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RETHINKING THE INSOLVENCY AND BANKRUPTCY LAWS IN INDIA

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ABSTRACT

One of the single largest economic reforms of the post-independence era of India is the Insolvency and Bankruptcy Code, 2016 ('IBC'). It was passed in an attempt to unify the previously scattered insolvency law regime and institute a time-bound, creditor-controlled resolution regime. It has certainly helped transform India's credit culture and ranking in the world's Ease of Doing Business ranking.356 Nearly a decade later into its operation, three structural gaps persist with long-lasting impact: the institutional marginalization of operational creditors through their category-specific exclusion from the Committee of Creditors357; the ease with which the Section 14 moratorium is manipulated so as to negate the objective of business continuity358; and the near-total vacuum of a mechanism dealing with environmental liabilities in an insolvency process.359 Each of these three lacunae is subjected to a thorough doctrinal examination, and located in the existing academic literature. An in-depth comparison is drawn between the IBC and the United States Bankruptcy Code (Chapter 11) and United Kingdom's Insolvency Act 1986 and Corporate Insolvency and Governance Act 2020. The latter two regimes feature developed tools - such as cramdown, bad faith stay-relief doctrine, monitor function, and environmental successor liability - which may serve as blueprints for addressing the three structural deficits of the IBC.360 The paper concludes with concrete reforms targeting legislative amendment, judicial adjustments, and institutional capacity building, stating that continued commitment to the IBC's fundamental purpose necessitates remedying these three deficiencies with the same rigor used in its creation.

Keywords: *Insolvency and Bankruptcy Code, Financial Creditors, Operational Creditors, Moratorium, Green Insolvency, CIRP, IBC 2016.*

[356] "From distress to development: the ibc and india's economic future," Aug. 2025, doi: 10.5281/zenodo.16991598.

[357] A. Baxi, "Interim Finance in Creditor-Oriented Bankruptcy Codes: A Study in the Context of Insolvency & Bankruptcy Code, India," *Vikalpa*, pp. 025609092211506–025609092211506, Feb. 2023, doi: 10.1177/02560909221150689.

[358] A. Babu and S. Choudhury, "A Critical Analysis of Insolvency and Bankruptcy Law in India", [Online]. Available: http://iciset.in/Paper2067.pdf

[359] Jean-Michel Sahut et al., What Relation Exists Between CSR and Longevity of Firms?, 17 Int'l J. Bus. 152 (2012).

[360] *Insolvency Regime in India and USA: A Comparative Study*, SCC ONLINE BLOG (Sept. 19, 2023), https://www.scconline.com/blog/post/2023/09/19/insolvency-regime-in-india-and-usa-a-comparative-study/

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I. INTRODUCTION

In a push towards reforming an outdated and disjointed insolvency regime – which involved a confluence of laws like the Companies Act, SICA, RDDBFI Act and SARFAESI Act, at a time of 4.33 trillion NPAs and resolution of insolvency cases averaging 4.3 years', the IBC was passed on May 28, 2016 following a report submitted by the BLRC. The two major tenets on which it is based are creditor-in-control management overriding existing managements upon default, a time-bound CIRP limited to 330 days and establishment of the institutional architecture in the form of the IBBI, NCLT, IP and IU.[361]

To the credit of the IBC, India moved up from 136 to 52nd place in World Bank's Ease of Doing Business ranking;[362] critical resolutions of Essar Steel and Bhushan Steel vindicated its ability to resolve complicated cases, and the mere existence of the Code has served as a deterrent and enforced discipline among borrowers.

However, the Code suffer from three fatal flaws in its structural design.[363] First, the indiscriminate denial to operational creditors (i.e., those who supply goods and services which form the very lifeline of the debtor) their right to vote on resolution plans is inherent in the exclusion of operational creditors from the CoC.[364] Second, the Section 14 moratorium is a frequently exploited shelter from creditor claims, instead of an efficient tool for resolution.[365] Third, a lack of robust environmental provisions within the Code - due to the Clean Slate Doctrine and residual ranking accorded to environmental liabilities in Section 53-transfers the cost of cleaning up pollution, rather inefficiently, onto public authorities and the taxpayers.[366]

This paper aims to address these problems through six parts: Creditor categorisation (Part II); Moratoriums: their purpose and abuse (Part III); Green insolvency (Part IV); Comparison with US and UK insolvency regime (Part V) and, lastly, reform recommendations (Part VI).

II. CLASSIFICATION OF CREDITORS AND THE DISENFRANCHISEMENT OF OPERATIONAL CREDITORS

A. Statutory Framework

The IBC conceptually divides creditors into two classes: financial and operational, based on the nature of the debt itself rather than the existence or non-existence of security. 'Financial Creditor' is defined under Section 5(7) as "any person to whom a financial debt is owed." 'Financial debt' under Section 5(8) is broadly defined as "a debt along with interest, if any, which is disbursed against the consideration for time value of money or carries an obligation that has the commercial effect of a borrowing."[367] *'Time value of money'* under Nikhil Mehta v. AMR Infrastructure Ltd.[368] connotes payment for the use of money during the time it is invested-"the fundamental factor is the interval between the time at which the money is disbursed and the time at which it is repayable."

An 'Operational Creditor' is defined under Section 5(20) as "any person to whom an operational debt is owed." 'Operational Debt' is defined under Section 5(21) as "a claim in respect of the provision of goods or services, employment, or a debt in respect of payment of dues arising under any law for the time being in force and payable to the Central Government, State Government or any local authority." The Supreme Court has clarified that an operational creditor definition is not a residuary definition,

[361] History And Evolution Of The IBC, Int'l J. L. Stud. & Soc. Sci., June 20, 2025, https://ijlsss.com/history-and-evolution-of-the-ibc/.
[362] Report of the Bankruptcy Law Reforms Committee, Ministry of Finance, Gov't of India (Nov. 4, 2015).
[363] Time to resolve insolvencies in India, The Leap Blog (Mar. 10, 2019), https://blog.theleapjournal.org/2019/03/time-to-resolve-insolvencies-in-india.html.
[364] Operational Creditors Under IBC: Why They Bear Losses Without a Vote, TaxGuru (Mar. 15, 2026), https://taxguru.in/corporate-law/operational-creditors-ibc-bear-losses-vote.html
[365] Section 14 of IBC, 2016: Moratorium Meaning, Scope & Key Provisions, The Legal School (Apr. 6, 2026), https://thelegalschool.in/blog/section-14-ibc.thelegalschool
[366] Ishita Das, *Airline Insolvencies and Environmental Concerns: A Comparative Legal Perspective*, 29 Uniform L. Rev. 44 (2024).
[367] Operational Creditors Under IBC: Why They Bear Losses Without a Vote, TaxGuru (Mar. 15, 2026), https://taxguru.in/corporate-law/operational-creditors-ibc-bear-losses-vote.html.
[368] Nikhil Mehta & Sons (HUF) v. AMR Infrastructure Ltd., (2021) 9 SCC 209 (NCLAT).

rather classification is based on the nature and object of the debt. If a debt arises due to consideration having the time value of money or having a commercial effect of borrowing, it is a financial debt. If the debt arises from goods, services or employment, it is an operational debt.

The operational and financial creditors' classification, in practical terms, produces a stark asymmetry. While a financial creditor can directly apply to NCLT for CIRP without prior notice upon occurrence of default, an operational creditor is first required to submit a demand notice to the debtor and wait ten days for response before approaching the adjudicating authority. Financial creditors, upon the commencement of CIRP, have exclusive voting rights in the Committee of Creditors to decide the resolution plan, while operational creditors can attend but not vote. The approved resolution plan, by a 66% supermajority of the CoC, binds all creditors, including operational ones, irrespective of their opinion on the plan.[369]

B. Judicial Affirmation and Its Limitations

The constitutional validity of this discrimination was challenged before the Supreme Court and was affirmed in Swiss Ribbons (P) Ltd. V. Union of India[370]. The reasoning was that since financial creditors (such as banks and FIs) had specific expertise for judging the viability of a business venture, it is logical that the resolution plan decided by the CoC will represent an informed opinion on the restructuring or liquidation strategy on the basis of their credit analysis. Operational creditors, on the other hand, are interested only in recovery of payments for goods or services rendered and do not have any particular competence in assessing complex resolution plans. Further, since financial debts are predominantly documented through a loan agreement, there are fewer uncertainties of fact and disputes compared to an operational debt, where such disputes may be regarding the quality or delivery of goods. Hence, the court found an intelligible differentia and a rational nexus to the objectives of IBC satisfying the Art. 14 test.

In Committee of Creditors of Essar Steel India Ltd. V. Satish Kumar[371], the Supreme Court has reiterated that financial and operational creditors cannot be treated alike. Financial creditors deal with public money, and therefore their decisions have implications for the macroeconomic perspective. Furthermore, it upheld the primacy of the "commercial wisdom of the CoC", which cannot be subject to judicial review unless it is irrational, illegal or in violation of statutory provisions.

However, the legality of this classification does not determine its policy efficacy. As Mahapatra, Singhania and Chandna in their analyses of the Essar Steel judgment have observed, by keeping operational creditors out of the CoC, the provision does not offer them any real role in the insolvency process, despite the fact that it is their supplies that have kept the corporate debtor as a going concern during CIRP. While the proviso states that the resolution plan must grant them, at a minimum, the liquidation value of their debt, this is in reality little compensation because the operational creditors are mostly unsecured and there is usually nothing left of the liquidation value after the secured financial creditors are paid off. Jain also notes the increasing marginalization of MSME operational creditors, with high initiation thresholds, non-participation in the CoC and a poor position in the Section 53 waterfalls.

C. Economic Dimensions

The marginalization of operational creditors not only affects the individual corporate insolvency process but has broader implications for the economy as well. As observed in India's largely MSME driven economy, it is common for the MSME to be an operational creditor in an insolvency process of a larger company. The failure to recover payments means lesser cash

[369] Rights of Operational Creditors Under the IBC, LinkedIn (Feb. 26, 2025), https://www.linkedin.com/pulse/rights-operational-creditors-under-ibc-tarun-kovvali-mp1pc.linkedin
[370] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17.
[371] Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.

availability for these small entities, making them unwilling to risk supplying credit to firms under financial distress and therefore jeopardizing the resolution process itself. A corporate debtor who cannot secure suppliers during CIRP can hardly be presented as a going concern suitable for rehabilitation or for an investor to acquire.[372]

Pryor and Garg on the basis of their interviews with insolvency practitioners and officials of IBBI found that there is a consensus among professionals that the financial creditors capture the bulk of the value within CIRP and that practitioners have institutional compulsion to favour financial creditors, as the latter has the power to appoint and remove IPs. This structurally reinforced operational creditor disadvantage transcends the formal legislative provisions.[373]

III. SECTION 14 MORATORIUM – SHIELD OR SWORD?

A. Design and Purpose

Section 14 of the Code envisages a moratorium that can be triggered upon the admission of a CIRP application by the NCLT. When such a moratorium is in force, no proceedings against the corporate debtor - be it a suit, recovery action, proceeding for enforcement of a security interest or disposal of assets-are permitted to be continued.[374] These proceedings remain suspended for the duration of the CIRP which has been held by the Supreme Court to extend up to 330 days, inclusive of litigation time in Committee of Creditors of Essar Steel.[375]

The design and purpose of the moratorium is the bedrock of the entire architecture of CIRP. As has been often iterated by the NCLT, the purpose of the moratorium is "to create an environment for the Adjudicating Authority to assess the true financial position of the corporate debtor and for formulation of a viable resolution plan free from interference of competing enforcement actions". A moratorium has been defined by Black's Dictionary as "an authorised postponement of the maturity of an obligation" (p. 1115, 8th ed., 2004). However, in the context of insolvency, the moratorium is not a postponement in perpetuity, but a controlled standstill aimed at fostering a collective resolution for the benefit of all stakeholders.[376]

B. Judicial Clarification of Scope

Courts across India have been asked to interpret the reach and scope of the moratorium on various occasions and the outcome has varied in each instance. It has been held in *Power Grid Corporation of India Ltd. V. Jyoti Structures Ltd.*[377] that the moratorium does not automatically preclude proceedings commenced by the corporate debtor; what must be determined is whether the proceeding is beneficial or harmful to the corporate debtor's estate. Refinements were brought to the doctrine of benefit or detriment to the corporate debtor's estate by the Delhi High Court in *SSMP Industries Ltd. V. Perkan Food Processors Pvt. Ltd.*[378] that indicated that "mere adjudication of dispute… Without actual threat to the estate of corporate debtor doesn't trigger the moratorium".

The moratorium has now been authoritatively held to extend to proceedings for cheque dishonour under Section 138 of the Negotiable Instruments Act in the case of *P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.*[379] since such proceedings though criminal are "essentially for recovery of money". In fact, it was in this case that the Supreme Court distinguished between the corporate debtor's immunity under Section

[372] Sudip Mahapatra, Pooja Singhania & Misha Chandna, *Operational Creditors in Insolvency: A Tale of Disenfranchisement*, S&R ASSOCIATES (July 30, 2020), https://www.snrlaw.in/operational-creditors-in-insolvency-a-tale-of-disenfranchisement/

[373] Pryor, C. Scott, and Risham Garg. "Differential Treatment Among Creditors Under India's Insolvency and Bankruptcy Code, 2016: Issues and Solutions." American Bankruptcy Law Journal, vol. 94, 2020, pp. 123–177.

[374] Insolvency and Bankruptcy Code, 2016, Section 14, No. 31, Acts of Parliament, 2016 (India).

[375] Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.

[376] Section 14 of IBC, 2016: Moratorium Meaning, Scope & Key Provisions, The Legal School (Apr. 6, 2026), https://thelegalschool.in/blog/section-14-ibc

[377] Power Grid Corp. of India Ltd. v. Jyoti Structures Ltd., 2017 SCC OnLine Del 12189.

[378] SSMP Indus. Ltd. v. Perkan Food Processors Pvt. Ltd., 2019 SCC OnLine Del 9339

[379] P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd., (2021) 6 SCC 258.

14 from civil recovery actions in contrast to the criminal proceedings against directors for their personal actions that were not stayed. While the NCLAT in *Canara Bank v. Deccan Chronicle Holdings Ltd.*[380] Held that the moratorium may not override constitutional remedies like Articles 226 and 32 while all recovery suits filed in High Courts' original jurisdiction have been stayed.

C. Forms and Consequences of Misuse

In the face of its laudable design and purpose, evidence of strategic misuse has been catalogued by Kulshrestha and Achlavat[381] with serious ramifications for the very notion of going concern upon which financial reporting, valuation and resolutions are predicated. There are primarily three broad categories of misuse observed in the legal and academic spheres:

The first form is the strategy of launching CIRP to delay potential enforcement of decrees/foreclosure or initiation of recovery proceedings where the intention is not restructuring. Because all such enforcement actions are stayed instantly upon admission of a CIRP application by the NCLT, corporate debtors are instantly provided relief and substantial benefit of a standstill at the slightest initiation of a CIRP without having to prove good faith, a credible restructuring plan, or a dire financial emergency. In the absence of a 'bad faith exception' for initiating CIRP in Indian insolvency law, there is no procedural device available to the creditor whose efforts at enforcement has been scuttled in its tracks.[382]

The second form of misuse of the moratorium comes in the form of using it as a shield against regulatory and other civil liability (including environmental enforcement actions, which are analyzed in the next section). Invoking Section 238 of the Code that dictates that the Code will have an overriding effect over any conflicting provision in any other law for the time being in force, corporate debtors have argued that enforcement actions under environmental, consumer protection or labor laws are subordinate to the insolvency process. Such interpretation offers a procedural loophole which allows for weaponization of the moratorium against legitimate public interest law enforcement.[383]

Thirdly, promoter-level manipulation in a bid to continue operational control of the asset and its operations through related parties in the guise of being managers/employees post CIRP. Though control of management shifts to the IRP post admission, Garg identified various ways through which this form of abuse takes place, which is antithetical to the Code's aims of transparency and orderly resolution.[384]

The combined impact of these categories of misuse is to allow the moratorium to transform from a 'trigger' for resolution to an instrument of 'delay'. A protracted CIRP leads to depreciation of assets and goodwill, deterioration in operations, collapse of supply chain, exit of employees, and departure of customers. The corporate debtor's condition as a going concern suffers rather than stabilize.

IV. GREEN INSOLVENCY AND THE ENVIRONMENTAL ACCOUNTABILITY GAP

A. The Conceptual Framework

The concept of "Green Insolvency", conceptualized in the academic literature by Madaus, Sarra and Mevorach, and debated on platforms organised by the World Bank, INSOL International and the International Insolvency Institute[385], suggests that environmental liability should not be borne by the society and externalities should be internalized within

[380] Canara Bank v. Deccan Chronicle Holdings Ltd. (CA (AT) No. 147-2017), decided on September 14, 2017

[381] Kulshrestha, Anshul, and Abhay Revantdan Achlavat. "Misuse of Moratorium Under the Insolvency and Bankruptcy Code, 2016: A Threat to the Going Concern Principle." International Journal for Multidisciplinary Research (IJFMR), vol. 7, no. 1, January-February 2025, pp. 1-4. E-ISSN 2582-2160.

[382] Strategic Misuse of IBC Sections 94 & 95: How Debtors Are Gaming the System, Nava Legal (Aug. 6, 2025), https://navalegal.in/the-strategic-misuse-of-ibc-sections-94-95-how-debtors-are-gaming-the-system-to-stall-recovery-proceedings/

[383] Critical Analysis of Interim Moratorium Under Section 14 of IBC, JETIR (2024), https://www.jetir.org/papers/JETIR2404681.pdf.

[384] Garg, Arpit. "A Critical Examination of IBC through Moratorium Scope, Creditor Dynamics, Judicial Interpretation, and Resolution Effectiveness." ibclaw.in, 2025.

[385] Sarra, J. P., Madaus, S., & Mevorach, I. (2024). The Greening Of The Insolvency System. *Canadian Business Law Journal*, *69*(3), 231-287. https://doi.org/10.2139/ssrn.5042510

insolvency proceedings. Every corporate insolvency proceeding leaves in its wake polluted land and water resources and unfufilled clean-up obligations which persist even after the insolvency proceeding has ended.

The normative basis in India lies on the principle that the polluter pays, which has been recognized both constitutionally and statutorily under Indian environmental jurisprudence through the *MC Mehta v. Union of India*[386] and *Indian Council of Enviro-Legal Action v. Union of India*[387]. The Supreme Court has developed a doctrine of absolute liability in the aftermath of the Bhopal gas disaster and the Oleum gas leak where enterprises engaged in hazardous activities are held absolutely and unconditionally liable without any exceptions for all environmental harm resulting there from. This is a strong affirmation by the judiciary to externalize all environmental costs on the polluting entity which green insolvency intends to incorporate into the insolvency proceeding.

B. Environmental Claims under IBC: Structural Inadequacies

There are two overlapping failures within the approach of the IBC toward environmental claims: failure by definitional subordination, and failure by procedural marginalization. At the definitional level, while a 'claim' is defined under S.3(6) of the IBC as including "a right to payment" and a "right to remedy in respect of breach of contract, where the breach relates to a debt" and gives "rise to a right to payment", an environmental claim will be included only as a 'right to payment'. Environmental claims, however, are contingency claims, which are nearly always disputed, not yet a "right to payment", but instead a "right to remedy in respect of breach of contract". Contingency claims will be categorized as 'contingent claims' under the IBBI Regulations and must be estimated in value by the RP. In practice, approved by the Supreme Court in Committee of Creditors of Essar Steel, such contingency environmental claims were admitted at nominal values of Rupees one, thus 'nominalizing' the value of such environmental claims to virtually nothing.[388]

The predicament does not vastly improve in the case where the environmental liability has already crystallized into a court decree. Moratoria during CIRP can suspend the enforcement of a court decree and the holder of the court decree was deemed by the Tripura High Court in Subhankar Bhowmik v. Union of India to be an 'other creditor' under s. 53 of the IBBI Regulations and as such will necessarily have the lowest priority in the waterfall.[389] Therefore, whether the environmental liability is contingency, or crystallized in to a court decree, the environmental claimant is relegated to "any remaining debts and dues" as set forth in Section 53 of the IBBI Regulations, the final rung in the waterfall which in liquidation often equals nil.

Compounding this issue is Section 238, the supremacy clause in the IBC. A strong argument can be made, and has been accepted by many courts, that environmental claims arising under the Environment Protection Act 1986, the Water (Prevention and Control of Pollution) Act 1974, and various other environmental laws may not survive insolvency proceedings due to this provision, potentially shifting the environmental liability from a polluting company to publicly funded governmental agencies.[390]

The plight of Lavasa, a private city developed outside of Pune and currently subject to NCLT proceedings, serves as a microcosm of this crisis. Lavasa is riddled with numerous allegations of illegal land usage, improper environmental clearance procedures, and the

[386] M.C. Mehta v. Union of India, (1987) 1 SCC 395.
[387] Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212.
[388] Environmental Claims Under Indian Insolvency Law, IIM Ahmedabad Working Paper (Apr. 2024), https://www.iima.ac.in/sites/default/files/2024-04/Envir%20Claims%20in%20Insolvency_IIMA.pdf.
[389] Environmental Claims in Insolvency in India, Ox. L. Blogs (May 16, 2023), https://blogs.law.ox.ac.uk/oblb/blog-post/2023/05/environmental-claims-insolvency-india.
[390] Environmental Claims in Insolvency in India, Ox. L. Blogs (May 16, 2023), https://blogs.law.ox.ac.uk/oblb/blog-post/2023/05/environmental-claims-insolvency-india.

destruction of a pristine water body and significant forest cover. A token sum of 5 crore is designated within the resolution plan for environmental clearance renewal and not active remediation. Such insignificant allocations at the level of resolution plan for a development in a sensitive area like Lavasa demonstrate a breakdown in the systemic response to environmental remediation.[391]

C. The Public Liability Insurance Act and Its Limitations

The Public Liability Insurance Act, 1991, a statute which mandates insurance for the handling of hazardous chemicals and is operative on a no-fault basis before a District Collector, can play a role in remediation or compensation to offset environmental damage in insolvency situations. However, Ram Mohan and Prasad point out various limitations; its scope of operations only extends to accidental pollution, not willful environmental pollution and does not include Government fines or the 'fresh start' may extinguish the primary liability thus freeing insurers from obligation. Compensation provisions do not meet contemporary costs for remediation and a reform for direct right of action against PLI insurers which survives the insolvency of the insured is crucial.[392]

V. COMPARATIVE ANALYSIS: UNITED STATES AND UNITED KINGDOM

A. Treatment of creditors

The US chapter 11 model is a 'debtor-in-possession' regime, treating creditors on a pari passu basis with similar claims regardless of their classification. The distribution process is governed by the rule of absolute priority, while the court may impose its own approved plan despite objections by dissenting creditors via 'cram-down'.[393] To protect vital supply chains, the "critical vendor doctrine" allows preferential payment to vital trade creditors, which is unavailable under the Indian IBC. The administration system under the Insolvency Act 1986 treats secured and unsecured creditors on creditor committees alike, and the Corporate Insolvency and Governance Act 2020 introduces a cross-class cram-down, which forces dissentient classes to accept the plan, if the class members are not made worse off than if they received a payment.[394] Both systems are good models for India to improve the treatment of operational creditors and refine pre-packaged insolvency.[395]

B. Provisions of the moratorium

The 'automatic stay' under section 362 of the US code puts a hold on all creditor actions from the filing of the Chapter 11 petition, unless relief is granted 'for cause'.[396] Inadequate protection of the interests of a secured creditor may be a reason for such relief, and there are specific exceptions for criminal and environmental proceedings Part A1 of the UK scheme is initially time-limited to 20 days, and an independent monitor may cease the Moratorium where the rescue is not possible, the monitor must also ensure that employees are paid and rent is made[397]. In contrast with these, India provides an overall moratorium without sufficient safeguards against abuse.

C. Green insolvency

In US law, there is a precedent from the case of CERCLA[398], where it was held that environmental liabilities pass through bankruptcy, which means that trustees are not allowed to abandon contaminated properties and that there remains a binding order on a re-organised debtor to clean-up the land.[399] The EPA can file claims in bankruptcy proceedings for costs related to cleaning the land. In the UK, contamination liability is considered through the Contaminated Land Regime, where there is

[391] IA/1007/2023 In C.P. (IB)/1765(MB)2018
[392] Environmental Claims in Insolvency in India, Ox. L. Blogs (May 16, 2023), https://blogs.law.ox.ac.uk/oblb/blog-post/2023/05/environmental-claims-insolvency-india.
[393] 11 U.S.C. § 1129(b) (2018)
[394] Corporate Insolvency and Governance Act 2020, c. 12, pt. A1
[395] Comparison between the IBC and USA's Chapter 11 Bankruptcy Code, IIII PCAI (Jan. 2025), https://www.iiipicai.in/wp-content/uploads/2025/01/22-28-Article.pdf.
[396] 11 U.S.C. § 362
[397] Corporate Insolvency and Governance Act 2020, c. 12, pt. A1
[398] New Jersey v. Midlantic Nat'l Bank, 474 U.S. 494 (1986)
[399] Ohio v. Kovacs, 469 U.S. 356 (1985)

a duty of care for insolvency practitioners to identify and treat liabilities of contamination. In India, the role of pollution control boards has no importance, and no provision in the CIRP requires the participation of pollution control boards.[400]

VI. REFORM RECOMMENDATIONS AND CONCLUSION

A critical vendor mechanism where pre-CIRP operational creditors' liability is resolved as a CIRP cost subject to CoC sanction and that the CoC where operational creditors have more than 15% of the accepted debt have an elected member as their representative who will be granted maximum 10% vote in CoC should be provided and NCLT shall be vested with the power to approve a resolution plan against opposition of a dissenting class of stakeholders on the principles of cramdown.

There shall be a bad faith exception provision for lifting moratorium in Section 14, in situations where CIRP is used as a delaying tactic, an 180-day judicial review for moratorium with option of partial removal by class of creditor and there shall be clear exclusion of criminal proceedings from the scope of Section 14 in line with US and UK provisions.

The claims under environment remediation should form an independent category under section 53 waterfall that will rank higher to workmen's dues. Regulations of IBBI should mandate that CPCB and state board be informed as soon as CIRP is triggered and RPs should prepare an environmental due diligence report with remediation component. The clean slate provision should be limited to dormant liabilities only and Polluter Pays Act be amended and broadened for direct claims on insurer.

NCLT needs an expansion in terms of judicial strength and expertise. An insolvency mediation mechanism as prescribed by IBBI should be made functional forthwith. India should formally accede to the UNCITRAL Model Law on Cross-Border Insolvency.

The success of IBC is undeniable but its flaws are also obvious. All recommendations are derived from jurisdictions where these reforms have worked and India itself has borrowed to construct the present IBC structure; it should borrow again to develop the IBC further. We need to define success based not on the recovery rate, but on the existence of effective recourse for the MSME vendors, quick rebuttal of frivolous CIRP petitions, and clear onus on polluter to bear own cost. We already have the infrastructure, we must now build over it.

[400] Earth First? CERCLA Reimbursement Claims and Bankruptcy, 59 U. Chi. L. Rev. 1841 (1992).

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