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## *The Insolvency and Bankruptcy Code,2016: A Critical Analysis*

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### I. Introduction

Think of being a creditor owed crores by a company that is basically insolvent. You go to court with papers in hand, hoping for recovery, but then you're told to wait, because the whole process drags on for years. Meanwhile, the promoter of that same collapsed company, sheltered by a statute meant to "rehabilitate" sick industries, keeps his chairman's seat while creditor money evaporates. This was not a hypothetical in pre-2016 India; it was the lived reality of creditors navigating an insolvency landscape defined by fragmentation, delay, and systemic helplessness.[1]

The problem was structural. Multiple statutes — SICA (1985), the Companies Act (1956), the RDDBFI Act (1993), and SARFAESI (2002) — each covered a slice of the insolvency problem without any of them governing the whole. Forums overlapped. Standards conflicted. Something had to give.

The Bankruptcy Law Reforms Committee (BLRC), constituted under Dr T.K. Viswanathan in 2015, surveyed this wreckage and recommended a single, comprehensive, time-bound insolvency scheme built on one clear idea: where a company cannot pay its debts, creditors — not the failed promoter — should be in the driver's seat. The IBC is the recommendation enacted into law. Its impact was measurable and fast: India's rank in the World Bank's "resolving

[1]Insolvency and Bankruptcy Code, No. 31 of 2016, Preamble (India) [hereinafter IBC].

insolvency" parameter jumped from 136 in 2016 to 52 in 2020 — 84 places in four years — a clear signal to global capital markets that India had decided to take creditor rights seriously.[2]

## II. Historical Background  and Legislative Perspective

Before the IBC, a firm sliding into insolvency could, at the same time, show up before the Board for Industrial and Financial Reconstruction (BIFR) under SICA, approach the High Court under the Companies Act, go to a Debt Recovery Tribunal under RDDBFI, and face secured creditors using SARFAESI— all of this kind of in parallel, under different playbooks. Creditors couldn't coordinate properly, and so the cases kept running in opposite directions sometimes, quite literally. The average insolvency resolution in India took about 4.3 years, while the global average was closer to 2.7, and recovery outcomes were among the poorest when you compare with similar economies. Banks were left holding heaps of non-performing assets, with basically no credible legal path for recovery.

SICA was the most egregious offender of the old regime. Passed with good intentions — to rehabilitate genuinely distressed industries — it became a tool for promoters to shelter failing companies in the limbo of BIFR.It's the debtor-in-possession model, which—kind of allowed the same management that had driven the company into trouble to keep running it during rehabilitation, was almost like an invitation for asset stripping. Creditors sat there, helpless as collateral values kept eroding, cases dragged on and the chance of a real recovery fell back year after year.

[2]Bankruptcy Law Reforms Committee, *Report of the Bankruptcy Law Reforms Committee* vol. 1, at 3–5 (Ministry of Finance, Gov't of India, Nov. 2015); World Bank Group, *Doing Business 2021: Comparing Business Regulation in 190 Economies* 4 (2020) (recording India's rank improvement from 136th to 52nd on the "Resolving Insolvency" indicator between 2016 and 2020).

## III. The Insolvency and Bankruptcy Code, 2016: Structural Framework and Key Mechanisms

### *A*. Institutional Framework

Any law is only as strong as the institutions that try to make it real, like in practice, not in theory. The IBC's drafters, they seemed to know this a lot. They had watched how earlier insolvency statutes kinda collapsed, not because the underlying ideas were actually bad, but because the forums meant to implement them were swamped, under-resourced, or just not in sync with each other. The National Company Law Tribunal (NCLT) was named as the adjudicating authority for corporate insolvency under Part II of the Code; the Debt Recovery Tribunal (DRT) does the comparable job for individual and partnership insolvency under Part III. NCLT rulings can be challenged at the National Company Law Appellate Tribunal (NCLAT), and then on to the Supreme Court, but only where questions of law are involved — that limits what's factual, so parties can't haul every dispute up, and that helps avoid strangling delay. Over all of this, not exactly as a court, the Insolvency and Bankruptcy Board of India (IBBI) sits as regulator, it licenses insolvency professionals, supervises information utilities, and issues the secondary regulations, which basically add operational meaning to the Code's backbone framework provisions.

The IBBI has been a productive regulator. Its output — spanning professional conduct rules, liquidation procedures, and the PPIRP — has produced a layered secondary framework that allows the regime to adapt to problems the original statute did not foresee. The cost is real, though: staying current with the steady stream of IBBI amendments has turned into a bit like a full-time gig for insolvency practitioners, and all the frequent regulatory movement makes it more difficult to offer clients really clear legal guidance right in the middle of an active CIRP. There's this ongoing tension between being responsive and still keeping certainty, which the IBBI still has not fully ironed out.

### *B. Corporate Insolvency Resolution Process (CIRP)*

The Corporate Insolvency Resolution Process (CIRP) kinda starts when either a financial creditor, under Section 7, or an operational creditor under Section 9, or even the corporate debtor itself under Section 10, files an application before the NCLT. After that is admitted, a moratorium under Section 14 kicks in right away, which puts a stay on suits, blocks asset transfers, and basically limits enforcement proceedings. At the same time, the board of directors is suspended, and an Interim Resolution Professional (IRP) takes over the company, looks after its affairs, and also sets up the Committee of Creditors (CoC). The CoC sits at the centre of everything the CIRP is designed to do. Made up of all financial creditors of the corporate debtor, it inherits the governance authority that the old board had, and uses that authority to evaluate and approve resolution plans submitted by prospective resolution applicants. A plan requires the backing of at least 66% of the voting share of financial creditors before the CoC can pass it. Retail financial creditors — a category that, importantly, was expanded by the 2018 Amendment to include homebuyers who had paid advances for flats they never received — participate in CoC proceedings through specially appointed authorised representatives, so that their voice is not simply drowned out by the institutional lenders.[3] The underlying logic of the CoC structure is straightforward and honestly quite sensible: the people who stand to lose the most money have the clearest reason to push for the best possible outcome, and they are also the ones best placed to scrutinise whether a resolution plan actually delivers what it promises.

Section 12 imposes a firm time discipline. The CIRP must be completed within 180 days of admission, extendable by up to 90 days on CoC approval, subject to an absolute outer limit of 330 days introduced by the 2019 Amendment, covering all legal proceedings and extensions combined. Whether this ceiling is observed in practice is addressed critically below.

### *C. The Waterfall Mechanism under Section 53*

When no viable resolution plan materialises, the corporate debtor goes into liquidation, and it is Section 53 that takes over from that point. It sets out, in strict sequence, who gets paid from the liquidation proceeds and in what order — the arrangement the statute calls the 'waterfall'.[4] The

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[3]IBC §§ 25A, 24 (as amended by the Insolvency and Bankruptcy Code (Amendment) Act, No. 8 of 2018 (India)) (empowering authorised representatives to vote on behalf of retail financial creditors in the CoC).
[4]IBC § 53 (waterfall mechanism governing distribution of proceeds in liquidation); see also Insolvency and Bankruptcy Code (Amendment) Act, No. 26 of 2019 (India) (introducing the absolute outer time-limit of 330 days for completion of the CIRP under § 12).

costs of the insolvency resolution process itself come first, which makes sense because no one would agree to take on the role of resolution professional or fund the process without that assurance. After those process costs are cleared, workmen's dues for the 24 months preceding the liquidation order rank alongside the claims of secured creditors. Unsecured creditors and government dues follow in the next tier. Whatever remains after those layers are satisfied goes towards other debts, and right at the bottom, receiving whatever is left — which, in most liquidations, is nothing at all — stand the equity shareholders. Under the old legal framework, Crown debts had a traditional priority. When this was challenged before the Supreme Court in Swiss Ribbons Pvt. Ltd. v. Union of India, the Court held that this reversal was not arbitrary at all — it was a considered legislative choice about how best to serve the economy by encouraging creditors to lend, and it was firmly within Parliament's power to make.

**IV. Landmark Judicial Interpretations**

The IBC has generated a rich body of judicial interpretation. Over eight years, the Supreme Court and the NCLT/NCLAT have shaped — and at times substantially rewritten — how the Code operates in practice.

The Supreme Court cleared up some things about the IBC. It did this in a way. In the case of Mobilox Innovations Pvt. Ltd. Versus Kirusa Software Pvt. Ltd. the Court said that the CIRP process cannot be used to get money if there is already a real dispute. This means a dispute that was already happening under Section 9 of the IBC.[5]

The Supreme Court went further in the case of Swiss Ribbons Pvt. Ltd. Versus Union of India. It said that the IBC is constitutional, and it also said that there is a difference between financial creditors and operational creditors. This difference is really important.[6]

Then, in the case of Committee of Creditors of Essar Steel India Ltd. Versus Satish Kumar Gupta, the Court said that the people in charge of the creditors have to make business decisions.

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[5]*Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, (2018) 1 SCC 353 (India) (holding that an operational creditor's application under IBC § 9 must be rejected if the corporate debtor raises a pre-existing genuine dispute, thereby precluding use of the CIRP as a debt-collection mechanism).
[6]*Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17 (India) (upholding the constitutional validity of the IBC in its entirety and sustaining the differential treatment of financial creditors and operational creditors as a reasonable and non-arbitrary classification).

It also said that no group of creditors can be completely ignored when making a plan to solve the problem. There has to be a way to divide things up. The Court said that even if the people in charge of the creditors make a business decision, they still have to be fair. The Essar Steel case showed what the limits are for the Court to get involved in the CIRP process. This is why the Essar Steel case is an important one for people who work with the IBC.Two more decisions sort of complete the picture. In Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416, the Supreme Court upheld the 2018 amendment that treated real estate homebuyers as financial creditors, so that hundreds of thousands of flat purchasers who had paid advances for homes not yet delivered could take part in CoC proceedings. Then, in Vidarbha Industries Power Ltd. v. Axis Bank Ltd. (2022) 8 SCC 352, the Court said the NCLT keeps a residual discretion to refuse admission under Section 7 even when debt and default are both shown. That holding has sparked a fair bit of debate; it does add a particular nuance to how admission happens, but it also opens a channel for debtors to stall the start of CIRP. And this, in practice, can really reshape recovery outcomes.

## V. Critical Analysis

### A. Achievements of the IBC

The IBC's record is one of genuine achievement, and honestly, it feels a bit bigger than the bare stats. From December 2016 to March 2024, creditors realised over Rs. 3.16 lakh crore through completed CIRP proceedings against admitted claims of around Rs. 10.2 lakh crore. On first glance, 31 paise on the rupee sounds modest, until you compare it to the near-zero recovery creditors saw via liquidation and DRT proceedings before 2016. Beyond these figures, IBBI data suggests the pressure of CIRP by itself has pushed voluntary repayments worth several times the amount actually realised through those concluded proceedings. Also, its detailed quarterly publications have, for the first time, made India's insolvency system genuinely transparent and usable for evidence-based reform, even if it was never framed that way before.

### *B. Criticisms and Remaining Gaps*

None of this means the IBC has arrived at perfection. Far from it, really. The most glaring failure is the one that is, somehow, always the first one cited: the 330-day outer timeline is, in practice, more aspirational than operational. As of March 2024, the average time for completion of CIRP had crossed 700 days, which is more than double the statutory ceiling. The reason is not hard to identify — litigation. Parties routinely approach the NCLT, then NCLAT, then the Supreme Court at every conceivable procedural juncture. Each appeal adds months, and then another round. Even the bench strength at the NCLT has not really kept pace with the volume of filings. That creates backlogs which, in turn, erode the very certainty and speed that the IBC was supposed to guarantee.

A more structural concern is how operational creditors are treated. The IBC's two-tier design — financial creditors inside the CoC, operational creditors outside it — did make theoretical sense at the time of drafting. They cannot vote on a resolution plan. They also routinely receive far less than financial creditors in approved plans. The MSME supplier who gave trade credit in good faith can end up seeing its claims substantially written off, while a resolution restores the corporate debtor to health, mainly for the benefit of banks.

Two further gaps deserve mention, and they are not small. First, Part III of the IBC — governing the insolvency of individuals and partnerships — remains a dead letter. Its "fresh start" orders, individual insolvency resolution, and personal bankruptcy have not been operationalised in any meaningful way. This is a serious omission, especially because personal guarantees by promoters are standard features of Indian corporate lending. Second, India's refusal to adopt the UNCITRAL Model Law on Cross-Border Insolvency has left the framework without a mechanism for coordinating insolvency proceedings that span multiple jurisdictions.[7] The Jet Airways collapse, with simultaneous proceedings in India and the Netherlands proceeding in complete isolation from each other, illustrated how costly this gap can be in a world of internationally integrated corporate groups.

### *C. Recent Legislative Reforms*

[7]Jet Airways (India) Ltd. v. State Bank of India, [2019] SCC OnLine NCLAT 388; see also Re Jet Airways (India) Ltd., [2020] SCC OnLine NCLT 217 (illustrating the gap in India's cross-border insolvency framework in the absence of UNCITRAL Model Law adoption).

The government has done something about this problem. They made a law called the IBC Amendment Act in 2021. This law includes something called the Pre-Packaged Insolvency Resolution Process for medium-sized businesses. This process is like a mix of things. The people who run the business get to stay in charge. At the time, a special person oversees everything. They work out a plan with the people who are owed money before going to court. This seems like an idea because it recognises that the old way of doing things is not good for small businesses. The old way is too harsh for businesses where the people who start the business know what they are doing and have good relationships with others. These relationships are very important to the business. The Pre-Packaged Insolvency Resolution Process, for medium-sized businesses, is a good thing because it takes this into account.

## VI. Comparative Perspective

The choice between debtor-in-possession and creditor-in-control is an issue in insolvency law. It is a problem that many countries face. How different countries deal with this issue shows what is important to them and how they do things.

In the United States, Chapter 11 is a known debtor-in-possession setup. The people who manage the company get to stay in charge. They are called the debtor-in-possession, and they work with creditors to come up with a plan to fix the company. The court watches to make sure everything is done fairly. This is done because the managers know the company better than anyone else

The way the United Kingdom handles these situations is similar to what India's doing. When a company is in trouble, an administrator takes over. This person is like the Resolution Professional in India. They try to sell the company or make a deal with the creditors. The United Kingdom also did something that India has not done yet. They agreed to work with countries to solve problems that involve companies in many countries. This is important because it helps when companies like Jet Airways have problems in countries at the same time.

## **VII. Conclusion**

Nearly a decade on, the IBC has earned its place as the most consequential commercial law reform in post-liberalisation India. It built not just a statute but an entire professional ecosystem and judicial infrastructure, and most importantly, it changed the incentive structure for promoters and lenders alike. The promoter who once used insolvency law as a shield now knows it can cost him his company. The bank that once buried non-performing assets now has a credible route to resolution. Those are not small shifts.

The gap between the 330-day statutory ceiling and the 700-day reality is not a technical problem — it is a governance failure that demands urgent attention. The treatment of operational creditors raises fairness questions that cannot be permanently deferred.

The good news is that the IBC has proven adaptable. The PPIRP, the homebuyer amendments, the continuous stream of IBBI regulations — these demonstrate a system capable of learning from experience.