
**NAVIGATING LEGAL COMPLEXITIES IN CORPORATE BANKRUPTCY AND
INSOLVENCY PROCEEDINGS: A TENTATIVE EXPLORATION OF EMERGING
CHALLENGES**

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ABSTRACT

The present study explores the potential legal concerns that arise during corporate bankruptcy and insolvency processes, according to India's Insolvency and Bankruptcy Code, 2016 (IBC). Although the Code was designed to ensure speedy resolution and repair creditor faith, its actual application has highlighted several procedural anomalies, institutional hold-ups, and interpretational issues. The study's goal is to look into the potential for unintended consequences that could impede resolution efficiency as a result of specific statutory provisions, specifically those pertaining to eligibility under Section 29A, withdrawal under Section 12A, and the composition and discretion of the Creditors Committee. Using a doctrinal methodology, the study draws inspiration from legislative documents, judicial opinions, regulatory reports, and comparative models. With this approach, the study will concentrate on pinpointing important areas where the insolvency process can encounter difficulties, like the institutional capacity constraints of the NCLT/NCLAT system, the processing load on resolution experts, and the restricted access to equitable remedies for operational creditors. Despite the IBC's widespread recognition as a major structural change, the analysis demonstrates that the resolution ecosystem it has produced is nevertheless impacted by judge discretion, stakeholder dynamics, and systemic limitations. To achieve the goals of fast, equitable, and effective insolvency resolution, the paper indicates that a continuing process of improvement through both jurisprudential growth and legislative response

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may be required; nevertheless, it makes no claim to provide definitive answers. The study concludes by recommending for a balance between procedural flexibility and legal certainty, taking into account both domestic experience and worldwide best practices.

KEY WORDS:

Bankruptcy, Insolvency and Bankruptcy Code of 2016, Creditor conflict, Procedural delay,

INTRODUCTION

Many people believed that the Insolvency and Bankruptcy Code of 2016 was a path-breaker for India's financial system and also legal system. The Code was intended to bring about a time-bound, creditor-driven process that could better handle business crisis than its legislative predecessors by bringing together a disjointed insolvency structure. By putting financial creditors at the center of decision-making, it may be claimed that the IBC was designed to enhance credit culture generally in addition to facilitating corporate rescue. Although the Code has been in effect for almost ten years, its operation seems to reflect a more complicated reality, where institutional restraints, procedural rigidity, and changing jurisprudence may give rise to unanticipated legal issues.

The goal of this paper is not to provide a thorough assessment of the IBC's achievements or shortcomings. Rather, it aims to address particular legal and procedural conflicts that may occur during Code implementation. The current study makes no effort to offer a comprehensive evaluation of the IBC's successes or failures. Instead, it seeks to resolve specific legal and procedural issues that can arise throughout the implementation of the Code. Although the bankruptcy process has been simplified by legislation, it may still be undergoing practical adjustment due to issues including adjudication delays, disputed interpretation of eligibility restrictions, and the limited participation of certain classes of creditors. Furthermore, there may be a type of jurisprudential uncertainty that affects consistency, predictability, and justice in results as courts and tribunals interpret the Code in light of economic reality.

The methodology of this investigation is doctrinal and comparative. Through an analysis of official committee reports, significant case law, statutory provisions, and a few international examples, the

study seeks to determine whether India's insolvency regime can continue to function effectively and sustain its integrity in the face of increasing legal complexity. The present study does not offer a single point of view; rather, it offers a preliminary reflection on the changing nature of insolvency law and the various institutions and people that influence its future development.

SCOPE OF THE RESEARCH

The scope of this study is limited to a legal-analytical investigation of the potential structural, procedural, and interpretive difficulties that may materialize during corporate insolvency procedures under the 2016 Insolvency and Bankruptcy Code (IBC). The goal is to identify important legal conflicts that may affect how well the corporate resolution process works, rather than claiming to fully handle all institutional or economic facets of insolvency law. The study is restricted to the Indian setting, but it does include a few references to international insolvency models, such those used in the US and the UK, only when doing so might provide comparative analysis.

The scope mostly consists of pertinent regulations published by the Insolvency and Bankruptcy Board of India (IBBI) as well as legislative provisions including Sections 7, 12A, and 29A. The Supreme Court and National Company Law Appellate Tribunal's (NCLAT) changing judicial interpretations of these regulations are another area of emphasis. The focus is on legal issues pertaining to the role of the National Company Law Tribunal (NCLT) in managing and overseeing insolvency procedures, the operation of resolution specialists, procedural delays, and creditor prioritizing.

Within these constraints, the study aims to address more general issues like whether the existing legal system is sufficiently flexible, whether important players are in a position to carry out their responsibilities, and whether the legal system's structure takes into account the realities of insolvency administration. Although legislatively structured, the research is nonetheless based on the idea that legal systems may need ongoing institutional and interpretive improvement.

ANALYSIS

I. Explore the Possibilities of the Insolvency and Bankruptcy Code

The Insolvency and Bankruptcy Code of 2016, created significant enthusiasm among legislators, probably due to their belief that it might offer a thorough mechanism for resolving firms which are financially troubled. Numerous individuals believed that it can improve credit discipline since it marked a notable shift from debtor-centric systems to a creditor-dominant model.²

However, it seems that this early confidence has not always been reflected in the actual execution of the IBC. Many cases indicate that appeals and procedural delays frequently cause statutory deadlines—especially the 330-day resolution limit—to be exceeded³. Even while the law may be predictable, how it is applied frequently depends on how tribunals interpret its provisions and how important players behave.

II. Procedural and Structural Disruptions in Practice

Procedural bottlenecks and judicial backlogs are frequently the causes of delays in the Corporate Insolvency Resolution Process (CIRP). It may take the National Company Law Tribunal (NCLT) several months to admit cases. Procedural steps following admission, such as hiring resolution specialists and confirming claims, are likewise beset by problems.⁴

According to data from the IBBI, a sizable portion of cases appear to go beyond the statutory deadline⁵. Additionally, even when a settlement is possible, the Section 12A requirement of 90%

² Sahoo, M. S., “Redesigning India’s Bankruptcy Framework,” *Economic & Political Weekly*, 2018.

³ IBBI, *Quarterly Newsletter*, Vol. 26, 2024.

⁴ Singh, R., “IBC Implementation Hurdles: A Practitioner’s Insight,” *Company Law Journal*, 2022.

⁵ IBBI, *Insolvency Data Sheet*, 2023.

Committee of Creditors (CoC) agreement for the removal of insolvency may lead to rigidity in resolution⁶.

III. Conflicts among Stakeholders and Judicial Interpretation

Court interpretations have had a significant influence on insolvency jurisprudence. In *ArcelorMittal India v. Satish Kumar Gupta*, the Supreme Court expanded the qualifying condition by interpreting Section 29A, which forbids some promoters from bidding during CIRP, broadly.⁷

Another point of interest has been the differentiation between operational and financial creditors. Due to their superior ability to evaluate economic sustainability, the court in *Swiss Ribbons v. Union of India* maintained the prioritization of financial creditors.⁸ Operational creditors, however, might think this arrangement is unfair, particularly in MSME settings.

IV. Global Reference Frameworks and Comparative Difficulties

Existing management may be able to keep control of the company in Chapter 11 bankruptcy in the United States thanks to the debtor-in-possession concept⁹. In a similar vein, UK administrative procedures that balance creditor rights and asset preservation offer corporate rescue.¹⁰

While all these models provide valuable insights, their applicability in India might be limited due to the differences that is present in the institutional evolution, enforcement strategies, and legal infrastructure. Nevertheless, global guidelines such as the UNCITRAL Legislative Guide on

⁶ Ministry of Corporate Affairs, Insolvency Law Committee Report, 2020.

⁷ *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*, (2019) 2 SCC 1

⁸ *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17.

⁹ Pottow, J.A.E., "The Rise of Global Insolvency Law," *Michigan Law Review*, 2010.

¹⁰ Brouwer, M., "Corporate Rescue in the UK: A Functional Perspective," *European Journal of Law and Economics*, 2006.

Insolvency Law will indicate that merging restructuring incentives with creditor rights may be beneficial.¹¹

V. Problems with Resolution Specialists and Organizational Ability.

In the CIRP, asset management, claim verification, and support for CoC verdicts are the main duties of resolution professionals (RPs). Nevertheless, the insufficient training of RPs have been questioned in various cases and articles.¹²

Also, the NCLT and NCLAT had significant challenges because of the insufficient manpower and infrastructure. Inconsistency in decisions and delays in adjudication might affect the system's predictability as the number of cases rise.¹³ Wherefore, central to this argument is the notion that for any insolvency process to succeed, both institutional understanding and legal clarity is mandatory.

VI. Thoughtful Reflections and the Way Ahead

Even if it has been revolutionary, India's insolvency regime might still be going through fundamental development. Issues ranging from imbalanced stakeholders to inconsistent judges may call for continual examination. The IBC has addressed a number of the shortcomings of previous laws, like SICA, but it still seems that the law has to be improved through a responsive legislative and judicial process¹⁴.

Perhaps the foundation of a robust insolvency system can be found in judicial discretion, prompt regulatory reform, and improved institutional infrastructure. But changing the law might not be

¹¹ UNCITRAL, Legislative Guide on Insolvency Law, 2005.

¹² Balasubramaniam, R., "The Challenges in the Indian Insolvency Landscape," NLS Business Law Review, 2020.

¹³ KPMG, IBC Performance Report, 2022.

¹⁴ Jain, R., "Evolving Jurisprudence under the IBC," National Law School Review, 2021

the only answer. Another important factor could be improved initiatives and cultural changes in the relationships between creditors and debtors¹⁵.

CONCLUSION

The bankruptcy and Bankruptcy Code of 2016, which was developed for India's corporate bankruptcy framework, can represent a major legislative shift which is aimed at improving financial discipline and the effective resolution of distressed businesses. However, the present paper has examined the institutional, procedural, and legal factors that appear to impact the Code's actual implementation, sometimes hindering its intended outcomes. Rigid procedures, different interpretations of key sections, and delayed adjudication are examples of obstacles that may not always point to problems with legislative creation but rather show how the connection between institutional capacity and legislative intent is changing.

Although the judicial interpretation can be crucial for filling in statutory gaps, it can result in conflict with the application of the law, especially when there is uncertainty in regulatory standards combined with the limited resources of tribunals. Hence, operational creditors and various other stakeholders can question the fairness of the superior status provided to creditors, despite its economic rationale. The efficacy of the Committee of Creditors, and the procedural guidelines outlined in Sections 12A and 29A all demand continuous evaluation. In the end, the success of the IBC might rely more on its ability to adapt in practice than in the consistency of its text. A developing insolvency framework should be unprejudiced to contextual reinterpretation, enhancing institutional capacity, and procedural advancements to significantly address the evolving circumstances of corporate distress.

¹⁵ World Bank, Doing Business Report: Resolving Insolvency, 2020.

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