



CRITICAL ANALYSIS OF INSOLVENCY AND BANKRUPTCY CODE 2016

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Abstract

The enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) was a root-and-branch overhaul of Indian law relating to insolvency, and with the goal of consolidating and streamlining pre-existing piecemeal and inefficient legal structures. Prior to IBC, bankruptcy and insolvency were governed by different legislations such as the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), Companies Act, and SARFAESI Act, 2002. All the legislations were prone to delay in proceedings, overlapping jurisdictions, and poor recovery rates for creditors. The IBC brought one, creditor-in-control, time-bound model of resolution of insolvency and business survival and thus significantly enhanced investor confidence and business facilitation in India.

The following research paper is critically examining the genesis, creation, and impact of the IBC when compared to the earlier insolvency legislations, delineating its paradigmatic impact on the financial ecosystem of India. It also touches upon ground-breaking orders such as *Swiss Ribbons v. Union of India*, *Essar Steel v. Satish Kumar Gupta*, and *Jaypee Infratech v. IDBI Bank* which have played a crucial role in interpreting and molding the law. The study diagnoses problems such as delay in disposal, judicial jam, and creditor haircuts that are still widespread and suggests policy interventions to enhance the efficiency and working efficacy of the Code.

Keywords – Insolvency and Bankruptcy Code, IBC 2016, Corporate Insolvency, SICA, SARFAESI Act, NCLT, Financial Creditors, Resolution Process, Landmark Judgments, Debt Recovery, Legal Reforms, Corporate Restructuring.

Introduction

A robust and efficient insolvency framework is the backbone of the economy of any nation. It is the single most crucial driver of credit behavior, investor confidence, and the overall financial system. India never had a standardized legal regime dealing with issues relating to insolvency and bankruptcy before 2016. Rather, it was met by a motley of older and frequently disagreeing legislations such as Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act), Securitisation

and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), and the insolvency regimes in the form of the Companies Act, 1956 and 2013. They operated in silos, and they resulted in inefficiencies, protracted litigations, below-par recovery, and loss of creditor and investor confidence.

Rising NPAs of Indian banks and the financial crisis in 2008 implied there was an urge to re-engineer the structure of insolvency at the root of thought. Payment and settlement delays had become facile under existing legal architecture,



wherein defaulting companies had found ways to take advantage of loopholes, postpone, and hold back settlement. Judicial delay, forum non-concordance, and indulgence towards debtors were among the other causes of the crisis. Sensing the need for one, the Indian Parliament enacted the Insolvency and Bankruptcy Code, 2016 (IBC)—a paradigmatic law which obviated the earlier legislations and dreamt of a time-bound, market-linked process of resolution of insolvency.

The IBC revolutionized the Indian insolvency regime. It substituted debtor-in-possession with a creditor-in-control setup and imposed tight timed deadlines (180 to 330 days) on the insolvency resolution process. It introduced the concept of corporate insolvency resolution process (CIRP), established a new institutional framework with the National Company Law Tribunal (NCLT) as the adjudicating authority, the Insolvency and Bankruptcy Board of India (IBBI) as the regulator, and an Insolvency Professionals (IPs) cadre to manage the process. Over and above all, the Code includes an insolvency trigger stage at the onset of insolvency proceedings, engages creditors via a Committee of Creditors (CoC), and holds liquidation only as the last resort. The IBC has also been developed over the years through amendments incrementally. Judicial understanding of law has also assisted in the development of the IBC. The provisions were understood through the judgments such as *Swiss Ribbons Pvt. Ltd. v. Union of India*, *Innoventive Industries v. ICICI Bank*, *Essar Steel v. Satish Kumar Gupta*, and *ArcelorMittal v. Satish Kumar Gupta*. They emphasized again the business sense of the CoC as the paramount priority under the resolution process.

While it has a galaxy of success stories, the IBC also has some teething problems of implementation.

Those are the ones which deal with grossly delayed disposals against rightful timelines, clogged NCLTs, discriminatory application of the law, and piling issues with regard to deep

haircuts by financial creditors. To that extent, two sectors—real estate and MSMEs—have raised concern with regard to fungibility of the Code to their respective worlds. Other areas apart from that are cross-border insolvency, individual insolvency, and group insolvency, which are new-age topics in the existing framework.

Statement of the Problem

Before the Insolvency and Bankruptcy Code (IBC) came into force in 2016, India's insolvency resolution process was marred by inefficiency, delays, and disparate legal provisions under different legislations. Creditors were grossly hit by recovering debt, an exercise which would go on for years with no clear end. Companies availed legal loopholes to delay the proceedings, making the system more creditor-unfriendly than defaulters. As per World Bank technical reports, on average more than 4 to 6 years would be needed to recover insolvency under current laws with recovery levels being less than 25%. The decentralized structure of the legal framework—composed of laws like SICA, RDBFI Act, SARFAESI Act, and Companies Act—led to confusion of jurisdiction, overloading tribunals and courts, and led to divergent interpretations. In addition, the absence of a common vehicle to resolve insolvency led to unnecessary complexity to different stakeholders such as financial and operating creditors and employees of troubled firms.

The IBC came as a lean and punctual mechanism for resolution of corporate insolvency with the aim to ease the ease of doing business and increasing investor sentiment. But even being path-breaking legislation, the IBC faced its own shortcomings and weaknesses. Some of the problems faced are:

Retention delays in consonance with the sheer back-log that has been haunting National Company Law Tribunals (NCLTs) despite, legally prescribed timeline of 180–330 days yet to spread its wings.



Heavy haircuts endured by financial creditors as well during resolution running into even up to 80–90% in worst-case situations raising concerns with regard to justice and value maximisation;

Uncertainty about court directions, primarily in the case of real estate, MSME, and personal guarantors;

Lack of independent facilitators of cross-border insolvency and group insolvency, which impacts the overall effectiveness of the Insolvency and Bankruptcy Code;

Concern for abuse on the part of debtors as well as creditors for strategic litigation as well as wilful prolongation of cases.

This paper will attempt to discuss the very basic question of whether or not the IBC has processed insolvency in a timely and efficient manner, if it has been able to reconcile the interests of the stakeholders, and what changes in the legal, structural, or procedural domain would be needed in order to resolve the issues currently being encountered in its enforcement.

Objectives of the Study

1. To compare the IBC with previous insolvency legislations in India
2. To evaluate the efficiency and implementation of IBC
3. To examine landmark judgments interpreting IBC
4. To suggest reforms for a more robust insolvency system

Scope and Limitations

Scope of the Study

The present research paper is a critical and comprehensive analysis of the Insolvency and Bankruptcy Code, 2016 (IBC) with an aim to examine its efficacy in correcting the shortfalls of past insolvency legislations. The article discusses the organizational framework of the IBC for key factors like the Corporate Insolvency Resolution Process (CIRP), function of Insolvency Professionals (IPs), the Committee of Creditors

(CoC), and the National Company Law Tribunal (NCLT). Focused attention is given to the working functionality of such mechanisms and to what extent and whether or not they are time-bound and value-maximizing resolutions.

One of the significant features of this research is the comparison of IBC with prior legislations like the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the SARFAESI Act, 2002, and the Companies Act, 1956/2013. This comparison has been done in order to point out the progress on the process transparency, empowerment of creditors, and speed of the insolvency process by the IBC. Here, the research also examines the development of the law through key judgments that have shaped the interpretation and enforcement of the IBC.

The research also discusses empirical issues in the working of the Code, including delay in resolution, massive haircuts for creditors, and sectoral concerns. In addition, the research delves into overarching policy considerations and proposes reforms to improve the strength of India's insolvency framework, contributing to the legal and economic reform debate.

Limitations of the Study

While the study seeks to offer a holistic critique of the IBC, it is not without weaknesses. To begin with, the study is limited to corporate insolvency and not individual and partnership insolvency, as these aspects of the IBC are still in the process of development or are yet to be fully operational.

Besides, since the law is in a process of change, the conclusions and results derived from this study are founded only on the legislative and judicial developments as of the writing date. The Code amendments and judicial interpretations available subsequent to this writing may render parts of the analysis obsolete or subject to future modification.

In addition, the study is geographically limited to India and does not attempt any comparative international research except for some mere citations. This might limit the reader's



understanding of how India's insolvency regime compares in the context of an international comparison.

Apart from that, the research relies primarily on secondary data in the form of scholarly commentary, journal publication, government reports, and case law. There is no such primary empirical data as stakeholder interviews, case data, or fieldwork, which confines the study's depth.

Lastly, because of geographical constraints, the analysis is limited to some of the landmark judgments that have contributed meaningfully to the IBC. While these judgments are part of larger trends, they might not be representative of all judicial subtleties and differential applications of the Code across industries and circumstances.

Research Questions

1. How does the Insolvency and Bankruptcy Code, 2016 differ from the earlier insolvency legislations in India?
2. Has the IBC achieved its objective of ensuring time-bound resolution and value maximization?
3. What role have landmark judicial decisions played in shaping the implementation of the IBC?
4. What are the major challenges and limitations faced in the practical enforcement of the Code?

Hypothesis

The research is founded on the assumption that the Insolvency and Bankruptcy Code, 2016 has substantially enhanced the mechanism of resolution of insolvency in India by way of a time-bound, integrated, and creditor-friendly mechanism. While with its valuable contribution, yet the Code continues to face implementation issues and judicial inconsistency to dilute its fullest efficacy. Continued legal reform and capacity building are also presumed to be required to achieve the objectives of the Code.

Research Methodology

The study is doctrinal and analytical in nature. The study is based largely on secondary sources like statutes, rules, case laws, commentaries, journals, reports of the Insolvency and Bankruptcy Board of India (IBBI), and government reports. The study adopts the qualitative method of discussing the legal framework of the Insolvency and Bankruptcy Code, 2016, its origin, and judicial interpretation by precedence verdicts.

Comparative analysis is done to find out differences from the IBC and earlier insolvency legislations such as the SICA, SARFAESI Act, and Companies Act. Landmark Supreme Court and NCLAT judgments are discussed to find out how judgments at the judicial level have affected enforcement of the Code.

The study also draws statistical data from official reports and juridical databases to verify findings about solution time horizons, recuperation rates, and issues of implementation. The goal is to present a well-balanced and critical assessment of the IBC and propose viable recommendations on the basis of legal and procedural loopholes identified.

Review of Literature

● Academic Analysis of the IBC Framework

Dr. M.S. Sahoo, former Chairperson of IBBI, has explained how the IBC brought about a paradigm shift from debtor-in-possession to creditor-in-control. He points out the contribution of the Code in reviving stressed assets through resolution at the right time. His articles stress the IBC as a structural economic reform.

● Economic Perspective on Insolvency

Suranjali Tandon, in her study brought out by the National Institute of Public Finance and Policy (NIPFP), has concentrated on the economic effect of the IBC. She believes that although the IBC has enhanced investor sentiment and credit discipline, it still has



problems in certain sectors like real estate and MSMEs.

● **Judicial Interpretation and Legal Challenges**

Umakanth Varottil's articles offer critical examination of legal uncertainties and conflicting judicial decisions under the IBC. He also discusses adjudication delays and stresses the need to develop the capacity of NCLTs to meet the Code's timelines.

● **Institutional and International Reports**

World Bank's Doing Business Report (2020) welcomed the IBC for shortening insolvency resolution periods and enhancing India's ease of doing business ranking. Yet, it also noted that procedural and enforcement inefficiencies still require improvement.

● **Doctrinal and Constitutional Concerns**

Authors like Dr. K.R. Chandratre have elaborated the IBC's constitutionality in particular, concerning Articles 14 and 19 challenge issues. Articles by these scholars discuss judicial precedent's impact upon the understanding of the Code and its correlation to natural justice doctrine.

Books

1. Saxena, R.K. *Law Relating to Insolvency & Bankruptcy Code, 2016, 5th edn. (LexisNexis, 2022)*

Provides a comprehensive clause-by-clause explanation of the IBC with cross-references to judicial pronouncements and procedural aspects.

Chandratre, K.R. *Corporate Insolvency: Law and Practice, (Bharat Law House, 2021)*

Concentrates on corporate insolvency proceedings with analytical critique of landmark judgments and procedural traps.

Sahoo, M.S. (ed.) *Insolvency and Bankruptcy Code: A Miscellany of Perspectives, (Taxmann, 2020)*

A collection of expert views on diverse topics of IBC, such as jurisprudence, implementation, and comparative insolvency law.

Roy, Arvind Kumar *Insolvency and Bankruptcy Code, 2016: Concept, Law and Practice, (Central Law Publications, 2021)*

An introduction to the practical and conceptual aspects of the IBC.

Articles

Varottil, Umakanth, "Corporate Insolvency Resolution in India: The Journey so far under the IBC", (2020) 8(1) *National Law School Business Law Review*

Analyzes structural and functional issues in the functioning of IBC.

Tandon, Suranjali, "Insolvency and Bankruptcy in India: Analysing the Efficiency of the Code", *NIPFP Working Paper No. 278 (2019)*

Analyzing economic efficiency and effects of IBC on the enhancement of credit culture and recovery of debt.

World Bank, "Resolving Insolvency in India: Doing Business Report 2020"

Emphasizes India's enhanced insolvency resolution ranking and the effects of the IBC on the business climate.

Subramanian, A.K., "Judicial Trends and Commercial Realities under the IBC", (2021) 63(4) *Journal of Indian Law Institute*

Emphasizes judicial interpretation and its real-world implications on commercial choices under the Code.

Insolvency and Bankruptcy Board of India (IBBI), *Annual Report 2022–23*

Presents official numbers, trends, and performance indicators of the insolvency world since the IBC.

I. HISTORICAL CONTEXT: PRE-IBC LEGAL FRAMEWORK

Prior to the implementation of the Insolvency and Bankruptcy Code, 2016 (IBC), there existed



no proper legal mechanism in India to deal with insolvency and bankruptcy. The mechanism for recovery and resolution of debts was disintegrated through various legislations, resulting in jurisdictional disputes, delayed cases, long pending litigations, and large economic inefficiencies. The disintegrated mechanism failed to handle the growing pile of non-performing assets (NPAs) in an apt manner and was devoid of any systemic framework to revive corporate debt.⁵⁶³

(a) Companies Act, 1956 and Companies Act, 2013

Winding-up of Insolvent Companies was enabled by the Companies Act, but the procedure was largely dependent on litigation, was long drawn out, and was largely meant for liquidation and not rehabilitation. Directions and orders of winding up were usually given by High Courts, which were greatly backlogged in work. In addition to that, no system of reorganization was present which could assist in saving financially stressed companies.⁵⁶⁴

(b) Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)

SICA was instituted to locate ailing industrial units and rehabilitate them by means of the Board of Industrial and Financial Reconstruction (BIFR). However, the SICA process did not work, with BIFR developing a bad name for tardiness, weak enforcement, and promoter manipulation with the latter using creditor protection. Consequently, few companies sent to BIFR were actually rehabilitated, and the system remained ineffective to a large extent⁵⁶⁵.

(c) Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act)

This act facilitated the establishment of Debt Recovery Tribunals (DRTs) and Debt Recovery Appellate Tribunals (DRATs) for the speedy

recovery of loans from financial institutions. It was a welcome step, but the tribunals became overworked and under strength soon, so the proceedings got bogged down, as in the case of civil courts also. The primary focus was still debt recovery and not settlement.⁵⁶⁶

(d) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

SARFAESI gave power to the secured creditors to enforce their secured interests without the involvement of the courts, a key reform. The act, nevertheless, had a weakness in the sense that it did not reach out to the unsecured creditors or operational creditors. It was also devoid of a comprehensive structure for restructuring the business of the debtor or for dealing with more than one creditor.⁵⁶⁷

(e) Provincial Insolvency Act, 1920 and Presidency-Towns Insolvency Act, 1909

These colonial laws governed the insolvency of individuals in rural areas and urban towns, respectively. The laws were antiquated and aimed at a pre-industrial economy and were not able to keep up with the complexity of modern financial transactions. Their processes were slow, and there was no institutional support system in place to help creditors and debtors in individual insolvency cases.⁵⁶⁸

Challenges of Pre-IBC Regime

Pre-IBC regime was marked by:

Multiplicity of forums: Various tribunals had to be approached by the creditors, depending on whether the debt in question was secured or not.

Inefficient, prolonged procedures: Insolvency matters took a mean run time of more than 4.3 years, according to World Bank reports.

⁵⁶³ R.K. Saxena, *Law Relating to Insolvency & Bankruptcy Code*, 2016, 5th edn. (LexisNexis 2022) 3.

⁵⁶⁴ K.R. Chandratre, *Corporate Insolvency: Law and Practice* (Bharat Law House 2021) 15.

⁵⁶⁵ Arvind Kumar Roy, *Insolvency and Bankruptcy Code*, 2016: Concept, Law and Practice (Central Law Publications 2021) 8.

⁵⁶⁶ Umakanth Varottil, "Corporate Insolvency Resolution in India: The Journey so Far under the IBC" (2020) 8(1) *National Law School Business Law Review* 25.

⁵⁶⁷ Suranjali Tandon, "Insolvency and Bankruptcy in India: Analysing the Efficiency of the Code" NIPFP Working Paper No. 278 (2019)

⁵⁶⁸ Arvind Kumar Roy, *Insolvency and Bankruptcy Code*, 2016: Concept, Law and Practice (Central Law Publications 2021) 8.



Low recoveries: The creditors recovered less than 25% of the borrowed amount in most cases.

Absence of business orientation: The legal procedure was short on business revival or value maximization focus.

Debtor-orientated legislation: Existing legislation under most circumstances enabled defaulting promoters to continue in control, discouraging financial discipline.

Need for Sweeping Reform

As non-performing assets were on the rise, especially after the global financial crisis and India's own infrastructure loan crisis, there simply had to be a fresh and comprehensive legal regime. The Bankruptcy Law Reforms Committee (BLRC), led by Dr. T.K. Viswanathan, was constituted in 2014⁵⁶⁹ to identify the failures and suggest a time-bound, creditor-friendly, and commercially sustainable framework.⁵⁷⁰

The outcome was the Insolvency and Bankruptcy Code, 2016, which merged and substituted then existing law to create an integrated, time-bound, and certain insolvency resolution process for individuals, partnerships, and companies.

II. THE 2016 INSOLVENCY AND BANKRUPTCY CODE OVERVIEW

In order to deal with individual and corporate insolvency in an efficient and timely manner, the Insolvency and Bankruptcy Code, 2016 (IBC)⁵⁷¹ was enacted with the force of law. It has no multitude of old and inefficient laws but a single code for insolvency resolution. Limited liability partnerships (LLPs), partnership firms, individuals, and corporations are all brought under the umbrella of the Code. In order to safeguard the interest of all the stakeholders, it

imposes a creditor-in-control regime that puts management of the insolvent company in the hands of a Resolution Professional (RP) under the Corporate Insolvency Resolution Process (CIRP). Besides imposing fast-track processes, liquidation processes, and adjudication by expert tribunals—the National Company Law Tribunal (NCLT) and the Debt Recovery Tribunal (DRT)—the IBC also establishes the Insolvency and Bankruptcy Board of India (IBBI)⁵⁷² as a regulator. Its advantage lies in its time-based strategy spanning 180 (or 330) days to allow creditors to recover their claims and prevent the loss of assets.

COMPARISON WITH PRIOR INSOLVENCY LAWS

The IBC is a stark difference from the erstwhile disintegrative system of various legislations such as Companies Act, 1956, SICA, 1985, SARFAESI Act, 2002, and RDBFI Act, 1993. Resolution was never given importance in the previous system, and procedures were time-consuming and cumbersome. Procedures such as BIFR under SICA did not work and were misused by debtors for evading responsibility.⁵⁷³ Creditors did not have standardized processes of filing for insolvency and were instead compelled to navigate a number of windows of the law, which sometimes led to conflicting judgments. The IBC changed all that by introducing a single-window clearance system along with a comprehensive mechanism addressing both financial as well as operational creditors. Also, the shift from a debtor-in-possession regime to a creditor-in-control regime ensures that promoters will no longer be able to use the process for their advantage.⁵⁷⁴

III. LANDMARK JUDGMENTS AND THEIR IMPACT

1. Innoventive Industries Ltd. v. ICICI Bank

The Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank*⁵⁷⁵ gave the first milestone

⁵⁶⁹ T.K. Viswanathan Committee, Report of the Bankruptcy Law Reforms Committee Volume I – Rationale and Design (November 2015) Ministry of Finance, Government of India <https://www.finmin.nic.in>

⁵⁷⁰ A.K. Subramanian, "Judicial Trends and Commercial Realities under the IBC" (2021) 63(4) *Journal of Indian Law Institute* 312.

⁵⁷¹ The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

⁵⁷² IBBI, Annual Report 2022-23, <https://ibbi.gov.in>

⁵⁷³ R.K. Saxena, *Law Relating to Insolvency & Bankruptcy Code, 2016*, 5th edn., LexisNexis, Gurgaon, 2022, p. 18.

⁵⁷⁴ Umakanth Varotil, "Corporate Insolvency Resolution in India: The Journey so far under the IBC", (2020) 8(1) *NLS Business Law Review* 45.

⁵⁷⁵ *Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407.



judgment under the IBC, where the Court formulated the doctrine that the Code is a comprehensive and consistent piece of legislation which pre-empts all the other state legislation repugnant thereto. The Court made clear the initiation process of insolvency proceedings under Section 7 and conferred jurisdiction of the National Company Law Tribunal (NCLT) to admit insolvency petitions on default alone. It also reiterated that from the date the moratorium takes effect under Section 14, all judicial proceedings shall stand suspended. This judgment ushered in strict enforcement of timelines and precedence of IBC over state enactments like the Maharashtra Relief Undertakings Act, bearing witness to legislative will to approach insolvency in an efficient and expeditious way.

2. **Swiss Ribbons Pvt. Ltd. v. Union of India**

In *Swiss Ribbons Pvt. Ltd. v. Union of India*,⁵⁷⁶ the validity of the IBC under the constitution was challenged, i.e., prioritization over financial creditors vis-a-vis operational creditors and exclusion of certain classes under Section 29A. The Supreme Court upheld the act in its entire form, noting that the classification was on rational and intelligible differentia. The Court acknowledged the commercial intent of financial creditors and justified their dominance in the CoC's decision-making process. It also reaffirmed that commercial wisdom of the CoC cannot be interfered with, except when the decisions are palpably illegal or arbitrary. This judgment provided judicial imprimatur to the IBC design and facilitated its legitimacy.

3. **Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta**

The *Essar Steel* case was a benchmark to determine the discretion exercised by the Committee of Creditors when sanctioning and distributing resolution proceeds. The Supreme Court held that the financial creditors can decide under the resolution plan and courts shall not interfere in business judgments.

⁵⁷⁶*Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17.

Moreover, it clarified that equal treatment does not necessarily mean treatment on an equal basis for every creditor and that various classes of creditors can be treated disparately. The Court also reaffirmed the integrity of the plan of the resolution applicant and discouraged litigation after approval so that there will be finality in the process. This case also cemented the CoC's authority and facilitated settlement by preventing business decisions from court examination.⁵⁷⁷

4. **Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.**

It was in this landmark homebuyers' case that the Supreme Court elaborated on the subject matter of allottees in realty insolvency. The Court reinforced the position of homebuyers as finance creditors' moneylenders under the IBC and ensured their position on the CoC. The Court reconciled the interests of the financial institutions and the homebuyers and made resolution plans inclusive and fair. Also, it clarified that RERA and IBC are performing their roles in varied fields and can coexist with each other without causing any damage. This decision safeguarded consumer rights during insolvency proceedings and prevented builders from employing insolvency law to escape responsibility.⁵⁷⁸

5. **ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta**

In this case, the court explained how Section 29A operates to exclude wilful defaulters and related persons from submitting a bid for properties under insolvency. Management personnel of the defaulting firm, indirectly or otherwise, cannot offer a resolution plan, was upheld by the Supreme Court. The Court reaffirmed that piercing the veil of the firm is necessary to ascertain real ownership to prevent abuse. The judgment also reaffirmed the need for strict adherence to timelines to

⁵⁷⁷*Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.

⁵⁷⁸*Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.*, (2021) SCC OnLine SC 253.



prevent erosion of value and delay. This decision closed the doors for defaulting promoters who would try to re-gain control by using proxies or shell companies and thus maintain the moral fibre of insolvency.⁵⁷⁹

RECOMMENDATIONS AND THE WAY FORWARD

Although the Insolvency and Bankruptcy Code, 2016, has been a game-changer in its importance, execution hasn't been without its difficulties. Some steps that can be taken to strengthen the insolvency regime further in India are:

- **Strengthening Institutional Capacity:** Institutional infrastructure of the NCLTs and the Insolvency and Bankruptcy Board of India (IBBI) needs to be strengthened. Increasing the benches and adding more members would avoid pendency of cases and expedite resolution timelines.
- **Retrieving Section 29A:** While Section 29A has been a deterrent against unethical promoters, its excessively harsh nature at times dissuades potential resolution applicants. A judicious approach with requisite checks and flexibility will ensure that genuine investors are attracted.
- **Cross-Border Insolvency Clarification:** India does not have a robust cross-border insolvency framework currently. Implementing the UNCITRAL Model Law will give foreign investors certainty and allow for smooth international resolution processes.
- **Promoting Pre-Pack Mechanisms:** The recent introduction of pre-pack insolvency in MSMEs is a welcome step. It should be made operational for large corporate borrowers as well to achieve faster and economical resolution.
- **Facilitating Creditor Classification:** Differential treatment between financial and operational creditors is still controversial. The Code must have more

clear-cut parameters on fair treatment to prevent litigation and ensure equity.

- **Capacity Building for Insolvency Professionals (IPs):** IPs of high quality are required, with a solid framework of training, accreditation, and regulation, to ensure the integrity of the process and protect the interests of all stakeholders.

The future lies in not just changes to law but also change at the administrative level as well as the active cooperation of judiciary, regulators, and market participants to give the IBC its due long-term success.

CONCLUSION

The Insolvency and Bankruptcy Code, 2016 is a landmark in the evolution of Indian commercial law. It has brought a paradigm shift from debtor-in-possession to creditor-in-control and thereby placed Indian insolvency practice at international best practices. Path-breaking judicial dicta have played a crucial role in interpreting and grounding provisions of the Code. Unlike the pre-IBC period's piecemeal response, the Code offers a time-bound and integrated resolution mechanism, thereby facilitating doing business and improving investor sentiment.

However, delay in settlement, overcrowded tribunals, and shifting jurisprudence remain a hang-up on its optimal potential. As India's economy is on the rise, the IBC must keep pace with constant review, stakeholder interaction, and policy amendment to remain in the lead. Through ongoing consolidation, the IBC can achieve its goal of maximum value maximization of assets, encouraging entrepreneurship, and coordinating stakeholders' interests.

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