

Watching the Insolvency and Bankruptcy Code work

Finance Research Group
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Re-cap: Why *IBC*?

- ▶ Intended outcome of *IBC*:

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Re-cap: Why *IBC*?

- ▶ Intended outcome of *IBC*:
 - ▶ Change credit market landscape..
- ▶ Outputs that will lead us to these outcomes:
 1. Increase in the debt recovery rate.
 2. Reduction in the time for recovering debts.
 3. Efficient functioning of the IBBI.
 4. Efficient functioning of the institutional machinery of IUs, IPAs and IPs.
 5. Efficient functioning of the judicial machinery:
 - 5.1 Minimal judicial intervention.
 - 5.2 Expeditious disposal of insolvency resolution petitions and approval of resolution plans.
 - 5.3 Protect the integrity of the law.

Questions we must ask

1. Is the timeline of 180 days under the *IBC* met?
2. How much do creditors recover post resolution or liquidation?
3. Is there an overall liquidation or a re-structuring bias?
4. How long does the IBBI take to license IPs, IPAs and IUs?
What is the quality of enforcement against these licensed industries?
5. What kind of creditors are using the *IBC*?
6. Are the debtors using the *IBC* at all?
7. What kind of evidence of debt and default are the National Company Law Tribunals (NCLTs) accepting?
8. Are NCLTs admitting evidence from the IUs as good evidence of default?
9. Are debtors given an opportunity to be heard?
10. Are the timelines for admission indicated in the *IBC* being met?

Questions we must ask (contd.)

11. What is the dismissal rate?
12. Does the NCLT dismiss petitions on grounds other than those intended under the *IBC*?
13. What is the average time for approval of a resolution plan approved by the committee of creditors?
14. Are the rulings of different benches consistent?
15. How many orders of the NCLT passed under the *IBC* are appealed? How many appeals are allowed?
16. Is the National Company Law Appellate Tribunal (NCLAT) allowing appeals against orders approving resolution plans on grounds other than those specified in the *IBC*?
17. What is the average time for disposal of appeals filed before the NCLAT under the *IBC*?
18. Does the NCLT pass a liquidation order as contemplated under the *IBC* on expiry of the resolution period?

These questions can be answered with data. What do we know?

Scope of data set

- ▶ Study period: November 30, 2016 - May 15, 2017.
- ▶ Number of benches of the NCLT: 12.
- ▶ Number of benches of the NCLAT: 1.
- ▶ Total number of final orders passed by the NCLT: 108.
- ▶ Number of final orders of NCLT studied: 88.
- ▶ Number of final orders of NCLAT studied: 6.
- ▶ Source of data: Website of the NCLT.

Bench-wise break-up of the final orders passed by the NCLT

Sr. No.	Bench	Number of final orders
1.	New Delhi*	33
2.	Ahmedabad*	9
3.	Allahabad	6
4.	Bangalore	4
5.	Chandigarh	8
6.	Chennai*	1
7.	Guwahati	1
8.	Hyderabad	1
9.	Kolkata*	4
10.	Mumbai*	41
Total		108

*Benches whose final orders were included in the study.

Fields of information captured

1. Case No. before the NCLT.
2. Bench
3. Name of debtor and creditor
4. Who filed: Debtor or creditor
5. If creditor, whether operational creditor or financial creditor.
6. If operational creditor, whether employee, vendor or other.
7. If financial creditor, whether bank, NBFC or other.
8. Amount of debt.
9. Due date for payment.
10. Date of demand notice.
11. Date of receipt of demand notice.
12. Date of filing in NCLT.
13. First date of case listing.
14. Date of final disposal.

Fields of information captured (contd.)

15. Evidence of debt.
16. Evidence of default.
17. Was debtor's counsel present?
18. Did debtor's counsel make an oral representation to the tribunal?
19. Did debtor's counsel make a written representation to the tribunal?
20. Whether admitted or dismissed?
21. Name of the IP.
22. Reason for dismissal.
23. Whether the order has been recorded on the website of the IBBI?

Key observations

Cases admitted and dismissed (contd.)

Total number of cases admitted and dismissed

Cases admitted	47
Cases dismissed	41
Total	88

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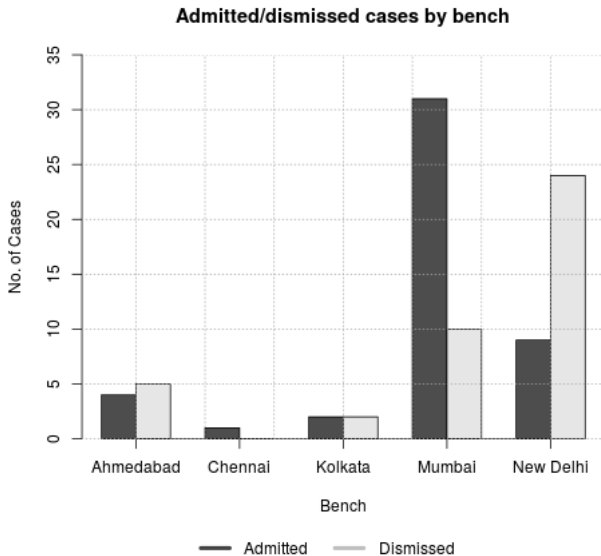
Percentage of cases admitted and dismissed by 5 NCLT benches

Bench	Admitted	Dismissed
Ahmedabad	44%	56%*
Chennai	100%	0
Kolkata	50%	50%
Mumbai	76%	24%
New Delhi	29%	71%

*3 cases were settled.

Key observations

Cases admitted and dismissed



Key observations (contd.)

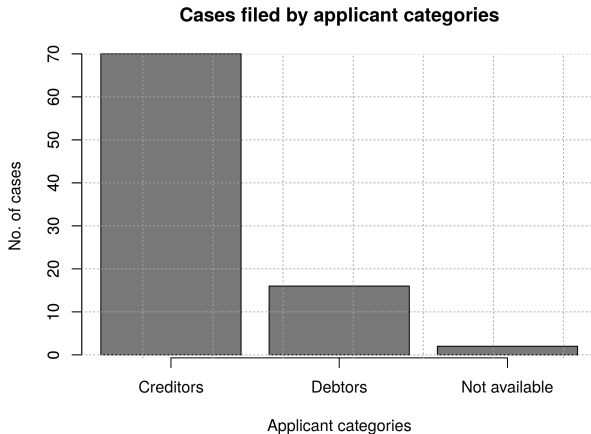
Who triggered?

Who triggered?

No. of petitions filed by creditors	70
No. of petitions filed by operational creditors	54
No. of petitions filed by financial creditors	16
No. of petitions filed by debtors	16
No. of unknown applicants	2
Total	88

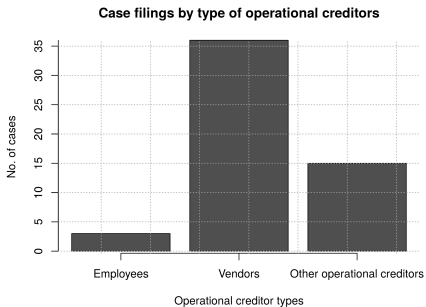
Key observations (contd.)

Who triggered? (contd.)



Key observations (contd.)

What kind of operational creditors triggered?

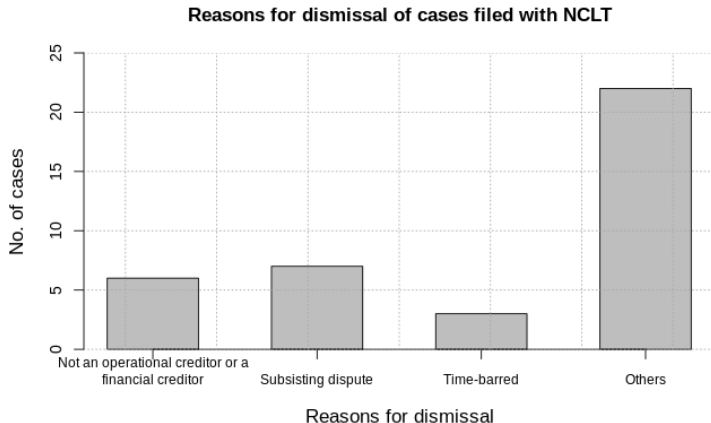


Kinds of operational creditors

Employees	3
Vendors	37
Others	15
Total	55

Key observations (contd.)

Reasons for dismissal



1. Not an operational creditor or a financial creditor : Dismissal on the ground that the person filing the petition was not an operational creditor or a financial creditor.
2. Subsisting dispute : Dismissal on the ground that there is a pending dispute between the parties.
3. Time-barred : Dismissal on the ground that the debt is time-barred.
4. Others : Dismissal on any other ground.

Key observations (contd.)

Average time taken for disposal of insolvency resolution petitions

Average duration for disposal of cases

Stages	No. of cases for which data is available	Average time taken (in calendar days)
Date of filing-Date of date of first hearing	12	18
Date of first hearing-Date of final order	43	16
Date of filing-Date of final order	22	24

Takeaways from the data

- ▶ We know (or can get) some answers:
 1. Kinds of creditors and debtors.
 2. Admission and dismissal rates.
 3. Reasons for dismissal.

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- ▶ We know (or can get) some answers:
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- ▶ What do we not know?
 1. Whether and to what extent does the debtor get a hearing?
 2. Time taken to dispose off petitions.
 3. Number of interim orders.
 4. Data from appellate tribunal.

Observations for improvement of data from NCLTs

1. Orders not standardised - results in several gaps.
 - ▶ Date on which debt was due or default occurred.
 - ▶ Date on which application was filed.
 - ▶ Date of first hearing.
 - ▶ Number of interim orders passed.
 - ▶ Evidence of default.
 - ▶ Whether debtor given a chance to be heard?
2. NCLAT does not upload the orders passed by each of its benches.

Other data to answer these questions

1. Recovery rates after implementation of resolution plan.
2. Average time for disposing off intervening applications.
3. Costs of the insolvency proceeding.

Thank you.