Syllabus subtopic: Government policies and interventions for development in various sectors and issues arising out of their design and implementation.

News: In a landmark judgment, the Supreme Court has upheld the supremacy of the Committee of Creditors comprising the financial creditors of the bankrupt firms over the distribution of claims.

Prelims focus: About the Insolvency and Bankruptcy Code 2016.

Mains focus: Insolvency process- issues, challenges and redressal.

About the verdict:

1. The Supreme Court quashed the earlier NCLAT order which brought parity between financial and operational creditors of Essar Steel in matters of distribution of proceeds.
2. The two set of creditors will be treated differently during the insolvency proceedings and taking over of a debt-ridden firm by another company. There is no principal of equality between secured and unsecured creditors.
3. The Court has done away with the 330-day mandatory deadline for the resolution of insolvency and bankruptcy cases after which liquidation will be invoked. The mandatory nature of the 330-day mark as a violation of Article 14 (right to equal treatment) of the Constitution and an “excessive and unreasonable restriction on the litigant’s right to carry on business under Article 19(1)(g) of the Constitution”.

What was the issue?
In its judgment in July this year, the NCLAT placed financial (secured and unsecured) and operational creditors on the same footing, setting aside the categorisation by the resolution plan.

Peeved with the NCLAT ruling, the financial creditors had approached the apex court saying that the NCLAT order exceeds the scope of the IBC.

They also argued that secured creditors have the first right over funds.

Way ahead:

The order will finally pave the way for resolution of Essar Steel, one of the oldest cases in the IBC process. It was one of the original Dirty Dozen referred by the RBI to NCLT for Corporate Insolvency Resolution Process under the IBC Code.

With the Supreme Court finally upholding CoC’s primacy over distribution of funds, a major area of concern has been addressed.
Basic info:

Purpose of enactment of the Insolvency and Bankruptcy Code 2016?

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 value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, as a regulatory body for Insolvency and Bankruptcy law.

Who is a creditor?

A Creditor means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder.

Financial Creditor V/s Operational Creditor

Financial creditor is any person to whom a financial debt is owned and includes a person to whom such debt has been legally assigned or transferred to.

Operational creditor is any person to whom operational debt is owned and includes a person to whom such debt has been legally assigned or transferred to. They are suppliers of good or services to any company or operational debtor.