



The Dynamics of Corporate Insolvency Resolution Process: Legal and Regulatory Framework

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ABSTRACT

The IBC of 2016 has brought corporative insolvency regulation legislative reform in India that focuses on the Corporate Insolvency Resolution Process (CIRP). This work critically analyzes the duties of the Resolution and Insolvency of Corporate Enterprises, CIRP, in eliminating corporate distress and protecting assets, and equality for citizens as creditors. The IBC displaced a clause-based archaic insolvency law that was filled with delay with a creditor-led mechanism for a fast, efficient realization of assets, or possibly restructuring of the distressed firms. Some of the areas of focus pertain to the legal and practical obstacles involved, the identification of assets and valuation, and the recognition and protection of stakeholder claims under CIRP. The research also involves comparing CIRP with the best practices of other nations and the changes that can be made, including adopting the UNCITRAL Model Law for cross-border insolvency and a debtor-in-possession model for a specific sector. Legal cases contribute to CIRP in various ways as they either support or modify the plans' usefulness in practice while staying legal. Thus, this paper concludes that while CIRP is a strong reform, targeted improvements in the ability to drive greater accuracy in valuation, inclusiveness of stakeholders, and conformity of the IBC with an enhanced universal standard are crucial to making international restructuring an efficient and fair system. Proposed changes are regarding digitalization, manpower-specific CIRP benches, protection amendments for operational creditors, and pre-pack insolvency, all of which are intended to enhance the function of CIRP in creating a stable, investor-friendly business climate in India.

Keywords: Insolvency and Bankruptcy Code, Corporate Insolvency Resolution Process, creditor-driven insolvency

Introduction

Corporate bankruptcy law as a branch of law and an institution has emerged as an important part of legal and economic development in the global context as the essential element of the processes of corporate governance. Fundamentally, in India, the corporate insolvency law has rapidly evolved over the years through the enactment of the IBC. This statute has codified the laws that were previously scattered for insolvency of companies, partnership firms, and individuals and has furnished the statute with legal unity and certainty. The pre-reform laws included the Sick Industrial Companies (Special Provisions) Act, of 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, of 1993, and Section 433 of the Companies Act of 1956. These laws resulted in untimely or even extremely slow determination of bankruptcies, which was inadmissible from the point of view of the interests of both creditors and debtors. In this sense, the IBC was a radical shift from the past by emphasizing a timely resolution process that, if possible, aims at resurrecting the corporate brick-and-mortar out of which the financially non-viable entities have emerged and, in every case, brings about an efficient process of value realization. Hence, through an assessment of the law dealing with bankruptcy in India, especially focusing on CIRP, this study intended to assess the impact of IBC and recommend likely areas of legal changes required.¹

When the IBC was enacted, one of the most important innovative steps made was the introduction of CIRP. Its main goal is to serve as a clear plan for solving the problems connected with the insolvency of enterprises. CIRP is precisely directed by the RP, who happens to manage the debtor firm while the creditors assume the responsibility of deciding between business revival and its liquidation. It also assists in the process of protecting the value of assets; this method gives a more reasonable approach to solving the problems related to corporate insolvency compared to the earlier advanced laws. This paper aims to discuss the following aspects: What exactly is CIRP? The legal framework of CIRP, the difficulties, and legal cases that have defined CIRP in the last couple of years.

The general meaning of the word "bankruptcy" has pre-legal meanings, and its fundamental function is determined in the area of law, focusing on the resolution of the conflict that a party that cannot pay back the loan. In the context of legal regulation of corporate relations, bankruptcy law is not only an instrument for the recovery of corporate debts but also the stability of the management of financial risks and the promotion of the stability of the economic environment. The loan laws in India suggest that the bankruptcy laws were primarily debtor friendly till the enactment of the IBC. Before coming into

¹ Dr. Binoy J. Kattadiyil and CS. Peer Mehboob, "Corporate Insolvency in India and Other Countries – A Comparative Study", 12 *International Journal of Multidisciplinary Educational Research* 45 (2020).

force of IBC, several enactments had provisions for corporate insolvency, which, however, were insufficient due to the structural legalities and absence of a sound remedy for such a dispute.

The IBC was enacted to replace the inefficient earlier insolvency regimes aimed at organizing the procedure of insolvency of corporate entities. The function of the code is not limited to a situation where business ought to come to an end; it has objectives of achieving the optimum realizable value of assets, fostering entrepreneurship, and achieving timely disposal. Also, the role of the judiciary in the development of bankruptcy law in India is apparent through some important judgments, which include *In Swiss Ribbons Pvt. Ltd. v. Union of India*², the Supreme Court held IBC constitutionally valid and apprehended that efficiency and speed are the essence of IBC.

That is why a structured approach in the framework of bankruptcy is important to support economic stability as well as function as a protective shield for the stakeholders and increase the level of business ethics. According to Weder (1998, p. 250), “bankruptcy laws exist to facilitate the legal management of the failure of companies as well as to ensure that solutions to insolvency situations are orderly and predictable. The passing of the IBC was a way to fill the lacunae and inadequacies of earlier legislation by providing a code that can be both for the recovery of dues as well as the revival of ailing companies. Failure to integrate this requirement into a more structured framework could lead to insolvent firms making more losses to their creditors and other stakeholders when they had no clear direction.

It would be naive to overlook the opportunities that arise from an efficient insolvency process since the country is rapidly developing and comprises various industries. It was established that an effective bankruptcy law enhances investors’ confidence due to the certainty of the recovery of debt. It is especially crucial in cross-border insolvency because the legal frameworks under the act in question help improve cooperation with foreign jurisdictions and positively impact India’s standing in the global economy. The CIRP, in particular, allows the stakeholders to get together and determine if it is possible to save the company or if forced liquidation is the only option. This system makes it impossible for promoters to perpetuate legal ambiguities that are manipulated to their gain, as has been seen with Sick Industrial Companies (Special Provisions) Act, 1985.³

This paper aims at conducting a critical evaluation of the law on the insolvency of companies in India with special reference to the CIRP under the IBC. This paper seeks to discuss the legal statutes regulating CIRP, the judicial systems of the laws, and the experience challenge that comes with CIRP administration. In this context, the research is also going to analyze the effects of IBC on corporate governance and the prospects of the Indian economy. Certain areas of the study will focus on the application of case laws to most of the sections of the IBC, which include “Section 7,” which gives the financial creditors the right to initiate the CIRP, and “Section 12,” which outlines the timeline that the resolution process should take.

Furthermore, the paper seeks to establish how the current legal provisions could be enhanced to enhance efficiency in the resolution of insolvency cases. It will evaluate changes to the IBC that were undertaken in the past to the existing contentious aspects, such as homebuyers’ rights, the CoC’s functioning, and operational creditors’ treatment. The purpose of writing this article is to review the development of India’s bankruptcy law and give recommendations to the authors for future legal changes that will improve CIRP usage, furthering the code’s alignment with global standards and ability to address the increasing complexities of contemporary business environments.

Conceptual Analysis and Key Terminologies

Insolvency laws refer to several key areas in the law that are very essential to comprehend in their correct perspective. To understand the role and relevance of bankruptcy law, especially in the Indian context, it becomes pertinent to define the terms insolvency, bankruptcy, and liquidation together. These terms are used interchangeably in everyday conversation, although they each have legal definitions. As a result, their correct appreciation is imperative for gauging the complexity of the Corporate Insolvency Resolution Process (“CIRP”) under the Insolvency and Bankruptcy Code, 2016 (“IBC”). With the planned span of this paper, it is crucial to define the IBC as the overall legal framework designed to address the corporate and individual financial crises and is somewhat intended to revise, consolidate, and ameliorate the laws regarding reorganization and insolvency management within a stipulated timeframe. The CIRP, especially, is a procedure under the IBC that deals with corporate insolvency for the overall purpose of realizing the maximum value of the assets, encouraging entrepreneurial activity, and the efficient management of financial distress.⁴

Definition of Key Terms

Business Insolvency means a state of affairs whereby an entity is unable to pay its debts as and when due. This situation may occur as a result of efficiency, that is, operational difficulties, improper management of the company’s finances, unfavorable market factors, or recessionary times. It refers to the state of a company’s insolvency but does not have a legal connotation or a declaration. Yet, when insolvency becomes legally documented as a legal process to address nonpayment of the debtor, then it becomes bankruptcy. Bankruptcy, therefore, is not only a legal status that is declared by a court of law, following satisfying the criteria set out in the IBC around the debtor’s inability to meet his/her obligations, but is also a legal process that is sought with the help of a relevant legal authority such as the ‘NCLT.’ Liquidation, on the other hand, means selling the stocks of a company to clear debts due to various creditors. As per the norms of the IBC, liquidation comes under the category of the last stage and comes into operation only when all the attempts

² [2019] 4 SCC 17.

³ Mrs. Nisha Vyas, "A Study of Corporate Insolvency Resolution Process of Bhushan Steel Ltd. with Reference to 'Insolvency and Bankruptcy Code 2016'", *16 International Journal for Multidisciplinary Research* 78 (2023).

⁴ Shreeja Athota, "Reverting Back: A Critical Analysis of the Insolvency and Bankruptcy Code", *1 Jindal Global Law Review* 213 (2020).

towards the implementation of a resolution plan during CIRP fail. Thus, while insolvency stands for a state of financial problem, bankruptcy is the legal process that reflects the condition of such difficulty, and liquidation is the last course of a corporate restructuring plan.

Differentiating Insolvency from Bankruptcy

Insolvency and bankruptcy are two legal circumstances that depict the rising levels of financial hardship in organizations. Business failure is in effect the state where the total amount of debts owed by the company exceeds the value of the total asset or when a firm cannot pay for its debts as and when they are called upon. It acts as a pull factor that brings into operation legal tools that seek to address cases of credit crunch. Insolvency, on the other hand, is a legal status where, after insolvency, a bankruptcy process is set after it is legally acknowledged and a form of debtor liquidation where the NCLT identifies the inability of the debtor to meet his or her obligations. 'Section 7' and 'Section 9' of the IBC for the initiation of CIRP empowers the creditors or the corporate debtor to apply for the resolution of the insolvency. It remains important because insolvency is not the same thing as bankruptcy. Unlike most bankruptcy laws in the world, the IBC is geared towards efforts to find a solution to insolvency through reorganization and restructuring before bankruptcy and liquidation. It was initiated with the view of uncovering these possibilities by opening a window to resurrect financially challenged firms in a stipulated period.⁵

Understanding Corporate Insolvency Resolution Process (CIRP)

The CIRP is therefore a founding element of the IBC, which is intended to timely and systematically address the insolvency of corporate debtors. It offers a means of solving cases of financial stress to satisfy the strapped creditors and debtors at the same time. As soon as a CIRP is commenced, the administration of the affairs of the corporate debtor vests with an IRP, and the corporate debtor is deemed to be managed by the IRP. It involves the constitution of the Committee of Creditors CoC, which is mainly constituted of financial creditors, though operational creditors may also be included in this; it is only this committee that gives a nod to check as to who would work out the revival plan of the company, whether it is the acceptability of a resolution plan for the revival of the company or otherwise, it is ready to go for its liquidation. Under the IBC, the whole CIRP has to be completed within 180 days, which can be further increased by a maximum of 90 days so that the delay does not diminish the value of the assets of the debtor. This time-bound nature was upheld by the Supreme Court in "*Innovative Industries Ltd. v. ICICI Bank*"⁶, the Supreme Court is facing the need for early disposal to maintain the value of an insolvent company's assets.

The provisions of CIRP are intended to enable the restructuring of distressed organizations, whereby any person or company can propose the plan for the company's revival to the CoC. In case no resolution plan is sanctioned within a set period, the company goes for liquidation under "Section 33" of the IBC. This structured process helps in the early identification of instances of financial troubles and allows for timely participation and offering of solutions to avert utilization and loss of assets, finally ensuring the best results for all the stakeholders. Hence, the CIRP tries to be an effective means of coping with corporate insolvency and is different from the occasional and fragmented tools that have been available before the adoption of IBC.⁷

Theoretical Framework and Principles Governing Corporate Insolvency

A treatment of the rules of bankruptcy law necessarily involves understanding the legal theory surrounding insolvency resolution frameworks. Bankruptcy law, especially when it comes to corporations, gives an attempt to manage diametrically opposite claims of debtors and creditors while fostering stability. It is founded on different legal and economic theories regarding the fundamentals of creditor-debtor relations, handling of defaulted claims, and insolvency decision-making. The Indian IBC Act was designed to institutionalize these principles with great emphasis on timely and efficient resolution. From the concerns that were spread under different laws, the IBC gives a congregate structure to handle insolvency in a way that conserves the value of the masses and undermines interference with business operations.⁸

Theories of Bankruptcy Law

A large number of theories that seek to justify legal action in insolvency have defined the evolution of bankruptcy law. These theories are anchored around the creditor-debtor relationship, although bankruptcy law is seen as a solution to a collective action by creditors. Where a debtor is unable to pay his debts, numerous creditors are likely to try and attack the same debtor with the hope of being paid first; a so-called 'race to the courthouse' leads to the exhaustion of the assets of the debtor and therefore fewer recoveries are made. It's for this reason that bankruptcy law attempts to replace this competitive process with a collective model for debt repayment in the form of the CIRP under the IBC. Legal opinions include the economic theory of 'the creditor's bargain theory' proposing that before insolvency creditors agreed on the nature of bankruptcy. This theory bolsters some form of structured resolutions, such as the CIRP, that protects the interests of financial creditors, providing the CoC with the central authority in making collective decisions.

⁵ Rajeswari Sengupta and Anjali Sharma, "Corporate Insolvency Resolution in India: Lessons from a Cross-Country Comparison", available at: https://mpira.ub.uni-muenchen.de/69130/1/MPRA_paper_69130.pdf (last visited on October 18, 2024).

⁶ [2017] 14 SCC 317.

⁷ S. Deb and I. Dube, "Corporate Ownership and Insolvency Law: An Evidence from India", 53 *Common Law World Review* 68 (2024).

⁸ M. S. Sahoo and A. Guru, "Indian Insolvency Law", 45 *Vikalpa* 71 (2020).

In addition, the “value-maximization theory” is the legal basis for liquidation when restructuring cannot occur, so that the remaining value of the insolvent business enterprise is made as great as possible for the benefit of all.

Objectives of the Insolvency and Bankruptcy Code (IBC), 2016

The main goal of the IBC is to offer a time-bound process for the settlement of corporate insolvency while addressing the recognition of the optimum value of the assets and offering fair treatment for all stakeholders. Accordingly, the requirement for its prompt completion is stressed by “Section 12” of the IBC, wherein CIRP has to be completed within 180 days or 90 more days. Developed in this code, the idea was to achieve a balance between rehabilitation of the ailing balance sheets and winding up companies that are too ill to be revived—an area where past insolvency regimes were criticized as being slow and ineffective. The IBC also aims to enhance India’s business entity environment by creating certainty and simplicity in the process of tackling corporate insolvency to encourage new entries to the market. This priority treatment of creditors’ interests by ascribing voting rights to the CoC is pertinent to the IBC objective of safeguarding the financial creditors, the riskiest players in credit transactions.

Besides, the IBC is formulated under the messages of fair and reasonable dealings and with all the stakeholders, including the operation creditors, who, while deprived of the voting right in the CoC, are still eligible for a reasonable haircut in the resolution plan. In *In Swiss Ribbons Pvt. Ltd. v. Union of India*⁹, the apex court upheld the IBC for it is germane how India, as a country, requires a stringent insolvency law that is less mawkish, time-consuming, and laden with potential opportunities for misuse by unsavory corporate promoters. The principles of the IBC are also consistent with the best practices followed across the world, thanks to the provisions for cross-border insolvency under “Section 234” and “Section 235,” which have set the groundwork for India’s adoption of the United Nations Commission on International Trade Law’s (UNCITRAL) Model Law on Cross-Border Insolvency. The IBC sets out the theoretical and legal contexts within which corporate insolvency can be resolved in a way that will not cause further volatility in the economy or promote reckless borrowing and business practices.

Historical Background and Evolution of Bankruptcy Law in India

The development of bankruptcy law in India has been a process of progressive consolidation, and creditor-friendly legislation has replaced the piecemeal and debtor-friendly legislation under the IBC. The historical paper Insolvency Regime in India before the enactment of IBC acknowledges multiple laws that were enacted to cover different aspects of insolvency partially effectively. These earlier laws were succeeded by the IBC to address reconcentrated insolvency issues compounded with the intent of formulating extensive reform to improve the process of fixing corporate financial unrest. The IBC’s CIRP represents a significant shift in how insolvency issues are managed, with time being of the essence for resolution and obscene simplicity while attempting to get the most value out of the insolvent company’s assets. The changes in the CIRP legislation demonstrated that insolvency law is a progressive area of law, and the legislatures and judiciary have taken an incremental approach to tackling new problems arising in the corporations.¹⁰

Pre-IBC Insolvency Regime

India’s earlier legislation on insolvency was the Sick Industrial Companies (Special Provisions) Act, 1985; the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Such laws covered various aspects of insolvency and debt recovery, but there was no coherence between them. “Sick Industrial Companies (Special Provisions) Act, 1985” was intended to resuscitate ailing industrial enterprises, but the “Sick Industrial Companies (Special Provisions) Act, 1985” proceedings involved cumbersome and unwarranted time-consuming exercise, and protective mechanisms were abused appropriately by the promoters, making a virtue out of it, resulting in stripping corporate assets and values. The “Recovery of Debts Due to Banks and Financial Institutions Act, 1993” was passed for the early recovery of debts through the creation of the DRTs, but the act lacked a proper insolvency law regime and was only restricted to the recovery of debts without addressing the restructuring requirements. As in the case of “Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002,” enforcement of security interests did not require the intervention of the court by this act, but the unsecured creditors or a collective resolution for insolvency were not provided. These laws led to a highly fragmented legal structure, which gave way to incongruent proceedings, extended time taken to resolve, and low rates of recovery for creditors, as a pointer to the call for a complete overhaul.

The Need for IBC, 2016

Several laws emerged giving rise to conflicts of jurisdiction and long legal proceedings that informed the enactment of the IBC. The previous system of insolvency was centrally not integrated and thus took time to complete its procedures in Moved: raising solutions for distressed assets, and thus affected the banking environment due to high NPAs. The lack of efficacy of the ‘Sick Industrial Companies (Special Provisions) Act, 1985,’ ‘Recovery of Debts Due to Banks and Financial Institutions Act, 1993,’ and ‘Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002’ models was more apparent in their inability to offer quick and justified solutions to insolvency issues while insolvency-hit companies continued to function economically until they were declared unviable, thereby perpetuating the crisis. Understanding the requirement of a structured and effective

⁹ [2019] 4 SCC 17.

¹⁰ Warmiyana Zairi Absi and Marsudi Utoyo, "Legal Analysis of Corporate Insolvency: A Case Study of the Insolvency Resolution Process", 3 *International Journal of Social Service and Research* 3317 (2023)

insolvency law, the government introduced IBC, which set out to reform the insolvency scattered legal structure by providing a single law of insolvency that included resolution, liquidation, and bankruptcy, along with time-bound mechanisms that provided it speed. The IBC changed earlier; the 'debtor-in-possession' notion has been replaced by a new 'creditor-in-control' notion, due to which, under the CIRP mechanism, the future of the company is in the hands of the Committee of Creditors ('CoC').¹¹

Evolution of Corporate Insolvency Resolution Process under IBC

The IBC was amended during its five-year journey, in addition to judicial pronouncements, which have also influenced the CIRP. An important change made included the Insolvency and Bankruptcy (Amendment) Act, of 2019, which made provisions that attempted to protect the interests of home buyers and placed them in the category of financial creditors. This amendment was on account of disturbing signals regarding the treatment of homebuyers in insolvency situations, especially following the decision of the Apex Court in "*Pioneer Urban Land and Infrastructure Ltd. v. Union of India*"¹², where the rights of the homebuyers under the IBC were justified. Another noteworthy emerging property was done by introducing "Section 29A" under the Insolvency and Bankruptcy (Amendment) Act, 2018 to prevent the promoters of defaulting companies from submitting the resolution plans and targeting the problem of backdoor entry by the defaulters into what they were attempting to regain control over the insolvent entity.

Another factor that has also defined the CIRP is the judicial interpretation of the CIRP. In "*Essar Steel India Ltd. v. Satish Kumar Gupta*"¹³, as well, the Supreme Court recognizes the CoC as the dominant party in deciding the distribution of proceeds under the resolution plan as part of the creditor-centric mechanism. Furthermore, tangent to the same, the court's interpretation in "*ArcelorMittal India Private Limited v. Satish Kumar Gupta*"¹⁴, notably refined the provisions of "Section 29A" to make it clearer that promoters of insolvent firms cannot be permitted to bid again. The above discal amendments and judicial decisions are indicative of the dynamic nature of law contained in the IBC, as well as the extensive flexibility that the legislature demonstrated to respond to the emerging questions and to guarantee the effectiveness of the CIRP as an essential legal tool for the realization of corporate insolvency in India. The changes in CIRP under the IBC are a step forward to create a strong and appropriate legal structure for insolvency at par with best practices followed in the world and helping the economy by effectively handling problem assets in due time.

Corporate Insolvency Resolution Process: Legal Framework and Key Provisions

This can be analyzed through the Corporate Insolvency Resolution Process ("CIRP") in the IBC, a reform that presents a clear and holistic means of dealing with insolvency in corporate entities in India. That was the reason for the IBC's introduction; it was designed to replace the inefficiencies of the earlier laws, which were scattered and could not ensure timely debt recovery. A huge emphasis was placed on the core importance of the CIRP in the IBC as it offers legal procedures for tackling insolvency in a time-bound manner to ensure the preservation of the value of assets, equitable treatment of stakeholders, and facilitation of entrepreneurship. Indeed, the IBC aims to accomplish its objectives through different provisions for the initiation of insolvency processes and the appointment of insolvency practitioners; authorization of formation of the CoC; as well as acceptance of the resolution applications accompanied by liquidation as the final procedure. The law therefore guarantees the applicable distressed firms a chance to get engineering while creditors' interests are also protected.¹⁵

Overview of the Insolvency and Bankruptcy Code, 2016

The IBC has been framed to repeal and rewrite the laws obtaining the process of reorganization and insolvency resolution of corporate persons, partnership firms, and individuals promptly. Its main characteristics are creditor orientation, when it is the creditors who decide on the further fate of the insolvency case, and transition from the debtor-in-possession model to the creditor-in-control model. Basically, according to the IBC, insolvency processes are expected to take a certain duration, which negates time wastage, which in most cases reduces the value of the assets. Section 14 of the IBC also provides for a process called "moratorium," which means that no legal proceedings can be carried forward against the debtor during the CIRP, to give the company a 'breath of air'. To enable the financial and operational creditors and the corporate debtor, the code has provided specific avenues of participation through the insolvency process.

Initiation of CIRP: Admission of Applications

The start of CIRP can be initiated by the financial creditors, operation creditors, or the corporate debtor itself. According to "Section 7," a financial creditor may present an application to the National Company Law Tribunal for initiating the CIRP against the corporate debtor in case of default. If the

¹¹ Shruthi Manohar, "An Analysis of Corporate Insolvency Resolution in India in the Wake of COVID-19 Crisis", *2 GIBS Law Journal* 107 (2020).

¹² [2019] 8 SCC 416.

¹³ [2019] 16 SCC 193.

¹⁴ [2019] 2 SCC 1.

¹⁵ "Corporate Insolvency Resolution Process: Legal Framework and Key Provisions", *available at:*

https://www.penaclaims.com/Corporate_Insolvency_Resolution_Process_Legal_Framework_Key_Provisions.pdf (last visited on October 18, 2024).

application for admission of the debt and default is complete, then the NCLT is bound to admit it within fourteen days. What ‘Section 9’ contemplates is that operational creditors can also initiate CIRP once they meet the following conditions: a) requirement of the issuance of a demand notice to the debtor, and b) no existence of any dispute between the concerned parties. The CIRP can also be initiated by the corporate debtor under Section 10 if the corporation has defaulted on the debts. The moment an application is admitted, the NCLT passes an order of moratorium and passes an order appointing an Interim Resolution Professional (IRP) to manage the affairs of the debtor.¹⁶

Appointment of Interim Resolution Professionals (IRP) and Committee of Creditors (CoC)

In the CIRP, the IRP gains possession or control of the debtor’s assets, oversees operations, and comprises the CoC. The IRP is supposed to authenticate the claims against the corporate debtor and check that the resolution process complies with the legislation of the IBC. CIRP begins with the formation of a CoC that includes financial creditors who are eligible to vote on key issues, including the approval of the resolution plan, in the first thirty days from the commencement of CIRP. The CoC has arguably immense influence, for it is the one that determines the future of the company—whether it will carry on its operations under a resolution plan or go for liquidation. This process is developed here with a view of conducting that creditor-centric point of view, which is intended to safeguard the interests of those who have invested in the company. The Honorable Supreme Court in “*Innovative Industries Ltd. v. ICICI Bank*”¹⁷ remained focused on the basic principle that the CoC is driving the resolution process and decision-making rights with the creditors.

Resolution Plan Approval and Liquidation Process

The workout proposed as part of its bid by potential acquirers is reviewed by the IRP and requires the affirmative vote of two-thirds of the CoC members by “Section 30(4)” of the IBC. Debts have to be covered, and the path for the company’s revival concerning the maximization of the asset value must be outlined in the resolution plan. After this, the plan that has been developed is taken to the National Company Law Tribunal for ratification by the CoC. To the best of my understanding following the ruling of the case, the court might not go as far as commenting on the merits of the commerciality of the plan as a whole, but it will only check that the legal necessities under the IBC are being met. In “*K. Sashidhar v. Indian Overseas Bank*”¹⁸, recognizing the commercial wisdom of the CoC in the approval of the resolution plan, the Supreme Court has again endorsed the principle of creditor autonomy. Should such a resolution plan not have been approved within the statutory period, then the company goes under liquidation in terms of “Section 33.” The liquidation process in which assets of the company are sold to discharge the debts under priority as defined under Section 53, IBC.¹⁹

Time-bound Resolution under IBC

Thus, one of the major deviations within the framework of the IBC is the focus on a time-limited result. According to “Section 12,” CIRP must be concluded in 180 days from the section start up to 90 days more if it is approved by the NCLT. This concept-by-concept approach is used to reduce the duration of litigation and to maintain the optimum value of assets. Failure to complete insolvency quickly may result in loss of value of assets, non-realization of creditors’ income, and other social effects. These timelines have been buttressed by the judiciary. Like the recent judgment in the case titled “*Committee of Creditors of Essar Steele India Limited v. Union of India*”,²⁰ the Supreme Court has emphasized why it is necessary to follow the procedural law in a bid to protect the aims stated under the code. The timeline prescribed for CIRP under IBC serves to show that IBC is designed to offer a quick, certain, and efficient process to deal with insolvency to bolster the creditor’s confidence to resolve the corporate failure.

Comparative Analysis: Corporate Insolvency Resolution in India vs. Other Jurisdictions

CIRP stands for the Corporate Insolvency Resolution Process under the IBC, or the Insolvency and Bankruptcy Code, 2016 is one of the main legal reforms in India designed to insolvency crisis in a formal and timely manner. Nonetheless, to better evaluate the CIRP, it is appropriate to make a cross-judicial comparison with other leading countries of the world that have developed their systems of insolvency proceedings with characteristics peculiar only to them, including the United Kingdom and the United States of America. Whereas the UK has the administration and liquidation treatment, the U.S. has Chapter 11, which treats the failure with reorganization and control of debts by the debtor. Comparing these jurisdictions not only identifies the differences in the approach to insolvency resolution but also analyzes reform possibilities that may strengthen India’s CIRP.²¹

¹⁶ Akaant Kumar Mittal, *Insolvency and Bankruptcy Code: Law and Practice* 98 (Eastern Book Company, New Delhi, 2nd edn., 2023).

¹⁷ [2017] 14 SCC 317.

¹⁸ [2019] 12 SCC 150.

¹⁹ Stages of Corporate Insolvency Process, available at: <https://www.indiafilings.com/learn/stages-of-corporate-insolvency-process/> (last visited on October 18, 2024).

²⁰ [2019] 16 SCC 193.

²¹ *Supra* note 1.

CIRP in the United Kingdom

In the United Kingdom, the corporate insolvency mechanisms comprise administration, liquidation, and company voluntary arrangements (“CVA”). The administration is so recourse-focused that an insolvency practitioner gets involved in the running of the company’s business with the primary aim of making a better return for the creditors than would be the case under liquidation. According to the government of India’s official site, the “Enterprise Act, of 2002” amended the administration process and facilitated the restructuring of companies along with giving protection from creditors. This is similar to India’s CIRP in the sense that both involve the appointment of a professional to work for the debtor and towards a rehabilitation solution. However, a lot of variation is present as to how much active participation of creditors is permitted; on the one hand, the UK has flexibility where creditors are required to negotiate; on the other hand, the Indian CIRP is more rigid being vested in the CoC, which has to approve the resolution plan.

Liquidation in the UK also bears some difference with the liquidation in the IBC rules. Liquidation legislation in the UK differs from that in the USA by the fact that it can be voluntary and compulsory; creditors’ access to the proceedings is also wider. The IBC, however, requires liquidation only if the CIRP fails to ensure that liquidation is carried out as a measure of last resort. This approach in India is thus aimed at not only getting a greater amount of assets back but also preventing some viable firms from being closed.²²

CIRP in the United States (Chapter 11 Bankruptcy)

The Chapter 11 bankruptcy law in the United States is debtor-in-possession, which enables the debtor to manage the relevant business while restructuring it but under the supervision of the bankruptcy court. This is in contrast to India, where management control immediately transitions to the CIRP once the process unfolds. Chapter 11 concentrates on reorganization and gives the debtor a vast amount of freedom in dealing with creditors, which can be extended for as long as the debtor wishes with the approval of the court. Consequently, under the IBC, CIRP must be and often is indeed carried out within a predetermined timeline of 180 days with a possible extension of 90 days only and under Section 12.

Also, the priority of claims in the Chapter 11 process is different from the priority of claims under the IBC. In the U.S., secured creditors and administrative expenses get priority, while under Indian IBC there is a prescribed waterfall known as “Section 53” of the code where the resolution amount is given first preference, then secured creditors’ claims, workmen’s dues, and unsecured creditors. This structured approach under the IBC aims at fostering fair distribution of the assets of the debtor among several stakeholders without protraction.²³

Lessons for India from International Practices

Consequently, the United Kingdom and the United States’ experience could be useful for further developing India’s CIRP framework. The inhospitable grounds for borrower negotiations present in the UK can be implemented in India to achieve more space for out-of-court settlement along with pre-packed insolvencies so that they do not put pressure on the National Company Law Tribunal (“NCLT”). Furthermore, selective borrowings of the debtor-in-possession model of the United States could allow distressed firms to regain and maintain control in the course of restructuring in specific cases, cultivate an atmosphere of enterprise, and help the firms to seek remedies on schedule. The Chapter 11 process also points at the advantages of extension of time in the large and composite cases where restructuring would be needed more than what is permissible by IBC.

Also, for instance, India’s IBC could stand to benefit from adopting provisions of the UNCITRAL Model Law on Cross-Border Insolvency already operative in the United States and United Kingdom. It would also strengthen India’s capacity to address foreign creditors or assets that are involved in the insolvency issue, thus placing the country’s insolvency regime on par with best practices as a way of encouraging foreign investors. Referring to the best practices from different countries, India can further enhance its humane insolvency laws, capable of addressing the challenges of the new economic world.

Role of Judiciary in Interpreting Corporate Insolvency Laws

Therefore, the judiciary has an indispensable function in defining different aspects of corporate insolvency regulations, with a focus on the CIRP under the IBC. In its operation since the IBC, Indian courts have played a key role in interpreting the code, providing clarity where needed, and navigating conflict to adhere to its stated goals—the Supreme Court as well as the NCLT. By the supreme judgments, not only has the judiciary explained several sections of the IBC, but it has also ensured that the resolution process is complied with in a way that is fast, transparent, and creditors friendly. It is seen that the change in judicial attitude has an endeavor to develop the CIRP framework, to look into the concerns of stakeholders, and to mitigate the potential adversities to creditors as well as to the corporate debtors. This section focuses on judicial interventions that have influenced the CIRP, the scope of powers of the CoC, and the applicability of various judicial trends to the subject.

²² "Hybrid Insolvency Resolution Process", *available at*: <https://insolvencyacademy.com/wp-content/uploads/2024/08/hybrid-insolvency-resolution-process-v3.pdf> (last visited on October 18, 2024).

²³ "Chapter 11 Bankruptcy Basics", *available at*: <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics> (last visited on October 18, 2024).

Landmark Case Laws Interpreting CIRP Provisions

Some of the cases that have thus brought important interpretations of the provisions of the CIRP include the following important judgments, which in effect have helped explain the applicability of the IBC. One such important case is In *Swiss Ribbons Pvt. Ltd. v. Union of India*²⁴, where the Constitutional bench of the Hon'ble Supreme Court affirmed the constitutionality of the IBC. In this case, the Court underlined the fact that the CIRP is a time-bound process and that financial creditors' decisions shall prevail. The judgment perhaps was a reaffirmation that while the NCLT will have to ensure strict legal compliance to the prescription under the CoC along with implementing the approved resolution plan, the commercial feasibility of a particular resolution plan is not the domain of NCLT. The apex court, realizing the necessity of the efficient architecture of the insolvency resolution framework, has further strengthened the objective of IBC to achieve faster disposal of stressed assets.

One other judgment that passed under the shroud of IBC is "*Innovative Industries Ltd. v. ICICI Bank*"²⁵ relating to the initiation of CIRP by financial creditors. The judgment explained that the moment the NCLT is satisfied that there has been a default, it must admit the application, and the colorable contract was rejected. It cannot be allowed to make the process endless due to the financial health of the company. The court position in this regard provided continuity of creditor-led process by IBC and highlighted the importance of adhering to statutory timelines to ensure that the value of the debtor's asset is not eroded due to unwarranted delays.

Judicial Interpretation of CoC's Powers

The key participant in the CIRP is the CoC, which has broad powers within the process, in which it can approve the resolution plan or recommend liquidation. The judiciary has more often interceded into the degree and bounds of the CoC's jurisdiction to ensure that the business failure process is equitable. In "*K. Sashidhar v. Indian Overseas Bank*"²⁶, The court opined that the NCLT and the National Company Law Appellate Tribunal cannot challenge the cause of action as long as the CoC's decision falls within the legal provisions of the IBC. In this regard, this judgment established the greater autonomy of the CoC, where a court should not vary the decision of the creditors but only ascertain whether or not the CVA process was properly followed.

Analysis of Judicial Trends and Their Impact on CIRP

An analysis of judicial precedents governing the interpretation of corporate insolvency laws has revealed that judicial precedent has had a profound impact on the formation and efficiency of the CIRP. The judiciary has been very active in clearing matters that may be gray areas in the IBC, thus leading to a more structured insolvency environment. Case law has particularly placed importance on the state's compliance with statutory timeframes to reduce any undertaking, thus protecting and enhancing the value of troubled enterprises. The expectations of time-bound resolutions comply with the scope of the IBC, as evident in judgments like "*ArcelorMittal India Private Limited v. Satish Kumar Gupta*"²⁷, where the Supreme Court dealt with the requirements of timelines for submission and approval of a "Section 12" resolution plan. The recent conscience to pay much regard to statutory measures concerning deadlines has helped to create a climate of immediacy in the insolvency process and has increased recovery rates among creditors.

Furthermore, it is necessary to note that in this sphere, judicial practice has become the major determinant of the law regulating the application of the resolution. The provision for "Section 29A" that excludes promoters of companies that have defaulted from presenting resolution plans was reviewed in terms of constitutional validity in cases like *ArcelorMittal India Private Limited*. This has ensured that those dishonest promoters do not regain control of their companies, which is good because they have to be held responsible and cannot mislead other investors by continuing to fan wrong figures.

Challenges in the Corporate Insolvency Resolution Process

The CIRP has been central to the solution of corporate insolvency problems in India under the IBC, although it has its problems. All the same, while the framework is quite inclusive, it has experienced some challenges that hinder its efficiency. Such challenges can be further elaborated as including procedural issues as well as issues about the valuation of the assets and questions of stakeholder rights. It is vital to understand these problems from the goal of establishing and drawing measures toward optimizing CIRP's functioning and objectives met, such as time efficiency, asset value optimization, and promoting fair action for all participants.

Delays in Resolution and Liquidation

Among the problems that seem to crop up in the CIRP the most consistently is the fact that the process takes so long to be completed. While the IBC has set a time-bound mechanism for the resolution of insolvency cases and Section 12 has provided a 180-day + an extendable period of up to 90 days for CIRP, many of the cases take more than these stipulated periods. Such delays are caused by extended legal processes, appeals, and extensive creditor

²⁴ [2019] 4 SCC 17.

²⁵ [2017] 14 SCC 317.

²⁶ [2019] 12 SCC 150.

²⁷ [2019] 2 SCC 1.

reform group negotiations. These delays are counter to the desired objective of the IBC in that insolvency resolution is supposed to be a quick process; the debtor's assets may depreciate over time, which then leads to claimants receiving lower recoveries. For instance, in *Essar Steel India Ltd. v. Satish Kumar Gupta*²⁸, the Supreme Court of India recognized the issue of delay and wanted lawyers to respect statutory timelines to retain the value of distressed assets. To address these concerns, more process changes are required, including simplifying the appellate process, scaling up NCLT, and adopting more pre-packaged formal insolvency schemes that enable quicker throughput.

Issues Related to Valuation and Fairness of Resolution Plans

Another difficulty in the process of the CIRP is the valuation of the assets: the key to the identification of fair value and the liquidation value of the troubled business is practically predicated on estimates. Valuation differences may bring conflict of interest among the stakeholders, especially given the creditors who feel that the implementation plan doesn't provide sufficient recovery relative to the worth of the associated assets. As noted earlier, the IBC does not offer any provisions on the valuation techniques that may be used by registered valuers, and therefore they may use any method, yet the results obtained are likely to be next to each other. In the same way, the resolution plans may provide more prominence to the financial creditors than the operational creditors, which raises issues of parity and emergent treatment.

Concerns over the Protection of Rights of Various Stakeholders

The provisions that motivate the CIRP framework are vested firmly in the protection of financial creditors, but these reforms raise issues about other rights of operational creditors along with employees and shareholders. However, B lists financial creditors as the most powerful player in the CoC and stresses that operational creditors may not always be protected, especially where priority ranking concerning payments after an IMD is concerned. In *Swiss Ribbons Pvt. Ltd. v. Union of India*²⁹, while holding that the IBC does not offend Article 14 of the Constitution, the constitutionality of the dichotomy between financial and operational creditors has been disputed. Other stakeholders include employees affected when resolving disputes since they worry about whether or not they will be paid their wages or retain employment. Moreover, shareholders, who surrender managerial control as soon as CIRP starts, can do very little if the resolution plan results in a substantial dilution of equity.

To tackle these challenges, the legal provision should be made more robust to account for all the stakeholder's interests during the dispute resolution process. This may include sections affecting the IBC, the provision of a more structured framework for the cooperation of operational creditors and employees, or the introduction of new clauses in the CoC to guarantee improved rights for those operational creditors. Commitment to ensuring that the resolution process of the IBC continues to be fair, transparent, and inclusive will enhance public confidence in the insolvency system to fruition of the IBC policy objectives of promoting economic growth and stability of businesses.³⁰

Conclusion

The IBC has changed the corporate insolvency landscape of India by presenting a new time-bound and structured corporate insolvency resolution process. In their combination, the code erases the crippling inefficiencies of the pre-IBC insolvency legal regime that had presupposed several laws being in existence for insolvency. Nevertheless, problems like the time-consuming nature, variations in the estimated values of the assets, and the relative fairness of stakes to other stakeholders are issues that still exist. Several reported cases have helped in shaping the provisions of the IBC and, more importantly, the compliance with statutory time limits, creditors' rights, and the principle of natural justice.

Although the IBC has provided a strong framework for its implementation, refinements are still needed for the CIRP plan. Adopting Debtor in Possession models and cross-border insolvency provisions as adopted by other countries could improve the overall insolvency regime in India. Mitigating the pointed-out issues will be important for strengthening the IBC as a relevant instrument for containing fluctuation in the economy and enforcing discipline in finances and corporate management.

Suggestions

The IBC has paved ways for the proper legal structure for corporate insolvency in India and has consolidate and standardized the legal procedures which were scattered earlier. The current framework has nuanced several overarchingly spare areas, especially in the CIRP, which could benefit from specific reforms concerning efficiency, equity, and accessibility. Below are specific suggestions for refining the IBC framework, addressing procedural issues, valuation challenges, stakeholder rights, and judicial interpretation:

- Set up a special list within the NCLT, for companies with limited assets who are not financially capable of hiring lawyers. This could help prevent these types of cases from be set aside just like other larger sophisticated insolvency cases.

²⁸ [2019] 16 SCC 193.

²⁹ [2019] 4 SCC 17.

³⁰ Siddharth Sivaselvam and Dr. Sonika Bhardwaj, "Assessing and Unravelling the Challenges Faced in the Prevailing Corporate Insolvency Resolution Process in India", 5 *Indian Journal of Law and Legal Research* 10 (February 3, 2024).

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- Each of the CIRP cases should be subject to two independent valuations in order to avoid inconsistencies. This could help avoid situations such as those cases where some assets are underpriced and overvalued by some groups within an organization especially in insolvency cases.
 - For fast-tracking the creditor committee (CoC) decision making, permit large financial institutions pre-approval of specific resolution plans with which they have a large exposure. This step would have saved much time in voting procedures and reduce on many discussions that would be going back and forth.
 - Develop CIRP supported new interim fund to support basic ordinary expense claims of operational trade creditors which will assist not to shut operation during CIRP due to non-receipt of immediate payment.
 - Create a website where progress on each of the resolution plans will be posted. This platform could enhance operational accountability since other stakeholders such as operational creditors could track the compliances with timelines and plan timeframe.
 - In sectors particularly those industries with structural complexities such as the manufacturing industry, allow a debtor in possession regime, that is the debtor carries out its operations under strict supervision of the IRP. This would prevent possible disruptions such as; Instances, where operational know-how is vital in sectors.
 - Fast forward the enactment of the UNCITRAL Model Law in the IBC amendments to deal with the insolvency having overseas connection to enable better synchronization with foreign courts/creditors.
 - Currently, CoC decisions require 66% voting, the voting threshold be reduced to 51% for other routine matters except for final resolution or liquidation so that; There should be faster and quicker minor approval within CIRP.

The following suggestions aims to improve upon some of the perceived procedural delays of CIRP on how IBC can better deal with asset valuation, stakeholder management and ensure compatibility to better address insolvent business cross-country.