

CAPSTONE PROJECT PRESENTATION

Reimagining the Role of NCLT

Under The Insolvency and Bankruptcy Code, 2016



About Me



Satyansh Singh Parmar

B.A.LL.B. (Hons.) | LL.M.

DAKSH NIST Fellow 2025–26

Academic Background

- B.A.LL.B. (Hons.) — Devi Ahilya Vishwavidyalaya, Indore
- LL.M. — Gujarat National Law University, Gandhinagar

Professional Experience

- Litigation Practice — Corporate & Commercial law
- Researcher— Ministry of Commerce & Industry

Awards and Recognitions

- GNLU Litigation Assistance and Support Scheme Fellow
- GNLU IQAC Overall Performance Scholar



India's Insolvency Framework & the Role of NCLT

Before IBC (Pre-2016)

- Fragmented laws: SICA, Companies Act, RDBA, SARFAESI
- Recovery: Around 26% - decades of delays
- Multiple overlapping forums & jurisdictions



IBC 2016 — The Solution

- Single unified legislation for insolvency & bankruptcy
- Time-bound resolution: 180 days (extendable to 330)
- Creditor-in-control model with minimal judicial interference

The IBC primarily rests on four institutional pillars:



Adjudicating Authority (AA)

NCLT - admits cases, oversees CIRP, approves plans



Insolvency Professional

Licensed IPs manage debtor operations during CIRP



IBBI Regulator

Regulates IPs, agencies & overall insolvency ecosystem



Information Utility

Digital repository authenticating financial records



The Seeding of IBC: How NCLT Became the Adjudicating Authority

1993

2000

2005

2015

Goswami Committee

First call for fast-track creditor-driven tribunals; summary winding-up procedures

Eradi Committee

Proposed unified National Tribunal; consolidate High Court + BIFR + CLB jurisdiction

Irani Committee

Endorsed NCLT; non-intrusive supervisory role; insolvency within Companies Act framework

BLRC Report

Creditor-in-control model; NCLT as AA by continuity - Practical choice post constitutionality litigation (Madras Bar Association Case)

Key Gap: Committees envisioned a narrow, supervisory AA - but never designed or stress-tested the NCLT for IBC's speed, volume, or summary mandate.



What the IBC Actually Intended for the Adjudicating Authority

The AA's Narrow, Intended Mandate

Objective Trigger

- 01** Admit CIRP on default alone — clear threshold, minimal discretion.

Strict Timelines

- 02** 180 days (extendable to 330) for resolution. Timelines embed urgency — asset value erodes with every passing day.

Limited Plan Scrutiny

- 03** Approve resolution plans only on statutory compliance - waterfall mechanism, non-discrimination. Not on commercial merit.



BLRC's Vision for the AA

- AA verifies existence of default - nothing more at admission
- Commercial decisions rest with the Committee of Creditors (CoC)
- Insolvency Professionals manage operations - AA supervises process, not business
- Leave restructuring economics to creditors and market
- NCLT chosen for practical continuity, not because it was ideal

Reality: NCLT's design was never aligned to this mandate



The Conflict of Dual Jurisdictions

Aspect	Companies Act	Insolvency and Bankruptcy Code
<ul style="list-style-type: none">Nature of Proceedings	<ul style="list-style-type: none">Adversarial proceedings between Parties	<ul style="list-style-type: none">Summary proceedings
<ul style="list-style-type: none">Objective	<ul style="list-style-type: none">Protection of stakeholder rights, corporate governance, and compliance	<ul style="list-style-type: none">Time-bound insolvency resolution and value maximization
<ul style="list-style-type: none">Type of Enquiry	<ul style="list-style-type: none">Full Factual Inquiry	<ul style="list-style-type: none">Summary determination of default
<ul style="list-style-type: none">Key Matters Covered	<ul style="list-style-type: none">Oppression and Mismanagement, Mergers, Demergers, Corporate governance disputes	<ul style="list-style-type: none">Corporate Insolvency Resolution Process (CIRP), Liquidation, PPIRP
<ul style="list-style-type: none">Role of NCLT	<ul style="list-style-type: none">Acts as a Tribunal	<ul style="list-style-type: none">Acts as Adjudicating Authority



Proof from NCLT Annual Report 2024–25:

4 of 5

Days/week dedicated to IBC matters per bench

1 of 5

Days/week for all Companies Act matters

7,003

Pending Company Law IAs/MAs/CAs (March 2025)



The Timeline Crisis: Analysis from 252 Cases with approved Resolution Plan(2025)

14

Days
Statutory Admission Limit

526

Days
Actual Average Admission Time

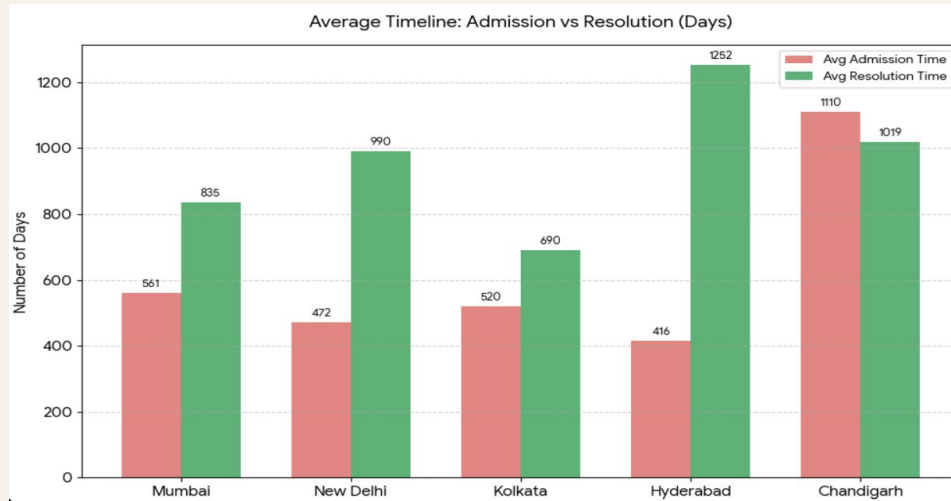
330

Days
Statutory CIRP Limit

883

Days
Actual Average CIRP Time

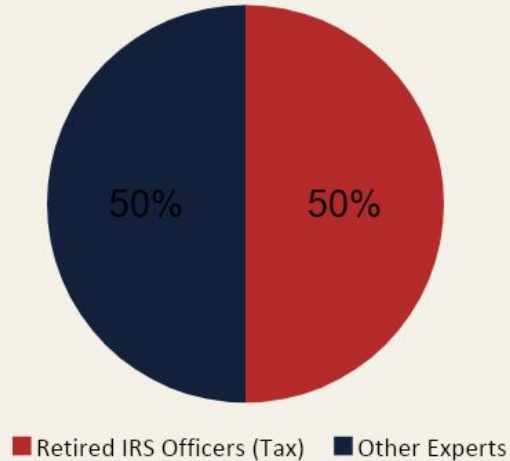
Bench-wise Delays — Empirical Analysis (Jan–Dec 2025):





Structural Flaw: Member Composition, Expertise & Tenure

Technical Member Composition (Feb 2026)



9

Vacant seats
(63 sanctioned → 54 actual as
of Feb 2026)

Source: Member analysis is done by presenter.



Adjudicatory Approach and Institutional Transition

Judicial members from civil/criminal background often operate within an adversarial framework involving detailed factual inquiry and extensive evidentiary scrutiny. While, IBC demands summary, threshold-only adjudication.



Limited Insolvency Domain Expertise

50% of technical members are retired IRS officers (taxation background). The Supreme Court has held that long administrative service alone cannot substitute for subject-matter knowledge.



Tenure Trap — Learning Then Leaving

5-year term filled by retired officers means expertise is barely built before turnover. Each new bench restarts from scratch, creating a cycle of institutional amnesia.



Judicial Overreach: NCLT Stepping Beyond Its Mandate

Interference with Commercial Wisdom

Essar Steel & Maharashtra Seamless

Issue: NCLT redistributed CoC approved payouts to operational creditors on equity grounds

SC held: NCLT is not a court of equity. CoC's commercial wisdom is final.

Vallal RCK

Issue: NCLT rejected settlement with 94% CoC approval, calling it 'restructuring'

SC held: Direct interference with CoC's statutory right — overturned.

Procedural & Public Law Overreach

GLAS Trust (BYJU'S)

Issue: NCLAT used inherent Rule 11 powers to approve a private promoter–BCCI settlement

SC held: Cannot override mandatory 90% CoC approval under S.12A — quashed.

Kalyani Transco & Embassy Property

Issue: NCLT/NCLAT attempted to direct ED (PMLA) and State Mining Depts

SC held: Public law matters are outside NCLT's purview entirely.

The Supreme Court on occasions had to correct the NCLT repeatedly - signalling not just individual errors but a structural design problem.

Example- Jet Airways Case



Specialised IBC Benches — Segregate the Docket

CURRENT STATE

- 1 bench = IBC + Companies Act
- 4/5 days for IBC, 1/5 for company law
- IBC urgency crowds out governance disputes
- 7,003 company law IAs pending
- Both jurisdictions suffer in quality

PROPOSED: SPLIT BENCHES

- Dedicated IBC benches — undivided focus
- Separate company law benches restored
- 14-day admission window becomes achievable
- Governance disputes (oppression, mergers) no longer sidelined
- 50 new courts — Cabinet approval being sought

Why This Works — Impact on the System:



Single-purpose dockets allow procedures & culture to be built around 14 & 330-day limits



India's Ease of Doing Business rank: 'Resolving Insolvency' already improved 108→52



Company law disputes resolved faster - preventing healthy firms from drifting into insolvency



Restructuring Member Appointments — Expertise Over Bureaucracy



Domain Expertise First

Prioritise registered Insolvency Professionals, registered valuers and restructuring accountants as Technical Members.

Eliminate the dominance of retired IRS/IAS generalists who lack insolvency domain knowledge.

Supreme Court in Madras Bar Association (2025): 'Long administrative service cannot substitute for subject-matter knowledge.'



Younger Entrants + Full Careers

Recruit professionals mid-career (not post-retirement) so they build deep institutional knowledge over a full tenure. Amend Tenure Rules: Serve until standard retirement age and not just 5 years from appointment.

Economic Survey 2025–26: 'Attract professionals at younger ages to pursue dedicated careers in adjudication.'



Search-cum-Selection Process

Replace advertisement-only recruitment with a proactive Search Committee that identifies experts with demonstrable insolvency experience, judicial temperament and professional reputation. Ensures bench composition reflects the complexity of modern insolvency — valuation disputes, cross-border issues, complex capital structures.



Infrastructural Augmentation — Capacity for a ₹4.5 Lakh Crore Institution

The Infrastructure Crisis:

16

Benches comprising of 30 Courts – for 45,509 pending cases

80%+

Registry Staff on contractual terms

~10
yrs

to clear IBC backlog at current disposal rate

What Must Be Done:



50 New Courts — Immediate Priority

MCA has sought Cabinet approval. Must be pursued urgently. As setting up and filling said new courts would take significant time.



Specialised Judicial Complexes

AV-equipped courtrooms for virtual hearings, dedicated chambers, e-filing infrastructure, digitalised record rooms.



Permanent Registry Staff

Amend 2020 Recruitment Rules: over 50% contractual staff weakens institutional memory, morale and stability.



Signal Institutional Importance

An institution recovering ₹4.5 lakh crore for Indian banking deserves world-class physical infrastructure.

National Commission of Insolvency & Bankruptcy (NCIB)



Purpose-Built — Single Mandate

No competing company law docket. All procedures, staffing, culture and infrastructure oriented around 14 & 330-day IBC limits.



International Precedent

US Bankruptcy Courts demonstrate that specialised forums deliver faster, higher-value recoveries.



Structural Advantages

A commission would give an advantage of constructing the structure and to bring in domain expertise

Transition requires inter-ministerial coordination & legislation - immediate IBC amendment reforms must run in parallel to provide relief during this gap.



Thank You