Opinion

When Process Defeats Purpose: India's IBC and the Value Maximisation Test

India's insolvency framework has transformed credit culture, but recent cases raise pointed questions about whether process is displacing purpose.

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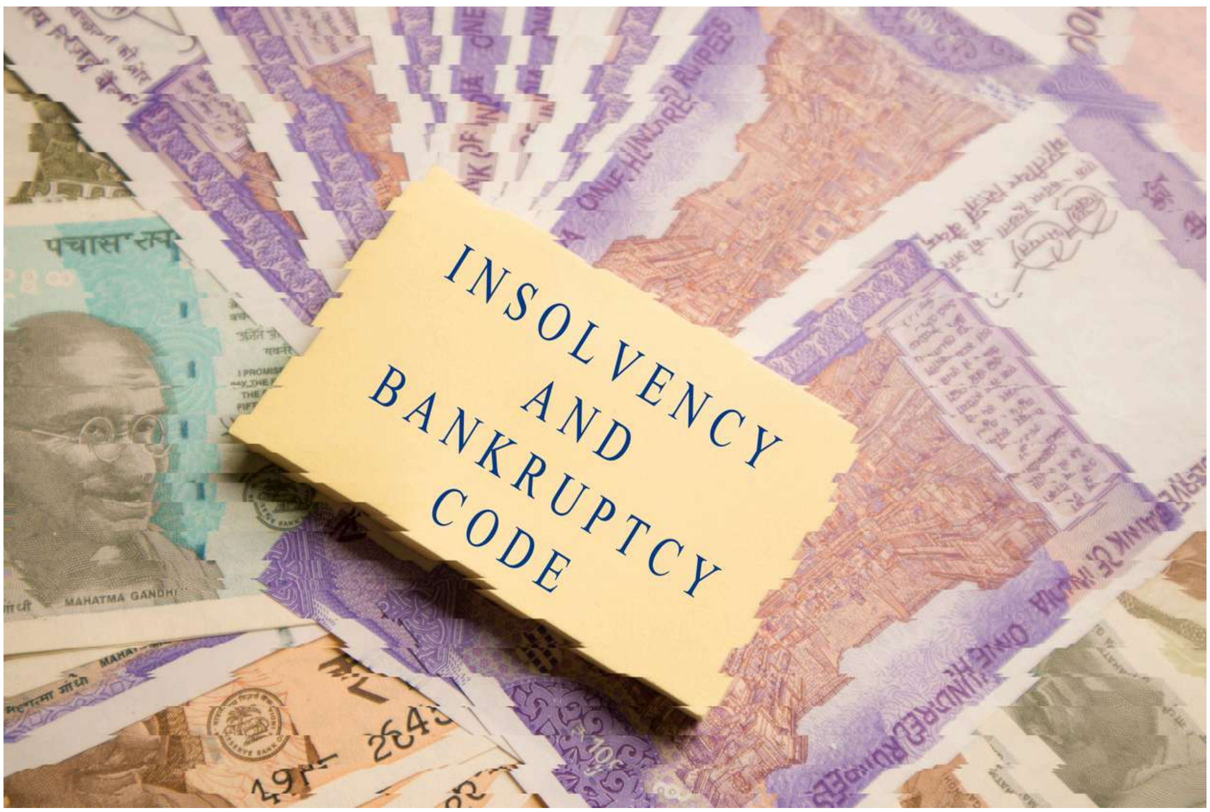

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India's Insolvency and Bankruptcy Code, enacted in 2016, has reshaped the country's credit culture. Since its introduction, the IBC has facilitated the resolution of over ₹3.5 trillion in stressed assets, and in doing so, it has altered the calculus for borrowers, lenders, and investors alike. That is no small achievement.

Yet the code is now navigating a more difficult terrain. Recovery rates hover at around 32%, average resolution timelines have stretched to over 653 days against a statutory ceiling of 330, and high-profile cases such as Jaiprakash Associates have generated prolonged litigation that cuts against the very predictability the IBC was designed to provide. With the government exploring IBC 2.0 to extend pre-packaged insolvency to MSMEs, the code stands at a genuine crossroads, and the choices made now will determine whether it fuels or risks India’s $5-trillion economy dream.

The intellectual architecture of the IBC rests on a clear organising principle: distressed assets must be resolved transparently, within defined timelines, in a manner that maximises value for all stakeholders. This principle is not incidental to the code; it is constitutive of it. The Committee of Creditors, the Corporate Insolvency Resolution Process, the structured auction mechanisms — each of these instruments was designed with value maximisation as the lodestar.

Discretion's Limits

The IBC deliberately concentrates considerable decision-making authority in the CoC. The commercial wisdom of creditors is integral to the code's design, and rightly so. But that wisdom is not unconditional. It must operate within the framework established by the code and remain aligned with its primary objective. Discretion cannot override design.

This is particularly consequential in the context of structured challenge processes. These mechanisms exist for a reason: they are introduced when initial bids are thought to underreflect an asset's intrinsic value, and they are governed by CIRP regulations that define the terms of engagement.

When bidders are invited through multiple competitive rounds, and when evaluation criteria are clearly articulated, the reasonable expectation is that outcomes will reflect those criteria. In the Jaiprakash Associates proceedings, reports indicate that Vedanta emerged as the highest bidder with an offer of ₹167.2 billion, materially higher than a competing bid of ₹145.3 billion. If the IBC's governing principle is value maximisation, any outcome that diverges from it demands clear and reasoned justification not as a matter of second-guessing commercial judgement, but as a matter of fidelity to the code's own design.

Confidence at Stake

Serious bidders commit substantial financial, legal, and managerial resources to insolvency auctions. They do so on the assumption that the rules, once established, will be applied consistently. If a party emerges as the highest bidder through a transparent and competitive process and still fails to secure the asset without adequate explanation, that assumption is placed in doubt. The concern is not merely about any single outcome; it is about what that outcome signals to participants considering future engagement.

There is also a public interest dimension that cannot be set aside. The CoC in most major insolvencies is dominated by public sector banks, which means that recovery outcomes directly affect public funds. This raises the threshold for transparency and outcome rationality beyond what would be expected in a purely private commercial arrangement. The broader transformation that the IBC has catalysed — the emergence of distressed assets as a credible investment class attracting domestic and global capital — is acutely sensitive to process risk. That transformation did not happen automatically; it was earned through consistent, principled conduct. It can also be eroded.

None of this argues for curtailing the CoC's authority or substituting judicial oversight for commercial judgement. The code's architecture should remain intact. What it does argue for is that discretion must be exercised within a disciplined framework, and that outcomes must remain visibly tethered to the code's central objective. Where structured price discovery does not reliably produce value realisation, confidence in the system is quietly undermined, and with it, the behavioural change that the IBC has worked to embed.

The IBC's credibility is not a function of its processes alone. It rests equally on outcomes that reflect them.

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