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## **Introduction**

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## **Preface**

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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## **Description**

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

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**“A CRITICAL STUDY OF CORPORATE INSOLVENCY  
RESOLUTION FAILURES IN INDIA: ANALYSING THE  
TRANSITION FROM RESOLUTION TO LIQUIDATION  
UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016.”**

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**Abstract**

The Insolvency and Bankruptcy Code, 2016 (IBC), was enacted as a comprehensive legal framework to address corporate insolvency through a time-bound and creditor-driven resolution process. It replaced the fragmented insolvency regime, intending to promote corporate rescue, maximising the value of assets, improving credit discipline, and balancing the interests of all stakeholders. The Corporate Insolvency Resolution Process (CIRP), introduced under the Code, was intended to facilitate the revival of financially distressed but viable companies while treating liquidation as a measure of last resort. Despite these objectives, a substantial number of insolvency proceedings continue to conclude in liquidation, raising concerns regarding the effectiveness of the existing insolvency framework.

This paper critically examines the factors contributing to corporate insolvency resolution failures in India and analyses the increasing transition from resolution to liquidation under the IBC. Adopting a doctrinal and analytical research methodology, the study analyses statutory provisions, judicial pronouncements, committee reports, regulatory publications, and scholarly literature relating to corporate insolvency. It evaluates the impact of procedural delays, institutional constraints, the commercial decisions of the Committee of Creditors, inadequate availability of viable resolution plans, and post-resolution implementation failures on the outcome of the Corporate Insolvency Resolution Process. The paper argues that while the IBC has significantly strengthened India's insolvency regime, persistent legal and practical challenges continue to impede its objective of corporate rescue. It concludes by proposing legal and institutional reforms to improve the efficiency of insolvency resolution and reduce avoidable liquidations, thereby strengthening the effectiveness of the Insolvency and Bankruptcy Code, 2016.

**Keywords:** Insolvency and Bankruptcy Code, Corporate Insolvency Resolution Process, Liquidation, Committee of Creditors, Corporate Rescue, Corporate Insolvency, Insolvency Resolution.

## 1. Introduction

The issue of corporate insolvency has become one of the biggest challenges facing the Indian economy and has not only impacted distressed companies but also the creditors, labour force, investors, suppliers, and the financial system. Businesses in today's tough and international market are subjected to monetary risks from market change, excessive borrowing, inefficiency in operations, economic slowdowns, and unexpected disruptions. A good insolvency system is thus crucial to effectively address financial crises, to keep economically viable companies in business, to value-maximize the assets and to restore investor confidence in the credit market. An efficient insolvency process also supports economic growth through the efficient reallocation of resources and responsible lending and borrowing<sup>1</sup>. Before the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC), India's insolvency regime was governed by several legislations such as the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and the Companies Act<sup>2</sup>. Having several different legal mechanisms led to overlapping jurisdictions, to long litigation, to slow proceedings, and to inconsistent results. These weaknesses seriously weakened the prospects for corporate revival, and frequently resulted in the loss of value of distressed assets before effective resolution could be achieved. Thus, the need was growing for a complete and timely insolvency framework<sup>3</sup>. The Insolvency and Bankruptcy Code, 2016 was a major step towards creating a unified and all-encompassing commercial law regime in India<sup>4</sup>. The Code has brought an innovative and creditor-driven mechanism through the Corporate Insolvency Resolution Process (CIRP) for restructuring and revival of financially distressed but viable companies. The legislative provisions are to ensure

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<sup>1</sup> Bankruptcy Law Reforms Committee, *The Report of the Bankruptcy Law Reforms Committee: Rationale and Design* vol. I, at 5–10 (Nov. 2015).

<sup>2</sup> Sick Industrial Companies (Special Provisions) Act, 1985; Recovery of Debts Due to Banks and Financial Institutions Act, 1993; Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Companies Act, 2013.

<sup>3</sup> Bankruptcy Law Reforms Committee, *supra* note 1, at 15–29.

<sup>4</sup> Insolvency and Bankruptcy Code, No. 31 of 2016, pmb., Acts of Parliament, 2016 (India).

the time-bound resolution, to maximise the value of the corporate debtor's assets, to promote the spirit of entrepreneurship, to improve credit availability, and to balance the interests of financial creditors, operational creditors, employees, shareholders, and other stakeholders. Whereas earlier the system had viewed liquidation as a first resort, the IBC now has a more balanced approach, putting company rescue first, even if it is not feasible, and liquidation last.<sup>5</sup> Despite such changes in the legislation, there are some issues that have emerged from the implementation of the IBC which continue to impact the effectiveness of the resolution process. Many of the Corporate Insolvency Resolution Processes fail to result in resolution, but instead in liquidation. The timeline in insolvency proceedings, institutional restrictions, long litigation, Committee of Creditors' commercial decisions,<sup>6</sup> viable resolution applicants, and failures to implement the resolution process after the code have become major hurdles in the realisation of the objectives of the code. The proliferation of liquidations poses critical questions about the effectiveness of the current insolvency regime in achieving corporate rescue and the need to resolve structural and procedural issues that remain to hinder the successful resolution of the majority of cases. Keeping this in mind, the present research paper critically discusses the legal and practical impediments to the failure of the corporate insolvency resolution regime in India. It examines the resolution process versus liquidation in the Insolvency and Bankruptcy Code, 2016, from the perspectives of the statutory provisions, judicial pronouncements, institutional arrangements, and real-world challenges involved in the Corporate Insolvency Resolution Process. The paper also aims at highlighting the key shortcomings of the insolvency system and the measures needed to improve the system and strengthen corporate rescue, improve the efficiency of the system and ensure that liquidation is a last resort and not a common result of an insolvency proceeding.

## **2. Literature Review**

The Insolvency and Bankruptcy Code, 2016 (IBC) has proven to be one of the most crucial law reforms in India's corporate insolvency regime. Since it came into force, the Code has attracted a widespread academic debate on its effectiveness in attaining timely resolution of insolvency, corporate rescue, value maximisation, and protection of stakeholders. In the existing literature, it is generally accepted that the IBC has provided a replacement for the piecemeal insolvency regime

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<sup>5</sup> *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 S.C.C. 17.

<sup>6</sup> *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 S.C.C. 150.

with a time-bound, creditor-driven and unified framework.<sup>7</sup> But at the same time, scholars state that there are certain procedure, institutional and commercial issues which still obstruct the effective implementation of the Corporate Insolvency Resolution Process (CIRP).<sup>8</sup>

The IBC has its roots in the recommendations by the Bankruptcy Law Reforms Committee (BLRC) 2015 which also recognised that the existing framework for insolvency was only working well for debtors who were unable to keep their companies and was highly fragmented and produced long and costly litigation. The Committee proposed a holistic insolvency mechanism, which would include early identification of financial distress, participation of all creditors in the process, implementation of strict timelines, and maximisation of value. These recommendations eventually became the foundation of the Insolvency and Bankruptcy Code, 2016 and are still having a bearing on insolvency jurisprudence in India.<sup>9</sup>

Kishnani (2018) discussed IBC as a holistic solution to the escalating issue of NPAs among Indian banks. The study contends that the Code unified the existing set of laws governing insolvency into one set that will encourage a prompt resolution process, strengthen credit discipline, and maintain a balance between creditors and debtors. The author, however, underscores the importance of proper institutional implementation of the IBC, prompt adjudicatory processes, and statutory time limits for the success of the IBC.<sup>10</sup>

The corporate governance aspect of Deb and Dube (2021) is a critical examination of the change from the manager-driven insolvency regime to the creditor-in-control regime introduced by the IBC. The authors recognise the benefits of creditor supremacy but believe that India's highly concentrated ownership pattern and the ongoing presence of promoters are often restrictive in its use in practice. They consider the key difference between the legal framework and its application, and believe that changes in the law are insufficient for effective corporate restructuring unless there are other improvements in corporate governance and institutional capacity.<sup>11</sup>

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<sup>7</sup> M.S. Sahoo, *Law and Practice of Insolvency and Bankruptcy in India* (Taxmann)

<sup>8</sup> Vinod Kothari, *Insolvency and Bankruptcy Code: Law and Practice* (Taxmann Publ'g).

<sup>9</sup> Bankruptcy Law Reforms Committee, *The Report of the Bankruptcy Law Reforms Committee: Rationale and Design*, vol. I (2015).

<sup>10</sup> Kishnani, *Insolvency and Bankruptcy Code: A Comprehensive Remedy for Non-Performing Assets*, (2018).

<sup>11</sup> Deb & Dube, *Corporate Governance under the Insolvency and Bankruptcy Code* (2021).

Abhirami and Rahul (2022) have carried out an empirical evaluation of the IBC and found that it has achieved substantial gains in recovery rate, gross non-performing assets, and an enhanced insolvency ecosystem compared to the previous recovery mechanism. The study reveals that the IBC is now gaining popularity as compared to the conventional debt recovery processes like Debt Recovery Tribunals and SARFAESI. It also highlights issues that are recurring, such as delays in the National Company Law Tribunal (NCLT), lack of adjudicatory infrastructure, growing pendency of cases, and failure to adhere to the statutory timelines, which continue to impact the efficiency of the Corporate Insolvency Resolution Process<sup>12</sup>.

Likewise, Vyas and Pandya (2024) review the practical implementation of the Corporate Insolvency Resolution Process and note that while the IBC has improved creditor confidence and bolstered financial discipline, its implementation has been hampered by factors such as extended litigation, institutional limitations, inadequate bidder participation, and operational difficulties faced by Insolvency Professionals, along with sector-specific complexities. In conclusion, the authors suggest that all these factors limit the chances of a successful restructuring and raise the risk of liquidation even in the name of rescue in the spirit of the Code.<sup>13</sup>

Gupta (2020) provides a more in-depth analysis of IBC resolution outcomes and their determinants. Based on the empirical evidence and interviews with Insolvency Professionals, the study concludes that some of the key factors in the failure of liquidation to be successful include delayed initiation of Insolvency proceedings, inadequate adjudicatory infrastructure, a lack of viable resolution applicants, and prolonged litigation. The author also contends that companies, even those with a viable business, can liquidate due to procedural inefficiencies and creditor preferences, which thwart the purpose of a corporate rescue.<sup>14</sup>

In recent times, research has focused on problems that occur following resolution plan approval. Vasishth (2025) suggests that the post-resolution period is poorly regulated in the IBC, with no timeline for its implementation and limited enforcement powers, ongoing court cases, and limited

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<sup>12</sup> Abhirami & Rahul, *Performance of the Insolvency and Bankruptcy Code: An Empirical Analysis* (2022).

<sup>13</sup> Vyas & Pandya, *Corporate Insolvency Resolution Process: Challenges and Prospects* (2024).

<sup>14</sup> Gupta, *Liquidation under the Insolvency and Bankruptcy Code: Issues and Challenges* (2020).

accountability for the Successful Resolution Applicant. Such shortcomings are frequently the reason for failed resolution plans and, by extension, the failure to effectively achieve the goal of corporate revival.<sup>15</sup>

Similarly, Sharma and Indolia (2025) delve into the liquidation of Jet Airways as a pivotal case of post-resolution failure. Although the authors secure approval of a resolution plan, the process is stalled due to regulation, litigation, condition precedent disputes, and a lack of pre- and post-resolution governance. The study stresses that simply passing a resolution plan doesn't automatically mean the company is revived, and calls for enhanced monitoring and implementation mechanisms under the insolvency regime<sup>16</sup>.

There is ample literature available that offers a clear understanding of the purpose of the Insolvency and Bankruptcy Code, the workings of the Corporate Insolvency Resolution Process (CIRP), the role of the Committee of Creditors, institutional challenges, and implementation issues after the completion of the resolution process. Most studies, however, study these questions in isolation, looking at either procedural delays, creditor control, empirical recovery trends, or implementation failures. Little academic research has focused on examining how these interrelated dynamics combine to drive the growing shift towards a more liquidationary corporate insolvency regime. The present study aims to fill this gap by critically analysing the cumulative effect of procedural delays, institutional shortcomings, commercial decision-making, and failures in implementing post-resolution resolutions on the corporate insolvency resolution proceedings under the Insolvency and Bankruptcy Code, 2016. The study, in its holistic legal approach, adds to the present body of knowledge and suggests remedies to enhance the efficacy of the Indian insolvency regime.<sup>17</sup>

### 3. Research Methodology

The methodology of the present study is a doctrinal research method which examines the failure of the corporate insolvency resolution process and the shift from resolution to winding up by the

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<sup>15</sup> Anushka Vasishth, *Implementation of Resolution Plans under the Insolvency and Bankruptcy Code* (2025).

<sup>16</sup> Sharma & Indolia, *Post-Resolution Challenges under the Insolvency and Bankruptcy Code* (2025).

<sup>17</sup> Sumant Batra, *Corporate Insolvency: Law and Practice* (Eastern Book Co.).

Insolvency and Bankruptcy Code, 2016 (IBC). It is suitable to take a doctrinal approach in this research as it mainly involves the analysis of statutory provisions, judicial interpretation, and legal framework of corporate insolvency in India. The study aims to assess critically whether the current insolvency regime is conducive to a corporate rescue or whether there are legal and institutional limitations in the context of the increasing rate of liquidation. The information used for the research was sourced from primary and secondary sources of legal information. The major sources comprise the Insolvency and Bankruptcy Code, 2016, rules and regulations made thereunder, notifications and circulars issued by the Insolvency and Bankruptcy Board of India (IBBI), and important judgments pronounced by the Supreme Court of India, the National Company Law Tribunal (NCLT), and the National Company Law Appellate Tribunal (NCLAT). These sources offer a basis for the analysis of the Corporate Insolvency Resolution Process (CIRP) and the liquidation process, as well as judicial interpretation of the significant provisions of the Code. Secondary sources include other books, peer-reviewed journal articles, research papers, reports of the Bankruptcy Law Reforms Committee, Insolvency Law Committee reports, annual reports of IBBI, publications of RBI and other authoritative academic commentaries on insolvency law and corporate restructuring. These are used to discuss the development of the insolvency regime in India, issues of institutions and processes and the academic debate on the success of the IBC. The study also uses a critical analytical technique and explores key judicial rulings, empirical studies and real-world experiences in corporate insolvency resolution. Special attention is given to legal, procedural and institutional drivers of the lack of resolution and escalation to liquidation. The study recommends measures in the form of law and policy for strengthening insolvency resolution mechanism and enhancing the efficacy of the Insolvency and Bankruptcy Code, 2016 on the basis of the analysis.

## **4. Evolution and Legal Framework of the Insolvency and Bankruptcy Code, 2016**

### **4.1 Evolution of Insolvency Law in India**

The evolution of Insolvency and Bankruptcy Law in India has been a continuous process of building a robust legal framework that would be able to tackle corporate financial distress,

safeguard the interests of creditors and ensure economic stability<sup>18</sup>. Before the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC), the corporate insolvency had been ruled by some legislations such as the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act), the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and Companies Act. While these pieces of legislation were intended to help companies resolve debt and rehabilitate, they functioned separately and were frequently flawed, causing conflicts of jurisdiction and “judicial uncertainty.” The lack of an integrated legal framework made it difficult for corporations to be rescued in time and often resulted in a loss of value of distressed assets before they could be resolved.<sup>19</sup>

#### **4.2 Bankruptcy Law Reforms Committee and the Enactment of the IBC**

The Government of India had set up the Bankruptcy Law Reforms Committee (BLRC) in 2014, led by Dr. T.K. Viswanathan, to address the inadequacies in the existing insolvency regime.<sup>20</sup> The Committee suggested the establishment of a holistic insolvency regime with a time-bound resolution, creditor participation, and value maximisation. It stressed the need for a recovery process in the insolvency law, which would give the most weight to the revival of viable businesses and provide for an effective exit for non-viable businesses.<sup>21</sup> To that end, Parliament passed the Insolvency and Bankruptcy Code, 2016, which amalgamated various insolvency laws into a single statute and added a structured Corporate Insolvency Resolution Process (CIRP) with dedicated institutional frameworks to help it.

#### **4.3 Objectives of the Insolvency and Bankruptcy Code, 2016**

The aim of enacting the IBC was to ensure a timely resolution of corporate insolvency, while keeping the viable business as a going concern. The main idea behind the Code is to maximize the asset value of the corporate debtor, enhance entrepreneurship, increase credit availability, and strike a balance between the interests of financial creditors, operational creditors, employees, and

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<sup>18</sup> M.S. Sahoo, *Law and Practice of Insolvency and Bankruptcy in India* (Taxmann Publ'g).

<sup>19</sup> Sumant Batra, *Corporate Insolvency: Law and Practice* (Eastern Book Company).

<sup>20</sup> Bankruptcy Law Reforms Committee, *The Report of the Bankruptcy Law Reforms Committee: Rationale and Design*, vol. I (2015).

<sup>21</sup> Ministry of Finance, *The Insolvency and Bankruptcy Code, 2015: Notes on Clauses* (2015).

shareholders and the interests of other stakeholders<sup>22</sup>. The IBC emphasises restructuring as its core focus as opposed to liquidation, unlike the earlier insolvency regime, which was focused on liquidation only, as the continuation of a viable business generally brings greater economic and social benefits. For this reason, liquidation is considered to be the last resort, once all reasonable attempts at resolution have been made.

#### **4.4 Institutional Framework under the IBC**

A strong institutional setup is essential to make the Insolvency and Bankruptcy Code effective. The Insolvency and Bankruptcy Board of India (IBBI) is the regulatory body to oversee insolvency professionals, insolvency professional agencies, and information utilities. The National Company Law Tribunal (NCLT) is the adjudicating tribunal for corporate insolvency proceedings, and the National Company Law Appellate Tribunal (NCLAT) is the appellate tribunal for the NCLT. The affairs of the corporate debtor is handled by the Resolution Professional under the Corporate Insolvency Resolution Process, while the Committee of Creditors is responsible for the commercial control, which involves considering and approving resolution plans<sup>23</sup>. Together, these institutions guarantee transparency, accountability, and efficiency in the management of the insolvency proceedings and are vital for the attainment of the Code's goals.

### **5. Corporate Insolvency Resolution Process: Objectives and Practical Challenges**

#### **5.1 Overview of the Corporate Insolvency Resolution Process**

The main process provided under the Corporate Insolvency Resolution Process (CIRP) in the Insolvency and Bankruptcy Code, 2016, is for the resolution of corporate insolvency in a time-bound and structured way. While the earlier insolvency framework was aimed at debt collection, the CIRP aims to save financially sound companies through a restructuring process while maximising the value of the assets. The process is designed to facilitate efficient, transparent, and fair resolution of the insolvency while taking into account the interests of creditors, employees, shareholders, and other interested parties. The IBC seeks to enhance credit discipline and foster trust in the Indian business ecosystem by focusing on corporate rescue instead of liquidation.<sup>24</sup>

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<sup>22</sup> Insolvency and Bankruptcy Code, No. 31 of 2016, pmb. (India).

<sup>23</sup> Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.

<sup>24</sup> Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 S.C.C. 17.

## **5.2 Initiation of the Corporate Insolvency Resolution Process**

As per Sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016, the CIRP can be initiated by a financial creditor, an operational creditor or by the corporate debtor in case of default. On admission of an application by the National Company Law Tribunal (NCLT), a moratorium is triggered under Section 14<sup>25</sup> which prevents legal proceedings being initiated or continued against the corporate debtor. A moratorium safeguards the property of the corporate debtor and offers a chance for a constructive resolution, without outside influence. At the same time, an Interim Resolution Professional (IRP) is appointed to take over the management of the corporate debtor, confirm creditors' claims and also form the Committee of Creditors (CoC).

## **5.3 Role of the Resolution Professional and the Committee of Creditors**

The Resolution Professional is an important individual, appointed for administration of the Corporate Insolvency Resolution Process. The Resolution Professional manages the affairs of the corporate debtor as a going concern, preserves its assets, gives out calls for expressions of interests from prospective resolution applicants, considers resolution plans, and helps the Committee of Creditors in decision making. The Committee of Creditors, a group of financial creditors, is tasked with assessing the viability and viability of the resolution plans and determine the fate of the corporate debtor. The Committee of Creditors' commercial wisdom has been accepted by the courts<sup>26</sup> as the principle underpinning the creditor-driven insolvency framework. Thus, there is a need for the Resolution Professional and the Committee of Creditors to work together and ensure the success of the Corporate Insolvency Resolution Process<sup>27</sup>.

## **5.4 Statutory Timelines under the IBC**

The Insolvency and Bankruptcy Code is one of the standout features of the insolvency regime, with a focus on time-bound resolution of insolvencies<sup>28</sup>. The Code fixes the timelines for the Corporate Insolvency Resolution Process to ensure that enterprise value is not eroded to the maximum extent possible and the chances of restructuring are enhanced. The timely resolution makes it easier for investors to invest, keeps the business running and allows for better recovery

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<sup>25</sup> Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan Pvt. Ltd., (2018) 16 S.C.C. 94.

<sup>26</sup> K. Sashidhar v. Indian Overseas Bank, (2019) 12 S.C.C. 150.

<sup>27</sup> Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 S.C.C. 531.

<sup>28</sup> Insolvency and Bankruptcy Code, No. 31 of 2016, § 12 (India).

of the creditors. But despite the statutory provisions, the practical application of the Code has sometimes been hampered by long litigations, repeated adjournments and institutional limitations causing delays that defeat the legislative purpose of the Code<sup>29</sup>.

### **5.5 Practical Challenges in the Corporate Insolvency Resolution Process**

Despite the enactment of the Insolvency and Bankruptcy Code which has enhanced the insolvency regime in India, some practical issues remain to impede the efficacy of the Corporate Insolvency Resolution Process. Cases are often not taken up on time, cases take a long time to be disposed of, shortage of judicial infrastructure, and prolonged litigation before the National Company Law Tribunal often obstruct a timely disposal of cases. These delays result in the loss of value of the corporate debtor's assets and make it less attractive for any potential resolution applicant to engage with the insolvency proceedings. There are also concerns about viable resolution applicants, especially in areas suffering financial instability. In practice, Resolution Professionals have faced challenges when trying to get full financial information, cooperation of the management company under resolution and the preservation of value of distressed assets during the resolution process. In addition, even if a resolution plan is approved, implementation delays as a result of regulatory approvals<sup>30</sup>, contractual disputes, and compliance issues can have a negative impact on corporate revival. These practical issues highlight that, the IBC structure is extensive and if it is to reach its goal of corporate rescue and prevention of unnecessary liquidation, it is crucial to implement it effectively.<sup>31</sup>

## **6. Transition from Resolution to Liquidation under the Insolvency and Bankruptcy Code, 2016: Causes and Legal Analysis**

### **6.1 Legal Framework Governing Liquidation under the IBC**

Under the Insolvency and Bankruptcy Code, 2016, liquidation is the last resort of the corporate insolvency resolution process when all attempts at resolution are deemed futile. The main purpose of the Code is to save viable businesses by using the Corporate Insolvency Resolution Process

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<sup>29</sup> Insolvency Law Committee, *Report of the Insolvency Law Committee* (Ministry of Corporate Affairs, 2022).

<sup>30</sup> Anushka Vasisht, *Navigating the Turbulent Waters of Post-Resolution under IBC* (SSRN Working Paper No. 6107027, 2025).

<sup>31</sup> Reserve Bank of India, *Report on Trend and Progress of Banking in India 2023–24*.

(CIRP). In the absence of a resolution plan within the prescribed period or if the Committee of Creditors (CoC) finds that the revival of a corporate debtor is no longer commercially viable, the corporate debtor enters into liquidation under Chapter III of Part II of the Code.<sup>32</sup> "The National Company Law Tribunal (NCLT) may order liquidation under Section 33 of the Insolvency and Bankruptcy Code, 2016." "Under which section of the IBC does the National Company Law Tribunal (NCLT) have the power to order the liquidation of companies? They are the failure to receive a resolution plan on time, or the resolution plan has been rejected by the committee of creditors due to the failure to adhere to the provisions of the Code, or the resolution plan has been accepted by the committee of creditors by the prescribed threshold of votes. After the imposition of a liquidation order, the Resolution Professional, in general, becomes the liquidator and is responsible for managing the liquidation estate, verifying creditors' claims, realising the assets, and distributing the proceeds among the creditors in accordance with the priority specified under Section 53 of the Code<sup>33</sup>. "It is important to reflect on these factors to gauge IBC's performance as a corporate rescue mechanism as provided by the legislation." It can also lead to the loss of jobs, closure of businesses, and the loss of enterprise value as well. Therefore, liquidation was not originally to be the standard result of insolvent companies' processes, but rather, a last resort<sup>34</sup>. However, data from insolvency proceedings shows that many of the CIRPs eventually end up in liquidation. This brings up a key issue: whether liquidation is a true indicator of actual business failure or whether it is also affected by delays, flaws in the procedure, and practical issues that occur in the resolution process. It is important to reflect on these factors to gauge IBC's performance as a corporate rescue mechanism as provided by the legislation.

While a liquidation is a legal process that allows for the resolution of outstanding debts and enables a company to wind up its affairs, it can also lead to the loss of jobs, closure of businesses, and the loss of enterprise value as well. Therefore, liquidation was not originally to be the standard result of insolvent companies' processes, but rather, a last resort. However, data from insolvency proceedings shows that many of the CIRPs eventually end up in liquidation.<sup>35</sup> This brings up a key issue, whether liquidation is a true indicator of actual business failure or whether it is also affected

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<sup>32</sup> Insolvency and Bankruptcy Code, No. 31 of 2016, ch. III, pt. II, sec 33–54 (India).

<sup>33</sup> Insolvency and Bankruptcy Code, No. 31 of 2016, sec 53 (India).

<sup>34</sup> *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 S.C.C. 17.

<sup>35</sup> Insolvency and Bankruptcy Board of India, *Annual Report 2023–24*.

by delays, flaws in the procedure, and practical issues that occur in the resolution process. It is important to reflect on these factors to gauge IBC's performance as a corporate rescue mechanism as provided by the legislation.

## 6.2 Delays in the Corporate Insolvency Resolution Process

Delay in completion of the Corporate Insolvency Resolution Process is one of the key drivers towards the shift from resolution to liquidation. While IBC gives strict timelines to achieve the quick resolution, there are many factors that result in the delay of the process, like pendency before the National Company Law Tribunal<sup>36</sup>, the number of adjournments, admission of Insolvency applications, etc. Even though the IBC has laid down strict timelines for quick resolution, various factors are responsible for the delays, like adjournment of cases repeatedly, repeated admission of Insolvency applications, etc., and pendency before the National Company Law Tribunal. These delays impact the value of assets of the corporate debtor and lower the chances of having financially capable resolution applicants. Extended insolvency proceedings will have an impact on the viability of restructuring due to the detriment of the enterprise value. By the time the resolution process is finished, companies that have the capacity to be revived may have become commercially unviable.<sup>37</sup> This means that creditors have few options, and liquidation is the most feasible solution. The effectiveness of the IBC is also subject to the ability of adjudicatory bodies to ensure the timely implementation of the IBC. Enhancing institutional efficiency and tackling delays continue to be key to improving resolution outcomes and to avoiding unnecessary liquidations.

## 6.3 Institutional Challenges Affecting Insolvency Resolution

The success of the Insolvency and Bankruptcy Code will be tied to the ability of the institutions that are supposed to facilitate the provisions. However, in practice, it is seen that the institutional shortcomings persist and do not promote the effective resolution of corporate insolvency despite the establishment of special institutions like the Insolvency and Bankruptcy Board of India (IBBI), National Company Law Appellate Tribunal (NCLAT), Information Utilities, and Insolvency Professionals under the Code.<sup>38</sup> The rise in the number of applications for bankruptcy proceedings

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<sup>36</sup> Insolvency Law Committee, *Report of the Insolvency Law Committee* (Ministry of Corporate Affairs, 2022).

<sup>37</sup> Reserve Bank of India, *Report on Trend and Progress of Banking in India 2023–24*.

<sup>38</sup> Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 188–227 (India).

and the lack of judicial resources and members have led to significant delays in dealing with cases. Practical Issues have also arisen with the activities of Insolvency Professionals. Resolution Professionals often find that the financial records are incomplete, the suspended management is uncooperative, and there are many complex commercial disputes delaying the preparation and assessment of resolution plans. These challenges not only extend the Corporate Insolvency Resolution Process, but also reduce the value of the corporate debtor's assets. This, in turn, undermines investor confidence and lessens the likelihood of successful corporate restructuring, leading to institutional inefficiencies. Therefore, there is a need to strengthen the adjudicatory capacity, coordinate the institutions, and enhance the professional accountability<sup>39</sup> to achieve the objectives of the IBC.

#### **6.4 Commercial Decisions of the Committee of Creditors**

The Committee of Creditors (CoC) is an integral part of the Corporate Insolvency Resolution Process as it is tasked with assessing the commercial viability of the corporate debtor and the competing resolution plans. The Insolvency and Bankruptcy Code provides that the wisdom of the CoC is acknowledged and gives limited authority to the courts to intervene<sup>40</sup> in the decisions of the CoC. This is done with a view to allowing financial decisions to be made by the creditors who have the needed financial expertise, not judicial bodies. The operation of the CoC has been the subject of a significant amount of academic and judicial research and criticism, even in the face of this legislative policy. Commercially viable resolution plans have been rejected in several insolvency proceedings due to failure to meet the expectations of financial creditors for a recovery. Consequently, liquidation is often seen as an option over restructuring<sup>41</sup> even when the corporate debtor has the potential to be revived. This inclination is cause for concern as to whether there is a risk of focusing too strongly on short-term profit recovery instead of the goal of continuing to sustain economically viable businesses. The concept of commercial wisdom is still underpinning of IBC, but more transparency and an objective assessment of resolution plans and balanced consideration of the interests of stakeholders should lead to better resolution outcomes.

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<sup>39</sup> M.S. Sahoo, *Law and Practice of Insolvency and Bankruptcy in India* (Taxmann Publications).

<sup>40</sup> *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 S.C.C. 150.

<sup>41</sup> *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 S.C.C. 531.

## 6.5 Lack of Viable Resolution Plans

The existence of credible and financially viable resolution plan is one of the key success parameters of the Corporate Insolvency Resolution Process. But many struggling businesses never see prospective resolution applicants due to poor financial data, falling asset values, economic issues in their industry, and ongoing uncertainty surrounding legal matters. When many companies are in insolvency proceedings, the companies' commercial situation is often already so poor that potential investors do not see restructuring as attractive. Resolution plan availability drastically reduces the possibilities of liquidation. Further, extended court proceedings, regulatory approvals uncertainty, and transaction costs make it less attractive for potential investors to be involved in the process of resolution. All of these contribute to a decrease in competition between the resolution applicants and the availability of options for the Committee of Creditors. Early recognition of financial situations, enhancing investor confidence, and providing more certainty in procedures is therefore important to promote investor participation and minimize unwarranted liquidation under the Insolvency and Bankruptcy Code.<sup>42</sup>

## 6.6 Post-Resolution Implementation Failures

Approval of a resolution plan does not automatically mean that the corporate debtor can be revived. While the Insolvency and Bankruptcy Code, 2016 has laid down a procedure to approve resolution plans, the execution process has still faced numerous practical issues. There are often delays in obtaining statutory and regulatory approval, disagreements between stakeholders, failure of successful resolution applicants to comply with the plan and a lack of an effective post-approval monitoring system<sup>43</sup> that slows plan implementation. This means that companies emerging from the Corporate Insolvency Resolution Process have still got to face their operations and finance related challenges which eventually may result into the company's liquidation. The example of Jet Airways shows the repercussions of the failure of implementation. The company was revived by a resolution plan, but the implementation of the resolution plan, the complications of regulation and the ongoing litigation prevented the revival from becoming effective, and the companies ended up in liquidation. This shows that insolvency resolution cannot be evaluated based on the approval

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<sup>42</sup> World Bank, *Principles for Effective Insolvency and Creditor/Debtor Regimes* (2021).

<sup>43</sup> Anushka Vasisht, *Navigating the Turbulent Waters of Post-Resolution under IBC* (SSRN Working Paper No. 6107027, 2025).

of the resolution plan. To attain the goal of corporate rescue, successful resolution applicants are equally important to be implemented and monitored effectively along with accountability. Therefore, further strengthening of the legal regime for post-resolution implementation would help make the IBC more effective and decrease unnecessary liquidations.

### **6.7 Judicial Analysis of Significant Cases**

Judicial interpretation has been pivotal in the process of the implementation of the Insolvency and Bankruptcy Code and understanding of the powers of stakeholders in the insolvency process. In the case of *K. Sashidhar v. Indian Overseas Bank (2019)*, the Supreme Court observed that the scope of review of commercial decisions of the Committee of Creditors is extremely narrow and only as provided in the limited manner under the Code. The decision upheld the framework of the IBC, which was driven by the creditors, and also acknowledged the business acumen of financial creditors in determining the viability of resolution plans. The Supreme Court, in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta (2019)*, also noted that the aim of the IBC is to revive the corporate debtor by promoting value maximisation and a fair balance between the interests of the stakeholders. The Court realised that the commercial judgement of the committee of creditors is important and should be given a high pedestal, but ultimately the insolvency process must lead to effective resolution, not liquidation, wherever a feasible resolution plan exists. Such rulings, along with verdicts in later insolvency proceedings, clearly reflect the judicial stance on the goals of the IBC, while upholding the autonomy of creditors in their commercial endeavors. But, with the rising number of cases of companies going into liquidation, the law is not enough. Key issues to be addressed for the success of the corporate rescue provisions in the Insolvency and Bankruptcy Code, 2016, continue to be procedural efficiency, institutional capacity, timely resolution plans, and commercial decision making.

## **7. Findings and Recommendations**

### **7.1 Findings**

The analysis conducted in this study shows that the Insolvency and Bankruptcy Code, 2016, has played a pivotal role in overhauling the framework of corporate insolvency in India by bringing a streamlined and time-bound corporate financial distress resolution system on creditor-led principles. The Code has helped to boost creditor confidence, enhance financial discipline,

improve the insolvency system, and create a legal framework for corporate insolvency. It has also brought greater transparency into insolvency processes and has helped to make insolvency processes more predictable and, as a result, has improved the general credit culture in the country. Even with these remarkable milestones, the implementation of the Corporate Insolvency Resolution Process (CIRP) is plagued by many legal, procedural, and institutional hurdles which hinder the realisation of the Code's objectives in practice. The study finds that issues like delays in proceedings before the National Company Law Tribunal (NCLT), shortage of judicial infrastructure, rising pendency of cases, long litigation process, and deviation from the statutory timelines are still challenges for the resolution of insolvency cases in a timely fashion. Such delays can lead to an asset deterioration of the corporate debtor, loss of enterprise value, and loss of investor interest, which reduces the chances of corporate restructuring being successful. The research also reveals that though the Committee of Creditors has a key role in the outcome of the Corporate Insolvency Resolution Process, often, the ultimate goal of maximising immediate returns is prioritised over restructuring viable businesses. The study also suggests that the small number of financially capable resolution applicants, deficiencies in some of the resolution plans, and difficulties in the effective implementation of approved resolution plans have contributed to the surge in the number of liquidation orders. As a result, liquidation has become a more common remedy than was at first thought in the Insolvency and Bankruptcy Code, 2016, thus impacting its primary purpose of ensuring a viable corporate entity as a going concern. The results indicate that the legislative framework of the IBC is strong, but the institutional capacity, timely implementation, and ongoing legal and regulatory reforms are essential for making the IBC effective in the long-term.

## **7.2 Recommendations**

Based on the results of this study, the following legal, institutional and policy recommendations can be suggested to boost the effectiveness of the Insolvency and Bankruptcy Code, 2016, and the chances of success for the Corporate Insolvency Resolution Process (CIRP). The adjudicatory capacity of the National Company Law Tribunal (NCLT) needs to be enhanced by providing additional benches, appointment of additional judicial as well as technical members, adequate administrative infrastructure and speedy disposal of insolvency application. It is crucial to reduce case pendency for safeguarding the enterprise value and investor and creditor confidence in the

insolvency regime. Secondly, there is a need for more focus on early detection of financial distress and timely commencement of the insolvency proceedings. By the time the early intervention process took place, the financial situation of a company was in a weak position, and the probability of finding a resolution applicant that is financially sound and willing to take up the business was higher. In addition, the Insolvency and Bankruptcy Board of India (IBBI) should have better regulatory oversight by implementing more effective monitoring mechanisms to ensure the approval of resolution plans are implemented on time and successful. Frequent monitoring of Resolution Professionals' performance and increased accountability during the implementation process would enhance the efficiency of the insolvency process. Moreover, more transparency, objective evaluation criteria, and a balanced approach towards the overall revival of the company should be incorporated in the process of decision-making by the Committee of Creditors (CoC) along with quick financial recovery. The philosophy of the commercial wisdom of the CoC is an essential part of the IBC, but a decision should also be made based on the overall goal of maintaining viable businesses wherever possible. The process of approving corporate restructuring should be made simpler, regulatory coordination should be enhanced, the participation of domestic and foreign resolution applicants should be increased, and investor confidence should be improved further, which would help increase the chances of successful corporate restructuring. Last but not the least, periodical review of the Insolvency and Bankruptcy Code should be done to take care of the new legal and commercial issues that crop up, to reflect major judicial advancements and to meet the changing requirements of the Indian economy. The continuous development of legislation, improving institutional cooperation, the increasing application of technology in adjudicating bodies would help make the insolvency framework more efficient and transparent. All these reforms will add up to reduce avoidable liquidations, increase the efficiency of the Corporate Insolvency Resolution Process, maximise value to all the stakeholders, and ensure that the objective of the IBC corporate rescue and value maximisation is met better in reality.

## **8. Conclusion**

The Insolvency and Bankruptcy Code, 2016 (IBC), is one of the largest overhauls of India's commercial law, which presents a comprehensive framework to resolve corporate insolvency in a time-bound manner. The Corporate Insolvency Resolution Process (CIRP) was introduced in the Code to replace the disjointed insolvency regime with one driven by creditors that will encourage

corporate rescue, value maximisation, and a balance of the interests of all stakeholders. The IBC has been instrumental in promoting credit discipline, enhancing creditor confidence, and creating a more streamlined and structured bankruptcy regime since its enactment. However, its operation, as evidenced by the practical implementation of the Code, shows that the objective of its legislation remains a great challenge. The above study has demonstrated that the rising trend in transitioning from resolution to liquidation is not due to any single cause. On the contrary, the delayed procedures, institutional constraints, tedious litigation, lack of any viable resolution plan, commercial decisions of the Committee of Creditors, and the failures in the implementation of solutions after the resolution are responsible for it. The common problems make it unlikely for restructuring of the businesses to be successful and often result in business liquidation, where reviving the business may have been possible. As a result, the ability of the insolvency mechanism goes beyond merely the strength of the law; it also relies on the efficiency of the institutions that apply the law.

The analysis also shows how the courts have always played a significant role in upholding the goals of IBC, but the legislative intent cannot ensure the successful resolution of insolvency. To move the system forward, the infrastructure of adjudicatory institutions must be strengthened, there needs to be stronger coordination between the institutions, a more transparent commercial decision-making process is required, financial distress should be identified early, and resolution plans should be effectively implemented upon approval. These changes would ensure the goal of maintaining viable businesses while safeguarding in good faith the claims of creditors and other parties.

Overall, the Insolvency and Bankruptcy Code, 2016, has provided a good bedrock for the corporate insolvency resolution in India. But it has to be continuously refined, institutionalised, and implemented over the years if it is to survive and flourish as a sustainable strategy. This study highlights several practical issues that need to be addressed to ensure that liquidation is truly used as a process of last resort and the primary goal of the IBC is achieved, which promotes the rescue of companies, economic stability, and sustainable commercial development.

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