Evaluating the Corporate Insolvency Resolution Process (CIRP): Empirical Evidence on Operational Issues, Challenges, and Stakeholder Dynamics

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Abstract

Evaluating the Corporate Insolvency Resolution Process (CIRP) using applied empirical research evaluates whether the stakeholders, such as Resolution Professionals, Committee of Creditors (CoCs), adjudicating authority and legal practitioners, are in tune with the mandate of the Insolvency and Bankruptcy Code (IBC). The CIRP is strictly time-framed, with the resolution plan to be completed within the stipulated time limit. In approving the resolution plan, the CoC adheres to the principles of natural justice and balances the interests of all stakeholders, including operational creditors. The CoC ensures a fair and efficient resolution process that maximises value for the corporate debtor and benefits all stakeholders involved. There are instances where suspended management consistently remains non-cooperative, regardless of potential consequences. The National Company Law Tribunal (NCLT) is entrusted with the task of adjudicating all matters arising from the IBC. In this multifaceted CIRP mechanism, infrastructure enhancement, capacity building, and stakeholder engagement are opportunities to strengthen the adjudicatory framework and reduce delays in the CIRP and related processes. The study presents qualitative and quantitative evidence of how the Corporate Insolvency Resolution Process (CIRP) assesses the efficacy of the Insolvency and Bankruptcy Code (IBC) 2016 in the state of Gujarat, India. This research examines the operational issues and challenges under the IBC, focusing on how stakeholder dynamics and institutional constraints affect the insolvency resolution

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Note: The study adhered to accepted ethical practices and standards of research integrity throughout the research process.

process. It also analyses how factors such as delays, litigation, and non-cooperation influence the efficiency and effectiveness of CIRP.

Keywords: *applied empirical research, Corporate Insolvency Resolution Process (CIRP), Committee of Creditors (CoCs), operational creditors, suspended management*

1. Introduction

The Insolvency and Bankruptcy Code (IBC) 2016 underwent a complete change in the insolvency process of the corporate. The IBC has replaced all laws concerning insolvency and bankruptcy. The National Company Law Tribunal (NCLT) is designated as the adjudicating authority for the procedural and approval of the Corporate Insolvency Resolution Process (CIRP) under IBC. The CIRP is strictly time-framed, where the resolution plan is to be completed within 180 days or 180 days and a one-time extension of 90 days, i.e. 270 days. An overall maximum timeline of 330 days, including any extension or any legal proceedings period. If the resolution plan is not approved by 66% of the Committee of Creditors, or no resolution plan is made within the above time-frame, the liquidation process will be initiated for the corporate entity. So, IBC can also realise from its output or speedy disposal of cases. It also prevents the 'corporate death' of the debtor, as too many 'corporate deaths' are fatal for an economy in the long run from both a micro as well as, a macroeconomic perspective. This research examines the operational issues and challenges arising under the IBC by analysing how stakeholder dynamics, including CoC self-interest, non-cooperation by suspended management, and institutional constraints, contribute to delays, litigation, and institutional bottlenecks, thereby affecting the efficiency, effectiveness, and overall outcomes of the insolvency resolution process. The study is unique because it relies on data from practitioners and stakeholders involved in CIRP. While other studies, such as, Chatterjee et al. (2018), Regy & Roy (2017), Thakkar et al. (2024), Thakkar, Rami, & Sarmah (2023), Thakkar & Agarwal (2023), Singh & Thakkar (2021), Thakkar & Agarwal (2021-2022), Thakkar & Agarwal (2022), Thakkar et al. (2020), Thakkar & Agarwal (2026), Thakkar, Maurya & Sood (2026), and Thakkar (2022-2023) in the domain of economic analysis and the efficacy of law. This research highlights that the impact analysis of the IBC involves a multidimensional approach to stakeholders and the regulatory framework, based on practitioners' responses.

2. An Empirical Investigation of Operational Challenges and Stakeholder Dynamics in the Corporate Insolvency Resolution Process (CIRP)

The study is based on quantitative and qualitative methods to evaluate the efficacy of the Corporate Insolvency Resolution Process (CIRP). For the qualitative method, the study adopted the face-to-face interview method with respondents. The interviews were conducted in a semi-structured manner, and relevant questions were raised concerning the broad objectives of the study. The duration of the interviews varied with respect to the time considerations of respondents; it ranged from approximately 45 minutes to 1 hour.[2] Along with in-depth unstructured interviews, four panel discussions with all stakeholders were undertaken, and NCLT hearings were also observed for more than three months. In order to validate it in the real world, a questionnaire was created based on identified factors discovered through interviews, panel discussions and observations of NCLT proceedings.

The process of gathering data was done through non-probability sampling. The participants were chosen from the three categories of advocates, creditors and resolution professionals (RPs) using strategies including convenience sampling. The study has a sample size of 103; with 5 creditors, 27 resolution professionals and 71 advocates. Then the data was processed and coded, following which, descriptive and frequency analyses were conducted. For the research design on the impact assessment various studies like Chatterjee, et. al., (2018), Regy & Roy (2017), Abhirami & Rahul (2022), Singh & Thakkar (2021), Thakkar, et. al., (2023), Jolly & Singh (2021) etc., have been referred.

[2] The concept of data saturation is defined as "bringing new participants continually into the study until the data set is complete, as indicated by data replication or redundancy. In another word, saturation is reached when the researcher gathers data to the point of diminishing returns when nothing new is being added."

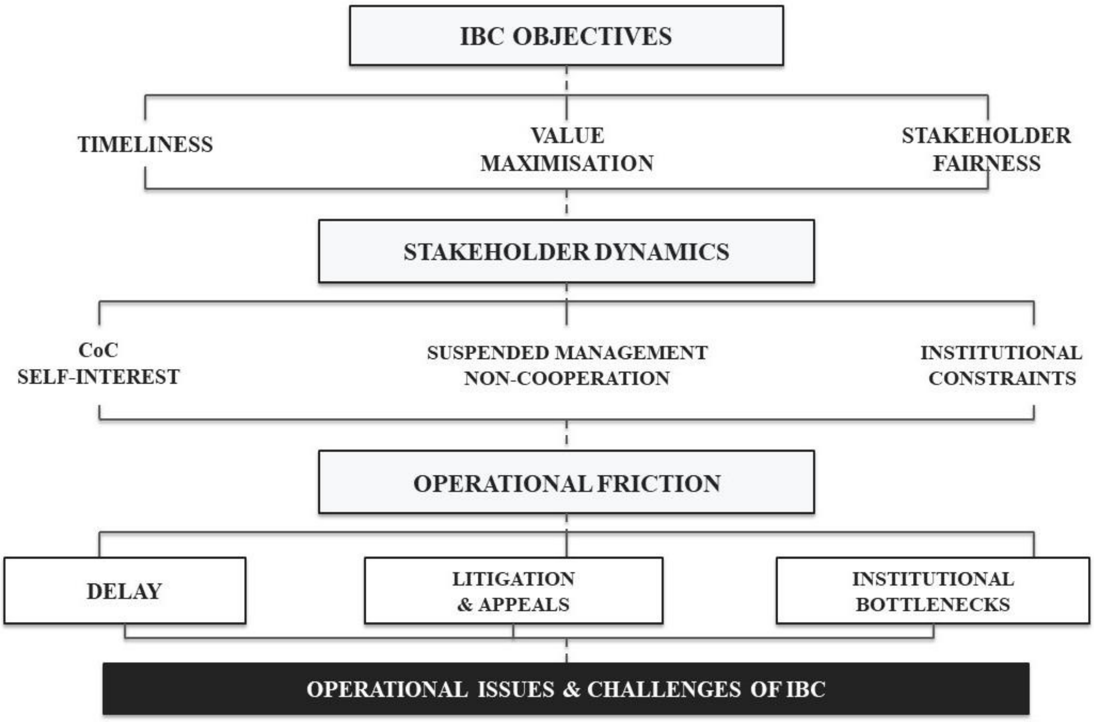

Chart 1: IBC Operational Issues & Challenges

Source: Author's Own Construction

This research paper is grounded in a conceptual framework examining the operational issues and challenges arising under the Insolvency and Bankruptcy Code (IBC). The framework demonstrates how the IBC's core objectives, timeliness, value maximisation and stakeholder fairness; may be affected or diluted by various stakeholder dynamics, particularly self-interest within the Committee of Creditors (CoC), non-cooperation by suspended management, and institutional constraints. These dynamics, in turn, generate operational friction, manifested primarily through delays, litigation and appeals, and institutional bottlenecks. Collectively, these factors contribute to the operational issues and challenges encountered in the implementation of the IBC, with potential implications for the efficiency, effectiveness and overall outcomes of the insolvency resolution process (Chart 1).

Mathematical Model of CIRP Operational Efficiency

$$\begin{array}{c}\text{CIRP}\\ \text{Operational Efficiency}\end{array} = \frac{\text{Timeliness} + \text{Value Maximisation} + \text{Stakeholder Fairness}}{\text{Delays} + \text{Litigation} + \text{Non-Cooperation} + \text{Institutional Bottlenecks}}$$

3. Transformative Effects of Corporate Insolvency Resolution Process (CIRP) on Economic Dynamics

The Corporate Insolvency Resolution Process (CIRP) provides an avenue to scrutinize the company's balance sheets, comparing the assets and liabilities to determine whether the debtor can pay off their debts. Such scrutiny of the time-bound process gives an undue opportunity to the committee of creditors (CoC) and resolution professional (RP) to dispose of debtors' assets and resolve the company's value as a going concern (Sukul & Bansal, 2021). Also, ensure maximization of assets during insolvency in a time-bound manner (Insolvency and Bankruptcy Code, 2016, preamble).

3.1.Mandated Role and Responsibilities of the CoC in CIRP

The intended impact of the IBC is interestingly in a recent decision of the National Company Law Tribunal (NCLT) in *Rathi Graphic Technologies Ltd. v Rajkumar Rathi (2019)* ruled that though the commercial wisdom of the Committee of Creditors is indispensable, the procedure of approval of a resolution plan is always subject to judicial scrutiny. The tribunal made an interesting observation and held that the CoC under the IBC, in *Essar Steel India Ltd. v. Satish Kumar Gupta & Ors., (2019)*, is an instrumentality of the state in the commercial sphere. That being said, it held that, in the process of approving the resolution plan, adherence to the principles of natural justice and the balancing of the interests of all stakeholders is primary. It held that all decisions arrived at by the CoC while considering a resolution plan must be backed by proper information and data. Thus, implicitly the NCLT held that if a certain resolution plan confers zero or a relatively low amount in favour of operational creditors or any stakeholder for that matter, and the CoC approves such resolution plan, the CoC must back its decision with sufficient and cogent reasons, on account of being an instrumentality of the state, principles of natural justice bind the CoC. This judgement is extremely important and welcome, especially when the discourse around conferring more rights upon operational creditors is gaining momentum.

Due to its significance in the CoC's decision-making, RP initiates the valuation process with two registered valuers to determine fair market and liquidation values.[3] Valuation is a critical step in the bankruptcy proceedings. The minimal entitlement to operational creditors and

[3] Regulation 27 (1) of the CIRP Regulations states that the RP shall designate two registered valuers to determine the fair value and liquidation value of the corporate debtor in accordance with Regulation 35 within 7 days of his appointment but not longer than a period of 47 days after commencement of insolvency.

dissident financial creditors can be determined with its help. It provides direction for evaluating the resolution solutions even though it is not a floor price for the assets. The severe consequences of errors or faulty valuation methods may necessitate the reversal of approved resolution plans. In practice, with a standard valuation approach, the IBC's strategy contains a substantial gaping hole as a result of this absence, which encourages complacency among valuation specialists and leads to incorrect asset appraisals. Intentional lapses, undervaluing assets for malicious intentions, errors in diligence and breaches in care can also break the IBC's obligations. There were various judgments addressed issues related to asset valuation, undervaluation and malicious practices, for example, *Swiss Ribbons Pvt. Ltd. v. Union of India (2019), Arcelor Mittal India Private Limited v. Satish Kumar Gupta (2019), Innoventive Industries Ltd. v. ICICI Bank (2018), State Bank of India v. Videocon Industries Ltd. (2020), Jaypee Infratech Ltd. v. NBCC (India) Ltd. & Ors. (2020)* etc., to ensure the effectiveness and credibility of the insolvency framework. These judgments and cases reflect the evolving jurisprudence under the IBC, highlighting the importance of fair valuation practices, transparency in resolution processes and protection of creditor rights to ensure the effectiveness and credibility of the insolvency framework.

The exclusion of the operational creditors from the decision-making procedure and CoC has been a point of debate since the enactment of the code and has been termed as contrary to the objective of the code to "balance the interests of all the stakeholders" (Swiss Ribbons Pvt. Ltd. v. Union of India, 2019). However, an economic thought has to be given to the problem before reaching a final conclusion and deciding on the issue of affecting the efficiency of the resolution process by offering more voting rights to operational creditors in CoC. The operational creditors can find their place in CoC only if their debt is more than 10% of the total debts or if the CoC lacks any financial creditors. In both situations, it is indicated that the operational creditors are given a lesser role in the insolvency process as compared to the financial creditors. But for an unbiased economic analysis of the outcome of the equitable treatment between the creditors, it is necessary to presume the non-existence of these discriminatory provisions.

3.2.Mandate and Functions of NCLT in CIRP

As per Section 5(1) of IBC, the National Company Law Tribunal (NCLT) is entrusted with the task of adjudicating all matters arising under the IBC. One of the implicit aims of the code is the resolution of corporate debtors with minimal judicial intervention; hence, ideally, the role of the NCLT should be limited to ensuring compliance with the code and disposing of complaints of non-compliance quickly (Arun Kumar Jagatramka v. Jindal Steel and Power Ltd., 2021). However, since the inception of the code, that has not been the case; the judicial system, including the NCLT and its functioning, has received its fair share of criticism for delays in the overall CIRP. The higher judicial forums should refrain from reviewing the merits of a decision arrived at by the NCLT (unless absolutely necessary). A review of merits at several stages tempts affected stakeholders to manufacture litigation at higher levels, thereby stalling the entire CIRP (Chand, 2022).

Procedurally too there are certain concerns about the functioning of NCLTs. Further, studies have suggested that there is a maximum delay in the admission of insolvency applications. However, the delay cannot be solely attributed to NCLT, but also to the parties, who often fail to remove office objections without removing applications that cannot be entertained. Inadequate infrastructure and lack of required number of specialised judges also stall the entire process. The humongous amount of workload on National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) can also be attributed to the inordinate delays in CIRP. The NCLTs hear matters arising from the IBC as well as the Companies Act, which can be further appealed to the NCLAT. Further, the NCLAT is the appellate body for the National Financial Reporting Authority (NFRA) and the Competition Commission of India (CCI). Most of the time, this is because of delays in court processes since the NCLT and NCLAT are overworked, with insufficient bench members.

3.3.Non-cooperation by suspended management in CIRP

Non-cooperation by suspended management presents itself in several forms in the CIRP, which unnecessarily obstructs the valuation of assets and accurate evaluation of the company's financial position. For example, refusal to provide access to financial statements and books of accounts, forum shopping, refusal to enter premises etc. It hinders the resolution process. Under Section 17(2)(b) of the IBC, the resolution professional has the right to access the corporate debtor's books, records and other financial information. Also, Section 19(2) effectively compels the corporate debtor to cooperate with the RP. Refusal to comply with this provision can lead to legal repercussions. In practice, management often attempts forum shopping to choose a favorable jurisdiction for legal proceedings. This tactic can delay the resolution process and increase costs. Frivolous litigation is a tactic used to frustrate the resolution process. It was noticed that the suspended management refused to allow access to the company's premises for inventory verification or asset assessment (M/s Exbuzz Fire and Security Pvt. Ltd. v. M/s Future Retail Limited & Anr., 2024).

3.4.Adherence to Timelines in CIRP

One of the core principles of IBC is the timely resolution of distressed companies. Hence, time is of the greatest essence in reducing the already depreciating value of corporate debtors. In pursuance of the achievement of this objective, the IBC has prescribed a timeline to ensure speedy resolution to insolvency. Primarily a 180-day timeline is prescribed once the insolvency application is admitted, termed as the *"insolvency commencement date"*. Further, the Resolution Professional can file for an extension of up to 90 days, i.e. 270 days, subject to a resolution passed with 66% majority voting of the CoC, beyond the prescribed timeline, and the CIRP ought to be completed within 330 days, inclusive of any extension of the period of CIRP and time consumed in legal proceedings. In Arcelor Mittal v Satish Kumar Gupta (2019), the Hon'ble Supreme Court highlighted the importance of adhering to the timeline and held that the model timeline must be followed as closely as possible. Alternatively, in the CoC of Essar Steel India Ltd. v Satish Kumar Gupta (2019), the Supreme Court held that the timeline is directory in nature. If circumstances demand an extension beyond 330 days to enable the corporate debtor back on its feet, then such CIRP can be extended beyond the 330 days, in the interest of all stakeholders.

However, studies have suggested that the present timeline is seldom achieved and given the current state of affairs, the timeline is practically non-feasible (Shikha & Shahi, 2021). There are inordinate delays at several stages, both pre and during CIRP. As per the code, the adjudicating authority ought to reach a conclusion on the question of the existence of default within 14 days of an application moved under Section 7. However, interaction with stakeholders has revealed that applications at times have taken over a year to be admitted, mostly due to procedural requirements – such as service of notice, time to file a reply, etc. Thus, there is a pressing need to depart from the present 'one timeline fits for all' approach pertaining to the CIRP timeline.

4. Qualitative Empirical Evidence on Operational Challenges and Stakeholder Dynamics in the CIRP

Assessing the impact of Corporate Insolvency Resolution Process (CIRP) through the practical insights of resolution professionals, advocates and bankers, quoting their applied acumens in CIRP based on the identified factors and variables. The research studies conducted by various scholars have applied qualitative tools in line with this research, such as, Creswell (2007), Bowen (2008), Marshall et al. (2013), Schultze & Avital (2011), Bryman (2012), Pratihari & Uzma (2020), Thakkar et al. (2023), Noronha et al. (2018), Alvesson (2003), Avital (2011), Thakkar, H. (2022-2023) and Qu & Dumay (2011).

4.1.Compliance with Time Limits

[…] The timeline with respect to the completion of CIRP and the overall process have absolutely gone haywire. Forget 180 days, even 270 days and 330 days, and it goes on for years altogether. Now some of them are because of litigation and some of them are because of the liberal attitude of the courts. I mean, when there are unscrupulous promoters who try to ensure that the CIRP does not progress in the way it is supposed to be, it goes on for years. Generally, only the high stakes matter or the ones which are in view of the public, they get over around 330, 360 or at max 400 days but otherwise it goes on for almost a couple of years. (Respondent NCLT Advocates)

[…] with all these things to bring the CIRP in 330 days, is impossible in the Indian context – with so much litigation and paperwork. 330 days is only on paper, and rarely does it happen. [Respondent Insolvency Professional (RP)]

[…] in a Supreme Court judgment, [it was held] that 14-day period was directory and not mandatory. So once that came, everyone started taking it easy including the tribunals. They were very happy to dispose it in 14 days and it kept the corporate debtor on toes, but after that particular judgment, it opened the floodgates. I mean there are section 7 applications which have been pending for almost a couple of years, it goes on and on. (Respondent NCLT Advocates)

4.2.Institutional Bottlenecks

[…] On certain days, a single judicial member was assigned to handle two to three benches simultaneously. For instance, today, one judicial member managed both Court 1 and Court 2 of the Ahmedabad bench before proceeding to oversee matters at the NCLT Kolkata bench and the Indore bench. (Respondent NCLT Advocates)

[…] I think there are still a lot of cases which are pending and there is a problem of manpower, due to lack of judges and their appointment in the NCLT. Most of the staff that work at NCLTs and NCLAT are on deputation and contractual. [Respondent Insolvency Professional (RP)]

[…] At NCLT Ahmedabad in Gujarat, there were two benches in operation - one in the morning and another in the afternoon. Each bench consisted of one judge and one technical member. The schedule of their sessions varied daily. Additionally, the bench occasionally conducted virtual hearings for cases from locations like Indore, Chennai, Bengaluru, and others. (Observation at NCLT Ahmedabad over a period of three months)

4.3.Non-cooperation from the Corporate Debtor

[…] Promoters do not want to cooperate because of the mindset they have, the moment the company goes into insolvency; they think they have lost their company, which generally happens because most of these assets have no value. [Respondent Insolvency Professional (RP)]

[…] When our team went as a RP, entry to the office premises was restricted. This professional (RP) had to go to the local police, local magistrate, get the order, they went along with guarded police because those involved corporate debtor (suspended management) had kept their bouncers on the gate. (Respondent NCLT Advocates)

[…] Largely once the orders from the Tribunal are given, in 90% cases the promoters do cooperate or at least give a substantial portion of the documents. The promoters, who are not going to provide the documents with whether that particular penalty is there in the code or not, they are not going to give it, come what may. I have personally seen promoters who have planned the entire thing far in advance, and they say that there was a fire in the premises. This is the FIR, or these are the documents that we lost, and so on and so forth. (Respondent NCLT Advocates)

4.4.Code of conduct for CoC

[…] IBC’s current act is already providing the manner in which the CoC has to be conducted. The framework in which they have to agree is the Constitution, largely it is there. This will be more a sort of governance. We are questioning how it can be well governed. There is always room for improvising and this can help. (Respondent NCLT Advocates)

4.5.Procedural Delays and significant Adjournment

[…] Counsels frequently request adjournments, often due to procedural matters rather than substantive issues. Delays arise from late filing of replies and rejoinders by the counsels, prompting the need for adjournments. Additionally, counsels may seek extensions citing other commitments. The average gap between hearings is typically 30-45 days. (Observation at NCLT Ahmedabad over a period of three months)

5. Quantitative Empirical Evidence on Operational Challenges and Stakeholder Dynamics in the CIRP

This section deals with the consolidated frequency count and percentage analysis of 103 samples. Assessing the impact of CIRP through empirical evidence provided practical insight into various issues and opportunities within the process. It provides a data-driven understanding of the CIRP's impact and highlights areas for improvement. Also, see the research studies of Chatterjee, et. al., (2018), Thakkar, Agarwal & Urmi (2023), Thakkar, Rami & Sarmah (2023), Thakkar, H. (2022-2023), Singh & Thakkar (2021) and Thakkar & Agarwal (2021-2022).

5.1. Timeliness in CIRP: An Empirical Assessment of the Feasibility of Prescribed Timelines and Delays in Creditor Admission

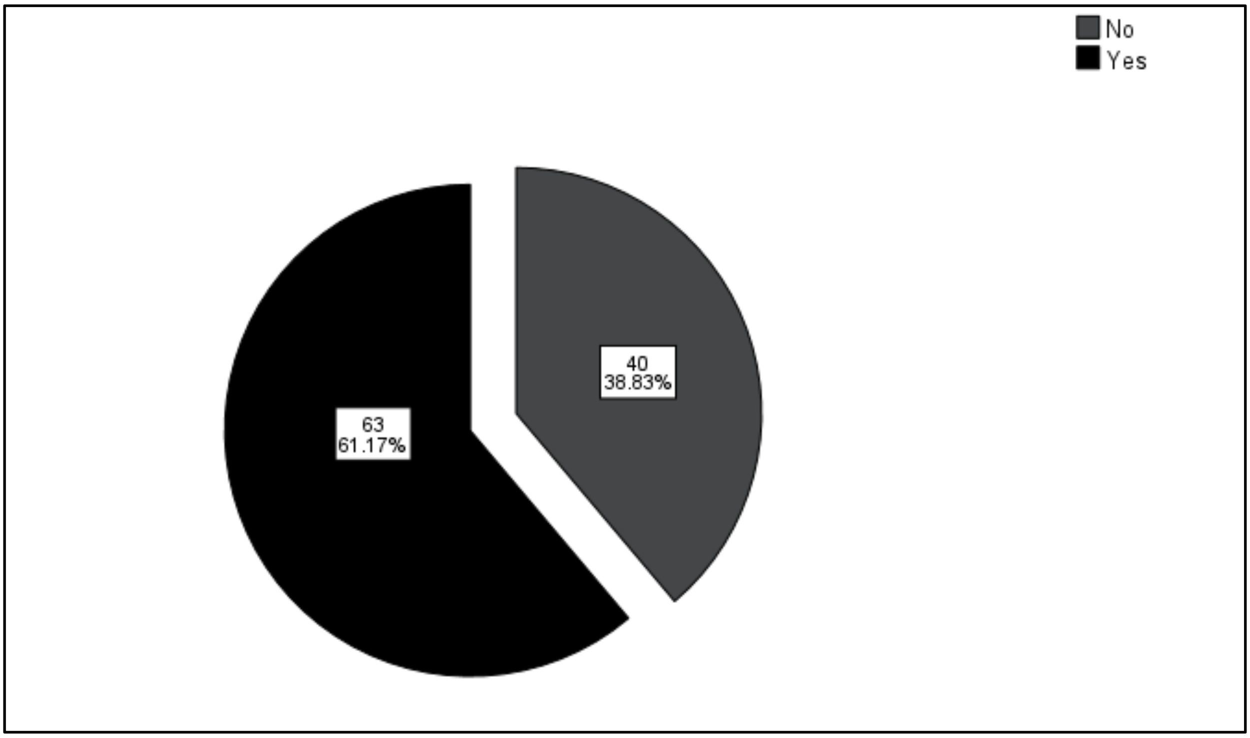

Figure 1: The feasibility of CIRP's present timeline (180 days; one-time extension - 270 days; including time consumed in legal proceedings - 330 days)

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

In Figure 1, on being asked whether the current timeline for CIRP under section 12(1) of the IBC was feasible, 61% of the respondents said yes, while 39% of them said no. Average timelines under IBC have reached 588 days (irrespective of the end result being liquidation or resolution) as of April 2023.

The data collected shows only in rare cases (5%) that the admission process of financial creditors is cleared in less than 14 days. A significant percentage of the respondents believed that the admission process for the creditors is cleared in 14 days - 2 years or even more than 2 years. It is important to note that only a handful of cases are admitted within the prescribed time limit of 14 days, as provided under Section 7 of the IBC (Figure 2).

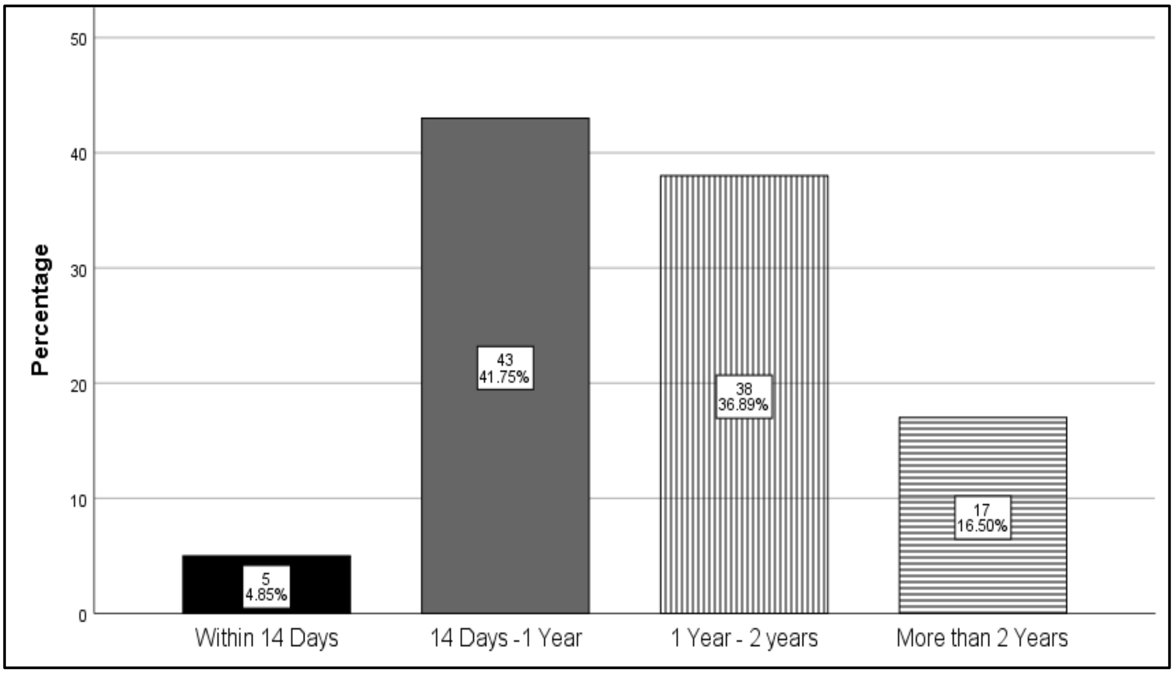

Figure 2: Time taken to clear the admission process for financial creditors in CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

Data collected in Figure 3 shows that significant percentage of the respondents suggested that it takes about 14 days - 2 year and even some time it goes more than 2 years for the admission process for operational creditors. These figures clearly indicate that the timeline (Within 14 days) provided in section 9 of the IBC is not being adhered to and very few responses support it.

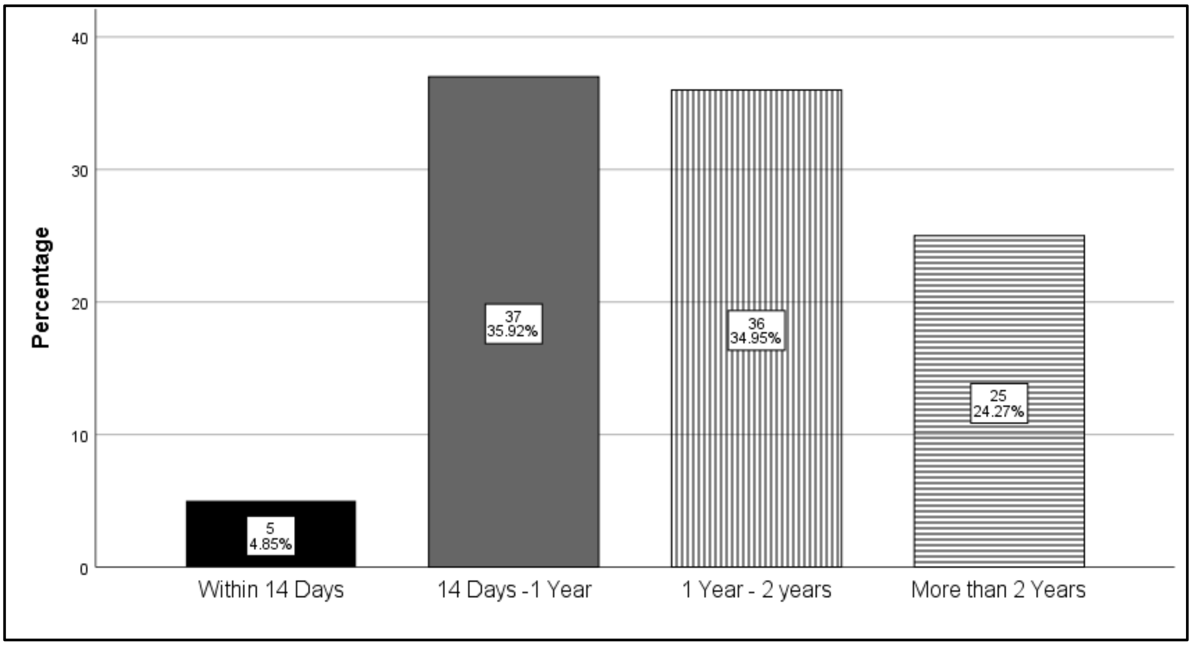

Figure 3: Time taken to clear the admission process for operational creditors in CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

5.2.An Empirical Assessment of Resolution Plan Approval and CIRP Completion Timelines

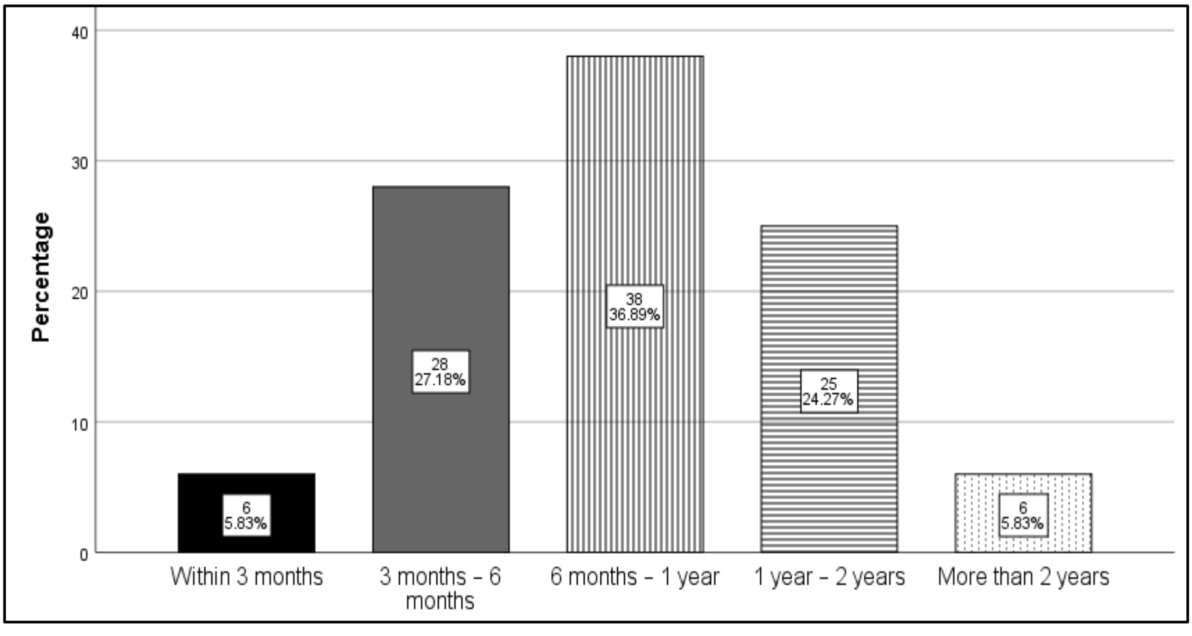

Figure 4: Time Taken by NCLT/Adjudicating Authority to approve a CoC-approved Resolution Plan

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

In Figure 4, it can be observed that on the question of the average time taken by adjudicating authority to approve a resolution plan approved by a committee of creditors, around more than 60% responded with the option of 6 months - 2 years. According to the above data, NCLT takes significantly more time than prescribed by the Insolvency Law Committee to reject or approve a resolution plan.

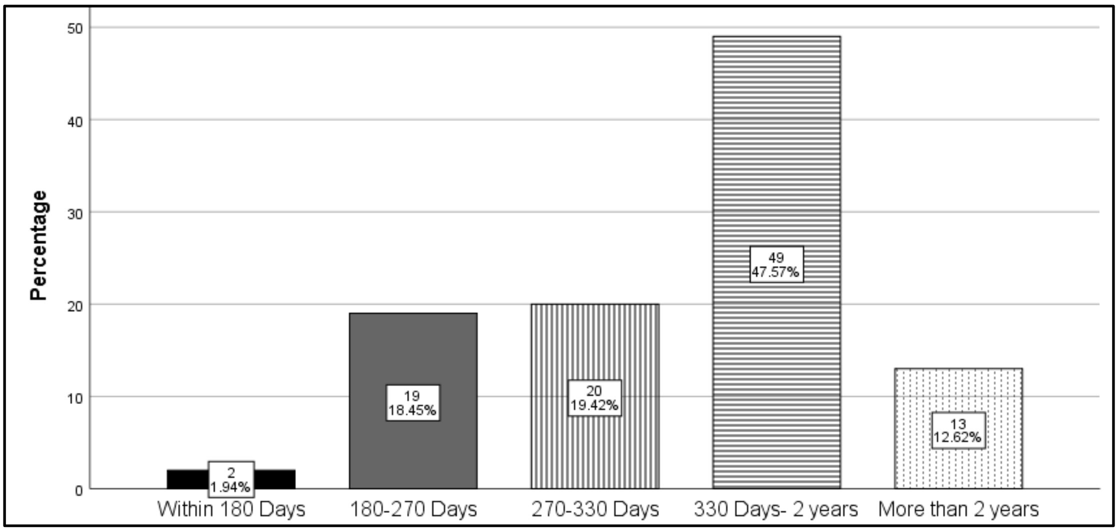

Figure 5: Average Time Taken for Completion of CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

In Figure 5, from the data analysis, it is seen that more than 60 percent (60.19%) respondents suggested that the average disposal of cases takes between 330 days - 2 years and also more than 2 years. Only a minuscule 1.94% of the total number of respondents felt that the CIRP process is disposed of within 180 days. According to the data, the majority of the creditors, resolution professionals and advocates are of the opinion that most of the cases were disposed after 330 days, breaching the prescribed timeline of CIRP (Thakkar, et. al., 2023).

5.3.Reasons for Delays and Stages with Maximum Delay in CIRP

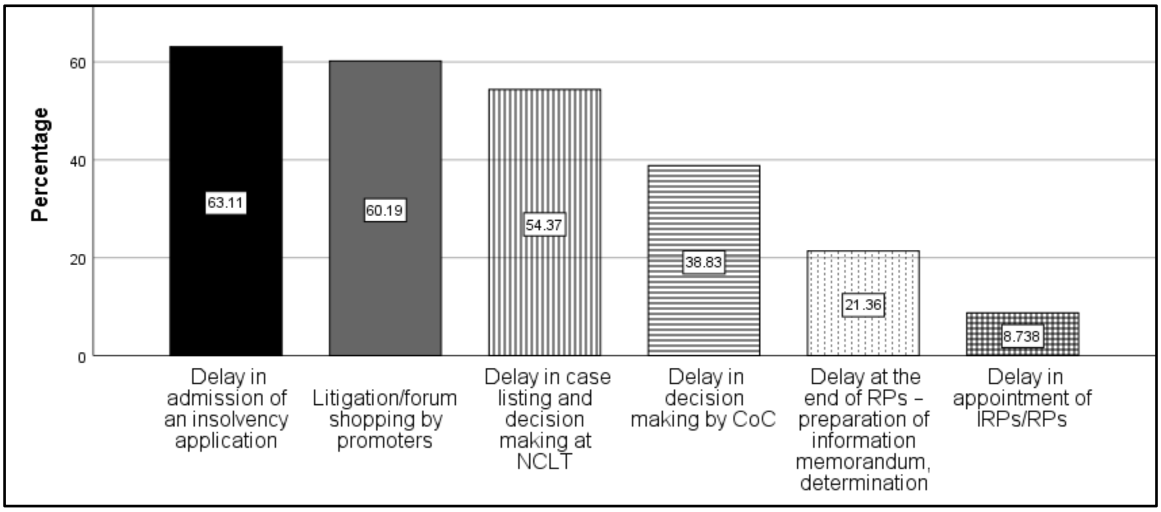

Figure 6: Reasons for Delays in CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

As per the responses in Figure 6, the most common reason for the delay in CIRP is the delay in admission of the insolvency application, which was supported in almost 63.11% of the responses. The next most common reason for delay was litigation or forum shopping by the petitioners, wherein they kept on changing the bench to hear the matter; this was also seen as a reason for delay in 60.19% of the total number of responses. Approximately the same number (54.37%) of responses supported the view that delay is caused by delay in case listing and decision-making at NCLT. 38.83% of the total responses attributed the cause of delay in CIRP to the delay in decision-making by the Committee of Creditors. Apart from this, 21.36% of the total responses received believed that the delay was due to the delay caused by resolution professionals in preparing the information memorandum. Another 8.7% of respondents believed that the delay was due to a delay in the appointment of a Resolution Professional/Interim Resolution Professional.

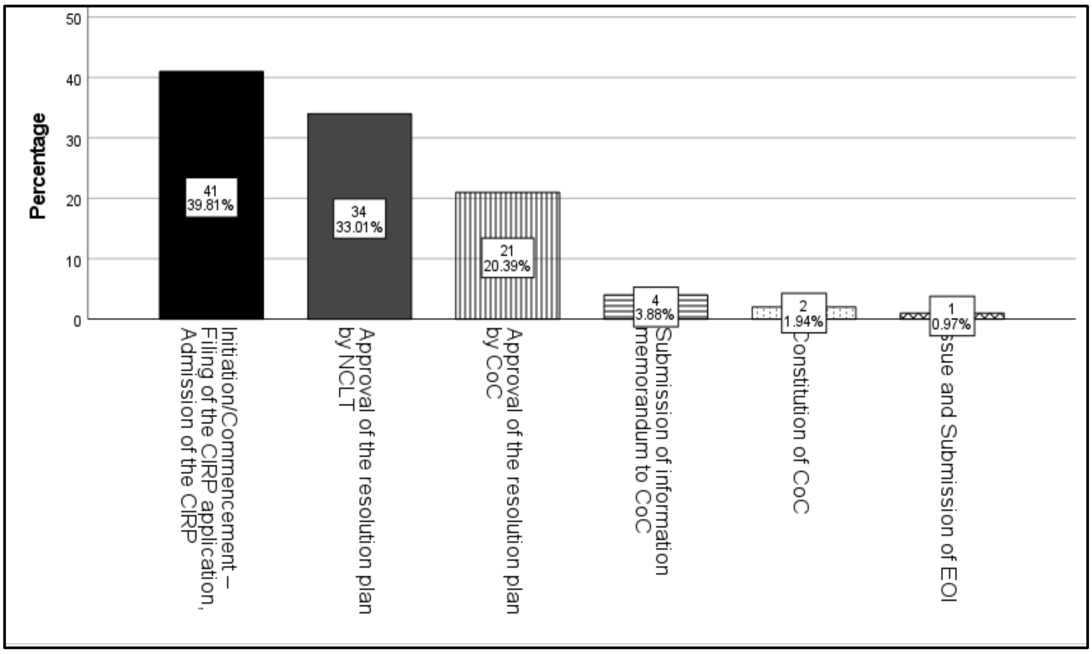

Figure 7: Stages of Maximum Delay in CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

In Figure 7, it can be observed that there are a total of 6 stages involved in the CIRP where the process may be delayed. About two-fifths (39.81%) of the total respondents believed that the delay is most likely to occur at the initiation or commencement of the process itself. About one-fifth (20.39%) of the respondents believe that the maximum delay shall occur at the stage of approval of the resolution plan by the CoC. However, 33.01% considered that the maximum delay should arise in the resolution plan's final stage of NCLT approval. Another 1.94% believe that most of the delay shall occur before the constitution of CoC. About 3.88% of respondents considered that most of the delay shall occur at the submission of the information memorandum to CoC. However, only a sole respondent (0.97%) considered the maximum delay to occur at the stage of issue and submission of EOI. From the above statistical analysis, it is evident that the most delay will occur either at the initiation of the proceedings or at the approval of the AA or the CoC.

5.4. Financial Creditors and Operational Creditors under the IBC: Stakeholder Dynamics, Challenges, and Suggested Reforms

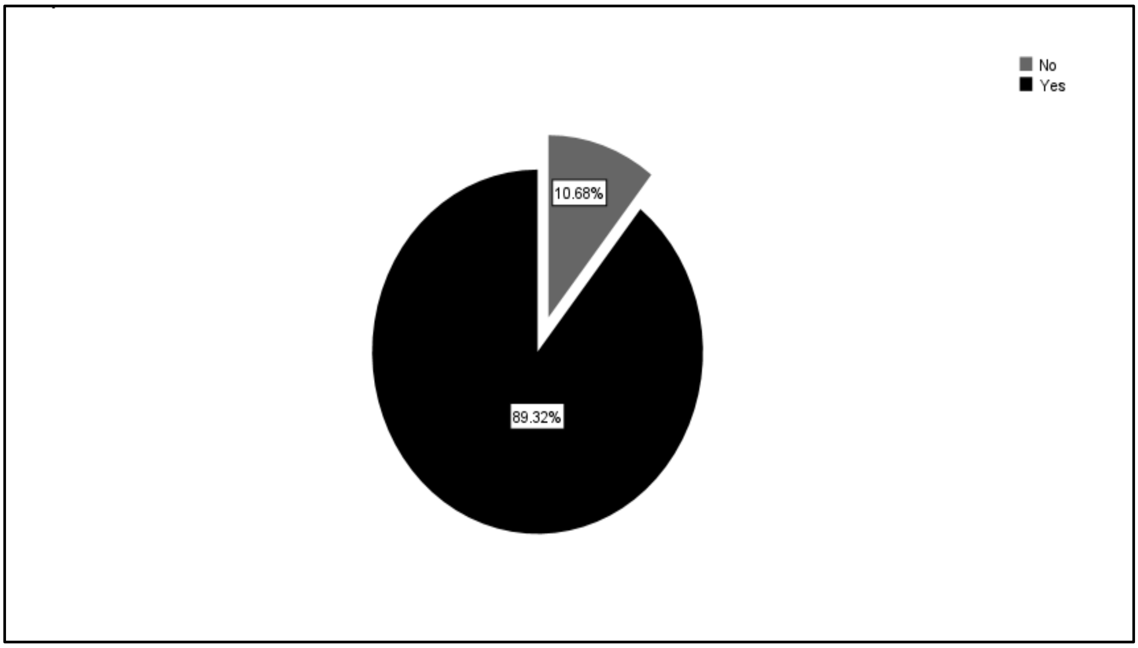

Figure 8: Orientation of IBC towards Financial and Operational Creditors

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

In Figure 8, on whether IBC in its current form is more inclined towards financial creditors than operational creditors, the majority agreed with the given statement, with about 89.32% of the respondents agreeing with this statement, compared to 10.68% disagreeing. It further substantiates that under the IBC, operational creditors do not have the right to vote or the right of representation in the committee of creditors, restricting them from having any say in the decisions regarding the insolvency resolution process, which includes the approval of the resolution plan that may alter their rights substantially. Against this backdrop, the guarantee to the operational creditors for the provision of a minimum liquidation amount is meaningless as usually in such cases the liquidation amount is near 0 (Mahapatra et. al., 2020). Moreover, the judgment of NCLT Ahmedabad also reiterates that the financial creditors are placed on a higher footing than the operational creditors (Pani Logistics v. Sona Alloys Pvt. Ltd., 2022).

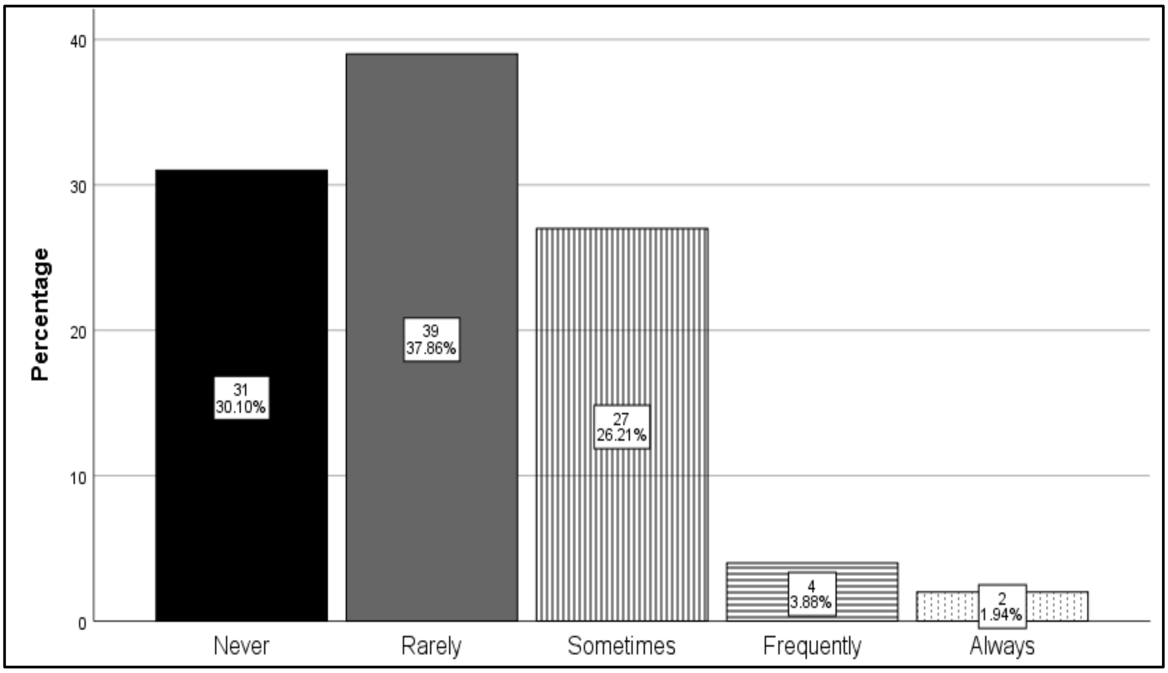

Figure 9: Financial Creditors' Sensitisation towards the Needs of Operational Creditors

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

Based on the data from Figure 9, it does not seem that the financial creditors are sensitized towards the needs of operational creditors since about 68% responded with "Rarely" (37.86%) or "Never" (30.10%). Similar results have been found in the study of Pryor & Garg (2020), wherein it was found that the Committee of Creditors, consisting of financial creditors, usually maximizes its own returns and does not consider maximizing the distribution to all creditors. Which clearly shows that they are not sensitized to the needs of the operational creditors. For instance, the termination of essential contracts by operational creditors is something which is not barred under the moratorium. This may give them a bargaining position with financial creditors. Further, 26.21% responded "Sometimes", whereas only 3.88% responded "Frequently" and 1.94% responded "Always".

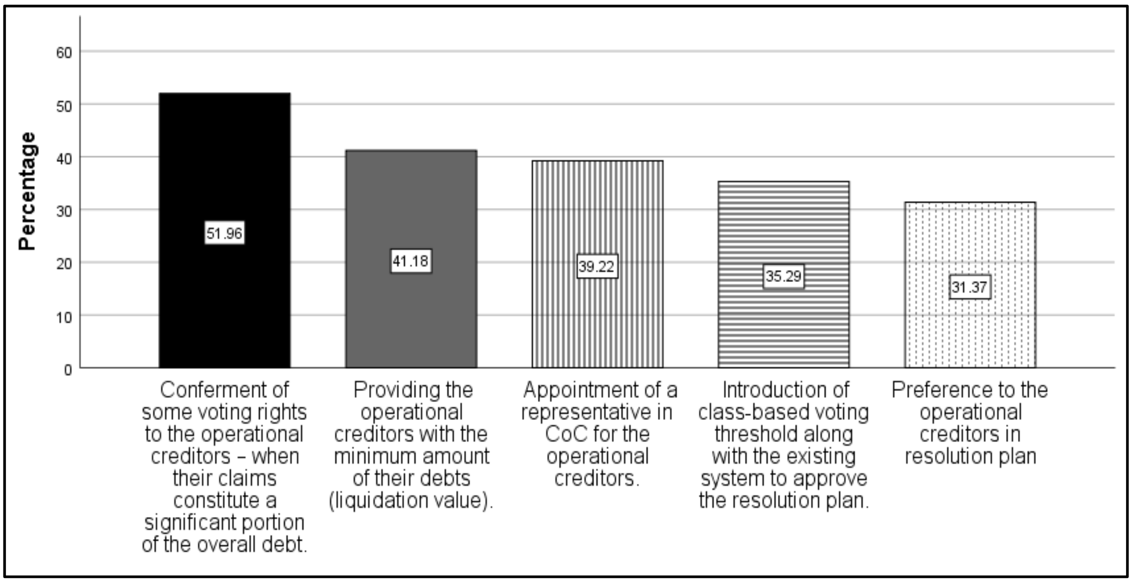

Figure 10: Suggested Amendments to the IBC in the Interest of Operational Creditors

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

According to the results of the frequency analysis performed on the responses gathered, of the five amendments that were proposed to be implemented in favour of the Operational Creditors, the amendment that confers upon operational creditors some voting rights in cases where their claims constitute a significant portion of the overall debt was proposed in the most number of responses of about 52%. Along with this getting the highest number of responses, it is essential to note that the apex court in the Swiss Ribbon Case has also emphasized the same.

The amendment that proposed providing the operational creditors with a minimum amount of their debts was supported in about 41% of responses. Another 39% of responses supported the representation of the operational creditors in the Committee of Creditors to promote their interests. The option seeking to introduce a class-based voting threshold was supported in 35% of the responses received. Meanwhile, about 31% of responses supported the view that giving preference to operational creditors in the resolution plan would be in their best interest (Figure 10).

5.5.Non-Cooperation of Suspended Management of the Corporate Debtor in CIRP

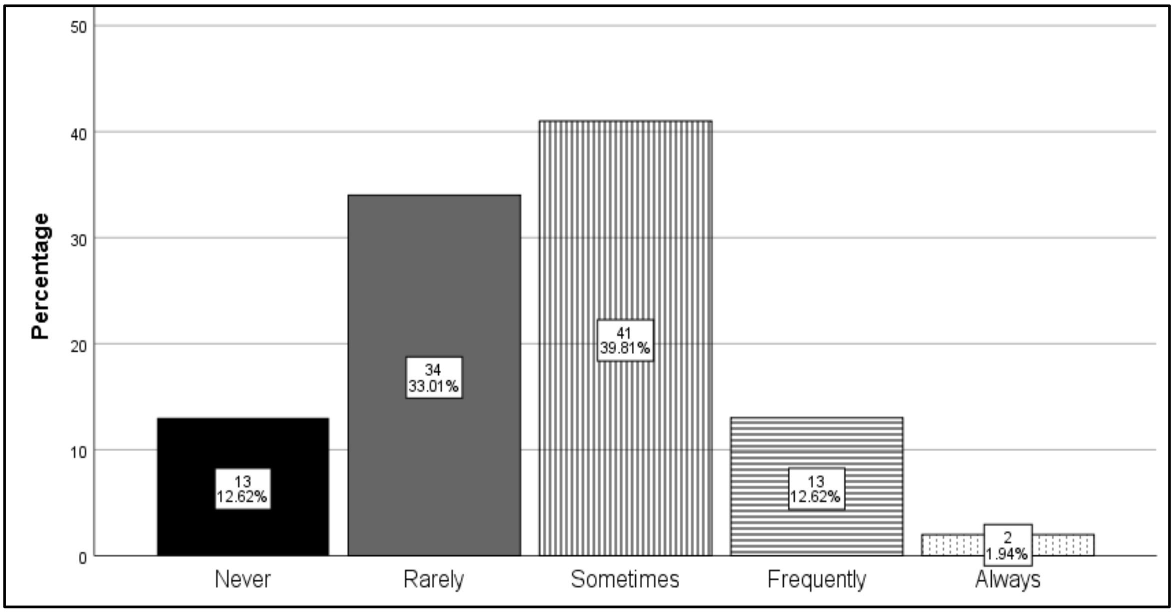

Figure 11: Cooperation and Non-Cooperation of Suspended Management in CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

It can be inferred from the responses in Figure 11 that the suspended management of the debtor company often does not cooperate for smooth functioning of the CIRP proceedings. 12.62% of respondents said they 'never' cooperate and 33.01% said they do so 'rarely'. Majority of the respondents (39.81%) replied with 'sometimes' indicating that suspended management perhaps cooperates as and when they deem fit. This indicates that there is no solid mechanism to deter suspended management from being a barrier to the smooth conduction of CIRP proceedings (Figure 11).

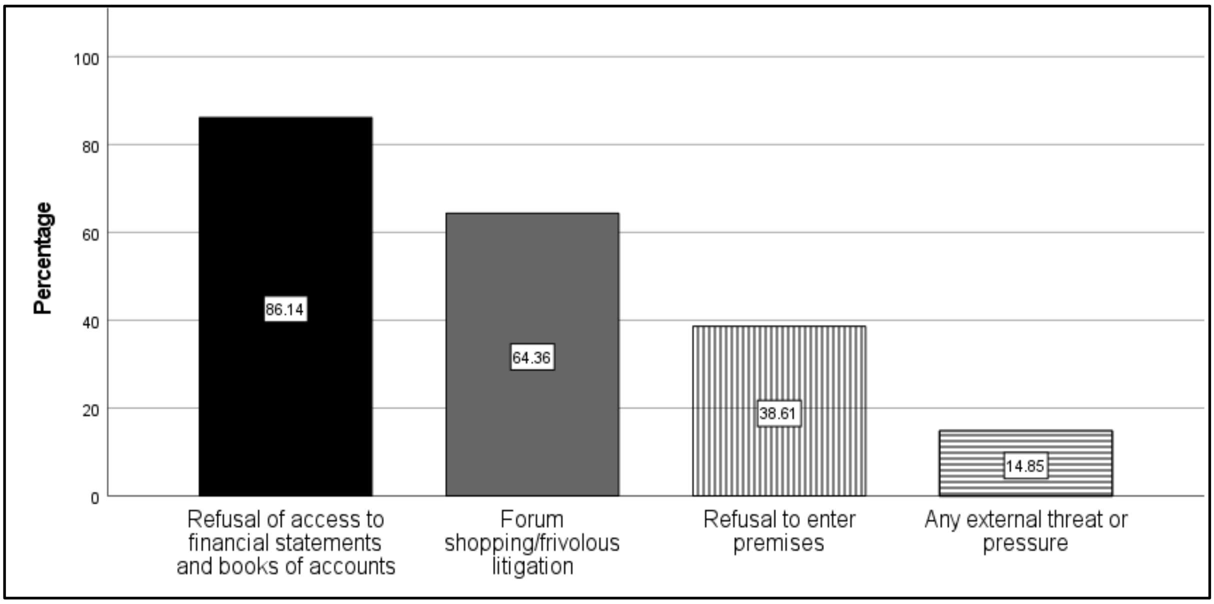

Figure 12: Types of Non-Cooperation by Suspended Management in CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

It can be observed in Figure 12, non-cooperation by suspended management can present itself in several forms. A huge chunk of the respondents (86.14%) said that the suspended management refuses to give access to financial statements and books of accounts. Forum shopping or frivolous litigation is also widespread as mentioned by 64.36% of the respondents. 38.61% of respondents cited that they have experienced or observed refusal to enter premises by the suspended management. The use of external threats or pressure, the least popular amongst the given forms of non-cooperation, also occurs for a noteworthy amount of time, with 14.85% of respondents having either experienced or observed it.

5.6.Measures to Improve the Operational Efficiency of CIRP

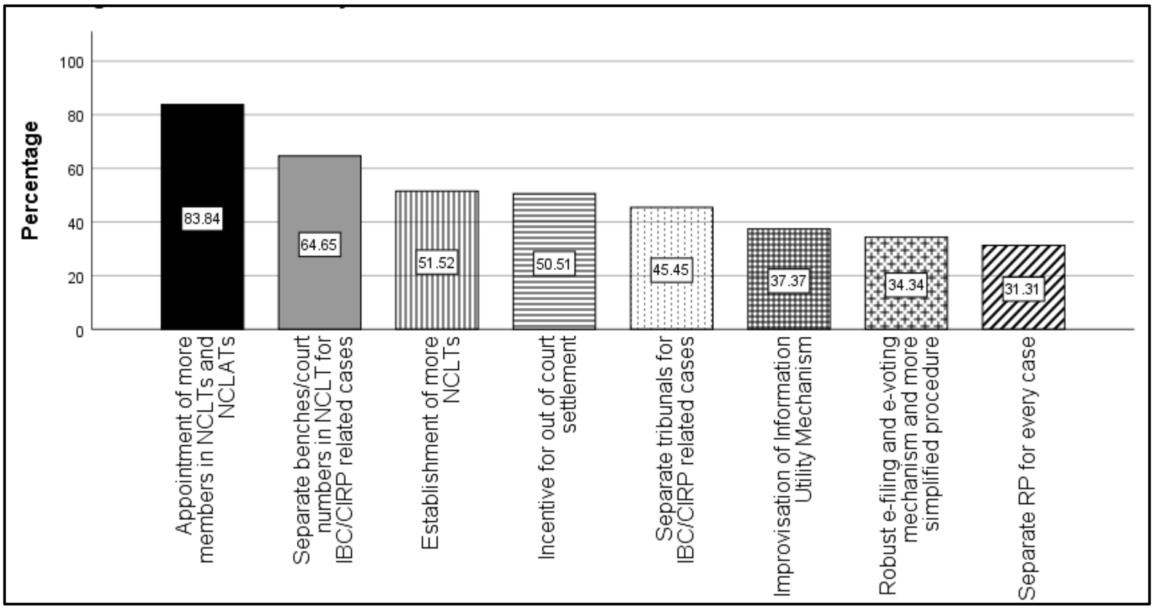

Figure 13: Measures to Improve the Operational Efficiency of CIRP

Source: Author's Own Construction [Thakkar, H. (2022-2023)]

In Figure 13, the frequency analysis indicates changes to increase the efficiency of CIRP. 83.84% of respondents stated 'appointment of more members in NCLTs and NCLATs', and 64.65% reported setting up separate benches/court numbers in NCLT for IBC/CIRP related cases. 51.52% of respondents stated 'establishment of more NCLTs as a method to increase the efficiency of CIRP, 50.51% stated 'incentive for out of court settlement', 45.45% reported 'separate tribunals for IBC/CIRP related cases’. 37.37% of respondents stated 'improvisation of information utility mechanism’, 34.34% reported 'robust e-filing and e-voting mechanism and more simplified procedure', and 31.31% chose 'separate RP for every case' as their response. A request made for resolution plans to increase the efficiency of CIRP is that the resolution professional shall issue the information (Ministry of Corporate Affairs, 2023), the evaluation matrix, and a request for resolution plans within five days of the date of issue of the provisional list under sub-regulation (Munjal, 2022).

6. Conclusions

The CIRP enables a thorough examination of the company's balance sheets, comparing assets and liabilities to assess the debtor's ability to repay debts. This process, constrained by time, gives the CoC and RP a chance to scrutinise the debtor’s assets and evaluate the company's worth as a going concern, all while ensuring asset maximisation within the insolvency timeline. In the process of approving a resolution plan, the CoC needs to uphold the principles of natural justice and prioritize balancing the interests of all stakeholders, including operational creditors. Otherwise, it will go for juridical scrutiny. Improving the valuation system is vital, as it can be compromised by intentional negligence, undervaluation of assets driven by malicious intent, and failures in diligence and duty of care in assessing fair market value and liquidation value. These aspects require attention to ensure the integrity of the valuation process. Since the code's inception, the judicial system has faced criticism for delays in CIRP proceedings. However, this can be due to insufficient infrastructure and a shortage of specialized judges, further contributing to delays in the process. The substantial workload burdening NCLT and NCLAT is another factor causing significant delays in CIRP proceedings. Non-cooperation by suspended management is a substantial concern in the CIRP under the IBC. Section 19(2)(b) grants the resolution professional the authority to access the corporate debtor's books, records and financial information. Failure to comply with this provision can result in legal consequences. The suspended management complies with Tribunal orders by providing substantial documentation. Yet, some promoters persistently withhold necessary documents, disregarding potential penalties outlined in the code. The prolonged timelines and delays in completing the CIRP under the IBC have become a significant issue. The CIRP has become lengthy, with a common occurrence of receiving hearing dates from the adjudicating authority. Delays are notable, especially at the admission stage, where 4 to 6 months can elapse without progress, contrary to the intended time-bound nature of the process. Litigation, significant adjournment, and interference from unscrupulous promoters are all contributing factors. This often results in CIRP processes extending for years instead of adhering to the intended timelines of 180, 270 or 330 days.

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