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WHY DISTRESSED M&A IS BECOMING A STRATEGIC ROUTE FOR CORPORATE ACQUISITIONS IN INDIA

~ Anshika Mishra

A struggling company can still own a valuable factory, a recognised brand and a loyal customer base. Its difficulty may lie in excessive borrowing or poor management rather than the absence of a viable business. For an acquirer with capital and operational expertise, that gap creates an opportunity: buy an established enterprise, reorganise its obligations and restore its earning capacity.

This explains why distressed mergers and acquisitions have gained strategic relevance in India. Their appeal lies not in replacing conventional acquisitions, but in offering buyers access to established businesses whose underlying assets may remain commercially valuable despite financial distress. While successful insolvency acquisitions demonstrate this opportunity, they do not establish that distressed transactions dominate India's wider M&A market.

HOW INSOLVENCY BECAME AN ACQUISITION OPPORTUNITY

Distressed M&A involves acquiring businesses or assets facing financial difficulty. It may occur through a negotiated sale outside insolvency, a resolution plan under the Insolvency and Bankruptcy Code, 2016 (IBC), or a liquidation sale. These routes carry different risks. The IBC is especially significant because its stated objectives include reorganisation, maximising asset value and balancing stakeholder interests.¹

Within corporate insolvency resolution, an eligible buyer can propose a plan combining acquisition with financial and operational restructuring. The committee of creditors evaluates the resolution

¹ Insolvency and Bankruptcy Code, 2016, pmbi., No. 31, Acts of Parliament, 2016 (India).

plan for its commercial viability and feasibility, while the National Company Law Tribunal examines whether the approved plan satisfies the statutory requirements under Section 31 of the IBC. This creates an organised mechanism for transferring control of a distressed enterprise. The attraction is therefore broader than purchasing cheap assets: it is the possibility of acquiring a functioning business through a collective resolution process.²

EXISTING CAPACITY MAKES EXPANSION COMMERCIALY ATTRACTIVE

Building a business from scratch requires land, construction, equipment, recruitment and customer development. Acquiring an existing enterprise may reduce some of those burdens. A buyer already operating in the same sector can integrate production, distribution and procurement, potentially making assets more productive than they were under the previous owner.

Tata Steel's acquisition of Bhushan Steel illustrates the point. In May 2018, its wholly owned subsidiary acquired a 72.65 per cent controlling stake under an approved IBC resolution plan. According to Tata Steel's November 2018 announcement, Bhushan Steel had an existing production capacity of 5.6 million tonnes per annum as of 31 March 2018, along with established capabilities in automotive-grade and high-carbon special steel.³ The strategic attraction was access to established industrial capacity. Financial distress had opened an acquisition opportunity involving commercially useful infrastructure.

Pricing also matters. Distress can weaken a seller's bargaining position and allow buyers to acquire assets below the cost of creating equivalent capacity. Yet a discount is only meaningful after accounting for repairs, working capital, employee retention and integration. Competitive bidding can raise the acquisition price, while prolonged business disruption can reduce the value of what is being purchased.

RESTRUCTURING REDUCES UNCERTAINTY OVER OLD CLAIMS

A conventional share acquisition generally leaves the target company's liabilities within that company. Buyers must investigate them and negotiate contractual protection. With a distressed

² Insolvency and Bankruptcy Code, 2016, §§ 29A–31, No. 31, Acts of Parliament, 2016 (India).

³ Tata Steel, *Bhushan Steel Limited Is Tata Steel BSL Limited Now* (Nov. 28, 2018), <https://www.tatasteel.com/newsroom/press-releases/india/2018/bhushan-steel-limited-is-tata-steel-bsl-limited-now/>.

seller, an indemnity may offer little practical comfort if the party giving it lacks the money to honour it.

An approved IBC resolution plan offers a different degree of certainty. In *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, the Supreme Court clarified that, upon approval of a resolution plan under Section 31 of the IBC, claims against the corporate debtor that are not included in an approved resolution plan stand extinguished, including qualifying statutory dues owed to government authorities. In *JSW Steel Ltd. v. Pratishtha Thakur Haritwal* (2025), the Supreme Court reiterated the binding effect of an approved resolution plan while considering subsequent tax demands raised against a successfully resolved corporate debtor.⁴ For buyers, this makes the cost of taking over a distressed company more capable of assessment.

Section 32A provides conditional protection against liability for offences committed by the corporate debtor before the commencement of CIRP, subject to approval of a resolution plan and the prescribed change in management or control. This protection does not extend to individuals who remain personally liable for their involvement in those offences.⁵ These protections cannot be treated as universal immunity. Buyers must still examine the transaction structure, statutory conditions, approvals and continuing compliance obligations.

CREDITORS HAVE A COMMERCIAL REASON TO SUPPORT REVIVAL

Distressed acquisitions can align the buyer's expansion plans with creditors' recovery interests. A factory sold as separate machinery and land may lose the value attached to its workforce, supply relationships and operating organisation. A buyer able to preserve these elements may offer creditors a more useful outcome than dismantling the enterprise.

The commercial question is whether the proposed restructuring produces a credible, funded business. A plan dependent on optimistic revenue forecasts or uncertain financing can merely postpone failure. A sustainable acquisition requires enough capital to implement the plan and enough expertise to repair the causes of distress. Creditor support is most valuable when accompanied by a realistic turnaround strategy.

⁴ *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, (2021) 9 SCC 657, ¶ 95 (India); see also *JSW Steel Ltd. v. Pratishtha Thakur Haritwal*, 2025 INSC 401, ¶¶ 16, 33–35 (India), https://api.sci.gov.in/supremecourt/2023/2204/2204_2023_2_1501_60444_Judgement_27-Mar-2025.pdf.

⁵ Insolvency and Bankruptcy Code, 2016, § 32A, No. 31, Acts of Parliament, 2016 (India).

WHY THE ROUTE STILL DEMANDS CAUTION

The IBC has not eliminated execution risk. Litigation, incomplete records, deteriorating assets and disputes over contracts can complicate an acquisition. The Supreme Court's decision in *A A Estates Pvt. Ltd. v. Kher Nagar Sukhsadan Co-operative Housing Society Ltd.* (2025) highlights the legal complexities surrounding development rights and insolvency-related protection. For prospective acquirers, such disputes reinforce the importance of verifying the nature, enforceability and continuity of the target company's contractual and property rights.⁶ A buyer therefore needs to investigate what the company actually owns and can continue using.

India's insolvency framework continues to evolve. The Insolvency and Bankruptcy Code (Amendment) Act, 2026 received presidential assent on 6 April 2026, with commencement subject to government notification. Acquirers must therefore examine the relevant commencement notifications and applicable regulations to determine the legal framework governing a particular transaction. For acquirers, legal certainty depends not merely on legislative reform, but also on its effective implementation.⁷

CONCLUSION

Distressed M&A appeals to Indian acquirers because it can combine established capacity, restructuring opportunities and greater certainty over historical claims. Its strongest use is where a financially troubled enterprise retains a commercially sound core that a new owner can revive. The route deserves attention as a strategic acquisition option, while claims of nationwide preference require comparative deal evidence. Ultimately, distressed M&A creates lasting value not merely when an acquirer purchases assets at an attractive price, but when it transforms financial distress into a commercially sustainable business.

⁶ *A A Estates Pvt. Ltd. v. Kher Nagar Sukhsadan Co-op. Hous. Soc'y Ltd.*, 2025 INSC 1366 (India), https://api.sci.gov.in/supremecourt/2025/7272/7272_2025_4_1503_66367_Judgement_28-Nov-2025.pdf.

⁷ Insolvency & Bankruptcy Bd. of India, Discussion Paper on Amendments to CIRP Regulations, 2016 in Pursuance of the Insolvency and Bankruptcy Code (Amendment) Act, 2026, ¶¶ 1–2 (Apr. 15, 2026), <https://ibbi.gov.in/uploads/whatsnew/7a49668e5fe3d71b471be749839855e4.pdf>.