The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

CORPORATE RESTRUCTURING UNDER THE IBC: HAS INDIA SHIFTED FROM THE LIQUIDATION CULTURE TO A RESCUE CULTURE?

Padmaja E

ABSTRACT

The corporate insolvency system in India is an important change in the approach towards dealing with insolvency from the liquidation-based system towards the corporate rescue and the maintenance of the value of enterprises. Before the introduction of the Insolvency and Bankruptcy Code, 2016, there existed a scattered insolvency law system based on several pieces of legislation such as the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debts due to Banks and Financial Institutions Act, 1993, SARFAESI, and the Companies Act. These overlapping mechanisms had jurisdictional disputes, long time periods, low recoveries and the loss of value of enterprises, ending in liquidation rather than rehabilitation.

The paper aims to explore how the IBC has changed the insolvency system in India. It examines the design structure of the Code, such as creditor control, timeliness of the process, and the role of the Committee of Creditors (CoC). Besides, it assesses the impact of important Supreme Court judgments like Innoventive Industries Ltd. v. ICICI Bank, Swiss Ribbons Pvt. Ltd. v. Union of India, K. Sashidhar v. Indian Overseas Bank, and Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta on the current insolvency regime. The paper finds out that although the IBC has certainly been successful in increasing recovery ratios, reducing delays, and bringing resolution as an effective substitute to liquidation, the framework created as a result of these developments is not a rescue culture in its true sense. Rather, it is a creditor-based rescue framework wherein the decision-making about the reviving process of the corporation is mostly immune from judicial review and depends on the commercial judgment of the financial creditors.

INTRODUCTION

When a company falls into financial despair in India, it previously did not have much choice but to take the easy but saddening way out , which is liquidation. It permanently sold its assets to pay off creditors, and ceased to exist. After a company's financial failure, the primary focus was to compensate the stakeholders and creditors who had interest in the company. Therefore the available options were liquidation or the government stepping in to take control and nationalize the company.

Liquidation pays no heed to the enterprise value and is an unfavourable option with regards to employment. On the other hand, the government taking over a company could lose the faith of the investors. The government is not meant to run commercial businesses, but rather to make policies and regulations. Shifting the burden from private companies to the government could also affect the public as now the funding to recover the company comes from the taxpayers.

Having the only two options to be unfavourable, the path of business was considered uncertain.

Business growth propels economic growth which in turn majorly contributes to the holistic growth of the country by providing employment, increasing productivity, generating tax revenues, etc. Therefore, conducting businesses being a risky path affects economic growth of the country as there is no impetus to keep going or resolution if a company fails. It becomes a highly expensive gamble. And with an ever-changing market dynamics, the companies must be given a framework to restructure itself to adapt to the change, making corporate restructuring indispensable.

CORPORATE RESTRUCTURING BEFORE THE IBC

Corporate restructuring is reorganizing a company and providing reformed financial, operational and organizational designs. Corporate restructuring plays a critical role in assisting in shifting through market changes, increasing competency and minimizing financial distress.

While liquidation is reactive, corporate restructuring treats financial hardship as a curable condition. It acts preventive rather than sweeping the debris after a broken company. It aims to prevent the company from breaking by taking many forms such as debt restructuring, mergers, assets sales, management overhauls and more. Being a much propitious alternative for liquidation, it still was not availed to its fullest potential due to scattered regulating frameworks.

Having a robust restructuring regime on the basis of economics lies in the concept of enterprise value, wherein a viable enterprise which has skilled labor, good networks of suppliers, customers and also intangible goodwill is more valuable than the sum of its assets in liquidated form.[1] Where a legal regime channels every distressed enterprise into liquidation, such surplus value gets systematically lost, hurting not just the creditors but the economy as well because the productive capacity of the economy goes down.

The purpose of restructuring regimes is to extract such surplus value, but only in those cases where the underlying enterprise is viable; otherwise, keeping a non-viable business alive is like postponing the inevitable. And, the key design task before any regime of insolvency law, then, is to distinguish between viable and unviable enterprises and channel them accordingly without the kind of delay, capture and moral hazard that existed under the old Indian regime.

THE PRE-IBC ERA: A SCATTERED FRAME

Until 2016, corporate insolvency in India involved not one but a combination of at least four laws: The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)[2], which provided for the constitution of the Board for Industrial and Financial Reconstruction (BIFR) for identifying and restructuring "sick" industrial companies; the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which constituted Debt Recovery Tribunals (DRTs) for recovery of dues by banks[3]; the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI)[4], which empowered secured creditors to enforce their security interest without court's involvement; and the winding up provision under the Companies Act, 1956 and 2013 which dealt with liquidation per se.[5] These different legislations covered different aspects of the issue but failed to address the entire aspect of the issue, leading to conflict and inconsistency of jurisdiction where one

[1]Report of the Bankruptcy Law Reforms Committee, Vol. I: Rationale and Design S 3.5 (Ministry of Fin., Gov't of India, Nov. 2015).
[2]Sick Industrial Companies (Special Provisions) Act, No. 1 of 1986, India Code (1985) (repealed 2003).
[3]Recovery of Debts Due to Banks and Financial Institutions Act, No. 51 of 1993, India Code (1993).
[4]Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002, India Code (2002).
[5]Companies Act, No. 18 of 2013, India Code (2013).

corporation would find itself in the process of resolution by the BIFR, DRT, and company court simultaneously.[6]

SICA offers the most concrete example of how, even in a rehabilitative law, a culture resistant to both liquidation and resolution might emerge. Instead of adopting a cash flow-based test (cash flow inability to repay debts), the Act adopted a balance sheet test (where accumulated losses exceeded net worth), so that a company could be termed 'sick' only after it had deteriorated to such an extent that recovery had become difficult. Furthermore, section 22 of SICA automatically triggered a moratorium when a reference was made to the BIFR, and this was used not as a respite to enable revival, but as a tool to protect management from enforcement by creditors. Given that there were no stipulated deadlines to complete the process of BIFR examination, the process often took years, and in many cases, over a decade; by then, whatever enterprise value was available to the company had dissipated. Even in the event of a recommendation for winding up by the BIFR, the courts were wont to grant a stay on the order, due to considerations about workers, so that the one remedy under the old law that worked fast hardly ever operated at all.

This led to a system which was both too lenient to defaulting promoters, who stayed in control of the firm during the process of rehabilitation, which, in effect, was a "debtor-in-possession" structure without any of the checks and balances that made debtor possession workable elsewhere, and too stringent towards any attempt at rescue, as delay negated the very value of continuing business operations that was to be preserved through rehabilitation. The recovery rates for creditors in the regime before the IBC era are widely believed to have been consistently below twenty-five percent, with solutions coming after six to eight years of delay, if ever.[7] This was, in essence, not a rescue culture. This was a liquidation culture, but one that merely deferred liquidation. While value bled out due to the deferral of liquidation, there was no effective way for the creditors to make any decision. Business failure, within this framework, was neither a resolved problem nor was it an ongoing problem; it was an unresolved problem, the uncertain path that discouraged entrepreneurs.

INSOLVENCY AND BANKRUPTCY CODE, 2016: INTRODUCTION

[6]BLRC Report, supra note 1, § 3.2.
[7]Insolvency & Bankruptcy Bd. of India, Ten Years of the Insolvency and Bankruptcy Code (2026).

The IBC thus brings together this diverse landscape to one cohesive body of law, with the National Company Law Tribunal (NCLT) administering the code, with appellate and supervisory jurisdiction being vested in the National Company Law Appellate Tribunal (NCLAT) and the Supreme Court, respectively, and the Insolvency and Bankruptcy Board of India (IBBI) regulating this process.[8] Its very aims of timely reorganization and insolvency resolution of corporate entities, maximization of the value of their assets, promotion of entrepreneurship and access to credit, and balancing the rights of all the stakeholders constitute an intentional move away from the recovery-centric approach of SARFAESI and the protection-centric approach of SICA.

From the structural point of view, the Code introduces creditor-in-control, rather than debtor-in-possession: upon filing for insolvency, the existing board of directors is put on hold; a resolution professional manages the company on a temporary basis; and a Committee of Creditors, consisting of financial creditors, is formed in order to make a decision regarding the future of the business.[9] The CIRP itself is subject to stringent deadlines of statutory nature (originally set to 180 days, then extended to 270 and finally to 330, including legal proceedings). It is the time-bound nature of the procedure, rather than any particular rule, that solves the key problem of the SICA period: the lack of deadline when the decision should be made either way.

FROM THE LIQUIDATION CULTURE TO RESCUE CULTURE

However, merely the act does not constitute a rescue culture; it constitutes a framework of sorts for a rescue culture to be built upon, and it was up to the Supreme Court, through a series of cases from 2017 till 2019, to figure out how the framework should be filled in. On examination, the following conclusions can be drawn from such cases that while the idea of the rescue culture constructed under the IBC Act may seem vague on face value, it is rather something specific.

i. Innoventive Industries Ltd. v. ICICI Bank

In the case of Innoventive Industries Ltd. v. ICICI Bank, the Supreme Court determined that the IBC's admission criterion depends upon the factual determination of default irrespective

[8] Insolvency and Bankruptcy Code, No. 31 of 2016,India Code (2016), S 5(1), 61, 64, 189.
[9] Essar Steel India Ltd. Comm. of Creditors v. Satish Kumar Gupta, (2020) 8 S.C.C. 531(India).

of any examination of the existence of dispute over such debt, thus rendering the constitutionality of the low-threshold mechanism of the Code beyond question.[10] In another judgment delivered in the year 2018, that is, the case of Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta, the Supreme Court set out the obligations corresponding to the powers of the CoC, namely, to assess the eligibility of the applicant for resolution, to exhaust all possibilities of resolution prior to considering liquidation to be a necessity, and to ensure fairness of the resolution plans to all classes of creditors.[11] Both the judgments above have laid down the limits of the newly established regime in terms of the low threshold criterion for CIRP and duties of the CoC within such a process.

ii. K. Sashidhar v. Indian Overseas Bank

K. Sashidhar vs. Indian Overseas Bank & Ors., decided by a two-judge Bench consisting of Justices A.M. Khanwilkar and Ajay Rastogi on 5 February 2019.[12] This appeal came up in relation to two insolvency cases, viz. those of Kamineni Steel & Power (India) Pvt. Ltd. and Innoventive Industries Ltd. Both insolvency cases involved rejection of resolutions plans submitted to the Committee of Creditors (CoC). It was the contention of the appellants that while in the Kamineni case, the Resolution Plan was rejected by the NCLT since it could muster just about 66.57 per cent against a threshold of seventy-five per cent then in existence, the rejection was erroneous since the votes of those creditors who abstained were wrongly ignored. While NCLAT set aside both the approvals, it also directed liquidation. It is contended by the appellants that both the NCLT and NCLAT should have evaluated the reasons for the rejection by the CoC and separately that an amendment effected in 2018 reducing the voting threshold from seventy-five to sixty-six per cent should be applied retrospectively.

Both arguments were summarily dismissed by the Supreme Court, in the process giving birth to the single most significant principle of law for the insolvency practice in India: the "commercial wisdom" of the CoC, whether applied as a collective body or through each financial creditor voting on it, is not judicially reviewable. According to the Supreme Court, the competence of the Adjudicating Authority in relation to Section 31 is limited to ensuring that the plan proposed by the majority of the CoC meets the criteria stipulated in Section

[10] Innoventive Indus. Ltd. v. ICICI Bank, (2018) 1 S.C.C. 407 (India).
[11] ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta, (2019) 2 S.C.C. 1 (India).
[12] K. Sashidhar v. Indian Overseas Bank, (2019) 12 S.C.C. 150 (India).

30(2) of the Code; the authority cannot sit in appeal on the reasoning of the CoC with respect to the commercial considerations behind accepting or rejecting such a plan. Not even the amendments made to the Code in 2017, which included the requirement of feasibility and viability being considered by the CoC before the plan is adopted, gave rise to an additional criterion of evaluation by the tribunal. Regarding retrospectivity of the amended law, the court followed the general rule of construction of statutory enactments that every act is presumed to be prospective in nature unless the legislature specifically provides otherwise, and thus the amended reduced threshold for approval of the resolution plan could not revive failed resolutions that had been attempted at the threshold set before the amendments, which required a majority of seventy-five per cent.

In effect, Sashidhar served to completely protect the decisions of the CoC from judicial interference. A resolution plan either succeeds or fails depending on the approval of the vote of financial creditors; once such a vote fails, then the only option left is liquidation, and the company, its promoters, employees and operational creditors have no place where they can challenge the commercial judgment of the CoC.

iii. Swiss Ribbons Pvt. Ltd. v. Union of India

A number of weeks prior to Sashidhar, in Swiss Ribbons Pvt. Ltd. v. Union of India, the apex court of India had affirmed the constitutional validity of the IBC in its entirety, holding that the exclusion of operational creditors from any right to vote on the Committee of Creditors did not violate Article 14 of the Indian Constitution.[13] The Court held that financial creditors, being well-equipped for their role by the process of carrying out due diligence and viability studies before granting the loans, were in a better position as compared to operational creditors to evaluate whether the corporate debtor could be revived. What this essentially meant was that there existed a discernible differentia, which was reasonably related to the purpose of maximizing the value of the enterprise. Notably, it was in this judgement that the Court made an important observation regarding the philosophy behind the Code, a statement which has frequently been referred to since then. It was held that the primary purpose of the Code was to revive and maintain the corporate debtor by ensuring that it was protected from the defaulting management, liquidation being a measure of last resort when all other options failed.

[13]Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 S.C.C. 17 (India).

iv. Essar Steel India Ltd. v. Satish Kumar Gupta

In its decision of Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, delivered late in 2019, the Supreme Court added yet another dimension to this complex landscape.[14] In the ruling, the Court reasserted the preeminence of the judgment of the CoC on the question of the sharing of resolution proceeds, while simultaneously asserting the right of operational creditors to reasonable and fair treatment – not necessarily equal treatment in comparison to financial creditors, but not arbitrary or illusory treatment either. Essar Steel is commonly interpreted as tilting in the direction of operational creditors to a slightly greater degree than Swiss Ribbons, although together they reinforce, not undermine, the basic structure.

WHY THE CODE PRIORITIZES CREDITORS

The net effect of the case law thus far is that of a Code which, both by its design as well as by virtue of judicial intervention, is creditor-friendly in at least four different aspects. Firstly, default itself constitutes the ground for entry into CIRP, thereby facilitating the process of a financial creditor filing for CIRP and making it difficult for a corporate debtor to oppose its invocation on the merits of the dispute, a principle reiterated in Innoventive. Secondly, control of the company in CIRP does not vest with a rehabilitation body or with the promoters, but with the CoC via the resolution professional, who oversees as opposed to adjudicates. Thirdly, and finally, the commercial substance of a resolution plan, who the acquirer is going to be and what will be the recovery for each class of creditors, is decided by the CoC and is non-justiciable in the face of Sashidhar, subject only to the limited procedural controls of Section 30(2). Fourthly, the liquidation waterfall as provided under Section 53, reaffirmed in Swiss Ribbons, makes operational creditors subordinate to financial creditors and workmen.

This, by itself, does not amount to a criticism of the Code. There is a certain logic to the Code's structure: financial creditors, particularly banks, have the knowledge, information, and incentive to make good viability decisions, while any other method would likely be subject to the same delays and potential for capture that destroyed SICA. However, it is necessary to describe the model in the proper terms. The IBC framework is not one that

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

fosters a rescue culture in which the firm, its workers, and its creditors bargain together for an optimal solution, facilitated by an independent judge as in the debtor-in-possession system of US Chapter 11. It is, rather, a creditor control system in which rescue is attempted solely as far as and in the manner as considered commercially viable by the creditors that will have to carry the burden of rescue.

A CRITICAL ANALYSIS OF INDIA'S SHIFT TO A RESCUE CULTURE: HAS IT REALLY BEEN DONE?

The truth of the matter is: yes, but not consistently. The doctrinal change is real and cannot be overemphasized either. Indeed, the very fact that there exists an "alternative to liquidation" doctrine of sorts embodied in the Swiss Ribbons decision, where the idea is that liquidation must follow failure to resolve the issue, shows a complete reversal of the status quo before IBC, wherein the idea was that liquidation, regardless of how long it took, would be the last thing on the agenda for any troubled business.[15] The numbers tell the tale: a sizable number of firms that have managed to leave the CIRP process through approved resolutions have been firms that used to be stuck with the BIFR or have already been dead.[16] Creditors' recovery rates have greatly improved since the pre-IBC days, and resolution times, although they exceed the 330-day statutory cap in most instances, are much shorter than the six-to-eight years standard of SICA and the DRT process.

But three structural aspects make it difficult to say that India has emerged as a rescue culture jurisdiction in the full sense of the term. First, numerically, liquidation still substantially outnumbers resolution in terms of outcomes from completed cases: a significant number of companies which pass through the CIRP process enter into liquidation and not into a plan of rescue, indicating that for the median distressed company, the Code still serves more as an orderly and fast way of liquidation than as a rescue tool.[17] Second, as a result of Sashidhar, the decision of CoC is virtually unassailable, and therefore the Code has no adequate means of protection against CoC which, without a reasonable cause, refuses to accept the risk and revive the company where revival could be achieved using another, more patient capital structure.[18]

[15]Swiss Ribbons, (2019) 4 S.C.C. 17, ¶ 12.
[16]Insolvency & Bankruptcy Bd. of India.
[17]ibid.
[18]K. Sashidhar v. Indian Overseas Bank, (2019) 12 S.C.C. 150 (India).

Third, the continual delay beyond the statutory deadline, largely through litigation at the NCLT and NCLAT around eligibility, valuation, and the execution of the plan, results in the failure that doomed SICA in that the reduction of enterprise value due to such delay has not been solved but merely mitigated; the enterprise value continues to be eroded with each extra month that passes until Sashidhar's zone of finality is achieved.[19]

Overall, it is perhaps fairer to say that what has occurred in India is a move away from an almost absolute liquidation-based legal framework toward a more limited and creditor-vetted rescue system: one that allows for rescue as a realistic possibility and one that is judicially enforceable, but only when and to the extent that it fits the business needs of the financial creditors, shielded from external intervention by virtue of the Sashidhar ruling. It is less ambitious a goal than a debtor-focused or stakeholder-focused rescue system, but still an improvement on the pre-2016 framework, where a viable and financially rational rescue attempt could be delayed indefinitely.

Instituting the Code did not mean doing away with liquidation; rather, it meant bringing discipline into the decision-making process regarding which was chosen, rescue or liquidation, and placing such decision-making power, almost totally, with the class of persons best equipped for making the choice.

CONCLUSION

The pre-IBC insolvency regime in India did not provide any sort of middle path for insolvent firms that were between a never-ending process of liquidation and an unpleasant government bailout, thus making the whole process of doing business a financial gamble. The IBC is meant to fill this gap by developing a comprehensive regime that could make a distinction between viable and unviable firms and could lead each of them to the appropriate conclusion.

From Innoventive to Swiss Ribbons and further through K. Sashidhar v. Indian Overseas Bank and Essar Steel, judicial rulings have made this framework into a well-formulated yet highly creditor-oriented doctrine: liquidation may be the measure of last resort, but the decision as to whether such resort has indeed been taken is, without exception almost, in the hands of the Committee of Creditors, which the courts will not override for lack of their commercial acumen. With respect to this, it can be said that India has moved beyond the culture of liquidation; however, it should be noted that what has replaced this liquidation

[19]Essar Steel India Ltd. Comm. of Creditors v. Satish Kumar Gupta, (2020) 8 S.C.C. 531, ¶¶ 116–20 (India).

culture in India is no "rescue culture" but rather a disciplined and creditor-friendly rescue culture, a culture which has, in a sense, improved upon the past.