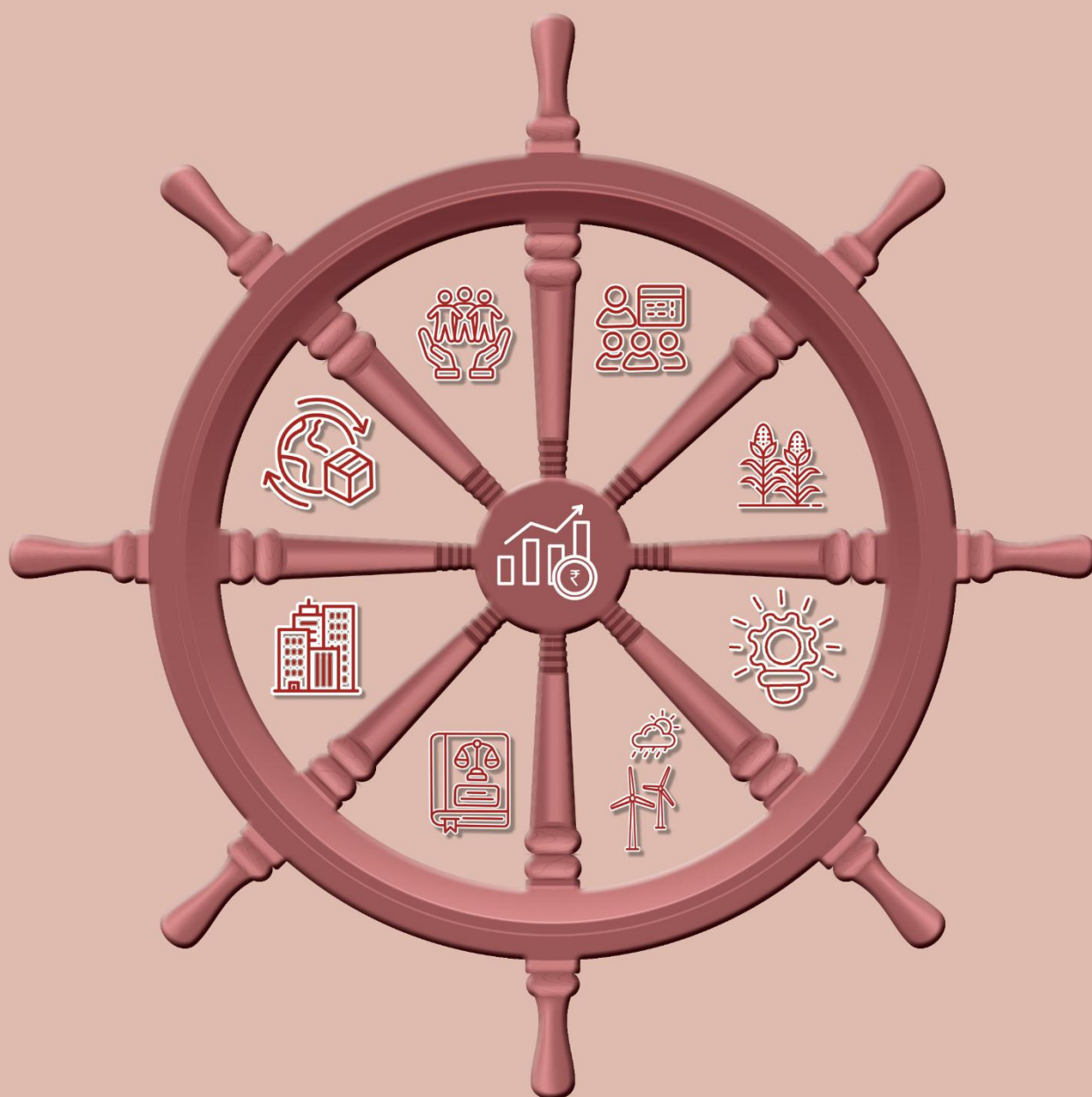


ECONOMIC SURVEY

2024-25



सत्यमेव जयते
Government of India



a good bankruptcy regime acts as a backstop during downswings, in turn reducing the need for costly macroprudential interventions. A continuously evolving and improving IBC framework is important to achieving a 7-8 per cent growth over the next decade. India's growth aspirations require capital to operate at the frontiers of productivity and efficiency. An efficient bankruptcy system will free up capital, allowing better production, employment, and growth prospects.

2.40 The next step towards insolvency and bankruptcy reform is to improve operational efficiencies to speed up the resolution process. This is especially important for MSMEs, for whom legal costs can prove to be substantial. Improving time efficiencies in the system comes down to using innovative resolution routes such as the pre-pack arrangements for MSMEs, inter-disciplinary capacity building of resolution professionals across legal, financial and industry basics and minimising judiciary delays in proceedings. Operational efficiencies require a balancing act between fairness and fastness of resolution. Further, improvements are also required to ensure the timeliness of the insolvency and bankruptcy processes under the Code. Box II.1 discusses the issue of delays in the processes under the IBC.

Box II.1: IBC and National Company Law Tribunals

The IBC lays a time limit of 180 days from the date of admission for closure of an insolvency process, with a provision for extension by 90 days with the approval of the committee of creditors (CoC) and the adjudicating authority (AA), i.e., the NCLT. The regulations provide detailed timelines for various processes to be undertaken in the corporate insolvency resolution process (CIRP) and liquidation processes. This aspect of the insolvency law has been crucial in determining its performance, and with time, the delays in the completion of processes have become a concern.

Within three years of implementation of the Code, the difficulties in complying with the timelines were evident, and it was amended to provide a 330-day outer limit for a CIRP, including judicial proceedings. Current evidence shows that the 1068 CIRPs, which have yielded resolution plans (as of the end of September 2024), took an average of 582 days (after excluding the time excluded by the AA) for conclusion, and the 2,630 CIRPs, which ended up in orders for liquidation, took on average 499 days for conclusion. This average time for a CIRP does not include the time taken for an application to be admitted and time periods that are excluded by the order of the AA for reasons assigned by it. The time excluded by AA in the cases resolved so far was, on average, 116 days. This constitutes about 64 per cent of the time intended in the Code to complete the entire process. The exclusion of time done by the AA helps address compliance with the Code. Still, it does not address the impact on the erosion of business and economic value of the corporate debtor.

The NCLT/Tribunal was made the AA for insolvency and bankruptcy matters, along with their pre-existing adjudicatory role under the Companies Act 2013 and the Competition Law. The government has taken comprehensive measures to strengthen the NCLT. As of September

2024, 30 courts and 16 benches were functioning headed by the President, and 31 each of judicial and technical members. As of the end of July 2024, the NCLT has, quite notably, reported as adjudicated 34,690 cases under the IBC against 35,501 cases numbered, i.e., close to 98 per cent adjudication and disposed of 29,705 cases. However, there are 2,593 cases awaiting admission and 4,723 pending after admission.²⁹ Further strengthening the number of courts, benches, and members and ramping up physical infrastructure, as envisaged in the Union Budget 2024-25, will help improve the disposal rate.³⁰

Further, addressing issues in the insolvency procedures and the Tribunal's administrative processes would help to reduce pendency in the long term. Delays in admission are of particular concern since, until admission, the company continues to be controlled by the defaulting debtor. While admission is awaited, the opportunities for value shifting, funds diversion and assets transfers increase, leading to further erosion of the value of the CD.³¹ While the prescription is admission in 14 days, in FY21, the average time for admission of 153 applications by operational creditors (under section 9 of the Code) was 468. In FY22, an average of 650 days was taken in the admission of 207 applications.³² Reasons for delay in admission occur as the AA tries to establish the existence of debt and default, as promoters file objections. Including evidentiary proof in the form of contracts, GST filings, etc., is all provided for, but all of this can be contested.

The financial system with digital credit information repositories receipts trading platforms, and the Information Utility (IU),³³ set up under the IBC, is quite robust and should be harnessed, and a means for verification of debt and default may be enabled, especially for applications filed by financial creditors. If developed by the market, such a service would address the problem and may also be monetisable as the applicant creditors will benefit from early admission of applications. Providing in the Code for the use of IU records as conclusive proof about the occurrence of a default in general, with necessary exceptions,³⁴ would enable such services.

Tribunals could improve the time taken for admission with the use of technology and the aid of the court registry for verification, scrutiny, and clearing of defects in the application. The proposed integrated platform for use by various stakeholders can include such features.³⁵ This would eliminate the need for pre-admission hearings and help reduce the time to admit an application. In the case of applications filed by operational creditors a voluntary mediation mechanism, if made applicable, may help address default and hence obviate the need for admission.

Another source of delays at the AA during the CIRP is the adjudication of inter-locutory applications.³⁶ It includes procedural requirements like the appointment of an insolvency

29 National Company Law Tribunal, <https://tinyurl.com/3x8wexbx>.

30 Para 61 and 62 of the Union Budget, 2024-25.

31 Standing Committee on Finance, Thirty-second report August 2021 Implementation of the Insolvency and Bankruptcy Code – Pitfalls and Solutions <https://tinyurl.com/23m36yze>.

32 Insolvency and Bankruptcy Board April 2022. Consultation paper on issues related to reducing delays in the corporate insolvency resolution process, <https://tinyurl.com/43nthke9>.

33 <https://nesl.co.in>.

34 Discussion Paper, January 2023, Ministry of Corporate Affairs, <https://tinyurl.com/yc4vmaky>.

35 Insolvency and Bankruptcy Board of India, Quarterly Newsletter Jan-Mar 2023 <https://tinyurl.com/2e4vwz3n>.

36 Insolvency and Bankruptcy Board November 2022. Report of the Colloquium on Functioning and Strengthening of the IBC Ecosystem, <https://tinyurl.com/mt6u5ykv>.

professional, appointment of an authorised representative, consideration of delayed claims, the constitution of the CoC, etc. and frivolous applications. In instances where an objective criterion to determine the achievement of a procedural milestone can be assessed or when decisions are arrived at by consensus among stakeholders, it can be taken on record of the AA. It may not be considered for formal posting before the court. Extending engineering principles, the process, method, and output of repetitive procedural tasks, which are amenable for standardisation, should be standardised such as, the use of template-based submissions and orders. In dealing with frivolous applications, the Tribunal needs to be more stringent, and using prevention by way of the imposition of high costs would have the necessary deterrent effect.

Tribunals have addressed the burden on the traditional judicial system by enabling specialisation in narrower domains to enable speedy relief by reducing formalistic procedures and complexity. Tribunals are envisaged to reduce costs and improve efficiency. The same would be possible if the trappings of the traditional judiciary were avoided both in procedure and stakeholders' mindsets.

The IBC provides a non-adversarial resolution process but has not been enabled in practice at the NCLT. The design and execution of procedures in the NCLT may be revisited, keeping the quasi-judicial nature of the mandate as a foundational tenet. Separate Rules for the NCLT in its role as the AA under the Code may also provide more clarity in dealing with procedural matters and improve the efficiency in its functioning.

Development in capital markets

2.41 Capital markets are central to India's growth story, catalysing capital formation for the real economy, enhancing the financialisation of domestic savings, and enabling wealth creation. As of December 2024, the Indian stock market has achieved new highs, with intermittent corrections, in the midst of geopolitical uncertainties, currency depreciation and domestic market volatility challenges. Investor participation has been a contributor, with number of investors growing from 4.9 crore in FY20 to 13.2 crore as of 31 December 2024. This growth, combined with active listing activity and recent measures by the regulator, viz. Securities and Exchange Board of India (SEBI), to temper excesses, is expected to foster sustainable market expansion.

2.42 **The primary markets** continued to witness heightened listing activities and investor enthusiasm in FY25, notwithstanding the market volatility and geopolitical uncertainties. As per the E&Y Global IPO trends³⁷, Indian stock exchanges provide conducive market conditions for foreign conglomerates to list their local subsidiaries, thereby offering a good opportunity for unlocking value. India's share in global IPO listings surged to 30 per cent in 2024, up from 17 per cent in 2023, making it the leading contributor of primary resource mobilisation globally.

2.43 The total resource mobilisation from primary markets (equity and debt) stands at ₹11.1 lakh crore from April to December 2024, which is 5 per cent more than the

³⁷ EY Global IPO Trends Report, https://www.ey.com/en_in/insights/ipo/trends.