

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper and a black leather watch with a silver face are also visible. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

ABOUT WHITE BLACK LEGAL

White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

ROLE OF INSOLVENCY AND BANKRUPTCY CODE (IBC) IN RESOLUTION OF DISTRESSED MERGERS & ACQUISITIONS IN INDIA

AUTHORED BY - VANSHIKA RATHORE

BBA LLB (HONS) Student,

Amity University Noida, Uttar Pradesh

Abstract

The enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) has fundamentally reconfigured India's approach to corporate distress and value preservation, particularly in the context of mergers and acquisitions involving financially troubled entities. Prior to the IBC, the absence of a coherent and time-bound insolvency framework resulted in protracted proceedings, erosion of asset value, and diminished investor confidence. This paper critically examines the role of the IBC as a facilitative legal mechanism in enabling the resolution of distressed mergers and acquisitions in India. Adopting a doctrinal and analytical methodology, the study evaluates the structural framework of the Corporate Insolvency Resolution Process (CIRP) and its function as a market-driven platform for the acquisition of stressed assets. It explores how the creditor-in-control model, coupled with judicial oversight by adjudicatory authorities, has introduced transparency, competitiveness, and efficiency in the resolution process. The paper further engages with leading judicial pronouncements and landmark insolvency resolutions to assess the practical efficacy of the Code in balancing the interests of stakeholders while maximizing asset value. The analysis reveals that the IBC has significantly catalysed distressed M&A activity by transforming insolvency from a debtor-protective regime into a resolution-oriented process. However, persistent challenges such as procedural delays, litigation complexities, and valuation concerns continue to affect its optimal functioning. The paper concludes that while the IBC represents a paradigm shift in India's insolvency jurisprudence, sustained institutional strengthening and regulatory refinements are essential to fully realize its potential in the domain of distressed mergers and acquisitions.

Keywords: Insolvency Resolution, Creditor Control, Resolution Plan, Business Transfer, Insolvency Acquisition, Corporate Restructuring,

Introduction

The evolution of insolvency law in India marks a significant transition from a fragmented and debtor-centric regime to a consolidated, creditor-driven framework aimed at timely resolution and value maximization. Prior to the enactment of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC” or “the Code”), the Indian insolvency landscape was governed by a multiplicity of statutes, including the Sick Industrial Companies Act, 1985 and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. These legislations, though well-intentioned, were marred by procedural inefficiencies, prolonged litigation, and an inherent inability to ensure swift resolution of corporate distress. Consequently, financially distressed entities often suffered severe erosion of asset value, adversely impacting creditors, investors, and the broader economy.

The introduction of the IBC signified a paradigm shift in India’s insolvency jurisprudence by establishing a unified and time-bound mechanism for insolvency resolution.¹ The Code seeks to balance the interests of all stakeholders while prioritizing the maximization of the value of assets of the corporate debtor². Central to this framework is the Corporate Insolvency Resolution Process (CIRP), which provides a structured and transparent platform for the resolution of distressed companies, either through revival or liquidation. Notably, the creditor-in-control model under the IBC empowers financial creditors, acting through the Committee of Creditors (CoC), to determine the fate of the distressed entity, thereby enhancing commercial certainty and accountability. In this transformed legal landscape, mergers and acquisitions (M&A) have emerged as a critical tool for resolving corporate distress. Distressed mergers and acquisitions involve the acquisition of financially troubled companies by prospective resolution applicants, often at a discounted valuation, with the objective of reviving the business and preserving economic value. The IBC has institutionalized this process by facilitating competitive bidding, ensuring transparency, and subjecting the resolution plans to judicial scrutiny by the National Company Law Tribunal (NCLT). This has not only streamlined the acquisition of distressed assets but has also attracted significant domestic and foreign investment, thereby reinforcing confidence in the Indian insolvency regime.

Furthermore, the statutory provisions of the IBC, particularly Sections 7, 9, and 10 governing the initiation of insolvency proceedings, along with Section 30 pertaining to the submission

¹ Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, India.

² Insolvency and Bankruptcy Board of India, <https://www.ibbi.gov.in>

and approval of resolution plans, play a pivotal role in shaping the contours of distressed M&A transactions. Judicial pronouncements have further clarified and strengthened the operational framework of the Code, emphasizing the commercial wisdom of the CoC and limiting judicial interference in business decisions. Such developments underscore the growing significance of the IBC as a facilitative mechanism for corporate restructuring through M&A. Issues such as delays in adjudication, litigation by stakeholders, and concerns regarding valuation and equitable distribution continue to pose practical difficulties. These challenges necessitate a critical examination of the effectiveness of the Code in achieving its stated objectives.

Against this backdrop, the present study seeks to analyse the role of the Insolvency and Bankruptcy Code, 2016 in the resolution of distressed mergers and acquisitions in India. It endeavours to explore the legal framework governing such transactions, evaluate the efficacy of the CIRP mechanism, and assess the broader implications of the IBC on corporate restructuring and economic stability.

Objectives of the Study

The present study seeks to examine the evolving role of the Insolvency and Bankruptcy Code, 2016 in facilitating the resolution of distressed mergers and acquisitions in India. In furtherance of this broad aim, the following specific objectives are identified:

- To critically analyze the legal framework of the Insolvency and Bankruptcy Code, 2016 in the context of corporate insolvency resolution.
- To examine the role of the Corporate Insolvency Resolution Process (CIRP) as a mechanism for enabling distressed mergers and acquisitions.
- To evaluate the effectiveness of the creditor-in-control model in ensuring transparency and efficiency in acquisition processes.
- To assess the impact of the IBC on value maximization and revival of financially distressed companies.
- To study significant judicial pronouncements and their implications on distressed M&A transactions.
- To identify the practical challenges and limitations within the existing insolvency framework.
- To propose suggestions for strengthening the role of IBC in facilitating efficient corporate restructuring through mergers and acquisitions.

Literature Review

The Insolvency and Bankruptcy Code, 2016 has been the subject of extensive academic and legal discourse, particularly in relation to its effectiveness in resolving corporate distress. Scholars have widely acknowledged that the Code has significantly improved the insolvency resolution framework by introducing a time-bound and creditor-driven process. Studies have highlighted the role of the Corporate Insolvency Resolution Process (CIRP) in enhancing transparency and facilitating the acquisition of distressed assets. At the same time, certain authors have pointed out persistent challenges such as procedural delays, valuation concerns, and litigation complexities that continue to affect its efficiency. While existing literature primarily focuses on the broader insolvency framework, limited attention has been given to the specific intersection of IBC with mergers and acquisitions. This study, therefore, seeks to bridge this gap by examining the role of IBC in enabling and structuring distressed M&A transactions in India.

Research Methodology

The present study adopts a doctrinal method of research, primarily based on secondary sources of data. The analysis relies on statutory provisions, particularly the Insolvency and Bankruptcy Code, 2016, along with relevant rules and regulations governing corporate insolvency in India. Judicial pronouncements delivered by various courts and tribunals have also been examined to understand the practical application of the legal framework. In addition, the study incorporates insights from scholarly articles, legal commentaries, reports, and online databases to provide a comprehensive understanding of the subject. The research follows an analytical and descriptive approach, aiming to evaluate the role of the Insolvency and Bankruptcy Code in facilitating distressed mergers and acquisitions and to identify the challenges associated with its implementation.

Overview of the Insolvency and Bankruptcy Code, 2016

The enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) represents a watershed moment in the evolution of India's corporate insolvency regime. Introduced with the objective of consolidating and amending the laws relating to insolvency resolution, the Code sought to address the longstanding inefficiencies and delays that characterized the pre-existing legal framework. Prior to its implementation, insolvency proceedings were governed by multiple legislations, leading to jurisdictional overlaps, prolonged litigation, and significant erosion of

asset value. The IBC was thus conceived as a comprehensive and unified legal mechanism to ensure a time-bound and efficient resolution process. At its core, the IBC is designed to promote the maximization of value of assets, ensure the availability of credit, and balance the interests of all stakeholders, including creditors, debtors, and investors. One of the defining features of the Code is its creditor-in-control model, which marks a departure from the earlier debtor-centric approach. Upon the initiation of insolvency proceedings, the management of the corporate debtor is vested in an Interim Resolution Professional (IRP), and subsequently, in the Resolution Professional (RP), thereby ensuring neutrality and professionalism in the resolution process.

A central component of the IBC is the Corporate Insolvency Resolution Process (CIRP), which provides a structured framework for resolving corporate insolvency within a prescribed time limit of 180 days, extendable up to 330 days. The initiation of CIRP can be triggered by financial creditors, operational creditors, or the corporate debtor itself under Sections 7, 9, and 10 of the Code.³ Upon admission of the application by the National Company Law Tribunal (NCLT), a moratorium is imposed, preventing any legal action against the corporate debtor and thereby preserving its asset value during the resolution period. The formation of the Committee of Creditors (CoC) constitutes a pivotal aspect of the CIRP. Comprising primarily financial creditors, the CoC is entrusted with the responsibility of evaluating and approving resolution plans submitted by prospective resolution applicants. The decision-making power of the CoC, often referred to as its “commercial wisdom,” has been consistently upheld by judicial authorities, thereby reinforcing the autonomy of creditors in determining the viability of resolution strategies.⁴

In the context of mergers and acquisitions, the IBC has emerged as a significant facilitator of distressed asset acquisition. By institutionalizing a transparent and competitive bidding process, the Code enables potential investors to acquire financially distressed companies through legally sanctioned resolution plans. This has led to the development of a robust market for distressed mergers and acquisitions in India, attracting both domestic and international investors. The role of adjudicating authorities, particularly the NCLT and the National Company Law Appellate Tribunal (NCLAT), further ensures that the process adheres to principles of fairness, legality, and procedural integrity.

³ Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, § 6–32, India., Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

⁴ Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2019) 16 SCC 1.

Despite its transformative impact, the implementation of the IBC is not without challenges. Delays in adjudication, capacity constraints of tribunals, and complexities arising from litigation continue to pose concerns.

Concept of Mergers and Acquisitions in India

Mergers and acquisitions (M&A) constitute a fundamental aspect of corporate restructuring, enabling businesses to achieve growth, operational efficiency, and market consolidation⁵. In the contemporary corporate landscape, M&A transactions serve as strategic tools through which companies expand their market presence, diversify operations, and enhance shareholder value. Within the Indian legal framework, mergers and acquisitions are governed by a combination of statutory provisions and regulatory mechanisms, primarily under the Companies Act, 2013, along with oversight by regulatory authorities such as the Securities and Exchange Board of India (SEBI) and the Competition Commission of India (CCI).

In the context of financial distress, M&A assumes even greater significance as it provides an effective mechanism for the revival or restructuring of economically unviable entities. Particularly under the Insolvency and Bankruptcy Code, 2016, distressed mergers and acquisitions have emerged as a structured and legally recognized pathway for resolving corporate insolvency through strategic acquisition by prospective investors. Such transactions not only facilitate the preservation of asset value but also contribute to economic stability by preventing the complete liquidation of distressed enterprises.

Key Components and Types of Mergers and Acquisitions

- **Merger:**

A merger refers to the consolidation of two or more companies into a single entity, resulting in the transfer of assets, liabilities, and operations. ⁶It is typically undertaken to achieve synergies, economies of scale, and enhanced competitiveness.

- **Acquisition:**

An acquisition involves one company acquiring control over another by purchasing its shares or assets. Unlike mergers, the acquired company may continue to exist as a separate legal entity, under new ownership.

⁵ Companies Act, 2013, sec 230–240.

⁶ Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

- **Takeover:**

A takeover occurs when one company gains control over another, often through the acquisition of a majority stake. It may be friendly or hostile, depending on the consent of the target company's management.

Legal Framework Governing M&A in India

- **Companies Act, 2013:**
Provides statutory provisions relating to mergers, amalgamations, and arrangements under Sections 230 to 240.
- **SEBI Regulations:**
Regulate acquisitions involving listed companies, particularly through the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations⁷.
- **Competition Act, 2002:**
Ensures that combinations do not adversely affect market competition and requires approval from the Competition Commission of India (CCI).

Relevance of M&A in Distressed Scenarios

- Facilitates revival of financially distressed companies
- Enables efficient reallocation of resources
- Attracts strategic and financial investors
- Supports value maximization under insolvency proceedings

In essence, mergers and acquisitions, when integrated with the insolvency framework under the IBC, play a transformative role in corporate restructuring by providing a viable alternative to liquidation and fostering sustainable economic growth.

Distressed Mergers and Acquisitions under the Insolvency and Bankruptcy Code, 2016

Distressed mergers and acquisitions represent a specialized segment of corporate restructuring wherein financially troubled entities are acquired or merged with the objective of revival, value preservation, and efficient resource utilization. Unlike conventional M&A transactions driven by strategic expansion, distressed M&A is primarily necessitated by financial insolvency and

⁷ SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Reg. 3-4.

operational inefficiencies. The Insolvency and Bankruptcy Code, 2016 has institutionalized this process by providing a structured, transparent, and time-bound mechanism that facilitates the acquisition of distressed assets through a competitive and creditor-driven framework.

1. Concept and Nature of Distressed Mergers and Acquisitions

Distressed M&A refers to transactions involving companies that are unable to meet their financial obligations and are either on the verge of insolvency or undergoing formal insolvency proceedings. Such transactions are characterized by reduced valuations, higher risk, and the potential for significant turnaround⁸.

- Distressed companies typically suffer from liquidity constraints, mounting debts, and declining operational performance.
- Unlike traditional M&A the primary objective is not expansion but revival and restructuring.
- Assets are often acquired at discounted valuations, offering opportunities for strategic investors.
- The focus remains on preserving business continuity and maximizing asset value rather than liquidation.

2. Initiation of Insolvency and Entry into the IBC Framework

The entry of a corporate entity into the insolvency framework under the IBC marks the starting point of distressed M&A transactions. The Code provides a legal trigger for initiating insolvency proceedings upon the occurrence of a default.

- Insolvency proceedings may be initiated by:
 - Financial creditors (under Section 7)
 - Operational creditors (under Section 9)
 - Corporate debtor itself (under Section 10)
- Upon admission by the adjudicating authority, a moratorium is declared, restricting all legal proceedings against the corporate debtor.
- The management of the company is transferred to an Interim Resolution Professional (IRP), ensuring neutrality.
- This transition creates a controlled environment conducive to restructuring and acquisition.

⁸ Insolvency and Bankruptcy Board of India, *Discussion Paper on CIRP*, <https://www.ibbi.gov.in>

3. Role of IBC in Facilitating Distressed M&A

The IBC serves as a critical enabler in transforming insolvency into an opportunity for strategic acquisition. It establishes a market-driven mechanism that encourages participation from potential investors through a transparent and competitive process.

- The Corporate Insolvency Resolution Process (CIRP) acts as a platform for inviting resolution applicants.
- A structured bidding process ensures fair competition and price discovery.
- The involvement of the Committee of Creditors (CoC) ensures that decisions are commercially viable and creditor oriented.
- The process enhances investor confidence by providing legal certainty and procedural clarity.
- It facilitates the transfer of ownership and control in a time-bound manner, thereby preventing value erosion.

4. Mechanism of Acquisition under the IBC Framework

The acquisition of distressed assets under the IBC is executed through the submission and approval of a resolution plan, which outlines the terms of restructuring or takeover.

- Prospective resolution applicants submit resolution plans in accordance with the requirements prescribed under the Code.
- The Committee of Creditors evaluates these plans based on feasibility, viability, and value maximization.
- Upon approval by the CoC, the plan is submitted to the adjudicating authority (NCLT) for final sanction.
- Once approved, the resolution plan becomes binding on all stakeholders, leading to the transfer of ownership and restructuring of the corporate debtor.

In essence, the Insolvency and Bankruptcy Code, 2016 has redefined the framework of distressed mergers and acquisitions in India by integrating legal certainty with market efficiency. It not only facilitates the resolution of insolvency but also promotes sustainable corporate restructuring through strategic investment and acquisition.

Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016

The Corporate Insolvency Resolution Process (CIRP) constitutes the cornerstone of the Insolvency and Bankruptcy Code, 2016, embodying its objective of ensuring a time-bound,

structured, and creditor-driven mechanism for resolving corporate insolvency⁹. It provides a legally sanctioned framework through which financially distressed companies can be either revived through strategic restructuring or resolved via liquidation. In the context of mergers and acquisitions, CIRP plays a pivotal role by creating an institutionalized platform for the acquisition of distressed assets through a transparent and competitive process. The procedural clarity and legal certainty offered by CIRP significantly enhance investor confidence and facilitate effective corporate restructuring.

1. Initiation of CIRP

The initiation of the Corporate Insolvency Resolution Process marks the formal commencement of insolvency proceedings against a corporate debtor upon the occurrence of a default.¹⁰

- CIRP may be initiated by:
 - Financial creditors under Section 7
 - Operational creditors under Section 9
 - The corporate debtor itself under Section 10
- The application is filed before the National Company Law Tribunal (NCLT), which acts as the adjudicating authority.
- Upon admission, a moratorium is declared, prohibiting all legal actions, enforcement proceedings, and recovery suits against the corporate debtor.
- This stage ensures preservation of assets and provides a stable environment for resolution and potential acquisition.

2. Appointment of Resolution Professional

Following the admission of the insolvency application, an Interim Resolution Professional (IRP) is appointed, who is subsequently confirmed or replaced by a Resolution Professional (RP).

- The management and control of the corporate debtor are transferred from the existing board to the IRP/RP.
- The RP is responsible for managing the operations of the company as a going concern.
- It ensures compliance with statutory requirements and facilitates the resolution process.
- This professional management introduces neutrality and enhances the credibility of the process for prospective investors.

⁹ Insolvency and Bankruptcy Code, 2016, sec 30(4).

¹⁰ <https://www.ibbi.gov.in/legal-framework/insolvency-and-bankruptcy-code>

3. Constitution of Committee of Creditors (CoC)

The Committee of Creditors (CoC) represents the financial creditors and plays a decisive role in the CIRP.

- The CoC is primarily composed of financial creditors of the corporate debtor.
- It exercises significant decision-making powers, including the approval or rejection of resolution plans.
- The principle of “commercial wisdom” of the CoC has been upheld by judicial authorities, limiting judicial interference.

4. Invitation and Submission of Resolution Plans

One of the most critical stages in the CIRP is the invitation of resolution plans, which directly facilitates distressed mergers and acquisitions.

- The Resolution Professional invites prospective resolution applicants to submit resolution plans.
- These plans outline proposals for restructuring, takeover, or revival of the corporate debtor.
- A competitive bidding process ensures transparency, fairness, and optimal price discovery.
- The plans are evaluated based on feasibility, viability, and capacity to maximize asset value.

5. Approval and Implementation of Resolution Plan

The final stage of the CIRP involves the approval and execution of the resolution plan, leading to the acquisition or restructuring of the distressed entity.

- The selected resolution plan must be approved by at least 66% of the voting share of the CoC.
- Thereafter, it is submitted to the NCLT for final approval and legal sanction.
- Once approved, the resolution plan becomes binding on all stakeholders, including creditors, employees, and shareholders.
- This stage results in the transfer of ownership and control, thereby completing the acquisition process under the IBC framework.

6. Outcome of CIRP

The CIRP culminates in either the successful resolution of the corporate debtor or, in the absence of an approved plan, liquidation.

- Successful resolution leads to:
 - Revival of the company

- Strategic acquisition by investors
- Preservation of economic value

In essence, the Corporate Insolvency Resolution Process serves as a comprehensive and legally robust mechanism that integrates insolvency resolution with the dynamics of mergers and acquisitions. By ensuring transparency, accountability, and time-bound decision-making, CIRP has significantly enhanced the efficiency of distressed asset acquisition in India, thereby reinforcing the transformative impact of the Insolvency and Bankruptcy Code, 2016.

Advantages and Limitations of the Insolvency and Bankruptcy Code, 2016 in Facilitating Distressed Mergers and Acquisitions

The Insolvency and Bankruptcy Code, 2016 has emerged as a transformative legal framework, significantly enhancing the efficiency and credibility of distressed mergers and acquisitions in India. One of the foremost advantages of the Code lies in its time-bound resolution mechanism, which ensures that insolvency proceedings are concluded within a stipulated period, thereby preventing undue delays and erosion of asset value. The introduction of a creditor-in-control model has further strengthened the decision-making process by empowering financial creditors to determine the viability of resolution plans through the Committee of Creditors (CoC). This has contributed to greater commercial prudence and accountability within the insolvency framework.

Additionally, the IBC has institutionalized a transparent and competitive bidding process, enabled fair price discovery and maximizing the value of distressed assets.¹¹ The structured nature of the Corporate Insolvency Resolution Process (CIRP) has instilled confidence among domestic and foreign investors, thereby fostering increased participation in distressed acquisitions. The involvement of adjudicating authorities ensures procedural fairness and legal certainty, which are essential for maintaining the integrity of the process. Furthermore, the Code facilitates the revival of economically viable entities, thereby preserving employment, promoting business continuity, and contributing to overall economic stability. However, despite its significant contributions, the implementation of the IBC is not devoid of limitations. One of the primary challenges pertains to delays in adjudication, largely due to the overburdened infrastructure of tribunals such as the National Company Law Tribunal (NCLT). Such delays undermine the objective of timely resolution and may lead to depreciation in asset

¹¹ <https://www.ibbi.gov.in/legal-framework/insolvency-and-bankruptcy-code>

value. Another concern is the issue of substantial haircuts accepted by creditors, which raises questions regarding equitable value distribution and recovery efficiency. Additionally, the process is often susceptible to prolonged litigation by various stakeholders, which can hinder the smooth execution of resolution plans.

Moreover, concerns relating to valuation discrepancies and information asymmetry may affect the fairness and effectiveness of the bidding process. Operational creditors, in certain instances, have also raised issues regarding their relatively limited role in decision-making within the CoC framework. These challenges indicate that while the IBC has undeniably strengthened the distressed M&A landscape, there remains a need for continuous institutional and procedural refinements to ensure its optimal functioning.

A Critical Evaluation of the Effectiveness of the Insolvency and Bankruptcy Code, 2016 in Facilitating Distressed Mergers and Acquisitions

The Insolvency and Bankruptcy Code, 2016 has undeniably redefined the contours of corporate insolvency resolution in India, particularly by integrating a structured mechanism for facilitating distressed mergers and acquisitions. While the Code has been widely lauded for introducing efficiency, transparency, and creditor primacy, a critical evaluation reveals a more nuanced reality marked by both institutional strengths and operational challenges¹².

At a structural level, the IBC has succeeded in transforming insolvency from a protracted, debtor-driven process into a time-bound and market-oriented mechanism, thereby enabling the efficient transfer of distressed assets to capable resolution applicants. The emphasis on competitive bidding under the Corporate Insolvency Resolution Process (CIRP) has enhanced price discovery and ensured that value maximization remains central to the resolution process. Furthermore, the recognition of the “commercial wisdom” of the Committee of Creditors (CoC) has reduced excessive judicial intervention, thereby fostering greater autonomy and commercial certainty in decision-making.

However, the practical implementation of the Code presents certain limitations that warrant critical scrutiny. One of the most significant concerns is the persistent delay in resolution timelines, which undermines the very objective of a time-bound process. Capacity constraints within adjudicating authorities and the increasing volume of cases have contributed to

¹² Reserve Bank of India, *Report on Trend and Progress of Banking in India* (latest ed.), <https://www.rbi.org.in>

procedural bottlenecks, often resulting in value erosion of distressed assets¹³. Additionally, the issue of substantial haircuts accepted by creditors raises questions regarding the efficiency of recovery mechanisms and the equitable distribution of value among stakeholders. From the perspective of distressed mergers and acquisitions, while the IBC has undoubtedly facilitated a more transparent acquisition environment, concerns relating to valuation discrepancies and information asymmetry continue to affect the fairness of the bidding process. Prospective resolution applicants may face challenges in accurately assessing the financial and operational position of distressed entities, thereby influencing the quality of resolution plans

Another critical dimension pertains to the increasing trend of litigation and strategic delays by stakeholders, which often disrupt the smooth execution of resolution plans. Although judicial pronouncements have attempted to streamline the process and uphold the primacy of the CoC, the evolving nature of insolvency jurisprudence continues to present interpretational challenges.

In essence, while the IBC has established a robust foundation for facilitating distressed mergers and acquisitions, its effectiveness is contingent upon consistent implementation, institutional strengthening, and procedural clarity.

Suggestions and Recommendations

Considering the foregoing analysis, it becomes imperative to strengthen the operational and institutional framework of the Insolvency and Bankruptcy Code, 2016 so as to enhance its effectiveness in facilitating distressed mergers and acquisitions. While the Code has laid a robust foundation, targeted reforms can further optimize its performance and address existing inefficiencies.

- **Strengthening Institutional Capacity:**¹⁴

There is a pressing need to augment the infrastructure and manpower of adjudicating authorities, particularly the National Company Law Tribunal (NCLT), to ensure expeditious disposal of cases and adherence to prescribed timelines.

- **Ensuring Strict Compliance with Timelines:**

Mechanisms should be developed to minimize procedural delays and prevent undue

¹³

https://www.researchgate.net/publication/368414513_On_the_Effectiveness_of_Insolvency_and_Bankruptcy_Code_2016_Empirical_Evidence_From_India

¹⁴ <https://taxguru.in/corporate-law/understanding-insolvency-and-bankruptcy-code-2016.html>

extensions, thereby preserving the value of distressed assets and maintaining the integrity of the time-bound resolution framework.

- **Enhancing Transparency in Valuation Processes:**

The adoption of standardized and more rigorous valuation methodologies can reduce discrepancies and ensure fair price discovery during the bidding process, thereby fostering greater investor confidence.

- **Reducing Litigation and Procedural Complexities:**

Streamlining procedural requirements and limiting frivolous litigation by stakeholders can significantly improve the efficiency of the resolution process and facilitate smoother execution of resolution plans.

- **Balancing Stakeholder Interests:**

Greater consideration should be accorded to operational creditors to ensure a more equitable and inclusive decision-making process, thereby reinforcing the legitimacy of the insolvency framework.

- **Encouraging Investor Participation:**

Policy measures aimed at attracting both domestic and foreign investors, including regulatory clarity and ease of doing business, can further strengthen the distressed M&A market in India.

Conclusion

The Insolvency and Bankruptcy Code, 2016 represents a landmark reform in India's corporate legal landscape, fundamentally transforming the manner in which financial distress and corporate insolvency are addressed. By introducing a unified, time-bound, and creditor-driven framework, the Code has not only streamlined the resolution process but has also facilitated the emergence of a structured market for distressed mergers and acquisitions. The integration of legal certainty with a market-oriented approach has significantly enhanced investor confidence and contributed to the revival of economically viable enterprises. Through the Corporate Insolvency Resolution Process (CIRP), the IBC has enabled the efficient transfer of distressed assets to capable resolution applicants, thereby promoting value maximization and business continuity. The emphasis on transparency, competitive bidding, and the commercial wisdom of the Committee of Creditors has further strengthened the credibility and effectiveness of the insolvency regime. Landmark insolvency resolutions have demonstrated the practical viability of the Code in facilitating complex corporate restructuring through

strategic acquisitions. However, the journey towards an ideal insolvency framework remains ongoing. Persistent challenges such as delays in adjudication, litigation-induced disruptions, and concerns relating to valuation and stakeholder equity continue to affect the optimal functioning of the Code. These issues underscore the need for continuous institutional strengthening, procedural refinement, and policy innovation.

In conclusion, while the IBC has undoubtedly ushered in a paradigm shift in India's insolvency jurisprudence, its long-term success is contingent upon its ability to adapt to emerging complexities and address operational inefficiencies. With sustained reforms and effective implementation, the Code holds the potential to further consolidate its role as a cornerstone of corporate restructuring, thereby fostering economic resilience and facilitating the efficient resolution of distressed mergers and acquisitions in India.

Ultimately, the true efficacy of the IBC will be measured not merely by the speed of resolution, but by its ability to foster sustainable corporate revival and equitable stakeholder outcomes. In this regard, a progressive and adaptive approach to insolvency regulation will remain indispensable in shaping the future trajectory of distressed mergers and acquisitions in India



BIBLIOGRAPHY

1. Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, India.
2. Companies Act, 2013, No. 18 of 2013, India.
3. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
4. Taxman, Insolvency and Bankruptcy Code (latest ed.).

5. Taxman, Guide to Insolvency and Bankruptcy Code (latest ed.).
6. V. S. Datey, Corporate Insolvency Law and Practice (latest ed.).
7. S. C. Kuchhal, Mergers, Acquisitions and Corporate Restructuring (latest ed.).
8. Reserve Bank of India, Report on Trend and Progress of Banking in India (latest year), <https://www.rbi.org.in>.
9. Ministry of Corporate Affairs, Annual Report (latest year), <https://www.mca.gov.in>.
10. Insolvency and Bankruptcy Board of India, Quarterly Newsletter (latest issue), <https://www.ibbi.gov.in>.
11. Insolvency and Bankruptcy Code: A New Framework for Corporate Insolvency Resolution in India, SSRN, <https://papers.ssrn.com>.
12. Legal Analysis of IBC and Corporate Insolvency in India Monday, <https://www.mondaq.com/india/insolvencybankruptcy>.
13. Corporate Insolvency Resolution Process under IBC: An Analytical Study, Tax Guru, <https://taxguru.in>.
14. SCC Online, <https://www.sconline.com>.
15. Manupatra, <https://www.manupatra.com>.
16. impleader's, <https://blog.ipleaders.in>.



WHITE BLACK
LEGAL