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A COMPREHENSIVE STUDY OF JUDICIAL DEFERENCE TO THE DOCTRINE OF COMMERCIAL WISDOM UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

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Abstract

The doctrine of commercial wisdom has emerged as one of the most influential principles governing corporate insolvency resolution under the Insolvency and Bankruptcy Code, 2016. By allocating primary decision-making authority to the Committee of Creditors and restricting the scope of substantive judicial intervention, the doctrine has fundamentally reshaped the relationship between creditors, adjudicatory institutions, and distressed enterprises. Adopting a doctrinal and analytical methodology, this study examines the legislative foundations of commercial wisdom through the Insolvency and Bankruptcy Code, 2016, the Bankruptcy Law Reforms Committee Report, Insolvency Law Committee Reports, regulatory materials, and relevant policy documents, while tracing its judicial development through leading decisions of the Supreme Court and the National Company Law Appellate Tribunal. Judicial interpretation subsequently transformed this legislative principle into a broader doctrine of institutional restraint by progressively limiting substantive review of decisions concerning feasibility, viability, valuation, distribution, and resolution outcomes. While such deference has strengthened certainty, efficiency, and commercial predictability within the insolvency framework, it has also generated concerns relating to transparency, accountability, stakeholder participation, and the legitimacy of concentrated creditor authority. The study argues that contemporary debates concerning commercial wisdom can no longer be adequately understood through the language of creditor primacy alone. Rather, the doctrine has evolved from a mechanism of resolution efficiency into a framework of creditor autonomy that increasingly requires corresponding structures of creditor governance. The principal finding of the paper is that judicial deference remains institutionally *justified because of the expertise and incentives possessed by creditors, but its long-term legitimacy depends upon governance-based accountability mechanisms capable of ensuring that commercial discretion is exercised transparently, responsibly, and consistently with the broader objectives of the insolvency process.*

Keywords: Insolvency, Bankruptcy, Deference, Creditors, Governance.

1. Introduction

The functioning of modern credit markets depends significantly upon the existence of an insolvency framework capable of addressing financial distress in a predictable, efficient, and value-preserving manner. Insolvency law performs a role that extends beyond debt recovery; it influences lending behaviour, credit availability, investment decisions, corporate governance practices, and broader market confidence[1]. The underlying premise is that commercial failure, while inevitable in a market economy, should be managed through institutional mechanisms that preserve economic value and allocate losses in an orderly manner. The effectiveness of such mechanisms becomes particularly important when competing stakeholders seek control over the future of a financially distressed enterprise.

India's pre-Insolvency and Bankruptcy Code regime was widely criticised for fragmented institutional structures, prolonged proceedings, inconsistent outcomes, weak creditor enforcement, and significant erosion of enterprise value during delays[2]. Multiple forums exercised overlapping jurisdiction, while resolution processes often remained debtor-controlled despite continuing defaults. The resulting uncertainty adversely affected recovery rates and constrained the development of efficient credit markets. These concerns ultimately generated support for a comprehensive insolvency reform framework designed to facilitate timely resolution while preserving viable businesses[3].

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[1] Bankruptcy Law Reforms Committee, *The Report of the Bankruptcy Law Reforms Committee: Volume I—Rationale and Design* 11–18 (Ministry of Fin., Gov't of India 2015).
[2] Id. at 19–31.
[3] Id. at 31–40.

The Insolvency and Bankruptcy Code, 2016 emerged from this reform process as a consolidated and time-bound insolvency regime intended to maximise asset value, promote entrepreneurship, improve credit availability, and balance stakeholder interests[4]. Central to the Code's architecture is a shift from a debtor-in-possession model to a creditor-in-control framework. Upon commencement of the Corporate Insolvency Resolution Process, managerial control is displaced, an insolvency professional assumes responsibility for the process, and the Committee of Creditors (CoC), composed primarily of financial creditors, becomes the principal decision-making body entrusted with determining the future of the corporate debtor[5].

The legislative design reflects a deeper normative assumption that questions concerning viability, restructuring, liquidation, valuation, risk allocation, and commercial feasibility are fundamentally business determinations rather than judicial determinations[6]. Because financial creditors bear the economic consequences of insolvency and possess expertise acquired through lending, monitoring, and risk assessment, the Code places primary responsibility for evaluating competing resolution outcomes in their hands[7]. This allocation of authority gave rise to what has become the organising principle of insolvency resolution under the Code: the doctrine of commercial wisdom.

Over the last decade, the doctrine has evolved from a legislative premise into a dominant judicial principle. Beginning with *K. Sashidhar v. Indian Overseas Bank*[8] and subsequently reinforced in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*[9], *Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh*[10], *Kalpraj Dharamshi v. Kotak Investment Advisors Ltd.*[11], *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.*[12], and *Vallal RCK v. Siva Industries & Holdings Ltd.*[13], the Supreme Court has consistently limited the scope of adjudicatory intervention in matters involving approval, rejection, modification, distribution,

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[4] Insolvency and Bankruptcy Code, No. 31 of 2016, pmbl. (India).
[5] Insolvency and Bankruptcy Code, No. 31 of 2016, Sec. 17, 18, 21, 30 (India).
[6] Bankruptcy Law Reforms Committee, supra note 1, at 74–80.
[7] Id.
[8] *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150.
[9] *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.
[10] *Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh*, (2020) 11 SCC 467.
[11] *Kalpraj Dharamshi v. Kotak Inv. Advisors Ltd.*, 2021 SCC OnLine SC 2047.
[12] J*aypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.*, 2021 SCC OnLine SC 253.
[13] *Vallal RCK v. Siva Indus. & Holdings Ltd.*, (2022) 9 SCC 803.

settlement, and implementation decisions taken by the CoC. Judicial review has increasingly been confined to questions of legality, procedural compliance, and adherence to statutory requirements, while commercial assessments relating to feasibility, viability, valuation, recoveries, and stakeholder distribution have largely been insulated from substantive scrutiny[14].

Yet the consolidation of creditor primacy has also generated an important debate. While judicial restraint is frequently justified on grounds of expertise, speed, value maximisation, market efficiency, and institutional competence, the concentration of extensive decision-making power within the CoC raises questions concerning accountability, transparency, stakeholder protection, and the legitimacy of decisions that substantially affect parties lacking meaningful participation in creditor deliberations[15]. Recent policy discussions, including recommendations concerning standards of conduct for CoC members, indicate a growing recognition that broad commercial discretion may require corresponding governance-based safeguards[16].

Against this backdrop, the present study undertakes a doctrinal and analytical examination of judicial deference to the doctrine of commercial wisdom under the Insolvency and Bankruptcy Code, 2016. Through an analysis of the legislative framework, regulatory architecture, committee reports, judicial decisions, and scholarly discourse, it evaluates the foundations of creditor autonomy, traces the judicial evolution of deference toward CoC decisions, examines the scope and limits of review available to adjudicatory authorities, and assesses the implications of creditor-centred decision-making for affected stakeholders. The inquiry ultimately focuses on whether the contemporary interpretation of commercial wisdom achieves an appropriate balance between creditor control and institutional accountability, or whether the continued expansion of judicial restraint necessitates additional mechanisms capable of ensuring fairness, transparency, and legitimacy within India's insolvency resolution framework.

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[14] *Essar Steel*, (2020) 8 SCC 531; *K. Sashidhar*, (2019) 12 SCC 150.

[15] Insolvency Law Committee, *Report of the Insolvency Law Committee* 73–80 (Ministry of Corp. Affs., Gov't of India May 2022).

[16] Id.

2. Literature Review and Research Gap

The academic discourse surrounding commercial wisdom under the Insolvency and Bankruptcy Code, 2016 has largely evolved around the broader acceptance of creditor primacy as the most effective framework for corporate insolvency resolution. A recurring theme across the literature is that insolvency resolution is fundamentally a commercial exercise requiring assessments of risk, viability, valuation, restructuring feasibility, and future business prospects, matters that are not easily reducible to legal standards or judicial determination. Consequently, much of the scholarship justifies the concentration of decision-making authority in creditors on the premise that they possess both the expertise and the economic incentives necessary to make commercially rational choices regarding distressed enterprises[17]. The dominant scholarly position therefore views creditor control not merely as an institutional arrangement but as a mechanism designed to align authority with financial exposure and responsibility for losses[18].

Closely associated with this position is the argument that commercial wisdom derives legitimacy from institutional competence. Existing scholarship repeatedly emphasises that financial creditors, by virtue of their experience in credit assessment, monitoring, and risk allocation, are better placed than adjudicatory bodies to evaluate competing restructuring alternatives[19]. Within this framework, judicial intervention is frequently portrayed as undesirable because courts lack both the technical expertise and the commercial information required to assess the merits of complex resolution decisions. Efficiency considerations further reinforce this position. Several scholars associate extensive judicial involvement with procedural uncertainty, delay, erosion of enterprise value, and reduced effectiveness of insolvency resolution mechanisms[20]. As a result, judicial restraint is often defended as an essential precondition for preserving commercial certainty and facilitating timely outcomes.

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[17] Aditya Shiralkar, *A Word to the Wise: The Proper Role for the Committee of Creditors in Insolvency Resolution,* 8 Nat'l L. Sch. Bus. L. Rev. 35 (2022). https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1105&context=nlsblr

[18] Surabhi Sharma & Arushi Mehta, *Creditor Democracy in Insolvency: Evaluating the Committee of Creditors under India's IBC in Comparative Perspective,* 2026(2) Minn. J. Bus. L. & Entrepreneurship 918 (2026).

[19] Priya Yadav, Anjali Sehrawat & Deepak Miglani, Commercial Wisdom of the Committee of Creditors Under the IBC, 2016: Scope and Limitations, 7 Indian J. L. & Legal Rsch. Issue VI, 8224 (2025). https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_29c2fa5a1a8e48fe8cf962529c142e7c.pdf

[20] Faranaaz G. Karbhari & Akriti Shikha, *Commercial Wisdom of Committee of Creditors,* HSA Advocates, Restructuring & Insolvency Insights (2021).

The literature also exhibits substantial convergence regarding the relationship between commercial wisdom and value maximisation. Resolution processes are frequently conceptualised as exercises in collective economic bargaining, where creditors negotiate outcomes intended to preserve value and maximise recoveries. Within this understanding, judicial review is viewed primarily as a safeguard against procedural irregularity rather than a mechanism for reassessing the commercial merits of creditor decisions[21]. Supporters of this approach argue that insolvency outcomes depend upon predictive business judgments involving uncertainty and market conditions, making them inherently unsuitable for substantive judicial scrutiny[22]. The resulting scholarly consensus largely favours a restrained adjudicatory role that preserves creditor autonomy and avoids substitution of judicial preferences for commercial assessments.

Despite this broad agreement, the literature is not entirely uniform. An emerging strand of scholarship questions whether the contemporary understanding of commercial wisdom has expanded beyond its original rationale. Some commentators express concern that the doctrine increasingly functions as a shield against meaningful scrutiny even in circumstances where issues of legality, procedural integrity, or decision-making quality arise[23]. These critiques do not necessarily reject creditor primacy; rather, they challenge the assumption that all decisions characterised as commercial should receive identical levels of deference. Such scholarship highlights the possibility that an expansive interpretation of commercial wisdom may blur the distinction between legitimate business judgment and decisions that warrant closer institutional oversight[24].

Another significant area of debate concerns the position of stakeholders whose influence over insolvency decision-making remains comparatively limited. Although creditor-centred governance is widely accepted, academic discussions increasingly examine its implications for operational creditors, dissenting financial creditors, homebuyers, and other constituencies affected

[21] Yadav, Sehrawat & Miglani, *supra* note 19.
[22] Karbhari & Shikha, *supra* note 20.
[23] Shiralkar, *supra* note 17.
[24] Jasper Vikas*, Judicial Pragmatism by the Supreme Court of India in Adjudicating Insolvency and Bankruptcy Issues, 9 J. Nat'l L. Univ. Delhi 110 (2022–23).*

by insolvency outcomes[25]. Existing scholarship notes that these groups frequently experience the consequences of commercial decisions without possessing meaningful influence over the decision-making process itself. While some scholars regard this outcome as an unavoidable feature of creditor-driven insolvency systems, others question whether efficiency-based justifications alone sufficiently address concerns relating to fairness, representation, and distributive legitimacy[26]. The treatment of dissenting creditors has attracted particular attention, with recent scholarship highlighting tensions between majoritarian creditor decision-making and the protection of minority interests within collective insolvency processes[27].

Related concerns emerge in discussions surrounding transparency and accountability. Although much of the literature accepts that creditor autonomy is necessary for efficient resolution, an increasing number of scholars have begun examining the governance implications of concentrating substantial decision-making power within creditor institutions[28]. Questions concerning the quality of deliberations, transparency of voting behaviour, information asymmetries, strategic conduct, and the potential misuse of commercial discretion have gained prominence in recent scholarship. Some studies further emphasise the importance of collaborative and trustworthy institutional relationships within insolvency proceedings, arguing that successful resolution depends not only upon legal rules but also upon confidence in the integrity of decision-making processes[29]. These discussions signal a gradual shift from earlier debates focused primarily on creditor empowerment toward broader concerns regarding governance standards and institutional legitimacy.

The existing scholarship nevertheless exhibits certain limitations. Much of the literature remains doctrinal in orientation and is heavily influenced by judicial and legislative narratives surrounding

[25] Viswajith T. S., *Critical Study of the Commercial Wisdom of Committee of Creditors Under IBC,* 5(7) ShodhKosh: J. Visual & Performing Arts 972 (2024). 10.29121/shodhkosh.v5.i7.2024.4784
[26] Sharma & Mehta, *supra* note 18.
[27] Nand Mohan, *The Quandary Surrounding Protection of Dissenting Financial Creditors: A Theoretical Analysis of the Double-Edged Sword of Judicial Interpretation, (*2025), https://www.ssrn.com/abstract=5408924
[28] Viswajith, *supra* note 25; Yadav, Sehrawat & Miglani, *supra* note 19.
[29] Kushal Brahmkshatriya, *Insolvency Professionals and Committee of Creditors (CoC): Need for Credence in India's Insolvency Regime,* 5 Indian J. Integrated Rsch. L. 1929 (2025). https://ijirl.com/wp-content/uploads/2025/11/INSOLVENCY-PROFESSIONALS-AND-COMMITTEE-OF-CREDITORS-COC-NEED-FOR-CREDENCE-IN-INDIAS-INSOLVENCY-REGIME.pdf

creditor primacy and commercial autonomy[30]. Comparatively less attention has been devoted to empirical assessment of decision-making practices within creditor bodies or to the development of normative frameworks capable of evaluating accountability in creditor-driven governance structures. Similarly, stakeholder-centred analyses remain relatively underdeveloped when compared with extensive scholarly engagement devoted to defending creditor control and judicial restraint[31].

The resulting research gap emerges from this imbalance within the literature. Existing scholarship predominantly focuses on explaining and justifying creditor primacy through arguments based on expertise, economic exposure, efficiency, institutional competence, and value maximisation. Discussions concerning judicial deference similarly concentrate on the reasons why courts should refrain from interfering with commercial decisions. Considerably less attention has been directed toward examining the governance consequences of such deference. The interaction between creditor autonomy, stakeholder protection, transparency, and institutional accountability remains insufficiently explored, particularly in circumstances where judicial review is intentionally limited. Existing academic discourse rarely investigates what safeguards become necessary once commercial wisdom is accorded extensive protection from external scrutiny. By examining judicial deference through the combined lenses of creditor governance, stakeholder protection, and accountability, the present study seeks to address this underexplored dimension of the commercial wisdom debate and contribute to a more balanced understanding of creditor-centred insolvency governance.

3. Commercial Wisdom as a Legislative Design Choice

The doctrine of commercial wisdom occupies a central position within the institutional architecture of the Insolvency and Bankruptcy Code, 2016, not because Parliament expressly defined the concept, but because the legislative framework was deliberately designed around the premise that decisions concerning the future of a financially distressed enterprise are fundamentally commercial in nature. A close examination of the legislative materials underlying the Code reveals that

[30] Shiralkar, *supra* note 17; Yadav, Sehrawat & Miglani, *supra* note 19
[31] Sharma & Mehta, supra note 18; Viswajith, supra note 25.

commercial wisdom emerged as an institutional allocation of authority intended to address structural weaknesses that had characterised earlier insolvency mechanisms. The objective was not merely to identify the actors who would participate in insolvency resolution but to determine which institution was best suited to evaluate viability, negotiate restructuring alternatives, preserve value, and decide the future of a distressed enterprise.

The Bankruptcy Law Reforms Committee repeatedly identified delay, fragmentation of proceedings, uncertainty of outcomes, and excessive dependence on adjudicatory processes as major deficiencies of the pre-Code framework[32]. These deficiencies were viewed not simply as procedural shortcomings but as factors that directly contributed to deterioration of enterprise value. The Committee proceeded from the assumption that the economic value of a distressed business diminishes over time and that prolonged decision-making frequently transforms potentially viable firms into liquidation candidates. Consequently, the legislative response prioritised speed, predictability, and coordinated decision-making within a structured framework capable of producing commercially informed outcomes[33].

A significant aspect of this design was the deliberate distinction between business decisions and adjudicatory decisions. The legislative materials consistently proceed on the basis that determining whether a distressed company should be restructured, sold, revived, liquidated, or subjected to some hybrid resolution mechanism involves assessments that are inherently commercial rather than legal[34]. Such determinations require evaluation of future cash flows, market conditions, operational prospects, restructuring possibilities, management capabilities, and alternative investment opportunities. The BLRC recognised that these assessments do not lend themselves to objective legal standards and cannot be resolved through conventional adjudication. Instead, viability was conceived as a matter to be negotiated among stakeholders possessing economic exposure to the outcome[35].

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[32] Bankruptcy Law Reforms Committee*, supra* note 1.
[33] Bankruptcy Law Reforms Committee*, supra* note 1.
[34] Id.
[35] Id.

This distinction explains why the institutional architecture of the Code allocates authority in the manner it does. Upon commencement of the Corporate Insolvency Resolution Process, management control shifts away from the existing board and promoters, while financial creditors collectively assume responsibility for major decisions affecting the debtor's future[36]. The transfer of authority reflects the legislative assumption that creditors bear the principal economic consequences of insolvency and therefore possess the strongest incentives to maximise value. At the same time, the Code avoids conferring decision-making authority upon adjudicatory bodies in matters involving feasibility, viability, or commercial desirability. The role of the adjudicatory framework is instead structured around supervision of process, legality, and compliance[37].

The statutory provisions governing the Committee of Creditors reinforce this institutional choice. Section 21 establishes the Committee as the principal deliberative body within the resolution process, while Section 24 creates a framework for meetings, participation, and collective decision-making[38]. Read together, these provisions do more than establish a creditor forum; they create the mechanism through which commercial assessments are expected to emerge. The legislative emphasis is not on individual creditor preferences but on collective evaluation of the debtor's future through voting structures linked to economic exposure. The design assumes that collective creditor participation can better reconcile competing interests than fragmented litigation or judicial determination.

The same logic informs Section 30(4), which entrusts creditors with the responsibility of evaluating and approving resolution plans after considering feasibility and viability[39]. Significantly, the provision does not prescribe substantive criteria by which these assessments must be conducted. This omission appears deliberate. Legislative materials repeatedly acknowledge that viability assessment depends upon context-specific commercial judgments that cannot be reduced to predetermined legal formulas[40]. By leaving such determinations to creditors,

[36] Id; Insolvency and Bankruptcy Code, No. 31 of 2016, Sec. 17, 21, 28, India Code (2016).
[37] Bankruptcy Law Reforms Committee, *supra* note 1.
[38] Insolvency and Bankruptcy Code, No. 31 of 2016, Sec. 21, 24, India Code (2016).
[39] Insolvency and Bankruptcy Code, No. 31 of 2016, Sec. 30(4), India Code (2016).
[40] Bankruptcy Law Reforms Committee, *supra* note 1.

the Code creates flexibility for market participants to negotiate value-maximising solutions while operating within a structured procedural framework.

Sections 31 and 61 further demonstrate the distinction between commercial authority and adjudicatory oversight. Section 31 provides for approval of plans that satisfy statutory requirements, while Section 61 confines appellate review to specified grounds[41]. The broader legislative scheme suggests that once commercial assessments have been undertaken by the designated decision-making body, subsequent scrutiny should focus on procedural and legal compliance rather than substantive reconsideration of business choices. Authority is therefore divided according to institutional function: creditors determine commercial outcomes, insolvency professionals facilitate the process, and adjudicatory institutions supervise compliance with statutory requirements.

The CIRP Regulations complement this architecture by reducing information asymmetries and enabling informed creditor decision-making. Provisions relating to claim verification, information collection, valuation exercises, information memoranda, creditor meetings, authorised representatives, voting procedures, and circulation of relevant materials collectively support the exercise of commercial judgment by ensuring access to information necessary for decision-making[42]. The regulations do not seek to replace creditor discretion with regulatory prescriptions. Rather, they establish the informational and procedural infrastructure within which commercial decisions can be made more effectively.

The Insolvency Law Committee's subsequent observations largely reaffirm this foundational approach. While recognising the extensive powers exercised by the Committee of Creditors, the Committee continued to describe the CoC as the principal commercial decision-making body within the insolvency framework[43]. At the same time, the recommendations concerning standards of conduct indicate that legislative and policy discussions increasingly recognised that broad

[41] Insolvency and Bankruptcy Code, No. 31 of 2016, Sec. 31, 61, India Code (2016).
[42] Insolvency & Bankruptcy Bd. of India, Insolvency Resolution Process for Corporate Persons Regulations, 2016, Notification No. IBBI/2016-17/GN/REG004 (Nov. 30, 2016), as amended up to Oct. 14, 2025.
[43] Insolvency Law Committee, *Report of the Insolvency Law Committee* (Ministry of Corporate Affairs, Government of India May 2022).

commercial discretion must operate within a framework promoting responsible exercise of power. Even so, the underlying premise remained unchanged: decisions concerning allocation of value, evaluation of recoveries, and assessment of resolution alternatives belong primarily to creditors rather than adjudicatory institutions[44].

Viewed collectively, these materials indicate that commercial wisdom was not conceived as an abstract doctrine of creditor supremacy. The legislative design repeatedly links creditor authority to functional considerations of expertise, economic exposure, information access, speed, and value preservation. The emphasis throughout the framework is on identifying the institution best positioned to make complex commercial assessments within a time-bound process. Commercial wisdom therefore emerged as a legislative design choice intended to facilitate efficient insolvency resolution through informed business decision-making, preserve going-concern value, minimise value-destructive delays, and ensure that decisions regarding the future of distressed enterprises are made by those bearing the economic consequences of those decisions rather than by adjudicatory bodies.

4. Transformation of Commercial Wisdom from Legislative Principle to Judicial Doctrine

The legislative framework of the Insolvency and Bankruptcy Code, 2016 allocated primary decision-making authority to financial creditors, but the concept of commercial wisdom acquired its contemporary significance only through a combination of legislative design, institutional theory, and judicial interpretation[45]. The Code was enacted against the backdrop of concerns regarding delays in debt recovery, value erosion of distressed assets, and excessive judicial involvement in commercial restructuring decisions. The Bankruptcy Law Reforms Committee had emphasised that decisions involving assessment of risk, viability, and future business prospects should ordinarily be taken by creditors who possess both the expertise and economic incentives necessary to evaluate such matters[46]. What initially appeared as an institutional choice embedded within the statutory architecture gradually evolved into one of the most influential doctrines

[44] Id.
[45] Insolvency and Bankruptcy Code, No. 31 of 2016, Sec. 21, 28, 30, 31, India Code (2016).
[46] Bankruptcy Law Reforms Committee, *supra* note 1, ch. 5.

governing insolvency adjudication. Through a series of decisions, courts were required to determine not merely the scope of creditor authority but also the extent to which adjudicatory institutions could scrutinise decisions taken by the Committee of Creditors. The resulting jurisprudence transformed commercial wisdom from a legislative principle facilitating efficient insolvency resolution into a broader doctrine defining the limits of judicial intervention within the insolvency process.

The earliest stage of this development focused on identifying the institutional boundaries between commercial decision-making and adjudicatory review. Judicial interpretation consistently recognised that the Code entrusted creditors with responsibility for evaluating matters involving economic risk, business viability, future recoveries, and restructuring prospects. These questions were viewed as fundamentally different from issues concerning statutory compliance or procedural legality. The distinction assumed particular significance when courts were confronted with attempts to challenge creditor decisions on substantive grounds. Rather than treating resolution proceedings as conventional adjudicatory disputes, the Supreme Court increasingly characterised them as collective commercial exercises requiring specialised financial assessments that courts were institutionally ill-equipped to undertake[47]. This reasoning reflected not merely deference to creditors but a broader acceptance of the Code's underlying allocation of decision-making authority between market actors and adjudicatory institutions.

This understanding crystallised when the Court rejected the proposition that adjudicatory authorities could reassess the merits of a resolution plan merely because alternative outcomes appeared preferable[48]. The judicial emphasis shifted from evaluating the correctness of creditor decisions to examining whether the decision-making process complied with statutory requirements. In doing so, the Court effectively insulated the commercial choices of creditors from substantive appellate scrutiny and established that dissatisfaction with the outcome of creditor deliberations could not itself justify judicial intervention.

[47] *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150
[48] Id.

The doctrine subsequently expanded beyond approval or rejection of resolution plans to encompass the underlying assessments informing those decisions. Questions relating to feasibility and viability became central to this evolution. Judicial reasoning repeatedly emphasised that viability determinations involve predictive assessments regarding future business performance, market conditions, restructuring prospects, and financial sustainability. Since such evaluations necessarily involve commercial judgment rather than legal interpretation, courts increasingly treated them as matters lying exclusively within the domain of the Committee of Creditors[49]. As a result, the inquiry undertaken by adjudicatory authorities became confined to verifying compliance with statutory requirements rather than reassessing whether creditors had reached the most commercially desirable conclusion.

A similar pattern emerged in relation to valuation disputes. Insolvency proceedings frequently generated objections concerning asset values, recovery estimates, liquidation benchmarks, and the adequacy of consideration offered under resolution plans. Judicial decisions consistently resisted invitations to substitute judicial assessments for creditor evaluations in these matters. The Court recognised that valuation methodologies may legitimately produce differing outcomes and that insolvency resolution often requires creditors to accept commercially negotiated compromises that cannot be measured solely against liquidation figures or alternative financial projections[50]. Consequently, valuation ceased to function as an independent ground for substantive review once the statutory framework governing the resolution process had been satisfied.

The doctrine also underwent significant expansion in the context of distribution decisions. Earlier challenges frequently sought judicial reconsideration of how resolution proceeds were allocated among different classes of stakeholders. The jurisprudence gradually moved away from conceptions of distribution based upon judicial notions of fairness and toward a framework centred on creditor discretion. While statutory safeguards continued to operate, courts increasingly accepted that differential treatment among stakeholders could result from legitimate commercial considerations evaluated by creditors[51]. Distribution decisions therefore became another area

[49] *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.
[50] *Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh*, (2020) 11 SCC 467.
[51] *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531; *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.*, (2022) 1 SCC 401.

where judicial review remained available only for ensuring compliance with statutory requirements rather than assessing the substantive desirability of particular allocations.

As the doctrine matured, judicial references to institutional competence became increasingly prominent. Courts repeatedly contrasted the financial expertise, market exposure, and economic incentives of creditors with the adjudicatory role assigned to tribunals under the Code. The recurring premise underlying these decisions was that insolvency resolution involves complex business judgments requiring specialised knowledge that courts neither possess nor are expected to possess. Commercial wisdom therefore came to be justified not only by statutory allocation of authority but also by considerations of comparative institutional capability[52]. The judiciary's role was increasingly described as supervisory rather than appellate, reflecting a conscious reluctance to enter areas regarded as commercially specialised.

This trend was accompanied by a corresponding narrowing of substantive review. Initially, judicial deference was articulated primarily in relation to approval or rejection of resolution plans. Over time, however, the protection afforded to commercial wisdom extended to a broader range of decisions, including assessments of viability, acceptance of haircuts, distribution methodologies, selection of resolution applicants, settlement proposals, and other decisions affecting the course of insolvency proceedings[53]. Each successive decision reinforced the proposition that the Committee of Creditors functions as the primary commercial decision-maker and that adjudicatory intervention must remain exceptional rather than routine.

At the same time, courts did not entirely abandon supervisory authority. Judicial review continued to operate in cases involving statutory non-compliance, procedural irregularity, jurisdictional error, and violations of mandatory provisions of the Code. The doctrine therefore never produced complete judicial abdication. Nevertheless, the scope of permissible intervention became

[52] *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150; *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.
[53] *Kalpraj Dharamshi v. Kotak Inv. Advisors Ltd.*, (2021) 10 SCC 401; *Vallal RCK v. Siva Indus. & Holdings Ltd.*, (2022) 9 SCC 803; *Jaypee Kensington Boulevard Apartments Welfare Ass'n v. NBCC (India) Ltd.*, (2022) 1 SCC 401.

increasingly confined to ensuring legality of process rather than correctness of outcome[54]. What emerged was a model in which courts retained authority to police the boundaries established by the Code while refraining from second-guessing commercial determinations reached through the collective decision-making process established by the statute.

Viewed cumulatively, the jurisprudential trajectory reveals a significant transformation. Commercial wisdom began as a legislative mechanism intended to allocate business decisions to creditors within a time-bound insolvency framework. Judicial interpretation progressively broadened its reach, converting it into a doctrine that not only protected specific creditor decisions but also defined the institutional relationship between adjudicatory bodies and the insolvency process itself. The cumulative effect of successive decisions was the expansion of creditor autonomy and the corresponding contraction of substantive judicial review. By the time the doctrine reached its more mature formulations, commercial wisdom had evolved into a principle of pronounced judicial restraint, under which courts increasingly declined to examine the merits of commercial outcomes so long as statutory requirements were satisfied. This evolution laid the foundation for a broader debate concerning whether the contemporary doctrine continues to reflect the balance originally contemplated by the insolvency framework or whether judicial deference has expanded beyond the limits necessary to preserve efficient insolvency resolution

5. Commercial Wisdom: Creditor Supremacy or Creditor Governance?

The contemporary doctrine of commercial wisdom occupies a position of considerable influence within India's insolvency framework. Judicial deference has progressively reduced the scope of substantive review and reinforced the authority of the Committee of Creditors in determining the future of distressed enterprises. As a consequence, the principal debate surrounding commercial wisdom is no longer whether creditors should exercise decision-making authority during insolvency proceedings. That question has largely been settled through legislative design and judicial interpretation. The more pressing issue concerns the institutional implications of concentrating extensive authority within creditor bodies while simultaneously limiting external

[54] Insolvency and Bankruptcy Code, No. 31 of 2016, Sec. 30(2), 31, 61, India Code (2016); *Essar Steel*, (2020) 8 SCC 531; *K. Sashidhar*, (2019) 12 SCC 150.

scrutiny. The resulting tension is not between creditor control and judicial intervention, but between creditor autonomy and creditor accountability.

The original justification for commercial wisdom rested upon functional considerations. Insolvency resolution requires assessments concerning viability, feasibility, risk allocation, business prospects, valuation, and recoveries. Such questions are inherently commercial and often depend upon predictive judgments that cannot be readily reduced to legal standards. The doctrine therefore emerged as a mechanism intended to facilitate efficient resolution by allocating authority to those possessing financial expertise and economic exposure to insolvency outcomes[55]. This rationale remains compelling. The success of any insolvency system depends upon the ability to make commercially informed decisions within constrained timelines, and excessive adjudicatory intervention would undermine that objective. Yet efficiency alone cannot provide a complete basis for institutional legitimacy once commercial discretion becomes insulated from meaningful substantive review.

The expansion of judicial deference altered the practical operation of commercial wisdom in significant ways. What began as a principle allocating responsibility for commercial assessments increasingly developed into a framework within which creditor decisions enjoy substantial protection from external challenge[56]. Judicial review remains available in cases involving statutory non-compliance, procedural irregularity, or jurisdictional error, but courts have consistently declined to reassess the merits of commercial determinations. This development strengthened the autonomy of creditors and reduced uncertainty arising from prolonged litigation. At the same time, however, it shifted the focus of insolvency governance away from the content of decisions and towards the quality of the decision-making process itself.

This shift has generated recurring concerns regarding institutional legitimacy. The Committee of Creditors exercises extensive authority over matters affecting a broad range of stakeholders, including operational creditors, employees, government authorities, homebuyers, minority

[55] Bankruptcy Law Reforms Committee, *The Report of the Bankruptcy Law Reforms Committee: Volume I—Rationale and Design* (2015); Insolvency Law Committee, *Report of the Insolvency Law Committee* (2022).
[56] *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150; *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531; *Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh*, (2020) 11 SCC 467.

financial creditors, and other parties whose interests may be significantly affected by insolvency outcomes[57]. Nevertheless, many of these stakeholders possess limited capacity to influence the decision-making process. While creditor-centred governance can be justified on grounds of expertise and financial exposure, the legitimacy of that governance structure increasingly depends upon confidence that commercial discretion is exercised responsibly, transparently, and consistently with the broader objectives of the insolvency framework.

The position of operational creditors illustrates this tension. The insolvency regime recognises that operational creditors play a vital role in the functioning of distressed enterprises, yet decision-making authority remains concentrated among financial creditors. Judicial affirmation of commercial wisdom has largely prevented substantive challenges to distributional outcomes once statutory minimum protections are satisfied[58]. Although this approach promotes certainty and preserves creditor autonomy, it also raises questions regarding whether procedural compliance alone provides an adequate safeguard against outcomes perceived as inequitable by affected stakeholders. Similar concerns arise in relation to homebuyers, whose interests frequently extend beyond purely financial recoveries and often involve expectations concerning possession, completion of projects, and long-term investments[59].

Questions surrounding dissenting financial creditors reveal a related dimension of the problem. Collective insolvency proceedings necessarily require majoritarian decision-making, and any effective resolution framework must prevent individual creditors from obstructing outcomes supported by the majority. Yet scholarly discussions concerning dissenting creditors highlight the continuing challenge of reconciling collective value maximisation with protection against potential majoritarian dominance[60]. The issue is not whether majority decision-making should exist; rather, it concerns the extent to which insolvency governance mechanisms adequately ensure that dissenting interests are considered within the deliberative process.

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[57] S. Sharma & A. Mehta, *supra* note 18.
[58] Essar *Steel*, (2020) 8 SCC 531; P. Yadav, A. Sehrawat & D. Miglani, *supra* note 19.
[59] *Jaypee Kensington Boulevard Apartments Welfare Ass'n v. NBCC (India) Ltd.*, (2022) 1 SCC 401; T.S. Viswajith, *supra* note 25.
[60] Nand Mohan, *supra* note 27.

Transparency concerns similarly acquire greater significance in a system characterised by extensive judicial restraint. When adjudicatory institutions decline to reassess commercial outcomes, the legitimacy of those outcomes increasingly depends upon the integrity of the process through which they were reached. Several academic and policy discussions have therefore emphasised issues relating to information asymmetry, quality of deliberations, disclosure practices, voting behaviour, and communication between insolvency professionals and creditor bodies[61]. These concerns do not necessarily imply abuse of authority. Rather, they reflect recognition that confidence in commercial decision-making requires stakeholders to believe that decisions are informed, reasoned, and directed towards value-maximising outcomes rather than narrow institutional interests.

The growing attention devoted to standards of conduct within the Committee of Creditors reflects this broader evolution. Discussions concerning creditor behaviour increasingly focus not merely upon the scope of creditor powers but upon the manner in which those powers are exercised[62]. The Insolvency Law Committee Report, 2022 assumes particular significance in this regard because it acknowledges that the effectiveness of creditor-led insolvency resolution depends upon responsible institutional conduct in addition to legal authority[63]. Although the report does not advocate replacing creditor autonomy with expanded judicial intervention, it recognises that confidence in the insolvency framework requires mechanisms capable of promoting accountability within creditor decision-making structures.

Viewed from this perspective, the contemporary debate surrounding commercial wisdom is often framed incorrectly as a choice between creditor supremacy and judicial control. The practical experience of the insolvency regime suggests that neither alternative adequately captures the institutional challenge that has emerged. The issue is not whether courts should substitute their commercial assessments for those of creditors. Judicial experience under the Code has largely rejected that possibility. Nor is the issue whether creditors should retain primary responsibility for commercial decisions. That proposition remains central to the architecture of insolvency

[61] K. Brahmkshatriya, *supra* note 29.
[62] A. Shiralkar, *supra* note 17.
[63] Insolvency Law Committee, *Report of the Insolvency Law Committee* (2022).

resolution. The more significant question concerns how authority should be exercised once commercial decisions become substantially insulated from substantive review.

Commercial wisdom therefore appears to have undergone a gradual conceptual transformation. Initially, it functioned as a mechanism for efficient insolvency resolution. Judicial interpretation subsequently reinforced it as a doctrine of creditor autonomy by narrowing the scope of permissible intervention. The logical consequence of these developments is an increasing emphasis upon creditor governance. As external review becomes more limited, the legitimacy of commercial wisdom becomes progressively dependent upon internal standards of accountability, transparency, deliberative quality, and institutional responsibility. In this sense, the future stability of the doctrine may depend less upon further expansion of judicial deference and more upon confidence that creditor authority is exercised in a manner consistent with the objectives that originally justified its existence.

The central challenge confronting contemporary insolvency jurisprudence is therefore no longer whether creditors should exercise commercial control over distressed enterprises. Legislative design and judicial doctrine have largely resolved that question. The challenge now lies in determining how such power should be governed within a system that has broadly accepted judicial restraint as a defining feature of insolvency resolution. The continuing legitimacy of commercial wisdom ultimately depends not only upon its capacity to facilitate efficient outcomes but also upon its ability to command confidence as a framework of responsible creditor governance

6. Findings and Recommendations

The analysis undertaken throughout this study reveals that commercial wisdom under the Insolvency and Bankruptcy Code, 2016 was neither conceived nor developed as an unrestricted doctrine of creditor supremacy. Its origins lie in a legislative decision to allocate commercial decision-making authority to those possessing the expertise, information, and economic exposure necessary to evaluate the future of distressed enterprises. The underlying objective was functional rather than hierarchical. Commercial wisdom was intended to facilitate efficient, value-preserving, and time-bound insolvency resolution by distinguishing business judgments from adjudicatory determinations and assigning each to the institution best equipped to perform that role. The legislative framework therefore linked creditor authority to institutional competence, value maximisation, and resolution efficiency rather than to any independent claim of creditor dominance.

A second finding concerns the manner in which judicial interpretation reshaped that legislative choice. While the statutory framework contemplated a distinction between commercial and legal decision-making, judicial doctrine progressively expanded the scope of matters regarded as falling within the exclusive domain of creditor discretion. Questions relating to feasibility, viability, valuation, distribution, settlement, and other commercially sensitive determinations became increasingly insulated from substantive review. Courts retained supervisory authority over legality, procedural compliance, and jurisdictional questions, yet the practical consequence of successive decisions was a substantial narrowing of adjudicatory intervention. Judicial deference enhanced certainty, reduced the likelihood of prolonged litigation, and reinforced the Code's objective of timely resolution. At the same time, it transformed commercial wisdom from a principle of institutional allocation into a broader doctrine of judicial restraint.

The study further indicates that the consolidation of creditor autonomy has generated consequences extending beyond the immediate resolution process. As judicial review became progressively limited, questions concerning accountability assumed greater significance. The concentration of extensive authority within the Committee of Creditors places considerable responsibility upon a body whose decisions affect multiple stakeholder groups, many of whom possess only limited influence over the decision-making process. Although existing safeguards address procedural compliance and statutory minimum protections, they do not fully resolve concerns relating to transparency, quality of deliberation, information asymmetries, or stakeholder confidence in commercial outcomes. The principal tension identified by this study therefore arises not from the existence of creditor control itself but from the challenge of ensuring legitimacy within a framework characterised by extensive deference.

The analysis also demonstrates that the contemporary debate concerning commercial wisdom cannot be satisfactorily framed as a choice between creditor autonomy and expanded judicial intervention. The doctrinal trajectory of the Code reflects a consistent judicial reluctance to substitute adjudicatory assessments for commercial evaluations. Reversing that approach would undermine many of the efficiency considerations that originally justified creditor-led insolvency resolution. The difficulties identified throughout this study consequently point towards governance-based responses rather than broader substantive review. The increasing attention devoted to standards of conduct for Committee of Creditors members, reflected in policy discussions and the Insolvency Law Committee Report, 2022, suggests recognition that accountability must emerge from the quality of decision-making processes rather than from routine judicial reconsideration of commercial outcomes[64].

In this context, greater emphasis should be placed upon institutional practices capable of enhancing confidence in creditor decision-making without diluting commercial autonomy. Structured disclosure obligations, improved communication with affected stakeholders, maintenance of comprehensive deliberative records, and limited reason-giving requirements for significant commercial decisions would strengthen procedural legitimacy while preserving the efficiency advantages associated with creditor-led resolution. Similarly, clearer expectations regarding standards of conduct and responsible participation within creditor bodies would assist in ensuring that commercial discretion is exercised consistently with the objectives underlying the insolvency framework. Such measures would not alter the allocation of authority established by the Code; rather, they would reinforce the credibility of decisions taken pursuant to that authority.

The central lesson emerging from this study is that judicial deference has largely succeeded in promoting certainty, efficiency, and value maximisation within India's insolvency regime, but those achievements have shifted attention towards a different institutional challenge. The continuing legitimacy of commercial wisdom now depends less upon further expansion of creditor autonomy and more upon the development of governance practices capable of ensuring that commercial power is exercised transparently, responsibly, and in a manner that commands confidence across the insolvency process. The future stability of the doctrine therefore rests not upon reconsidering whether creditors should decide, but upon ensuring that the exercise of that

[64] Insolvency Law Committee, *Report of the Insolvency Law Committee* (Ministry of Corporate Affairs, Gov't of India 2022).

decision-making authority remains consistent with the broader institutional objectives that originally justified judicial restraint.

7. Conclusion

The doctrine of commercial wisdom has emerged as one of the most consequential features of India's contemporary insolvency framework. Although rooted in the institutional design of the Insolvency and Bankruptcy Code, 2016, its present significance is the product of a sustained process of judicial interpretation that has progressively defined the relationship between creditors, adjudicatory institutions, and the insolvency process itself. The central inquiry examined throughout this study concerned the extent to which courts and tribunals have deferred to the commercial decisions of the Committee of Creditors and whether such deference appropriately balances creditor autonomy, stakeholder interests, and institutional accountability. The analysis demonstrates that judicial deference has evolved into a defining characteristic of insolvency resolution under the Code and has fundamentally shaped the operation of creditor-led decision-making.

The study finds that commercial wisdom was originally conceived as a functional mechanism intended to facilitate efficient insolvency resolution rather than as a normative assertion of creditor supremacy. The legislative framework allocated authority to creditors because they possess the information, expertise, and economic incentives necessary to evaluate commercial alternatives in circumstances of financial distress. Judicial interpretation subsequently reinforced this allocation of authority by drawing a clear distinction between commercial determinations and legal oversight. Through successive decisions, courts confined their role largely to ensuring statutory compliance and procedural regularity while declining to reassess matters involving feasibility, viability, valuation, recoveries, and distribution. The cumulative effect of this jurisprudential development has been the emergence of a highly deferential model of review in which commercial decision-making enjoys substantial protection from substantive judicial scrutiny[65].

[65] *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150; *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531; *Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh*, (2020) 11 SCC 467; *Kalpraj Dharamshi v. Kotak Inv. Advisors Ltd.*, (2021) 10 SCC 401; *Jaypee Kensington Boulevard Apartments Welfare Ass'n v. NBCC (India) Ltd.*, (2022) 1 SCC 401; *Vallal RCK v. Siva Indus. & Holdings Ltd.*, (2022) 9 SCC 803.

The paper further establishes that this evolution has generated both benefits and challenges. Judicial restraint has contributed significantly to certainty, predictability, and the preservation of the time-bound character of insolvency proceedings. By reducing opportunities for prolonged litigation and judicial second-guessing, the doctrine has strengthened the Code's capacity to pursue value-maximising outcomes and commercially informed resolutions. At the same time, the expansion of creditor autonomy has altered the institutional dynamics of insolvency governance. Once courts accept a limited role in reviewing commercial outcomes, questions concerning legitimacy increasingly shift from the substance of decisions to the processes through which those decisions are made. The significance of commercial wisdom therefore extends beyond creditor control and enters the broader domain of governance.

A principal conclusion emerging from this study is that the contemporary debate surrounding commercial wisdom can no longer be adequately understood through the traditional language of creditor primacy alone. The doctrinal position achieved through judicial interpretation has largely settled the question of who should exercise commercial authority during insolvency proceedings. The more difficult question concerns how that authority should be exercised within a framework characterised by extensive judicial restraint. The growing attention devoted to transparency, standards of conduct, deliberative quality, stakeholder confidence, and institutional responsibility reflects an implicit recognition that legitimacy cannot rest exclusively upon expertise and economic exposure. As the sphere of substantive review narrows, the quality of governance within creditor institutions assumes increasing importance[66].

The study therefore concludes that judicial deference to commercial wisdom remains institutionally justified. Insolvency resolution continues to involve complex commercial assessments that adjudicatory bodies are not optimally positioned to undertake, and creditor-led decision-making remains consistent with the objectives underlying the Code. Nevertheless, the long-term legitimacy of such deference depends upon the existence of governance-based accountability mechanisms capable of ensuring that commercial discretion is exercised responsibly, transparently, and consistently with the broader purposes of insolvency resolution.

[66] Insolvency Law Committee, *Report of the Insolvency Law Committee* (Ministry of Corporate Affairs, Gov't of India 2022); A. Shiralkar, *supra* note 17; S. Sharma & A. Mehta, *supra* note 18.

The future development of the doctrine is therefore likely to be shaped less by renewed debates concerning the scope of judicial review and more by continuing efforts to reconcile creditor autonomy with institutional accountability.

The broader contribution of this study lies in demonstrating that commercial wisdom should not be viewed merely as a doctrine limiting judicial intervention. It has evolved into a principle that structures the distribution of authority within the insolvency process and influences the legitimacy of creditor-led governance itself. The unresolved challenge for insolvency jurisprudence is not whether commercial decisions should remain with creditors, but how a system built upon deference can continue to maintain confidence, fairness, and institutional credibility. The future evolution of commercial wisdom in India will therefore depend upon its capacity to function not only as a doctrine of autonomy but also as a framework of responsible creditor governance.

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