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With this thought, we hereby present to you

OPTIMISING INSOLVENCY RESOLUTION: A COMPREHENSIVE REVIEW OF THE IBC'S IMPLEMENTATION AND JUDICIAL IMPACT

AUTHORED BY - HARSHVARDHAN YADAV & AVANTI PANDE

ABSTRACT

The Insolvency and Bankruptcy Code (IBC) 2016 was enacted to streamline and expedite the resolution process of insolvency cases in India, aiming to improve the recovery rates and minimise the time taken for resolving distressed assets. At its core, the IBC establishes a systematic framework for resolving insolvency, with the goal of optimising asset value, encouraging entrepreneurship, and ensuring a fair balance of interests among all parties involved. This research paper examines the effectiveness of the resolution process before and after the implementation of the IBC. The primary objectives are to analyse the changes in recovery rates, timelines, and overall success of resolution processes, and to identify the challenges faced by various stakeholders, including creditors, debtors, and resolution professionals, in navigating the IBC framework. It also seeks to evaluate the supportive role of judicial trends through landmark judgments, address persistent challenges faced by courts, such as significant case backlogs and the insufficient number of judges, and review various studies to gain a comprehensive understanding of these ongoing issues. The paper concludes by suggesting specific solutions to ease the burden on the judicial system, highlighting the comprehensive framework and dynamic evolution of the IBC. This research draws on primary sources such as IBBI reports, NCLT case records, and Supreme Court judgments, alongside academic journals and legal periodicals. The primary outcome of this study is the suggestion of a new model designed to enhance the overall efficiency and effectiveness of the IBC. This model, along with a detailed discussion of its components, will be thoroughly examined in the paper. In conclusion, this study offers valuable insights into the impact of the IBC on the Indian insolvency landscape through a thorough review of the pre- and post-IBC period.

INTRODUCTION

The Economic heartbeat of any nation depends on the steady pulse of its businesses, both big and small. Yet, whenever financial storms arise, these big or small enterprises often find themselves on the brink, struggling to stay afloat. The fate of these companies doesn't just concern their owners; it resonates through employees, creditors, and the broader economy. The Government of India introduced the Insolvency and Bankruptcy Code (hereinafter as IBC, 2016)¹ as a beacon of hope, offering a lifeline not just to the distressed companies but to the entire financial ecosystem they support. When a person or business is insolvent or bankrupt, it means they cannot pay their debts on time and their assets are insufficient to meet their financial obligations. Enactment of IBC marked a turning point in India's economic landscape. Before the IBC, businesses facing financial trouble had to navigate a maze of outdated and fragmented insolvency laws. The introduction of the IBC changed this by bringing all these laws under one unified framework, making it simpler and more efficient to address insolvency issues across the country. The Code has made a significant impact on both economic and non-economic fronts.² Since its implementation, India's global economic standing has seen a remarkable boost. The code has played a crucial role in attracting more foreign direct investment (FDI), increasing mergers and acquisitions (M&A) deals³, and improving India's Ease of Doing Business ranking.

This single piece of legislation has since become the backbone of India's approach to dealing with struggling businesses, offering a clearer path to resolution and recovery.

This paper delves into the effectiveness of the resolution process⁴, examining how it has transformed the insolvency landscape, its successes, the challenges, and the way forward.

KEYWORDS

Insolvency, Bankruptcy, IBC 2016, Resolution Process, Legal Analysis, Pre-IBC, Post-IBC, CIRP.

¹Insolvency and Bankruptcy Board of India. Available at: <https://ibbi.gov.in/en/legal-framework/act> (Accessed: 30 August 2024).

² Anant, S. and Mishra, A. (2019) A Study Of Insolvency And Bankruptcy Code And Its Impact On Macro Environment Of India, International Journal of Economics Development Research (IJEDR).

³ Khan, T.A. Impact of IBC on credit networks and firm performance, Ies.gov.in. Available at: <https://www.ies.gov.in/pdfs/Paper-on-IBC-Final.pdf>

⁴ Indian economy growth rate, GDP & economic structure insights: IBEF India Brand Equity Foundation. Available at: <https://www.ibef.org/economy/indian-economy-overview>.

RESEARCH OBJECTIVES

The study has been conducted with the aim of contributing to the following objectives:

1. To study the effectiveness of the resolution process (Pre IBC & Post IBC).
2. To identify the challenges faced in the resolution process.
3. Legal analysis of the IBC.

RESEARCH METHODOLOGIES

This research paper analyses the effectiveness of the Insolvency and Bankruptcy Code (IBC) 2016, with a specific focus on the resolution process, recovery rates, and stakeholder satisfaction before and after its implementation.

1. The comparative analysis evaluates the differences between the Pre-IBC and Post-IBC periods. Our study is structured around key metrics such as resolution timelines, recovery rates, and stakeholder satisfaction.
2. Comparing these metrics before and after the implementation of the IBC, our study assesses the impact of the Code on the insolvency landscape in India.

REVIEW OF LITERATURE

Overview of Insolvency and Bankruptcy Code, (IBC) 2016

Imagine a bustling marketplace where traders and businesses thrive, their stalls filled with goods, ideas, and services. Every corner is alive with the hum of transactions, the promise of profits, and the energy of new ventures. But beneath the surface of this vibrant market lies a stark reality: some businesses struggle to keep up. They are weighed down by unpaid loans, diminishing revenues, and creditors knocking at their doors. These struggling enterprises are like old, sinking ships in a sea of opportunity—unable to sail forward or find a way out.

For many years before the enactment of the IBC, India's economy grappled with similar challenges, with numerous companies struggling under unmanageable debt due to the absence of an effective framework. These companies were trapped in a maze of outdated laws and prolonged court proceedings, hampering their ability to restructure or wind down operations efficiently. Prior to the IBC, various laws addressed insolvency, including the Presidency Towns Insolvency Act of 1909⁵, the Provincial Insolvency Act of 1920, and the Sick Industrial

⁵ Abhiram et al. , On the Effectiveness of Insolvency and Bankruptcy Code, 2016: Empirical Evidence From India, 2 Sceindo 20 , 21-22 (2022)

Companies Act of 1985 (SICA)⁶, alongside amendments to other laws such as the Companies Act of 2013, the Recovery of Debt Due to Banks and Financial Institutions Act of 1993, and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002⁷. However, these laws were fragmented, often conflicting, and marked by lengthy procedures, leading to delayed resolutions, low recovery rates, and diminished confidence among creditors and investors, highlighting the need for a streamlined -framework⁸.

The IBC was enacted in India to unify insolvency laws and ensure timely proceedings.⁹ The concept of insolvency dates back to ancient times, though formal laws were introduced during British colonial rule. Insolvency principles were present in India's own historical texts, with the earliest references found in the Dharmashastras¹⁰, which emphasised that failure to repay debts resulted in a loss of reputation—a severe consequence in those times. The Dharmashastras, a collection of Smriti texts written by ancient sages to guide ethical and legal conduct in Hindu society, state that if an individual dies without repaying their debts, they will be reborn and must serve the creditor as a slave until the debt is fully repaid¹¹. This cycle continues until the debt is discharged, preventing the debtor from achieving salvation. The Dharmashastras also introduced the concepts of Kusidin (creditors) and Vyavaharik (officials managing disputes), which parallel modern concepts of creditors and resolution professionals under the IBC. Similarly, Kautilya's Arthashastra¹² addressed insolvency, proposing that debtors repay through labour and suggesting a debt relief fund, an early precursor to what we now call interim finance under the IBC.

During the mediaeval period, insolvency was a prevalent issue, especially in mercantile

⁶ Ankoosh Mehta , Repeal of Sick Industrial Companies (Special Provisions) Act, 1985, Cyril Amarchand blogs (Feb 23 , 2017, 10:26 AM) , <https://corporate.cyrilamarchandblogs.com/2017/02/repeal-sick-industrial-companies-special-provisions-act-1985/>.

⁷ Hritika Sharma , Evolution of the Insolvency and Bankruptcy Laws in India , IBC laws, [evolution-of-insolvency-and-bankruptcy.pdf \(ibclaw.in\)](https://www.ibclaw.in/evolution-of-insolvency-and-bankruptcy.pdf)

⁸ Abhiram et al. , On the Effectiveness of Insolvency and Bankruptcy Code, 2016: Empirical Evidence From India, 2 *Sceindo* 20 , 21-22 (2022)

⁹ Insolvency and bankruptcy - law & practise, The Institute of Company Secretaries of India (ICSI). Available at :https://www.icsi.edu/media/webmodules/Academics/Insolvency_and%20Bankruptcy_Law_Practice1.pdf

¹⁰ Sharma, R., *Insolvency in India during Ancient Times*. Available at: <https://www.iiipicai.in/wp-content/uploads/2024/02/34-38-Article.pdf> (Accessed: 04 September 2024).

¹¹ Sharma, R., *Insolvency in India during Ancient Times*. Available at: <https://www.iiipicai.in/wp-content/uploads/2024/02/34-38-Article.pdf> (Accessed: 04 September 2024).

¹² R Shamasastri, *Kautilya's Arthashastra* (Mysore Printing and Publishing House, Mysore , Karnataka, India, 1960).

communities. Hundis, or Bills of Exchange, were used as instruments of credit and payment¹³. In case of default, creditors could take legal action against debtors, much like modern credit enforcement methods.

The current insolvency framework has evolved significantly with the introduction of comprehensive laws and mechanisms. The Indian Insolvency Act of 1848 was the first legislation addressing insolvency during British rule, initially applicable to the presidency towns of Bombay, Calcutta, and Madras. It primarily focused on traders and individuals unable to pay their debts. The act remained in effect until replaced by the Presidency Towns Insolvency Act of 1909, which continued to focus on individual insolvency and was limited to these towns, leaving corporate insolvency unaddressed. Additionally, the first insolvency court was established in these presidency towns under legislation enacted in 1828.

Before 1907, insolvency laws did not cover non-presidency areas of India. To address this, the Provincial Insolvency Act was introduced in 1907 and replaced by the 1920 Act, governing insolvency in non-presidency regions until the Insolvency and Bankruptcy Code (IBC) repealed them. The Indian Constitution placed bankruptcy and insolvency under the Concurrent List and company matters under the Union List, leading to the enactment of the Companies Act of 1956, which governed corporate insolvency until 1985¹⁴.

In the early post-independence era, the government focused on industrial growth by supporting manufacturing sectors through Development Finance Institutions (DFIs)¹⁵, which controlled many companies, leading to inefficient capital allocation. This prompted the enactment of the Sick Industrial Companies Act (SICA)¹⁶ in 1985, which aimed to identify and revive distressed industrial companies. SICA established the Board of Industrial and Financial Reconstruction (BIFR) and its Appellate Authority, but its scope was limited to sick industrial companies. In 1993, the Recovery of Debts Due to Banks and Financial Institutions Act was enacted to enhance debt recovery but proved inadequate. This was followed by the Securitization and

¹³ Nirmal Kashyap, Hundi System (Bill of Exchange) in Amber During the Seventeenth Century, IX SHSS 147, 147-148 (2002)

¹⁴ Hritika Sharma, Evolution of the Insolvency and Bankruptcy Laws in India, IBC laws, [evolution-of-insolvency-and-bankruptcy.pdf \(ibclaw.in\)](https://www.ibclaw.in/evolution-of-insolvency-and-bankruptcy.pdf)

¹⁵ Anjali Krishna, A historical evaluation of Insolvency and Bankruptcy laws in India, Law Bhoomi (Sep 4, 2024, 10:28 AM), [A historical evaluation of Insolvency and Bankruptcy laws in India \(lawbhoomi.com\)](https://www.lawbhoomi.com/a-historical-evaluation-of-insolvency-and-bankruptcy-laws-in-india/)

¹⁶ Ankoosh Mehta, Repeal of Sick Industrial Companies (Special Provisions) Act, 1985, Cyril Amarchand blogs (Feb 23, 2017, 10:26 AM), <https://corporate.cyrilamarchandblogs.com/2017/02/repeal-sick-industrial-companies-special-provisions-act-1985/>.

Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002¹⁷, which also failed to effectively address financial distress in companies. In response, the J.J. Irani Committee was formed in 2005 to propose modern reforms for company law, focusing on improved restructuring and liquidation processes. In 2014, the Ministry of Finance set up the Bankruptcy Law Reforms Committee (BLRC)¹⁸, chaired by Dr. T.K. Viswanathan, to push for comprehensive reforms. This led to the Insolvency and Bankruptcy Code (IBC) 2016, which introduced key changes, including the creation of an insolvency regulator, adjudicating authorities (DRTs for individuals and NCLT for companies), information utilities for financial data management, and updated insolvency procedures for companies and individuals. The Bill also allowed the Central Government to temporarily exercise the powers of the regulator until its formal establishment.

Institutional Mechanism for Implementation of IBC

The institutions established under the IBC are crucial components that ensure effective implementation and regulatory oversight necessary to achieve the Code's objectives¹⁹. The Insolvency and Bankruptcy Board of India (IBBI), formed on October 1, 2016, plays a pivotal role in overseeing the insolvency and bankruptcy processes. Section 196²⁰ of the Code outlines the powers and functions of the IBBI, including:

- Registration and monitoring of insolvency professional agencies.
- Establishment and renewal of information utilities to meet evolving needs.
- Ensuring prompt resolution of insolvency cases and maximising creditor recovery.
- Conducting regular audits of debtor assets and creditor claims²¹.

The IBBI regulates insolvency professionals, agencies, and information utilities. Insolvency professional agencies, as the first tier of regulation, develop and enforce ethical codes of conduct for insolvency professionals, who manage the insolvency process by liquidating debtor assets, managing those assets, and providing creditors with essential information for decision-making²².

¹⁷ Abhiram et al. , On the Effectiveness of Insolvency and Bankruptcy Code, 2016: Empirical Evidence From India, 2 *Sceindo* 20 , 22(2022)

¹⁸ Anjali Krishna , A historical evaluation of Insolvency and Bankruptcy laws in India, Law Bhoomi (Sep 4 , 2024 , 10:28 AM) , [A historical evaluation of Insolvency and Bankruptcy laws in India \(lawbhoomi.com\)](https://lawbhoomi.com)

¹⁹ G. Sriram, *The Insolvency and Bankruptcy Code, 2016*, 46 *J. Corp. Pros. (ICSI)* 9 (2016).

²⁰ The Insolvency and Bankruptcy Code, 2016, § 196.

²¹ Mayashree Acharya, Insolvency and Bankruptcy Board of India, ClearTax (23 Aug, 2024, 8:24 PM), <https://cleartax.in/s/insolvency-bankruptcy-board-india>

²² Mayashree Acharya, Insolvency and Bankruptcy Board of India, ClearTax (23 Aug, 2024, 8:24 PM), <https://cleartax.in/s/insolvency-bankruptcy-board-india>

The Code also designates specific adjudicating authorities: the National Company Law Tribunal (NCLT) for corporate insolvency cases, and the Debt Recovery Tribunal (DRT) for individual and partnership firm cases. Appeals from NCLT²³ decisions are heard by the National Company Law Appellate Tribunal (NCLAT) and can be further appealed to the Supreme Court. Similarly, appeals from DRT orders go to the Debt Recovery Appellate Tribunal (DRAT) and ultimately to the Supreme Court.

Information Utilities (IUs) are entities registered with the IBBI under Section 210 of the IBC. They serve as repositories for financial information, handling the receipt, authentication, maintenance, and provision of financial data related to debtors. This role ensures that accurate and reliable financial information is readily available, facilitating an efficient and timely insolvency resolution process for all stakeholders²⁴.

Handling of Insolvency under the IBC

While multiple insolvency laws existed before the IBC, they primarily focused on restructuring rather than the revival of companies, a key change brought about by the Corporate Insolvency Resolution Process (CIRP) under the IBC. CIRP is triggered by a default in payment, where creditors or the debtor can initiate the process by applying to the NCLT. Upon application acceptance, a moratorium²⁵ is declared, halting all judicial proceedings, asset transfers, and contract terminations, while ensuring the continuation of essential services.

An Interim Resolution Professional (IRP) is appointed, followed by a public announcement to collect claims from creditors, which forms the basis for creating a Committee of Creditors (CoC). The CoC, with a 66% majority²⁶, decides whether to retain or replace the IRP. A Resolution Professional (RP) then prepares an information memorandum to guide potential resolution applicants, whose plans are assessed by the CoC. The CoC may approve a plan with a 66% vote, which is then reviewed by the NCLT for legal compliance. The CIRP must conclude within 180 days; if not, the company proceeds to liquidation, which can involve

²³ Gunturu, Krishna, V. and Abidi (2023) *A study on impact of IBC on Indian Stock Market*, Munich Personal RePEc Archive. Available at: <https://mpra.ub.uni-muenchen.de/>.

²⁴ Dr. Binoy J. Kattadiyil & Nitika Manchanda, INSOLVENCY PROFESSIONAL AGENCIES: FRONT-LINE REGULATORS UNDER IBC, 9 IJMER 1, 2-3 (2020)

²⁵ M Govindarajan, Exceptions to Moratorium Under Section 14(1) of the Insolvency and Bankruptcy Code, 2016, IIPICAI (24 Aug , 2024 , 11:26 AM) <https://www.iipicai.in/wp-content/uploads/2024/02/24-27-Article.pdf>

²⁶ The Insolvency and Bankruptcy Code, 2016, § 22(2).

various methods like going concern or asset sales.²⁷

In liquidation, the liquidator consolidates claims, manages the debtor's assets, and reports on dissolution. The liquidator must also create a marketing strategy, including public notices, to attract bidders. Successful bids lead to asset handover and distribution of sale proceeds to creditors. Following liquidation, an application for the debtor's dissolution is made to the adjudicating authority²⁸. The IBC also provides fast-track processes²⁹ and prepackaged insolvency resolution³⁰ for micro, small, and medium enterprises, as well as the insolvency of individuals and partnership firms under Part III of the Code.

Effectiveness of the Resolution Process (Pre IBC)

Even before the Insolvency and Bankruptcy Code (IBC) was introduced, India had a patchwork of different laws that dealt with insolvency and bankruptcy. These laws were often confusing and didn't work well together, leading to slow and inefficient processes for resolving financial problems. The legal framework governing insolvency was spread across multiple laws, including the Sick Industrial Companies Act (SICA),³¹ the Companies Act, the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act. The Sick Industrial Companies Act (SICA) of 1985 was established to rehabilitate companies identified as sick or potentially sick. The goal was to address industrial sickness by reviving viable companies and liquidating unviable ones through the Board for Industrial and Financial Reconstruction (BIFR). SICA proved ineffective in rapidly resolving viable companies and often delayed the liquidation of unviable ones. Additionally, it lacked mechanisms to address individual financial distress. To expedite debt recovery, the Recovery of Debts Due to Banks and Financial Institutions Act was introduced in 1993. This Act established Debt Recovery Tribunals (DRTs) to handle cases related to bank and financial institution dues. However, this

²⁷ Mayashree Acharya, Conducting Corporate Insolvency Resolution Process, ClearTax, (30 Aug , 2024, 9:36 AM), <https://cleartax.in/s/conducting-corporate-insolvency-resolution-process>

²⁸The Insolvency and Bankruptcy Code, 2016, § 35.

²⁹ The Insolvency and Bankruptcy Code, 2016, § 56.

³⁰ Hardeep Sachdeva & Swati Sharma, Pre-Packaged Insolvency Resolution Process – An overview of the mechanism, AZB partners (2 Sep 2024, 3:46 PM <https://www.azbpartners.com/bank/pre-packaged-insolvency-resolution-process-an-overview-of-the-mechanism/>)

³¹ Abhirami, A. and T, R. (2022) *On the Effectiveness of Insolvency and Bankruptcy Code, 2016: Empirical Evidence From India*, Sciendo. Available at: <https://intapi.sciendo.com/pdf/10.2478/law-2022-0003#:~:text=Effectiveness%20of%20the%20IBC%202016%3A%20Empirical%20Analysis&text=Studies%20indicate%20that%20effective%20insolvency,for%20businesses%2C%20especially%20small%20enterprises.>

did not resolve the issue completely. The Government further enacted the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) in 2002. This Act aimed to facilitate debt recovery for secured loans by enforcing security interests and managing or selling assets provided as security. It also offered asset reconstruction options. Nevertheless, SARFAESI was still insufficient for companies that could not be resolved through asset reconstruction or reorganisation. The only recourse in such cases was liquidation, managed under the Companies Act.

For individuals and firms, insolvency and bankruptcy processes were governed by the Presidency Towns Insolvency Act of 1909 and the Provincial Insolvency Act of 1920. These frameworks also suffered from ineffective resolution mechanisms and delays in the legal process for asset sales, mirroring the issues faced by companies. As a result, businesses and individuals often faced long delays and difficulties in recovering their debts.

Effectiveness of the Resolution Process (Post IBC)

The enactment of the Insolvency and Bankruptcy Code (IBC) has significantly altered the landscape of insolvency laws in India by unifying and consolidating various statutes governing corporate and individual insolvency into a single comprehensive framework³². One of the key provisions under the IBC is the moratorium, as outlined in Section 14, which imposes a temporary halt on all legal proceedings against the corporate debtor once the Corporate Insolvency Resolution Process (CIRP)³³ is initiated. This ensures that no suits, judgments, or decrees can be executed against the debtor during this period. Additionally, Section 63 of the IBC bars civil courts from interfering in matters within the jurisdiction of the National Company Law Tribunal (NCLT). During CIRP, existing insolvency proceedings³⁴ lose relevance, and if a resolution plan is approved, it overrides previous insolvency actions. In cases where no resolution plan is accepted, the company proceeds to liquidation. Under Section 52, creditors can choose to pursue individual liquidation or participate in collective

³² C.D.B.J. Kattadiyil & B.A. Islamov, *Analysis of Outcomes of IBC on Managing the Economic Development of India*, 12 Int'l J. Mgmt. 23 (2021).

³³ Mohan, M.P.R. and Gopalakrishnan, B. (2023) *Report of study on effectiveness of the Resolution Process, Insolvency and Bankruptcy Board of India*. Available at: <https://ibbi.gov.in/uploads/whatsnew/59f737b213b4700cc16428aefd62869a.pdf>.

³⁴ Joshi, A. and Gupta, P. (2024) *Dealing with insolvency: IBC's impact and role in the Resolution Process*, *Power Line Magazine*. Available at: <https://powerline.net.in/2024/03/04/dealing-with-insolvency-ibcs-impact-and-role-in-the-resolution-process/>

proceedings, with the priority of payment governed by the "waterfall mechanism"³⁵ in Section 53.

One of the key impacts of the Insolvency and Bankruptcy Code (IBC)³⁶ In India there has been an improvement in the country's Ease of Doing Business (EDB) ranking, moving from 130th in 2017 to 77th in 2019. The World Bank's Doing Business Report³⁷ evaluates the ease of resolving insolvency by examining factors like time, cost, and outcomes of insolvency proceedings, as well as the effectiveness of the legal framework. India's ranking in resolving insolvency improved significantly from 136th in 2017 to 103rd in 2018, though it dropped to 108th in 2019.

The Insolvency and Bankruptcy Code (IBC) has significantly reshaped the dynamics between creditors, debtors, and promoters by empowering creditors and increasing accountability among debtors and promoters. It has also instilled greater financial and cash discipline, as companies are now compelled to meet their payment obligations to avoid triggering insolvency proceedings. The Code has enhanced corporate governance standards by holding management accountable, with failures potentially leading to their replacement during the insolvency process³⁸. It strengthens the position of operational creditors such as employees, vendors, and suppliers by ensuring timely payment of dues and granting them the option to initiate insolvency proceedings if their dues are unmet. Additionally, the IBC promotes prompt payment of dues, preventing assets from becoming non-performing and thus averting insolvency intervention. It also facilitates the settlement of dues on existing non-performing assets (NPAs), allowing for their reclassification as standard assets and preventing IBC initiation. The Code has opened new avenues for professionals, including Chartered Accountants, Company Secretaries, Cost Accountants, and lawyers, to engage as Insolvency Professionals and in other roles such as valuers, process advisors, and turnaround specialists³⁹.

³⁵ Harshita Gupta, Waterfall Mechanism: Basic structure of the Insolvency and Bankruptcy Code, 2016 (4 Sep, 2024 1:25 PM), [ibc laws - waterfall mechanism: basic structure of the insolvency and bankruptcy code, 2016 - by harshit gupta](#)

³⁶ Anant, S. and Mishra, A. (2019) A Study of Insolvency and bankruptcy code and its impact on the macro environment of India, IJEDR. Available at: https://www.researchgate.net/publication/358476462_A_Study_Of_Insolvency_And_Bankruptcy_Code_And_Its_Impact_On_Macro_Environment_Of_India.

³⁷ World Bank. "Doing Business 2020: Comparing Business Regulation in 190 Countries." World Bank Group. (2020).

³⁸ Insolvency and Bankruptcy Code, 2018, ClearTax (5 Sep, 2024 2:43 PM) [Insolvency and Bankruptcy Code, 2016 \(cleartax.in\)](#)

³⁹ DK Prahlada Rao, Role & Responsibility of Insolvency Professionals Under The CODE-An Analysis, ICSI

The IBC has introduced a new career path for young professionals through the Graduate Insolvency Programme (GIP)⁴⁰ launched by the Insolvency and Bankruptcy Board of India (IBBI). Moreover, it has fostered opportunities for research and evaluation in insolvency and bankruptcy law, encouraging the adoption of international best practices to enhance the legal, institutional, and infrastructural framework.

Additionally, a record 269 resolution plans were approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code (IBC) in FY24⁴¹, marking a 42% increase from the previous year.

While IBC has increased operational efficiency, India still lags in recovery speed and rates compared to top-performing countries like Japan. The average recovery time in India is 4.3⁴² years with a recovery rate of 26.5 cents per dollar, significantly lower than Japan's 0.6 years and 92.5 cents per dollar.

India's insolvency system continues to face challenges due to the high volume of cases pending before NCLT and NCLAT. Efforts such as capacity building, training of judges, and enhancing the number of tribunal benches are crucial to addressing delays and aligning India's practices with global standards.

Legal Analysis of IBC

The IBC was introduced to facilitate swift recovery and revival of firms,⁴³ contrasting with previous laws. Notable improvements in recovery rates and resolution timelines have been observed, as highlighted earlier. The reforms extend beyond recovery, bringing significant changes to the legal framework, with new provisions proving effective in the insolvency process.

Section 7 empowers financial creditors to initiate the Corporate Insolvency Resolution Process

⁴⁰ Graduate Insolvency Resolution Program, IBBI, <https://www.ibbi.gov.in/uploads/whatsnew/38d5267a81e0d5385f1d9bc9290c8935.pdf>

⁴¹ Mohan, M.P.R. and Gopalakrishnan, B. (2023) Resources, Insolvency and Bankruptcy Board of India. Available at: <https://ibbi.gov.in/en/resources/reports>.

⁴² IBC delivering results; a reform Modi, Jaitley should be proud of, Business Today, <https://www.businesstoday.in/latest/economy-politics/story/ibc-delivering-results-a-reform-modi-jaitley-should-be-proud-of-182724-2019-04-10>

⁴³ Banerjee, A. and E. Duo (2005). "Growth Theory Through the Lens of Development Economics". Handbook of Economic Growth 1, 473{552.

(CIRP) by applying to the NCLT upon default, reflecting the Code's creditor-based approach. This section has redefined corporate insolvency in India, enhancing lender and investor confidence by providing a structured mechanism for financial distress. Similarly, Section 10 allows corporate debtors to initiate their own insolvency process, addressing insolvency issues from a debtor's perspective before they worsen⁴⁴. This provision requires debtors to disclose all necessary financial information, ensuring transparency and efficiency while balancing creditors' rights with debtors' opportunities for restructuring.

Section 14 introduces a mandatory moratorium period during CIRP, staying legal proceedings, enforcement of judgments, and recovery actions against the corporate debtor. This provision preserves the debtor's assets, allowing the resolution professional to thoroughly assess the company's financial status and formulate a feasible plan that maximises value for creditors. The moratorium creates a level playing field among creditors and reduces litigation burdens on debtors, contributing to a reliable and streamlined insolvency process⁴⁵.

The landmark case of *Swiss Ribbons Pvt. Ltd. vs Union Of India*⁴⁶ upheld the constitutional validity of the Insolvency and Bankruptcy Code (IBC), 2016. Swiss Ribbons Pvt. Ltd. and other petitioners challenged the IBC, arguing that it violated their fundamental rights under Articles 14, 19, and 21 of the Indian Constitution, and favoured creditors over debtors. Key provisions like Section 29A, which disqualifies certain individuals from submitting resolution plans, and Section 12A, allowing withdrawal of insolvency applications under specific conditions, were specifically contested.

Arguments Advanced: The petitioners argued that the IBC violated the right to equality, treated debtors unfairly, and that provisions like Section 29A were arbitrary. They also criticised the IBC's fragmented approach to insolvency. The Union of India defended the IBC as a necessary measure for economic stability, emphasising its role in protecting creditors and promoting investment through a streamlined insolvency process⁴⁷.

⁴⁴ Ankit Parhart & Rashi Srivastava , Decoding Section 7 of IB Code for admitting an application for Corporate Insolvency Resolution Process, <https://www.sconline.com/blog/post/2023/06/23/decoding-section-7-of-ib-code-for-admitting-an-application-for-corporate-insolvency-resolution-process/>

⁴⁵ M Govindarajan, Exceptions to Moratorium Under Section 14(1) of the Insolvency and Bankruptcy Code, 2016, IIPICAI (24 Aug , 2024 , 11:26 AM)

⁴⁶ *Swiss Ribbons Pvt. Ltd. vs Union Of India* , AIR 2019 SC 739

⁴⁷ Manisha Arora, *Swiss Ribbons Pvt. Ltd. V. Union of India: The Constitutionality of IBC Upheld Understanding the Procedural aspect and the After-Effects*, IBC laws (2 Sep 2023, 6:04 PM), <https://ibclaw.in/swiss-ribbons-pvt->

Judgement: The Supreme Court upheld the IBC, affirming its constitutional validity and emphasising the importance of a time-bound resolution process to preserve asset value. It upheld Section 29A to prevent fraud and maintain system integrity, and supported Section 12A for allowing flexible withdrawal when feasible alternatives exist⁴⁸.

Legal Analysis: The court's decision supports the IBC's goal of a streamlined insolvency process, protecting creditor interests and ensuring timely resolutions. By validating provisions like Section 29A, it reinforced confidence in the credit market, and the flexibility endorsed under Section 12A encourages collaborative resolutions.

Importance of the Case: The ruling provides a robust legal foundation for the IBC, clarifies key provisions, and promotes creditor confidence, leading to increased investment. It sets a precedent for future reforms and emphasises the need for a balanced approach that protects both creditors and debtors, contributing to economic growth by fostering a healthier business environment.

In summary, the Swiss Ribbons Pvt. Ltd. vs Union Of India case not only solidified the legal standing of the IBC but also highlighted its critical role in fostering a more efficient and equitable insolvency resolution process in India. The judgement serves as a cornerstone for the future of insolvency law in the country, promoting stability and confidence in the economic landscape.

Challenges & Issues in Implementing the Insolvency and Bankruptcy Code (IBC)

In the past few years after implementing the Insolvency and Bankruptcy Code (IBC) for corporate insolvency, various legal and operational issues emerged, which led to a significant number of cases and appeals being filed before the National Company Law Tribunal (NCLT), the National Company Law Appellate Tribunal (NCLAT), and the Supreme Court.

[ltd-v-union-of-india-the-constitutionality-of-ibc-upheld-understanding-the-procedural-aspect-and-the-after-effects-by-ms-manisha-arora-and-mr-pranav-ashutosh/](https://ibclaw.in/swiss-ribbons-pvt-ltd-v-union-of-india-the-constitutionality-of-ibc-upheld-understanding-the-procedural-aspect-and-the-after-effects-by-ms-manisha-arora-and-mr-pranav-ashutosh/)

⁴⁸ Manisha Arora, Swiss Ribbons Pvt. Ltd. V. Union of India: The Constitutionality of IBC Upheld Understanding the Procedural aspect and the After-Effects, IBC laws (2 Sep 2023, 6:04 PM), <https://ibclaw.in/swiss-ribbons-pvt-ltd-v-union-of-india-the-constitutionality-of-ibc-upheld-understanding-the-procedural-aspect-and-the-after-effects-by-ms-manisha-arora-and-mr-pranav-ashutosh/>

1. **Delays in Resolution Timelines⁴⁹:** Resolution delays are common due to legal complexities, extended litigation, and judicial bottlenecks, which prolong the process and reduce the value of distressed assets. Although the IBC mandates a 180-day resolution period, extendable to 270 days, it does not impose a specific deadline for the NCLT to approve the plan approved by the Committee of Creditors (CoC). If a resolution applicant withdraws after accepting the plan, the entire process must restart, causing further delays. These setbacks disrupt business operations, hinder funding, and create uncertainty about management after the 270-day period, ultimately undermining the resolution's effectiveness.
2. **Limited Capacity⁵⁰ and Resources of Judicial Bodies:** The Overburdened tribunals and courts, with an insufficient number of judges and resolution professionals, often lead to slow processing of cases and backlogs, undermining the efficiency of the resolution process.
3. **Ambiguities in Legal Provisions:** Unclear or inconsistent legal provisions within the IBC create challenges in interpretation and application, leading to disputes and delays in reaching resolutions. For instance, Section 25(2): Definition of "Operational Creditor", Section 96(Liquidation).
4. **Stakeholder Conflicts and Coordination Issues:** Often there are Disagreements among creditors, debtors, and resolution professionals on valuation, distribution, and other critical aspects often hinder the smooth progress of resolution proceedings. For example: Essar Steel Case, Bhushan Power and Steel Ltd. Case.
5. **Judicial Backlogs and Procedural Inefficiencies:** The high volume of cases and procedural inefficiencies within the legal system cause delays in adjudication and enforcement, weakening the resolution process. Continuous legislative updates and regulatory adjustments are essential to address emerging challenges and maintain the IBC's effectiveness.

⁴⁹ Government of India (2021). Economic Survey 2020–21. New Delhi: Ministry of Finance.

⁵⁰ Abhirami, A. and T, R. (2022) *On the Effectiveness of Insolvency and Bankruptcy Code, 2016: Empirical Evidence From India*, Sciendo. Available at: <https://intapi.sciendo.com/pdf/10.2478/law-2022-0003#:~:text=Effectiveness%20of%20the%20IBC%202016%3A%20Empirical%20Analysis&text=Studies%20indicate%20that%20effective%20insolvency,for%20businesses%2C%20especially%20small%20enterprises.> (Accessed: 25 August 2024).

PROPOSED MODEL (Insolvency Innovation Model {IIM})

The research paper suggests a theoretical model to tackle challenges in the insolvency resolution process under the Insolvency and Bankruptcy Code (IBC). The Goal is to improve resolution efficiency by enhancing coordination, minimising delays, and ensuring fair treatment of stakeholders. The model is based on four key pillars: Technological Integration, Stakeholder Collaboration, Judicial Efficiency, and Continuous Monitoring and Adaptation.

1. Technological Integration will deal with streamlining the resolution process, reduce delays, and improve transparency.

- **Digital Case Management⁵¹:** Implementing a centralised Digital Insolvency Management System (DIMS) that allows all stakeholders—creditors, debtors, resolution professionals (RPs), and the judiciary to access case files, submit documents, and track the progress of the resolution process. This system would reduce manual paperwork, minimise errors, and enhance transparency.
- **AI-Powered Decision Support:** Utilisation of AI within DIMS will help RPs to evaluate resolution plans, estimate asset values, and predict recovery rates using historical data. AI can also identify potential red flags and suggest improvements, streamlining decision-making.
- **Blockchain for Secure Transactions:** Use of blockchain technology to record and verify transactions related to insolvency cases. This would ensure the integrity of data, prevent tampering, and build trust among stakeholders.

2. Stakeholder Collaboration will help with communication and cooperation among stakeholders, leading to more efficient and effective resolutions.

- **Collaborative Platform:** A Collaborative Resolution Platform within DIMS can be established, where all stakeholders can communicate, negotiate, and collaborate on resolution plans. The platform would facilitate discussions, hold virtual meetings, reducing the need for frequent in-person interactions and speeding up the resolution process.

⁵¹ Abhirami, A. and T, R. (2022) *On the Effectiveness of Insolvency and Bankruptcy Code, 2016: Empirical Evidence From India*, *Sciendo*. Available at: <https://intapi.sciendo.com/pdf/10.2478/law-2022-0003#:~:text=Effectiveness%20of%20the%20IBC%202016%3A%20Empirical%20Analysis&text=Studies%20indicate%20that%20effective%20insolvency,for%20businesses%2C%20especially%20small%20enterprises>. (Accessed: 25 August 2024).

- **Mediation and Arbitration Support:** Integration of mediation and arbitration services into the resolution process may help in resolving disputes quickly, without resorting to lengthy court battles. This would reduce litigation and help stakeholders to reach a common consensus.

3. Judicial Efficiency involves specialised Insolvency Benches⁵² and Procedural Reforms to reduce case backlogs, ensure consistent rulings, and expedite the resolution process.

- **Specialised Insolvency Benches⁵³:** Establish specialised insolvency benches within the NCLT, staffed with judges experienced in insolvency law and finance. Regular training and best practices will ensure informed, consistent rulings, reducing deliberation and appeal times.
- **Resolution Mechanism:** A fast-track resolution mechanism for cases involving small and medium-sized enterprises (SMEs) and straightforward insolvency cases. This mechanism would include simplified procedures, shorter timelines, and dedicated benches to handle such cases, ensuring quicker resolutions.

4. Continuous Monitoring and Adaptation will ensure continuous improvement of the resolution process and adapt to emerging challenges.

- **Feedback Loop Mechanism:** A feedback loop mechanism is needed where stakeholders can provide input on the resolution process, identify challenges, and suggest improvements. This feedback would be analysed regularly and used to refine procedures, update training programs, and make necessary adjustments to the IBC framework.
- **Legislative and Policy Review Committee:** A Legislative and Policy Review Committee⁵⁴, comprising legal experts, financial analysts, and industry representatives, tasked with regularly reviewing the IBC framework. This committee could recommend legislative amendments and policy changes based on the latest data, judicial interpretations, and stakeholder feedback, ensuring that the IBC remains responsive to the evolving economic environment.

⁵² J, S. (2024) Swaminathan J: *Resolution of stressed assets and IBC – The Future Road Map*, The Bank for International Settlements. Available at: <https://www.bis.org/review/r240117g.htm>.

⁵³ Mohan, M.P.R. and Gopalakrishnan, B. (2023) Resources, Insolvency and Bankruptcy Board of India. Available at: <https://ibbi.gov.in/en/resources/reports>.

⁵⁴ J, S. (2024) Swaminathan J: *Resolution of stressed assets and IBC – The Future Road Map*, The Bank for International Settlements. Available at: <https://www.bis.org/review/r240117g.htm>.

CONCLUSION

The research paper highlights the crucial role of the Insolvency and Bankruptcy Code (IBC) 2016 in reshaping India's insolvency framework. In economic downturns, the IBC ensures equitable loss distribution among stakeholders, including creditors and small business owners, using tools like taxation and wage adjustments. It consolidates laws for corporate, partnership, and individual insolvency. The IBC promotes entrepreneurship, improves credit access, supports business revival, addresses cross-border insolvency, and balances stakeholder interests. After examining the Pre- and Post-IBC periods, the study reveals that the Insolvency and Bankruptcy Code (IBC) is still in its early stages, and its impact is just beginning to be felt across the economy. Thus, a comprehensive critical analysis may be premature. In brief, the outcomes and timelines for resolution raise concerns. There is an urgent need to fill bench vacancies, streamline processes for quicker case resolution, focus more on pre-packaged resolutions, and enforce guarantees to maximise the value of distressed assets.

Moreover, it also uncovers ongoing challenges, particularly within the judicial administration and the loopholes of IBC. The suggested model seeks to overcome these obstacles by introducing targeted solutions aimed at streamlining processes and reducing judicial burdens. Leveraging advanced technology, promoting collaboration, and boosting judicial efficiency, the suggested model seeks to tackle the key challenges within the IBC resolution process. Through continuous monitoring and adaptation, it aims to create a more efficient, transparent, and equitable system. These improvements are expected to lead to better outcomes for all, thus, contributing to the stability and growth of the Indian economy.

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