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Assessment of Corporate Insolvency and Resolution Timeline

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The Insolvency and Bankruptcy Board of India (IBBI), in its endeavour to promote research - legal, economic and interdisciplinary - and discourse in areas relevant for the evolving insolvency and bankruptcy regime in general, and that in India, introduced the IBBI Research Initiative, 2019 on 1st July, 2019.

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Assessment of Corporate Insolvency and Resolution Timeline

Executive Summary

A sound and efficient insolvency regime is important for better investment, innovation, economic growth, and cost of credit in the market. The insolvency regime has a direct bearing on allocation of resources in an economy. Hence, for overall economic growth and development, a robust insolvency ecosystem is extremely crucial. The World Bank and Organisation for Economic Co-operation & Development (OECD) have developed certain indicators to assess and compare the insolvency regimes of different nations. One of the key parameters is the time taken to resolve the insolvent enterprise.

This research project aims to examine the stagewise delay in Corporate Insolvency Resolution Process (CIRP) and explore the relationship between the respective sector and the delay occurring in the CIRP. It also attempts to analyse the relationship of delay in CIRP with the debt size of the Corporate Debtor (CD). A two-pronged approach was adopted to study this. Firstly, data pertaining to 1189 companies (resolved companies = 224 and liquidated companies = 965 as of March 2020) was analyzed based on information received from the CIRP Forms 1,2,3,4,5 and 6. Secondly, a survey of those insolvency professionals was conducted who have handled at least one CIRP. Total respondents for the survey were 431 which is 37 % of the total population data.

For the first approach of data study, the sample was divided into two groups; delayed group that exceeded the prescribed timeline of completion of CIRP of 270 days and controlled group which completed its CIRP within the prescribed timeline.

The study finds that the delayed group takes almost twice as long as prescribed time for the CIRP, with the maximum delay being observed in the following stages:

1. Issue of Expression of Interest (EOI)
2. Issue of final list of Resolution Applicants (RAs)
3. Issue of Request for Resolution Plan (RFRP)
4. Approval of resolution plan.

In the above stages, there was a marginal to no delay in the controlled group, except for the issuance of RFRP. While the data shows no reason for the delay, the survey indicates that the complexity of the sector, diverse group of creditors and competing claims seem to be the most obvious reasons.

Admission of Application for CIRP takes much longer than the prescribed timeline, both in delay and control groups. Also, the percentage contribution of each stage to the total delay as mapped reflects that 64% of the total delay is caused in *taking approvals of the resolution plan* from CoC and Adjudicating Authority. This percentage becomes as high as 81 when percentages are calculated only for the Delayed Groups. It is important to note that most of the CDs also get extensions at this stage.

Submission of claim is found to be completed before the prescribed timeline. The *Constitution of Committee of Creditors (CoC)* takes almost the same time as prescribed by the model timeline, that is, 23 days. As per the model timeline prescribed by the Insolvency and Bankruptcy Code, 2016 (Code/IBC), the first meeting of CoC should be conducted within 7 days of the constitution of CoC thereby indicating that the first meeting of CoC should be held within 30 days of commencement of the process. The first meeting was conducted almost in time. What is important to note here is that the appointment of Resolution Professional (RP) should have taken place in the first meeting which is not the case.

The study finds that while the *issue of information memorandum* is taking place within the prescribed timeline i.e. 54 days *issuance of EOI* is significantly delayed in companies whose resolution has not been completed within the prescribed timeline. Also, there is a delay of almost 30 days in the issue of the provisional list of RAs for the delayed group. Similar delay is noted in preparation of the final list of RAs wherein the delayed group takes almost additional 75 days. If this delay is read considering delay in issuance of EOI or its multiple issuances, it can be safely concluded that there is scarcity of good resolution plans, thereby resulting in the paucity of the RAs who could participate in sale of stressed assets. This clearly indicates that there needs to be concerted efforts made in the developing market for stressed assets in India. Also, it is trite to mention that if there is paucity of players in the market who could participate in CIRP, the restrictions of Asset Reconstruction Companies (ARCs) may not be entirely conducive for the overall growth of the Indian insolvency ecosystem.

Issuance of Evaluation Matrix (EM) stage witnesses delay in case of delayed group that takes an additional 11 days on an average for preparing the same. While evaluating the effectiveness of the EM is beyond the scope of this research project, it is still worth noting that the criteria adopted in EM should focus more on revival of business than recovery. A separate study needs to be done on the EM adopted by the CoC to examine as to whether the CoC is delineating itself from the objectives of the Code by focusing more on recovery than revival. The research survey does note that, in most cases, CoC is stubborn on accepting haircuts less than 25% and insists on upfront payment. This may not be conclusively true, but this surely indicates that relevant study/ enquiry needs to be done in this regard.

The *issuance of RFRP* also takes longer than the prescribed timeline but the submission of a resolution plan does not take much longer. Even in the delayed group, there is a marginal delay of 6 days to submit the resolution plan.

The resolution plan first needs to get approved from CoC and then from the adjudicating authority. The two-step process should take 45 days, if the number of days allowed is 180, and 135 days, if an extension of 90 days is granted, to finish the process within 270 days. As noted above, the Delayed Group takes more than 300 days to finish the step while the Control Group consumes approximately 85 days. Further, an extension of 90 days was granted to 40% of the CDs and time consumed in litigation was excluded for 15% of the CD's. Litigation and adjournment are the most prominent reasons for extensions being granted to the CDs. Another reason for this extension was the possibility of receiving a better resolution plan for revival of the CD.

Sector-wise Findings

Coming to the sector wise study, the above analysis shows that there is no delay in submission of claims in any of the sectors. Date of passing of resolution by CoC to appoint RP witnesses delays across sectors with wholesale & retail trade and construction sector taking up to 75 days, manufacturing sector up to 52 days and real estate approximately 51 days. This takes the average time to 54 days. An investigation into the minutes of the meeting may reveal the reasons for the same.

Submission of EOI gets delayed if the CDs are from the wholesale & retail trade sector (162 days), manufacturing, electricity & others. These sectors face delay in issuance of

provisional lists of RA. Issuance of the final list of RAs also faces delay across sectors and the maximum delay is seen in wholesale and retail trade wherein it takes up to 234 days. *RFRP* is smoothest in transport, storage & communications sectors but the submission of the resolution plan in these sectors takes longer. All the sectors reflect delays with wholesale & retail trade sectors taking 236 days to get approvals for the resolution plan, construction sector taking 279 days and electricity and other sectors taking approximately 197 days.

From the above, it is clear that the delays cannot be attributed to a single sector. However, as indicated above, CDs from the service industry are subject to more delays as compared to the non-service/manufacturing industry. This is not in line with the general perception of RPs, which are of the view that “real estate” is the sector most prone to delay.

Correlation between debt size and delay

Research indicates that there is no correlation between debt size and delay. The data analysis does not seem to correlate with the perception of RP's as revealed in the survey. 60% of the RPs perceived that the debt size is directly proportional to the time taken in completion of the CIRP, whereas 40% say that there is no relation between the two and cause of delays is a combination of many variables put together.

Another interesting finding is regarding the non-cooperation by the CD, pertaining to submitting information about the CD. Even though RPs can take legal recourse under section 19(2) of the Code, only 3% of the RPs filed such an application. As per the survey, 75% of the RPs believed that there are general inhibitions in sharing information with them. Arguably this could also be because more than 80% of the CDs lack documentation models and books of accounts are poorly maintained.

Additional Findings

One observation that has come out from research that needs imminent attention is that, for everyone case resolved under the Code, four cases end up in liquidation. Though the realization proceeds under the corporate resolution framework of the Code has also proven to be higher in comparison to the realization value under the previous frameworks, there are about 25% of the cases where CoC rejected a resolution plan on the grounds of high haircuts and since there was only one bidder and hence, the CD was pushed into liquidation. The survey also found that creditors constantly demanded less than 25% of haircut. They are more interested in getting upfront payments and recovering their dues

even at the cost of haircuts as compared to suggesting the operational turnaround of the company. Another interesting point to be noted is that, according to most of the respondents in this survey, companies are pushed into liquidation merely because of the delayed timelines. However, this finding is contrary to the secondary data. Nearly 80% of the CDs which received the resolution plans and or even had the scope of having potential RAs were given an extension of 90 to 180 days on revival grounds. In light of the fact that even though approximately 25% of the companies had a resolution plan, yet they were liquidated as due to non-approval of the resolution plan by CoC on grounds like low recovery rate, it is worth noting that the value quoted in the resolution plans is lower than the liquidation value or otherwise the resolution plan is just not genuine.

To sum up, research indicates that the COC focuses on the upfront payment and hence tends towards rejection of RP where the haircut is high. That may be the reason why for each 1 company being resolved, 4 seems to be pushed towards liquidation. However, there are other themes also which justify the rejection like plans lacking feasibility and genuineness. Also, given the fact that most of the companies which came under IBC in the first four years were baggage of past from BIFR and had only scrap value, it would be difficult to make any firm conclusion based on above.es that the Code is successfully working as a recovery mechanism for the creditors. While making any conclusive inference whether the CIRP is focused more on recovery than revival will be wrong given the want of qualitative data, the issue of higher upfront payment and which is also substantiated by the survey needs a deeper thought. It is beyond the scope of this research to delve into details in these aspects, but the underlying concern of assessment of plan for revival and not recovery needs to be given due concern.

The findings of the study suggested following as main reasons for delay-

1. Inadequate capacity of NCLT
2. Difficulty in marketing stressed assets
3. Non-Cooperation by CD
4. Improper documentation model of companies

In light of findings that have emerged in the study, there are some suggestions as given below that may help reduce the delay in CIRP. Moving forward, following points may be reconsidered by the policy makers to ensure that the Code remains a healthy business rescue regime:

1. Building Court's Capacity

The data in the research analysis clearly suggests that maximum delay is taking place at the stages of admission of CIRP and approval of resolution plan by the adjudicating authority. The survey also suggests that 40% of RPs feel that for securing the success of the Code, reducing delay in admission is most crucial (Refer Annexure 2). This clearly shows that there is a need to strengthen the capacity of the courts which could adjudicate cases of insolvency in a timely manner.

Existing literature has identified slow judicial processes as a barrier to addressing the rise in NPLs¹. Courts and the judges often act as an impediment to the efficient resolution of insolvency. Court involvement is important in guaranteeing the rights of different parties involved and can increase ex-post efficiency by acting as a coordination tool. Court involvement particularly for smaller firms that lack scale to cover the associated fixed costs comes with a cost and hence there is a need to reassess the usefulness of the role of courts in the CIRP process in cases of smaller debt size.

Although some stages of a restructuring process require court involvement, most procedural steps – in principle – can be dealt with out-of-court. Doing so could reduce the workload of the courts, enabling them to focus on a timely resolution of those difficult cases where court involvement is necessary. Limiting the involvement of courts to where it is only necessary can raise aggregate productivity by facilitating the exit of non-viable firms (i.e., strengthening market selection) and to the extent this is achieved in a timely manner, releasing scarce resources to be re-deployed to more productive uses.

In this regard, it is suggested that a multi-track approach be adopted for insolvency resolution. Given that not all insolvency matters take 270 days for resolution, as some cases are of smaller nature, it will be useful to look at insolvency cases through the prism of a multi-track approach. In 1998, the Woolf Committee in England adopted a similar approach. The multi-track approach provides a flexible regime for handling cases and does not provide any standard procedure such as those in the small claims or claims in the fast track. Instead, it offers a range of case management tools such as standard directions,

¹ Adalet McGowan, M. and D. Andrews (2016), "Insolvency Regimes and Productivity Growth: A Framework for Analysis", OECD Economics Department Working Papers, No. 1309, OECD Publishing, Paris.

case management conferences and pre-trial reviews. These can be used in a 'mix and match' way to suit the needs of individual cases. Thus, following three tracks could be suggested based on default threshold: -

- the fast tracks
- the small claims track.
- the multi-track

Cross-country evidence suggests that some kind of specialization in expertise of judges and bankruptcy practitioners does pay off, leading to faster and cheaper procedures and, therefore, better recovery rates.² Several jurisdictions such as the United States of America have specialized courts to look into the cases of insolvency, also known as Insolvency courts. Given the potential of stressed asset market and restructuring in India, dedicated benches can be allocated to deal with cases of insolvency. This will help in quick adjudication and developing a uniform jurisprudence in this very vital subject area.

Further, taking guidance from US Orientation for newly appointed insolvency judges can be done by two one-week programs. The initial, Phase I, orientation program would invite experienced bankruptcy judges to serve as mentors. This four-day program would be attended by NCLT judges with less than six months on the bench.

The Phase II orientation program would be organized for Phase I classes of insolvency judges with less than eighteen months on the bench. Participants would analyze the decision-making process, in theory and in practice; study the role of judges; assess case-management styles; consider key ethical dilemmas confronted by new judges; rule on simulated evidentiary issues; and examine best writing practices.

Further, constant delays in the implementation of the Code can be mitigated if, in addition to the mandatory overall timeline for CIRP under section 12 of the Code, mandatory timelines are inserted at every stage of such CIRP process under the Code. For instance, at the stage of admission of application by NCLT, approval of resolution plan, and others. Insertion of such segmented timelines will seek to change the behaviour of courts in implementing such procedures strictly and not just keep the overall timeline in hindsight. An analogy can be drawn from the indirect taxation regime in India, where the pre-GST

² Müge Adalet McGowan & Dan Andrews, *Design of Insolvency Regimes Across Countries*, OECD Economics Department Working Papers No. 1504 (Sept. 6, 2018, 10:00 A.M.)

laws were framed to not facilitate the adjudication of demand notices under stringent schedules, as opposed to the present GST law which has inserted the word shall at numerous instances to ensure speedy adjudication.

2. Strengthening documentation Management System

In the survey, 83% respondents had stated that the companies lack a proper documentation model for both statutory and non-statutory records. 60% respondents have said that it is tough for RPs to get information pertaining to financial and operational aspects of the company. Record keeping is quintessential for the insolvency process to run smoothly. This issue needs to be tackled on two fronts: firstly, in the normal course of business when a company is a going concern, all the annual filings need to be electronically kept and updated. While the law mandates that there should be monitoring of the compliances, use of technology can make these monitoring processes simpler. Secondly, the Information Utility needs to be better utilized. Currently, there is only one such entity in India. There is a need to bring in more participants in the ecosystem. There are some entry barriers that may be prohibiting others to enter the market. It is beyond the scope of this research to deep dive into this question but what remains important to note is that to create a sound and swift insolvency process, the law must allow interested players to enter. The rules need to focus on creating the right incentives. In this regard, information utilities can provide vital infrastructural support.

Further, as per the scheme of the Code, once the application is admitted under either of the provisions of Section 7 or 9 or 10 of the Code, the Adjudicating Authority, under Section 13 of the Code appoints the Interim RP for conducting the CIRP. It is significant to note that if Section 13 is amended to reflect that the Adjudicating Authority passes an order against the corporate debtor to provide all forms of financial information to the IRP (and RP, later on), then the corporate debtor would be compelled to cooperate and provide such information to the IRP/RP. Further, this must also be supplemented with the fact that any form of non-compliance by the corporate debtor with such a court order will hold them liable for contempt of court offense.

The Hong Kong insolvency law also states that any form of non-cooperation by the corporate debtor with the insolvency professional will make it liable for contempt of court offense. Hence, such a transformation in the language of Section 13 of the Code will go a

long way in facilitating the provision of financial information by the corporate debtor to the IRP/RP.

3. Non-Cooperation by CD

Research indicates that, as part of the CIRP conducted under the Code, the CD does not fully cooperate with the RP and that is one of the major reasons for delay in the entire CIRP. However, it is also noted that, even though RPs have a recourse under Section 19(2) of the Code to approach the courts to compel the cooperation by the corporate debtor, only 3% of the RPs have filed such an application and approached the courts on grounds of Non-Cooperation by the corporate debtor.

Section 19(2) is a section with wide import that does not provide what types of orders can be passed by the courts or the Adjudicating Authority under the Code, except for effectively compelling the corporate debtor to cooperate with the RP. However, recently, the Adjudicating Authority in the matter of M/s Educomp Infrastructure & School Management Limited (Petitioner - Corporate Debtor) and Mr. Ashwini Mehra, Resolution Professional vs. Mr. Vinod Kumar Dandona, Suspended Director & Ors., held that the corporate debtor shall be held responsible for non-submission of the information as well as for non-cooperation with the RP and be liable for punishment under section 70 of the Code. Section 70 is a general provision penalising any parties who are liable for misconduct in the CIRP.

Jurisdictions such as Singapore, United Kingdom, Hong Kong and others, in their respective insolvency laws severely penalise any form of non-cooperation, on part of the corporate debtor, with the RP. However, noting the surprisingly low number of Section 19 applications in India, we believe that the language of Section 19 of the Code be accordingly amended to explicitly provide that non-cooperation on part of the corporate debtor with the RP will attract penalty.

Further, there is ambiguity regarding powers of RPs whether they can conduct private investigation in cases where there is avoidance transaction. Considering the fact that, in most of the contentious insolvency cases, fraud may be suspected, therefore, courts may be allowed to permit the RPs to carry out private investigation to investigate such transactions. Currently, a few such orders have been passed but given that law has not

defined the periphery of courts power, much is being left to courts and judges' own pragmatism. Law should be certain and clear in this regard.

Private examinations are a powerful investigatory tool because they would enable the RP to question not only the ex-personnel of the corporate debtor but also the third parties, pertaining to their dealings with the corporate debtor.

4. Building a robust market for stressed assets in India

Given the size of stressed assets in India, there is huge potential for growth in the secondary stress market. It is clear from the research that substantial delay is witnessed at the stages of the issuance of EOI and RFRP. Further, the survey findings suggest that external factors such as marketability of assets is one of the critical causes contributing to delays in resolution of companies. As on today, if an investor is interested in acquiring any corporate asset undergoing CIRP under IBC, there is no one stop website where such an investor can visit to identify a target company which can suit the requirements of the investor in any given sector.

There is also a need to create a robust market for trading of stressed assets and to this extent, there is also a need to increase participation of players for the same. For this purpose, there is a requirement for E-Platform wherein sale of such stressed assets can take place without much difficulty. This platform can be prepared on similar lines as investindia.gov.in specifically for stressed asset investment of companies undergoing CIRP. To make it more user friendly it can have filters such debt size, location, sector etc. Such a platform could lead to more transparency and better price-discovery.

Also, it is trite to mention that if there is paucity of players in the market who could participate in CIRP, the restrictions of ARCs may not be entirely conducive for the overall growth of the Indian insolvency ecosystem.

Thus, we see that while the Code has made the best attempt to ensure that insolvency resolution is completed well within time, the situation is dismal on the ground. As of September 2019, 57% of the ongoing cases had crossed 180 days' timeline and 35% had crossed 270 days. As seen above, the delay has occurred on a few stages that need the attention of both the regulator and legislature. 64% delay is caused in taking approval of the resolution plan from COC and AA. In order to make sure that the Code is relevant

both as a business rescue tool and as an insolvency resolution mechanism, it's imperative that the model timeline is adhered to as far as possible.

In conclusion, it is submitted that the IBC has indeed been a game changer in providing a timely resolution framework. The gap that exists between the letter of law and the practice as seen in this study, can be redeemed if a pragmatic approach is adopted in strengthening the existing insolvency framework as suggested under the project.

Assessment of Corporate Insolvency and Resolution Timeline

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Abstract:

Speed is of essence for the success of the Insolvency and Bankruptcy Code, 2016 (IBC). The longer the resolution process takes, more detrimental are its effects. Currently, there is a rising concern about the delayed timelines and backlogs of cases admitted under the Code. Though there have been a few empirical studies on the delay, they pertain strictly to the delay at the end of Adjudicatory Authority. In the whole CIRP under the IBC, there are approximately 18 stages, many of which have no role of the Adjudicating Authority, i.e. the NCLT. This paper aims to investigate the stages where there is delay and also investigate if any particular sector is prone to delay. It also explores if there is any relation between size of the debt and delay.

The study adopts a two-pronged approach to investigations into these questions. Firstly, it analyses data in CIRP Forms 1,2,3,4,5 and 6 of sampled companies. Secondly, a survey of those insolvency professionals was conducted, who have handled at least one CIRP.

The research finds that delay is not only at the end of state agencies but is also attributable to market participants.

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Introduction

A sound and efficient insolvency regime is important for better investment, innovation, economic growth, and cost of credit in the market. Insolvency regime has a direct bearing on allocation of resources in the economy. Hence for overall economic growth and development, a robust insolvency ecosystem is extremely crucial. World Bank and OECD have developed certain indicators to assess and compare the insolvency regimes of different nations. One of the key parameters is the time taken to resolve insolvency.³

As of 2015, insolvency resolution in India took 4.3 years on an average which was much higher when compared to other countries such as the United Kingdom (12 months) and United States of America (18 months). The reason was poor enforcement mechanism, slow court process and staggered business rescue measures. Indian insolvency and recovery regime prior to the Insolvency and Bankruptcy Code, 2016 (IBC/Code) was multi-layered with multiple fora for adjudication which resulted in undue delay in resolution, conflicting judgments and erosion of investor's confidence.⁴ This emphasized the need to overhaul the then existing framework and bring in a unified code. Hence, on 28th May, 2016 the Parliament enacted a consolidated framework, in the form of the IBC to provide a facilitative mechanism for resolution of stressed assets in a time bound manner.

Section 12 of the Code⁵ provides for a specific timeline of 180 days for completion of a CIRP from the date of admission of application which can be extended further by

³ OECD List of Indicators, at <http://www.oecd.org/economy/growth/policies-for-productivity-the-design-of-insolvency-regimes-across-countries.html>

⁴ Sharma, Anjali and Susan Thomas (2015), Evolution of the bankruptcy framework for enterprises in India, Working paper, FRG IGIDR.

⁵ **S.12. Time-limit for completion of insolvency resolution process. -**

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of [sixty-six] per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding 90 days:

maximum 90 days on filing of an application. It further provides that the CIRP shall mandatorily be completed within a period of 330 days from the insolvency commencement date, including any extension of the period granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor (CD).

Also, the Regulations provide a model timeline for each task in the process, which needs to be followed as close as possible.⁶ Internal timelines within the CIRP are provided through Regulation 40 A. It is relevant to note, however, that while the statutory outer time limit cannot be extended, this does not apply to the internal timelines for the processes set by the committee of creditors, as long as those are within the statutory outer time limit (*Refer Annexure 1 for model timeline*).

According to the aforesaid regulation 40A, once the CIRP has commenced and the Interim Resolution Professional (IRP) has been appointed, the public announcement of CIRP to invite claims from creditors must be done within three days of appointment of IRP. Further, such claims must be submitted within 90 days of the CIRP commencement date. Moreover, the IRP, after collating and verifying the claims of creditors, will also constitute a Committee of Creditors (CoC) and file a report with the National Company Law Tribunal (NCLT). Within seven days of the submission of this report or within 30 days approximately from the CIRP commencement date, the CoC's first meeting will be held to appoint a resolution professional (RP) or confirm IRP as RP, as the case maybe.

The RP is required to issue an Expression of Interest (EOI), inviting bids from the prospective bidders, within 75 days of the CIRP commencement date, following which the RP prepares a provisional list of such bidders and issue the requisite information to them, within 105 days of the CIRP commencement date. Furthermore, the RP allows a minimum of 30 days for the prospective bidders to submit a resolution plan and this deadline may further be extended by the RP, with the approval of CoC for reasons, inter alia, that the plans are not satisfactory. He can additionally issue another request for resolution plans, for which the 30 days' timeline is not applicable. Once the resolution plans have been received, the CoC votes on its approval and then submits the same to the NCLT at least 15 days before the completion of the total 180 days, following which the resolution plan is approved by the Tribunal.

(4) Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta And Ors (2019) 2 S.C.C. 1 (India).

It is worth noting that the Code is one of the very few laws in the world to provide for a time bound resolution of an insolvency process. Since the enactment of the Code, the time taken to resolve insolvency in India, as of 2019, has come down to 1.6 years on an average. However, we still have a long way to go as the best regulatory performance in resolving insolvencies is 0.4 years (Ireland)⁷.

Statement of Problem

A study by E&Y⁸ indicates that since 2018, the number of cases admitted under the Code has increased manifold. However, most of the cases have crossed the time prescribed by the Code. Of the 1,497 ongoing cases as on 30th September 2019, (57%) were ongoing for more than 180 days and 535 (35%) had crossed the 270-day timeline. It appears that the CIRP is not being completed in prescribed time which is a source of concern.

Though there have been a few empirical studies on the delay in CIRP⁹ under the Code, they pertain strictly to the delay at the end of adjudicatory authority in terms of workload and efficiency of the benches. In the entire IBC process, there are approximately 18 stages and most of these does not involve role of adjudicatory authority. Hence, the earlier findings cannot be generalised to assess delay in the CIRP. In this light, this study provides an important insight in assessing the stage wise delay in the CIRP and explores if there is any connection between delay and debt size or the sector of the CD. This study is timely as it lays down some critical evaluations to identify and understand the weak-link in the CIRP so that some structural as well as procedural changes may be adopted, where needed.

Research Objectives

In the above background, this research aims to understand the stagewise delay in CIRP and explore the reasons for same. It further aims to investigate whether some sectors are more prone to delay owing to business and other complexities. The study will also attempt to understand and analyse the relationship of delay in CIRP with the debt size of the CD.

⁷ Time to resolve Insolvency (2015), at <https://data.worldbank.org/indicator/IC.ISV.DURS>

⁸ Evolving Landscape of Corporate Stress Resolution, EY Report (December 2019), available at <https://assets.ey.com/content/dam/ey-sites/>

⁹ Sreyan Chatterjee, *An Empirical Analysis of the Early Days of the Insolvency and Bankruptcy Code*, 2016, National Law School of India Review **Vol. 30, No. 2 (2018)**, pp. 89-110; Sreyan Chatterjee et al., *Watching India's insolvency reforms: a new dataset of insolvency cases* (WP-2017-012), available at <http://www.igidr.ac.in/pdf/publication/WP-2017-012.pdf>

Research Questions

With the above objectives, this research aims to look into the following questions:

1. In the given sample, which of the stages of CIRP witnesses delay?
 - a. What stages of CIRP witness delay in both *Control Group*¹⁰ and *Delayed Group*¹¹?
 - b. What stages of CIRP witness delay in the *Delayed Group*?

The details of control group and delayed group are discussed in the next section.

2. Whether there is any correlation between any specific sector and delay in CIRP?
3. Whether the stage wise delay is related to the size of the debt?

Literature Review

IBC has played a significant role in resolving abundant non-performing assets conundrum. The Code brought a paradigm shift in insolvency regime in India. It reformed the existing institutional structure for insolvency and bankruptcy resolution and replaced the erstwhile regime with a modern and well-structured law.¹²The country did not have any prior experience of a law for insolvency resolution that was proactive, incentive-compliant, market-led and time-bound. It replaced earlier multi-layered insolvency and bankruptcy procedure by consolidating insolvency of various entities in a single Code. It was envisaged as a cure-all solution for the resolution of distressed organizations in an orderly and time bound manner thus marking a significant departure from the previous regime that did not provide for a time-bound process.

Recovery rate under an insolvency procedure is a function of time, cost, and outcome.¹³ Bankruptcy costs are likely to increase with the time that the firm spends in bankruptcy.¹⁴The amount of time consumed in bankruptcy proceedings is a proxy for

¹⁰ Consist of sampled CD's who have finished the CIRP within 270 days.

¹¹ Consist of sampled CD's who have taken more than 270 days to finish CIRP.

¹² M. S. Sahoo & Anuradha Guru, *Indian Insolvency Law*, Vikalpa: The Journal for Decision Makers, Vol. 45(2), 69, 72 (2020).

¹³ *Id* at 74

¹⁴ 2 HOTCHKISS, E. S., JOHN, K., MOORADIAN, R. M., & THORBURN, K. S., HANDBOOK OF EMPIRICAL CORPORATE FINANCE, 262 (2008)

indirect costs. The longer a bankruptcy process lasts, more detrimental its effects will be for businessmen.¹⁵

The Bankruptcy Law Reforms Committee also has noted that time is essence of the Code. The Committee observed that:

“Speed is of essence for the working of the bankruptcy code, for two reasons. First, while the ‘calm period’ can help keep an organisation afloat, without the full clarity of ownership and control, significant decisions cannot be made. Without effective leadership, the firm will tend to atrophy and fail. The longer the delay, the more likely it is that liquidation will be the only answer. Second, the liquidation value tends to go down with time as many assets suffer from a high economic rate of depreciation. From the viewpoint of creditors, a good realisation can generally be obtained if the firm is sold as a going concern. Hence, when delays induce liquidation, there is value destruction. Further, even in liquidation, the realisation is lower when there are delays. Hence, delays cause value destruction. Thus, achieving a high recovery rate is primarily about identifying and combating the sources of Delay.”

Under the old regime, the prominent statutes that governed the resolution of non-performing assets were Sick Industrial Companies Act 1985 (SICA), The Recovery of Debts due to Banks and Financial Institutions Act 1993 (RDBFI Act) and the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act). It took as long as 4.3 years on an average to resolve an insolvency during this regime. Data available from Eradi Committee findings clearly highlights the lack of successful resolution of sick companies under SICA which was only 19%.¹⁶ Another study shows that the abuse of SICA came down significantly after the introduction of SARFAESI Act.¹⁷ Though SARFAESI did expedite the recovery process to some extent, its effect was limited to realization of secured assets. In addition, similar to the RDBFI Act, SARFAESI lacked any powers or provisions for considering restructuring and reorganization. There were multiple instances where SARFAESI and RDDBI

¹⁵ Welch, Ivo & Bris, Arturo & Zhu, Ning, *The Costs of Bankruptcy: Chapter 7 Liquidation versus Chapter 11 Reorganization*, Journal of Finance, Vol. 58, issue 3,1253,1274 (2006)

¹⁶ Eradi, et al., *Report of the high-level committee on law relating to insolvency and winding up companies*, Ministry of Law, Justice and Company Affairs, Government of India,40, (2000).

¹⁷ A. Pandey, *The Indian insolvency and bankruptcy bill: Sixty years in the making*, Munich Personal RePEc Archive, 30 (2016).

exercised parallel jurisdictions, leading to a complete confusion on primacy and 'forum shopping'.¹⁸Data also validates that the introduction of RDBFI Act had no impact on the attractiveness and misuse of the BIFR forum.¹⁹ The aforementioned shortcomings resulted in enactment of the Code in 2016. Understanding the lacuna that existed in law previously the new Code has stipulated fixed timelines to ensure timely resolution.

Apparently, delayed timelines have been the biggest roadblock for realisation promise into delivery for the Code. A survey-based study has indicated that the probability of case completion within 180 days is less than 5%, the probability of case completion within 270 days is 22% and the probability of case completion within 360 days is 45%.²⁰However, the results are not fully reliable as they are based on perception of different stakeholders captured through a survey.

OECD has observed that delay in resolution proceedings can be attributed to multiple reasons. Slow judicial processes have been identified as a barrier to addressing the rise in Nonperforming loans.²¹ World Bank notes that courts and the judges often act as an impediment to the efficient resolution of insolvency.²² In this regard, the importance of a well-functioning adjudication process at the NCLT cannot be understated for the sound functioning of the IBC. Some scholars have suggested that limiting the involvement of courts to where it is only necessary can raise aggregate productivity by facilitating the exit of non-viable firms (i.e., strengthening market selection) and to the extent this is achieved in a timely manner, release scarce resources to be re-deployed to more productive uses.²³

The working of a country's judicial system plays a nontrivial role in balancing the interests of those involved in a bankruptcy proceeding. Beyond the clear enumeration of equitable legal rights, there is a need for an efficient judicial system to enforce these

¹⁸ *Id* at 30

¹⁹ *Supra* note 13 at 30

²⁰ Shon Gadgil, Dr. Bindu Ronald & Ms. Lasya Vyakarana, *Timely Resolution of Cases Under the Insolvency and Bankruptcy Code*, *Journal of Critical Reviews*, vol. 6(6), 156,167 (2019).

²¹ Müge Adalet McGowan & Dan Andrews, *Design of Insolvency Regimes Across Countries*, OECD Economics Department Working Papers No. 1504 (Sept. 6, 2018, 10:00 A.M)

²² Elena Cirmizi, Leora Klapper & Mahesh Uttamchandani, *The Challenges of Bankruptcy Reform*, World Bank Policy Research, Working Paper No. 5448.

²³ Pratik Datta & Ajay Shah, *How to make courts work?*The Leap Blog (Feb. 22, 2015, 10:00 A.M.), <https://blog.theleapjournal.org/2015/02/how-to-make-courts-work.html>.

rights, or at least to serve as a credible threat.²⁴ Laws which trap businesses in lengthy court proceedings or impose penal provisions on bankruptcy muzzle risk-taking entrepreneurship.²⁵

Importance of availability of information for timely resolution of insolvency cannot be emphasized more. One of the keys to timely completion of an insolvency or bankruptcy process is quick availability of factual and undisputed information. Imprecise and ambiguous financial reporting often marks the bankruptcy environment.²⁶ Financially distressed firms could delay reports has been empirically proven.²⁷

Several theories explain why distressed firms could start delaying reports, such as the theory of selective disclosure²⁸ and the obfuscation theory.²⁹ In the modern corporate world, corporate information is produced by information and control systems which record, organize, and summarize data in useful ways and then provide that information to those who will use it. Such systems enable management and the board, to exercise control in a complex and fast-changing world by identifying deviations from corporate plans and budgets and from corporate standards and policies. Distressed companies have internal conflicts and financial incentives to hide the reasons why they are not performing well.³⁰

This may lead to information asymmetry which can impact the timely resolution. This divergence of information can result in a sub-optimal solution towards resolution.³¹ Insolvency regimes that do not provide sufficient cover for incumbent management increase the private incentives of management to hide the true financial state of the firm

²⁴ Enrico Perotti, [*Lessons from the Russian Meltdown: The Economics of Soft Legal Constraints*](#), William Davidson Institute Working Papers Series 379, William Davidson Institute at the University of Michigan (2001).

²⁵ supra note 8 at 70

²⁶ Oliver Lukason Oliver, Camacho-Miñano & María-del-Mar, *Bankruptcy Risk, Its Financial Determinants and Reporting Delays: Do Managers Have Anything to Hide?* Risks 7(3): 77 (2019).

²⁷ Altman, Edward I., Gabriele Sabato, & Nick Wilson, *The value of non-financial information in small and medium-sized enterprise risk management*, The Journal of Credit Risk vol. 6, 1, at 17 (2010).

²⁸ Darrrough, Masako N., & Neal M. Stoughton, *Financial disclosure policy in an entry game*, Journal of Accounting and Economics, Vol. 12, 219(1990).

²⁹ Curtis, John K., *Annual report readability variability: Tests of the obfuscation hypothesis*, Accounting, Auditing and Accountability Journal, vol. 11, 459(1998).

³⁰ Whittred, Greg, & Ian Zimmer. *Timeliness of Financial Reporting and Financial Distress*, The Accounting Review, Vol. 59, no. 2, 287(1984).

³¹ J. Martel, *Bankruptcy Law and the Canadian Experience: An Economic Appraisal*, 17 Canadian Public Policy 52, 55 (1991).

and gamble on resurrection.³² Thus, in the Indian context, this becomes a great challenge as management of the CD is displaced with an outsider thereby creating greater incentive for insufficient information disclosure. Dismissal of management during restructuring can have largely adverse effect on the timely initiation of insolvency.³³ Given the frame of law in India, it becomes imperative that the CIRP is completed within the timeline and the weak links in making the timely resolution are addressed adequately.

There is a rising concern of backlogs of cases admitted under IBC and this makes the adherence to timeline critical. For instance, the new admissions of insolvency cases between January to September 2019 is 350 but the average rate of closures for the same quarter is 148, which is a cause of concern. While the literature has highlighted the three main reasons for delay as stated above, there exists vacuum in scholarship to understand the stagewise delay. This project aims to fill this existing gap.

Design of the Study

Given the objective of the research to investigate stage wise delay in the CIRP process, the study adopted a twofold approach for its research design. *First*, it collected data of 305 companies from IBBI to study the delay in timeline and analyse stagewise delay. *Second*, it conducted surveys with IPs who have handled at least one CIRP to get insight into whether the perception of the IPs matches our data findings. IBC has been regarded as a successful law that has changed the credit behaviour of CDs and is “perceived” as a strong tool for improving “payback culture. In this regard, the survey offers insight into such perception from the perspective of an insolvency professional (*Annexure 2* of the documents includes questionnaire with answers).

Under the *first approach*, the study involved comparison of the time taken at each stage of CIRP for our sample cases against the prescribed model timeline under regulation 40 A of the CIRP regulations. This yielded a relevant set of data for further analysis.

- a) To assess the stage wise delays - dates of the various events were captured to compare the average number of days taken at each stage starting from the date of commencement of the CIRP by sampled CDs, excluding the outliers and circumstantial cases against the mandated timelines under the law. A similar

³² Müge Adalet McGowan & Dan Andrews, *Design of Insolvency Regimes Across Countries*, OECD Economics Department Working Papers No. 1504 (Sept. 6, 2018, 10:00 A.M.)

³³ *Id*

approach was followed to assess the relationship between sector/industry of the CD and time taken to complete the CIRP.

- b) For decoding the relationship between size of debt and number of days taken to complete the CIRP, a regression analysis was conducted where the number of claims was the explanatory variable (independent variable) and number of days taken to complete the process as predictor variable (dependent variable). Since the claims did not follow a normal distribution pattern - the data was converted into *logarithmic function* series in order to run regression analysis.
- c) For decoding the relationship between sector and delay in CIRP.

In the case of primary survey, the objective questionnaire prepared was circulated amongst the registered RPs who have handled at least one case of CIRP. The minimum benchmark of one case was set to remove perception bias. The survey questions covered different aspects of the code including 13 stages to map the qualitative as well as qualitative responses.

A. Sampling of Primary Data for Survey

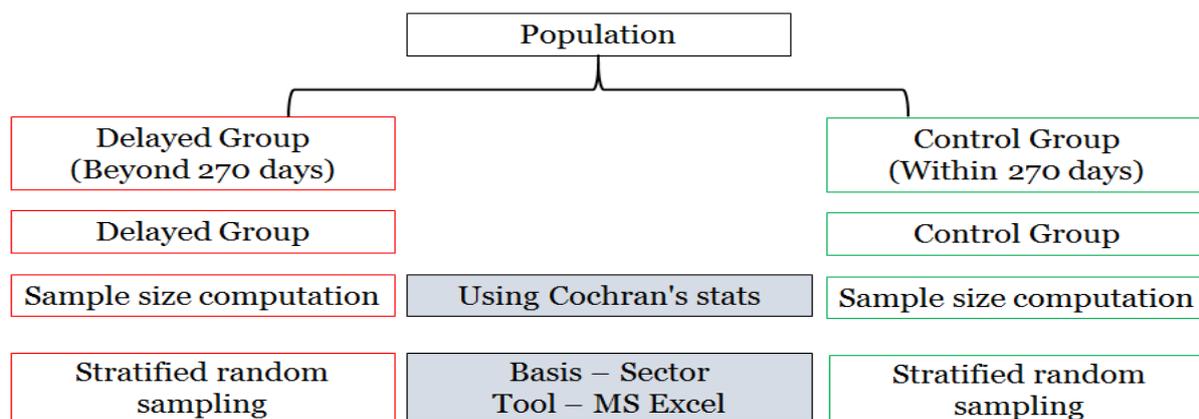
As per the IBBI data, the total number of IPs who have handled at least one case is 1149. A total of 431 resolution professionals participated in the survey.³⁴ Thus, the sample size of 37% was targeted to receive response. 94 % of population was above 40 years and had undertaken minimum of one assignment. The questions with response are attached as *Annexure 2*.

B. Sampling of Secondary Data

Companies resolved (224) and liquidated (965) till March 2020 are considered for the purpose of the study. Stratified random sampling method is applied to the entire population of 1189 companies. The stepwise procedure of the Sampling is described as follows –

³⁴ In order to generalise findings, the optimum sample size was computed, with 95% confidence interval and 5% Margin of Error as -

$$N' = Z^2 * p * q / ME^2 = \text{ROUND} ((1.96)^2 * 0.5 * 0.5 / (0.05)^2, 0) = \sim 385.$$



1. The entire population was divided into resolved and liquidated companies to treat them in different groups.
2. It was further split into “Control” and “Delayed” group on the basis of the number of days taken (Cut off being 270 days) to complete the process, thereby forming four categories – Delayed Resolved, Control Resolved, Delayed Liquidated, and Control Liquidated. (Any CD finishing the process within 270 days were bucketed into “Control Group”, else into the “Delayed Group”)

CDs	CONTROL GROUP	DELAYED GROUP
RESOLVED	Within 270 days	Beyond 270 days
LIQUIDATED	Within 270 days	Beyond 270 days

3. For each group optimal sample size was identified using Cochran’s statistics in order to generalize findings. The sample was computed as
4. Additionally Stratified random sampling on the four groups mentioned above was done to ensure representation from all the “Sector”. (Tool – Spreadsheet)

CDs Sample	CONTROL GROUP	DELAYED GROUP
RESOLVED	25	66
LIQUIDATED	107	107
Total	132	173

Sampling Technique-Cochran's statistics

For infinite population – $N' = Z^2 * p * q / ME^2 = \text{ROUND} ((1.96)^2 * 0.5 * 0.5 / (0.1)^2, 0) = 96$ [Where, Z is the z-value found in Z table, p is the (estimated) proportion of the population, q is $1 - p$ and ME is the desired level of precision (i.e. the margin of error)]

Assumptions –

1. Z - 95% confidence interval
2. Assuming maximum degree of variability here - $p=0.5$ & $q=0.5$
3. ME = a 10% - that the results will be within 10% of the real population value 90% of the time.

Since the size of the population was known with precision, the sample was computed as –

For finite population of delayed group (Resolved Companies) – $N' / 1 + ((N' - 1) / N) = 96 / [1 + ((96 - 1) / 192)] = 64$ [Where, N' is found as above and N is the population size]

Similarly, the sample size for the control group of resolved companies was computed using the Cochran formula as follows –

For an infinite population – $N' = Z^2 * p * q / ME^2 = \text{ROUND} ((1.96)^2 * 0.5 * 0.5 / (0.1)^2, 0) = 96$ [Where Z is the z-value found in Z table, p is the (estimated) proportion of the population, q is $1 - p$ and Margin of Error is the desired level of precision (i.e. the margin of error)]

Assumptions are taken –

1. Z - 95% confidence interval
2. Assuming maximum degree of variability here - $p=0.5$ & $q=0.5$
3. ME = 10% - that the results will be within 10% of the real population value 90% of the time.

Since the size of the population was known with precision, the sample was computed as –

For finite population of control group (Resolved Companies) – $N' / 1 + ((N' - 1) / N) = 96 / [1 + ((96 - 1) / 32)] = 24$ [Where, N' is found as above and N is the population size].

Then a stratified random sampling was applied on the population on the basis Sector of the companies for both the delay and control group.

A similar sampling approach was followed in case of liquidated companies i.e. for a total of **965** liquidated companies of which **572** were in delayed groups and **393** formed the control group, **214** CDs were sampled for the purpose of analysis.

Hence, CIRP of a total of 305 CDs are analysed to safely generalize the findings.

The table below summarizes the output of the sampling exercise done for both the groups.

Category	Sampled Delayed	Population Delayed	Sampled Control	Population Control	Total Sampled	Total Population
Resolved CDs	66	192	25	32	91	224
Liquidated CDs	107	572	107	393	214	965
Total	173	764	132	422	305	1189

Information Received

The data received from IBBI constituted CIRP forms (CIRP form 1, 2, 3, 4, 5 and 6) for the sample companies. Until March 2020, companies resolved were 224 and liquidated were 965.

Approaches to Data Analysis

The step wise study of the CIRP was done to evaluate whether the scheme of the CIRP is aligned with the Code's objective of faster resolution and value maximization. Also, considering that the CIRP involves multiple stages, it is important to investigate whether there is delay at any stage and if yes, what could be the cause of the delay. While the first question can be investigated through the data provided and substantiated by the survey findings, the second question involves evaluation of a qualitative matrix which may not be possible given the limited data available with the researchers.

For the purpose of study, the CIRP process is divided into 13 stages. The first question to be evaluated is whether companies that have completed the CIRP within the prescribed time frame have completed all the 13 stages also within the time as provided under Regulation 40 A. For this purpose, companies that have completed the CIRP within the timeline are grouped as a single cluster known as '*Control Group*' and stage wise analysis is done for this group. Also, the companies with delayed CIRP were also studied to enquire at what stage the delay had occurred. For this, a second cluster with company switch delayed timeline is created as Group 2 which is "*Delayed Group*".

To summarise,

1. Two groups are created based on the criteria of finishing the process within 270 days.
2. The sample was divided into two groups- a) *Control group* consisting of companies that completed the CIRP within the prescribed timeline i.e. 270 days and b) *Delay Group* consisting of companies that took time beyond 270 days to complete the CIRP.
3. Comparison of 13 stages was done followings were done adopting the mean excluding outliers: -
 - a. Controlled group against the stipulated timeline
 - b. *Delay Group* against the *control group*
 - c. *Delay Group* against the stipulated timeline
4. To substantiate findings under Point 3, a sanity check of alignment of professionals' opinion gathered through the primary survey with the secondary data was mapped against the findings.
5. For qualitative analysis, text mining technique was done using Python for the information available in secondary data on three themes - "Delay in overall delay",

“Reasons for rejection of Resolution Plan by CoC” and “Reasons for extension and exclusion of certain period.

Limitation of the study

At the onset, we would like to point out that though an honest attempt has been made to answer the research questions at hand through the data study, the research nevertheless suffers from certain limitations. Where possible, findings of survey have been used to provide qualitative insights to overcome this. Some limitations could not be overcome due to want of data such as minutes of COC meetings, event reports or incomplete information in the CIRP forms.

Another limitation is that the reasons for delay as found in this study may be due to the fact that jurisprudence on IBC is still evolving. Once the law is settled, some reasons may not hold true in future cases.

Research Findings

The research findings are categorised into three heads as below:

- A. Stagewise analysis of the CIRP timeline and identifying delay, if any, at each of the stage.
- B. Sector based findings for delay.
- C. Relationship between delay and the debt size.³⁵

A. Stagewise Analysis of CIRP Timeline

Pre-Commencement stage/stage of admission of application under CIRP

Pursuant to section 9 of the Code, 14 days’ timeline has been prescribed for admission of application. However, the research findings suggest that the average number of days taken for admission of applications under CIRP is 133 days, with no substantial variation between Control Group (136 days) and Delayed Group (131 days). The findings of CIRP forms are substantiated with the opinion of RPs. According to the survey results, 74% of RPs believe that it takes more than 90 days for initiating CIRP, whereas only 1% of RPs said that applications get admitted within 14 days of filing. This is indicated in Fig. 1.

³⁵ Debt size signifies total claims admitted.

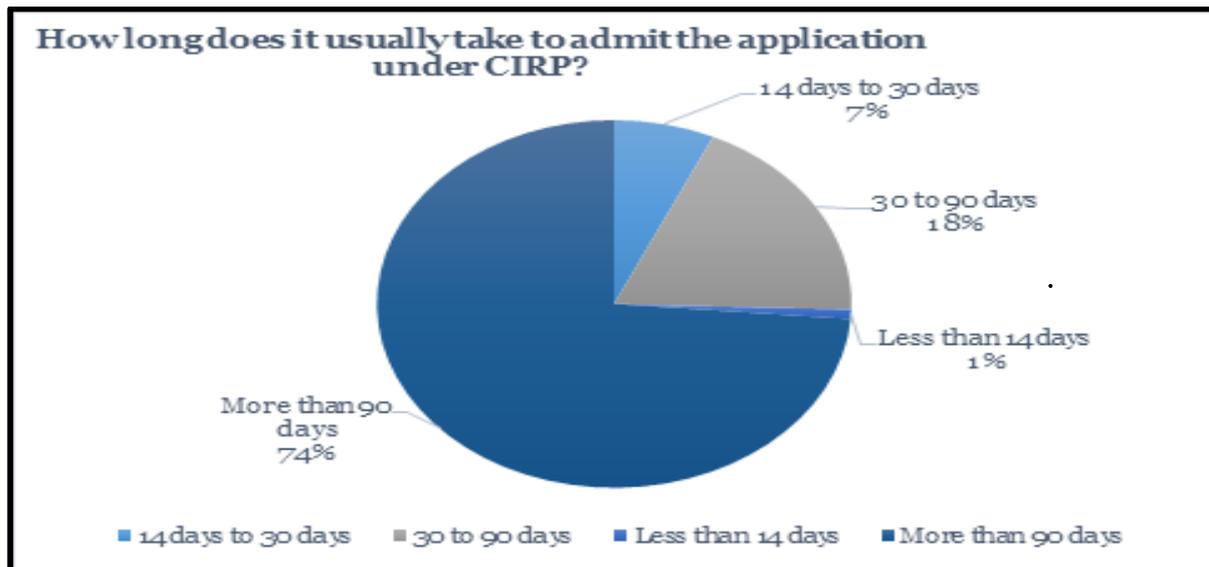


Fig 1: Survey response on time taken for admission of application under CIRP

The table below represents the stagewise analysis post admission. The table is prepared based on the mean calculated by analysis of CIRP forms 1-5. Certain CIRP forms had incomplete information, as already pointed out in the limitation, owing to which they were excluded while calculating the mean. Outliers were excluded while calculating the mean. Number of days (delay) in table is calculated is incremental. Delay at each stage is calculated after reducing the delay of the previous stage.

As depicted above ~80% of the total delay is at 4 stages -

1. Date of Issue list of RAs
2. Date of issue of RFRP
3. Date of EOI
4. Approval of resolution plan

Further, there are stages of **consistent delays** irrespective of the group, those include-

1. Admission of Application
2. Date of Public Announcement (T+3)
3. Date of resolution to appoint RP (T+30)
4. Issue of provisional list of RAs (T+100)
5. Issue of RFRP (T+105)

Then, there are stages which witnessed delays as *Delayed Group* took more number of days on an average as against the stipulated timeline -

1. Issue of EOI (T+75)
2. Issue of final list of RAs (T+115)

3. Approvals of Resolution Plans (T+270)

(For detailed discussion on stagewise delay refer Annexure 3)

Research findings reveal the following stages/reasons for delay-

T+day	Stage description	Mandate -Law	Delayed Group	Control Group	Average delay	% contribution to total delay in Delayed Group
T+3	Public Announcement	3	11	10	11	2.8%
T+90	Submission of Claims	90	33	22	29	NA
T+23	Constitution of CoC	23	25	24	25	0.7%
T+30	First meeting of CoC	20	34	30	32	0.9%
T+30	Resolution to appoint RP	20	59	45	54	9.2%
T+54	IM to CoC	54	55	54	55	0.3%
T+75	Invitation of EOI	75	117	71	100	9.6%
T+100	Issue of Provisional list of RA	100	133	117	127	10.2%
T+115	Issue of final list of RAs	115	191	120	166	19.2%
T+105	Issue of evaluation matrix	105	116	95	108	1.1%
T+105	Issue of RFRP	105	176	114	151	17.5%
T+135	Submission of plan	135	141	133	138	1.0%
T+270	Resolution plan approval	270	477	214	383	27.4%

1. Inordinate delay from the side of Adjudicating Authority

Admission of application for CIRP takes much longer than the prescribed timeline, both in *delayed* and *control group*, suggesting inordinate delay from the side of the adjudicating authority in admitting an application for CIRP.

Also, the percentage contribution of each stage to the total delay as mapped reflects that 27.4% of the total delay is caused in taking approvals of the resolution plan from CoC. It is important to note that most of the CDs also get extensions at this stage.

The text mining result as indicated in Fig 2 explains the grounds on which court granted extension. It reveals “*Litigation Period*” and “*Adjournment*” as most prominent reasons for granting extensions to CDs. Also, the survey findings indicate timely admission as the most important factor for securing the success of IBC.

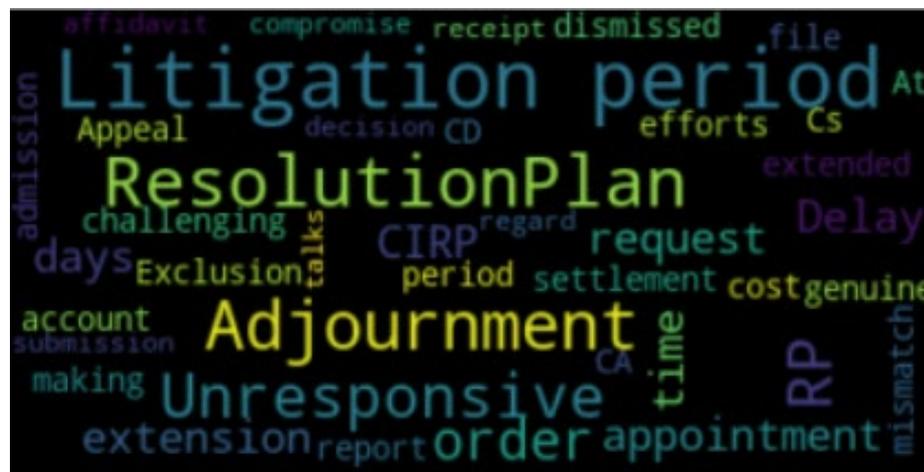


Fig 2: Grounds for Extension of Application

Thus, it is found that litigation is taking maximum time and there is an urgent need to develop the capacity of NCLT to reduce delay at two main stages i.e., admission & approval of resolution plan. A separate study needs to be done to evaluate whether the delay is due to a smaller number of judges at NCLT or whether the productivity of judges is not up to mark. The latter signifies the need for appropriate training as well as need for providing conducive environment and support in form of backend administrative functions which are vital for efficient performance of judicial function.

The survey findings also point towards reducing the delay at stage of admission as one of the most important factors for securing success of IBC. (Refer Fig 3).

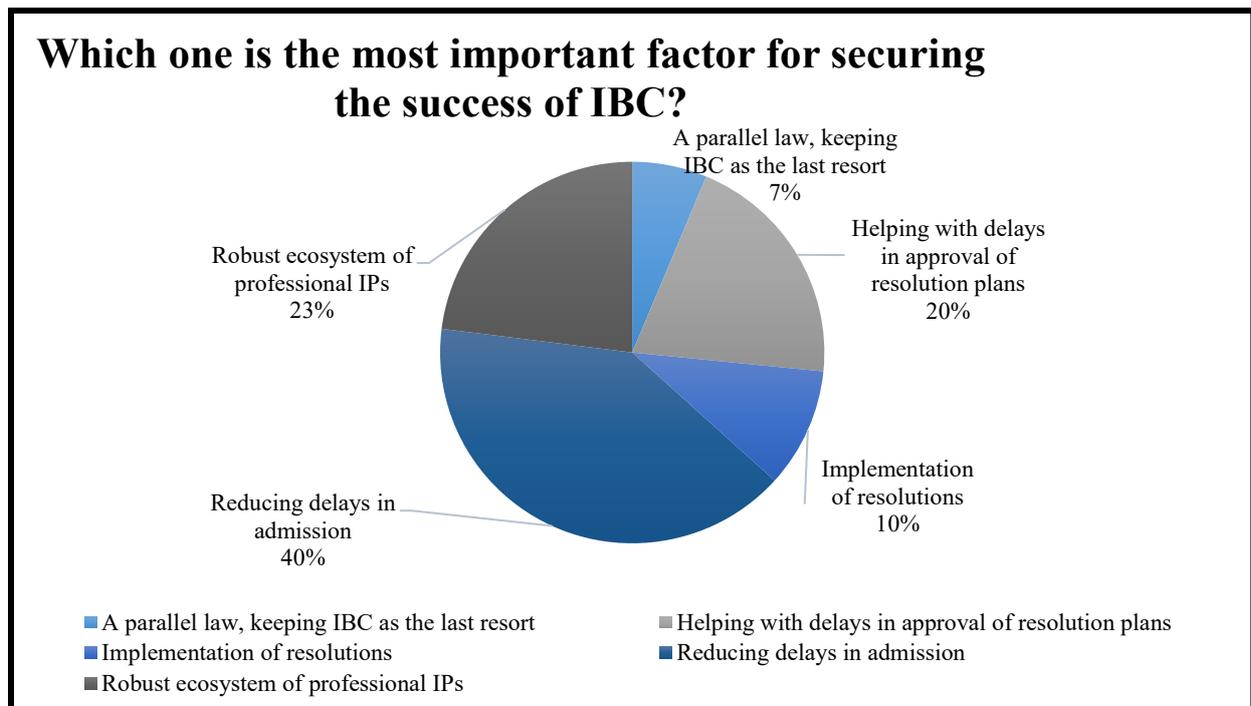


Fig 3: Survey Response on most important factor for securing success of IBC

2. Delay in appointment of RP

The study indicates that there is delay in appointment of RP. Pursuant to section 22 of the Code, the first meeting of CoC should be conducted within 7 days of the constitution of CoC and the RP must be appointed in the same meeting. The study finds that even though the first meeting is conducted well in time, the appointment of RP is delayed (Refer Fig 4).

Given the fact that minutes of COC meeting were not provided, it is difficult to assess the reason for the same. Also, it is worth noting that though the survey indicates that if the IRP and RP are different individuals it leads to delay, however the secondary data does not offer any such findings.

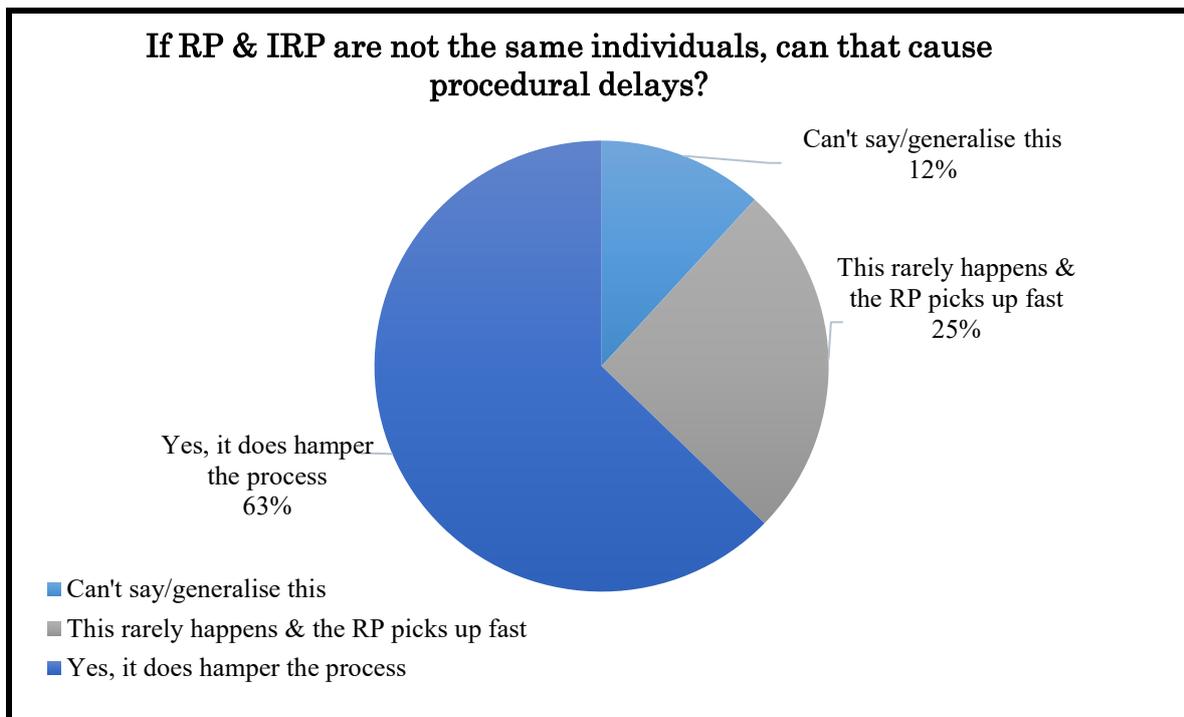


Fig 4: Survey response on relation of delay with change in RP

3. Challenge with sale of distressed assets

The research shows concerns with marketability and sale of stressed assets. While the issue of information memorandum is taking place within the prescribed timeline i.e., 54 days, issuance of EOI is significantly delayed in companies in *delay group* suggesting impediment from the side COC. Further the survey suggests that 60% of the time COC asks for extension of prescribed time for expression of interest (Refer Fig 5).

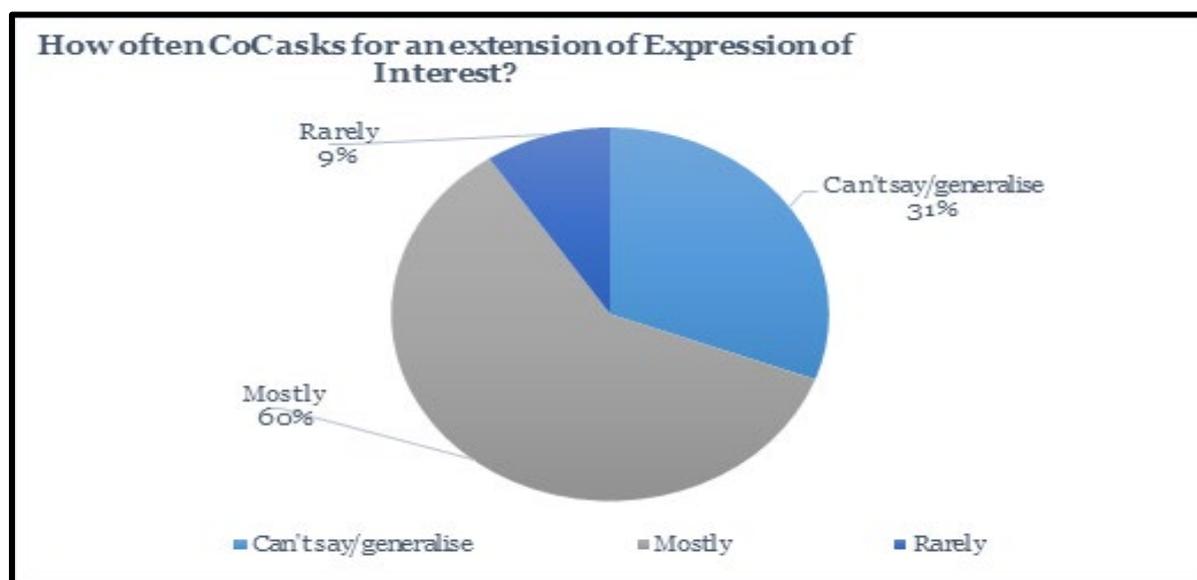


Fig 5: Survey response on how often COC asks for expression of interest

The survey findings also indicate that marketability is a major concern and reason for delay in case of liquidation (Refer Fig. 6).

If this delay is read in light of multiple issuances of EOI as observed in many cases it can be safely concluded that there is scarcity of good resolution plans, thereby resulting in the paucity of the RAs who could participate in sale of stressed assets. This clearly indicates that there needs to be concerted efforts made in the developing market for stressed assets in India. Also, it is trite to mention that if there is paucity of players in the market who could participate in CIRP, the restrictions of ARCs may not be entirely conducive for the overall growth of the Indian insolvency ecosystem.

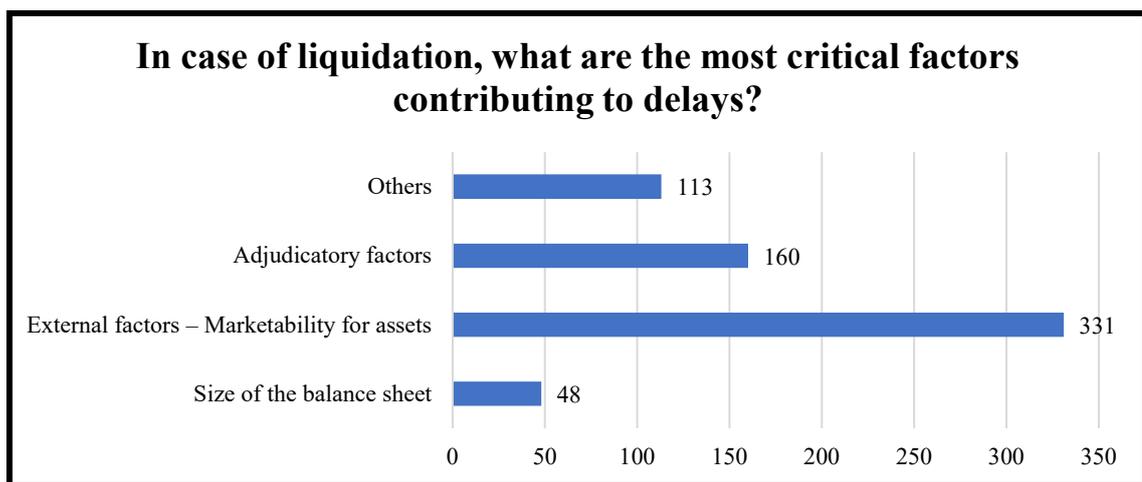


Fig 6: Survey response on critical factors contributing to delay in liquidation

4. Delay in issue of provisional list & final list of RAs

The study indicates delay of almost 30 days for the issue of the provisional list of RAs for the *delayed group*. Similar delay is noted in preparation of the final list of RAs wherein the *delayed group* takes almost additional 75 days. The delay may be due to the reason that that between the issue of provisional list and final list, the prospective RA's whose application has been rejected based on the eligibility criteria such as contravention of Section 29 A etc are given chance to raise objection.

One way that delay could be curtailed is if the Regulations provides that the decision of RP, who has been given the power to conduct due diligence to inspect the eligibility of PRA be final. Any objections should be supported by relevant documents and must only be made on procedural grounds. Further, any writ is filled challenging the decision of RP

to reject a PRA should not stop the CIRP the process unless the court finds excruciating reasons based on documentary evidence.

5. Non-Cooperation by CD

The study suggests Non-cooperation by CD as a major cause of concern. The various themes that emerge through the text-mining analysis done using Python on the opinions of RPs duly filled in CIRP form to assess reason for delay, indicates the following bag of words - *books of accounts, non-cooperation and accessibility to financial information* about the CD (Refer Fig 7).

This is also indicated in the survey findings wherein 79% of RP's are of the view that there is general inhibition in sharing information 67% stated that it is tough to get financial and operational information about the company undergoing CIRP (Refer Fig 8 & Fig 9).



Fig 7: Python results of CIRP forms to assess reasons for delay

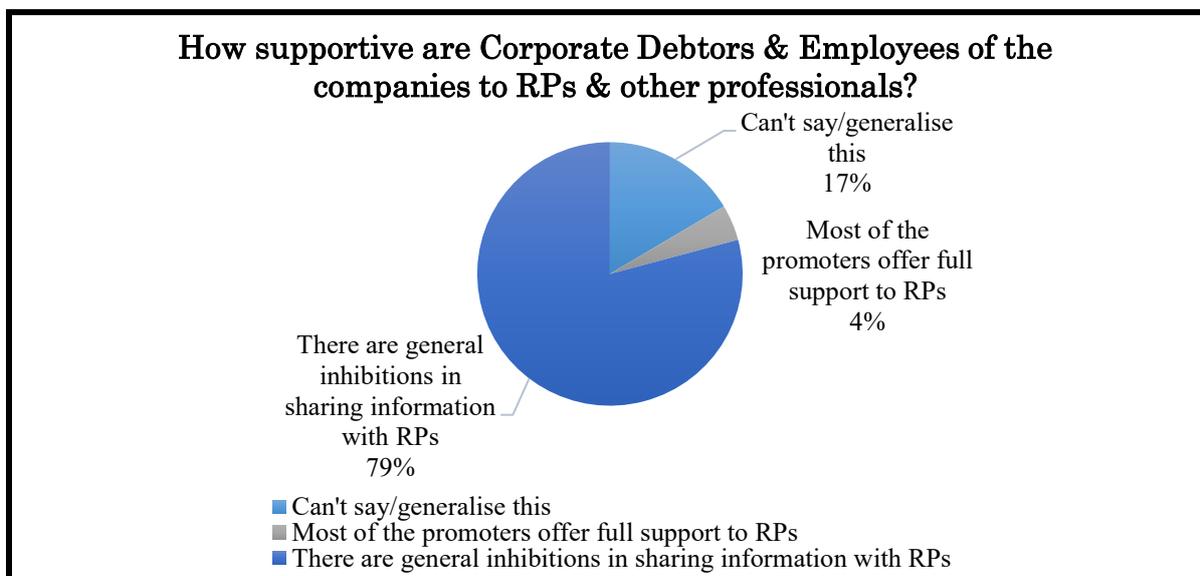


Fig 8: Survey response on how supportive are corporate debtors & employees to RP

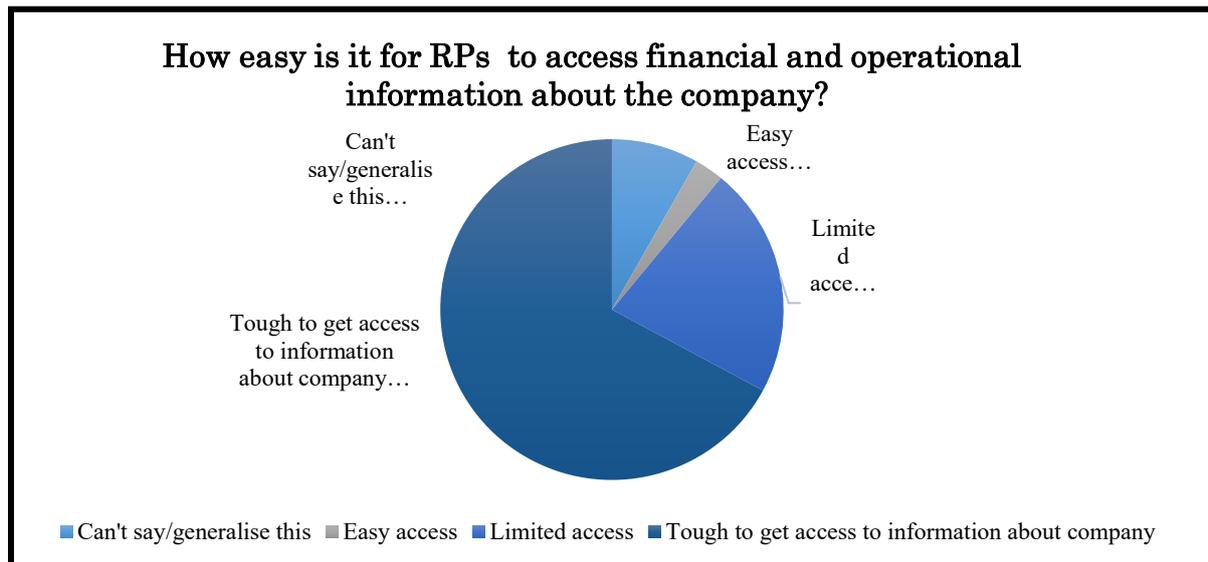


Fig 9: Survey response on access of information by RP

It is noteworthy that even after these impediments the information memorandum is being prepared on time. This may point towards the poor quality of IM's. However due to lack of qualitative data no firm conclusion can be made.

6. Difficulty in accessing information about the company and improper documentation model

The other two themes that emerge through the text-mining analysis done using Python on the opinions of RPs duly filled in CIRP form to assess reason for delay, indicates Non-Filing and Non-Compliance as reason for delay (refer Fig 6). This stipulates lack of proper books. This is further validated by survey findings wherein 83% of RPs are of view that companies lack proper documentation model for both statutory register and non-statutory register (Refer Fig 10). It is worth noting that only 3% of the RPs filed the application under section 19(2) of the Code to take help of local authorities on grounds of non-cooperation by the CD.

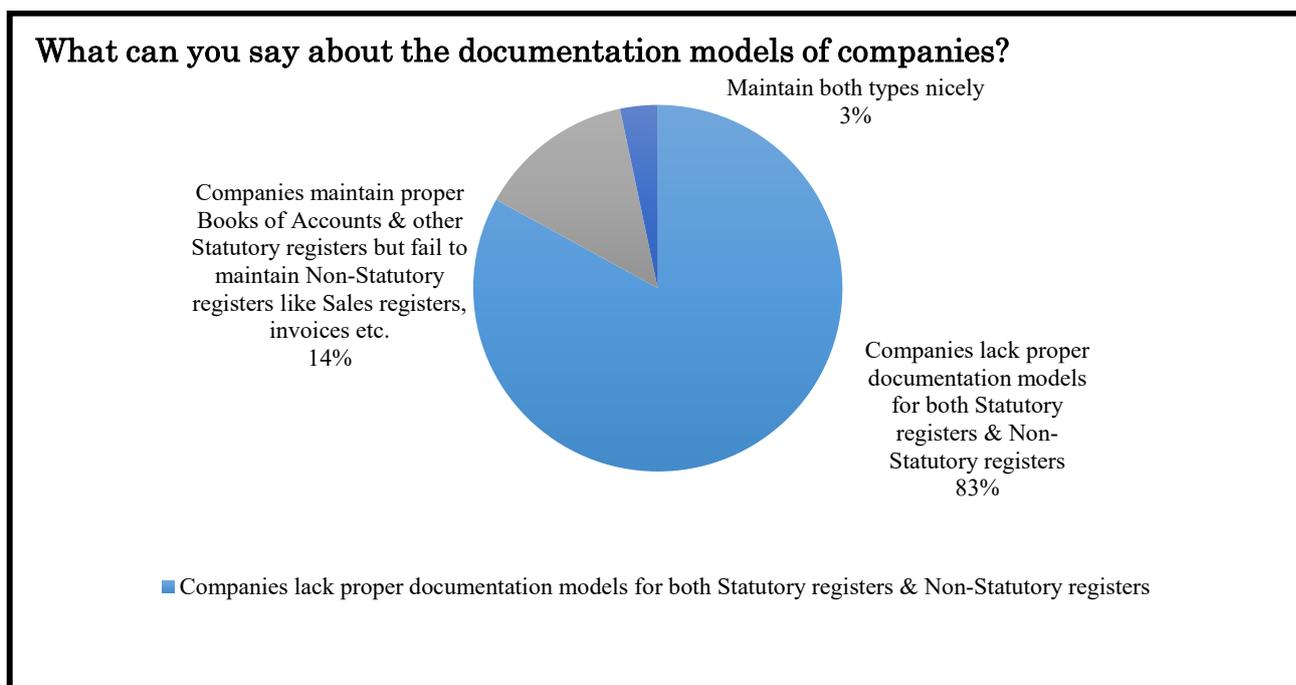


Fig 10: Survey response on documentation model of the company

B. Sector-based findings

The sector wise analysis from the CIRP forms can be visualised as under. Red reflects delays, Yellow, Just in Time and Green when CDs took less than the stipulated time.

Sector	3 Ann	90 Claim	23 CoC	30 1 m	30 RP	54 IM	75 EOI	100 PRA	115 FRA	105 EM	105 RFRP	135 Plan	270 App
Construction	Red	Green	Yellow	Yellow	Red	Green	Red	Red	Red	Green	Red	Green	Red
Electricity	Yellow	Green	Yellow	Yellow	Yellow	Green	Red	Red	Red	Green	Red	Red	Red
Hotels	Yellow	Green	Yellow	Yellow	Yellow	Red	Red	Red	Red	Red	Red	Red	Red
Manufacturing	Red	Green	Yellow	Yellow	Red	Green	Red	Red	Red	Green	Red	Green	Red
Others	Red	Green	Yellow	Red	Red	Yellow	Red	Red	Red	Red	Red	Red	Red
Real Estate	Red	Green	Yellow	Yellow	Red	Yellow	Red	Red	Red	Green	Red	Green	Red
Transport	Yellow	Green	Yellow	Yellow	Yellow	Green	Yellow	Yellow	Yellow	Red	Green	Red	Red
Wholesale	Red	Green	Yellow	Yellow	Red	Red	Red	Red	Red	Red	Red	Red	Red
Average	Red	Green	Yellow	Yellow	Red	Yellow	Red	Red	Red	Yellow	Red	Yellow	Red

From the above table, it is clear that there is no relation between delay and any particular sector. However, as indicated above, CDs from service industry reflects more delays as compared to non-service/manufacturing industry. This may be due to the intangible

nature of assets for service sector. Valuation & marketing of intangible assets is much more time taking than tangible assets.

This is not in line with the survey findings which reflects “real estate” as the sector most prone to delay (Refer Fig 11).

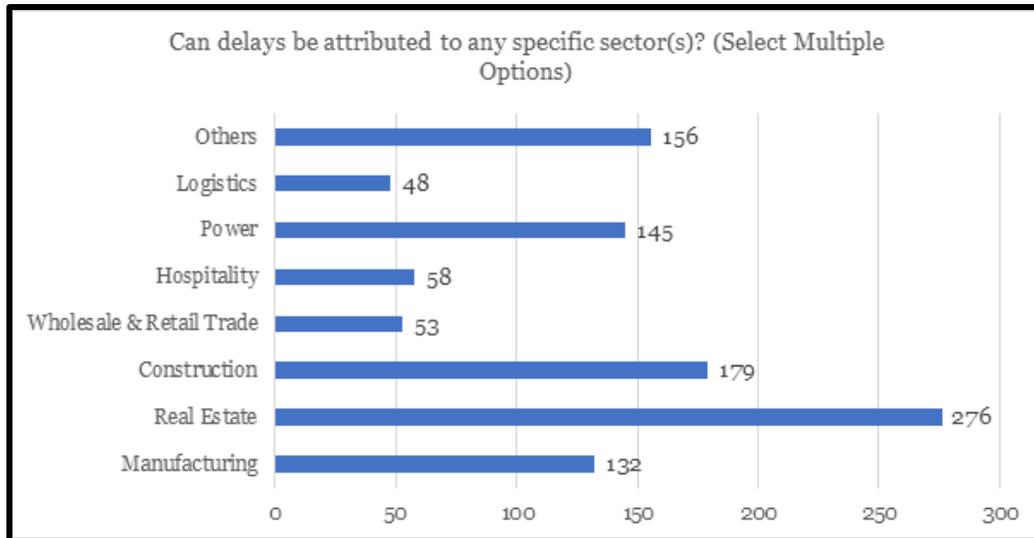


Fig 11: Survey response on sector wise perception of delay

C. Relationship between delay and the debt size (total claims admitted)

The purpose of the study was to examine if the delay in completion of CIRP is attributable to the size of the debt. Regression analysis was conducted where the amount of claims was the explanatory variable (independent variable) and number of days taken to complete the process as predictor variable (dependent variable). The result of the regression suggested that R square 13.49% which means that only ~13.5% of the variation in number of days taken to finish the process is explained by the size of the CD. The closer to 1, the better the regression line (read on) fits the data which means that the amount of claim does not explain the variability in number of days taken and hence any relationship cannot be established between the two variables.

Regression Statistics	
Multiple R	0.367
R Square	0.135
Adjusted R Square	0.125
Standard Error	214.158

ANOVA					
	df	SS	MS	F	Significance F
Regression	1	650697.825	650697.825	14.188	0.000
Residual	91	4173598.304	45863.718		
Total	92	4824296.129			

	Coefficients	Standard Error	t Stat	P-value	Lower 95%	Upper 95%	Lower 95.0%	Upper 95.0%
Intercept	304.153	54.084	5.624	0.000	196.721	411.584	196.721	411.584
TAC-Independent (X)	77.522	20.581	3.767	0.000	36.639	118.404	36.639	118.404

As indicated in Fig 12, 55% of the respondents in the primary survey however believe that bigger the debt size, more time it takes to complete the CIRP, whereas 40% say that there is no relation between the two and cause of delays is a combination of many variables put together.

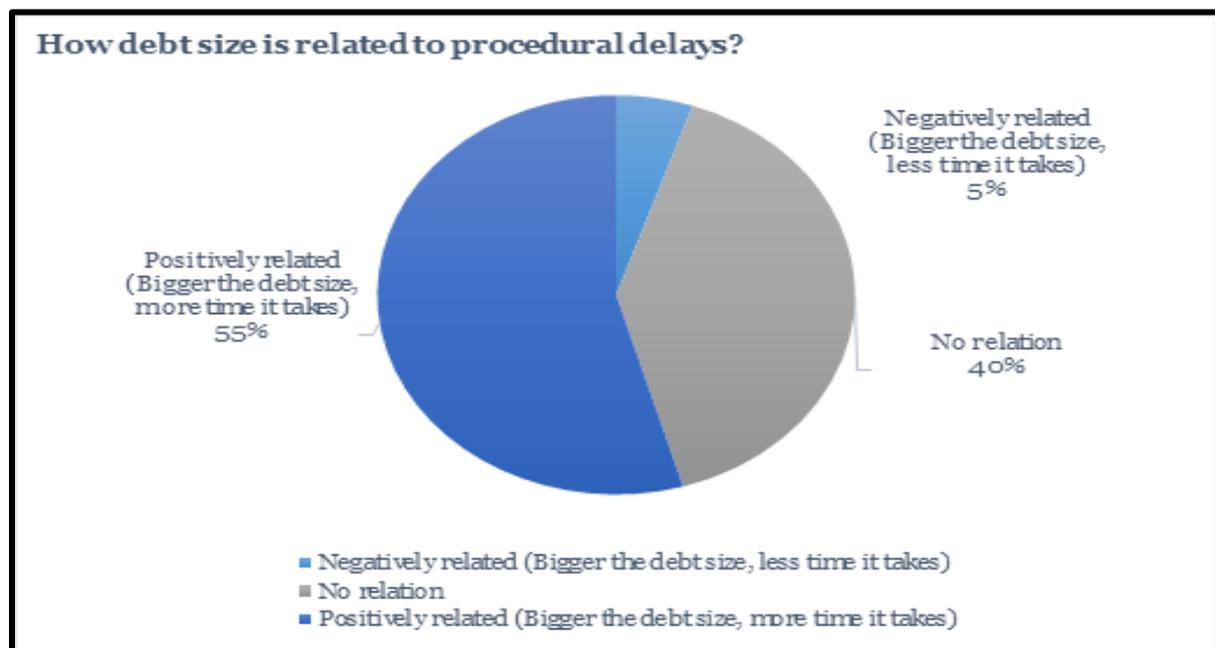


Fig 12: Survey response on relation of debt size to delay.

Though the study indicates no relation of size of debt with delay, it would be interesting to see if the composition of debt and number of stakeholders has any relation with delay or not. However due to paucity of time & data this study has restricted its scope only to relation between size and delay.

Other Findings

The analysis of CIRP Form 5 suggests there were about 25% of the cases where CoC rejected a resolution plan on the grounds of high haircuts and since there was only one bidder, the company was pushed into liquidation.

“*Liquidation Value*” and “*Haircut*” are the most prominent themes that emerged out of text mining on RP’s duly filed CIRP form to assess reason for rejection of plan. “*Down Payment*”, “*One Time Settlement*” and “*Finance*” are other themes highlighted, which are related to the fact that CoC prefer either value above liquidation or are interested in upfront payments. The other noticeable themes are ‘*plans lacking feasibility*’ and ‘*genuineness*’ or having ‘*compliance issues*’ (Refer Fig 13).

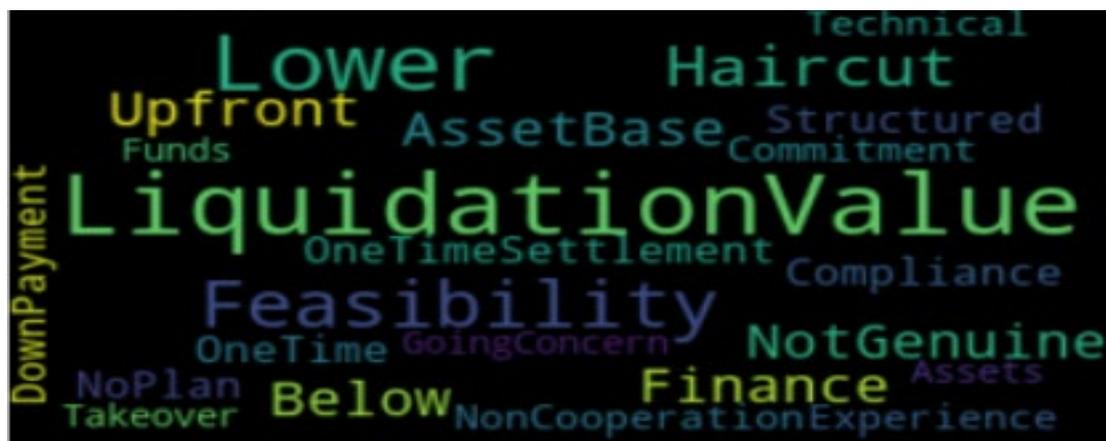


Fig 13: Python results of CIRP form 5 on reasons for rejection of resolution plan

The primary survey also highlights the demands of the creditors in terms of recovery where in 51% of the respondents admit that less than 25% of haircut remains the constant demand of the creditors (fig 14).

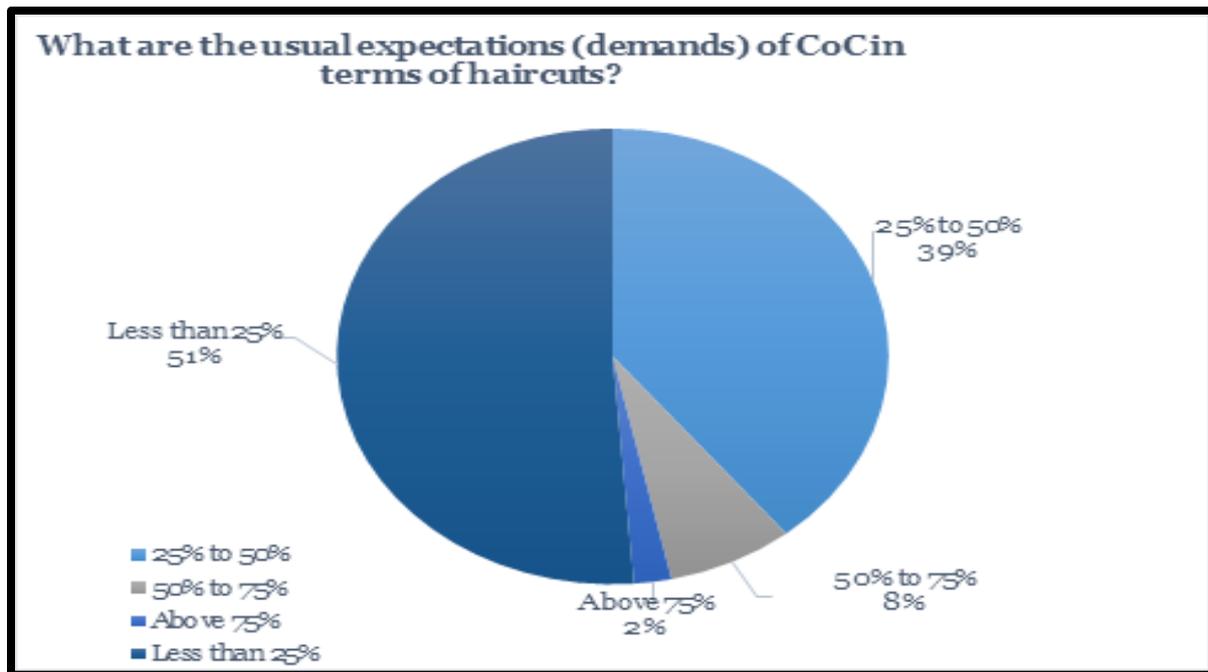


Fig 14: Survey response on expectation of COC

Also, 74% of the respondents submitted that creditors are more interested in getting upfront payments as compared to suggesting the operational turnaround of the company (fig 15).

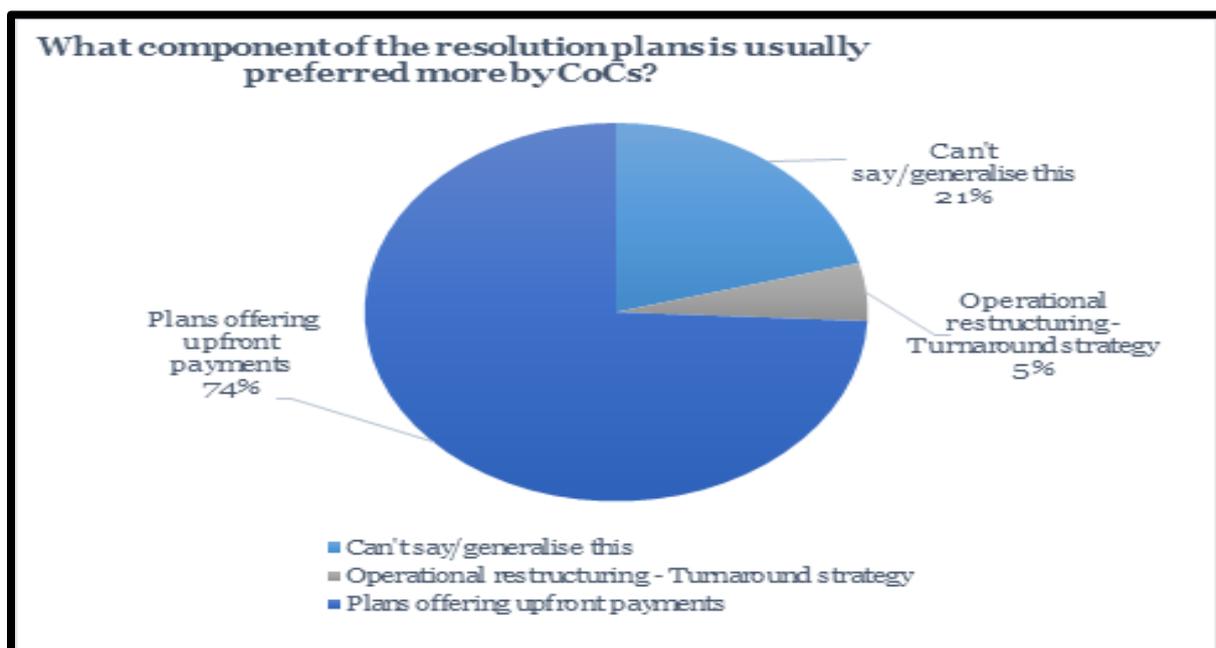


Fig 15: Survey response on components of resolution plan preferred by CoC

While most of the survey results suggest that companies are pushed into liquidation because of delayed timelines, however, the secondary data suggests otherwise. Nearly

80% of the CDs who received the Resolution Plans and or even had the scope of having potential RAs were given an extension of 90 to 180 days on revival grounds.

To sum up, research indicates that the COC focuses on the upfront payment and hence tends towards rejection of RP where the haircut is high. That may be the reason why for each 1 company being resolved, 4 seems to be pushed towards liquidation. However, there are other themes also which justify the rejection like plans lacking feasibility and genuineness. Also, given the fact that most of companies which came under IBC in first four years were baggage of past from BIFR and had only scrap value,³⁶ it would be difficult to make any firm conclusion based on above.

Brouwer stated that the countries characterized by a creditor-oriented bankruptcy system (for example Continental European nations), are often biased towards liquidations.³⁷ This is in contrast with common law countries, where bankruptcy laws are more debtor-oriented and thus provide a distressed firm with more opportunities for survival and reorganisations.³⁸ While making any conclusive inference whether the CIRP is focused more on recover than revival will be wrong given the want of qualitative data, the issue of higher upfront payment and which is also substantiated by the survey needs a deeper thought. It is beyond the scope of this research to delve into details in these aspects, but the underlying concern of assessment of plan for recovery and not revival needs to be given due concern.

As seen from the findings above, some stages faced constant delays in companies that underwent the CIRP, including those companies that completed its resolution within the prescribed time. These stages include admission of application, making a public announcement, issue of provision list of resolution applicant and appointment of resolution professional. In such cases, it will be worth revisiting the timeline and prescribed for a more realistic timeline. Technology can be used for bridging the information asymmetry which most often results in delay. In any case, it may be useful for the adjudicators to take note of this while granting extension of the timeline.

³⁶ Neeti Shikha, Urvashi Shahi & Rahul Prakash, Liquidation under IBC: Understanding the numbers, Financial Express, Dec 28 2020

³⁷ Brouwer, M. Reorganization in US and European Bankruptcy law. Eur J Law Econ 22, 5–20 (2006)

³⁸ *Id*

Conclusion

The study thus far has shown that the model timeline as prescribed by IBBI has not been adhered to leading to delay in insolvency resolution process. Delay is happening at many stages highlighting concerns at the end of state agencies as well as market participants. As indicated in the literature, time is of essence and delay in insolvency resolution depreciates value of firm. Until now, there has been no study on the reasons for delay. In this regard, the project fills the existing gap in the literature as it for the first time studies the stage wise delay in CIRP. Especially in the Indian context, a study of this nature has not been done and hence this study will offer a good roadmap for future research.

The methodology adopted by the project i.e., quantitative & qualitative analysis of the data provided by IBBI and the survey taken by the existing RPs who have handled minimum one assignment offers a deep insight into the research questions.

The findings of the study suggested following as main reasons for delay-

- Inadequate capacity of NCLT
- Difficulty in marketing stressed assets
- Non-Cooperation by CD
- Improper documentation model of companies

In light of findings that have emerged in the study, there are some suggestions as given below that may help reduce the delay in CIRP. Moving forward, following points may be reconsidered by the policy makers to ensure that the Code remains a healthy business rescue regime:

1. Building Court's Capacity

The data in the research analysis clearly suggests that maximum delay is taking place at the stages of admission of CIRP and approval of resolution plan by the adjudicating authority. The survey also suggests that 40% of RPs feel that for securing the success of the Code, reducing delay in admission is most crucial (Refer *Annexure 2*).

This clearly shows that there is a need to strengthen the capacity of the courts which could adjudicate cases of insolvency in a timely manner.

Existing literature has identified slow judicial processes as a barrier to addressing the rise in non-performing loans.³⁹Courts and the judges often act as an impediment to the efficient resolution of insolvency.⁴⁰ Court involvement is important in guaranteeing the rights of different parties involved and can increase *ex-post* efficiency by acting as a coordination tool. Court involvement particularly for smaller firms that lack scale to cover the associated fixed costs comes with a cost and hence there is a need to reassess the usefulness of the role of courts in the CIRP process in cases of smaller debt size.⁴¹

Although some stages of a restructuring process require court involvement, most procedural steps – in principle – can be dealt with out-of-court. Doing so could reduce the workload of the courts, enabling them to focus on a timely resolution of those difficult cases where court involvement is necessary.⁴² Limiting the involvement of courts to where it is only necessary can raise aggregate productivity by facilitating the exit of non-viable firms (i.e., strengthening market selection) and to the extent this is achieved in a timely manner, releasing scarce resources to be re-deployed to more productive uses.

In this regard, it is suggested that a multi-track approach be adopted for insolvency resolution. Given that not all insolvency matters take 270 days for resolution, as some cases are of smaller nature, it will be useful to look at insolvency cases through the prism of a multi-track approach. In 1998, the Woolf Committee in England adopted a similar approach. The multi-track approach provides a flexible regime for handling cases and does not provide any standard procedure such as those in the small claims or claims in the fast track. Instead, it offers a range of case management tools such as standard directions, case management conferences and pre-trial reviews. These can be used in a 'mix and match' way to suit the needs of individual cases. Thus, following three tracks could be suggested based on default threshold: -

- the fast tracks
- the small claims track.
- the multi-track

³⁹ Supra 18

⁴⁰ Supra 19

⁴¹ Adalet McGowan, M. and D. Andrews (2016), "Insolvency Regimes and Productivity Growth: A Framework for Analysis", OECD Economics Department Working Papers, No. 1309, OECD Publishing, Paris.

⁴² Franks, Julian & Sussman, Oren. (2000). The Cycle of Corporate Distress, Rescue and Dissolution: A Study of Small and Medium Size UK Companies. The Cycle of Corporate Distress, Rescue and Dissolution: A Study of Small and Medium Size UK Companies.

Cross-country evidence suggests that some kind of specialisation in expertise of judges and bankruptcy practitioners does pay off, leading to faster and cheaper procedures and, therefore, better recovery rates.⁴³ Several jurisdictions such as the United States of America have specialised courts to look into the cases of insolvency, also known as Insolvency courts. Given the potential of stressed asset market and restructuring in India, dedicated benches can be allocated to deal with cases of insolvency. This will help in quick adjudication and developing a uniform jurisprudence in this very vital subject area.

Further, taking guidance from US Orientation for newly appointed insolvency judges can be done by two one-week programs. The initial, Phase I, orientation program would invite experienced bankruptcy judges to serve as mentors. This four-day program would be attended by NCLT judges with less than six months on the bench.

The Phase II orientation program would be organized for Phase I classes of insolvency judges with less than eighteen months on the bench. Participants would analyse the decision-making process, in theory and in practice; study the role of judges; assess case-management styles; consider key ethical dilemmas confronted by new judges; rule on simulated evidentiary issues; and examine best writing practices.

Further, constant delays in the implementation of the Code can be mitigated if, in addition to the mandatory overall timeline for CIRP under section 12 of the Code, mandatory timelines are inserted at every stage of such CIRP process under the Code.⁴⁴ For instance, at the stage of admission of application by NCLT, approval of resolution plan, and others. Insertion of such segmented timelines will seek to change the behaviour of courts in implementing such procedures strictly and not just keep the overall timeline in hindsight. An analogy can be drawn from the indirect taxation regime in India, where the pre-GST laws were framed to not facilitate the adjudication of demand notices under stringent schedules, as opposed to the present GST law which has inserted the word shall at numerous instances to ensure speedy adjudication

⁴³ Müge Adalet McGowan & Dan Andrews, *Design of Insolvency Regimes Across Countries*, OECD Economics Department Working Papers No. 1504 (Sept. 6, 2018, 10:00 A.M.)

⁴⁴ As of now it is not mandatory to follow the internal timelines as prescribed by Regulation 40 A of Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

2. Strengthening documentation Management System

In the survey, 83% respondents had stated that the companies lack a proper documentation model for both statutory and non-statutory records. 60% respondents have said that it is tough for RPs to get information pertaining to financial and operational aspects of the company. Record keeping is quintessential for the insolvency process to run smoothly. This issue needs to be tackled on two fronts: firstly, in the normal course of business when a company is a going concern, all the annual filings need to be electronically kept and updated. While the law mandates that there should be monitoring of the compliances, use of technology can make these monitoring processes simpler. Secondly, the Information Utility needs to be better utilised. Currently, there is only one such entity in India. There is a need to bring in more participants in the ecosystem. There are some entry barriers that may be prohibiting others to enter the market. It is beyond the scope of this research to deep dive into this question but what remains important to note is that to create a sound and swift insolvency process, the law must allow interested players to enter. The rules need to focus on creating the right incentives. In this regard, information utilities can provide vital infrastructural support.

Further, as per the scheme of the Code, once the application is admitted under either of the provisions of Section 7 or 9 or 10 of the Code, the Adjudicating Authority, under Section 13 of the Code appoints the Interim RP for conducting the CIRP. It is significant to note that if Section 13 is amended to reflect that the Adjudicating Authority passes an order against the corporate debtor to provide all forms of financial information to the IRP (and RP, later on), then the corporate debtor would be compelled to cooperate and provide such information to the IRP/RP. Further, this must also be supplemented with the fact that any form of non-compliance by the corporate debtor with such a court order will hold them liable for contempt of court offense.

The Hong Kong insolvency law also states that any form of non-cooperation by the corporate debtor with the insolvency professional will make it liable for contempt of court offense. Hence, such a transformation in the language of Section 13 of the Code will go a long way in facilitating the provision of financial information by the corporate debtor to the IRP/RP.

Further companies could be encouraged to remain resolvable at all time. They should have a shelf prospectus kind of information memorandum updated on quarterly basis.

3. Non-Cooperation by CD

Research indicates that, as part of the CIRP conducted under the Code, the corporate debtor does not fully cooperate with the RP and that is one of the major reasons for delay in the entire CIRP. However, it is also noted that, even though RPs have a recourse under Section 19(2) of the Code to approach the courts to compel the cooperation by the corporate debtor, only 3% of the RPs have filed such an application and approached the courts on grounds of Non-Cooperation by the corporate debtor.

Section 19(2) is a section with wide import that does not provide what types of orders can be passed by the courts or the Adjudicating Authority under the Code, except for effectively compelling the corporate debtor to cooperate with the RP. However, recently, the Adjudicating Authority in the matter of *M/s Educomp Infrastructure & School Management Limited* (Petitioner - Corporate Debtor) and *Mr. Ashwini Mehra, Resolution Professional vs. Mr. Vinod Kumar Dandona, Suspended Director & Ors.*, held that the corporate debtor shall be held responsible for non-submission of the information as well as for non-cooperation with the RP and be liable for punishment under section 70 of the Code. Section 70 is a general provision penalising any parties who are liable for misconduct in the CIRP.

Jurisdictions such as Singapore, United Kingdom, Hong Kong and others, in their respective insolvency laws severely penalise any form of non-cooperation, on part of the corporate debtor, with the RP. However, noting the surprisingly low number of Section 19 applications in India, we believe that the language of Section 19 of the Code be accordingly amended to *explicitly* provide that non-cooperation on part of the corporate debtor with the RP will attract penalty.

Further, there is ambiguity regarding powers of RPs whether they can conduct private investigation in cases where there is avoidance transaction. Considering the fact that, in most of the contentious insolvency cases, fraud may be suspected, therefore, courts may be allowed to permit the RPs to carry out private investigation to investigate such transactions. Sufficient safeguards must be introduced to prevent any misuse. Currently, a few such orders have been passed but given that law has not defined the periphery of courts power, much is being left to courts and judges' own pragmatism. Law should be certain and clear in this regard.

Private examinations are a powerful investigatory tool because they would enable the RP to question not only the ex-personnel of the corporate debtor but also the third parties, pertaining to their dealings with the corporate debtor.

4. Building Up A Robust Market for Stressed Assets in India

Given the size of stressed assets in India, there is huge potential for growth in the secondary stress market. It is clear from the research that substantial delay is witnessed at the stages of the issuance of EOI and RFRP. Further, the survey findings suggest that external factors such as marketability of assets is one of the critical causes contributing to delays in resolution of companies. As on today, if an investor is interested in acquiring any corporate asset undergoing CIRP under IBC, there is no one stop website where such an investor can visit to identify a target company which can suit the requirements of the investor in any given sector.

There is also a need to create a robust market for trading of stressed assets and to this extent, there is also a need to increase participation of players for the same. For this purpose, there is a requirement for E-Platform wherein sale of such stressed assets can take place without much difficulty. This platform can be prepared on similar lines as investindia.gov.in specifically for stressed asset investment of companies undergoing CIRP. To make it more user friendly it can have filters such debt size, location, sector etc. Such a platform could lead to more transparency and better price-discovery.

Also, it is trite to mention that if there is paucity of players in the market who could participate in CIRP, the prohibitions in form of section 29A under the Code and restrictions of ARCs may not be entirely conducive for the overall growth of the Indian insolvency ecosystem.

Thus, we see that while the Code has made the best attempt to ensure that insolvency resolution is completed well within time, the situation is dismal on the ground. As on September 2019, 57% of the ongoing cases had crossed 180 days' timeline and 35% had crossed 270 days. As seen above, the delay has occurred on a few stages that need the attention of both the regulator and legislature. 64% delay is caused in taking approval of the resolution plan from COC and AA. In order to make sure that the Code is relevant both as a business rescue tool and as an insolvency resolution mechanism, it's imperative that the model timeline is adhered to as far as possible.

In conclusion, it is submitted that the IBC Code has indeed been a game changer in providing a timely resolution framework. The gap that exists between the letter of law and the practice as seen in this study, can be redeemed if a pragmatic approach is adopted in strengthening the existing insolvency framework as suggested under the project.

Acknowledgement

The Centre for Insolvency and Bankruptcy was set at the Indian Institute of Corporate Affairs (IICA) with a vision to spearhead the research and training in the area of insolvency ecosystem. This research is reinstatement of vision with which IICA in general and the Centre in particular was set up, i.e., to act as a think tank to the Ministry of Corporate Affairs.

At the onset, we would like to thank our DG CEO, Dr. Sameer Sharma, who has been the greatest source of inspiration to all of us at IICA and has propelled a research culture at the Institute. Dr. Sharma has motivated us to explore and investigate deeper into insolvency research. We would also like to thank Ms. Shreya Sharma, who worked as intern on this project for her research inputs.

We would also like to thank the research division of IBBI for their constant support.

Any research is outcome of constant investigation and questions that arise out of a curious mind. The Graduate Insolvency Programme offered by IICA is one such platform wherein the faculty members engage in constant questions and debates. Our heartfelt gratitude to the students of the programme who have challenged us as academics and researchers.

At last, but not the least, we would like to thank everyone at IICA who have rendered us support and encouragement for completion of the project.

MODEL TIMELINE

The following Table presents a model timeline of CIRP on the assumption that the interim resolution professional is appointed on the date of commencement of the process and the time available is hundred and eighty days as prescribed under the regulation 40A of the *Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*, as under:

Section / Regulation	Description of Activity	Norm	Latest Timeline
Section 16(1)	Commencement of CIRP and appointment of IRP	T
Regulation 6(1)	Public announcement inviting claims	Within 3 Days of Appointment of IRP	T+3
Section 15(1)(c) / Regulations 6(2)(c) and 12(1)	Submission of claims	For 14 Days from Appointment of IRP	T+14
Regulation 12(2)	Submission of claims	Up to 90th day of commencement	T+90
Regulation 13(1)	Verification of claims received under regulation 12(1)	Within 7 days from the receipt of the claim	T+21
Regulation 13(2)	Verification of claims received under regulation 12(2)		T+97
Section 21(6A)(b) / Regulation 16A	Application for appointment of AR	Within 2 days from verification of claims received under regulation 12(1)	T+23
Regulation 17(1)	Report certifying constitution of CoC		T+23
Section 22(1) / Regulation 19(1)	1st meeting of the CoC	<i>Within 7 days of filing of the report certifying constitution of the CoC, but with five days' notice.</i>	T+30
Section 22(2)	Resolution to appoint RP by the CoC	In the first meeting of the CoC	T+30

Annexure 1: Model Timeline

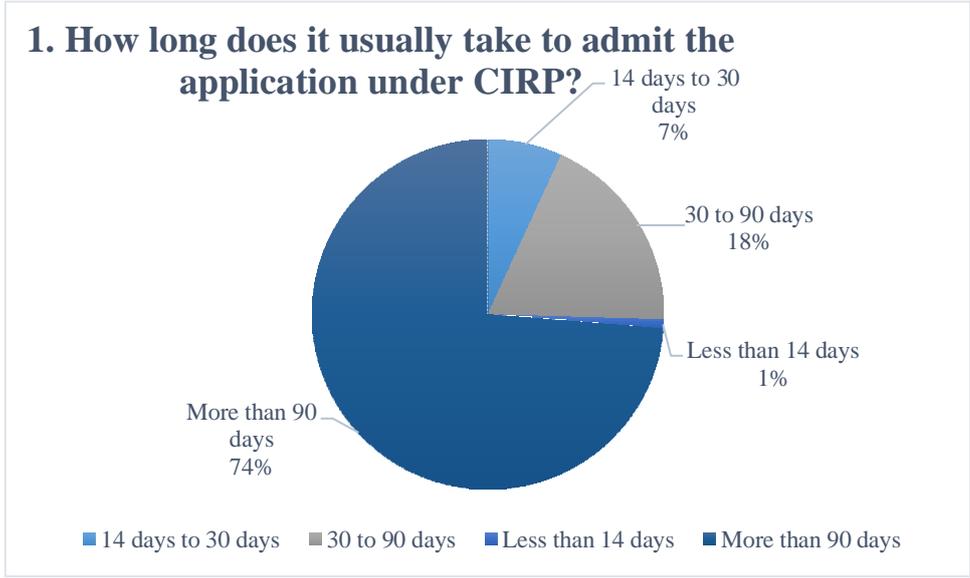
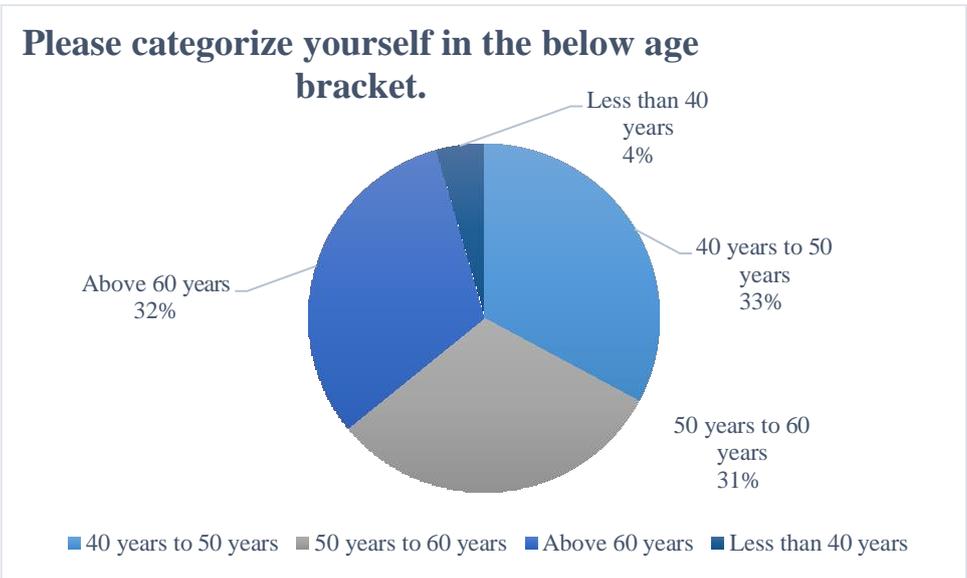
Section 16(5)	Appointment of RP	On approval by the AA
Regulation 17(3)	IRP performs the functions of RP till the RP is appointed.	If RP is not appointed by 40th day of commencement	T+40
Regulation 27	Appointment of valuer	Within 7 days of appointment of RP, but not later than 40th day of commencement	T+47
Section 12(A) / Regulation 30A	Submission of application for withdrawal of application admitted	Before issue of EoI	W
	CoC to dispose of the application	Within 7 days of its receipt or 7 days of constitution of CoC, whichever is later.	W+7
	Filing application of withdrawal, if approved by CoC with 90% majority voting, by RP to AA	Within 3 days of approval by CoC	W+10
Regulation 35A	RP to form an opinion on preferential and other transactions	Within 75 days of the commencement	T+75
	RP to make a determination on preferential and other transactions	Within 115 days of commencement	T+115
	RP to file applications to AA for appropriate relief	Within 135 days of commencement	T+135
Regulation 36 (1)	Submission of IM to CoC	Within 2 weeks of appointment of RP, but not later than 54th day of commencement	T+54
Regulation 36A	Publish Form G	Within 75 days of commencement	T+75
	Invitation of EoI		
	Submission of EoI	At least 15 days from issue of EoI (Assume 15 days)	T+90

Annexure 1: Model Timeline

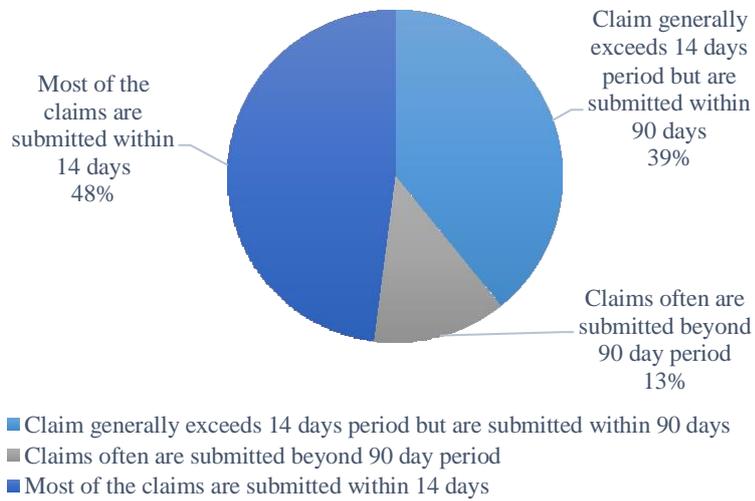
	Provisional List of RAs by RP	Within 10 days from the last day of receipt of EoI	T+100
	Submission of objections to provisional list	For 5 days from the date of provisional list	T+105
	Final List of RAs by RP	Within 10 days of the receipt of objections	T+115
Regulation 36B	Issue of RFRP, including Evaluation Matrix and IM	Within 5 days of the issue of the provisional list	T+105
	Receipt of Resolution Plans	At least 30 days from issue of RFRP (Assume 30 days)	T+135
Regulation 39(4)	Submission of CoC approved Resolution Plan to AA	As soon as approved by the CoC	T+165
Section 31(1)	Approval of resolution plan by AA		T=180

AA: Adjudicating Authority; AR: Authorised Representative; CIRP: Corporate Insolvency Resolution Process; CoC: Committee of Creditors; EoI: Expression of Interest; IM: Information Memorandum; IRP: Interim Resolution Professional; RA: Resolution Applicant; RP: Resolution Professional; RFRP: Request for Resolution Plan.

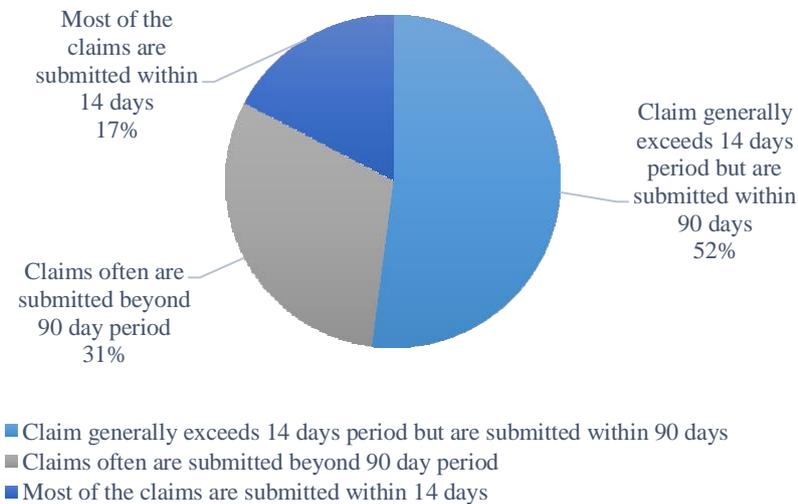
IP'S OPINION TO SURVEY QUESTIONS



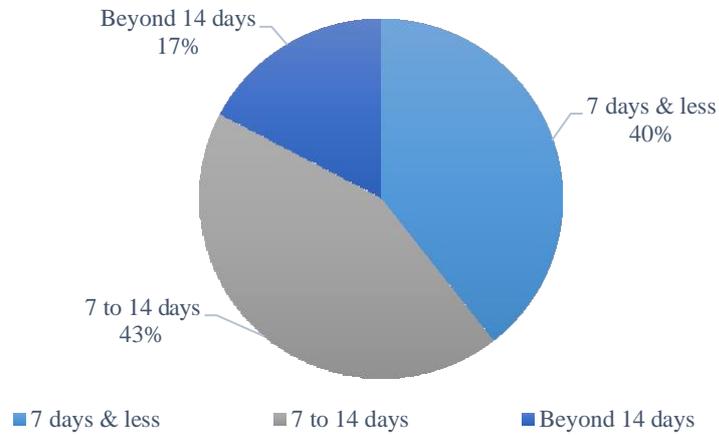
2. How long does it take for collating claims for financial creditors post the public announcement?



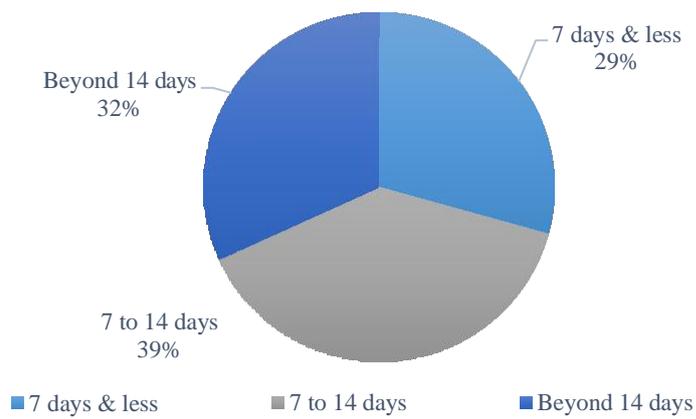
3. How long does it take for collating claims for operational creditors post the public announcement?



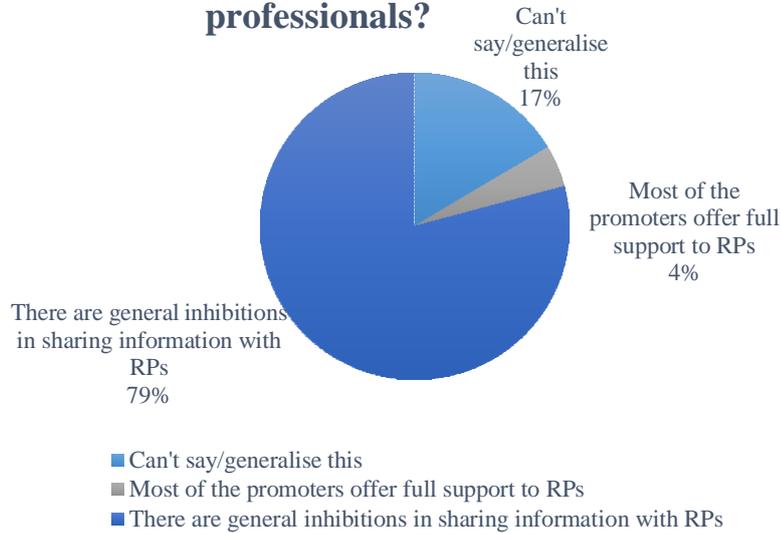
4. How long does it usually take for verification of claims filed by financial creditors?



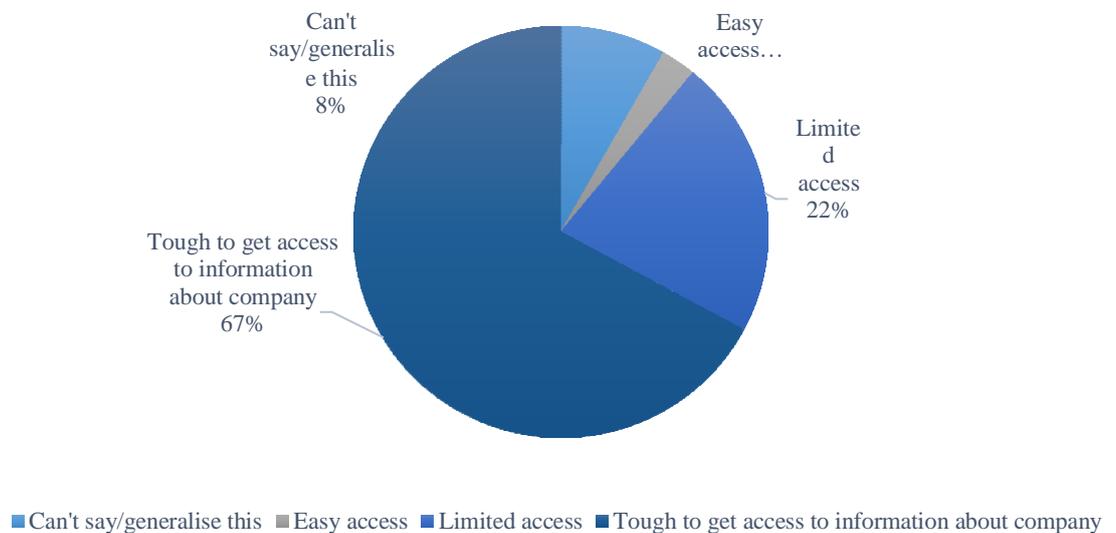
5. How long does it usually take for verification of claims filed by operational creditors?



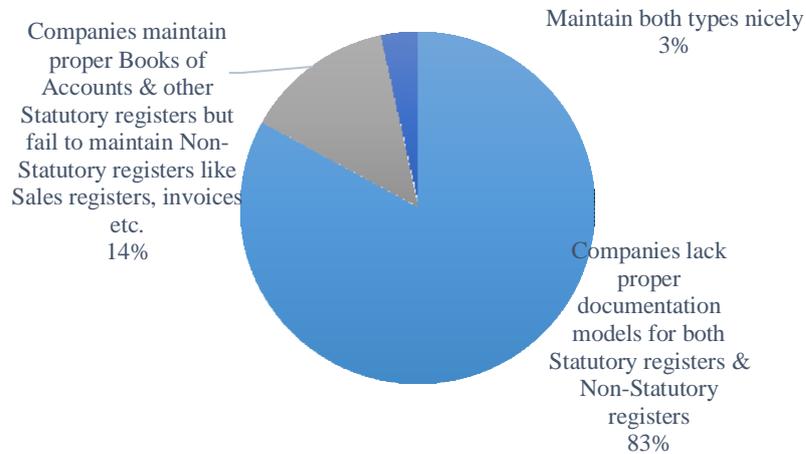
6. How supportive are Corporate Debtors & Employees of the companies to RPs & other professionals?



7. How easy is it for RPs and other professionals to access financial and operational information about the company?

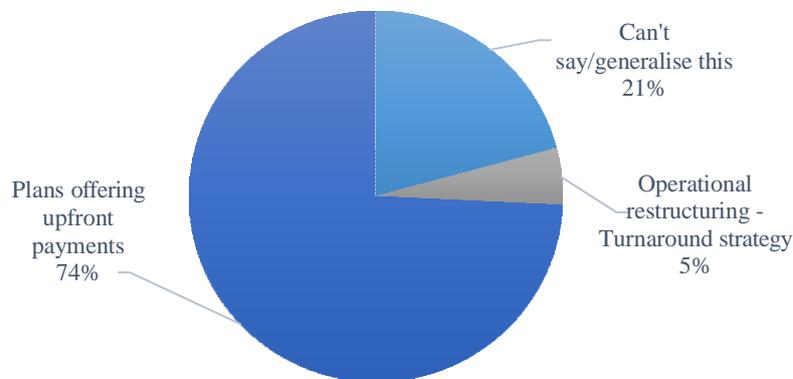


8. What can you say about the documentation models of companies?



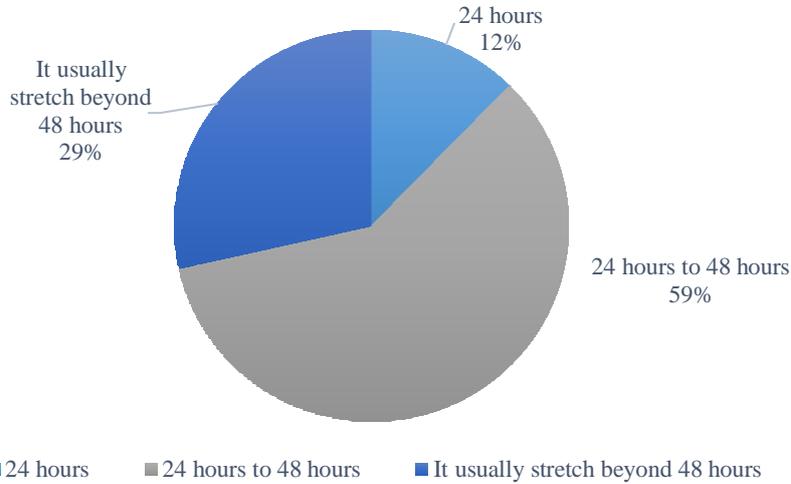
- Companies lack proper documentation models for both Statutory registers & Non-Statutory registers
- Companies maintain proper Books of Accounts & other Statutory registers but fail to maintain Non-Statutory registers like Sales registers, invoices etc.

9. What component of the resolution plans is usually preferred more by CoCs?

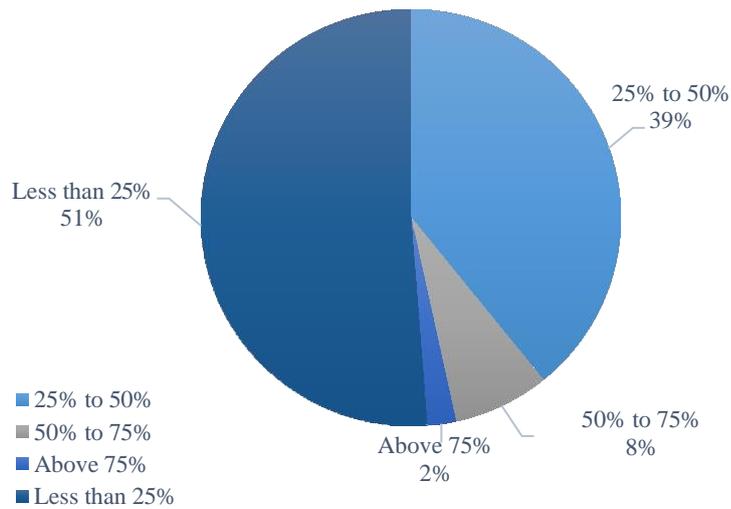


- Can't say/generalise this
- Operational restructuring - Turnaround strategy
- Plans offering upfront payments

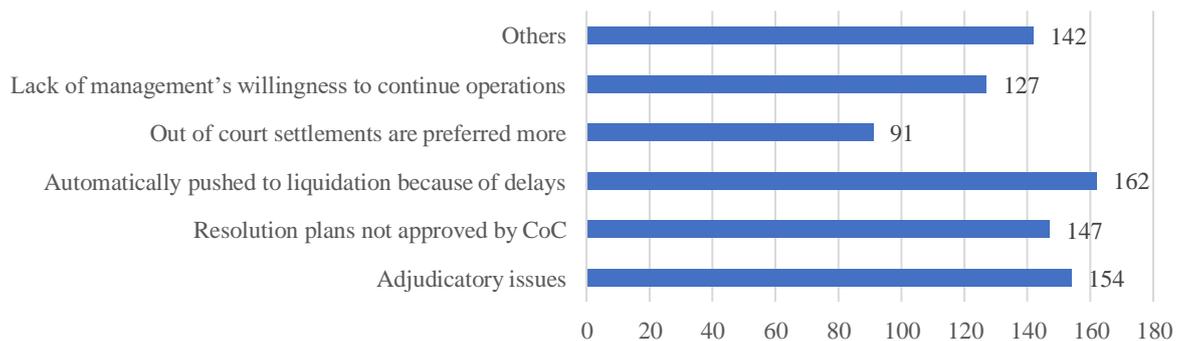
10. How long does it take for closing E-Voting?



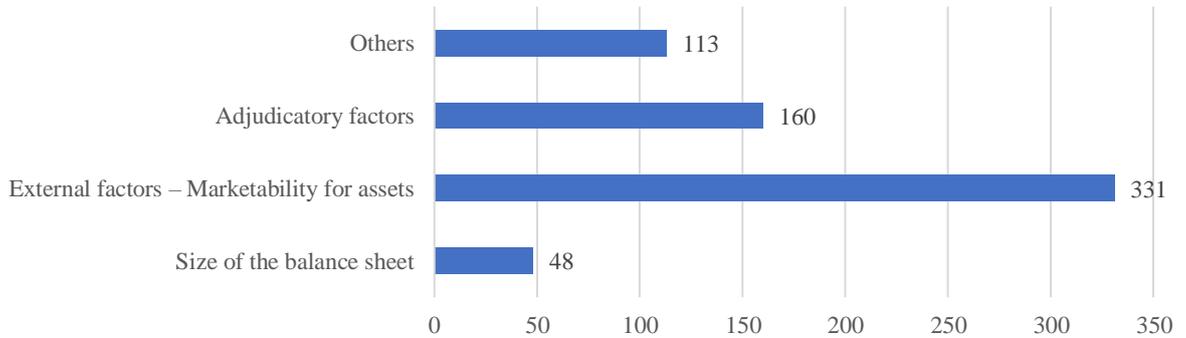
11. What are the usual expectations (demands) of CoC in terms of haircuts?



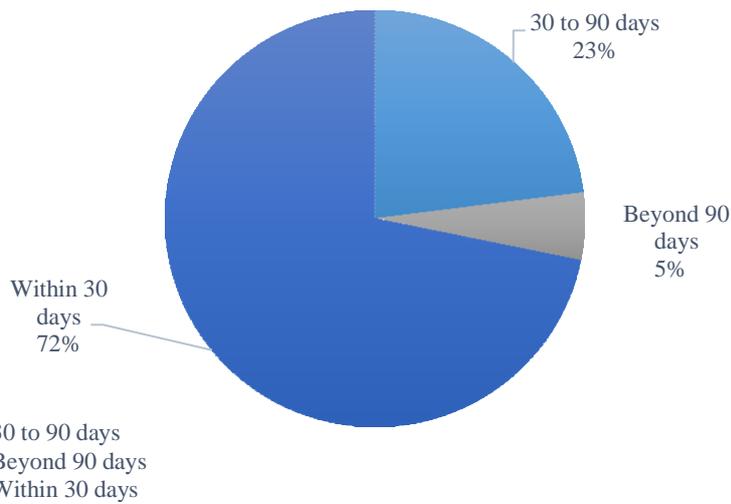
12. Please select the possible reasons for low recovery rates in the resolution process. (Select Multiple Options)



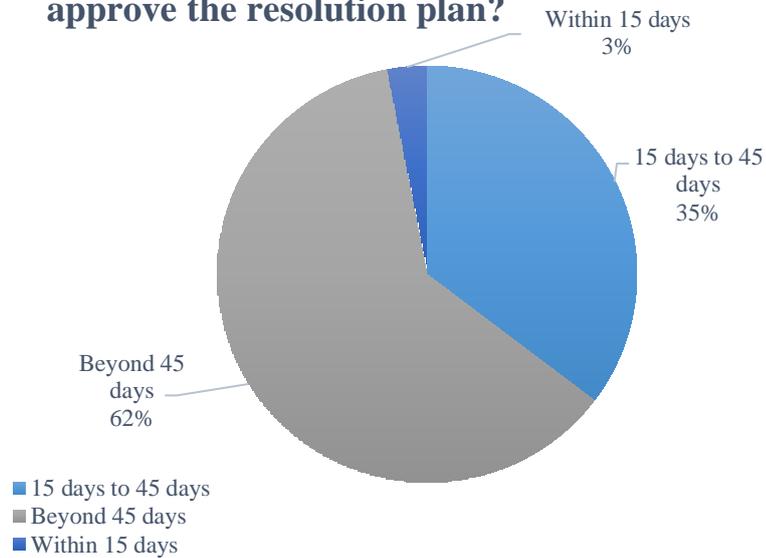
13. In case of liquidation, what are the most critical factors contributing to delays? (Select Multiple Options)



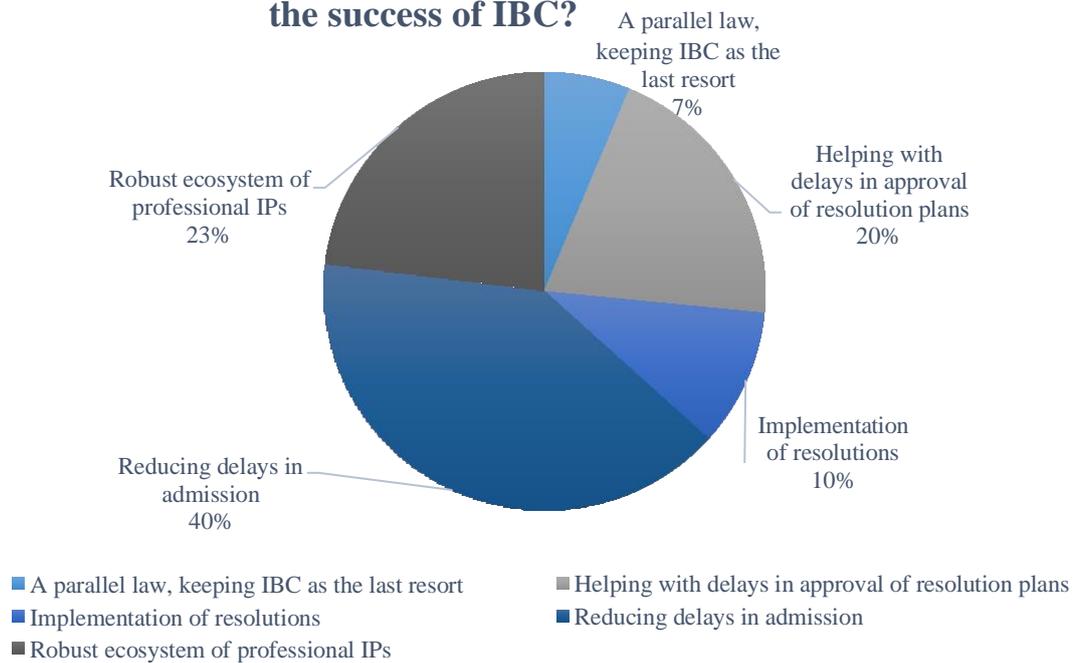
14. How long does it take to submit the CoC approved plan to AA?



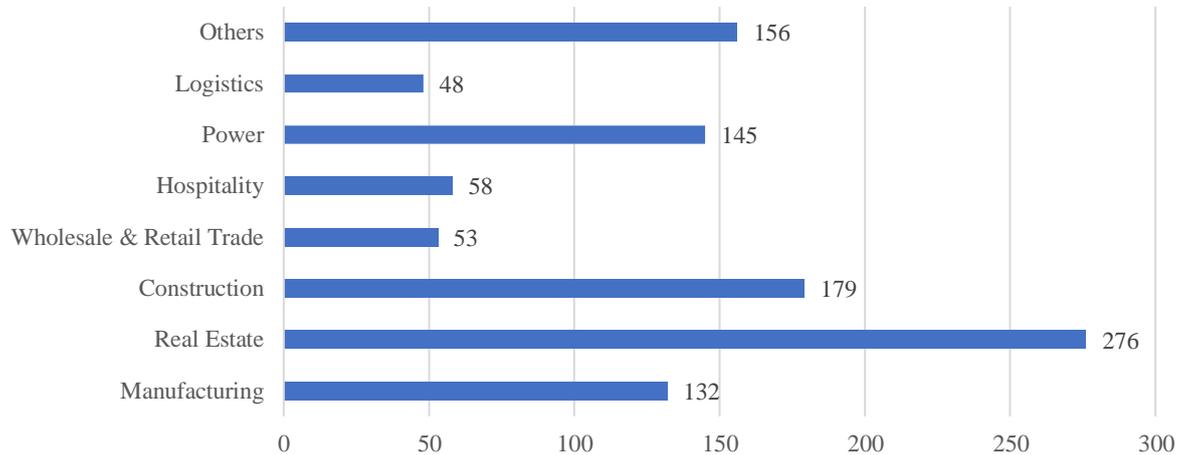
15. How much time does the AA take to approve the resolution plan?



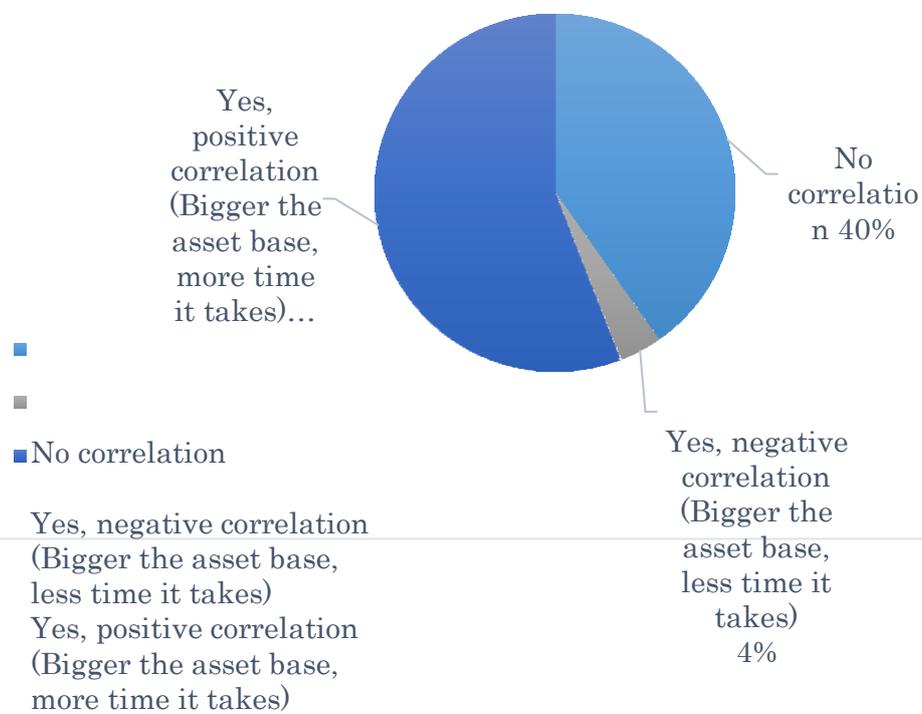
16. Which one is the most important factor for securing the success of IBC?



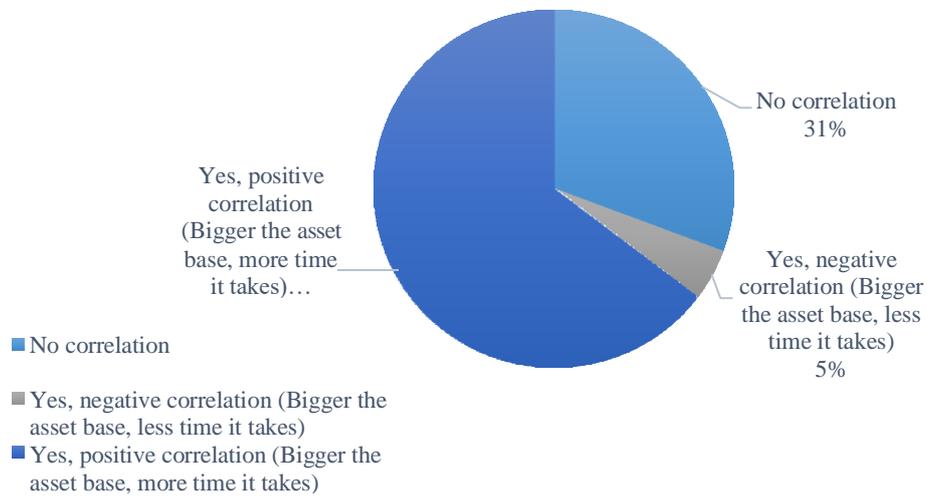
**17. Can delays be attributed to any specific sector(s)?
(Select Multiple Options)**



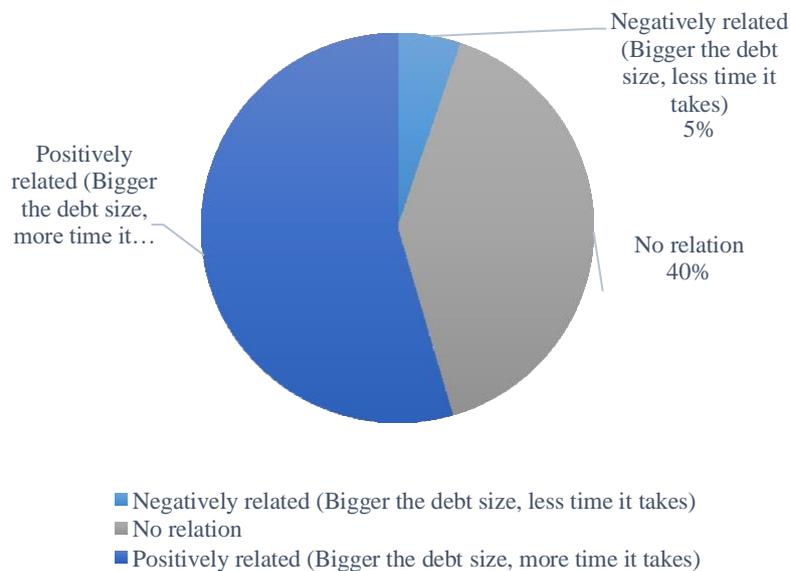
18. In the case of CIRP, Is there any correlation between the size of the company and possible delays in the process?



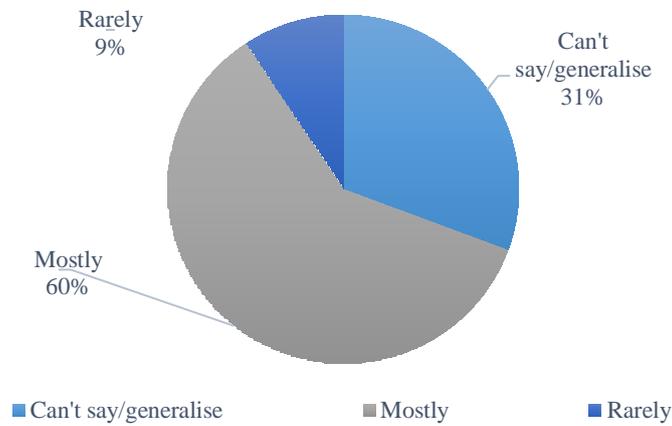
19. In the case of Liquidation, Is there any correlation between the size of the company and possible delays in the process?



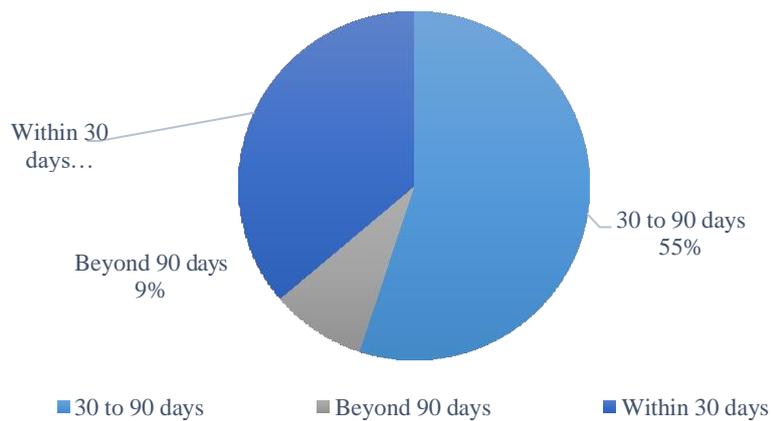
20. How debt size is related to procedural delays?



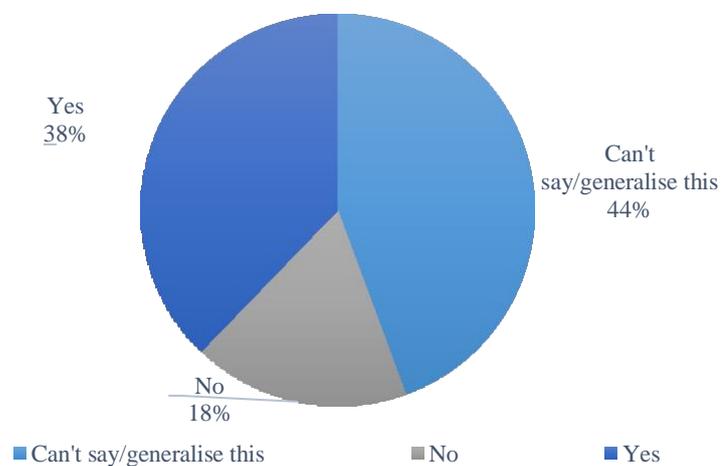
21. How often CoC asks for an extension of Expression of Interest?



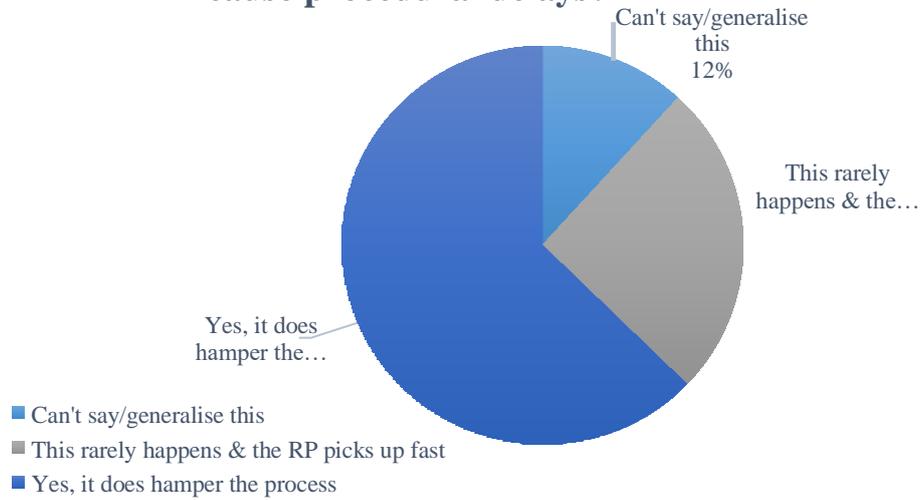
22. How long does the CoC take to approve/reject a resolution plan?



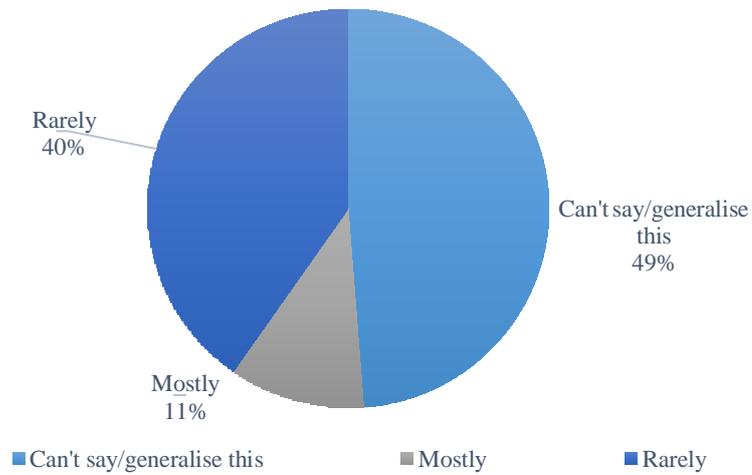
23. Are the members of CoC supportive of RP?



24. If RP & IRP are not the same individuals, can that cause procedural delays?



25. How often are the Evaluation matrix challenged in court by prospective Resolution Applicant(s)?



STAGE-WISE FINDINGS

1. Pre-Commencement stage/Stage of admission of application under CIRP

Pursuant to section 9 of the Code, 14 days' timeline has been prescribed for admission of application. However, the research findings suggest that the average number of days taken for admission of applications under CIRP is 133 days, with no substantial variation between Control Group (136 days) and Delayed Group (131 days). The findings of CIRP forms are substantiated with the opinion of RPs. According to the survey results, 74% of RPs believe that it takes more than 90 days for initiating CIRP, whereas only 1% of RPs said that applications get admitted within 14 days of filing. This is indicated in Fig. 1.

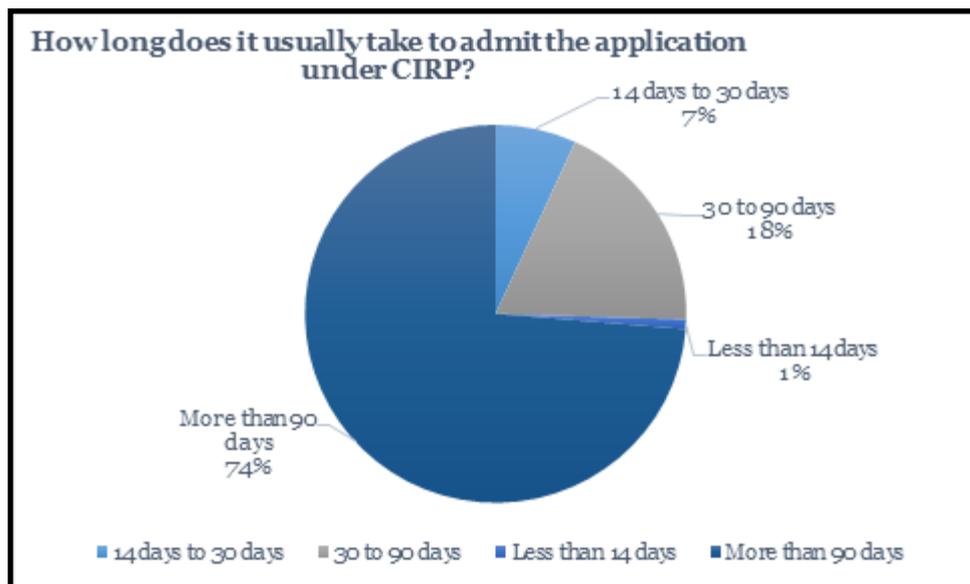


Figure 1: Survey response on time taken for admission of application under CIRP

2. Date of Public Announcement (T+3)

As indicated in Fig. 2, the data shows that CDs take 7 days more than the prescribed timeline to make a public announcement in both the groups. The average number of days taken by CDs to make a public announcement is 10 days. Also, it is important to note that the CDs in the Control Group as well as in the Delayed Group show delay in this stage and take almost the same number of days when averages are compared.

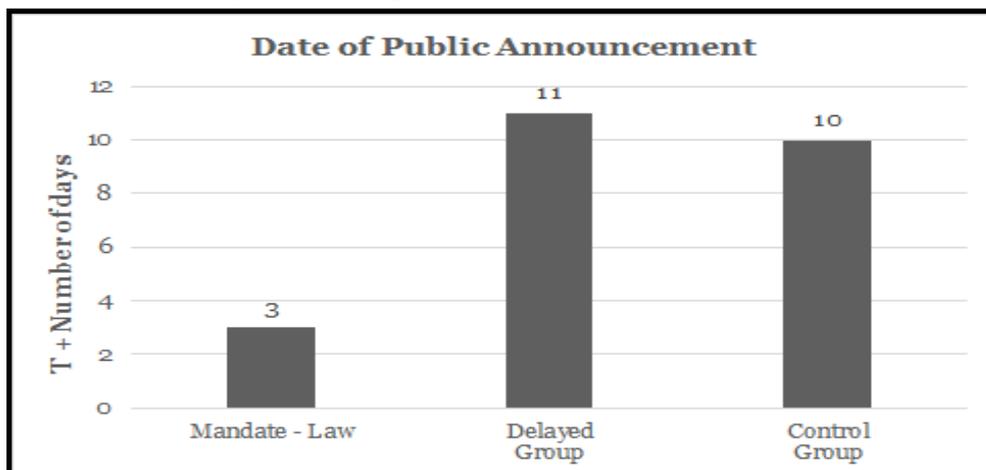


Figure 2: Date of Public Announcement

3. Last date for submission of Claims (T+90)

As seen in Fig. 3, submission of claim is completed before the prescribed timeline. It is important to note that for the CDs in the Control Group, most of the claims are filed within 22 days, whereas the delayed group gets applications from creditors within ~35 days on an average as against the stipulated timeline of 90 days. The survey conducted is aligned with the above analysis wherein more than 85% of the respondents agree that most of the claims are filed within 90 days (Fig.4 and 5.)

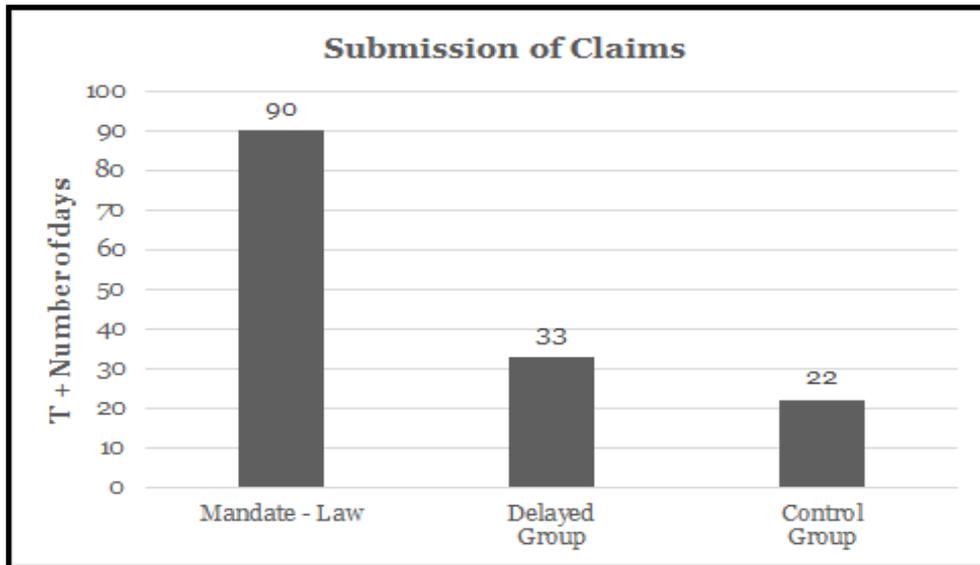


Figure 3: Submission of Claims

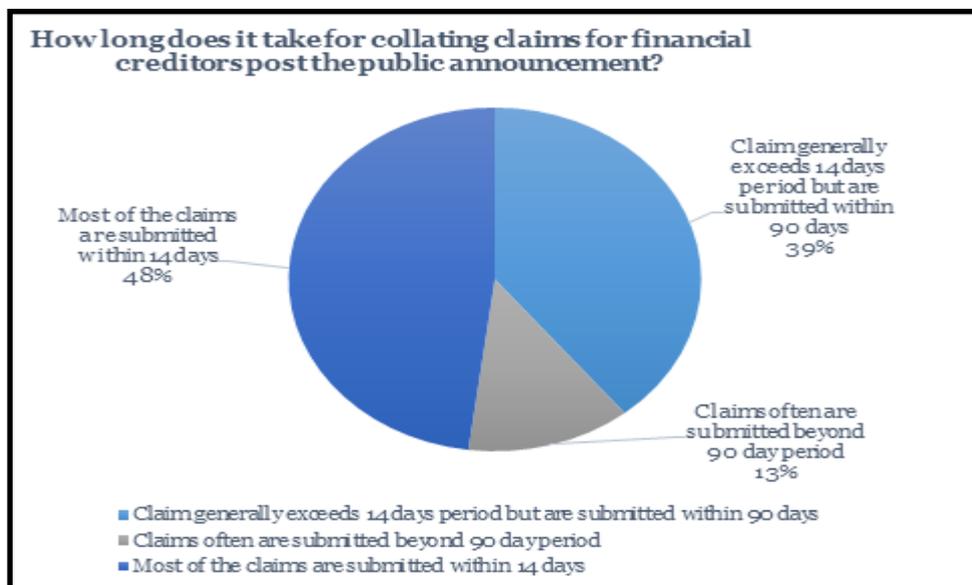


Figure 4: Survey Response on time taken for collection of claims for financial creditors

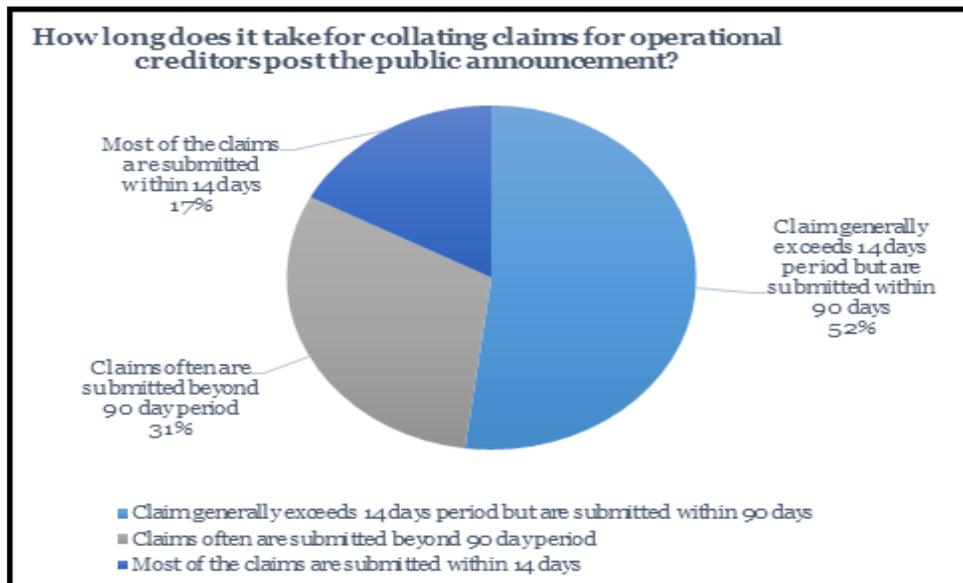


Figure 5: Survey Response on time taken for collection of claims for operational creditor

4. **Constitution of CoC (T+23)** - Both the Control Group and Delayed Group took an equal number of days in constituting CoC i.e. ~25 days, which also nearly aligns with the model timeline of 23 days. (Figure 6 below).

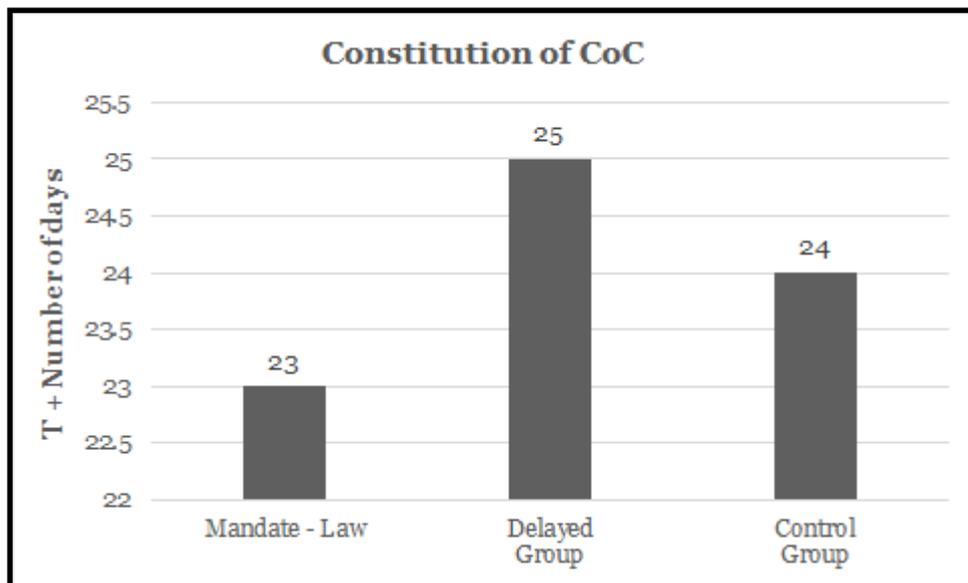


Figure 6: Constitution of CoC

5. The first meeting of CoC (T+30)

As per the model timeline prescribed by the Code, the first meeting of CoC should be conducted 7 days of constitution of COC thereby indicating that first meeting of CC should be held within 30 days of commencement of the process. Fig.7 indicates that for sampled group first meeting was conducted almost in time. The Delayed Group doesn't show substantial delay.

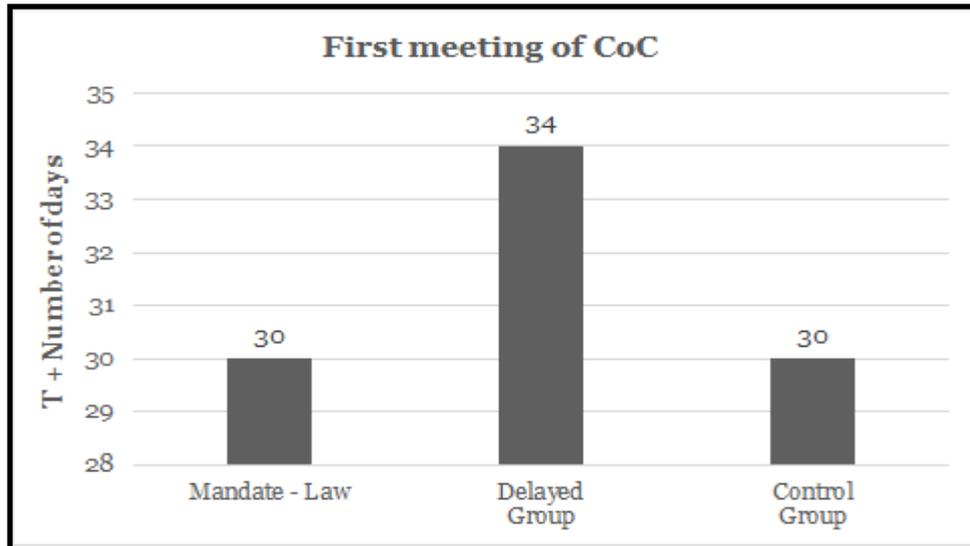


Figure 7: First Meeting of COC

6. Date of passing a resolution by CoC to appoint RP (T+30) - Date of passing a resolution by CoC to appoint RP witness delays both in the Delayed group and Control group even though the first meeting of CoC takes place well within time (T+30). CDs in the Control group take approximately 45 days, while Delayed Group take approximately 60 days to pass a resolution to appoint a Resolution Plan. (Fig. 8)

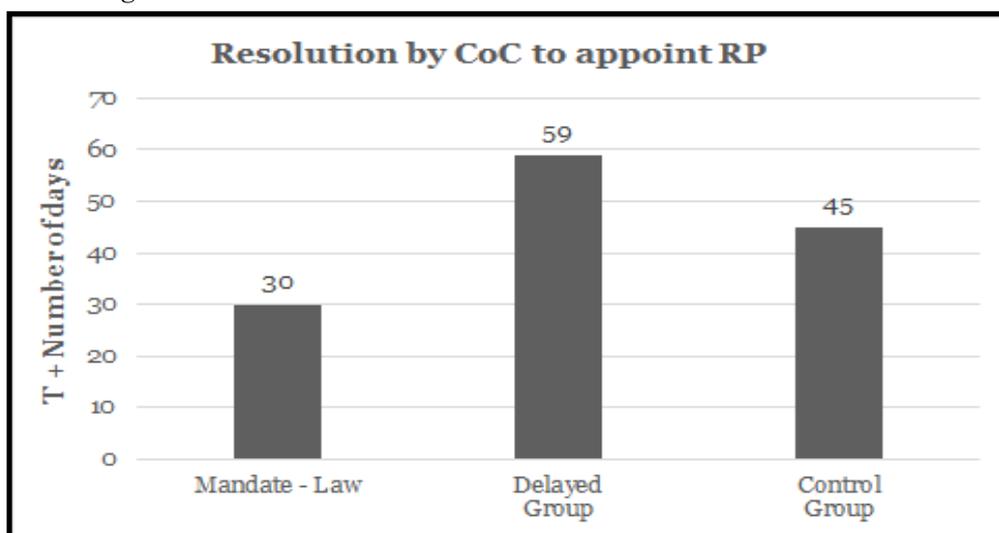


Figure 8: Resolution by COC to appoint RP

7. **Date of submission of IM to members of CoC (T+54)** After factoring in delays in passing a resolution for the appointment of RP, this stage particularly reflects no delays in both groups. The average number of days taken for submission of IM to CoC is ~55. (Figure 9).

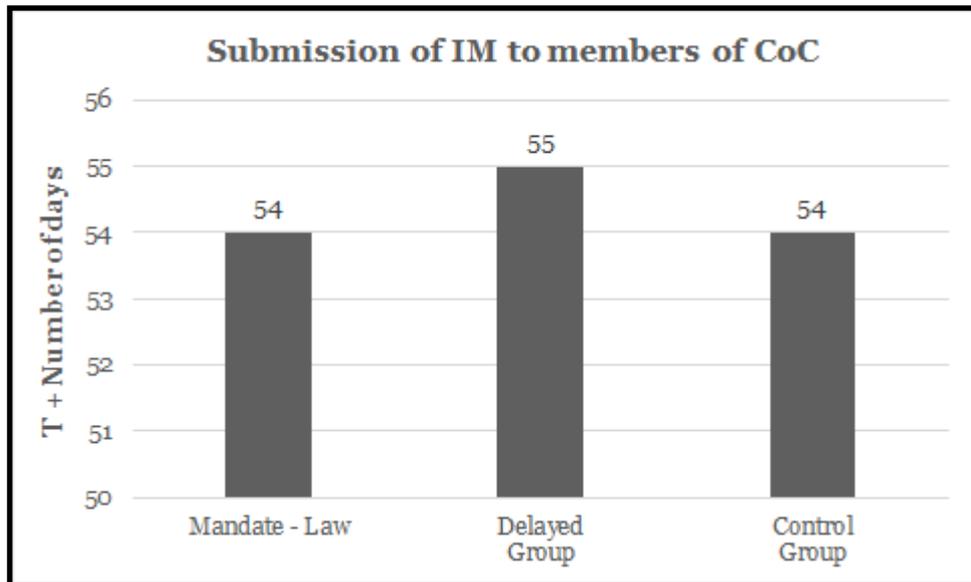


Figure 9 Submission of IM to members of COC.

8. **Date of issue of EOI (T+75)** - Issuance of EOI should be done within 75 days of commencement of CIRP as prescribed by the model timeline. However, CDs compared against the Control Group reflected significant delay because of multiple instances of re-issuances of EOI. Around 60% of CDs in the Delayed Group reissued EOI and finished this step within 120 days starting from the date of commencement. The Control Group finished the step within 71 days on an average with only 15% of the total CDs under the controlled group reissuing the EOI. There could be multiple instances of re-issuances causing the delay, one of the reasons could be the non-availability of RAs. This is validated by the survey as indicated in Fig. 11.

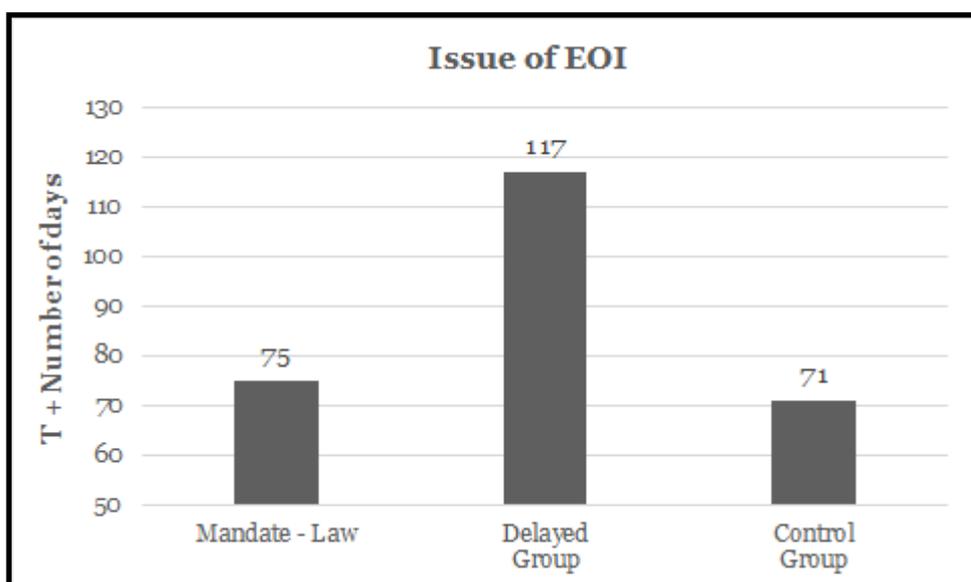


Figure 10 Issue of EOI.

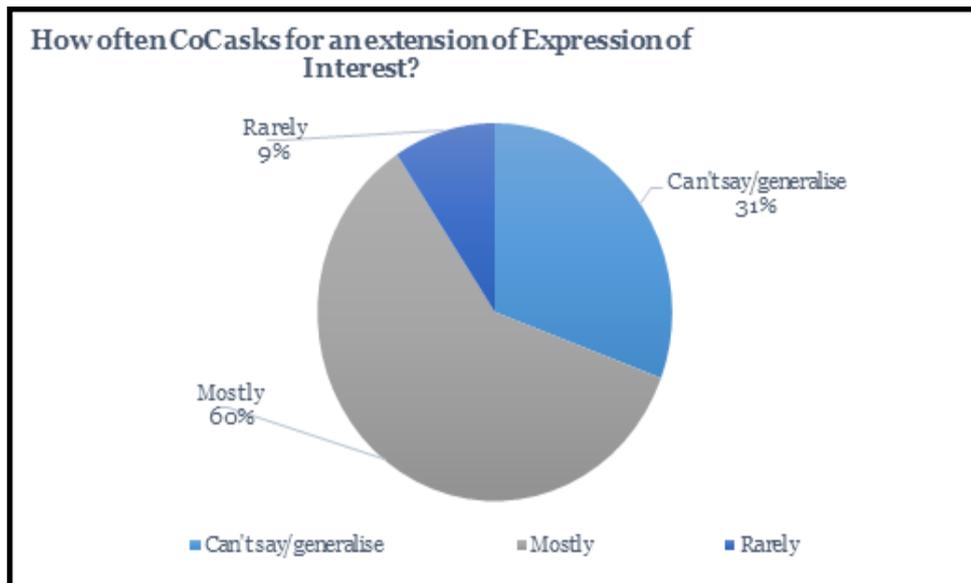


Figure 11 Extension of EOI by COC.

9. Date of issue of the provisional list of RAs (T+100)

Both the groups extended the stipulated timeline of issuing a provisional list of RAs. CDs in Delayed Group took more than 130 days while those under the Control Group Companies issued the list within 117 days. An inference here can be drawn from the previous stage that multiple re-issuances of EOI causes delay in this stage.

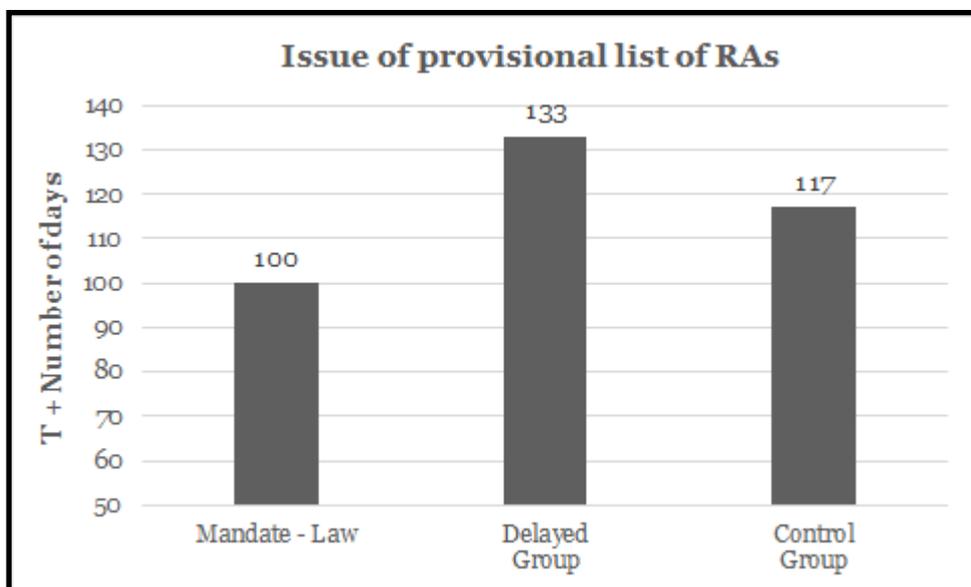


Figure 12 Issue of provisional list of RA.

10. Date of Issue of the final list of PRAs (PRA'S) (T+115)

As indicated in Fig 13, Control Group complete this stage by taking an average of 5 more additional days to prepare the final list of RAs. Though this shows delay from the prescribed timeline, the delay is not significant. Delayed Group takes additional ~75 days to prepare the final list.

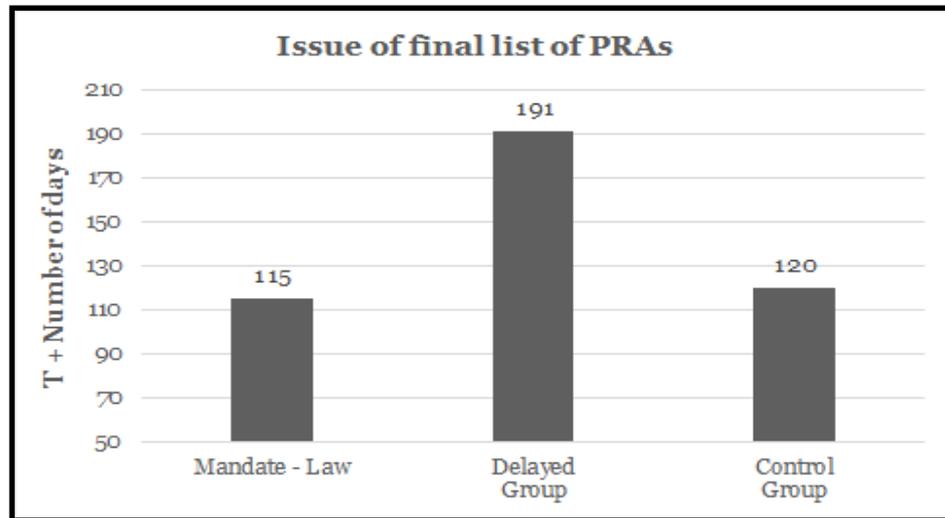


Figure 13 Issue of Prospective List of RAs

11. Date of issue of evaluation matrix (T+105)

As indicated in Fig 14, this stage witnesses delay in case of Delayed Group as they took an additional 11 days over and above the stipulated time frame though the matrix was prepared and issued by all the CDs in Control Group well before time.

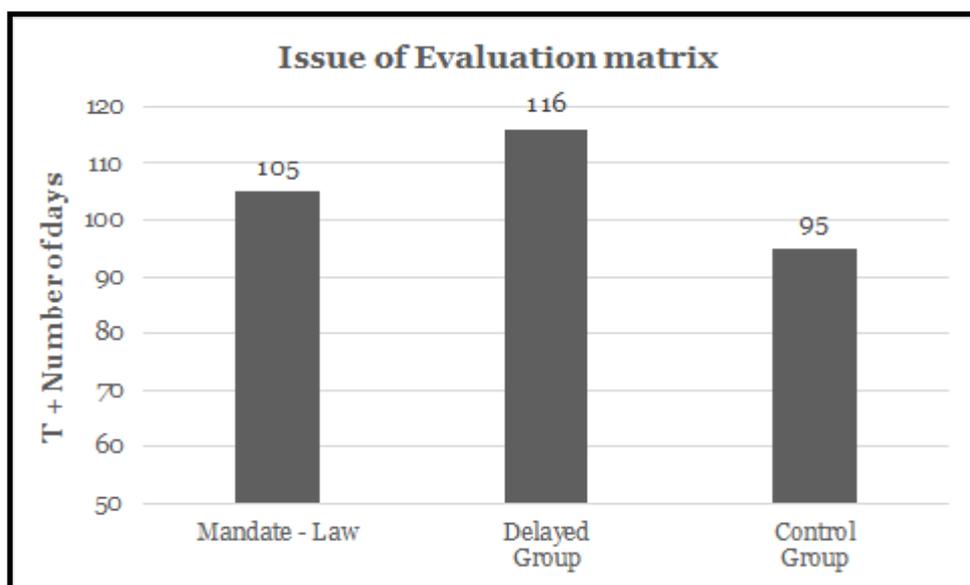


Figure 14 Issue of Evaluation matrix.

12. Date of issue of RFRP (hereinafter referred as RFRP) (T+105)

As seen in Fig 15, CDs in the Delayed Group took more than 70 days over and above of the stipulated timeline. Control group finished this step taking 114 days starting from the date of commencement.

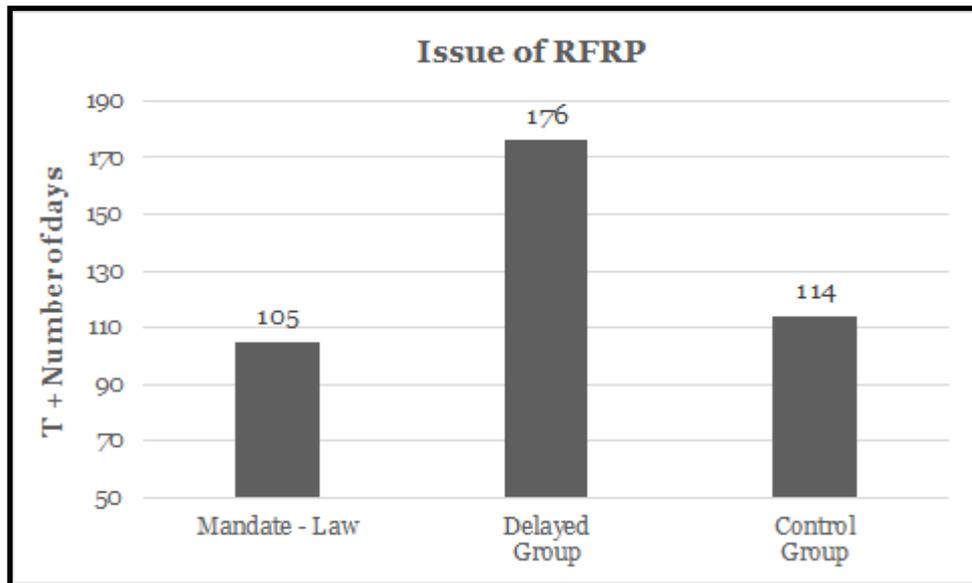


Figure 15 Issue of RFRP.

13. The last date for submission of resolution plans (T+135)

Most of the RAs submitted the resolution plan within the stipulated time frame. The Delayed Group witnessed a delay of 6 days, on average. The Control Group received the plan(s) well on time, within 133 days

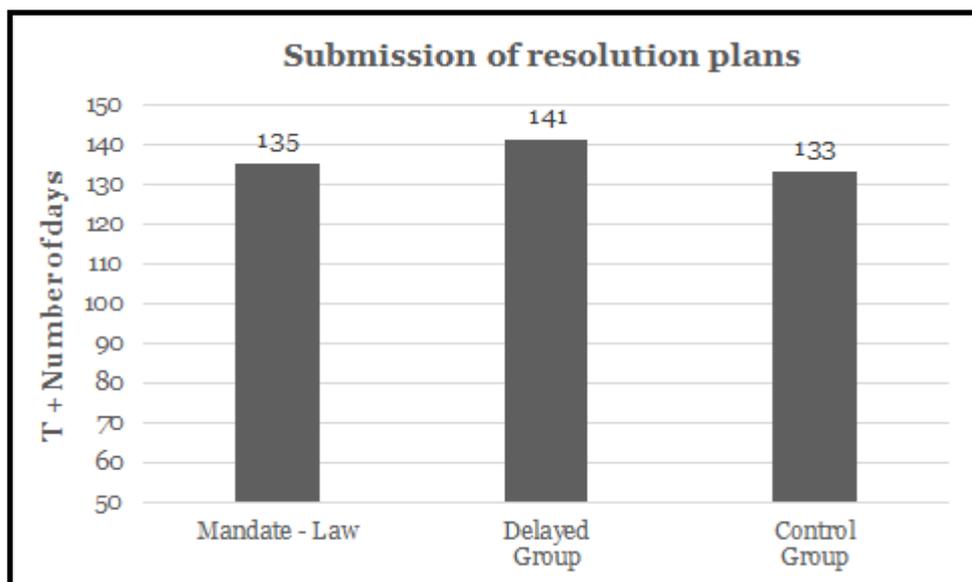


Figure 16 Submission of resolution plan

14. Approvals with respect to the resolution plan (T+180/270)

There are two stages involved in the approval of the Resolution Plan -

1. CoC approving resolution plan.
2. CoC approved resolution plan by the AA.

The two-step process should take 45 days if the number of days allowed is 180 and 135 days if an extension of 90 days is granted, to finish the process within 270 days. The analysis reflects that the Delayed Group takes more than 300 days to finish the step while the Control Group consumes ~85 days. Further, an extension of 90 days was granted to 40% of the CDs and time consumed in litigation was excluded for 15% of the CD's