

A Critical Analysis of The Role of the Insolvency and Bankruptcy Code, 2016 in Restructuring Failing Businesses in India

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ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC) marked a transformative shift in India's insolvency framework by consolidating fragmented laws into a unified, time-bound mechanism for insolvency resolution. Prior to the enactment of the Code, insolvency proceedings in India were governed by multiple legislations such as SICA, RDDBFI Act and SARFAESI Act, resulting in delays, jurisdictional conflicts and inefficient recovery processes. The IBC introduced a creditor-in-control model and established the Corporate Insolvency Resolution Process (CIRP) with the objective of maximizing the value of assets and promoting business restructuring instead of liquidation.

This research paper critically examines the effectiveness of the IBC in restructuring distressed businesses in India. It analyses the institutional framework under the Code, the role of the Committee of Creditors (CoC), the significance of judicial interpretation, and the practical challenges faced during implementation. The paper also evaluates landmark judgments including *Innoventive Industries Ltd. v. ICICI Bank*, *Swiss Ribbons Pvt. Ltd. v. Union of India* and *Essar Steel India Ltd. v. Satish Kumar Gupta* which have shaped insolvency jurisprudence in India.

The study further highlights concerns such as procedural delays, high liquidation rates, excessive haircuts accepted by creditors, infrastructural deficiencies in NCLTs, and limited participation of operational creditors. Comparative analysis with the insolvency frameworks of the United States and the United Kingdom demonstrates the strengths and weaknesses of the Indian model. The paper concludes that while the IBC has significantly improved India's insolvency ecosystem and promoted financial discipline, continuous reforms and stronger institutional capacity are necessary to ensure effective restructuring of failing businesses in the long run.

INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 represents one of the most significant economic reforms introduced in India in recent years. Before the enactment of the Code, India's insolvency regime consisted of multiple overlapping legislations including the Sick Industrial Companies Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI), and the SARFAESI Act, 2002. The existence of various statutes resulted in procedural complexities, delays, multiplicity of forums and deterioration in asset value.

The growing burden of non-performing assets (NPAs) and the inefficiency of debt recovery mechanisms highlighted the need for a comprehensive insolvency framework. To address these issues, the Bankruptcy

Law Reforms Committee (BLRC) recommended the creation of a unified insolvency law. Consequently, the Insolvency and Bankruptcy Code, 2016 was enacted to provide a time-bound process for insolvency resolution and maximize the value of distressed assets.

One of the major shifts introduced by the IBC was the transition from a “debtor-in-possession” model to a “creditor-in-control” model. Under the Corporate Insolvency Resolution Process (CIRP), the management of the corporate debtor is transferred to an Insolvency Resolution Professional (IRP), acting under the supervision of the Committee of Creditors (CoC). The primary objective of the Code is resolution and revival of distressed businesses rather than liquidation.

This research paper critically analyses the role of the IBC in restructuring failing businesses in India. It examines the effectiveness of CIRP, the powers of the CoC, the judicial interpretation of the Code and the practical challenges faced during implementation.

EVOLUTION OF INSOLVENCY LAW IN INDIA

India’s insolvency regime has evolved through several legislations enacted over different periods. Earlier laws such as the Provincial Insolvency Acts and the Indian Bankruptcy Act primarily focused on debt recovery rather than business revival. Later, the Sick Industrial Companies (Special Provisions) Act, 1985 aimed to detect industrial sickness and revive financially distressed companies through the Board for Industrial and Financial Reconstruction (BIFR). However, the absence of strict timelines and extensive litigation made the process ineffective.

The RDDBFI Act, 1993 established Debt Recovery Tribunals (DRTs) to expedite debt recovery proceedings, while the SARFAESI Act, 2002 empowered secured creditors to enforce security interests without court intervention. Despite these reforms, the insolvency framework remained fragmented and creditor recoveries continued to be inefficient.

Recognizing these shortcomings, the Government of India constituted the Bankruptcy Law Reforms Committee in 2014. The Committee recommended a consolidated and creditor-driven insolvency framework. This led to the enactment of the Insolvency and Bankruptcy Code, 2016, which unified insolvency laws and created specialized institutions such as the Insolvency and Bankruptcy Board of India (IBBI), National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT).

FRAMEWORK OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

The IBC provides a structured mechanism for insolvency resolution through the Corporate Insolvency Resolution Process (CIRP). CIRP may be initiated by financial creditors, operational creditors or the corporate debtor itself under Sections 7, 9 and 10 of the Code respectively. Once the application is admitted by the NCLT, a moratorium under Section 14 comes into force, preventing all legal proceedings and enforcement actions against the corporate debtor.

The management of the corporate debtor is then transferred to an Interim Resolution Professional (IRP), who takes control of the company and forms the Committee of Creditors. Resolution applicants are invited to submit resolution plans aimed at reviving the business through restructuring measures such as debt restructuring, management changes or fresh capital infusion.

The Code emphasizes time-bound resolution by prescribing a maximum period of 330 days for completion of CIRP. In cases where no resolution plan is approved, liquidation proceedings are initiated under Section 33 of the Code.

Section 29A of the Code plays a significant role by disqualifying defaulting promoters and related persons from regaining control of the corporate debtor through the resolution process. Although the provision strengthens creditor confidence, it has also faced criticism for being excessively rigid in certain cases.

CORPORATE INSOLVENCY RESOLUTION PROCESS AND BUSINESS RESTRUCTURING

The Corporate Insolvency Resolution Process forms the core of the IBC framework. Its primary objective is revival of the corporate debtor as a going concern rather than liquidation. During CIRP, the Resolution Professional manages the affairs of the company and ensures preservation of assets during the moratorium period.

Resolution plans submitted by prospective applicants may include restructuring of debts, conversion of debt into equity, changes in management, sale of non-core assets and infusion of additional funds. The flexibility of the resolution process allows innovative solutions for revival of distressed businesses.

However, practical implementation has exposed several challenges. Delays in admission of cases, excessive litigation and lack of institutional infrastructure have often resulted in destruction of asset value. In many cases, creditors have accepted substantial haircuts, raising concerns regarding effective value maximization. Despite these issues, the CIRP mechanism has significantly improved creditor recoveries compared to the pre-IBC regime.

ROLE OF THE COMMITTEE OF CREDITORS (CoC)

The Committee of Creditors is the principal decision-making body under the IBC. It consists mainly of financial creditors who evaluate and approve resolution plans. A resolution plan requires approval by at least 66% voting share of the CoC under Section 30(4) of the Code.

The concept of “commercial wisdom” of the CoC has been consistently upheld by the judiciary. Courts generally refrain from interfering in commercial decisions taken by the CoC unless there is procedural irregularity or violation of statutory provisions.

Despite its importance, the CoC framework has faced criticism for excluding operational creditors from voting rights. Questions have also arisen regarding large haircuts accepted by financial creditors and delays caused due to indecisiveness within the CoC.

Nevertheless, the CoC has played a crucial role in ensuring creditor participation and introducing financial discipline into India’s insolvency ecosystem.

JUDICIAL INTERPRETATION OF THE IBC

Judicial interpretation has been instrumental in shaping the functioning of the IBC. In *Innoventive Industries Ltd. v. ICICI Bank*, the Supreme Court clarified that the adjudicating authority only needs to determine the existence of default while admitting an insolvency application.

In *Swiss Ribbons Pvt. Ltd. v. Union of India*, the Supreme Court upheld the constitutional validity of the Code and justified the distinction between financial and operational creditors. The Court emphasized that financial creditors are better equipped to assess the viability of the corporate debtor.

The landmark decision in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* strengthened the principle of the commercial wisdom of the CoC and limited judicial interference in business decisions taken during CIRP.

Similarly, *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta* clarified the scope of Section 29A and ensured that defaulting promoters could not regain control of distressed companies through resolution pla

ns.

These judgments have contributed significantly to the development of a robust insolvency jurisprudence in India.

CRITICAL ANALYSIS OF THE IBC FRAMEWORK

Although the IBC has transformed India's insolvency framework, several challenges continue to hinder its effectiveness.

1. **Delays in CIRP:** Despite statutory timelines, many cases exceed the prescribed 330-day period due to litigation, procedural complexities and overburdened tribunals. Delays lead to deterioration in asset value and reduce the chances of successful restructuring.
2. **High Liquidation Rates:** A large number of companies undergoing CIRP ultimately enter liquidation, indicating that effective restructuring is not always achieved. This raises concerns regarding investor confidence and preservation of economic value.
3. **Large Haircuts:** Creditors have accepted substantial haircuts in several insolvency cases, sometimes exceeding 90%. Although commercial factors may justify such decisions, they raise questions about the efficiency of the resolution process.
4. **Infrastructure Deficiencies:** NCLTs suffer from shortage of benches, inadequate staffing and infrastructural limitations. These issues significantly delay insolvency proceedings.
5. **Treatment of Operational Creditors:** Operational creditors have limited participation in decision-making despite having substantial claims. The unequal treatment of stakeholders remains a debated issue under the IBC framework.

COMPARATIVE ANALYSIS WITH US AND UK INSOLVENCY REGIMES

The United States follows a "debtor-in-possession" model under Chapter 11 of the U.S. Bankruptcy Code, allowing existing management to continue operations during restructuring. In contrast, the IBC adopts a "creditor-in-control" model.

The UK insolvency regime provides mechanisms such as administration and Company Voluntary Arrangements (CVAs), offering greater flexibility and stakeholder participation. Compared to these systems, the IBC focuses heavily on creditor control and strict timelines.

While the Indian framework has improved significantly, incorporating international best practices relating to flexibility, stakeholder participation and institutional efficiency may strengthen the effectiveness of the IBC.

FINDINGS AND RECOMMENDATIONS

The study reveals that the IBC has substantially improved India's insolvency environment by introducing time-bound resolution, enhancing creditor confidence and promoting financial discipline. Recovery rates have improved significantly compared to the pre-IBC regime.

However, the following reforms are necessary:

1. Strengthening NCLT infrastructure and increasing the number of benches.
2. Promoting alternative mechanisms such as pre-packaged insolvency and out-of-court settlements.
3. Ensuring greater participation of operational creditors.
4. Introducing flexibility in rigid provisions such as Section 29A.
5. Continuous review and amendment of the Code to address evolving challenges.

CONCLUSION

The Insolvency and Bankruptcy Code, 2016 has fundamentally transformed India's insolvency framework by consolidating fragmented laws and introducing a creditor-driven, time-bound resolution mechanism. The Code has strengthened creditor rights, improved recovery rates and enhanced financial discipline among corporate borrowers. Judicial interpretation has further clarified ambiguities and reinforced the objectives of the legislation.

Despite its achievements, challenges such as delays, high liquidation rates, infrastructural deficiencies and concerns regarding stakeholder equality continue to affect the effectiveness of the insolvency process. The IBC should therefore be viewed as an evolving framework requiring continuous reforms and stronger institutional support.

Overall, the Code represents a major step towards improving India's business environment and ensuring efficient restructuring of failing businesses. With appropriate reforms and effective implementation, the IBC has the potential to become a globally competitive insolvency framework.

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