Shot in the arm

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The Supreme Court's ruling eases the implementation of the IBC in knotty cases

- Supreme Court judgment upholding the validity of the Insolvency and Bankruptcy Code 2016 (IBC) in its "entirety" could have a major impact on the country's economic landscape.
- The fledgling IBC has been severely tested in the two years since its enactment, with the Centre being forced to amend a couple of its provisions in order to plug some loopholes that enabled defaulting borrowers to challenge the legislation.
- Any law of this nature that takes over businesses and assets from defaulters and empowers lenders to change the management is bound to face legal challenges.
- Borrowers were never going to take the IBC lying down, and that is exactly what happened; over the last two years, they have challenged various aspects of the law in tribunals and courts.
- In the event, the apex court's stamp of approval on the entire Code is a strong signal to borrowers and banks even as it brings a sense of relief to the Centre, which has been watching one of its better economic initiatives being stifled by vested interests.
- One of the major challenges mounted against the IBC was by operational creditors, who are owed money by the company in the normal course of operations for supply of goods and services.
- In the payment waterfall prescribed under Section 53 of the IBC in the event of liquidation of the company or its sale to another entity, their dues rank below those of financial creditors, workmen and employees.
- This was challenged by the operational creditors, who wanted equal treatment with financial creditors in the waterfall mechanism.
- With the Supreme Court now ruling that there are "intelligible differentia" between operational and financial creditors, an avenue that defaulters used to stymie proceedings has been closed.
- This constitutes a clear signal of its backing for the IBC which, despite

all the challenges that it has faced, has been successful in sending a message to recalcitrant defaulters that there can be no more business-as-usual when they default.

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