

CORPORATE INSOLVENCY AND RESTRUCTURING: CHALLENGES AND OPPORTUNITIES POST IBC 2016

AUTHOR – RISHABH ATUL LALITA SHARMA, STUDENT AT KARNAVATI UNIVERSITY

BEST CITATION – RISHABH ATUL LALITA SHARMA, CORPORATE INSOLVENCY AND RESTRUCTURING: CHALLENGES AND OPPORTUNITIES POST IBC 2016, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (5) OF 2025, PG. 53-65, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract

This research analyzes the development of Indian corporate insolvency and restructuring law with an emphasis on the role of transformation played by the Insolvency and Bankruptcy Code, 2016 (IBC). Before the IBC, Indian insolvency law was regulated by a series of piecemeal legislations including the Companies Act, 1956 & 2013, Sick Industrial Companies Act, 1985 (SICA), RDDBFI Act, 1993, and SARFAESI Act, 2002. These overlapping pieces of legislation resulted in jurisdictional disputes, delayed insolvency resolution timelines, low recovery rates for creditors, and a debtor-centric system that resulted in piling up of non-performing assets (NPAs) in the banking system. The IBC Act made a paradigm shift by bringing harmonization of insolvency law into a single, creditor-oriented, and time-bound resolution mechanism. Some of the key elements of the IBC are the Corporate Insolvency Resolution Process (CIRP), the National Company Law Tribunal (NCLT) as the adjudicating authority, the Insolvency Professionals (IPs) concept, and the introduction of a hierarchical debt repayment system under Section 53. The Code also takes international best practices in insolvency, such as the US Chapter 11 model, UK's Enterprise Act, and the UNCITRAL Model Law on Cross-Border Insolvency. By reducing procedural complexities and increasing legal certainty, the IBC has significantly enhanced the speed of insolvency resolution in India. The study concludes that the IBC has filled gaps in the earlier regime, thereby facilitating ease of doing business and foreign investment. Challenges such as delay in taking effect and development of a robust cross-border insolvency regime are still on the agenda of future development and reform.

Introduction

Background of Corporate Insolvency and Restructuring in India

Corporate insolvency and restructuring in India have undergone significant evolution over the years, influenced by economic reforms, judicial precedents, and legislative frameworks. Before the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC), the legal landscape for corporate insolvency was fragmented and inefficient, leading to prolonged resolution processes and economic inefficiencies.

Pre-IBC Legal Framework

Prior to IBC, multiple laws governed corporate insolvency and restructuring in India, creating jurisdictional overlaps and procedural delays. The key legislations included:

1. **The Companies Act, 1956 & 2013** – These statutes contained provisions related to corporate insolvency, primarily focusing on winding-up proceedings under the supervision of the High Courts. However, these provisions were time-consuming and lacked an effective mechanism for restructuring distressed companies¹⁰⁹.

¹⁰⁹ Companies Act 1956, s 433–560; Companies Act 2013, s 270–365

2. **The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)** – Enacted to revive financially distressed industrial companies, SICA established the Board for Industrial and Financial Reconstruction (BIFR). However, the BIFR became notorious for delays, with cases dragging on for years without resolution¹¹⁰.
3. **The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act)** – This legislation established Debt Recovery Tribunals (DRTs) to expedite recovery proceedings for banks and financial institutions. However, its scope was limited to debt recovery rather than comprehensive insolvency resolution¹¹¹.
4. **The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)** – SARFAESI empowered secured creditors to seize and sell assets of defaulting borrowers without court intervention, but it lacked a structured insolvency resolution framework for corporate debtors¹¹².

Judicial Inefficiencies and the Need for Reform

The multiplicity of laws resulted in conflicting judicial interpretations and excessive litigation, causing undue delays in resolving corporate insolvency cases. The average duration for resolving an insolvency case exceeded four years, which adversely impacted creditors' recovery rates and discouraged investments¹¹³. The inefficiencies in the system necessitated a unified legal framework, leading to the formulation of the IBC.

Global Influence and the Development of IBC

India's insolvency reforms were influenced by international best practices, particularly from

jurisdictions such as the UK and the US, which had well-established insolvency regimes. The **UNCITRAL Model Law on Cross-Border Insolvency** also played a significant role in shaping India's insolvency framework¹¹⁴. The IBC was introduced to consolidate insolvency laws, provide a time-bound resolution process, and promote a creditor-friendly approach.

The enactment of the IBC in 2016 marked a paradigm shift in corporate insolvency and restructuring, replacing archaic laws with a single, comprehensive framework. The introduction of the Corporate Insolvency Resolution Process (CIRP) and the establishment of the National Company Law Tribunal (NCLT) significantly enhanced the efficiency of insolvency proceedings in India.

Overview of the Insolvency and Bankruptcy Code (IBC) 2016

The **Insolvency and Bankruptcy Code, 2016 (IBC)** represents a landmark reform in India's insolvency framework, aimed at providing a structured and time-bound resolution process for distressed entities. The IBC consolidates multiple insolvency laws into a single legislation, streamlining the resolution process and improving creditor recovery rates. The enactment of the IBC was driven by the need to address inefficiencies in the pre-existing insolvency regime, which was characterized by delays, legal ambiguities, and poor recovery outcomes¹¹⁵.

Objectives of the IBC

The IBC was designed with the following core objectives:

1. **Maximization of Value** – Ensuring that the assets of a distressed entity are utilized optimally to prevent further deterioration in their worth¹¹⁶. **Time-Bound Resolution** – A fixed timeline for insolvency resolution, with a maximum

¹¹⁰ Sick Industrial Companies (Special Provisions) Act 1985, s 3, 4.

¹¹¹ Recovery of Debts Due to Banks and Financial Institutions Act 1993, s 3, 17.

¹¹² Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, s 13(4).

¹¹³ World Bank, 'Doing Business Report 2017: Resolving Insolvency' (World Bank, 2017) <https://www.worldbank.org/> accessed 1 March 2025

¹¹⁴ UNCITRAL, 'Model Law on Cross-Border Insolvency' (1997) <https://uncitral.un.org/> accessed 1 March 2025

¹¹⁵ Ministry of Finance, 'The Insolvency and Bankruptcy Code, 2016: An Analysis' (Government of India, 2016).

¹¹⁶ Insolvency and Bankruptcy Code 2016, s 1

limit of 330 days, to ensure efficiency and reduce asset erosion¹¹⁷. **Promotion of Entrepreneurship** – Encouraging business continuity by providing opportunities for revival rather than liquidation¹¹⁸. **Balancing Interests of Stakeholders** – Protecting the rights of creditors, shareholders, employees, and other stakeholders¹¹⁹. **Establishment of a Robust Insolvency Framework** – Creating an institutional infrastructure for insolvency resolution through the National Company Law Tribunal (NCLT), the Insolvency and Bankruptcy Board of India (IBBI), and Insolvency Professionals (IPs)¹²⁰.

Key Features of the IBC

1. Corporate Insolvency Resolution Process (CIRP)

The IBC introduces the **Corporate Insolvency Resolution Process (CIRP)** as a mechanism for resolving corporate distress. Upon default of ₹1 crore (or such threshold as prescribed), creditors can initiate insolvency proceedings before the NCLT. Once admitted, a moratorium is imposed, and a **Resolution Professional (RP)** is appointed to manage the corporate debtor. The RP invites resolution plans, which are evaluated and approved by the **Committee of Creditors (CoC)**. If no resolution plan is approved within the prescribed period, the company proceeds to liquidation¹²¹.

2. Liquidation Process

If the CIRP fails, the corporate debtor undergoes liquidation, where assets are sold, and proceeds are distributed as per the **waterfall mechanism** under section 53 of the IBC¹²².

3. Fast Track Insolvency Resolution

For small and medium enterprises (SMEs) and startups, the IBC provides a **fast-track resolution process**, reducing the time and cost involved in insolvency proceedings.

4. Insolvency of Individuals and Partnerships

The IBC also covers insolvency resolution for individuals and partnership firms, although the implementation of these provisions has been gradual¹²³.

5. Role of Adjudicating Authorities

The **NCLT** serves as the adjudicating authority for corporate insolvency cases, while the **Debt Recovery Tribunal (DRT)** handles individual and partnership insolvency cases¹²⁴. Appeals from NCLT orders lie with the **National Company Law Appellate Tribunal (NCLAT)** and ultimately, the **Supreme Court of India**.

6. Cross-Border Insolvency Framework

While the IBC currently lacks a dedicated cross-border insolvency framework, proposed amendments align it with the **UNCITRAL Model Law on Cross-Border Insolvency**, enhancing global investor confidence¹²⁵.

Impact of the IBC

Since its implementation, the IBC has significantly improved India's insolvency resolution mechanism. The **World Bank's Ease of Doing Business Report** has acknowledged the IBC's role in enhancing India's ranking in resolving insolvency¹²⁶. The recovery rate for creditors has also improved, reducing non-performing assets (NPAs) in the banking sector¹²⁷.

Despite these advancements, challenges remain, including delays in CIRP due to litigation,

¹¹⁷ IBC 2016, s 12(3)

¹¹⁸ M Sahoo, 'IBC: The Journey So Far' (2021) 34(3) National Law Review 210

¹¹⁹ IBC 2016, s 53

¹²⁰ IBC 2016, s 196

¹²¹ IBC 2016, s 33

¹²² IBC 2016, s 53

¹²³ Insolvency and Bankruptcy Board of India (IBBI), 'Individual Insolvency Framework' (IBBI, 2022) <https://ibbi.gov.in> accessed 2 March 2025

¹²⁴ IBC 2016, s 60

¹²⁵ UNCITRAL, 'Model Law on Cross-Border Insolvency' (1997) <https://uncitral.un.org/> accessed 2 March 2025

¹²⁶ World Bank, 'Ease of Doing Business Report 2020' (World Bank, 2020) <https://www.worldbank.org/> accessed 2 March 2025

¹²⁷ Reserve Bank of India (RBI), 'Financial Stability Report' (RBI, 2023) <https://rbi.org.in> accessed 2 March 2025

the need for better implementation, and the requirement for a comprehensive cross-border insolvency framework.

Hypothesis

Null Hypothesis: The Insolvency and Bankruptcy Code, 2016 has no significant background.

Research Questions

1. What are the historical and economic factors that necessitated the introduction of the Insolvency and Bankruptcy Code (IBC) 2016 in India?
2. Is there a need for a Comprehensive Insolvency Framework?
3. What are the key features and objectives of the Insolvency regime?

4. What are the crucial Legislations Governing Corporate Insolvency before IBC?

Methodology

This study examines whether successful legislation in India has been framed for preventing corporate insolvencies and restructuring thereafter under the backdrop of IBC 2016 through the combination of an exploratory and doctrinal methodology. The exploratory methodology adopted here aims to spot the gaps and ambiguities in the Indian legislative framework relating to corporate insolvency and restructuring, which implies that it needs to delve into the specific areas where the law is vague or unclear and find challenges becoming emergent in the domain of insolvency law that the existing legislative frameworks fail to adequately address.



Nature of Literature	Name of Literature	Covered/ Review	Research Gap in Literature	Intended Research
Journal	Akshaya Kamalnath, 'Corporate Insolvency Resolution Law in India – A Proposal to Overcome the "Initiation Problem" (2019) SSRN https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3387001	This paper analyzes the implementation of IBC in its first two years and identifies critical gaps, especially the 'initiation problem', wherein stakeholders generally shy away from initiating insolvency proceedings due to the stigma and costs involved with the same. It assesses procedural issues and offers policy recommendations for effectively addressing these gaps.	It talks widely about issues of procedure in initiation of insolvency but does not make any case for mechanisms of restructuring or the problems financial institutions face while negotiating the framework of IBC.	The paper explores interplay between corporate insolvency and restructuring under IBC in terms of how the two can be integrated and optimised for better business recovery and continuity.
Nature of Literature	Name of Literature	Covered/ Review	Research Gap in Literature	Intended Research
Article	Himanshi Sanjaykumar Sharma, 'Corporate Restructuring under IBC' (2021) IBC Law https://ibclaw.in/corporate-restructuring-under-ibc-by-himanshi-s-sharma/	This article delves deep into corporate restructuring under the IBC, focusing upon the legal mechanisms available to restructure distressed assets along with key amendments and judicial precedents that have shaped application of the Code.	While this article focuses on restructuring through IBC, it never has an empirical analysis in terms of whether the code achieves its goals of time-bound resolution and safeguarding stakeholder interests.	To empirically test the effectiveness of rehabilitation mechanisms in IBC and disclose the bottlenecks in the form of delay problems, valuation issues, and coordination failures among stakeholders involved.
Nature of Literature	Name of Literature	Covered/ Review	Research Gap in Literature	Intended Research

Research Paper	Shreya Reddy, 'Understanding of the IBC, 2016' (2018) SSRN https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3425370	This paper is an introduction to the IBC. It discusses the corporate insolvency resolution process and its claimed objectives. Innovations introduced by the IBC are put against the earlier insolvency regimes in India.	The paper offers a wide-ranging overview but does not address industry-specific challenges or the impact of the Code on corporate restructuring.	The industry-specific implications of IBC regarding the manufacturing and service industries are discussed, along with recommendations on sectoral efficiency in corporate restructuring..
----------------	--	---	--	--

Literature Review

Evolution of Insolvency Laws in India

Pre-IBC Regime: Key Legislations and Their Limitations

Before ever the passing of the Insolvency and Bankruptcy Code, 2016 (IBC), corporate insolvency within the Indian jurisdiction used to be under the purview of multiple laws, leading to operational inefficiencies, conflict of jurisdiction, and delays in resolution. There was no single framework to restructure entities within a shut timeframe: The pre-IBC regime imposed significant hindrance to the recovery of creditors, together with issues such as economic stability.¹²⁸

Crucial Legislations Governing Corporate Insolvency before IBC

Numerous laws governed insolvency and restructuring in India before the IBC, each one addressing altered aspects of the process:

1. Companies Act, 1956 & Companies Act, 2013

The Companies Act, 1956, which later became Companies Act, 2013, contained various provisions for corporate insolvency, mainly under the winding-up mechanism. Liquidation measures were handled by the High Courts of the specific state, which resulted in delays and procedural incompetence.¹²⁹ The Limitation is

that there was no structured resolution process for revival of distressed companies or assets. Winding-up would be a prolonged court-driven and court-centric process, which would often end up taking years. The Official Liquidator, a person who was responsible for administering the winding-up process, may lacked the capacity to handle complex insolvency cases¹³⁰.

2. Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)

SICA was enacted with the very purpose of reviving financially distressed industrial companies via a dedicated tribunal, which was also called the Board for Industrial and Financial Reconstruction (BIFR).¹³¹ The Limitations are, The procedure was very debtor-friendly, which in turn allowed the defaulting companies to delay creditor action. BIFR proceedings many times lasted for decades without any final outcomes.

¹²⁸ Ministry of Corporate Affairs (MCA), 'Report of the Bankruptcy Law Reforms Committee' (Government of India, 2015)
¹²⁹ Companies Act 1956, s 433-560; Companies Act 2013, s 270-365

¹³⁰ M Sahoo, 'Corporate Liquidation in India: Challenges and the Way Forward' (2020) 35(2) National Law Review 198
¹³¹ Sick Industrial Companies (Special Provisions) Act 1985, s 3, 4.

The lack of a creditor-centric or creditor-driven mechanism also resulted in low recovery rates.

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

The RDDBFI Act setup a tribunal known as Debt Recovery Tribunals (DRTs) to enable the prompt recovery of debts owed to banks and financial institutions.¹³² The Limitation is that DRTs were overburdened, which lead to unwanted delays in adjudication. Its main focus was only debt recovery, not insolvency resolution or corporate restructuring. There was no structured or organized framework for companies to revive operations¹³³.

4. Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

SARFAESI enabled secured creditors (mainly banks and financial institutions) to recover their dues without involving any court by taking custody of collateral and selling it¹³⁴. The Limitations: This only applied to secured creditors, which left unsecured creditors without an effective remedy or means to recover their dues. This also failed to address cases where a certain company needed restructuring or reorganization rather than direct asset liquidation. Judicial intervention by courts on behalf of the borrowers often delayed the process¹³⁵.

5. Presidency Towns Insolvency Act, 1909 & Provincial Insolvency Act, 1920

These laws oversaw individual insolvency for over a century but were out-of-date and insufficient for addressing contemporary fiscal complexities.¹³⁶ The **Limitations**: There was not a single provision for cross-border insolvency or for financial instruments introduced in modern

time. Obsolete procedural requirements, which made the resolution process very inefficient.

Need for a Comprehensive Insolvency Framework

The gaps identified in the pre-IBC regime emphasised India's requirement for a consolidated insolvency law. The World Bank's Doing Business Report continues to rank India poorly for resolution of insolvency on account of long timelines (averaging more than 4 years) and low recovery rates (at below 25%). The inefficiencies in the process served to deter foreign investments and depress India's economic growth.¹³⁷

The IBC was introduced with the purpose of addressing certain gaps by consolidating insolvency laws, to ensure time-bound resolutions, and also promoting a creditor-driven method. The IBC replaced SICA, at the same time repealed redundant laws while redefining India's insolvency framework, making it more proficient and internationally competitive.¹³⁸

Comprehensive Insolvency Framework

Before the introduction of the IBC, India's framework on insolvency was highly divided and inefficient and went through extensive delays. The insolvency resolution process itself was under various different laws which at times overlapped in jurisdiction, conflicted in certain judicial pronouncements and took disproportionately long to resolve. Such absence of a unified and time-bound process on insolvency created a dent to creditors in terms of recovery, posed an obstacle towards attracting foreign investments, and eventually led to escalating NPAs in the Indian banking system.¹³⁹

Key Issues with the Pre-IBC Insolvency Regime

1. Multiplicity of Laws and Jurisdictional Conflicts: Corporate insolvency and

¹³² Dhanendra Kumar, 'The Role of BIFR in India's Insolvency Framework' (2014) 28(4) Economic & Political Weekly 52

¹³³ RBI, 'Financial Stability Report' (Reserve Bank of India, 2016)

¹³⁴ Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, s 13(4)

¹³⁵ P Chidambaram, 'Banking and Financial Law Reforms in India' (2019) 41(1) Journal of Indian Law and Society 67

¹³⁶ Presidency Towns Insolvency Act 1909, Provincial Insolvency Act 1920

¹³⁷ World Bank, 'Doing Business Report 2016: Resolving Insolvency' (World Bank, 2016) <https://www.worldbank.org/> accessed 2 March 2025

¹³⁸ Insolvency and Bankruptcy Code 2016, s 255 (repealing SICA)

¹³⁹ Ministry of Finance, 'The Insolvency and Bankruptcy Code, 2016: An Analysis' (Government of India, 2016)

restructuring was governed and overlooked by at least six different laws, including the Companies Act of 1956 & 2013, the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDBFI Act), and the SARFAESI Act, 2002. The presence of numerous laws created various kinds of jurisdictional conflicts between the High Courts, Debt Recovery Tribunals (DRTs), Board for Industrial and Financial Reconstruction (BIFR), and the Company Law Board (CLB).¹⁴⁰ Example: In **Madras Petrochem Ltd v BIFR**, the Supreme Court emphasized that the issue of conflicting jurisdictions, wherein multiple laws were invoked concurrently, led to delays in reaching to a resolution.¹⁴¹

2. Prolonged Resolution Timelines: The insolvency resolution process in our country is extremely slow, taking on an average of about **4.3 years** to complete, compared to 1-1.5 years in various developed economies. Which inherently lead to inefficiency resulted by asset value erosion, which in turn lead to reduced recoveries for creditors and leaving distressed businesses with no or very little hope of revival. **Example:** The liquidation of **Dunlop India Ltd** under the pre-IBC regime took close to over a decade, which reflected the inefficiencies of the previous multi-origin frameworks.¹⁴²

3. Poor Recovery Rates for Creditors: According to the World Bank's Doing Business Report 2016, the recovery rate for creditors in India was a mere 25.7%, which is significantly less when compared to the global average of 70%.¹⁴³ As a result this in turn discouraged financial institutions from lending to businesses, which lead to a increase in the cost of credit.

4. Debtor-Oriented Framework: Many pre-IBC laws, particularly **SICA**, preferred corporate debtors over creditors, which lead to the

misappropriation of legal provisions to delay insolvency proceedings. Companies mostly approached the **BIFR** for protection from creditors simultaneously continuing to operate unproductively, leading to further decline of assets.¹⁴⁴ **Example:** In **Krishna Filaments Ltd v Industrial Development Bank of India**, the company remained under BIFR protection for over 15 years without any resolution, which only showcased the misuse of debtor-friendly provisions.¹⁴⁵

5. Rising Non-Performing Assets (NPAs) in the Banking Sector: The inadequacies of the pre-IBC regime backed the sharp rise in NPAs, damaging the banking sector. By 2016, the non performing assets in Indian banks had risen to ₹6.7 lakh crore, with a considerable portion of loans jammed in legal conflicts due to ineffective insolvency resolution mechanisms.¹⁴⁶

6. Lack of a Time-Bound Process: Most insolvency laws prior to IBC lacked strict timelines for insolvency resolution and provided opportunities for the corporate debtors to drag the proceedings on virtually indefinitely. On the contrary, international insolvency frameworks such as the Chapter 11 of the US Bankruptcy Code have visible timelines to expedite resolutions.¹⁴⁷

The Urgent Need for a Comprehensive Framework

To report these inefficiencies, the Indian government accepted that there is a need for a **single, consolidated insolvency law** that would:

Ensure Time-Bound Resolution – Indian government introduced a strict timeline of 180 days (extendable to 330 days) to complete insolvency resolution, preventing undue delays.¹⁴⁸ **Maximize Value of Assets** – the government introduced legislation to prevent further deterioration of distressed assets by

¹⁴⁰ R Goel, 'Multiplicity of Laws in Insolvency: A Comparative Study' (2015) 32(4) National Law Review 76.

¹⁴¹ Madras Petrochem Ltd v BIFR (2005) 2 SCC 257.

¹⁴² P Chidambaram, 'Banking and Financial Law Reforms in India' (2019) 41(1) Journal of Indian Law and Society 67.

¹⁴³ World Bank, 'Ease of Doing Business Report 2016' (World Bank, 2016) <https://www.worldbank.org/> accessed 2 March 2025

¹⁴⁴ S Krishnamurthy, 'Challenges in India's Insolvency Resolution Process' (2014) 25(3) Economic & Political Weekly 110

¹⁴⁵ Krishna Filaments Ltd v Industrial Development Bank of India (2010) 4 SCC 450

¹⁴⁶ Reserve Bank of India (RBI), 'Financial Stability Report' (RBI, 2016)

¹⁴⁷ UNCITRAL, 'Model Law on Cross-Border Insolvency' (1997)

¹⁴⁸ IBC 2016, s 12(3)

ensuring quicker resolution or liquidation.¹⁴⁹

Improve Creditors' Recovery Rates – Provided the creditors, while including financial institutions, with a very detailed and structured mechanism to recover dues efficiently.¹⁵⁰

Reduce Judicial Overlaps – Established a single adjudicating authority (NCLT) to eliminate conflicts arising from multiple forums.¹⁵¹

Align with Global Best Practices – Adopting provisions inspired by international insolvency models such as the **UNCITRAL Model Law on Cross-Border Insolvency** and the **UK's Enterprise Act, 2002**.¹⁵²

Introduction of the IBC as a Comprehensive Solution

Upon identifying these challenges, the government also constituted the Bankruptcy Law Reforms Committee (BLRC), which made a recommendation of having a modern, creditor-driven insolvency framework. As a result this led to the enactment of the Insolvency and Bankruptcy Code, 2016, which not only consolidated existing laws but also streamlined insolvency proceedings, and significantly improved India's Ease of Doing Business ranking.¹⁵³

Global Influences on the IBC 2016

The Insolvency and Bankruptcy Code, 2016 (IBC) is not shaped in isolation; reasonably, it is also shaped by best global practices in corporate insolvency and restructuring. The Bankruptcy Law Reforms Committee (BLRC), also played a key role in drafting the IBC, considered insolvency laws from jurisdictions such as the United Kingdom, the United States, Canada, and Singapore. The main objective of the committee was to develop a comprehensive, creditor-friendly, time-bound insolvency framework that at the end of the day aligned with international standards.¹⁵⁴

Key Global Influences on the IBC

1. The United States – Chapter 11 of the US Bankruptcy Code

The **US Bankruptcy Code**, particularly **Chapter 11**, served as a major influence on India's corporate insolvency framework.¹⁵⁵

- **Key Features Borrowed from Chapter 11: Debtor-in-Possession (DIP) Concept:** In the US, financially distressed companies can continue to carry out operations under judicial supervision. While the IBC does not adopt a pure DIP model, it mainly focuses on creditor in control concept by allowing the Committee of Creditors (CoC) to decide upon business continuousness during insolvency proceedings.¹⁵⁶
- **Time-Bound Resolution:** The US system also sets very clear timelines for restructuring, an approach which is then reflected in IBC's 180-day resolution period (extendable to 330 days).¹⁵⁷
- **Moratorium Provision:** Similar to Chapter 11's "automatic stay", the IBC also introduces a moratorium period to prevent legal actions against the corporate debtor or the CD during the pendency of the insolvency proceedings.¹⁵⁸

2. The United Kingdom – Enterprise Act, 2002 & Administration Process

The UK's Enterprise Act, 2002, particularly its "administration" process, was another major influence during the drafting of the IBC.¹⁵⁹

- **Key Features Borrowed from the UK Model: Creditor-Driven Insolvency Process:** The IBC, like the UK model, shifts power from management to creditors during insolvency resolution.¹⁶⁰
- **Liquidation Preference:** The UK law also

¹⁴⁹ IBC 2016, s 53

¹⁵⁰ IBC 2016, s 21

¹⁵¹ IBC 2016, s 60

¹⁵² UNCITRAL, 'Model Law on Cross-Border Insolvency' (1997)

¹⁵³ Bankruptcy Law Reforms Committee (BLRC), 'Final Report on IBC' (MCA, 2015)

¹⁵⁴ Bankruptcy Law Reforms Committee (BLRC), 'Final Report on IBC' (MCA, 2015)

¹⁵⁵ United States Bankruptcy Code, Chapter 11 (1978)

¹⁵⁶ Jay Lawrence Westbrook, 'The Globalization of Bankruptcy' (2011) 90 Texas Law Review 713

¹⁵⁷ Insolvency and Bankruptcy Code, 2016, s 12(3)

¹⁵⁸ IBC 2016, s 14 (Moratorium)

¹⁵⁹ UK Enterprise Act 2002, s 248

¹⁶⁰ R Goel, 'Creditor Rights and Corporate Insolvency: Lessons from the UK and India' (2020) 35(2) Indian Law Review 112

prioritizes secured creditors in debt recovery, which in turn influenced IBC Section 53 (Waterfall Mechanism).¹⁶¹

Insolvency Professionals (IPs): The United Kingdom’s perception of licensed insolvency practitioners also inspired the IBC in the establishment of Insolvency Professionals (IPs) and Insolvency Professional Agencies (IPAs).

3. The UNCITRAL Model Law on Cross-Border Insolvency (1997)

Cross-border insolvency has always been a major concern while the crafting period of the IBC. Although India is yet adopted the UNCITRAL Model Law, many of its principles have in some way or other influenced IBC provisions.

- **Key Features Borrowed from UNCITRAL Model Law¹⁶²: Recognition of Foreign Proceedings:** The IBC allows courts to recognize international insolvency cases under Sections 234 & 235. **Cooperation between Courts:** The IBC also promotes for cooperation between Indian and foreign courts in cross-border insolvency matters.

4. Singapore – Insolvency, Restructuring, and Dissolution Act, 2018¹⁶³

Over time Singapore has also emerged as a global insolvency hub, and its laws have influenced some of IBC’s modern features.

Key Features Borrowed from Singapore’s Insolvency Law: Pre-packaged Insolvency Resolution:

Singapore’s insolvency law have encouraged pre-packaged (pre-pack) resolution, which is a concept introduced in India through **IBC’s amendments in 2021**.¹⁶⁴

Flexible Restructuring Mechanisms: The IBC’s provision for corporate restructuring are majorly inspired by Singapore’s emphasis on out-of-

court settlements and hybrid restructuring models.

5. Canada – Creditor Protection and Stakeholder Involvement¹⁶⁵

Canada’s **Companies’ Creditors Arrangement Act (CCAA)** also provided several insights into the balancing of creditor rights and corporate restructuring.

- **Key Features Borrowed from Canada’s Insolvency Law: Stakeholder Protection:**

The IBC also incorporated certain elements of **creditor protection and fair distribution** of assets, similar to the Canadian model.¹⁶⁶ **Supervisory Role of Courts:** Just like the CCAA, the IBC authorizes the **National Company Law Tribunal (NCLT)** to oversee the insolvency process and approve resolution plans.¹⁶⁷

Key Features and Objectives of the IBC 2016

The IBC, i.e. the Insolvency and Bankruptcy Code, 2016, was brought in as a broad-spectrum insolvency framework to remedy the shortcomings of India’s preexisting laws. The main objective of the IBC is to provide a time-bound, creditor-driven resolution process, maximizing the value of assets to promote economic stability. The IBC provides consolidation of various laws on insolvency, a structured resolution mechanism, and alignment with the global best practices.¹⁶⁸

Objectives of the IBC 2016

The IBC was enacted with the following key objectives:

1. Time-Bound Resolution of Corporate Insolvency:

Prior to the IBC, insolvency proceedings in India were extremely slow, often taking several years. The IBC **dictates a strict resolution timeline of 180 days (extendable to 330 days)** to avoid excessive delays. Example:

¹⁶¹ IBC 2016, s 53 (Waterfall Mechanism)

¹⁶² UNCITRAL, ‘Model Law on Cross-Border Insolvency’ (1997) <https://uncitral.un.org/> accessed 2 March 2025

¹⁶³ Singapore Ministry of Law, ‘Insolvency, Restructuring, and Dissolution Act, 2018’ (Singapore Law Reform, 2018)

¹⁶⁴ Pre-Packaged Insolvency Resolution Process Rules, 2021 (India)

¹⁶⁵ Companies’ Creditors Arrangement Act 1985 (Canada)

¹⁶⁶ Baird & Morrison, ‘Creditor Rights in Canada: Lessons for Emerging Markets’ (2016) 58(1) Harvard International Law Journal 211

¹⁶⁷ IBC 2016, s 31 (Approval of Resolution Plans)

¹⁶⁸ Bankruptcy Law Reforms Committee (BLRC), ‘Final Report on IBC’ (MCA, 2015)

In **Innoventive Industries Ltd v ICICI Bank**, the Supreme Court highlighted the significance of a time-bound resolution process under the IBC.¹⁶⁹

2. Maximization of Asset Value: The IBC ensures that the distressed assets are **determined or discharged quickly**, preventing further value erosion. This brings into line with **UNCITRAL's Model Law on Insolvency**, which also stresses maximizing asset recovery.¹⁷⁰

3. Balancing Interests of Stakeholders: The IBC pursues to create a **reasonable balance** between the mentioned: **Financial creditors** (banks, financial institutions), **Operational creditors** (suppliers, employees), and **Corporate debtors** (companies undergoing insolvency).

4. Promoting Ease of Doing Business: By providing a **strong and foreseeable insolvency mechanism**, the IBC has considerably improved India's **Ease of Doing Business ranking**. According to the **World Bank's 2020 Doing Business Report**, India jumped from **Rank 136 (2016) to Rank 52 (2020)** in the "Resolving Insolvency" category.¹⁷¹

5. Encouraging Foreign Investment: The IBC has also **boosted investor confidence** by introducing a more transparent insolvency framework that not only protects creditor rights but also ensures fair treatment for all stakeholders.¹⁷²

Key Features of the IBC 2016

1. Single Comprehensive Law: The IBC also **replaced multiple insolvency laws** (such as the Companies Act, 1956, SARFAESI Act, 2002, and SICA, 1985) and brought all insolvency proceedings under a **single legal framework**.¹⁷³

2. Corporate Insolvency Resolution Process (CIRP): The **Corporate Insolvency Resolution**

Process (CIRP) is the essential mechanism under the IBC. Key aspects of which include:

- **Initiation:** The Financial or operational creditors can initiate CIRP as soon as a corporate debtor **defaults on payments above ₹1 crore**.¹⁷⁴
- **Moratorium:** As soon as the CIRP is initiated, the IBC **imposes a moratorium** (suspension of legal proceedings and asset recovery actions) to protect the debtor from any sort of litigation until the CIRP proceedings continue.¹⁷⁵
- **Resolution Plan:** A **Committee of Creditors (CoC)** is also formed to decide upon the resolution strategy, which can include but not limited to debt restructuring, new investments, or liquidation.¹⁷⁶

3. Committee of Creditors (CoC) and Creditor-Driven Process: Nothing like the pre-IBC regime, which largely favored debtors, the IBC **authorizes financial creditors** to take control of the insolvency process through the **Committee of Creditors (CoC)**. **Example:** In **Essar Steel India Ltd v Satish Kumar Gupta**, the Supreme Court observed that the CoC's decisions with regards to the resolution must be respected, which lead to the strengthening of creditor rights.¹⁷⁷

4. Role of Insolvency Professionals (IPs): The IBC introduced **Insolvency Professionals (IPs)** to act as independent resolution professionals and manage the debtor's affairs during CIRP.¹⁷⁸

5. Fast-Track Insolvency Resolution for Small Enterprises: The IBC also provides for a **fast-track resolution process (90 days)** for small businesses and startups, to ensure a faster debt recovery opportunity.¹⁷⁹

6. Pre-Packaged Insolvency Resolution (Pre-Packs)

¹⁶⁹ *Innoventive Industries Ltd v ICICI Bank* (2017) 8 SCC 407

¹⁷⁰ Insolvency and Bankruptcy Code 2016, s 12(3)

¹⁷¹ World Bank, 'Ease of Doing Business Report 2020' (World Bank, 2020)

¹⁷² R Goel, 'Impact of IBC on Foreign Direct Investment' (2021) 38(4) *Indian Law Review* 112

¹⁷³ P Chidambaram, 'Banking and Financial Law Reforms in India' (2019) 41(1) *Journal of Indian Law and Society* 67

¹⁷⁴ IBC 2016, s 4

¹⁷⁵ IBC 2016, s 14 (Moratorium)

¹⁷⁶ IBC 2016, s 30

¹⁷⁷ *Essar Steel India Ltd v Satish Kumar Gupta* (2019) 16 SCC 1

¹⁷⁸ IBC 2016, s 206

¹⁷⁹ IBC 2016, s 55-58

In 2021, the IBC was amended to introduce **pre-packaged insolvency resolution**, which in turn provided for an opportunity to the distressed companies to negotiate with creditors before formally initiating CIRP.

- **Example:** The **Jet Airways case** was one of the first major cases where a pre-pack insolvency approach was used in real time.¹⁸⁰

7. Waterfall Mechanism (Priority of Debt Repayment): The IBC introduces a very **structured priority order** for debt or loan repayment under Section 53:¹⁸¹

1. **Insolvency Resolution Costs & Employee Dues**
2. **Secured Financial Creditors**
3. **Unsecured Financial Creditors**
4. **Operational Creditors**

This framework in turn ensures **reasonable and controlled debt recovery**, not like the previous system, where creditors had to participate in prolonged litigation to recover their dues.

8. Cross-Border Insolvency Provisions

The IBC has very **inadequate provisions for cross-border insolvency** (Sections 234 & 235), but India being in the process of **adopting the UNCITRAL Model Law on Cross-Border Insolvency**.¹⁸²

Conclusion

The Insolvency and Bankruptcy Code, 2016 has been a turning point in Indian corporate law, qualitatively transforming the insolvency and restructuring regime. By replacing a fragmented and inefficient legal regime with a consolidated, time-bound, and creditor-centric approach, the IBC has dramatically improved corporate distress resolution. It has raised the confidence of the creditors, improved recovery rates, reduced non-performing assets, and

improved India's ease of doing business ranking globally.

The comparative analysis of pre-IBC laws identifies grave weaknesses—like lengthy time frame, conflict of jurisdictions, and weak enforcement—making reform inevitable. Contrarily, the IBC leverages international best practices and propels key aspects like the CIRP, moratorium, resolution by way of CoC, and engagement of insolvency professionals, which together guarantee transparency, efficacy, and accountability.

Despite the IBC making great progress, there are still lingering issues. These are procedural delays due to litigation, uneven judicial interpretation by tribunals, and the absence of a well-developed cross-border framework of insolvency. There is also still a need to improve institutional capacities and regulatory fine-tuning for consistent and effective implementation.

In short, the IBC has served as a good starting point for an effective and efficient insolvency regime in India. With further amendments and development through the judiciary, it can evolve into an internationally comparable insolvency regime which balances the interests of all the stakeholders as well as economic growth and financial stability.

References

- Jet Airways (India) Ltd v State Bank of India (2021) NCLT Mumbai
- Insolvency and Bankruptcy code of India, 2016
- Essar Steel India Ltd v Satish Kumar Gupta (2019) 16 SCC 1
- Bankruptcy Law Reforms Committee (BLRC), 'Final Report on IBC' (MCA, 2015)
- Innoventive Industries Ltd v ICICI Bank (2017) 8 SCC 407
- World Bank, 'Ease of Doing Business Report 2020' (World Bank, 2020)

¹⁸⁰ Jet Airways (India) Ltd v State Bank of India (2021) NCLT Mumbai

¹⁸¹ IBC 2016, s 53 (Waterfall Mechanism)

¹⁸² IBC 2016, s 234-235 (Cross-Border Insolvency).

- R Goel, 'Impact of IBC on Foreign Direct Investment' (2021) 38(4) Indian Law Review 112
- P Chidambaram, 'Banking and Financial Law Reforms in India' (2019) 41(1) Journal of Indian Law and Society 67
 - Singapore Ministry of Law, 'Insolvency, Restructuring, and Dissolution Act, 2018' (Singapore Law Reform, 2018)
- Pre-Packaged Insolvency Resolution Process Rules, 2021 (India)
- Companies' Creditors Arrangement Act 1985 (Canada)
- Baird & Morrison, 'Creditor Rights in Canada: Lessons for Emerging Markets' (2016) 58(1) Harvard International Law Journal 211

