1. Reset The Code

Why in News?

- The Supreme Court judgment in the Essar Steel case has restored the primacy of the committee of creditors (CoC), settling the contentious issue of the distribution of funds between creditors.

- While the judgment solidifies one of the tenets of the IBC (Insolvency and Bankruptcy Code), does it pave the way for smoother functioning of the resolution process?

Insolvency and Bankruptcy Code:

- Insolvency and Bankruptcy Code, 2016 is considered as one of the biggest insolvency reforms in the economic history of India.

- This was enacted for reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of the value of assets of such persons.

Objectives of IBC:

- Consolidate and amend all existing insolvency laws in India.

- To simplify and expedite the Insolvency and Bankruptcy Proceedings in India.

- The code aims to resolve insolvencies in a strict time-bound manner - the evaluation and viability determination must be completed within 180 days.

- Moratorium period of 180 days (extendable up to 270 days) for the Company. For start-ups and small companies the resolution time period is 90 days which can be extended by 45 days.

- To get the necessary relief to the creditors and consequently increase the credit supply in the economy.

- To set up an Insolvency and Bankruptcy Board of India.

- Maximization of the value of assets of corporate persons.

The Insolvency and Bankruptcy Code Ecosystem

- **National Company Law Tribunal (NCLT)** – The adjudicating authority (AA), has jurisdiction over companies, other limited liability entities.

- **Debt Recovery Tribunal (DRT)** has jurisdiction over individuals and partnership firms other than Limited Liability Partnerships.

- The Insolvency and Bankruptcy Board of India (IBBI) – apex body for promoting transparency & governance in the administration of the IBC; will be involved in setting up

the infrastructure and accrediting IPs (Insolvency Professionals (IPs) & IUs (Information Utilities).

Factors that Promoted the resolving of the cases outside the IBC process:

1. Delays in the resolution of cases, and endless litigation have dampened enthusiasm for the process. 36 per cent of cases have crossed 270 days, while another 22 per cent have crossed 180 days. As a time-bound resolution process was one of the most appealing aspects of IBC, such delays creating little incentive for stakeholders to opt for this process.

2. The recovery rates have not have been along expected lines. A slowing economy, coupled with an over-leveraged corporate sector, has reduced appetite for assets stuck in the NCLT.

3. Lack of clear precedents has complicated matters. For investors, it was hardly possible to calculate expected returns on their investment with any degree of certainty.

4. Instances such as the enforcement directorate attaching property, as in the case of Bhushan Power and Steel, have further disincentivised buyers.

To Ensure Smoother Functioning of Codes – Way Forward:

1. The provisioning norms for bad loans should be made more stringent to ensure banks have strong incentives to take companies through this process and not postpone the decision, hoping to restructure the loan outside IBC.

2. Relaxing the 330-day deadline will further dampen enthusiasm. The idea of having a time-bound process was to put pressure on the CoC to ensure speedy resolution. Delays in either taking the company to NCLT or in the resolution process destroys enterprise value. This decision must be reviewed.

3. The government should establish the supremacy of IBC to ensure that assets are not allowed to be attached once they have been admitted. Under Section 53 of the law, amounts due to the central government rank below those of secured and unsecured creditors. This hierarchy needs to be respected.

4. There also needs to be clarity on the role of promoters. Allowing them to participate in liquidation but not in the resolution process would be inconsistent.