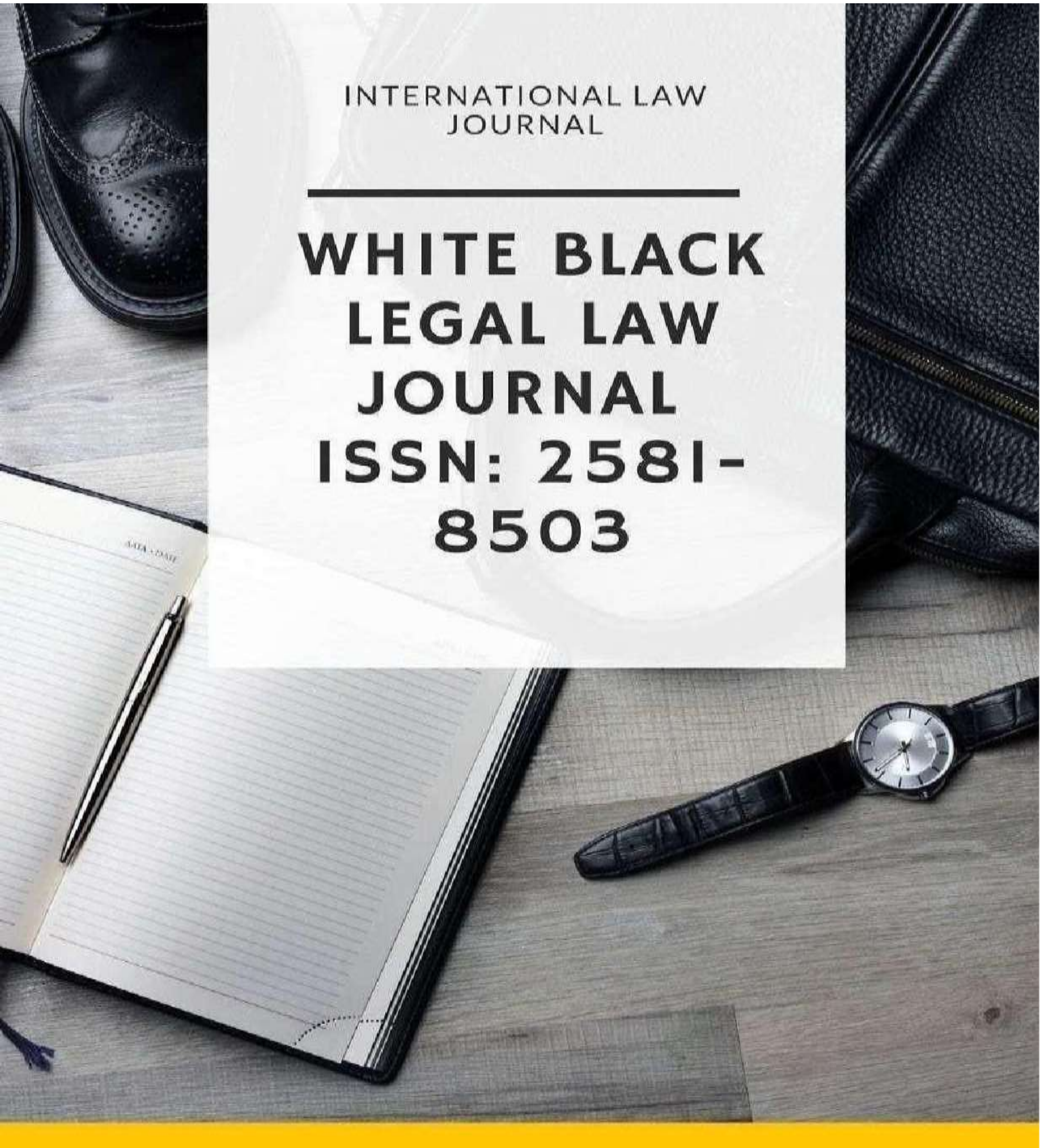

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Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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With this thought, we hereby present to you

CORPORATE INSOLVENCY & RESTRUCTURING IN INDIA: LEGAL FRAMEWORKS AND STAKEHOLDER INTERESTS.

AUTHORED BY - SHOVIK DUTTA

B.A.LLB. (HONS) 2020-2025

SEMESTER: 10

INSTITUTE: AMITY LAW SCHOOL NOIDA

DECLARATION

I, SHOVIK DUTTA, a BA.LLB (Hon) candidate at Amity Law School in Uttar Pradesh, certify that the Dissertation I have submitted is an original, unpublished work that has not been submitted elsewhere for any academic or non-academic purpose. Every case study I encountered during my research was cited. Nothing covered by my Industry Guide's confidentiality clause has been submitted. By no means did I violate or infringe upon any copyrights.

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TOPIC APPOVAL LETTER

(ISSUED BY SUPERVISOR)

Even semester 2024-25

This is to certify that Mr. SHOVIK DUTTA, Enrollment Number A3211120059 from program B.A.LLB(HONS.) Semester-10 is enrolled in Legal Writing /Dissertation NTCC, under my supervision. The Topic of research is "CORPORATE INSOLVENCY & RESTRUCTURING IN INDIA: LEGAL FRAMEWORKS AND STAKEHOLDERS INTERESTS" & the same is in consensus with the undersigned. The student will follow the NTCC Guidelines and proceed with the research.

Faculty Supervisor
Dr./Mr./Ms. Mini Srivastava

MS
17.12.2024

Amity Law School, Noida.

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ABSTRACT

In light of financial turmoil and economic volatility, corporate restructuring and insolvency are crucial to maintaining the stability of India's corporate sector. The Insolvency and Bankruptcy Code, 2016, its implementation, development, and impact on different stakeholders, such as employees, creditors, shareholders, and regulatory agencies, are the main topics of this paper's analysis of the legal frameworks controlling corporate insolvency and restructuring in India.

India's insolvency system saw a dramatic change with the implementation of the IBC, which replaced the disjointed and laborious procedures under antiquated legislation with a thorough and time-bound resolution framework.

The interests of different parties within the insolvency proceedings are further examined in this study. Employees, operational creditors, and minority shareholders' concerns are nevertheless relevant even though the law favours creditor-driven remedies. This study investigates whether these interests are sufficiently balanced by the current legal system or whether changes are necessary to improve stakeholder protection. This report also emphasizes the difficulties brought on by litigation strategies, resolution delays, and the efficacy of corporate rescue measures, such as out-of-court settlements and pre-pack insolvency.

In order to make important recommendations for changes to India's bankruptcy framework, this paper concludes by discussing global best practices and comparing them with insolvency frameworks in countries such as the US. The final section of this study looks at the latest developments in corporate restructuring in India.

Keywords: Corporate Insolvency, Corporate Restructuring, Insolvency & Bankruptcy Code, 2016, Regulatory Bodies, Creditors, National Company Law Tribunal (NCLT), Insolvency Professionals, United States Insolvency Framework, Pre-Pack Insolvency.

CHAPTER 1 INTRODUCTION

OVERVIEW OF INSOLVENCY & RESTRUCTRING IN INDIA

INTRODUCTION

Background: Navigating the Evolution of Corporate Insolvency in India

India's landscape of corporate insolvency has undergone a significant transformation, shaped by evolving economic policies and legal structures. Before the advent of the Insolvency and Bankruptcy Code (IBC), the nation's approach to dealing with financially distressed companies was a fragmented and often frustrating affair, marked by considerable delays and a lack of cohesive action. A patchwork of laws, including the Companies Act of 1956 (later superseded by the Companies Act of 2013), the Sick Industrial Companies (Special Provisions) Act of 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act of 1993 (RDDBFI), and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 (SARFAESI), governed this complex terrain. This intricate web of regulations often led to lengthy insolvency processes and substantial financial setbacks due to overlaps and a lack of clear direction.

The Pre-IBC Era: A Struggle for Resolution

One of the primary challenges of the pre-IBC era was the cumbersome process of resolving the issues faced by financially troubled businesses. The Board for Industrial and Financial Reconstruction (BIFR), established under SICA, was intended to revitalize ailing industrial units. However, it frequently struggled with prolonged decision-making, allowing businesses to deteriorate further. Creditors seeking to recover their dues also had to navigate a complex array of legal avenues, such as filing cases under the RDDBFI with Debt Recovery Tribunals (DRTs) or utilizing SARFAESI for asset recovery. This fragmented approach, lacking a unified strategy, often resulted in increased litigation, the practice of "forum shopping" (seeking the most favourable jurisdiction), and inconsistent outcomes.

Introduction of the Insolvency & Bankruptcy Code: A Paradigm Shift

Recognizing these deep-seated inefficiencies, the Indian government introduced the landmark Insolvency and Bankruptcy Code (IBC) in 2016. This legislation aimed to establish a consolidated and time-bound framework for resolving insolvency. By replacing the existing fragmented legal landscape with a creditor-driven process, the IBC sought to ensure that distressed companies were either successfully revived or liquidated within clearly defined timelines. The Code introduced the Corporate Insolvency Resolution Process (CIRP), empowering both financial and operational creditors to initiate insolvency proceedings against defaulting companies. Furthermore, it established specialized bodies like the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) to adjudicate insolvency cases, effectively replacing the BIFR. The introduction of insolvency professionals, the imposition of a moratorium period to prevent further asset erosion, and the establishment of a clear "waterfall mechanism" for the distribution of proceeds significantly enhanced the efficiency of corporate insolvency resolution.

Lingering Challenges & Path Forward:

Despite the IBC's undeniable success in improving India's global ranking in ease of resolving insolvency and boosting recovery rates, certain challenges persist. The significant backlog of cases within the NCLT, delays in the resolution process, and the strategic use of litigation by corporate debtors to stall proceedings continue to pose obstacles. Moreover, while the law prioritizes the interests of financial creditors, operational creditors, employees, and smaller stakeholders often face difficulties in recovering their outstanding amounts. The introduction of pre-packaged insolvency schemes specifically for Micro, Small, and Medium Enterprises (MSMEs) in 2021 was intended to provide a faster resolution pathway, but its full impact is yet to be seen. Additionally, external factors such as global economic downturns and unforeseen events like the COVID-19 pandemic have tested the resilience of India's insolvency framework, leading to temporary suspensions of insolvency filings and adaptations in legal interpretations.

As India's corporate insolvency framework continues to mature, it remains crucial to strike a delicate balance between the competing interests of various stakeholders and to ensure the continued effectiveness of resolution procedures. Drawing valuable lessons from the bankruptcy regimes of other nations, coupled with ongoing judicial pronouncements and legislative refinements, will be essential in further strengthening India's corporate restructuring environment and fostering long-term economic sustainability.

The Vital Role of Restructuring in Keeping Businesses Afloat:

Think of corporate restructuring as a lifeline for businesses navigating rough financial waters. Especially when times get tough economically, it's not just an option, but a crucial, well-thought-out way for companies to steer clear of sinking into insolvency, regain their footing financially, and keep their doors open. For many Indian companies dealing with inefficiencies, cash flow problems, and economic downturns, restructuring has become a key strategy for survival and recovery. It's about strategically reshaping a business's management, operations, and finances to better manage debt, boost how efficiently things run, and ultimately become more profitable. Now, thanks to the Insolvency and Bankruptcy Code of 2016 (IBC), struggling businesses have a real shot at recovery, offering a path back instead of a forced shutdown.

One of the biggest wins of corporate restructuring is its power to preserve a company's worth. When a company faces insolvency, it often sees trust from stakeholders erode, its assets lose value, and its reputation in the market take a hit. But by acting quickly to restructure debt, renegotiate agreements, and streamline how things are done, companies can nurse themselves back to financial health. This is particularly vital in industries that require a lot of capital, like manufacturing, infrastructure, and real estate, where a quick liquidation could mean huge losses for everyone involved – creditors, employees, and investors alike. By allowing businesses to continue operating, restructuring helps keep jobs stable, avoids disruptions in supply chains, and prevents wider problems from rippling through the banking system.[1]

The IBC has introduced various ways for businesses to restructure, like the Corporate Insolvency Resolution Process (CIRP), a faster "pre-pack" option for smaller businesses, and ways to settle things outside of court. These approaches make it easier for businesses to work out sustainable restructuring plans by negotiating debt settlements with both their operational and financial backers. Beyond these formal processes, strategies like selling off assets, swapping debt for equity, and mergers or acquisitions can also help a business reshape itself without completely shutting down. By taking these steps, the focus shifts

[1] https://fastercapital.com/topics/the-importance-of-corporate-restructuring.html

from simply liquidating assets to actively trying to revive the business, ensuring that viable companies can continue to drive economic growth and progress.

Restructuring is also essential for protecting the interests of everyone involved. For creditors, well-structured debt repayment plans offer a way to avoid lengthy legal battles and uncertain recoveries that often come with liquidation. Employees, who can be particularly vulnerable when a company becomes insolvent, find greater job security in a restructured company compared to one being liquidated. Shareholders also stand to gain as restructuring helps prevent the complete loss of their investment by keeping the business going. Moreover, involving insolvency professionals and having judicial oversight in the restructuring process helps ensure fairness and transparency, preventing any single group of stakeholders from gaining an unfair advantage.[2]

Finally, it's important to consider how restructuring contributes to the overall stability of the economy. Major business failures can send shockwaves through the economy, potentially leading to banking crises, increased unemployment, and a decline in investor confidence. By providing a legal framework for businesses to reorganize their debts and improve their financial standing, the insolvency and restructuring system strengthens economic resilience. India's evolving system is learning from the well-established restructuring approaches used in countries like the United States, such as Chapter 11 bankruptcy and administration proceedings.

[2] https://www.realbusinessrescue.co.uk/business-restructuring

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OVERVIEW OF INSOLVENCY & RESTRUCTURING IN INDIA

Definition and Concept of Corporate Insolvency:

Imagine a business facing a serious financial crunch, where it simply can't keep up with its bills as they come due. This predicament is what we call corporate insolvency. It's a red flag indicating a deeper financial crisis, often seen when a company's debts outweigh what it owns, or when it doesn't have enough cash flowing in to keep the lights on and operations running smoothly. We generally recognize two main types of this trouble: balance-sheet insolvency, where the total debts are more than the total assets, making it impossible to pay everyone even if the company sold everything it owns; and cash-flow insolvency, where the company might have valuable assets, but lacks the immediate cash to pay its debts on time.[3]

When corporate insolvency isn't handled well, the consequences ripple outwards. People can lose their jobs, businesses can collapse, investors lose faith, and the wider economy can feel the strain.

The very idea behind addressing corporate insolvency is rooted in a desire to strike a balance: to try and save struggling businesses where possible, and to ensure fairness for those who are owed money (the creditors) when a business can't be saved. In many countries, including India, insolvency laws aim to do these two things. They provide a framework for giving financially distressed companies a chance to recover, and if that's not feasible, they lay down the rules for dividing the company's assets among the creditors in a fair manner.

Historically, India's approach to insolvency was a bit scattered, governed by several different laws like the Recovery of Debts Due to Banks and Financial Institutions Act of 1993, the Companies Act of 1956, and the Sick Industrial Companies (Special Provisions) Act of 1985. These separate regulations often led to inefficiencies and delays, meaning insolvency cases dragged on, and the value of the distressed businesses often diminished further.

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[3] https://lawbhoomi.com/overview-of-laws-relating-to-corporate-insolvency/

A significant turning point came with the introduction of the Insolvency and Bankruptcy Code in 2016. This new law brought in a much quicker and more streamlined process for resolving insolvency issues, while trying to balance the interests of everyone involved, from the creditors to the struggling company itself.

Under this Code, the main way corporate insolvency is dealt with is through the Corporate Insolvency Resolution Process, or CIRP. The goal of CIRP is either to reorganize and revive the business, or if that's not possible, to ensure an orderly liquidation. The process typically begins when a company defaults on a payment that exceeds a certain threshold. At this point, financial creditors, operational creditors, or even the company itself can file an application with the National Company Law Tribunal (NCLT). Once the application is accepted, a moratorium is put in place. This is essentially a standstill that halts all legal proceedings and enforcement actions against the struggling company, allowing for a controlled and fair resolution process. To oversee this process, manage the company's affairs, and help stakeholders develop a rescue plan, a Resolution Professional (RP) is appointed. If no viable rescue plan is agreed upon within a specific timeframe, the company then goes into liquidation. In this scenario, the company's assets are distributed according to a priority order defined in the IBC, which typically gives preference to employees and secured creditors, among others.

Ultimately, corporate insolvency is more than just a legal or financial event; it has significant economic and social consequences. A robust insolvency framework, like the IBC, plays a crucial role in reducing the risk of non-performing assets in the banking sector and improving the availability of credit in the economy by ensuring that viable businesses are given a chance to recover, while unviable ones are dealt with efficiently. Across the globe, effective insolvency systems prioritize swift resolution, protection for creditors, and the continuation of viable businesses. However, the effectiveness of any country's insolvency laws depends heavily on its legal system, the strength of its institutions, and the willingness of all parties involved to participate in fair resolution processes. India's evolving insolvency legislation continues to adapt to new challenges to ensure that corporate insolvency serves as a mechanism for economic stability and sustainable business practices.

Historical Evolution Of Insolvency Laws In India:

The narrative of India's insolvency laws is a story of gradual refinement, shaped by the currents of legal progress, economic liberalization, and the adoption of international best practices. Historically, India's approach to insolvency was characterized by a fragmented and often ineffective landscape, governed by a patchwork of statutes that frequently resulted in protracted and inconsistent outcomes. However, the legal framework has undergone a significant transformation, evolving from colonial-era enactments to the contemporary Insolvency and Bankruptcy Code, 2016 (IBC), thereby substantially improving the mechanisms for corporate insolvency and restructuring.

British Period:

During the British colonial period, the foundational principles of English law left their imprint on India's insolvency regulations. The earliest legislative efforts in this domain were the Presidency Towns Insolvency Act of 1909 and the Provincial Insolvency Act of 1920. These statutes primarily addressed insolvency proceedings for individuals, distinct from corporate entities. Conversely, corporate insolvency was largely governed by the Companies Act of 1913, which contained limited provisions for liquidation but lacked a structured framework for resolution. These legislative instruments remained in force until India achieved independence in 1947.

Post-Independence Period:

In the post-independence era, the Companies Act of 1956 became the principal legislation governing corporate insolvency. While it incorporated measures for the winding up of companies, it lacked a comprehensive system for the reorganization of financially distressed enterprises. The legislation's primary focus on liquidation offered limited avenues for the revival or resolution of struggling businesses. Recognizing the need for a specialized mechanism to address corporate distress, the government established the Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies Act, 1985 (SICA). However, BIFR's reputation suffered due to its slow processes, ineffectiveness, and susceptibility to exploitation by insolvent companies seeking to evade creditor obligations. The shortcomings of SICA and BIFR underscored the necessity for a more efficient insolvency framework.

During The 90's:

The economic liberalization initiated in India during the 1990s necessitated corresponding reforms in the nation's commercial and financial regulations. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI), which led to the establishment of Debt Recovery Tribunals (DRTs), aimed to expedite the recovery of outstanding debts. Furthermore, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), empowered banks and financial institutions to enforce security interests without direct judicial intervention. Despite these amendments, the existence of multiple overlapping regulations continued to create confusion and inefficiency, and corporate insolvency proceedings remained protracted.

Birth Of Insolvency & Bankruptcy Code:

The inadequacies of the existing framework became increasingly apparent in the early 2000s, as corporate borrowers exploited legal ambiguities to delay debt repayment, leading to a surge in non-performing assets (NPAs) within Indian banks. This context prompted the formation of the Bankruptcy Law Reforms Committee (BLRC), which recommended the enactment of a unified insolvency law. The Insolvency and Bankruptcy Code, 2016 (IBC), enacted in response to these recommendations, fundamentally reshaped the landscape of corporate insolvency in India.

The IBC established the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) as adjudicating authorities, superseded BIFR and SICA, and introduced a time-bound Corporate Insolvency Resolution Process (CIRP). This legislation strengthened the rights of creditors, improved the ease of doing business, and prioritized resolution over liquidation. Subsequent amendments have further refined the IBC, incorporating mechanisms such as pre-packaged insolvency and streamlined resolution processes for Micro, Small, and Medium Enterprises (MSMEs).

Role Of Restructuring In Corporate Turnaround:

Consider corporate restructuring as a lifeline for companies on the edge of collapse. It's not just about shuffling papers; it's a strategic overhaul that can breathe new life into businesses struggling with financial distress. By offering a clear path to fix how a company operates, shore up its finances, and ensure it can thrive long-term, restructuring becomes a crucial tool for survival. For companies facing the very real threat of going under, it provides a chance to reshape their core business, renegotiate tough debt situations, and bring in fresh perspectives through management changes. In India, the importance of this process has really come into focus since the introduction of the Insolvency and Bankruptcy Code (IBC) in 2016. This legislation provides a structured framework, offering businesses a real shot at recovery instead of simply dissolving.

One of the most effective ways restructuring helps is by tackling financial distress. Companies heading towards insolvency often find themselves buried under mountains of debt, struggling with day-to-day cash flow, and watching their revenues shrink. Restructuring offers solutions like sitting down with lenders to rework loan agreements, swapping debt for a stake in the company, or attracting new investment to stabilize their finances. Often, this involves making tough choices like selling off assets, rescheduling debt payments, or bringing in strategic investors to inject much-needed capital. The IBC plays a vital role here, acting as a referee to ensure fair and transparent talks between those owed money and the company trying to get back on its feet. This helps pave the way for a workable plan for repaying or reorganizing debt.

Beyond the balance sheet, restructuring also digs deep into how a company actually runs. Often, struggling businesses are weighed down by high costs, poor management decisions, or outdated ways of doing things. Operational restructuring aims at boosting productivity and efficiency. This could involve anything from cutting unnecessary expenses and automating processes to making sure the right people are in the right roles and forming smart partnerships. For instance, several Indian companies in industries like manufacturing and infrastructure have successfully turned things around by adopting lean management principles and revamping their supply chains. Insolvency professionals and turnaround specialists are key players here, helping to identify where things are going wrong and developing practical plans that align with what the market needs.

But it's not just about the money and the day-to-day operations. Corporate turnaround often requires looking at the bigger picture through organizational and legal restructuring. This might mean selling off parts of the business that aren't core to its mission, merging with or acquiring other companies, or making changes to how the company is governed. For many struggling businesses, joining forces with a stronger entity can be a lifeline, providing both financial backing and credibility in the market. The IBC facilitates these kinds of mergers through the resolution plans proposed by potential investors, ensuring that viable businesses are rescued rather than liquidated. Moreover, the introduction of the Pre- packaged Insolvency Resolution Process (PIRP) specifically for smaller businesses (MSMEs) has significantly sped up and simplified the restructuring process for them.

Ultimately, restructuring during a corporate turnaround is also about protecting the interests of everyone involved. When a company hits hard times, it impacts customers, shareholders, lenders, and employees. A well-thought-out restructuring plan strives to ensure that the value for shareholders isn't completely wiped out, that jobs are preserved where possible, and that creditors receive fair repayment. The Committee of Creditors (CoC), which has the power to approve these rescue plans under the IBC, plays a crucial role in making sure the restructuring process is conducted in a way so that the needs of all the stakeholders are balanced.

CHAPTER-2

NAVIGATING FINANCIAL DISTRESS: INDIA’S CORPORATE INSOLVENCY FRAMEWORK & CHALLENGES IN THE CONTEMPORARY LEGAL FRAMEWORK

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NAVIGATING FINANCIAL DISTRESS: INDIA'S CORPORATE INSOLVENCY FRAMEWORK

3.1 Insolvency & Bankruptcy Code (IBC), 2016- Key Provisions:

When a company in India faces serious financial trouble, the Insolvency and Bankruptcy Code (IBC) of 2016 steps in as the main rulebook. Think of it as a comprehensive and timely way to handle situations where businesses can't pay their debts, replacing a system that wasn't working so well before. The IBC's big goals are to make India a better place for lending and borrowing, keep the economy humming, and find a fair balance for everyone involved when a company is struggling. Following are its key provisions:

1. **The Corporate Insolvency Resolution Process (CIRP)-A Chance for Revival:** The CIRP is the IBC's central way of trying to fix a company's financial problems. It kicks in when a company misses a payment of at least ₹1 crore (this amount might change over time). Importantly, the company itself, the banks and other lenders it owes money to, or even the businesses it owes money to for supplies or services can start this process by applying to the National Company Law Tribunal (NCLT). Once the NCLT accepts the application, a moratorium goes into effect – essentially a pause on all lawsuits, debt recovery, and enforcement actions against the struggling company. During this time, a neutral expert called a Resolution Professional (RP) takes over managing the company and works to create a rescue plan within 180 days (which can be extended up to a total of 330 days in some cases). If they can't agree on a plan, the company will likely move towards being liquidated.[4]
2. **The Committee of Creditors (CoC)- Lenders at the Helm**: The Committee of Creditors (CoC) is like a steering committee made up of the financial lenders to the company. They have a big say in the rescue process. They review and vote on any proposed rescue plans from potential buyers or investors. In order to pass a plan, at least 66% of the CoC members have to agree. This ensures that the

[4] https://cleartax.in/s/insolvency-and-bankruptcy-code-2016

lenders, who have a significant financial stake, are on board with how the company moves forward while also trying to keep the process fair for everyone.

3. **The Liquidation Process- Distributing the Assets:** If the CIRP doesn't lead to a workable rescue plan within the given timeframe, the company goes into liquidation. In this phase, a liquidator is appointed to sell off the company's assets and distribute the money according to a specific order laid out in Section 53 of the IBC. This "waterfall mechanism" prioritizes certain payments:
   - First in line are the costs of the insolvency process itself and the secured lenders.
   - Next are the wages owed to workers and employees.
   - Then come the unsecured financial creditors.
   - After that, operational creditors and government dues are paid.
   - Finally, if there's anything left, it goes to the shareholders.
4. **Fast-Track Insolvency- Speeding Up Resolution:** Recognizing that smaller businesses might need a quicker solution; the IBC offers a fast-track insolvency process for small and medium enterprises and other specific types of companies. This aims to wrap things up within 90 days (with a possible extension of up to 135 days), allowing for faster resolutions for these financially troubled entities.
5. **Pre-Packaged Insolvency- An Early Agreement:** Introduced in 2021 specifically for Micro, Small, and Medium Enterprises (MSMEs), the Pre- Packaged Insolvency Resolution Process (PIRP) offers a different approach. It allows these smaller companies to work out a restructuring plan with their creditors before formally starting the insolvency process. This can reduce damage to the business and result in a quicker resolution compared to the standard CIRP.
6. **The Role of NCLT & NCLAT: The Judges of Insolvency**: The National Company Law Tribunal (NCLT) acts as the main court for all insolvency cases. If someone disagrees with an NCLT order, they can appeal to the National Company Law Appellate Tribunal (NCLAT).Ultimately, orders passed by the NCLAT can be further challenged in the apex court of India, the Supreme Court.

Pre-Packaged Insolvency Resolution Process (PIRP):

Concept & Objectives Of PIRP: The Pre-Packaged Insolvency Resolution Process (PIRP) offers a streamlined approach to resolving financial distress, blending out-of-court negotiations with the formal Corporate Insolvency Resolution Process (CIRP) outlined in India's Insolvency and Bankruptcy Code (IBC). Think of it as a hybrid model where companies facing financial headwinds can proactively engage with their creditors to forge a restructuring plan before fully entering the more rigorous CIRP framework.

An important step taken in favour of the evolution of the IBC was the birth of PIRP through the IBC (Amendment) Act of 2021. This amendment targets the specific challenges faced by Micro, Small, and Medium Enterprises (MSMEs), as defined under the Micro, Small and Medium Enterprises Development Act, 2006.

Recognizing the profound impact of the Covid-19 pandemic on businesses of all sizes, particularly MSMEs, the legislature carved out a dedicated chapter within the IBC for PIRP. The core distinction between CIRP and PIRP lies in their approach to insolvency resolution: PIRP integrates both consensual (non-judicial) and formal (judicial) elements. For instance, unlike CIRP, where an independent Resolution Professional (RP) assumes control of the company, PIRP operates on a "debtor-in-possession, creditor-in-control" model. This means the existing management remains at the helm, while creditors assert considerable influence over the resolution process, aiming to reduce the disruptions to ongoing business operations.

The primary objectives of PIRP include:

- To establish a faster and more efficient resolution pathway for MSMEs.
- To curtail litigation and procedural delays by encouraging upfront negotiation of resolution plans.
- To ensure business continuity with minimal interruptions.
- To balance the protection of creditors' rights with the opportunity for debtors to achieve business revival.

Eligibility Criteria For Initiation of PIRP Process:

For an MSME to initiate the PIRP process by approaching the Adjudicating Authority (AA), it must meet specific eligibility criteria, notably a minimum default of ₹20,00,000 (Rupees Twenty Lakh Only). If the default exceeds ₹2,00,00,000 (Rupees Two Crore Only), then PIRP would not apply.[5]

Beyond the monetary threshold, several other conditions must be met for an MSME to be eligible for PIRP:

1. The corporate should not have undergone PIRP or CIRP in the 3-year period before the date of commencement of PIRP.
2. A company cannot simultaneously undergo both CIRP and PIRP.
3. The company must satisfy all the requirements to be a resolution applicant under Section 29A of the IBC, implying it should not be disqualified from presenting a resolution plan.
4. The MSME should not have been put in for liquidation according to Section 33 of the IBC.

The initiation of the PIRP process unfolds in a structured manner:

1. An application, with a fee, is submitted with the Adjudicating Authority. The application must be either admitted or rejected by the AA within the duration of 14 days. Crucially, before filing, a majority of the company's directors or partners must submit a declaration to the AA, and at least three-fourths of the directors or partners must approve the filing. Further, the approval of the financial creditors constituting at least 66% of the outstanding financial debt is a necessary condition.
2. Even before the application is formally admitted, the financial creditors propose an Insolvency Professional (IP). The IP is required to formulate a report regarding the confirmation of eligibility of the debtor and whether the base resolution plan complies with the provisions of the IBC. The IP's role concludes if the application isn't filed within the stipulated time, or if it's rejected or admitted.

[5] https://www.azbpartners.com/bank/pre-packaged-insolvency-resolution-process-an-overview-of-the- mechanism/

3. The next step involves the filing of the PIRP initiation application, which must include the name of the RP that has been proposed. The AA then has 14 days to issue an order. If the application has deficiencies, the AA must grant the corporate debtor seven days to rectify them.
4. After the application of PIRP is admitted, a Committee of Creditors (CoC) must be formed within the duration of seven days, and their 1st meeting must be conducted in the next seven days. While the debtor retains management control, the CoC, with a 66% majority vote, can resolve to transfer management to the RP, in which case the relevant CIRP provisions become applicable.
5. Within the duration of 2 days after the order has been admitted, the corporate debtor must submit a base resolution plan to the RP, who then puts it before the CoC.
6. The CoC will then decide whether to approve the base resolution plan for submission to the AA. However, before doing so, the CoC must ensure that the plan doesn't negatively impact the claims of operational creditors. Operational creditors should receive the full amount of the claims they have confirmed. If this isn't the case, the RP must invite alternative resolution plans to compete with the base plan. Before this "Swiss challenge" mechanism is initiated, the CoC will typically offer the corporate debtor an opportunity to revise their base plan to better address operational creditor concerns. Notably, there isn't a similar safeguard explicitly designed to protect the interests of financial creditors, who may face potential losses on their claims.
7. A resolution plan requires approval from at least 66% of the voting shares of the CoC before it can be submitted to the AA. If the AA is satisfied that the plan meets the IBC's requirements, it will approve it within 30 days of receipt. If the CoC doesn't approve any resolution plan, even after considering competing proposals, the RP is obligated to file an application with the AA for the termination of the PIRP.
8. Once the application of PIRP is received, a period of moratorium under Section 14 of the IBC comes into effect. The proceeding under PIRP must be accomplished within the duration of 120 days, and the submission of the resolution plan by the resolution professional must be done within the duration of 90 days from the pre- packaged insolvency date of commencement.

9. The AA can reject a resolution plan submitted by the CoC if it doesn't comply with the IBC's provisions, leading to the termination of the PIRP. The plan becomes binding upon all the stakeholders and the provisions of Section 31 stands to apply upon its approval by the adjudicating authority. Further, if the corporate debtor fulfils the criteria for CIRP at any particular point after the PIRP date of commencement but before the resolution plan has been approved, the CoC can approach the adjudicating authority in order to terminate the PIRP and initiate proceedings under CIRP.

Comparative Analysis Of IBC, 2016 With Chapter 11, Bankruptcy Code of U.S.A:

The Insolvency and Bankruptcy Code, 2016 (IBC) is India’s comprehensive insolvency framework, designed to streamline the process of resolution of financially distressed companies and balance the interests of all stakeholders. Since its enactment, it has significantly improved India’s insolvency resolution process by introducing a time-bound and a creditor-driven approach.

Below is the comparative analysis of Insolvency Laws of India & U.S.A.

Aspect	**INDIA IBC, 2016**	**U.S.A CHAPTER,11 BANKRUPTCY CODE**
Approach	The Insolvency process is initiated by the Creditors.	The initiation of Insolvency process is done by the Debtor Company.
Control of the Company	The control of the company is retained by the Board of Directors (BOD) or Resolution Professional (RP).	The approach of Debtor-In-Possession is adopted and hence the entirety continues till its operation
Moratorium Period	NCLT upon the acceptance of the application for insolvency proceedings, may declare the moratorium period which continues till the approval of the resolution plan.	After filing of the petition in the Bankruptcy Court, the period of moratorium starts under the US Bankruptcy Code.

Insolvency Proceedings Duration	180 days which can be extendable up to 330 days with Adjudicating Authority giving one time extension.	120 days which can be extendable up to 18 months on considering genuine grounds.
Resolution Plan	The Resolution applicant provides the Resolution professional with the resolution plan according to section 30 based on the information memo that the RP prepared in accordance with section 29. According to section 30(4), the Committee of Creditors (CoC) must have a 66% voting share to adopt the resolution plan, and the Adjudicating Authority may, by order, accept the CoC-approved plan.	Under Chapter 11 of the Bankruptcy Code Resolution plan also known as living will, describes the strategy of the company regarding mitigation of risks in situations of financial distress. The plan requires at least 2/3rd members voting to a majority.
Costs Of Insolvency Proceedings	If the Corporate Insolvency Resolution Process is started under Section 7 (financial creditor takes actions against corporate debtor) or Section 9 (operational creditor initiates proceedings against corporate debtor), the cost is borne by the creditors. Debtors bear the costs if CIRP is started under section 10 (proceedings started by a corporate applicant).	The debtors borne the costs of insolvency proceedings. However, lenders may provide finance to debtors against lien over the assets which have not been pledged to other lenders.
Stakeholder Protection	Prioritizes secured creditors and financial institutions in resolution. Employees and operational creditors receive lower priority.	Ensures broader protection for various stakeholders, including employees, suppliers, and unsecured creditors.

Challenges in the Contemporary Legal Framework Governing Corporate Insolvency Resolution:

While the Insolvency and Bankruptcy Code (IBC) of 2016 has furnished a significantly improved framework for addressing corporate insolvency, its practical application encounters several salient challenges. These impediments span protracted resolution timelines, operational inefficiencies within the judicial system, insufficient engagement from creditors, and sector-specific complexities. This discussion highlights the specific hurdles faced during the introduction of the IBC, 2016:

1. **Protracted Resolution Timelines:** Despite the IBC stipulating a resolution period of 180 days, extendable by a maximum of 150 days to a total of 330 days, a substantial number of cases exceed this statutory duration. This deviation arises due to protracted disputes among creditors, intricate legal issues, and the considerable backlog within the judicial infrastructure. Landmark cases like Dewan Housing Finance Corporation Ltd. (DHFL) and Jaypee Infratech have reportedly taken several years to achieve resolution, thereby undermining the IBC's fundamental objective of expeditious resolution. The main factor responsible for these delays is the overburdened National Company Law Tribunal (NCLT).
2. **Suboptimal Repayment Percentages:** The approval of Resolution Plans frequently entails a relatively low upfront payment by the prospective acquirer, often in the vicinity of 15% of the outstanding dues. Furthermore, the subsequent repayment to creditors can extend over several years without the accrual of additional interest, as highlighted in the Financial Stability Reports (FSR) published by the Reserve Bank of India in 2023.
3. **Complexities in Settlement and Recovery:** Recent instances of settlements and recoveries, such as the case involving Reliance Communications Infrastructure Ltd. (RCIL), have elicited concerns regarding the modest amounts recovered and the extended durations required for resolution. Specifically, the settlement that happened in the case of RCIL resulted in a recovery of approximately 0.92% of the total debt and necessitated a resolution period of four years, significantly exceeding the stipulated 330-day timeframe. Moreover, the time-intensive processes

associated with identifying and acknowledging defaults contribute to diminished recovery rates by impeding the timely initiation of resolution proceedings.

4. **Difficulties in the Liquidation Process:** In instances where a viable resolution plan fails to materialize, the corporate debtor is relegated to liquidation, a process often detrimental to asset value. According to the provisions of Section 53 of the IBC, the established waterfall mechanism prioritizes secured creditors in the distribution of assets, frequently leaving operational creditors and employees with minimal or no recovery. This perceived imbalance engenders dissatisfaction among various stakeholders, leading to further legal entanglements and procedural delays.

5. **Regulatory Concerns:** The Financial Stability Reports (FSR) have underscored several pertinent concerns regarding the Corporate Insolvency Resolution Process (CIRP). These reports indicate a discrepancy between the quantum of claims admitted and the actual dues, with banks and financial creditors often recovering only a fraction of the liquidation and fair values of the assets. Further, the 32nd report by the Parliamentary Standing Committee on Finance has highlighted several concerns about lower rates of recovery (reaching up to 95% haircuts), the delayed duration of resolutions (over 71% of cases pending beyond the duration of 180 days), and issues regarding the conduct of Resolution Professionals (RPs) and Insolvency Professionals (IPs). The committee has recommended putting a limit to the extent of haircuts and establishing a dynamic code of conduct to be followed by the Committee of Creditors (CoC).

6. **Inadequacy of Infrastructure:** The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) occupy a pivotal role in the adjudication of insolvency matters. However, a deficiency in the number of judicial members coupled with an overwhelming caseload has resulted in substantial case backlogs. The pendency of numerous insolvency cases and the delays associated with appeals at the NCLAT, and the Supreme Court further impede the resolution process. Augmenting the infrastructure of these tribunals and increasing the number of judicial personnel are crucial for enhancing the efficiency of IBC implementation.

7. **Limited Uptake of the Pre-Packaged Insolvency Process:** The Pre-Packaged Insolvency Resolution Process, which got implemented in the year 2021 with the aim of delivering faster and less chaotic restructuring for MSME's, has faced slower rates of adoption. This limited uptake can be attributed to stringent eligibility criteria and demanding creditor approval requirements. Expanding the applicability of the Pre-Pack framework to larger enterprises and streamlining its procedural aspects could potentially improve restructuring outcomes.

8. **Challenges to the Rights of Operational Creditors:** Under the Insolvency and Bankruptcy Code, 2016, financial creditors are vested with voting rights within the Committee of Creditors (CoC), whereas operational creditors are excluded from this privilege. This disparity limits the ability of operational creditors to influence the formulation of resolution plans, often resulting in their claims being overlooked or settled at significantly reduced values. To foster more equitable creditor participation, a more balanced approach to their rights and involvement is warranted.

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CHAPTER 3

THE PIVOTAL ROLE OF KEY STAKEHOLDERS IN INSOLVENCY & RESTRUCTURING

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THE PIVOTAL ROLE OF KEY STAKEHOLDERS IN INSOLVENCY & RESTRUCTURING

Corporate Debtors: Within the framework of insolvency and restructuring, the corporate debtor occupies a central position. Under the Insolvency and Bankruptcy Code, a corporate debtor possesses the prerogative to initiate insolvency proceedings against itself by submitting an application to the designated adjudicating authority. This provision serves as a crucial safeguard, designed to protect the interests of the entity when its internal mechanisms for financial stability falter. This self-initiation typically occurs when the corporate debtor recognizes a significant adverse impact on its operations, leading to an inability to meet payment obligations and consequent financial losses. Such a determination is usually reached following a comprehensive assessment of prevailing market dynamics and a critical lack of liquid working capital. Defined under Section 3(8) of the Code as any entity owing a debt to another, a corporate debtor can formally apply for insolvency under Section 10 of the aforementioned legislation. This application necessitates the submission of several key documents, including the company's books of account, a proposed name for an interim resolution professional, and a resolution sanctioning the insolvency proceedings. For companies, this resolution requires a special majority vote by the shareholders, while partnership firms must secure a resolution passed by a three-fourths majority of their partners.

The corporate debtor's involvement extends across the entire insolvency and restructuring process, with its actions and level of cooperation significantly influencing the efficiency and outcome of resolution efforts. Its role encompasses various critical stages, from the initial filing for resolution to active participation in restructuring and potential liquidation proceedings, as elaborated below:[6]

1. **Initiation Of Insolvency Proceedings:** According to the provisions of IBC, 2016, a corporate debtor can initiate insolvency proceedings against itself under Section 10, if it is not able to meet its financial obligations. This allows financially distressed companies to seek restructuring before reaching a stage of complete financial

[6] https://www.indiafilings.com/learn/cirp-petitioners-corporate-debtors-financial-operational-creditors/#:~:text=A%20corporate%20debtor%20is%20defined,s%2010%20of%20The%20Code.

collapse. The ability to voluntarily trigger insolvency proceedings provides an opportunity for early intervention, potentially leading to a more favourable resolution. However, corporate debtors can also be subjected to insolvency proceedings initiated by financial creditors (Section 7) or operational creditors (Section 9). In such cases, the corporate debtor must either contest the claims or cooperate with the appointed Resolution Professional (RP) and the Committee of Creditors (CoC) in finding a viable resolution.

2. **Cooperation With Resolution Professional & CoC:** As soon as the insolvency proceeding is commenced, the corporate debtor's existing management is suspended, and a Resolution Professional (RP) takes control. However, the corporate debtor still plays a significant role in facilitating the process by:
   - Providing necessary financial statements and records to assist the RP.
   - Cooperating with creditors to ensure smooth decision-making.
   - Engaging in negotiations with potential resolution applicants to help frame viable restructuring plans.
3. **Role in Restructuring & Resolution Plans**: During insolvency proceedings, corporate debtors may propose restructuring strategies to the CoC, including:
   - <u>Debt restructuring</u>: Proposing a reduction in outstanding debt or extended repayment timelines.
   - <u>Asset monetization</u>: Selling non-core assets in order to generate liquidity.
   - <u>Strategic investments</u>: Seeking new investors or business partners.

   The debtor's cooperation in preparing and implementing resolution plans is crucial for successful restructuring. If a corporate debtor fails to support the process, it may lead to liquidation, which often results in greater value destruction for all stakeholders.

<u>Financial Creditors:</u> According to the provision of Section 5(7) of the Insolvency & Bankruptcy Code, 2016, a Financial Creditor is defined as *"a person to whom a financial debt is owed, including a person to whom such debt has been legitimately assigned or transferred."* In order to determine whether an individual is a financial creditor, the debt owed to that person must come under the definition of Financial Debt" as mentioned in Section 5(8) of the IBC.

According to Section 5(8) of the IBC, a financial debt is defined as: *a debt together with interest, if any, that is distributed against the consideration for time worth of money an includes:*

- Money borrowed against interest payment
- Any money raised through acceptance under an acceptance credit arrangement, or its dematerialized counterpart
- The amount of any liability related to a lease or hire purchase agreement that is deemed to be a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed
- Any amount raised through any other transactions, such as forward sale or purchase agreement that has commercial impact of a loan.
- Any amount raised through a note purchase facility or the issuance of bonds, notes, debentures, loans, stock or a comparable instrument.

Under Section 7 of the IBC, 2016, Financial Creditors have a right to initiate Corporate Insolvency Resolution Process (CIRP) against a defaulting corporate debtor. The Financial Creditor plays a crucial role regarding Insolvency and Restructuring which are mentioned below:

1. **Participation in The Committee of Creditors (CoC)**: Financial creditors hold significant power in the insolvency process as they constitute the Committee of Creditors (CoC), which plays a decisive role in:
    - Evaluation & Approval of resolution plans submitted by prospective buyers.
    - Deciding on restructuring strategies such as asset sales, debt restructuring or infusion of fresh capital.
    - Voting on the future of the debtor, including whether to accept a resolution plan or push the company into liquidation.

Financial creditors have significant control over the process because a resolution plan needs the CoC's 66% approval. Since financial creditors have direct exposure to the debtor’s loans, their interests lie in maximizing recovery while ensuring business viability.

2. **Impact on Restructuring**: Financial creditors often opt for debt restructuring over liquidation to maximize their returns. They may agree to haircuts or debt-to-equity

swaps to help the debtor regain financial stability. As demonstrated in the Essar Steel case, financial creditors play a vital role in approving resolution plans that ensure better recoveries.

Operational Creditors: According to Section 5(20) of the Insolvency & Bankruptcy Code, 2016, "Operational Creditor" *refers to any individual to whom operational debt is owed, including any person to whom such debt legally assigned or transferred.* In order to determine whether an individual satisfies the criterion of an operational creditor, the debt owed to that individual must meet the definition of operational debt as defined under Section 5(21) of the IBC.

According to Section 5(21) of the IBC, an operational debt "*refers to a claim for the provision of goods & services, including employment, or a debt for repayment of dues arising under any law for the time being in force and payable to Central Government, any State Government or a local authority.*"

In contrast to Financial Creditors, Operational Creditors have a very limited role in decision-making since they are excluded from the Committee of Creditors (CoC) and do not have any voting rights.

Swiss Ribbons Pvt Ltd. & Ors. Vs. UOI: In the case of Swiss Ribbons Pvt. Ltd. & Ors Vs. Union of India, the Hon'ble Supreme Court of India was asked to provide a ruling on the prioritization and differential treatment given to "Financial Creditors" over "Operational Creditors."

In this case, the Supreme Court did an evaluation to check whether there is violation of Article 14 of the Indian Constitution by not having operational creditors represented on the Committee of Creditors (Coc). The Bankruptcy Law Reforms Committee's (BLRC) report, the predecessor to the IBC, served as the foundation for the Hon'ble Supreme Court's reasoning for the separation of operational creditors from the CoC. The viability of a resolution plan could be examined by the financial creditors since staff members were qualified to do so, according to the reports of BLRC.

In contrast, operational creditors are typically unable to assess a company's profitability & viability; instead, they are simply interested in collecting the money they are owed for their goods and services. The BLRC states that financial creditors can assess a plan's viability and effectiveness, they will do so and base their choice to approve or reject a plan primarily based upon those considerations.

In this matter, the Hon'ble Supreme Court upheld the constitutional validity of Section 53 and rejected the argument that there should be distinction between Operational and Financial Creditors on the grounds that doing so would violate Article 24 of the Indian Constitution and undermine the intent behind the Code.

Insolvency Professionals & Resolution Professionals:

According to Section 3(19) of IBC, 2016, an individual who is registered with the Insolvency & Bankruptcy Board of India (IBBI) as an Insolvency Professional is referred to as an "Insolvency Professional". An insolvency professional must also be a member of an insolvency professional agency to qualify as an insolvency professional.

According to the provisions of Section 208 of the IBC, professionals are required to follow all the rules and regulations set up by the Insolvency Professional Agency they belong to. There are several IPAs in India, such as the ICSI Institute of Insolvency Professionals, and the Indian Institute of Insolvency Professionals of ICAI. These agencies ensure that insolvency professionals follow the necessary guidelines while dealing with cases of Insolvency.[7]

Interim Resolution Professional: During the initial stages of the Corporate Insolvency Resolution Process (CIRP), the National Company Law Tribunal (NCLT) appoints an interim resolution professional (IRP) within 14 days from the initiation date of CIRP to oversee the management of the debtor's affairs. The primary tasks of the IRP include taking control over the debtor's assets and establishing a committee of creditors within 30 days of the commencement of CIRP.

Resolution Professional: The Adjudicating Authority appoints a Resolution Professional who overlooks and manages the entire process of insolvency and bankruptcy. According to the provisions of the Code, "Resolution Professional" refers to an Insolvency Professional who conducts the insolvency resolution process and includes an interim resolution professional and takes significant steps to revive the company. The Insolvency Professional

[7] https://blog.ipleaders.in/role-and-duties-of-resolution-professional-under-the-insolvency-and- bankruptcy-code-2016/

is governed through a specific legislation that they must follow i.e. IBBI (Insolvency Professional) Regulation, 2016.

Role of Resolution Professional: The Resolution Professional plays an important role in the Insolvency & Bankruptcy process. The important functions of a Resolution Professional are mentioned below-:

1. According to the provisions of Section 23 of the Code, the Resolution Professional conducts the entire Corporate Insolvency Resolution Process and manages the operations of the corporate debtor during the period of the CIRP. Further, even after the expiry of the corporate insolvency resolution, the Resolution Professional continues to manage the affairs until the order of the approved resolution plan or appointment of the liquidator is passed. He is also vested with the exercise of the power and to perform the duties that rests with the Interim Resolution Professional.
2. After the order of the initiation of CIRP is passed, an insolvency professional is appointed who acts as an IRP by the Adjudicating Authority. As per Section 17 of IBC, on and from the date from which the IRP is appointed he is vested with the management of the operations of the corporate debtor. The control from the corporate debtor is transferred to the IRP. The power of the Board of Directors of the corporate debtor also rests and exercised by the IRP. In order to manage the operations of the corporate debtor by the IRP, the managers and the officers of the debtor are required to give access to the IRP of all the relevant documents, books of accounts, records, etc. as may be required. Section 17 of IBC also makes it obligatory for the managers and the officers of the corporate debtor to report to the IRP. The IRP acts and executes all the receipts, deeds, and documents in the name and on behalf of the corporate debtor and takes all such actions specified by the Board.
3. For the purposes of CIRP, the control and custody of the assets from the corporate debtor is taken over by the Resolution Professional according to the provisions of Section 18(f). The NCLT, Mumbai Bench in the case of *Goa Auto Accessories V. Suresh Saluja* has held that to facilitate the CIR Process, the Resolution Professional can take control of the assets of the corporate debtor that forms the subject-matter of the litigation.

4. One of the most important roles of a Resolution Professional is to bring all the creditors together. After the collation of claims and determination of the position of the corporate debtor, the interim resolution professional constitutes the CoC. The Committee of Creditors then decide whether to resolve insolvency of the company or to liquidate it. During the first meeting of the CoC, a Resolution Professional is appointed who then presides and conducts the meetings of the committee. Further, according to the provision of Section 24(2), the RP conducts all the meetings of the Committee of Creditors.
5. The Resolution Professional is required to prepare and submit the information memorandum in order to formulate a resolution plan. He must also provide all the relevant information to the resolution applicant. Regulation 36(2) states about the details to be contained in the information memorandum.

Regulatory Authorities (NCLT, NCLAT, IBBI):

National Company Law Tribunal (NCLT): The NCLT is the adjudicating authority for corporate insolvency and restructuring matters under the IBC. It plays a significant role in resolving financial distress by ensuring that insolvency proceedings are conducted efficiently and in accordance with the law. The important functions of NCLT in Insolvency & Restructuring are mentioned below:

1. In accordance with Sections 7, 9, and 10 of the IBC, petitions submitted by corporate debtors, financial creditors, or operational creditors are used by NCLT to determine whether to start a corporate insolvency resolution procedure (CIRP).
2. The tribunal is also in charge of selecting an Interim Resolution Professional (IRP) to assume control of the troubled business.
3. A moratorium term is imposed by NCLT, during which time all court cases and recovery attempts against the corporate debtor are halted.
4. The NCLT examines and approves a resolution plan after the prior approval of Committee of Creditors (CoC) ensuring its adherence to the law.
5. As stated in Section 53 of the Insolvency & Bankruptcy Code, 2016, the NCLT orders liquidation and designates a liquidator to distribute assets under the "waterfall mechanism" if no resolution plan is approved within 330 days.

6. The tribunal also considers cases including fraud, preferential transactions, and poor management in connection with insolvency issues.

National Company Law Appellate Tribunal (NCLAT): For decisions rendered by the NCLT, the NCLAT acts as the appellate body. In order to ensure that justice is done in insolvency proceedings, it is crucial to examine and fix mistakes. The following lists NCLAT's primary responsibilities with regard to insolvency and restructuring:

1. Any stakeholder (debtor, creditor, or resolution applicant) may file an appeal with NCLAT if they are dissatisfied with an NCLT order.
2. The impacted party may appeal to the NCLAT if the NCLT orders the company to go into liquidation or rejects a specific resolution plan.
3. Any complaints regarding the resolution procedure may be directed to the NCLAT by resolution applicants, creditors, or operational debtors.
4. Appeals against fines or regulatory proceedings conducted by the Insolvency & Bankruptcy Board of India (IBBI) must be heard by the NCLAT.
5. To ensure judicial oversight over insolvency procedures, a party may petition and appeal to the Hon'ble Supreme Court of India if they are dissatisfied with an NCLAT ruling.

Insolvency & Bankruptcy Board of India (IBBI): The Indian bankruptcy and restructuring ecosystem is regulated and overseen by the bankruptcy & Bankruptcy Board of India. It functions as a supervisory, regulatory, and quasi-judicial authority with a range of duties that affect all parties involved, including corporate debtors, creditors, insolvency professionals (IPs), and other adjudicating bodies. The following are the main duties of IBBI:

1. Insolvency Professionals (IPs), Information Utilities (IUs), Insolvency Professional Agencies (IPAs), and Registered Valuers are among the stakeholders that the IBBI regulates. Under the IBC framework, the Board publishes rules, guidelines, and circulars that offer legal certainty and procedural clarity. The Corporate Insolvency Resolution Process (CIRP), Pre-Packaged Insolvency Resolution Process (PIRP), Liquidation Process, and Voluntary Liquidation are among the topics covered by these regulations.

2. Regulating, licensing, and overseeing bankruptcy Professionals (IPs) who carry out bankruptcy and restructuring procedures is one of the IBBI's most important responsibilities. It establishes the requirements for eligibility, administers the qualifying tests, and establishes the standards of behaviour that insolvency professionals must adhere to. In order to ensure accountability and moral behaviour, IBBI also has disciplinary authority over the IPs. In addition, the IBBI has the power to punish professionals for wrongdoing and start disciplinary actions.
3. Information Utilities, which are organizations in charge of gathering, compiling, confirming, and disseminating financial data regarding debtors, are likewise registered and overseen by the Board. During insolvency processes, the information utilities are crucial in enhancing the dependability and transparency of data. The availability of verified data helps creditors make well-informed decisions and speeds up the claim verification process.
4. The Insolvency & Bankruptcy Board of India also plays a significant role in advising the Ministry of Corporate Affairs (MCA) and the central government on policy issues regarding insolvency and restructuring. It has been instrumental in introducing amendments to the IBC, including the homebuyers as financial creditors, Pre-Packaged Insolvency for MSME’s and cross-border insolvency proposals.

CHAPTER 4

PROCESSES AND PROCEDURES UNDER IBC

PROCESSES AND PROCEDURES UNDER IBC

Initiation Of Corporate Insolvency Resolution Process: The process can be initiated by creditors or the corporate debtor itself and is governed primarily under Sections 6 to 11 of the IBC along with detailed procedural regulations issued by the Insolvency and Bankruptcy Board of India (IBBI). Below is a step-by-step explanation of the CIRP initiation:[8]

1. **Filing Of Application Before The Adjudicating Authority (Section 7(1))**: A financial creditor, either jointly or individually with other financial creditors, or any other individual authorized by the Central Government, may file an application to initiate CIR process upon the occurrence of default against the corporate debtor. Further, regarding the notification dated 27th February 2019, an individual who can file an application on behalf of the financial creditor include:
    - An executor or an administrator of the estate of financial creditor.
    - An individual duly authorized by the Board of Directors of a company.
    - A guardian
    - A trustee
2. **Requisites Of Application Form and Fees (Section 7(2)):** The Financial Creditor(s) are required to make an application under Section 7 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The application should include necessary records and documents, and in the case of an assignee or transferee, a copy of the assignment or transfer agreement. Further, the application needs to be served to the registered office of the corporate debtor and the Board before filing with the Adjudicating Authority which is the NCLT.
3. **Required Enclosures With The Application (Section7(3)):** While filing the application, it needs to include the following information:
    - Name of the proposed interim resolution professional.
    - Record of default from an information utility or any other specified evidence.
    - Any other specified information.

[8] https://ibclaw.blog/initiation-of-corporate-insolvency-resolution-process-by-financial-creditors-under- section-7-of-the-ibc-scope-requirements-and-procedures-by-shivam-jadaun/#_edn6

4. **Duration For Ascertainment of Default By AA (Section 7(4)):** The Adjudicating Authority must prove the existence of default within the duration of 14 days of receiving the application, whether a default has occurred or not, either through the records of an information utility or any other evidence provided by the financial creditor which is directory and not mandatory in nature. Further, non-compliance to this will not lead to the application being considered as null & void.
5. **Grounds Of Rejection/Admission Of Application By AA (Section 7(5)):** The Adjudicating Authority will admit the application if the following conditions are met:
    - A default has occurred.
    - The application is complete.
    - No disciplinary proceedings are pending against the proposed RP.

If the following grounds mentioned above are not met, the Adjudicating Authority **"may"** reject the application, but must give notice to rectify the defect under 7 days before rejecting it as following the principles of natural justice. Further, non-compliance with the conditions will result in the application being null and void.

The principle involving the "7 days duration" has been upheld in the case of *Surendra Trading Company v. Juggilal Kamlapat Jute Mills Company Ltd.*[9] by the Supreme Court. The court in its judgement stated that the duration of seven days is directory and not mandatory. As a result, this will not lead to the insolvency proceedings being considered as null and void.

In the case of *Vidarbha Industries Power Ltd. v. Axis Bank Ltd*., the Supreme Court read Section 7(5) to suggest that the NCLT has discretion over whether to admit applications because of the word "May." This ruling gave the NCLT the authority to take the corporate debtor's viability and financial health into account, possibly rejecting applications even in cases where default was present.[10].

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9 https://digiscr.sci.gov.in/admin/judgement_file/judgement_pdf/2017/volume%209/Part%20I/Ms%20Surendra%20Trading%20Company%20%20vs%20%20Ms%20Juggilal%20Kamlapat%20Jute%20Mills%20Company%20Limited%20And%20Others1701935716.pdf

10 https://digiscr.sci.gov.in/admin/judgement_file/judgement_pdf/2022/volume%2012/Part%20I/2022_12_ 139-168_1702614170.pdf

According to the circumstances of this landmark case, the power generation business VIPL experienced financial difficulties because of loan repayment delays brought on by regulatory concerns. One of VIPL's lenders, Axis Bank, attempted to start the Corporate Insolvency Resolution Process (CIRP) in accordance with Section 7 of the IBC. VIPL contended that the NCLT has discretionary authority, arguing that Section 7(5)(a) permits the corporate debtor's financial health to be considered in addition to default. An obligatory interpretation was advocated by Axis Bank. According to the Supreme Court's decision, the NCLT has discretionary authority to consider a corporate debtor's financial situation in addition to default, which may allow applications to be denied even in cases where defaults have occurred. Following the Supreme Court's decision in the Vidarbha Case, there was uncertainty, which resulted in conflicting rulings in other cases

Requirements Post-Admission Of Application By The NCLT:

- Appointment of an Interim Resolution Professional by the Adjudicating Authority according to the provisions of Section 16(1) Of IBC, 2016. The interim resolution professional serves for the duration of thirty days from the date of appointment until the resolution professional as per Section 22 is appointed. This provision is directory in nature and non-compliance to this will not result in the application being considered as null and void.
- A Moratorium Period shall be declared according to Section 14 and a Public Announcement as per Section 15 by the Interim Resolution Professional to invite claims from creditors of the Corporate Debtor.
- Submission Of Proof of Claims by Creditors to the Interim Resolution Professional.

Post fulfilment of the requirements mentioned above, the Interim Resolution Professional will collect all the claims, verify them, and ascertain the status of the Corporate Debtor as per Section 18 of the IBC, 2016.

The IRP will constitute the “Committee of Creditors” according to Section 21 of the IBC, 2016. The CoC consists of all the financial creditors of the corporate debtor. However, a related party to whom the corporate debtor owes a financial debt does not have any right of participation, representation or voting within the CoC. The first meeting of the Committee of Creditors shall be held within the duration of seven days from the date of constitution of the Committee of Creditors.

Upon the establishment of the Committee of Creditors, there shall be an Appointment of a Resolution Professional according to Section 22 of the IBC, 2016.

The role of Resolution Professional is mentioned under Section 25 of the IBC, 2016 which are mentioned below:

- Acting on behalf of the corporate debtor.
- To invite prospective resolution plan.
- To examine the resolution plan.
- Submission of the plan before the Adjudicating Authority for approval.
- To file information collected with the information utility.
- Appointment of accountants & professionals from the legal field.
- To put forth the resolution plan in front of the Committee of Creditors.
- Protection, preservation and monitoring the assets of the corporate debtor.

The resolution plan will be prepared by the RP according to Section 29 of the Code and the Resolution plan must be proposed and approved by at least 66 % majority by the creditors as per Section 30 (4) of the Code.

Further, upon the approval of the Resolution plan, the resolution plan must be filed before the Adjudicating authority i.e. NCLT. Either the AA will approve the resolution plan according to Section 31 of the code or it will liquidate the assets of the debtor as per Section 33 of IBC, 2016.

According to Section 12(1) of the Code, the CIRP shall be completed within the duration of 180 days from the date of application to initiate such process was admitted. The timeline is compulsory and non-adherence to it will ultimately result in the application being considered as null and void. The Adjudicating Authority may grant a 90-days extension for one time only. The maximum duration during which CIRP must be necessarily completed, including any extension or litigation period, is 330 days. However, the duration of time can be extended beyond 330 days in the cases of exceptional nature.

In the case of Essar Steel India, the Supreme Court ruled that the bankruptcy court (Adjudicating Authority) possesses the power to extend the corporate insolvency resolution process (CIRP) beyond the usual 330-day limit. This can happen in specific, rare situations where the delay wasn't the fault of the involved parties and granting more time would benefit everyone with a stake in the outcome.

Commencement & Limitations Under The Act

Section 7(6) of the act specifies that the Corporate Insolvency Resolution Process (CIRP) starts upon the order of the adjudicating authority regarding admission of an application from a financial creditor, operational creditor, or corporate applicant. Furthermore, there's a period of limitation for 3 years from the date of default for submitting an application under Section 7 of the Insolvency and Bankruptcy Code (IBC). Only an application made under Section 5 of the Limitation Act may be granted an extension of this date, providing that there are adequate justifications for the delay.

Role Of Committee of Creditors (CoC):

Being the main decision-making body in the corporate insolvency resolution process (CIRP), the Committee of Creditors (CoC), which was created in accordance with rule 21 of the insolvency code, is essential. The CoC's advice and recommendations, which serve as the foundation for the business's resolution plan, are crucial to the CIRP's efficacy. The code states that a company that has defaulted on its debts may be subject to the CIRP by a number of different entities, including individuals, companies registered under the Companies Act 1956 (such as partnership firms and limited liability partnerships), and financial or operational creditors under IBC, 2016.

In insolvency, the committee of creditors has a significant and influential function. It serves as the primary governing and initiating body regarding the process of corporate insolvency resolution. The creation of this committee is required by regulation 21 of the code to manage the process of inviting creditor claims, which is the responsibility of the interim resolution professional. The committee is formed after these claims are verified, and this claim solicitation must take place within the duration of not more than 14 days following the public release.

The involvement of all financial creditors in the committee of creditors is a critical requirement under the insolvency code. The distinct kinds of operational and financial creditors are further defined by the code's regulations. Those to whom interest and debt are owed are known as financial creditors; banks, guarantee suppliers, and homebuyers are a few examples. On the other hand, operational creditors refers to the people or organizations that are owed money for the exchanges of goods & services; this includes government and employee obligations.

Composition Of Committee of Creditors: The Committee of Creditors (CoC) holds a position of supreme authority within the Corporate Insolvency Resolution Process (CIRP) framework. All resolutions pertaining to the management of the corporate debtor are subject to the approval of the creditor members of the Committee, decided by a majority vote in their convened meetings.

The code mandates that the Interim Resolution Professional must form the Committee of Creditors after all claim proofs have been compiled, as outlined in Sections 18 and 21. Specifically, subsection (2) of Section 21 clarifies that this committee must include all financial creditors of the corporate debtor.

Liquidation and its Implications:

Company Liquidation refers to a process rather than a term. Liquidation is the procedure under which a company is wound up. Company Liquidation under IBC may be

- Voluntary (where the Company is solvent) or
- Compulsory (where the Company is insolvent).

The primary objective of the liquidator is to sell off the assets of the company, turning them into money. This money is then used to pay back the company's creditors as much as possible. If there's any money left over after paying the creditors, it's given to the company's shareholders.[11]

Process Of Liquidation: The procedure regarding the voluntary liquidation or winding up of a company is stipulated in Section 59 of the Insolvency and Bankruptcy Code, 2016. A summarized version of this section is provided for your guidance through the process-:

1. **Submission Of Declaration-** A declaration, supported by an affidavit, must be submitted by the designated partners or the majority of the directors of the company. This document shall state that the company either has no outstanding liabilities or

[11] https://incorpadvisory.in/blog/step-by-step-guide-to-winding-up-of-the-company-under-ibc-2016/

has the capacity to discharge all debts using the funds from the sale of assets during the process of liquidation. Furthermore, it must affirm that the winding-up proceedings are not being undertaken with the intent to defraud any individual or corporate body. This declaration is required to be attached to the audited financial statements and a business operations record covering the last two years, or since incorporation for new companies.

2. **Scheduling a General Meeting-** The designated partners are obligated to convene a general meeting for the purpose of passing a special resolution concerning the appointment of an Insolvency Professional, duly registered with the Insolvency and Bankruptcy Board of India, to act as the Liquidator. Furthermore, a resolution for the voluntary liquidation of the company will be passed, predicated upon either the lapse of a period stipulated within the Articles of Association, or a consensual decision reached by the members.
3. **Informing the IBBI & Registrar of Companies**- Following the board's decision to liquidate the company, the organization is required to inform the Registrar of Companies (ROC) or the Insolvency and Bankruptcy Board of India (IBBI). This notification to both the Board and the ROC must occur within one week of the resolution being approved.
4. **Taking Control of The Company-** Upon the order of the adjudicating authority for winding up/liquidation and the appointment of a liquidator, the liquidator assumes full control, suspending the board of directors' powers. The company must fully cooperate, and the liquidator will then take possession of and value all assets.
5. **Public announcement and verification of claims-** Following their appointment in a company's winding-up proceedings, the liquidator is obligated to issue a public notice in one vernacular and one English language newspaper. Subsequently, the liquidator must consolidate all claims received from financial creditors (whether secured or unsecured), operational creditors, workmen and employees, and other relevant stakeholders.

   Upon receiving all claims by the final date, the liquidator will verify them and make a decision to either accept or reject each one within the following 30 days. Claimants will then receive notification of this decision within seven days of the verification.

6. **Prepare a list of stakeholders-** Within the duration of 45 days of the final date for submitting claims in a voluntary liquidation, the Liquidator is required by Regulation 30(1) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation) Regulations, 2017, to create a list of all parties involved in the liquidation, which is based upon the claims that have been verified.
7. **Preferential, Undervalued, Extortionate, and Fraudulent Transactions-** During liquidation or winding up, the liquidator must decide if there were any avoidance transactions and can hire a transaction or forensic auditor to examine the company's preferential, undervalued, extortionate, and fraudulent dealings.
    - Following the review of the transaction auditor's or forensic auditor's report, the liquidator is required to file an application to the Adjudicating Authority. This application must detail any avoidance transactions identified as having been carried out by the Corporate Debtor.
    - The liquidator is required to establish the timing of the transaction, showing it occurred within one year of the initiation date. For transactions involving related parties, this look-back period is extended to two years from the initiation date.
8. **Realisation and distribution of assets-** The liquidator has the authority to determine the value and method of selling the corporate entity's property and assets. Their primary responsibility is to gather and sell all accessible assets to obtain the highest possible value. Within six months of receiving funds from asset sales, the proceeds will be distributed to all relevant parties. However, the liquidator's expenses incurred during the company's winding up or liquidation process will be subtracted before any distributions are made. This distribution will follow the priority order outlined in Section 53 of India's Insolvency and Bankruptcy Code, 2016.
9. **Submission of the Final report-** Upon the termination of the company, the liquidator will be responsible for compiling and submitting a comprehensive final report on the liquidation process, including:
    - The audited financial accounts detailing all receipts and payments processed by the liquidator throughout the company's liquidation.

- This report details the liquidation of assets, specifying the proceeds from each sale and the subsequent distribution of these funds to all stakeholders. Furthermore, it attests to the absence of any ongoing legal proceedings against the corporate entity.
- A statement regarding the sale of all assets details the money received and how the assets were sold.
- Information pertaining to the transferee of the assets.

The final step involves submitting the report and a Section 59(7) application to the Adjudicating Authority. Upon the order of the AA under the IBC, the liquidator must keep all records (reports, registers, and accounts) for a minimum duration of eight years post-dissolution.

Effects & Consequences of Company Liquidation: The impact and consequences of liquidation of a company includes-

1. The effect of the moratorium initiated under section 14 of the IBC is discontinued upon the National Company Law Tribunal (NCLT) issuing an order for liquidation.
2. According to Section 52 of the IBC, any kind of legal action cannot be taken against a corporate debtor in liquidation. The exception is that the liquidator can initiate lawsuits or legal proceedings for the corporate debtor, but only with the Adjudicating Authority's prior consent.
3. This provision stipulates that upon the initiation of liquidation, the corporate debtor's officers, employees, and workers shall be issued a notice of discharge. This requirement is waived if the Liquidator, in accordance with the IBC, maintains the corporate debtor's business operations throughout the liquidation process.

CHAPTER 5

EMERGING TRENDS IN CORPORATE RESTRUCTURING IN INDIA

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Rise Of PIRP:

With the implementation of the Pre-Packaged Insolvency Resolution Process (PIRP) under the IBC 2016, India's insolvency law saw a significant shift. This new strategy was developed especially to streamline and expedite the bankruptcy resolution process for Micro, Small, and Medium Enterprises (MSMEs), making it more advantageous for debtors. It was formally put into effect in April 2021 through the 2021 amendment ordinance to the IBC. The normal Corporate Insolvency Resolution Process (CIRP) was frequently too time-consuming, expensive, and unsuitable for small enterprises' limited resources and narrow profit margins, which led to the necessity for PIRP. Since many small businesses faced the possibility of going out of business as a result of cash flow issues and unstable markets, the COVID-19 epidemic highlighted the urgent need for a more realistic and effective method of restructuring MSME debt.

The Pre-packaged Insolvency Resolution Process (PIRP) provides a simplified method of resolving financial difficulties. It reduces the intervention of the courts by combining the benefits of conventional insolvency procedures with out-of-court workouts. In contrast to CIRP's "creditor-in-control" approach, PIRP's "debtor-in-possession" model permits MSME promoters to initiate insolvency voluntarily while maintaining control. This helps to ensure that the business stays open, prevents a significant loss of value, and promotes prompt resolutions prior to irreversible insolvency. Pre-negotiating a resolution plan with creditors prior to addressing the National Company Law Tribunal (NCLT) is a distinguishing feature that expedites the procedure and lowers legal complications. Compared to the 180–330 days of standard CIRP, PIRP has a substantially reduced completion period of 90 days, with a possible 30-day extension.

One important feature of the Pre-packaged Insolvency Resolution Process (PIRP) is that it can only be started by the firm in financial difficulties, not by its lenders. Additionally, at least two-thirds of the unaffiliated financial creditors must approve the application to start PIRP, ensuring strong stakeholder support right on. Additionally, the pre-pack framework has safeguards against misuse. For example, under certain provisions of the Insolvency and

Bankruptcy Code (IBC), the company may be subject to the standard Corporate Insolvency Resolution Process (CIRP) if the majority of creditors (Committee of Creditors) do not approve the proposed restructuring plan within a specified timeframe.

The Pre-packaged Insolvency Resolution Process (PIRP) is currently in the first phase of implementation in India, and ongoing cases are being used to evaluate its practical worth. However, early indications suggest that it has great promise as a business recovery mechanism, especially in a country where MSMEs are a major economic engine, contributing close to 30% of the GDP and employing more than 100 million people. With the help of robust institutions, enhanced stakeholder understanding, and effective regulatory authority from the Insolvency and Bankruptcy Board of India (IBBI), PIRP might establish itself as a cornerstone of the corporate restructuring landscape in India.

This indicates a shift toward an approach to insolvency that is more flexible, inclusive, and business-minded, one that may support India's economic development while safeguarding the interests of creditors and debtors in the MSME sector.

Impact Of Technology & Digital Platforms In Resolution Processes:

India's insolvency system is undergoing a change because of the integration of digital platforms and technology, especially in the wake of the 2016 Insolvency and Bankruptcy Code (IBC). Digital tools are being increasingly used in the Corporate Insolvency Resolution Process (CIRP) to improve accessibility, efficiency, and openness for tasks like data management, public announcements, valuation, bidding, claim submission, and resolution plan monitoring. Establishing Information Utilities (IUs) like NeSL, which serve as central digital repositories for real-time debt information, is an important development that expedites claim verification and guarantees data-driven judgments.

Additionally, by using online platforms and e-filing, the National Company Law Tribunal (NCLT) has expedited procedures, enabling all parties involved—creditors, resolution experts, and debtors—to simply submit documents, track the status of their cases, and participate in proceedings from any place. During the COVID-19 outbreak, when electronic document submissions and remote hearings were necessary, this digital change proved particularly advantageous. Concurrently, Resolution Professionals (RPs) are using virtual data rooms (VDRs) to safely provide potential resolution applicants with the operational and financial data of indebted enterprises. This stimulates broader engagement and openness in the bidding process, as VDRs guarantee confidentiality while permitting real- time cooperation, hence expediting due diligence and the development of resolution plans.

Technologies like data analytics and automated claim verification are being used more and more by insolvency professionals to handle vast volumes of financial data. This aids them in identifying discrepancies and determining if suggested resolution techniques are feasible. Additionally, research is being done on the capabilities of machine learning (ML) and artificial intelligence (AI) to improvise risk assessment and forecasting in insolvency procedures, with the goal of achieving quicker and more precise results. For regulatory purposes, the Insolvency and Bankruptcy Board of India (IBBI) has also embraced digital tools, which enable them to track case developments and guarantee adherence with the Code's deadlines.

The way business assets are liquidated has been profoundly altered by technology, with online auctions growing in popularity. Platforms like MSTC's e-auction portals give liquidators a clear and competitive setting in which to sell assets, assisting creditors in obtaining the best possible price. By using automatic bidding and bidder authentication, these real-time auctions lessen the possibility of human error and manipulation.

Evolving Judicial Interpretations:

Judicial interpretations of the 2016-enacted Insolvency and Bankruptcy Code (IBC) have played an important role in guiding the evolution of corporate restructuring practices in India. Because of the IBC's novelty, the Supreme Court, the National Company Law Appellate Tribunal, and the National Company Law Tribunal (NCLT) have all played a significant role in defining its applicability and elucidating its provisions through their continuous decisions. These decisions have had a significant impact on the Committee of Creditors' (CoC) commercial acumen. In significant rulings like *K. Sashidhar v. Indian Overseas Bank (2019*[12]*)* and *Essar Steel v. Satish Kumar Gupta (2019)*[13], the Supreme Court unequivocally declared that the CoC's legitimate business decisions are exempt from

[12] https://digiscr.sci.gov.in/admin/judgement_file/judgement_pdf/2019/volume%203/Part%20I/2016_3_84 5-912_1704367373.pdf

[13] https://digiscr.sci.gov.in/admin/judgement_file/judgement_pdf/2019/volume%2016/Part%20I/2019_27_ 275-423_1702023476.pdf

judicial scrutiny. This was a significant development that sped up the settlement process by establishing that courts won't get involved in business decisions unless they are illegal or biased.

The criteria for who can be a resolution applicant according to Section 29A of the IBC are being interpreted with a growing understanding of the need to balance preventing problematic former owners from regaining control with ensuring viable revival plans aren't rejected. Initially, the rule was strictly applied to disqualify defaulting promoters. However, courts have shifted towards a more pragmatic view to support genuine company turnarounds. The order of the supreme court in the *ArcelorMittal India case (2018)*[14] illustrated this by stating that promoters could become eligible if they settled their outstanding debts before proposing a resolution plan, thus introducing more flexibility without abandoning the goal of financial discipline.

The judgement of SC in *Lalit Kumar Jain v. Union of India* (2021)[15] significantly extended the liability of personal guarantors by validating insolvency proceedings against them, thereby strengthening the IBC's effectiveness for creditors. Additionally, judicial interpretations of Section 32A, particularly in *Manish Kumar v. Union of India* (2021)[16], have provided clarity on the immunity granted to reorganized companies and their new leadership from prior wrongdoings. This has been instrumental in encouraging serious investment during the resolution phase, improving the prospects for corporate turnaround.

By interpreting its regulations in light of the Insolvency and Bankruptcy Code's (IBC) predetermined structure, the judiciary has played an important role in forming the Pre-Packaged Insolvency Resolution Process (PIRP). Due to its recent inception, the usefulness of PIRP for MSMEs is being determined by court rulings that clarify its relationship with the Corporate Insolvency Resolution Process (CIRP), particularly regarding minimum default amounts, deadlines, and the authority of CoC.

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14 https://digiscr.sci.gov.in/admin/judgement_file/judgement_pdf/2018/volume%2012/Part%20I/arcelormittal%20india%20private%20limited_satish%20kumar%20gupta%20&%20ors._1699427607.pdf

15 https://elplaw.in/wp-content/uploads/2023/11/Landmark-Ruling-of-the-Supreme-Court-on-Personal- Guarantors-under-IBC-will-shape-the-Future-of-Lender-Creditor-Dynamics.pdf

16 https://digiscr.sci.gov.in/admin/judgement_file/judgement_pdf/2021/volume%2014/Part%20I/2021_14_ 895-1160_1702537310.pdf

CONCLUDING REMARKS

Since the Insolvency and Bankruptcy Code went into effect in 2016, the approach of India to manage corporate financial troubles and restructuring has changed significantly. India's credit climate, company confidence, and investor outlook have all significantly improved as a result of the IBC's establishment of a robust and effective legal system for handling insolvency and permitting corporate restructuring. This study examines the many facets of this insolvency system, such as its development over time, legal requirements, and the participation of important parties like the courts, the IBBI, and insolvency professionals— all of whom are essential to the efficient operation of the Code.

This study emphasizes that corporate restructuring is a comprehensive strategic strategy that is essential for maintaining firms, preserving jobs, and defending the economy as a whole. It is not merely a legal or financial process. It plays a vital role in preventing the closure of struggling but potentially successful businesses and adjusting them to the current market conditions by providing options including debt conversion to equity, operational redesign, mergers, and asset sales. Additionally, the system is now more flexible and efficient thanks to the creation of innovative techniques like the PIRP, which allows smaller companies to take charge of their own recovery through predetermined strategies.

Even while the Insolvency and Bankruptcy Code (IBC) has made great strides, a number of hurdles still prevent it from operating smoothly. These include lengthy settlement times, inconsistent court interpretations, poor infrastructure, and the restricted authority of the National Company Law Tribunal (NCLT). Additionally, striking a careful balance between the needs of debtor protection and the interests of creditors pursuing recovery is still a difficult task that calls for constant modifications to the legal and regulatory environment. Positively, a more stable and uniform insolvency system has been promoted through the efforts of judiciary regarding interpretation and elucidating the provisions of IBC.

In the end, these court decisions have improved accountability and the overall soundness of the insolvency process by strengthening the authoritative powers of the committee of creditors, improving the requirements for qualified resolution applicants, and expanding the role of personal guarantors.

In conclusion, the IBC has established a strong foundation for an efficient and modern insolvency procedure in India. However, ongoing policy changes, changing legal precedents, and proactive stakeholder participation are necessary for its continued efficacy. For India's corporate and financial sectors to remain strong over the long term, it is critical to view corporate insolvency and restructuring as opportunities for renewal and advancement rather than only as negative consequences.