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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE EVOLUTION OF CORPORATE GOVERNANCE POST INSOLVENCY AND BANKRUPTCY CODE 2016**

AUTHORED BY - MS. RISHIKA BAHRI

## **Abstract**

The Insolvency and Bankruptcy Code<sup>1</sup> introduced in 2016 is considered one of the biggest insolvency reforms in the economic history of India. This was enacted to reorganize and resolve insolvency issues of corporate persons, partnership firms, and individuals in a time-bound manner to maximize the value of such person's assets. Before IBC, the insolvency resolution process was fragmented and inefficient, often leading to prolonged litigations and value erosion badly affecting the company's management as well. Corporate Governance is an upcoming study encompassing the mechanisms, processes, and relations by which corporations are managed and regulated. The primary objective of corporate governance is to ensure accountability, fairness, and transparency in a company's relationship with its stakeholders, including shareholders, employees, customers, and the broader community. This research paper examines the evolution of corporate governance in India post IBC implementation, highlighting the transformative effects on creditor-debtor dynamics, transparency, and accountability within corporate entities. Overall, the paper delves into the role of IBC in advancing corporate governance in India.

## **Keywords**

Evolution, Insolvency and Bankruptcy Code, Corporate Governance, Insolvency resolution, Indian corporate law

## **Introduction**

Corporate governance is the set of practices that ensure transparency, accountability, and ethical conduct within organizations and is the bedrock of the business environment.<sup>2</sup> In India, where businesses thrive in a diverse and dynamic landscape, the importance of sound corporate governance cannot be underestimated. Corporate governance has undergone significant

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<sup>1</sup> The Insolvency and Bankruptcy Code 2016, Act No. 31 of 2016

<sup>2</sup> Daizy Chawla and Neha Mittal, Building a Better Boardroom: The role of IBC in advancing corporate governance in India, The Economic Time, Dec 30, 2023



changes over the past few decades, driven by the need to align with global standards and address challenges in the Indian corporate sector. The introduction of the Insolvency and Bankruptcy Code, 2016 (IBC) represents one of the most critical reforms in this journey, with profound implications for corporate governance.

The concept of corporate governance gained significant attention, particularly from the 1980s onward, and became even more prominent after the Cadbury Committee released its corporate governance code. In its 1992 report titled "Financial Aspects of Corporate Governance," the Cadbury Committee defined corporate governance as the system by which companies are directed and controlled<sup>3</sup>. Building on this, the Kumar Mangalam Birla Committee later developed a corporate governance code specifically for companies in India. Within the global corporate culture, directors are responsible for managing their companies. On the other hand, shareholders play a role in governance by electing the directors and managers and ensuring an appropriate governance structure is in place.<sup>4</sup>

IBC offers a competitive, transparent market process that finds the person best suited to save the firm and chooses the resolution strategy. It requires that only reasonable and viable resolution proposals, developed by capable and credible individuals, be considered in order to ensure the company's long-term viability. This releases the company from the clutches of promoters and management, placing it in the hands of a trustworthy, capable management team to prevent liquidation. The IBC has rescued over 200 businesses, some of which are in serious difficulty.<sup>5</sup> Before the IBC, India's insolvency framework was fragmented, inefficient, and riddled with delays, often leading to value destruction for stakeholders. These inefficiencies particularly affected corporate governance, which concerns the mechanisms, processes, and relations by which corporations are controlled and directed. The IBC aimed to streamline the insolvency process, ensuring timely resolution and maximizing the value of assets, thus altering the dynamics of corporate governance. Post IBC, the corporate governance landscape has evolved, with companies being more mindful of their financial obligations and needing robust governance structures to avoid insolvency proceedings. The Code has also led to the emergence

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<sup>3</sup> Arpit Srivastava, Regulatory framework for Corporate Governance in India, iPleaders, 12 May 2017, (<https://blog.iplayers.in/corporate-governance/>)

<sup>4</sup> Bhumika Indulia, Evolution of Corporate Governance in India, SCC Online, 13 Nov 2019, (<https://www.sconline.com/blog/post/2019/11/13/evolution-of-corporate-governance-in-india/>)

<sup>5</sup> Here's how IBC 2016 has taken corporate governance to new heights, Financial Express, 13 Feb 2020

of new governance challenges, including the management of distressed assets and the role of promoters in the resolution process.

## **Scope and Objectives**

The study of Evolution of Corporate Governance Post Insolvency and Bankruptcy Code (IBC) 2016 aims to understand how the IBC has changed corporate governance in India. It looks at how the IBC interacts with existing laws like SEBI regulations and the Companies Act 2013, and how it has affected the roles of key players like company boards, creditors, shareholders, and insolvency professionals. The study also reviews important cases to see how governance works in real situations during insolvency. Overall, the goal is to see how effective the IBC has been in improving corporate governance and protecting the interests of stakeholders during insolvency.

## **Corporate Governance Pre IBC**

Before the IBC, Corporate Governance in India was primarily influenced by regulations such as the Companies Act<sup>6</sup>, SEBI's Listing Obligations and Disclosure Requirements (LODR)<sup>7</sup> and various sector-specific guidelines. These regulations focused on ensuring transparency, accountability, and protecting minority shareholders.<sup>8</sup> However, the insolvency framework was governed by several laws, including the Sick Industrial Companies Act (SICA)<sup>9</sup>, the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI)<sup>10</sup> and the Companies Act. This fragmented approach often led to prolonged insolvency proceedings, resulting in value destruction and poor governance practices. The lack of a unified insolvency framework meant that corporate governance was reactive rather than proactive, with companies often resorting to delaying tactics and creditors struggling to recover dues. The system faced several other challenges as well:

1. **Prolonged Insolvency Resolution Process:** The pre-IBC regime was characterized by a fragmented and inefficient insolvency resolution process, with multiple laws and forums leading to delays and uncertainty. This resulted in a significant erosion of value for creditors and shareholders alike.

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<sup>6</sup> Companies Act, 2013

<sup>7</sup> SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015

<sup>8</sup> Corporate Governance Laws and Regulations India 2024, ICLG.com, 15 July 2024, (<https://iclg.com/practice-areas/corporate-governance-laws-and-regulations/india>)

<sup>9</sup> Sick Industrial Companies Act, 1985 (SICA)

<sup>10</sup> The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI)

2. **Weak Creditor Rights:** Creditors, especially operational creditors, had limited rights and were often at the mercy of the management, which could manipulate the system to delay or avoid debt repayments.
3. **Limited Accountability:** Corporate mismanagement and fraudulent activities were often overlooked due to the lack of stringent laws and enforcement mechanisms, leading to a decline in investor confidence.
4. **Inadequate Board Oversight:** The role of the board of directors in overseeing the management and ensuring compliance with governance norms was often compromised due to conflicts of interest, lack of independence, and inadequate expertise.

### **Introduction of Insolvency and Bankruptcy Code 2016**

The Insolvency and Bankruptcy Code, 2016, was introduced as a consolidated legal framework to address the reorganization and insolvency resolution of corporate entities, partnership firms, and individuals in India. Its primary objectives include promoting entrepreneurship, enhancing credit availability, and balancing the interests of all stakeholders involved. Unlike the previous processes that permitted creditors to get a resolution exclusively from the current promoters, it looks for the best possible resolution from the market<sup>11</sup>. As laid down by NCLAT in the case of *Binani Industries Limited v. Bank of Baroda and Anr.*<sup>12</sup> that the purpose of IBC is resolution in a company.

The IBC brought several key features that have significantly impacted the insolvency process. One of the most crucial aspects is the introduction of a time-bound resolution process, which ensures that the value of assets is preserved and maximized. The IBC also shifted the control of the insolvency resolution process from the management to the creditors, empowering them to decide the company's fate through a creditor-in-control mechanism. To further enhance transparency and accountability, the IBC introduced insolvency professionals to manage the resolution process and established committees of creditors (CoC) to approve resolution plans. Additionally, the IBC addressed cross-border insolvency issues, enabling coordination between Indian and foreign jurisdictions in insolvency matters. Lastly, the IBC emphasized that liquidation should be considered only as a last resort, with a preference for the revival and resolution of companies whenever possible.

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<sup>11</sup> IBC: A Code for Corporate Governance (<https://ibbi.gov.in/uploads/resources/a63014047246e723eaa9f2071756b86b.pdf>)

<sup>12</sup> *Binani Industries Limited v. Bank of Baroda and Anr.*, No. 175/KB/2018 in C.P. (IB) No. 359/KB/2017

## Impact of IBC on Corporate Governance

The introduction of the Insolvency and Bankruptcy Code (IBC) in 2016 has significantly transformed corporate governance in India. One of the most notable impacts of the IBC is the enhanced accountability of corporate management. By transferring control of insolvent companies to creditors during insolvency proceedings, the IBC has encouraged a more disciplined approach to financial management, reducing instances of financial mismanagement. This shift has ensured that management teams are more accountable for their decisions, particularly in times of financial distress<sup>13</sup>. Additionally, the IBC has substantially strengthened creditor rights, especially for financial creditors, by granting them a significant role in the resolution process. This empowerment has led to better protection of creditor interests and a more equitable distribution of assets, fostering greater confidence among lenders.

The IBC has also mandated improved transparency and disclosure throughout the insolvency resolution process<sup>14</sup>. This requirement ensures that all stakeholders, including creditors, shareholders, and employees, are adequately informed and can participate in the process based on accurate and timely information. Such transparency is crucial for maintaining trust and fairness in corporate governance. Furthermore, the IBC has emphasized the role of independent directors, particularly in insolvency proceedings, where their oversight is critical to ensuring that management acts in the best interests of all stakeholders<sup>15</sup>. This emphasis on independent oversight has strengthened board dynamics, with boards increasingly focusing on independence, expertise, and the ability to effectively oversee the insolvency process.

Moreover, the IBC has promoted ethical business practices by holding management accountable and prioritizing the interests of creditors and other stakeholders over those of the company's management. This shift has led to a more ethical and robust governance framework, ensuring that companies are managed in a manner that is fair and just to all parties involved. Overall, the IBC has significantly improved corporate governance in India, creating a more transparent, accountable, and ethically sound business environment.

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<sup>13</sup> [Rasika Piplani](#), The Impact of The Insolvency and Bankruptcy Code (IBC) 2016 On Corporate Governance: Lessons from India's Experience, Legal Service India.

<sup>14</sup> Ibid

<sup>15</sup> Shwetanki Tyagi, Role of IBC in Corporate Governance, International Journal of Research Publication and Reviews, Vol 4, no 6, pp 3697-3703 June 2023



## Case Studies

To understand the practical impact of the IBC on corporate governance, it is essential to examine these high-profile insolvency cases:

1. **Bhushan Steel:** Tata Steel Ltd. (TSL) acquired Bhushan Steel Ltd under Insolvency and Bankruptcy Code (IBC)<sup>16</sup>, 2016 in the year 2018 and named as Tata Bhushan Steel Ltd. (TBSL). Further TBSL got merged with Tata Steel in 2019, a year after acquisitions . Bhushan Steel's insolvency case demonstrated the shift in power dynamics under the IBC. The resolution process, led by the CoC, resulted in Tata Steel acquiring Bhushan Steel, with creditors recovering a substantial amount. The case highlighted the importance of transparency and the role of the IRP in managing the company during the insolvency process.
2. **Jet Airways:** The insolvency of Jet Airways showcased the challenges of managing a distressed asset in a highly regulated industry. The resolution process faced several hurdles, including disagreements among creditors and regulatory challenges<sup>17</sup>. However, the case also illustrated the IBC's ability to provide a framework for resolving complex insolvencies.

### Challenges due to IBC in Corporate Governance

While the Insolvency and Bankruptcy Code (IBC) of 2016 has significantly improved corporate governance in India, it has also introduced several challenges that stakeholders must address. One major challenge is the increased complexity in decision-making, as the shift of control from management to creditors during insolvency proceedings involves multiple stakeholders with potentially conflicting interests. This can complicate and slow down the resolution process, making it difficult to reach a consensus on resolution plans. The IBC also places significant pressure on management, as they must balance ongoing operations with the demands of the insolvency process, leading to the risk of hasty decisions or overly conservative approaches that may not align with the company's long-term interests. Additionally, despite the IBC's emphasis on revival, the high risk of liquidation if a resolution plan is not approved within the stipulated timeframe can discourage potential investors and threaten business continuity. The IBC has also altered board dynamics, with the increased involvement of creditors and insolvency professionals sometimes diminishing the authority of boards, creating

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<sup>16</sup> Pritam Sangwan, Tata Steel acquires Bhushan through IBC route, M & A Critique, 10 June 2019 (<https://mnacritique.mergersindia.com/tata-steel-acquires-bhushan-through-ibc-route/>)

<sup>17</sup> The Downfall of Jet Airways: A Cautionary Tale of Corporate Governance and Mismanagement, 9 Nov 2023

tensions, especially regarding the role of independent directors. Challenges in cross-border insolvency, due to the lack of comprehensive mechanisms for dealing with international assets and liabilities, further complicate the resolution process for globally operating companies. Moreover, the IBC has introduced new regulatory and operational burdens, particularly for smaller firms that must comply with its transparency and reporting obligations. The evolving nature of the IBC, with frequent amendments and judicial interpretations, adds to this complexity and burden on the companies. Lastly, IBC mandates a pool of competent Insolvency Professionals (IPs) to efficiently handle the insolvency resolution process. However, a lack of skilled IPs has emerged, potentially impacting the standard of corporate governance oversight during the resolution process<sup>18</sup>.

### **Recommendations to overcome these challenges**

To overcome the challenges here are some recommendations that can help remove the complexities and delays-

1. **Simplify Decision Making:** Streamline the insolvency resolution process with clear rules and better coordination among creditors, insolvency professionals, and management to speed up decisions and reduce complexity.
2. **Encourage Revival Over Liquidation:** Create incentives for investors and resolution applicants to focus on reviving distressed companies rather than opting for liquidation, such as financial benefits and quicker resolution timelines.
3. **Support Management:** Provide support mechanisms for management teams, including advisory services and interim management, to help them navigate the insolvency process effectively.
4. **Improve Cross-Border Insolvency:** Strengthen mechanisms for dealing with cross-border insolvency by enhancing cooperation with international jurisdictions and setting clear guidelines for handling global assets and liabilities.
5. **Group Companies-** The IBC lacks specific provisions for group companies' insolvency. Introducing such legislation could prevent the entire group from falling into distress. This was exemplified by the *State Bank of India v. Videocon Industries Ltd*<sup>19</sup> case, which consolidated insolvency for 13 out of 15 companies despite the lack of clear provisions.

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<sup>18</sup> [Rasika Piplani](#), The Impact of The Insolvency and Bankruptcy Code (IBC) 2016 On Corporate Governance: Lessons from India's Experience, Legal Service India.

<sup>19</sup> *State Bank of India vs Videocon Industries Ltd & Ors.*, (2018) IBC law.in 237 NCLAT, 4 July 2019

## Conclusion

The Insolvency and Bankruptcy Code (IBC) of 2016 was designed with the specific needs of the Indian economy in mind, and it has significantly enhanced the business environment by promoting better corporate structures, entrepreneurship, and flexibility. Prior to the IBC, inadequate administration left banks burdened with bad loans, but the IBC now prioritizes corporate governance and minimizes delays and asset depreciation. By shifting control from debtor-in-possession to creditor-in-control, the IBC has empowered creditors, who previously struggled to recover debts. Although the roles of Insolvency Resolution Professionals (IRPs), Resolution Professionals (RPs), and the Committee of Creditors (CoC) present ongoing challenges, these roles represent positive steps towards improved corporate governance and institutional checks. Overall, the IBC has had a positive impact on the Indian economy and Corporate Governance, fostering a more robust and transparent business environment.

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