for financial creditors ranged from a low of 17.11 per cent in case of Alok Industries to a high of 63.50 per cent in case of Bhushan Steel Ltd.

Delays in ongoing cases notwithstanding, the IBC process has so far yielded better recovery rates when compared with the existing system of Debt Recovery Tribunals and recovery under the SARFAESI (The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest) Act.

From December 1, 2016, when provisions of CIRP kicked in till March 31, 2019, the IBC yielded successful resolution plans in 93 cases, wherein financial creditors could recovery Rs 74,497 crore out of admitted claims of Rs 1,73,359 crore — resulting in a recovery rate of 43 per cent for the financial creditors. In the existing regime of DRT/SARFAESI, banks could recover less than 20 per cent of the stuck loans with significant delays.

A senior official dealing with the IBC said since it's an evolving law, there are bound to be some hiccups but the system is producing better results compared to previous regime. "Apart from recovery coming from resolution, you need to realise that the law has completely changes the creditor-debtor relationship. A number of companies are coming forward to banks to repay their dues for the fear of losing control of their companies, as creditors may take them to the bankruptcy court," the official said.