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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



"AN ANALYSIS OF IMPLEMENTATION OF THE RESOLUTION PLAN UNDER IBC IN INDIA VIS-À-VIS CORPORATE RESCUE IN THE UNITED KINGDOM"

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ABSTRACT

This research aims to critically analyze the implementation of the Resolution Plan under the Insolvency and Bankruptcy Code (IBC) of India and compare it with corporate rescue practices in the United Kingdom. The study examines the limitations of India's current insolvency regime, focusing on the corporate restructuring and revival process. While the IBC provides a legal framework for resolving corporate insolvencies, the effectiveness of its implementation has often been called into question, particularly in terms of achieving corporate rescue as opposed to liquidation. The research identifies key challenges, such as procedural delays, insufficient creditor coordination, and the lack of a robust market for distressed assets, which hinder the success of corporate rescue efforts in India.

Comparing India's approach with the UK's insolvency legislation reveals significant differences in the treatment of distressed firms. The UK has a long-established framework that emphasizes over liquidation, with mechanisms like administration and company voluntary arrangements (CVAs) facilitating business continuity. In contrast, India's IBC, despite its ambitious design, has often leaned towards liquidation as a default outcome, limiting its potential for corporate restructuring. This study also delves into the reasons behind the ineffective implementation of corporate rescue in India, such as the lack of judicial consistency, bureaucratic inefficiencies, and the insufficient focus on protecting business continuity. Based on the analysis, the research provides suggestions for modifying the IBC to prioritize rescue and restructuring. These recommendations include introducing mechanisms for early intervention, enhancing the role of stakeholders in the rescue process, and fostering a more conducive environment for distressed asset sales. By addressing these issues, the study aims to contribute to a more effective insolvency framework that not only resolves financial distress

but also promotes sustainable corporate recovery in India.

TABLE OF CONTENTS

SL.NO	TITLE
1	DECLARATION
2	TABLE OF CONTENTS
3	ACKNOWLEDGEMENT PAGE
4	CHAPTER 1
5	CHAPTER 2
6	CHAPTER 3
7	CHAPTER 4
8	CHAPTER 5
9	CHAPTER 6
10	END NOTES

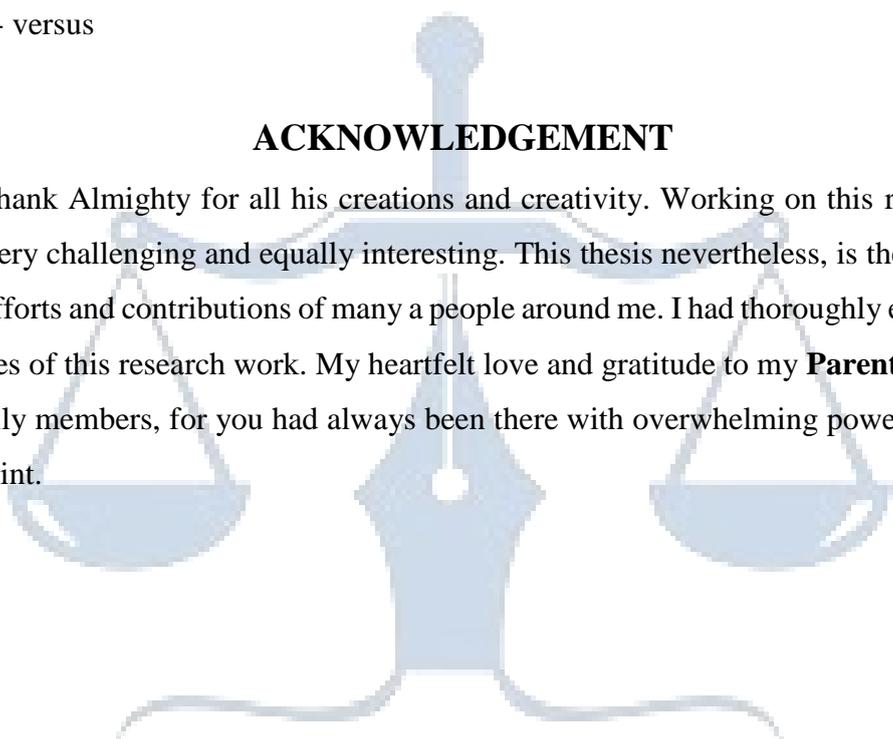
LIST OF ACRONYMS/ABBREVIATIONS

- AIR- All India Reporter
- BIFR- The Board for Industrial and Financial Reconstruction
- CIRP - Corporate Insolvency Resolution process
- CVA - Company Voluntary Arrangement
- CoC - Committee of Creditors
- CORPN Corporation
- DRT - Debt recovery tribunal
- ER – English report
- IA 1986- Insolvency Act
- IBBI - Insolvency and Bankruptcy Board of India
- IBC - Insolvency and Bankruptcy Code, 2016
- IRP - Insolvency resolution professional
- NCLT - National Company Law Tribunal

- NCLAT- National Company Law Appellant Tribunal
- RDDBI -Recovery of Debts Due to Banks and Financial Institutions.
- SCC- Supreme Court Cases
- SICA - The Sick Industrial Companies Act
- SIP - Statement of Insolvency Practice
- UK- United Kingdom
- UKHL- United Kingdom House of Lords
- UNCITRAL- The United Nations Commission on International Trade Law
- V .- versus

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I humbly thank Almighty for all his creations and creativity. Working on this research work had been very challenging and equally interesting. This thesis nevertheless, is the result of the pertinent efforts and contributions of many a people around me. I had thoroughly enjoyed every single stages of this research work. My heartfelt love and gratitude to my **Parents** and the rest of my family members, for you had always been there with overwhelming power and support at every point.



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CHAPTER 1

INTRODUCTION

“Corporate rescue is a major intervention necessary to avert eventual failure of the company.”

Professor Belcher¹

Businesses are like living things. Just like an organ in a body, a business has different parts that work together. Like any living thing, a business can grow and improve, or it can decline and weaken. Some businesses, like some organs, are essential for society to function well. Others may not be critical. Even healthy businesses can get sick over time. Some sick businesses may die, while others can recover. It's the same with startups – not all will succeed, even if they have a good idea. Some startups are even fraudulent, designed to cheat the system. A business can get sick for many reasons, from internal problems to outside influences. The sickness can be temporary, long-lasting, or even permanent.

It has become important to let go of companies that are failing. Allowing a non-functional company to close down is the best course of action, much like withdrawing a patient from life support when there is no longer any hope. This keeps resources from being squandered and lets everyone move on. The previous procedure for handling business failures was cumbersome and unproductive.

A significant advancement is the Insolvency and Bankruptcy Code (IBC). It offers a quicker method of handling bankrupt businesses, including partnerships and other non-corporate entities. Financial hardship is bad for the economy and for businesses. A company's inability to pay its obligations affects all parties. In an attempt to salvage the business, the IBC presents a "resolution plan," however in contrast to certain other nations, India's approach places greater emphasis on asset sales than on business reorganization.

The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") is a watershed moment in Indian law.²

Unlike the openness in many other nations, admitting a company's collapse (bankruptcy) was traditionally a taboo matter in India.

In order to preserve a façade of prosperity, company founders frequently attempted to conceal

financial difficulties.

To address this, the Insolvency and Bankruptcy Code (IBC) was introduced. Creditors can now file an appeal with the National Company Law Tribunal (NCLT) if they have given up on getting their loans back.

In order to help creditors recover a portion of their losses, the NCLT makes it easier to sell the business or its assets.

1.1 Research Objectives

- To examine the limitations of the current Insolvency Regime of India and to compare it with the Insolvency legislation of UK with special reference to the corporate restructuring and revival process.
- To analyse the reason of the ineffective/nugatory implementation of corporate rescue in India.
- To provide suggestions and modifications in the current Insolvency and Bankruptcy Code, 2016 with an emphasis on rescue over liquidation.

CHAPTER 2

INSOLVENCY AND BANKRUPTCY IN INDIA AND UK

Lord Ellenborough stated: *“The principle of (insolvency) bankruptcy laws is to prevent persons craftily obtaining into their hands great substance of other men’s goods, and at their own wills and pleasures consuming the substance obtained by credit of other men and it is always to be remembered that it is protection of persons who have so given credit which is the professed object of bankruptcy laws”*³

The historical analysis of bankruptcy legislation is very lacking. Even while debt slavery and other antiquated practices persisted, official bankruptcy rules did not appear until much later. A fair distribution of a debtor's assets among creditors and a prohibition on debtors hurting the interests of their creditors were the two main objectives of these laws.

These ideas are the foundation of the bankruptcy laws in both India and the UK. However, these laws have undergone significant changes recently. This chapter will delve into the evolution of bankruptcy and insolvency laws in these two countries and their current role in t

he global economy.

2.1. BANKRUPTCY/INSOLVENCY LAWS IN UK

The laws pertaining to insolvency in the UK are not new. This history can be separated into three primary time periods: pre-19th century, 19th century, and post-19th century. The Magna Carta of 1215 had the ninth clause as:

*“If, for lack of means, the debtor is unable to discharge his debt, his sureties shall be answerable for it. If they so desire, they may have the debtor's lands and rents until they have received satisfaction for the debt that they paid for him, unless the debtor can show that he has settled his obligations to them”*⁴

The Bankruptcy Code, the earliest English law addressing insolvency, was introduced in 1542. The "paripassu" principle, which guarantees equitable treatment for all creditors during bankruptcy proceedings, was established under this statute. It did not, however, abandon the severe tradition of treating debtors as criminals. This was also followed by a number of precedents such as *Fowler v. Padget*⁵ wherein bankruptcy was treated still as a crime. Under the Bankruptcy Code of 1542, the situation was made worse by overcrowded prisons full of debtors classified as "criminals." These hard facts influenced the creation of contemporary corporation legislation. The initial measures were the Joint Stock Companies Act and the Winding Up Rules of 1844. By restricting an investor's liability to the amount they invested, the Limited Liability Act of 1855 made improvements even more significant. But until the Debtors' Act of 1869, which outlawed both the practice of imprisoning debtors and the notion that they were criminals, the stigma associated with debtors as criminals endured. Thus, this Act created a layer of protection surrounding the bankrupt/ insolvent and this shelter led to cases such as *Salomon v. Salomon*⁶ where it was proved that even the smallest business enterprise will have protection (shelter). The UK's bankruptcy rules underwent a significant change in the 19th century. Bankrupts were no longer viewed as criminals. Instead, they were protected by a number of new laws. This change encouraged additional investment, which, together with enhanced investor protection, shaped the UK economy.

The efforts to shape the economy and to properly legislate on insolvency laws were seen in the 20th century also. The efforts made up in the 20th century in the United Kingdom could be dealt in three phases- *Primary* phase was of establishing a honored system of priorities among

the creditors of a company, *Secondly*, phase was of rescuing the business which was mainly because of the Cork Committee Report, 1982⁷ and *Thirdly*, the efforts were made for the purpose of ascertaining accountability for people who either benefitted or worsened from Insolvency.

The insolvency laws of the United Kingdom were not up to date enough for enterprises operating in the current day. A few little adjustments had been made, but the fundamental design had not changed in years. Company reorganization made use of the Bankruptcy Act of 1914 (applicable to England and Wales only), much like Chapter 11 bankruptcy does in the United States.

There were some similarities between the distinct administrations in Scotland and Northern Ireland. The Companies Act of 1948 addressed corporate bankruptcy (UK-wide). This made it possible for both involuntary liquidations (by creditors) and voluntary liquidations (by the corporation). A clause pertaining to agreements between corporations and creditors existed as well; it was a forerunner to contemporary schemes of arrangement and was comparable to a "deed of arrangement." But there were no special protocols for corporate recovery or rescue, an idea that had already been implemented elsewhere.

Thus, the relevant legislation governing insolvency in the United Kingdom can be found in the:⁸

- Companies Act 2006
- Insolvency Act 1986 (as amended)
- Insolvency Rules 1986 (as amended)
- The Insolvency (England and Wales) Rules 2016
- The Enterprises Act, 2002

Lord Hoffmann summarised the collective nature of insolvency proceedings in *Cambridge Gas Transportation Corpn v. Official Committee of Unsecured Creditors of Navigator Holdings plc*⁹, as:

"The purpose of bankruptcy proceedings, on the other hand, is not to determine or establish the existence of rights, but to provide a mechanism of collective execution against the property of the debtor by creditors whose rights are admitted or established...The important point is that

bankruptcy, whether personal or corporate, is a collective proceeding to enforce rights and not to establish them.”

2.2. BANKRUPTCY/INSOLVENCY LAWS IN INDIA

The adage "survival of the fittest" is applicable in the business world. Just as some firms prosper while others fail, insolvency rules are in place to handle instances in which enterprises are unable to pay their debts. Concerns concerning saving or closing a failing business are addressed by these laws. Insolvency procedures have changed in two significant ways throughout the last ten years. First, proactive risk management of insolvency has taken precedence over reactive crisis management. Secondly, the focus is on averting business failures instead of just addressing them after the fact. This illustrates a more general societal tendency in risk management. Lawyers that specialize in business and insolvency law should take note of these changes. These call for reevaluating the objectives of insolvency legislation as well as how these circumstances are perceived.

Because there was little possibility of a successful conclusion, initiating liquidation procedures was not desirable under the Companies Act. Although the Act granted judges the authority to grant liquidation benefits, there were no explicit rules to help them make just determinations. As a result, decisions were uneven and cases were handled differently by each court. There were initiatives to enhance debt recovery practices in the 1990s. The Goswami Committee report, which emphasized the issue of unaccountable promoters (company owners) contributing to business failures, served as the basis for the introduction of the "Recovery of Debts Due to Banks and Financial Institutions Act" (RDDBI). By enabling banks to request "Certificates of Recovery" from a recently established Debt Recovery Tribunal (DRT), RDDBI sought to expedite recovery. These certifications held the same authority as judicial decrees.

Reviving the economy was a primary objective when the National Democratic Alliance (NDA) won office in India in 2014. Raising India's position in the World Bank's Ease of Doing Business index was a significant contributing element. Given the significance of effective insolvency laws, the government gave revisions first priority. The Reserve Bank of India's (RBI) Asset Quality Review brought to light the severity of problematic loans. India's ranking remained low (133rd in 2010 and 136th in 2016) despite previous reforms. The Bankruptcy Law Reforms Committee (BLRC) was established to take immediate action on this matter. Effectiv

e financial restructuring is important.

The Global Financial Crisis had a detrimental effect on Indian businesses.

2.3 INSOLVENCY LAWS DURING THE TIME OF COVID-19

The global economy and people's lives are suffering greatly as a result of the COVID-19 pandemic. Governments and other institutions are acting to provide assistance. These measures are divided into three primary categories: preserving the stability of the financial system, assisting companies and independent contractors experiencing difficulties, and safeguarding employees and customers harmed by company closures. Although some of the concepts below may also be applicable to individuals, the primary emphasis is on the ways in which these rules might benefit corporations.

The power and limits of insolvency law in times of COVID-19

Insolvency law provides a variety of mechanisms to minimize the destruction of value generated in a situation of financial distress.¹⁰ First, when debtors are unable to pay their debts, creditors become entitled to enforce their claims and ultimately seize the debtor's assets. Therefore, their individual enforcement actions may end up destroying the going concern value of economically viable companies. For this reason, insolvency law responds by imposing a moratorium or automatic stay that will stop creditors from enforcing their claims while forcing them to act in a more coordinated manner. Thus, the use of a moratorium not only preserves value for the debtor but it can also promote a more efficient strategy by the creditors.¹¹ Second, the existence of a situation of insolvency may incentivize key employees to abandon the firm. Similarly, suppliers and lenders might decide to terminate their business relations with the debtor if they know their claims face the risk of going unpaid. Therefore, as these circumstances can also destroy value, insolvency law helps minimize these costs by providing various regulatory responses. Among others, insolvency law generally allows post-petition claimants to obtain a priority for their new claims, usually in the form of administrative expenses.¹² Likewise, other solutions to deal with these problems may include the restriction of ipso facto clauses and the availability of rescue (or DIP) financing.¹³ Third, debtors facing financial trouble may have incentives to engage in a series of opportunistic behaviors that can destroy or opportunistically transfer value at the expense of creditors. These opportunistic behaviors may include the transfer of assets to related parties, borrowing money in an irresponsible manner and investing in risky projects as a last attempt to rescue the firm. In order

to solve these problems, insolvency law provides several mechanisms, including avoidance actions and, in some jurisdictions, special duties and liabilities for directors of financially distressed firms. Likewise, once the debtor is subject to the bankruptcy procedure, most jurisdictions around the world also require the appointment of an insolvency practitioner to manage or supervise the debtor. By doing so, the risk of engaging in opportunistic behaviors will be notably reduced. Therefore, insolvency law can provide once again a valuable response to preserve or restore value. Finally, insolvency law provides viable but financially distressed companies with powerful tools to facilitate a debt restructuring. Hence, they can emerge from bankruptcy with a new financial structure. This goal is achieved through several mechanisms. First, insolvency law provides an adequate forum for negotiation. Second, insolvency law provides several tools that can help facilitate the renegotiation of the debtor's financial commitments. These tools include the possibility that a majority (or qualified majority) of creditors may impose a decision on dissenting minority creditors and, in some jurisdictions, even the possibility that a reorganization plan can be imposed on dissenting classes of creditors.

Insolvency and insolvency-related reforms to minimize the harmful economic effects of the coronavirus

Due to the limitations of insolvency law described in section 2, some adjustments to the insolvency legislation might be needed in times of COVID-19. These adjustments are discussed in section. Other responses to facilitate financial restructurings in times of COVID-19 will be discussed in section. Before getting the details of these reforms, however, it discusses the appropriate scope of the insolvency and insolvency related responses implemented in times of COVID-19. Finally, it should be kept in mind that, while insolvency law can be helpful, it is not the panacea. Corporate insolvency law in the time of COVID-19 should be adjusted in several ways. First, legislators should suspend the duty to file for bankruptcy in countries where, as it happens in many European jurisdictions, corporate directors are required to initiate insolvency proceedings once a company becomes insolvent.¹⁴ This policy recommendation, that was suggested in the early debates on the impact of COVID-19 on insolvency law,¹⁵ has been recently implemented in various jurisdictions, including Germany, France, Spain, Luxembourg, Poland, Portugal, Russia, and the Czech Republic. It should be noted, however, that while countries like Germany have decided to suspend the duty to file for bankruptcy for a reasonable period of time, other jurisdictions initially decided to suspend this duty until the end of the state of emergency. In my opinion, the suspension of the duty to file for bankruptcy

should last long enough to let companies recover from the effects of the COVID-19 crisis. Therefore, the German response seems more desirable than those implemented in jurisdictions just suspending this duty during the state of emergency.¹⁶ In the absence of an actual or a de facto suspension of the right to file involuntary bankruptcy petitions, creditors will have the ability to force debtors to bear the direct and indirect costs associated with a procedure that, in the absence of COVID-19, would not even be needed.¹⁷ Besides, depending on the jurisdiction, corporate directors can be exposed to several consequences such as being removed from the company's management to disqualifications and even special liability rules. In my view, while an insolvency proceeding can be helpful for many debtors affected by COVID-19, the decision to use the insolvency system should be made by the debtor. However, if it were shown that the debtor's state of insolvency was not generated by COVID-19 (for instance, because it was already insolvent before the outbreak), this exceptional legislation should not apply. Therefore, creditors should have the ability to put the debtor into bankruptcy under the general requirements existing in the pre-COVID-19 insolvency framework.

CHAPTER- 3

CORPORATE RESCUE IN UK: ISSUES AND CHALLENGES

*"Assets would be more highly valued if utilized in the industry for which they were designed, rather than scrapped."*¹⁸

The entry of firms and enterprises to the economy is of immense magnitude for nations at all level but equally imperative is the efficiency of corporate restructuring and insolvency process of the particular country. The rate of investment is completely reliant on the smoother implementation of entry and exit to the economy. Barriers to exit are equivalent to null investment. Also, equally important is the revival of the corporate entity. Having provisions for revival ensures that the economy is ever-growing. Revival of companies (the rescue culture) or resolving insolvency in the economy also adds to the ranking of a nation to the World Bank's Ease of Doing Business. Although India has shown fragmented development in its legislations and provisions related to bankruptcy but the major lump of it has been arguably come from the common law of the English Courts.¹⁹

A healthy economy needs businesses to start up easily, but it also needs a smooth process for struggling companies to restructure or exit the market. The UK is a leader in this area, with its "rescue culture" aiming to revive troubled companies. This chapter will explore the UK's

insolvency and corporate rescue procedures, examining both their strengths and weaknesses.

3.1 SCHEME OF THE INSOLVENCY LAW

Since the 1970s, the UK has made considerable changes to its insolvency rules in order to address economic issues and encourage corporate rescue. Insolvency legislation was dispersed over multiple acts before to 1986. Although the Insolvency Act of 1986 attempted to combine these, additional revisions were required. The significance of rescue culture was underscored in both the 2001 Government Report on Insolvency and the Cork Report, which paved the way for the Insolvency Act 2000 and the Enterprise Act 2002. These changes brought in instruments such as statutory moratoria to provide faltering enterprises some breathing room and to concentrate more on revitalizing successful businesses. This chapter will explore corporate rescue in further detail, as well as the UK's present legal system.

3.2 THE CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP) AND CORPORATE RESCUE IN THE UNITED KINGDOM

In the realm of corporate law, it is not uncommon to find companies which are in financial distress. The primary reasons for these events, although not exhaustive, may include over-expansion, inadequate marketing, poor management, excessive interest rates, loss of market share, or even fraudulent activities.²⁰ The advanced law identifying with both individual and corporate indebtedness is right now contained in the Insolvency Act 1986. Despite the fact that of some vintage now, the Insolvency Act 1986 was the administrative reaction to the report and proposals of a multi-disciplinary advisory group entrusted with checking on bankruptcy law and practice at the time after 1970s. The Cork Report²¹ helped the Insolvency Act 1986, which united in one rule both individual (personal) and corporate bankruptcy and simultaneously helped to formulate the law identifying with all types of indebtedness, including the presentation of the idea of corporate salvage using two new methodologies: the company voluntary arrangement and administration. During the early years following the entry of the Insolvency Act 1986, various issues were watched identifying with the underutilisation of the new strategies in contrast with receivership, which was frequently favored by principal creditors.

Insolvency Act 1986 and the Rescue Culture

The IA 1986²² grasped the goal of advancing recuperation by the introduction of two new

rescue systems: the CVA, covering organizations before formal insolvency and administration for organizations closer to bankruptcy.

The UK did not receive completely novel rescue protocols from the Cork Committee. Rather, they expanded upon preexisting legal frameworks such as receivership and schemes of arrangement. These methods were made simpler for debtor-creditor talks by the CVA, and administration was changed to a more official, court-supervised procedure run by an administrator. Unlike receivership, which favored secured creditors, both gave priority to all creditors. It is noteworthy that insolvency practitioners oversaw both processes, and debtors were only able to start them—not finish them.

Cork Committee and Rescue Paradigm

The UK's bankruptcy system was not designed with failing enterprises in mind prior to the Cork Report. Current procedures, such as receivership, frequently resulted in business closure, and schemes of arrangement were costly and time-consuming. Seeking inspiration from other countries, the Cork Committee was especially impressed by Chapter 11 in the United States due to its adaptability and emphasis on debtor reconstruction. The "debtor-in possession" option was, nevertheless, rejected by the UK in favor of a court-supervised procedure. They also thought about South African and French rescue protocols. The Cork Report's ultimate conclusion that rescue was a practical option for many companies opened the door for the UK insolvency system to be overhauled.

Enterprises Act, 2002: A paramount shift in the Rescue Process

The 2002 Enterprises Act brought about a number of modifications to help financially troubled businesses recover. Important changes included diminishing the significance of administrative receivership—a procedure that was chastised following the 1986 Insolvency Act and eliminating the government's unique privileges as a creditor. Additionally, it updated the administrative framework and gave businesses an additional choice: the Companies Act of 1985's Scheme of Arrangement. Essentially, the Act sought to improve upon current rescue techniques rather than developing brand-new ones. As is evident from the White Paper preceding the Act, its main objectives are to promote, in no particular order, corporate rescue, collectivity, the maximization of realizations from the corporate estate and overall fairness as between creditors.²³

The global adoption of appropriate insolvency legislation was spurred by the oil and economic crises of the 1970s. Although the UK had rescue mechanisms in existence since the 19th century they were never considered a viable alternative to liquidation, even if the Cork Report undoubtedly introduced the idea of corporate rescue as a unique concept. This analysis uses the Cork Committee Report and the 2002 Enterprises Act as lenses through which to examine how rescue culture in the UK has developed since the 1986 Insolvency Act. Before explaining the same, the four known conceptions of rescue culture in the United Kingdom are explained herein below.

1. ADMINISTRATION

Under UK bankruptcy rules, administration is a common rescue mechanism that was inspired by Chapter 11 of the US Bankruptcy Code. It was introduced primarily as a result of the Cork Report and permits a failing business to carry on with operations while debt is placed on hold (statutory moratorium). According to Part III of the Insolvency Rules of 2016, courts have the authority to start this process. The Cork Committee underscored the necessity of a rescue strategy that maintains trade, safeguards business operations, and maximizes value for the company and its creditors.

As a result, Administration, a more formal approach that offers a debt moratorium under a court-ordered ban was developed. Through management control, administration seeks to not only save the company but also to perhaps aid in a rehabilitation process.

Administration had other motives too- not just of the revival of the company but the long-term motive of company continuing its business as a going concern. Thus, the insolvency practitioner who is appointed as the administrator is envisaged with wide powers. Under Section 8(3), there was lack of hierarchy among the objectives. This also aggravated the fact that Court supervision under this method of rescue is vital. Two working groups were created by the Insolvency Service to independently look at CVAs and administration that came up with reports in 1995²⁴ and 2000.²⁵ This did not mean that no reforms to insolvency law occurred: two statutes were passed in 1994²⁶ effecting minor, but necessary changes, although it was clear that these were not intended to be by way of far-reaching reforms.

Administration and Pre-Packs: A new Feature of the Enterprises Act

The 1986 Insolvency Act's administration procedure was redesigned by the 2002 Enterprises Act and it brought in a new Schedule B1, which described the duties and powers of directors as well as the updated administration process. Part II of the original Act (the previous administration system) was repealed, although this part is still in place for a few businesses, including air traffic control, water, and railroads. The fundamentals of administration are still substantially the same despite the more intricate new processes; the two primary distinctions are the increased focus on rescue and the hiring of insolvency practitioners. The one year administration period and simplified schedule promote quicker and more effective rescues. The biggest adjustment is that rescue is now the administration's top priority. In contrast, the basic administration method in the IA 1986 specified four potential options from which an insolvency practitioner might pick as the aim of the specific administration process. This left every choice on a degree of equivalent significance – safeguarding the organization was an equivalent option in contrast to accommodating a superior outcome than in a straight liquidation.

The new administration process introduced three prioritized goals:

1. **Rescue the company as a going concern:** This is the primary objective. Unless rescue is impossible or offers no better outcome than liquidation, the administrator must prioritize it. Using "company" instead of "business" emphasizes preserving the entire entity and potentially appeals more to directors who might fear asset stripping.
2. **Achieve a better outcome than liquidation:** If saving the entire company isn't feasible, the focus shifts to maximizing the value for creditors compared to a straight liquidation. This prevents hasty asset sales and potential value loss.
3. **Distribute assets to creditors:** Only if the first two options are unavailable can the administrator resort to selling assets for creditor payouts, similar to a receivership. However, they must justify this choice by demonstrating it serves the overall benefit and doesn't significantly harm any creditor group.

This revised framework shifts the focus to prioritizing the collective interests of all creditors, moving away from prioritizing a single large creditor. Additionally, the emphasis on efficiency is evident in the legal requirement for the administrator to fulfill their duties as quickly and efficiently as possible. The primacy of the practitioner is also enshrined in the new hierarchy

of aims, since the court is obligated to follow his expert opinion and will not overrule it unless extraordinary circumstances arise.²⁷

The second significant modification relates to the administrative appointment procedure. The could have previously only been appointed by courts upon petitions from creditors or debtors. Out of court appointments were introduced under the reforms, enabling the corporation and certain secured creditors to start the process. In particular, if no provisional liquidator or administrator has been appointed earlier, holders of qualifying floating charges secured loans covering a significant portion of the company's assets may designate an administrator. The application of Schedule B1 must be specifically mentioned in these charges, and the holder must be given the authority to designate an administrator or to make an appointment that would normally be made for an administrative receiver.

Following appointment, the administrator and the person who nominated them are required to provide certain paperwork to the court, such as a statement attesting to the holder's legal rights. This reflects a belief that the creditor has a unique understanding of the debtor's financial situation and will be more inclined to act in the face of the directors' potential inaction.²⁸

The reduced risk of legal scrutiny has significantly boosted the popularity of pre-pack administration, especially in the years following the reforms. This strategy prioritizes minimizing reputational damage and ensuring business continuity for the company's trading partners during insolvency. To achieve a turnaround with these safeguards in place, the administrator negotiates a pre-arranged sale of the company or its assets to a chosen buyer.

Pre-pack administration in the UK borrows from the US "following pony offer" concept. This involves securing a pre-sale offer to gauge market interest before a formal sale, essentially setting a minimum price for the deal. If no higher bids emerge, the initial buyer is obligated to complete the purchase. In the UK, the administrator and the main creditor work together to find a buyer, often through the administrator's network. The primary issue is to protect the debtor's reputation and, for publicly traded companies, the value of their stock by avoiding competition from other creditors, particularly unsecured creditors, until the contract is signed by the purchasing company and authorised by the court in a last-minute administration procedure.²⁹ The absence of unsecured creditors from the pre pack administration process is a significant

criticism of the procedure. Until an administrator is chosen to handle the next administration, they frequently stay in the dark about the circumstances. Since the secured creditor frequently selects the same administrator that arranged the pre pack sale, there may be a conflict of interest as the secured creditor may value speed over transparency. This approach increases the risk of the "phoenix phenomenon," in which businesses are simply acquired back by their prior owners following bankruptcy, severely hurting unsecured creditors. The Joint Insolvency Committee's "Statement of Insolvency Practice 16" (SIP 16) and the mandatory insurance for insolvency

practitioners offer further protections, even if the administrator's general duty to all creditors provides some protection. Transparency, the public interest, and the communal nature of proceedings are all mandated as important considerations for practitioners to keep in mind when conducting the procedure.³⁰

2. COMPANY VOLUNTARY ARRANGEMENT

A company voluntary arrangement is referred to as a debt payment compromise between the company and its creditors. In the event of a CVA, the directors of the business may start the company voluntary agreement (CVA) process. Alternatively, if the company is already in administration or liquidation, the administrator or liquidator may start the CVA process. According to the aforementioned agreement, it is not required to demonstrate that the business is bankrupt or approaching insolvency prior to the start of the proceedings. A plan that is approved by a minimum of 75% of creditors initiates the Company Voluntary Arrangement and the proposition must be approved by the court.

Under Insolvency Act 1986³¹.

The Insolvency Act of 1986's Part I, which is further split into two sections the proposal section and the consideration and implementation of the proposal—contains the CVA. The Insolvency Act of 1986 stipulates that the directors of the firm or the creditors must make a proposal for the compromise of the outstanding debts. Either the settlement of claims or a compromise must be the proposal's main goal.

The Act's Section 1(3) further states that, if the administration procedure or the liquidation have begun, respectively, an administrator or a liquidator may also start the CVA. The person

who initiates the same (nominee) shall further submit the report to the Court regarding whether a meeting of creditors should be held, etc.

Cork Report-

The Cork Report of 1982 stated that the Company Voluntary Arrangement shall be inexpensive, less-time consuming and an efficient means of dealing with financial distress through the informal means.³² The Cork Committee envisioned CVAs as a way to streamline rescue processes by allowing companies to propose informal debt restructuring plans, even without imminent insolvency. This offered greater flexibility compared to traditional methods. However, the system wasn't without its drawbacks. A 1993 Insolvency Service report identified key problems:

- Lack of a moratorium: This made it difficult to secure successful agreements as creditors could still pursue legal action against the company.
- Limited financial assistance: The system lacked adequate support for the debtor's financial recovery during the restructuring phase.

Insolvency Act, 2000-

The major impact that the Insolvency Act 2000 brought was to introduce a paradigm shift in the previous CVA models as under Insolvency Act 1986 and this change was to aim the small and medium enterprises ("SMEs").³³ They can now save themselves from the action of creditors for a certain period of time owing to the fact that a moratorium has been fixed.

3. ADMINISTRATIVE RECEIVERSHIP: ABOLITION AND ISSUES

Administrative receivership, introduced in the late 19th century, was primarily a "creditor-oriented process" designed to protect the interests of the holder of a floating charge. This meant that any creditor holding a floating charge could appoint a receiver at any time, giving that receiver control over the company's operations.

Essentially, a creditor with a floating charge as security for their debt could use receivership to appoint a receiver to manage the secured assets and effectively take over the company. The primary goal of the receiver was to recover their client's security by selling off the assets of the insolvent company and using the proceeds to pay back the debt.

3.3 MAJOR ISSUES AND CRITICISMS

While the Enterprises Act 2002 and the Insolvency Act 2000 have introduced some improvements to the effectiveness of the rescue process, certain aspects remain questionable. Despite this, their primary goal was to introduce a significant shift in the way insolvency and rescue procedures operate within the UK. The administrative receivership has been done away with but still the complete abolition has not been made possible. The reality of the rejection according to pre-EA 2002 agreements can be found in the insights mirroring the arrangements from 2003 onwards, despite the fact that the statistics for the time of the ongoing worldwide money related emergency must be taken to contain a high component of cases in which one of the exemptions to the overall denial applies. “More recently, it can be seen that the statistics for the number of receiverships shows a drop, which might suggest an important reorientation in favor of administration as the principal choice for rescue. To what extent this may be despite the creditors’ wishes cannot be known with certainty, although a conclusion might be that the statistics still evidence some competition between both procedures, but not one that is as clear cut as under the pre-EA 2002 paradigm. Should further reforms be undertaken?

It seems as if, more recently, numbers continue to reduce and the procedure is in decline. Perhaps the best outcome is to simply leave the procedure where it is and to draw attention once more to those procedures that have a true rescue vocation. The question does arise, however, as to what type of rescue it is likely to be, given that the shape of rescue itself is changing, driven by developments in North America. In fact, there is a movement in practice, reflected in the literature, towards a reconsideration of the aim of rescue, given that, in the United States, there are many procedures that conclude in a sale under section 363 of Chapter 11.

The idea of rescue has been recently referred to as including the recycling of assets in order to return those assets to a state of economic productivity, such that others who are better placed might maximize the “use-value” of those assets.³⁴ That is a description that could also have been used in the context of receivership, where recovery on behalf of the creditor, although usually followed by a liquidation of the corporate shell, was viewed as contributing to the creditor’s ability to re-use these assets, especially in being able to recycle them (or their value) with view to further lending.”³⁵ Only slight changes have been made to the CVA in recent reforms. CVA Proceedings are considered to be time consuming. Thus, CVA is more debtors

oriented and “inimical to creditors, particularly in the event that shareholder challenges under section 4A of the IA 1986 are successful.”³⁶

CHAPTER- 4

RESOLUTION PLAN IN INDIA: ISSUES AND CHALLENGES

In recent years, there has been a significant revision to India's insolvency legislation. The 2016 introduction of the Insolvency and Bankruptcy Code (IBC) completely changed how companies dealt with insolvency. The IBC places a strong emphasis on efficiency and speed as opposed to the cumbersome and inefficient methods of the past.

The Corporate Insolvency Resolution Process (CIRP), described in Sections 6-32, Chapter II, is the primary component of the IBC. When a corporate debtor misses payments, this process enables creditors—financial and operational—or the business to start the insolvency process. Early detection of financial troubles is given priority by the IBC, allowing for a prompt resolution. Financial creditors may submit an application, evidence of default, and their preferred insolvency practitioner to the National Company Law Tribunal (NCLT). After the default is confirmed by the NCLT.

In case of operational creditor, the process is different from that of the financial creditor because the operational debts tend to be smaller in amount than the financial debts and are recurring in nature.³⁷

Once a default occurs, the operational creditor has to deliver a demand notice or a copy of an invoice demanding payment of the default debt. This ensures that operational creditors, whose debt claims are mostly lesser in amount are not able to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations.³⁸

The chapter also draws a time limit of 180 days extendable to a further of 90 days for the completion of corporate insolvency process. Within two weeks of the court's acceptance of the insolvency application, a temporary insolvency professional is appointed. In addition to collecting claims from creditors, organizing a committee of creditors, and supervising the

business's activities until a permanent resolution expert is hired, this individual plays a crucial part in the process.

The expert in permanent resolution then drafts an information memorandum, or comprehensive report, for prospective financiers who could be interested in saving the business. As long as they comply with regulatory standards, anyone can submit a proposal to resurrect the company. The creditor committee receives all recommendations from the resolution specialist for approval. Plans that have been approved move to court for final approval. Plans that are rejected start the liquidation process.

*The Court held, "The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier experiments, as we have seen, in terms of legislations having failed, 'trial' having led to repeated errors, ultimately led to the enactment of the Code. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster."*³⁹

Debt laws can be viewed as an attempt, from an economic perspective, to simulate the perfect arrangement between creditors. This arrangement would have been made in advance, allowing for the possibility of debtor difficulties. A single, logical business owner's best interests are the main focus, but the interests of the entire firm and its creditors are also taken into account. The goal of indebtedness legislation is to maximize profits for creditors by guaranteeing the effective use of assets. Credit extension is encouraged by rules that provide the highest returns for creditors.⁴⁰ A more refined version of this approach recognises the function of insolvency law in ensuring that capital is directed to the most productive uses in the economy.⁴¹

4.1 SICA AND THE FAILED RESCUE PLANS

India has a long history of companies that couldn't revive back and ultimately went onto liquidation. That is when the Tiwari Committee was appointed by the Reserve Bank of India to enquire on the barriers that hindered the revival of companies. For a developing economy like India, ever increasing liquidation/winding up company statistics were not a good symbol. Owing to this fact, Tiwari Committee elaborated in its report, few methods for revival of the companies, which were-

- Takeover of the company management

- Debt Reorganization
- Mergers with other firms
- Sale of the business

In addition to these revitalization strategies, the Tiwari Committee suggested passing extraordinary laws to enable swift and efficient action. As a result, the Sick Industrial Companies Act was passed on January 8, 1986, with the President's approval, taking into account every recommendation made by the Tiwari Committee. The Sick Industrial Companies Act was limited to the recommendations and actions made by the Tiwari Committee. A quasi-judicial authority was also established by the Sick Industrial Companies Act to oversee and rescue the "sick industries." The Board for Industrial and Financial Reconstruction was the name of the quasi-judicial body (BIFR). Additionally, the Sick Industrial Companies Act limited the ability of civil courts to intervene in BIFR cases. The appellant handled each and every BIFR appeal. The reason for the insertion of the first condition is owing to the fact that a company should be given reasonable times to make its stand in the economy.⁴² But the second clause suggests insolvency as a precursor but by making insolvency a pre-condition, the said clause is itself infringing the motive for why the Sick Industrial Companies Act came into force- "immediate measures for revival." Insolvency is a stage of almost no hope, so rather than moving on to the process of interference into the sick companies after they get into "mortuary," it is important to revive them anticipating their financial distressing condition. Sick Industrial Companies Act also has framework for moratorium but Sick Industrial Companies Act's moratorium was highly controversial and criticized pertaining to the fact that in case of pendency of proceedings, the moratorium restricts creditors from exercising their rights that they would generally have.⁴³ Sick Industrial Companies Act has more inclination towards the "debtor in possession" and in contrast to the administration procedure in the United Kingdom Insolvency Act 1986, the Sick Industrial Companies Act proceedings do not displace the management of the company.

Analyzing the powers of BIFR, it exercised wide powers under the Sick Industrial Companies Act and the major decision that BIFR had to take was regarding the rehabilitation process that is, BIFR has the rights to decide whether a company needs rehabilitation or not.⁴⁴ In *Nasik People's Co- Operative Bank Ltd v Data Switchgear*⁴⁵ and *VDCS Enterprises Ltd v Union of India*⁴⁶ it was held that BIFR has wide powers. To decide whether a company needs rehabilitation or not, BIFR follows a two-step process- Primarily BIFR must assess whether

the company can revive on its own and if it finds that the company has the ability of revival, it will allot the company necessary time for the same {Section 17(1)} and Secondly, in case BIFR finds out that the company cannot be rehabilitated on its own, it will analyze whether the company needs to be rehabilitated in “public interest” and it will further order the agency (operating agency) to draft the scheme. The public interest notion and the wide powers of BIFR has always been a matter for criticism.

The primary goal of the Sick Industrial enterprises Act was to revive the enterprises, but in addition to failing horribly, there was a paradigm shift from BIFR revival to liquidation in the 1990s. The Goswami Committee recommended an alternative to the Sick Industrial Companies Act as the UK's administrative procedure in a report it produced in the 2000s. *“In the proceedings initiated under [SICA], the effort should always be to achieve the goal of revival of the sick company concerned. Even if an approved revival scheme is likely to take quite a long time to ensure real turnaround... it should not be considered as a negative aspect, although in the process, of course, the creditors may at times have to accept a longer time for recovery of their dues. In a social welfare State that we are, it is the collective duty and responsibility of all... to ensure social and economic protection for the weaker Section, and there can perhaps be no dispute that the lower echelons of the working class in private sector industries... belong to the class.”* (Jayanta Kumar Biswas J, Kanoria Jute and Industries Ltd v AAIIR (2008).

4.2 INSOLVENCY AND THE BANKRUPTCY CODE, 2016 AND THE RESCUE CULTURE

Section 5(26) of the Code defines "resolution plan." With the introduction of the Insolvency and Bankruptcy Code, 2016 (IBC), which was the first consolidated code covering the provisions of insolvency exclusively, the resolution plan also emerged, offering a relief to corporate debtors and distressed companies. The Second Amendment to the Insolvency and Bankruptcy Code clarified several key points regarding corporate resolution plans. These clarifications focused on:

Fairness to creditors: The amendment ensured that resolution plans prioritize maximizing returns for financial creditors when proposing asset distribution.

Plan flexibility: The amendment allowed for plans involving mergers, amalgamations, or demergers without requiring the debtor's consent to specific merger frameworks.

Managing dissenting creditors: The amendment clarified the definition of "dissenting creditors" under Section 30(4). This includes creditors who abstain from voting in favor of the plan, not just those who actively vote against it. However, creditors who aren't part of the Committee of Creditors don't have voting rights and can't be considered dissenting creditors.

Overall, these clarifications aim to streamline the approval and execution of resolution plans. The IBBI claims that the IBC promotes a market-driven system in which rival resolution plans provide the best value for the business, frequently resulting in recoveries that are 200% greater than the liquidation value. Understanding India's approach to rescuing struggling companies requires examining the Corporate Insolvency Resolution Process (CIRP), outlined in Chapter II (Sections 6-32) of the Insolvency and Bankruptcy Code (IBC) enacted in 2016. CIRP allows initiating insolvency proceedings when a company defaults on a debt. The IBC prioritizes early identification of financial difficulties for faster resolution. It is interesting to note that the company itself, financial creditors, or operational creditors can all start the process. The financial creditor can submit an application with the National Company Law Tribunal, accompanied by proof of default and the name of a resolution expert who will function as interim resolution professional.⁴⁷

The court verifies the default and then proceeds with the CIRP process. However, there's a difference for operational creditors (whose debts are typically smaller and recurring) compared to financial creditors. Operational creditors must first issue a formal demand notice for payment before initiating CIRP. This helps prevent frivolous or premature insolvency proceedings. The CIRP process itself has a time limit of 180 days, potentially extended by 90 days. Within two weeks of accepting the application, the court appoints a temporary insolvency professional.

This professional plays a crucial role by:

1. Gathering information on the debtor company
2. Collecting claims from creditors
3. Forming a committee of creditors
4. Overseeing the company's operations until a permanent resolution expert is appointed

Once a permanent professional is appointed, they create a detailed report (information memorandum) for potential investors interested in rescuing the company. Anyone can submit a plan to revive the company, as long as they meet legal requirements. The resolution

professional presents all proposals to the creditor committee for their approval. Approved plans go to court for final sanction. Rejected plans trigger liquidation proceedings.

*The Court held, "The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier experiments, as we have seen, in terms of legislations having failed, 'trial' having led to repeated errors, ultimately led to the enactment of the Code. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster."*⁴⁸

Through resolution plans, the Insolvency and Bankruptcy Code (IBC) aims to revitalize struggling businesses. Potential rescuers, also known as resolution applicants, must fulfill the qualifying requirements listed in Section 29A of the code in order to submit their proposals. Subsequently, the resolution specialist reviews the plan to ensure compliance with all relevant regulations, including Section 30(2) IBC. In the case of *Binani Industries Limited v Bank of Baroda & Anr*,⁴⁹ the Hon'ble Court has laid down certain regulations that should follow a resolution plan which includes-

1. a) The Resolution Plan is essentially a resolution of the Corporate Debtor as a going concern, rather than a sale, auction, recovery, or liquidation.
2. b) The major aim of the Resolution plan is to eliminate the risk of insolvency by maximizing profits and improving the balanced interest of debtors and creditors.
3. c) Resolution plan is to be differentiated from the concept of recovery. The Insolvency and Bankruptcy Code prohibits recovery but encourages the resolution plan.
4. d) Resolution plan requires application of mind and it needs to be differentiated from the concept of liquidation also. Resolution plan is required to have an ever-growing economy,
5. e) Resolution plan should keep everyone on the same footing, a resolution plan if discriminates among any financial creditor or operational creditor then it would infringe the basic aim of the promulgation of Section 5(26) to the Code.

OTHER IMPORTANT CASE DISCUSSING RESOLUTION PLAN

CASE NAME	HELD
Arcelormittal India Private Limited v. Satish Kumar Gupta and Ors. (4 th September 2018)	Resolution plan is the basic norm for revival of a company and resolution plan under the Indian Insolvency Regime holds a special place for redirecting the Indian economy to achieve greater heights.
Vijay Kumar Jain v. Standard Chartered Bank Ltd. &Ors. (August 2018)	Resolution plans are confidential and is integrated to the company primarily.
Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta &Ors. (November 2019)	The major aim of the resolution plan shall be to maximize the business profits by returning the business back to the economy.
<i>Maharashtra Seamless Steel Ltd. v. Padmanabhan Venkatesh & Ors.</i> (2020)	The court upheld the primary wisdom of “resolution plan”

4.3 IMPLEMENTATION OF THE RESOLUTION PLAN DURING THE UNPRECEDENTED PANDEMIC

The sudden outbreak of COVID-19 has had a devastating global impact, affecting even the most developed nations like the United States. The economic consequences have been more severe than the 2008-2009 recession, unfolding in a much shorter timeframe. In response to these unprecedented circumstances, governments worldwide have taken action to provide basic necessities like food and shelter. Additionally, various administrative and legal measures have been introduced to ease burdens on citizens and businesses facing unintentional non-compliance due to the pandemic.

Some examples of these measures include:

1. Extending deadlines for filing tax returns (both income tax and GST) for the 2018-2019 financial year.
2. Granting a 60-day extension for holding mandatory board meetings over the next two quarters.
3. Relaxing filing timelines under specific securities regulations.

After promulgation of across the nation-wide lockdown⁵⁰ and different warnings by Central and State Government thereto, physical recording of pleadings in Courts turned out to be

unimaginable. Hon'ble Supreme Court of India took *suo moto* insight and passed a request dated 23-March 2020⁵¹ broadening the confinement endorsed under broad law, regardless of whether condonable or not, with impact from 15 March 2020 till further requests. In response to the COVID-19 pandemic, the National Company Law Tribunal (NCLT) initially closed from March 23rd to March 31st, 2020, and only considered urgent insolvency issues. This meant that extending deadlines, approving resolution plans, and initiating liquidation were not considered pressing matters. Following the national lockdown, the closure was extended to April 14th. The National Company Law Appellate Tribunal (NCLAT) clarified that the lockdown period wouldn't be counted towards the time limit for the corporate insolvency resolution process (CIRP) under Section 12 of the Insolvency and Bankruptcy Code (IBC). Further relief came through an amendment to the CIRP Regulations on March 29th, 2020. This amendment excluded the lockdown period when calculating deadlines for actions that couldn't be completed due to the lockdown. However, this exclusion has limitations. It doesn't apply to tasks following the approval of a resolution plan by the NCLT. This means the lockdown period doesn't provide additional time for implementing the plan. Importantly, resolution applicants typically submit an Earnest Money Deposit (EMD) with their plan. This deposit is returned to all applicants except the successful one. If the deadline to utilize the EMD falls within the lockdown period, the successful applicant is still legally obligated to fulfill the resolution plan. The subsequent stage/case of store is at following endorsement of Resolution Plan by the CoC, which is usually alluded to as Performance Deposit or Performance Security. The IBBI revised the CIRP Regulations to present Regulation 36B (4)⁵², which requires the solicitation for Resolution Plans ("RFRP") to accommodate a proviso obligatorily requiring the Successful Resolution Applicant to give a Performance endless supply of its Resolution Plan by CoC and bombing usage of the said Resolution Plan, such Performance Security to be relinquished.

There's a significant financial risk for companies chosen to implement a resolution plan. These successful resolution applicants:

1. Deposit an Earnest Money Deposit (EMD) and Performance Security (typically 10-20% of the plan value for large plans, or up to 30% for smaller plans).
2. Incur professional fees for developing and presenting the plan.
3. Face potential lost opportunity costs.
4. Failure to implement the plan after approval can lead to legal consequences including:
5. Forfeiture of the EMD and Performance Security

6. Potential imprisonment or fines (under Section 74(3) of the IBC)
7. Damage to reputation which could make it difficult to secure future investments

The COVID-19 lockdown created additional challenges for successful resolution applicants:

1. Difficulties in completing tasks such as transferring funds to creditors or changing the corporate debtor's board due to movement restrictions and limitations on obtaining documents.
2. Delays in securing financing from banks, especially if funds are located overseas.
3. Challenges in completing even basic tasks like printing documents due to lockdown restrictions.

These delays could financially harm creditors who have already waited through most of the CIRP period (270-330 days) for a resolution. In such cases, the only option may be liquidation. Unfortunately, resolution applicants have limited options:

1. Requesting an extension from the adjudicating authority may not be successful given the NCLT's previous stance on non-critical extensions during the lockdown.
2. Invoking Force Majeure (unforeseen circumstances) is also challenging as applicants need to prove genuine difficulty in implementing the plan. Recent court rulings on COVID-19 are mixed, making it difficult to predict success.

CHAPTER -5

CONCLUSION AND SUGGESTIONS

The IBC, a landmark law enacted in 2016, revolutionized how India handles insolvency. Before the IBC, creditors typically recovered only 20% of their claims from struggling companies, and the process was slow, taking over 4 years on average. This placed India at a poor ranking in global insolvency resolution comparisons. The IBC significantly improved creditor recoveries to 42% and introduced time-bound processes. It established a modern framework for insolvency resolution, replacing outdated procedures. While still in its early stages, the IBC has immense significance. It represents a unified and comprehensive law based on international best practices. The new code also introduced a rescue mechanism. This dissertation compares and contrasts the rescue culture in India and the UK. One key procedural difference is the approach to corporate rescue. The UK offers various options to save companies, while India primarily relies on "resolution plans." The influence of external entities on India's insolvency process is a debated topic that requires careful monitoring. Such as in a recent case wherein the

UK based Liberty House who was the Amtek Auto's biggest bidder by the committee of creditors backed off and in such a case the whole rescue procedure is completely dependent on a different entity altogether whereas in the United Kingdom, the major focus is on rescue. In a UK insolvency case,⁵³ the Court held that the liquidation process is to be moved on only when all the other rescue ways have been blocked. But the issues with the UK Insolvency Law is that the formalities required by foreign courts and officials to prove the appointment of the liquidator have caused administrative burdens.⁵⁴

Despite the 2002 Enterprise Act reforms, concerns linger about past controversies and the need for further improvement. While practices around pre-packs and US/Canada-inspired reorganization have evolved, new challenges loom.

Two key areas for future reform involve:

- The unclear state of insolvency law: The current legal framework is scattered and difficult to navigate. Rescue procedures reside mainly in schedules, requiring constant cross-referencing. Repealed sections and extensive reliance on secondary rules further complicate matters.
- The potential impact of European influence: The impact of future European regulations on domestic insolvency law remains uncertain.

The convoluted nature of the UK insolvency system makes it challenging for practitioners. India's insolvency regime might benefit from adopting some of the UK's efficiency-focused practices, but a full-scale implementation of all UK procedures may not be entirely suitable. The question of how well India's insolvency system supports restructuring is raised despite the early success of the IBC in resolving cases. The UK's 1986 Insolvency Law is seen as more effective in corporate rescue, partly due to less third-party interference.

The passage proposes specific improvements for India's system based on the UK model:

- A free-standing moratorium: Similar to the UK's approach, India could offer creditors a "breathing space" to assess and implement rescue plans.
- Expanded "cross class cram down" provisions: These provisions allow a restructuring plan to be approved even if some creditors or shareholders object. The proposal suggests extending this power beyond the IBC to the Companies Act.

- Strengthened NCLT/NCLAT powers: The tribunals overseeing insolvency cases should have the authority to effectively enforce resolution plans. Public awareness of a plan's breach can severely damage a debtor's already fragile market position.
- Clearer consequences for failing bidders: Stricter rules are needed to ensure successful bidders follow their obligations under the Code and prevent situations where all parties lose due to a bidder's non-compliance.

CHAPTER-6

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Regulation 36B: Request for Resolution Plan (4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security

within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.

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