

Economic competence in judiciary

COMPLEX DISPUTES. Economic laws are market infrastructure; courts must interpret them as such



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The Insolvency and Bankruptcy Code (Amendment) Bill, passed recently, addresses several concerns arising from judicial interpretation. The need for such corrective intervention will persist — unless judicial interpretation remains closely aligned with the underlying economic design of the Insolvency and Bankruptcy Code (IBC).

Consider the Supreme Court's 2022 ruling in *Vidarbha Industries*. By reading “may” in Section 7 as conferring discretion even after proof of debt and default, the Court unsettled the IBC's otherwise objective admission standard. Allowing the Adjudicating Authority (AA) to assess the debtor's financial health and viability at the threshold turned a mechanical, time-bound trigger into an open-ended equitable inquiry.

The Supreme Court's judgment of February 18 in *Power Trust v. Bhuvan Madan* restores the IBC's structural logic as predictability had begun to fray. By reaffirming that admission under Section 7 is mandatory upon proof of debt and default, the Court re-anchors the process to an objective trigger and confines the AA to a narrow factual inquiry: whether a debt exists and whether default has occurred.

The IBC represents a structural shift in economic design. It replaced the earlier regime, where distress was diagnosed through erosion of net worth, an accounting metric that is prone to delay and dispute, with a simple objective test: has a debt remained unpaid when due? The Notes on Clauses appended to the Bill explained that this trigger would deter strategic delay, minimise threshold litigation, and enable early intervention to secure better outcomes.

The probability of reviving a

distressed enterprise declines sharply with time. Employees leave, supplier relationships weaken, customers migrate, and working capital evaporates. Even if assets retain book value, their operational coherence may erode. Informal standstills often lack collective discipline and accelerate deterioration. The IBC recognises that restructuring is most viable at the earliest stage of distress. Delay does not merely postpone resolution; it narrows the window for revival and increases the likelihood of liquidation.

Insolvency law thus coordinates both market expectations and rescue incentives.

Lenders price loans based on recovery timelines and priority certainty. Investors assess probability-of-default and loss-given-default assumptions. Resolution applicants evaluate distressed firms based on a predictable asset pool, enforceable priority rules, and the continuing viability of operations.

When admission depends solely on proof of default, restructuring negotiations begin before operational decay becomes irreversible.

VIABILITY ASSESSMENTS

Introducing discretionary viability assessments at admission disrupts this design. *Ex ante*, uncertainty forces lenders to discount recovery timelines and raise risk premiums, increasing the cost of capital across the economy. *Ex post*, delay permits further erosion of going-concern value. By the time admission occurs, the enterprise may have lost its workforce, critical contracts, and competitive position. The statute's insistence on prompt admission reflects an understanding that time is economically decisive and delay is inherently corrosive. The IBC is

Economic literacy in appellate adjudication is integral to the stability of the legal architecture that underpins modern markets

built on two economic realities: the time value of money and the fragility of going-concern value.

The concern extends beyond one decision. In recent years, insolvency jurisprudence has oscillated before stabilising, unsettling expectations in the interim. The *Rainbow Papers* ruling interpreted state statutory dues in a manner that effectively elevated them within the priority structure, despite the IBC's objective of altering the order of priority of Government dues. The Section 53 waterfall was designed to create clear recovery hierarchies that inform lending models and restructuring valuations. Ambiguity in that ranking affected loss-given-default calculations and investor appetite for distressed financing, until later decisions clarified the position.

Similarly, in the litigation surrounding the resolution of Bhusan Power and Steel, the post-approval rejection of an implemented resolution plan years after its acceptance raised concerns about finality, an assumption central to investor confidence. Although the position was later revisited, the reversal generated interim volatility in expectations.

More recently, the spectrum ruling presents a related structural issue. By excluding spectrum from the insolvency estate of telecom companies, the decision has significant implications for enterprises whose business models depend on licensed resources. If core operational assets are unavailable to a resolution applicant, the economic viability of restructuring diminishes sharply. The consequence is not merely deeper haircuts for creditors, but the possible liquidation of otherwise viable firms.

These episodes illuminate a structural challenge. Modern economic statutes such as the IBC function as market-design frameworks. They shape incentives across stakeholders: banks, bondholders, private equity funds, operational creditors, employees, and foreign investors.

Judicial interpretations that modify admission thresholds, priority

hierarchies, or asset pools reshape capital allocation and influence whether distressed but viable enterprises can attract restructuring capital.

Capital markets are sensitive to uncertainty. When creditor rights appear fluid, risk premiums rise. International funds price jurisdictional unpredictability into lending decisions. Domestic banks widen spreads to compensate for recovery volatility. Over time, the cost of capital increases for infrastructure projects, MSMEs, and large corporates alike. At the same time, confidence in the restructuring framework affects the willingness of resolution applicants to commit capital and managerial expertise to distressed enterprises.

LEGISLATIVE DESIGN

None of this suggests that courts should privilege market convenience over statutory text. Stability emerges precisely from disciplined fidelity to legislative design. But fidelity requires an appreciation of the economic architecture embedded in statutory choices. Terms such as “may,” “secured,” or “asset” in an economic statute are structural levers within an integrated financial system. Sensitivity to economic consequences deepens understanding of what the text was designed to achieve.

This is ultimately a question of institutional evolution. As economic statutes grow more sophisticated, adjudicative engagement must keep pace. Parliament recognised the technical character of insolvency adjudication in creating specialised tribunals.

As complex economic disputes increasingly reach constitutional and appellate courts, structured judicial engagement with corporate finance, valuation principles, restructuring incentives, and comparative insolvency frameworks can enhance adjudicative consistency.