DELAY OF CORPORATE JUSTICE: NEED OF AN HOUR TO REVIEW INDIAN JUDICIAL SYSTEM

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Iustitiam morari iniustitia est

Where justice is denied, where poverty is enforced, where ignorance prevails and where any one class is made to feel that society is an organized conspiracy to oppress, rob and degrade them, neither persons nor property will be safe.

-Fredrick Douglass

ABSTRACT

Article highlights the current bad shape of corporate justice in India. Long standing researches regarding the same reveals that this system which had worked smoothly and satisfactorily for centuries has now failed to deliver justice expeditiously following a well-known saying tha "Justice delayed is justice denied."[1]

The government's efforts to make business and commerce easy have been widely acknowledged. The next task on the ease of doing business is addressing pendency, delays and backlogs in the appellate and judicial arenas. Such delays ultimately hamper the dispute resolution and contract enforcement, discouraging investment, stalling projects, hampering tax collections and also stressing tax payers and escalating legal costs. Coordinated action between government and the judiciary, a kind of horizontal cooperative separation to complement the cooperative federalism between the central and the state government, would address the law's delay and boost the economic activity. Hence, this paper will focus on the reasons of the delay in delivering justice by condemning lethargic practices on judiciary's part with special reference to statistics and facts as per newspapers and law commissions reports.

[1] Roger Hinterthuer *Justice Delayed Is Justice Denied* 1 (I Universe, 2015).

Introduction

One of the grey areas where our justice delivery system has failed to come up to the people's expectations is that, the judiciary has failed to deliver justice expeditiously. This delay in delivery of justice is in fact one of the greatest challenges before the judiciary. The problem of delays is not a new one but it is as old as the law itself. The problem has assumed such a gigantic proportion that unless it is solved speedily and effectively, it will in the near future crush completely the whole edifice of our judicial system.

Delay in context of justice denotes the time consumed in the disposal of case, in excess of the time within which a case can be reasonably expected to be decided by the court. An expected life span of a case is an inherent part of the system. No one expects a case to be decided overnight. However, difficulty arises when the actual time taken for disposal of the case far exceeds its expected life span and that is when we say there is delay in dispensation of justice. Delay in disposal of cases not only creates disillusionment amongst the litigants, but also undermines the very capability of the system to impart justice in an efficient and effective manner. Long delay also has the effect of defeating justice in quite a number of cases.

The huge back log in the courts has been the subject of number of Reports, debates in parliament and state legislatures, in Judicial conferences and the Media. Chief Justice Anand Observed:

"The consumers of justice want unpolluted, expeditious and inexpensive justice. In its absence, instead of taking recourse to law, he may be tempted to take law in his own hands. This is what the judicial system must guard against so that people do not take recourse to extra judicial methods to settle their own scores and seek redress of their grievances."[2]

India jumped thirty places to break into the top 100 for the first time in the world bank's ease of doing business report, 2018. The ranking reflect the government reform measures on wide range of indicators. India leaped 53 and 33 spots in the taxation and insolvency indices., respectively on the back of the administrative reforms in the taxation and passage of Insolvency and Bankruptcy Code, 2016. The importance of an effective, efficient and expeditious contract enforcement regime to economic growth and development cannot be overstated. A clear and certain legislative and executive regime backed by an efficient judiciary

[2] Vandana Ajay Kumar "Judicial Delays in India: Causes & Remedies "*JLPG* 4 ISSN 2224-3240 (2012).

that fairly and punctually protects the property rights, preserve sanctity of contracts and enforces the rights and liabilities of parties is a prerequisite for business and commerce."[3]

The topic is significant in current era because delay in the administration of justice is a subject of an utmost importance in determining the effective economic growth of a country. Government of India has taken a number of actions to expedite and improve the contract enforcement regime. For example, government scrapped over 100 redundant legislations; rationalized tribunals; amended arbitration and conciliation Act, 2015; passed the commercial courts, commercial division and commercial appellate division of high courts act, 2015; reduced inter government litigation etc., [4]

One of the reasons for rising pendency of economic cases at the high courts could simply be the generalized overloaded of cases. Further, economic and commercial cases are usually complex which require economic expertise in their handling and disposal and hence require more judicial time also the discretionary power of the courts, without any countervailing measures that either balance the scope of other jurisdictions or improve overall administration and efficiency.

Therefore, significance of the present article lie in the fact that the statistics so revealed in the surveys are shocking and the problem does not remain the trouble to the parties but it has become a spot in the reputation of the country. The research will help in understanding the causes and reasons of the delay of justice in corporate affairs. The corruption in the judicial system which is one of the reasons of such delay shall also be the focus of the research. At last, the research shall reveal the possible suggestions to improve the worsened judicial scenario in the performance of the justice.

History and evolution of commercial courts in India

The establishment of commercial courts in India is widely seen as a stepping stone to bring about reform in the civil justice system in India. As far back as in the year 2003, the Seventeenth Law Commission of India took up the issue of setting up Commercial Divisions in High Courts and submitted its recommendations[5] titled "Proposals for Constitution of Hi-tech Fast Track Commercial Divisions in High Courts". The Union Cabinet, in the year 2009, approved the

[3] Government of India *Economic Survey of India 2017-18* 131 (Oxford University Press, 2018).
[4] I*bid* at 134.
[5] Report 188th.

proposal for setting up Commercial Divisions in the High Courts and, as a result, the Commercial Division of High Courts Bill 2009 was introduced in the Parliament. This was passed by the Lok Sabha, and after certain amendments suggested by the Select Committee of the Rajya Sabha, and by the Cabinet, a revised Commercial Division of High Courts Bill, 2010 was introduced in the Rajya Sabha. However, the then Union Minister for Law and Justice sought more time from the Rajya Sabha for incorporating further changes to the Bill to address the concerns raised by many Members of Parliament. Thus, the Bill was referred to the Twentieth Law Commission of India for re-examining various provisions of the proposed Bill, with special emphasis on the scope and definition of 'commercial dispute'.[6]

Appreciating the importance of the matter, the Twentieth Law Commission decided to examine the various provisions of the Bill and after thoroughly examining the various issues contained therein, the Commission has now come out with its Two Hundred and Fifty Third Report titled "Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015".[7]

The Report, inter-alia, recommends the establishment of Commercial Courts, and Commercial Divisions and Commercial Appellate Divisions in the High Courts in order to ensure speedy disposal of high value commercial suits.

Breakdown of delays in disposal of civil suits in each High Court with original civil jurisdiction.

High Court	Total Number of Civil Suits Pending	Number of Civil Suits pending broken up on basis of length of pendency				% of Civil Suits pending for more than 2 years
		Less than Two years	Between two to five years	Between five to ten years	More than ten years.	

[6] Law Commission of India, 253rd Report on Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015 (January, 2015).
[7] *Ibid.*

Bombay	6081	1268	1268	1159	2386	79.14%
Calcutta	6932	787	800	1320	4025	88.6%
Delhi	12693	4707	4151	2849	1256	63.66%
Madras	6326	1536	1451	2196	1143	75.72%
Himachal Pradesh	354	75	105	75	99	78.82%
Total	32386	8373	7775	7599	8909	74.99%

Analysis of the above data shows that of the 32,386 pending civil suits, 16,508 suits, or 50.97%, have been pending disposal for more than five years. The problem seems especially acute in Calcutta High Court which, despite having reduced pendency of civil suits in ten years, still has a significantly large percentage of cases which have been pending for ten years or more.[8]

In its 188th Report, the Law Commission recommended that a time limit of two years be placed on the disposal of civil suits from the date of completion of service on the other side. Therefore, an assumption can be made that suits pending for less than two years are not part of the problem, although this would also depend on the type of case pending for less than two years. In any event, focussing our attention only on those suits that have been pending for more than two years, we find that nearly 75% of the suits have been pending for such time and can be classified as "delayed".

The Law Commission has, in its 245th Report on *Arrears and Backlog Creating Additional Judicial (Wo)manpower* also made a distinction between "arrears" and "delay". "Arrears" are a subset of "delay" for when the case has been delayed for unwarranted reasons.23 In the

[8] Law Commission of India, 253rd Report on Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015 (January, 2015).

present case, even if we assume that all suits delayed up to five years have largely been delayed for justified reasons (which may not be true), there are still a significant number of suits (more than 50%) that constitute "arrears" that seem to have been delayed beyond reasonable limits.[9]

Therefore, it would stand to reason that for efficient and effective disposal of civil suits, especially those relating to commercial disputes, any effort to create an exclusive commercial division can only succeed if the High Court's original pecuniary jurisdiction is restricted only to high value commercial disputes.

Delay in Corporate Justice

The importance of a stable, efficient and certain dispute resolution mechanism to the growth and development of trade and commerce is well established. Quick enforcement of contracts, easy recovery of monetary claims and award of just compensation for damages suffered are absolutely critical to encourage investment and economic activity, which necessarily involves the taking of financial and enforcement risks. A stable, certain and efficient dispute resolution mechanism is therefore essential to the economic development of any nation.

Where the legal institutions such as the Judiciary are not effective, an improvement in substantive law may make very little difference. Studying the transition countries of Eastern and South-Eastern Europe and the former Soviet Union, it was found that despite the substantial changes in the corporate and bankruptcy laws during the period from 1992 to 1998, there was remarkable improvement in financial markets only in those countries where the legal institutions became more effective.[10]

Famous examples which have rendered the Indian judiciary utterly lazy is 2G spectrum, Kingfisher Loan case, Jaypee Infratech and Amrapali Group, Aircel etc,.

One of the major reasons behind the sad state of affairs is that the number of Judges is highly disproportionate to the population. A human being, howsoever intelligent, has a limited capacity to work. So, do the judges. The population of our country is over 100 crores, yet the number of judges for the aforesaid population is only 17,615[11]. Thus, the number of judges per

[9] *Ibid.*
[10] Law Commission of India, 253rd Report on Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015 (January, 2015).
[11] Only .0013% of our population consists of Judges.

million of population is 10.5 judges per million[12]. Recently it has gone up to 13 Judges per million as against an estimated requirement of 50 judges per million of the population. In All India Judges Association's Case[13], the Supreme Court has expressed its desire that the number of Judges be increased in a phased manner in 5 years so as to raise the Judge-Population ratio to 50 per million. A comparative study of the number of judges working in other countries can tell us a lot about how far we are lagging behind.

"The state is also responsible for causing delay in the dispensation of justice. The government "contributes" to the problem of delay by its own lack of priority for matters relating to the administration of justice. This may happen in different ways, namely - delay in judicial appointments[14] lack of manpower needed for maintaining an efficient and a reasonable legal system and lack of adequate infrastructure facilities in the Court both for the bench and the bar[15].

Poor infrastructure in the courts and absence of computerized records: In today's age of technology, even the smallest office in the private sector is well equipped with computers and other electronic gadgets, which help them to raise their efficiency and update their records. But our Judiciary has not been provided with the technical assistance of faxes, dicto-phones and other such devices. Almost all the courts have heaps of rotten files in the basement. In District Courts one can see courts working without electricity. Thus, though we are living in the age of computers, yet our methodologies are outdated and urgently need a re-look.[16]

No fixed period for disposal: There is no time limit fixed either by any Act or Code within which the cases must be decided. Therefore, the judges, lawyers and even the litigants take it for granted that there is no urgency to finish the case. The cases drag on for years together.

Role of Indian judiciary

There are various cases for the speedy trial plea and the study of such is important for

[12] R.C. Lahoti "Envisioning Justice in the 21st Century" 13 (SCCJ, 2004).
[13] (2002) 4 SCC 247.
[14] CJI K.G. Bala Krishnan, as quoted in Hindustan times, 25 Sept, 2007 has said that India required 1539 more judges in H.C. and 1, 8479 in sub-ordinate courts to clear the back log of cases in one year.
[15] CJI K.G.: Balakrishnan in April, 2007, blamed the government for poor judge population ratio, making laws without judical impact assessment and not setting up courts to adjudicate cases arising out of central laws quoted in H.T, 25 Sept, 2007.
[16] Law Commission of India, 253rd Report on Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015 (January, 2015).

understanding the evolution of the speedy trials. Hence, following are the important judgements by the Indian judiciary to assist in ongoing revolution.

A.R. Antulay v R.S. Nayak[17]

The Constitution Bench in a leading case of Abdul Rehman Antulay v. R.S.Nayak, has

formulated certain propositions as guiding principles in this regard. They are as follows:

1. "The right to speedy trial is the right of the accused to be tried speedily as implicit in Article 21 of the Constitution of India spreading over through all stages from investigation, inquiry, trial, appeal, revision and retrial. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

2. 'Systemic delay' must be kept in view in dealing with an issue of alleged infringement of the right to speedy trial.

3. The court has to balance and weigh the several relevant factors- „balancing process"- and determine in each case whether the right to speedy trial has been denied in a given case.

4. Each and every delay does not necessarily prejudice the accused as some delays indeed work to his advantage and „delay is a known defence tactic". However, inordinate delay may be taken as presumptive proof of prejudice.

5. If the right to speedy trial is found by the court to have been infringed, the charges or the conviction, as the case may be quashed. However, in cases where quashing of proceedings would not be in the interest of justice, the court may make any other appropriate order as may be deemed just and equitable in the circumstances of the case, like-order to conclude the trial within a fixed time or reducing the sentence where the trial has concluded.

[17] AIR 1994 SC 268.

6. It is neither advisable nor practicable to fix any time limit for trial of offences. Any such rule is bound to be qualified one. It is primarily for the prosecution to justify and explain the delay."[18]

Ranjan Dwivedi v. CBI[19]

In Ranjan Dwivedi case, court reiterated the same view that right to speedy trial is a fundamental right. Court held that "A „reasonably" expeditious trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India."

Imtiyaz Ahmad v. State of U.P[20]

Hon'ble Supreme Court in the present matter directed Law Commission for creation of additional courts for ensuring expeditious disposal of cases and elimination of delay.

Therefore, the right to speedy trial has been recognized as a fundamental right by the Apex Court in its various above mentioned leading pronouncements. After examining the case laws on the point of speedy trial, now it is crystal clear that speedy trial is sine qua non for justice dispensation system.

State of Maharashtra v. Champa Lal[21]

Court held that "if the accused himself was responsible for delay, he could not take advantage of it. A delayed trial was not necessarily an unfair trial. If the accused had been prejudiced in conducting of his defence, it could be said that the accused had been denied the right and the conviction would certainly have to go."

Role of Judges: lack of punctuality, laxity and lack of control over case-files and court-proceedings, attending social and other functions during working hours contribute in no small measure in causing delays in the disposal of cases[22]. Some judges are very liberal in granting adjournments. Judges come to courts without reading case-files, therefore, the lawyers have to spend a lot of time just to explain the facts of the case and legal point(s) involved therein.

[18] *Ibid.*
[19] SCC 2012 8 495.
[20] AIR SC 2012 642.
[21] AIR 1981 SC 1675.
[22] CJI A.S. Anand: Indian Judiciary and Challenges of 21st century: The Indian Journal of Public Administration: July-Sept 1999 vol XLV No. 3, p 300.

Therefore, they argue at length and all this leads to wastage of precious 'Courts Time'. There is a great need for self-improvement by Judges.

Role of Lawyers: The role of lawyers is very important in justice delivery system. The commitment of these professionals can change the whole scenario. Unfortunately, they are also responsible for delay due to varied reasons. Lawyers are not precise; they indulge in lengthy oral arguments just to impress their clients. They are known to take adjournments on frivolous grounds. The reasons range from death of the distant relative to family celebrations. With every adjournment the process becomes costly for the court and for the litigants; but the Lawyers get paid for their time and appearance. More often than not, lawyers are busy in another court. They have taken up more cases than they can handle, hence, adjournments are frequently sought.

It is also true that lawyers do not prepare their cases. A better preparation of the brief is bound to increase the efficiency of the system. It is seen that lawyers often resort to strikes. The reasons could be any - it ranges from misbehavior with their colleague both inside court or outside the court to implementation of some enactment. The strike by lawyers against the decision of the government to enforce an amendment in the Civil Procedure Code is an example. This was very unfortunate because the main objective behind these amendments was to curtail delays in disposal of cases.

Recent development regarding the corporate justice in India

In order to tackle the situation resulted from the delay in corporate justice administration, Indian government introduced one of the major changes in the corporate insolvency in India. Following can be highlighted to understand the aims and objective of 2016 IBC, Code.

- **Enactment of Insolvency and Bankruptcy code of India, 2016**

Insolvency and bankruptcy code, 2016 was passed by Lok Sabha on may 05, 2016 by the Rajya Sabha on May 11, 2016 and assent of the president of India was obtained on May 28, 2016 and it is known as Insolvency and Bankruptcy Code, 2016 (IBC, 2016.[23]

The code creates a new institutional framework, consisting of regular insolvency professionals, information utilities and adjudicatory mechanisms, that will facilitate a formal and time bound

[23] Insolvency and Bankruptcy Code, 2016 (Act 1 of 2016).

insolvency resolution process and liquidation. Code also provide for fast track insolvency resolution process which shall take half of the time taken under the normal insolvency resolution procedure.[24]

Reasons which led to the passing of the present code was owing to the difficulty in the present arrangement relating to insolvency as the current scenario strengthens the rights for secured credit which has given rights to banks and some of the most important lenders in society are not banks. They are the dispersed mass of households and financial firms who buy corporate bonds. The lack of power in the hands of a bondholder has been one (though not the only) reason why the corporate bond market has not worked. This, in turn, has far reaching ramifications such as the difficulties of infrastructure financing.[25]

Preamble of the code, 2016 sets the following purpose:

"A Code to consolidate and amend the laws relating to 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, to promote entrepreneurship, availability of credit and balancing the interest of stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India and for other matters connected therewith."[26]

The preamble above mentioned states the very purpose of the code to bring a reform to the Insolvency and reorganization of the insolvent companies for the determination of the rights of the creditors and the debtors. To provide a fast track procedure for the realization of the maximum value of the assets, to strengthen the entrepreneurship in India and an assurance to the stakeholders of the security of their debts and hence the availability of the credit by balancing the interest.

The code shall have the applicability in relation to the Insolvency, Liquidation, voluntary liquidation, Bankruptcy as the case may be on the following:

[24] C.A Kamal Garg, Insolvency & bankruptcy Code Ready Reckoner p.no. 3 (Bharat Law House Pvt Ltd., New Delhi, 1st edition., 2018).
[25] The report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design, *available at:* http://ibbi.gov.in/BLRCReportVol1_04112015.pdf (last visited on May 1st, 2018).
[26] Insolvency and Bankruptcy Code, 2016 (Act 1 of 2016).

1. The companies incorporated under the provisions of the companies act, 2013 or any other previous companies act;
2. Limited liability Partnership incorporated under the provisions of the LLP (Limited liability Partnership) Act, 2008;
3. Other body corporate as specified by the central government;
4. Partnership firm;
5. Individual.[27]

- **Repeal and the amendment of certain laws on passing of IBC, 2016**

The corporate personalities in India were governed by the different statutes since the British Period. Earlier, the Insolvency of a company was a matter to be governed only for the companies in the princely towns of Madras, Kolkata and Bombay but thereafter with the evolution of the commercial world, globalization and the technology, various industries emerged which brought along various conflicts regarding the jurisdiction, powers of the court, rights of the creditors, debtor and other member etc., and thus Companies Act, 1956, provided a comprehensive provisions for the procedure to determine such above mentioned issues. After the continuous struggle by the parliament of India and of the committees formed time to time to entertain and tackle the corporate issues in India like Tiwari committee, Sachar Committee and BLRC committee etc., current Insolvency regime has been introduced in Insolvency & Bankruptcy Code, 2016.[28]

Code brought a drastic change in the treatment of the insolvent companies and provided a way faster procedure for the determination of the rights and liabilities of the creditor and the insolvent company. Not only this, the code repealed and essentially amended certain laws relating to the insolvency in India. Table below mentions the repealed and amended laws as follows:

[27] C.A Kamal Garg, Insolvency & bankruptcy Code Ready Reckoner p.no. 4 (Bharat Law House Pvt Ltd., New Delhi, 1st edition., 2018).
[28] Jyoti Singh & Vishnu Shriram *Insolvency and Bankruptcy Code, 2016: Concepts and Procedure* 44 (Bloomsbury, 2017).

Repealed	Amended
The provincial Insolvency Act, 1920	The recovery of Debt due to Banks and Financial Institution Act, 1993
The Presidency Towns Insolvency Act, 1909	The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
The Sick Industrial Companies (Special Provisions) Act, 1985	The Companies Act, 2013 (amended the provision relating to Voluntary winding up, liquidation of the Company, which now shall be dealt under IBC, 2016)
	Individual Bankruptcy and the Insolvency which was dealt with by the courts, now shall be dealt as per IBC, 2016 by Adjudicating Authority namely by Debt Recovery Tribunal (DRT) and Debt Recovery Tribunal (DRAT).

Judicial Approach to IBC, 2016

Companies act of 2013 established NCLT (National Company Law Tribunal) and NCLAT (National Company Law Appellate Tribunal), with effect from 1.06.2016. NCLT has been conferred with the adjudicatory powers under insolvency and bankruptcy Code, 2016 and also NCLAT is continues to enjoy the appellate powers under IBC, 2016.

By approaching the judicial decisions, I attempt to trace the development of the IBC by mentioning the critical issues which started from the 1st years of its operation. Followings are the judgements by Supreme Court of India and by NCLAT which throws a light on the development and the progress by IBC in governing the insolvency of companies.

Steel Konnect (India) Private Ltd. V Hero Fincorp Limited Company[29]

[29] (2017) Company Appeal (AT) (Insolvency) No. 51.

The case decided on the matter of the suspension of the powers of Board of Directors of the company after the appointment of the interim resolution professional under section 17 of the insolvency and Bankruptcy Code, 2016. Application was filed in the present case to initiate the Corporate Insolvency Resolution Process and the appeal against such was filed with the contentions that there was no post filing notice and record of default or any evidences as specified by the I&B, 2016.

Respondents contended that appellants do not have any locus to file the appeal as all the powers are suspended under section 17 1 (a) and (b) of the IB, 2016, after the appointment of the interim resolution professional. However, NCLAT rejected the contention and held that: "Interim resolution professional has not been vested with the powers to sue any person on behalf of the corporate debtors but such interim resolution professional may bring to the notice the adjudicating authority for appropriate order".

It was further held by the NCLAT that such corporate debtors or any aggrieved person can file an appeal under section 61 of the IB, 2016, because the appointment of the interim resolution under section 17 of IB suspends the 'powers' of the board of director(s) and not the suspension of the board of director(s). therefore, it was observed that though the order under section 7 and 8 of IB suspend the functions of Board of Directors, members and other directors of the company for the period of 180 days or 270 (extension of 90) days but they remain such for the purpose of Companies Act, 2013 under the records of the Registrar.

The plea was rejected by the NCLAT on the grounds that the opportunity of being heard was given to the appellants before passing the order under section 7 of the IB, 2016 and therefore no question to dismiss such order lies on the ground of non-fulfillment of natural justice principles.

Rubina Chadha v AMR Infrastructure Ltd[30]

In the present case, originally the petition was filed before Delhi High court under section 433 (e) of the Companies Act, 2013 which was transferred to the NCLT. However, before such authority it could not be proved that whether the parties are operational creditor or financial creditor and thus the petition was dismissed.

NCLAT observed that NCLT does not have power to decide under section 434 of the

[30] (2017) Company Appeal (AT) (Insolvency) No. 8.

companies Act, 2013, which says regarding the transfer of cases from the courts to the company law tribunal after the establishment of Company Law Tribunal with effect from 2016. Therefore, the matter was transferred the Ministry of Corporate Affairs, Government of India, New Delhi. Such claims would be entertained by Interim Resolution Professional under Insolvency and Bankruptcy Code, 2016.

"The then rule 5 has been substituted, and pursuant to which all petitions under clause € of section433 of the Companies Act, 1956, which were pending before High Court, and where petition has not been served as required under Rule 26 of the companies Court Rules, 1959 have been transferred to the tribunal having territorial jurisdiction, were to be considered as the petitions under Part-II of the present Code."

Nikhil Mehta & Sons v AMR Infrastructure Ltd[31]

In this case, Memorandum of understanding was reached with respondent AMR for the purchase of three units being a residential flat, a shop and office space in project Kessel-I Valley, one mall and one home which were developed by the corporate debtor. The money which was agreed upon by the parties to be against the consideration for the time value of money, given by the financial creditor was a debt under section 3(11) of the I&B Code, 2016.

Therefore, it was held that: "Language of the memorandum of understanding makes it clear that the appellants are the "investors" and has chosen "committed return plan" and the respondent agreed to pay monthly return plan committed return to the investors (appellants). Thus, the amount constitutes as the debt under section 3 (11) of the code, 2016."

Alpha & Omega Diagnostics (India) Ltd. v Asset Reconstruction Company of India Ltd.[32];

The question in the present case was whether the moratorium should take into recourse the personal assets and the properties of the promoters of the company debtors. NCLT held that "Insolvency resolution process will include only the assets of the corporate debtor and not any assets, movable or immovable property of the third party, like any promoter or director or other and so far as guarantor' is concerned, there was no expression of any opinion, as they fall within

[31] (2017) Company Appeal (AT) (Insolvency) No. 07.
[32] (2017) Company Appeal (AT) (Insol.) No. 116.

the meaning of corporate debtor individually', as distinct from the principal debtor who has taken a loan. In the appeal, has upheld the view of Ld. NCLT",

Prowess International Pvt. Ltd. v Parker Hannifin India Pvt. Ltd[33]

Corporate debtor settled the dispute with the operational creditor after knowing that the order has been passed by the adjudicating authority and other creditors applied pursuant to the notice of such order and filed an Interlocutory application for withdrawal of the petition. NCLT rejected the withdrawal of the application as such cannot be allowed once it is accepted.

Further, NCLAT holds that once the resolution plan is agreed upon and accepted by the court, it is not mandatory that the order is to be given after waiting for 180 days and such can be approved after recording its satisfaction that all the creditors have been paid or satisfied and any other creditor do not claim any amount in absence of default and required to close the insolvency resolution process.

Era infra engineering Ltd. v Prideco Commercial Projects[34]

If the application under section 9 is made and admitted without giving an opportunity of being heard to the debtor, it would not be maintainable as in contravention to the principles of natural justice and thus the merits of the application admitted would be set aside.

If such an application is reversed then all the actions taken by the insolvency resolution professional shall be declared as illegal.

Conclusion and Suggestions

Researcher hereby concludes that the delay of corporate justice in India is one of the major decay in the economic system of India. This is to be considered as the main hinderance in the development of the nation. There have been uncountable number of efforts on the part of the government to curtail the unnecessary procedures and the corruption in the judicial system which lead to the delay in the administration of justice in India. In the current decade, the task is to ease the doing of business by addressing the pendency, delays and backlogs in the appellate and judicial arenas.

[33] (2017) Company Appeal (AT) (Insol.) No. 89.
[34] (2017) Company Appeal (AT) (Insol.) No. 31.

Such mal and careless practice ultimately hinder the dispute resolution mechanism and the contract enforcement and discouraging investment, stalling projects at national and international level and hence effecting adversely the image of the Nation. Pendency, delays and injunctions are overburdening courts and severally impacting the progress of the cases through the different tiers of the appellate and judicial arenas. The government and courts need to work together for large scale reforms and incremental improvements to combat a problem that is exacting a large toll from the economy.

The coordination by substantially increasing the state expenditure on the judiciary mostly for modernisation. The government may consider inventizing expenditure on court modernisation and digitalisation. This needs to be supported with greater provision of resources for both tribunals and courts. Moreover, legislations should be accompanied by judicial capacity and public expenditure memorandums, which adequately lay out the necessary provisions required to address increasing judicial requirements , and ensure their adequate funding. Therefore, the hope is that the coordinated action between government and the judiciary would address the law's delay and boost the economic activity.

Suggestions: Researcher hereby would like to suggest the following suggestions in order to tackle the worsened condition of Indian judicial system"

1. One of the possible solution that can be spontaneously responsive is to expand the judicial capacity of lower courts and reducing the burden on the High Courts and Supreme Courts.
2. Discretionary power of the court should be used carefully and judges should avoid using it unnecessarily, to reclaim the envisaged constitutional and writ structure of the higher judiciary.
3. By downsizing or rather removing the original and commercial jurisdiction of the High Courts, and enabling the lower judiciary to deal with such cases.
4. By creating stage specific benches for the subject matter of commercial dispute in courts.
5. Reducing the injunctions ad stays and by imposition of stricter timelines within which cases with temporary injunctions may be decided. It would assist mostly in expensive infrastructure projects etc,.