Insolvency and Bankruptcy Code: adopt the discipline of letting go

A business exit is not failure but a delayed resolution is. Let's ensure that we don't destroy value in the name of preserving it

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Spencer Johnson's *Who Moved My Cheese?* (1999) offers a deceptively simple lesson: let go when the time comes. Every piece of 'cheese,' however hard-earned, eventually shifts. Those who accept this early adapt and recover faster; those who hesitate prolong their discomfort; and those who resist reality suffer. Letting go is not surrender; it is a precondition for renewal—for oneself and the system at large.

Business insolvency systems are, at their core, institutionalized responses to cheese movements. India's Insolvency and Bankruptcy Code (IBC) is an attempt to enforce this discipline at scale. It forces timely recognition that economic conditions have changed and require adjustment. Yet, in practice, nearly every business stakeholder has, at one stage or another, tried to cling to a pre-IBC order, often litigating endlessly to reclaim value that has already dissipated. This resistance is expensive. In insolvency, delay destroys value, while uncertainty compounds that destruction.

At its core lies a simple proposition: a company is a legal construct. The Code enables rescue through resolution plans where economic life remains, and equally enables an exit through liquidation where it does not. When economic viability is exhausted, there is no countervailing moral claim to prolong existence. A firm does not suffer in the human sense; it has no dignity interest. Confusing corporate failure with human suffering is an analytical distortion that weakens insolvency discipline.

The IBC, as enacted, was agnostic between two resolution outcomes: revival through a resolution plan or exit through liquidation. Both serve the same economic objective: efficient re-allocation of scarce resources. Liquidation is not failure; it is a market-clearing mechanism. It releases trapped capital, labour and entrepreneurial energy from unviable uses and redeploys them where they can generate value. Economic systems that stigmatize liquidation inevitably drift toward artificial preservation of unviable firms, locking resources in low-productivity uses and letting zombie firms that weigh down the economy survive.

Yet, this neutrality has been steadily eroded. Policy and practice have increasingly privileged resolution plans. Judicial interpretation has increasingly treated resolution as synonymous with rescue through a resolution plan, implicitly treating liquidation as an inferior outcome, rather than an alternative form of resolution. Legislative and regulatory interventions such as pre-pack frameworks, withdrawal mechanisms, relaxed voting thresholds and expansive clean-slate doctrines have cumulatively tilted the framework in favour of revival even when economic viability is doubtful. The implicit message: liquidation is failure. The predictable consequence is persistence with revival even after economic viability had vanished.

This drift reflects a deeper discomfort with loss. The Code fundamentally recasts rights, rewrites entitlements and re-arranges priorities. Once enacted, this new order displaces legacy expectations. It demands a cultural shift—from entitlement to acceptance, from resistance to resolution and from denial to discipline. Its central command is simple: accept reality and act decisively. Resistance to this economic logic rarely rests on principle; it is more often attachment, self-interest or institutional inertia, often dressed in a legal argument. In economic terms, it is an inability to internalize realized loss.

Consider the conduct of the state. As the largest stakeholder, the government enacted the Code fully aware that sovereign claims would operate within a defined statutory waterfall. Yet, in the *Rainbow Papers* case (2022), it sought and obtained a judicial interpretation that unsettled this hierarchy. Having shaped the framework, the state at times resists its operational consequences. It files belated claims, litigates beyond statutory timelines and allows enforcement actions to continue during resolution (and even post-resolution). Each such intervention fragments the process, increases uncertainty and deters credible resolution applicants. A regime that cannot bind the state cannot discipline the market.

Promoters exhibit an equally persistent reluctance to let go. The Code removes them from control upon admission and disqualifies errant actors under Section 29A. Yet, in practice, insolvency is often treated not as relinquishment but as negotiation. Related-party bids, tactical litigation and repeated attempts at withdrawal reflect a refusal to internalize a loss of control. The underlying pattern is unmistakable: an attempt to retain control in a regime designed to extinguish it once accountability is triggered.

Creditors, too, struggle with acceptance. A 60% haircut is experienced not as a 40% recovery, but as a 60% loss. Behavioural economics describes this as loss aversion; insolvency practice manifests it as delay. Committees of creditors hold out for improbable recoveries, defer decisions, prolong negotiations and privilege sectional recoveries even as asset values erode. In insolvency, time is almost always value-destructive.

The adjudicating authority sits at the fulcrum of this ecosystem, balancing procedural fairness and equity against value preservation, reluctantly crystallizing sovereign losses or ordering liquidation. It is struggling to let go of the instincts of ordinary civil litigation, where adjournments are routine, timelines are elastic and finality is deferred. The process is trapped in prolonged litigation rather than resolution. A system that tolerates indefinite process cannot deliver time-bound outcomes.

What emerges is a system-level coordination failure. The state softens enforcement, institutions accommodate delay and stakeholders exploit both. This produces an equilibrium of mutual accommodation, where the costs of resistance are externalized and IBC discipline is weakened. The result: erosion of credibility, prolonged distress and lower realizations across outcomes, whether through resolution plans or liquidation.

Nor is resistance confined to principal actors. Unsuccessful bidders litigate to derail outcomes. Creditors tend to recharacterize unsecured exposures as secured. Professionals sometimes prolong disputes rather than resolve them. Each actor, acting rationally in isolation, contributes to a collectively irrational outcome: value destruction in the name of its preservation.

The real test of an insolvency regime is not how many firms it saves, but how quickly and accurately it determines when a rescue is viable and when an exit is better. The Code contains that logic. What remains elusive is an institutional willingness to let go: of claims, control, rights, expectations and, when necessary, the firm itself, when doing so is the only way to preserve value.

Until that discipline is internalized, insolvency will continue to function less as a system of resolution and more as a collective refusal to recognize that the cheese has already moved.