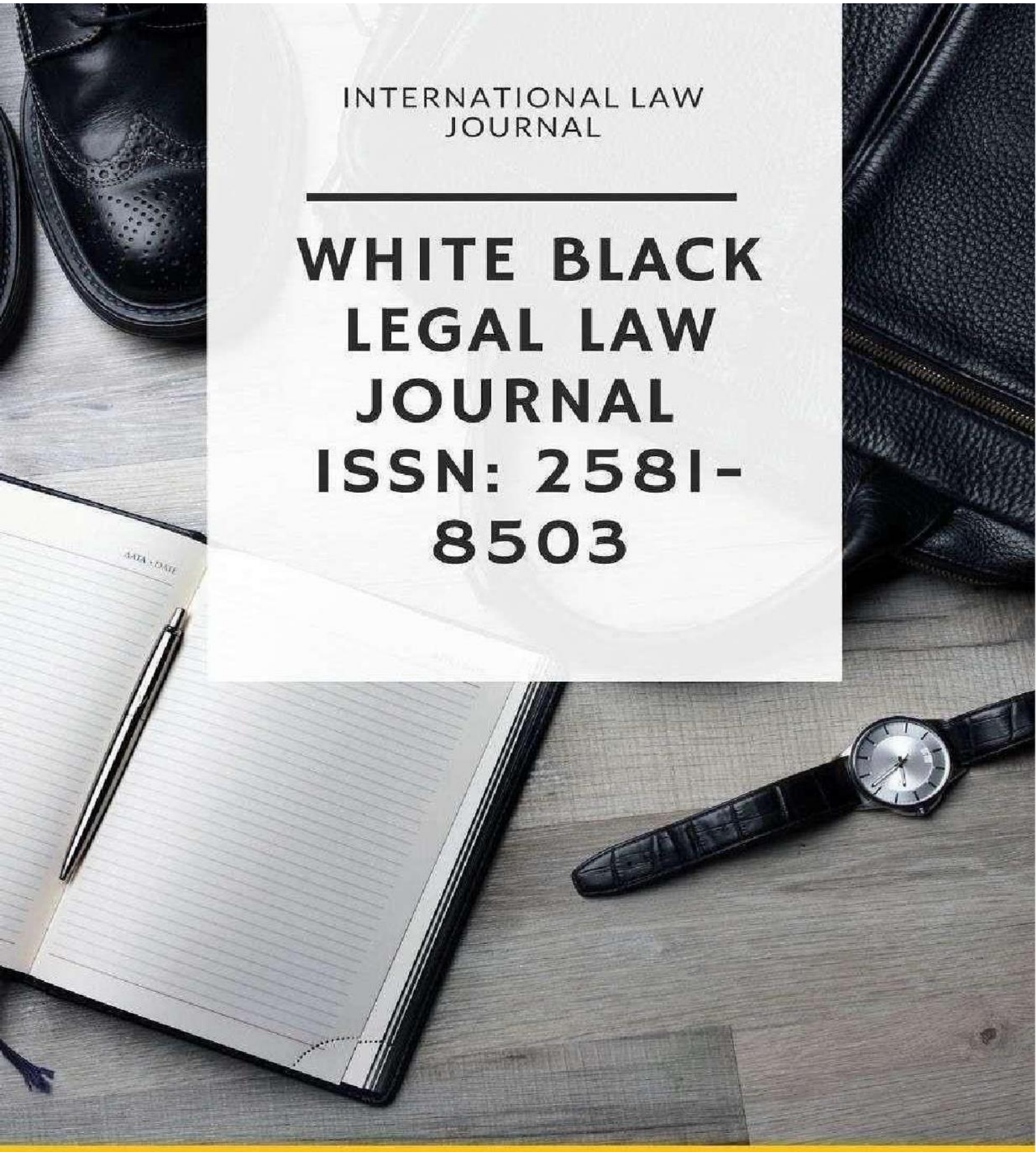

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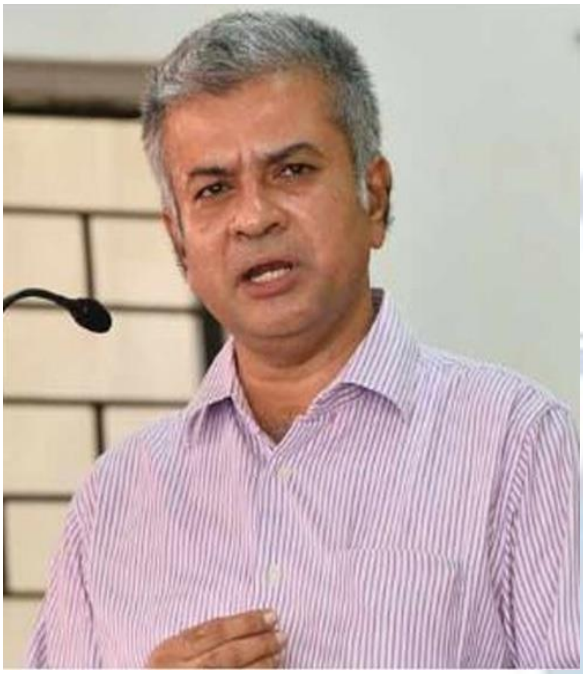

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Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

GREEN INSOLVENCY - A SUSTAINABLE APPROACH

By -Ananya Kamboj
UPES (Univesity of Petroleum and Energy Studies)

ABSTRACT

The bankrupt system of the Indian as provided by the bankruptcy and Bankruptcy Code, 2016 (IBC) has been reconsidered following the increasing nexus between the environmental sustainability and the corporate insolvency. Traditional insolvency processes often overrule environmental duties to creditor recovery and economic rejuvenation. Nevertheless, the necessity to involve the environmental factors into the settlement and liquidation procedures is pressing due to the increased interest in climate-conscious governance around the globe. A system where sustainability is integrated into the process of bankruptcy and ensures that ecological responsibilities and environmental adherence are taken into consideration along with financial claims is referred to as green insolvency. Besides discussing the recent legislative developments and international efforts aimed at climate-sensitive insolvency regimes, this paper explores the question of whether IBC, as it currently exists, is capable of accommodating the voice of environmental claims and demands. The paper focuses on the importance of aligning financial restructuring with a long-term sustainability agenda by exploring the prospect of incorporating environmental aspects of responsibilities in the Indian insolvency process.

INTRODUCTION

The volatility of a corporation is high and it puts in jeopardy the social and environmental responsibilities of a corporation and raises the all-important question, should the environment be sacrificed so that a corporation can go under? This query has seen the lawmakers across the world scrutinize the insolvency law much more closely. At the beginning of this month 12 members of a working group of the World Bank, INSOL International and the International Insolvency Institute initiated a global discussion on how we can hold climate in the insolvency processes. The ruling has sparked controversies in India regarding the necessity to revise the Insolvency and Bankruptcy Code 2016 (IBC) to acknowledge environmental duties and rights, thereby putting environmental concerns on a higher level even in an economically wretched

situation. Green insolvency is the new step in a modern world wherethe environmental degradation and financial crises are the major issues of the global character.

Financial problems are not the only reasons, the Insolvency and Bankruptcy Code (IBC) steps in when it cannot cope with usual restructuring strategies in favor of environmental requirements. Green insolvency is a process that entails the incorporation of sustainability and environmental issues into the restructuring processes and the insolvency process. The IBC enables the formation of a legal channel according to which resolution and restructuring of financially strained companies may commence. The last several years have seen the increased urgency to address the issues of the environment and encourage the sustainable approach in the business environment. Environmental agencies are deemed as operational creditors and the IBC but the claims procedure does not apply directly to the insolvency resolution procedure. The operational creditors shall be entitled to receive that which would have been received under the resolution plan or the liquidation value of their debt. Environmental claims are not easy to quantify as they in some cases entail unquantifiable damages or fines. Recent court rulings reflect the issues of acknowledging environmental assertions at nominal value.

RESEARCH PROBLEM

The focal research question in this research paper is:

1. Is the Insolvency and Bankruptcy Code, 2016 (IBC) effective in identifying and prioritizing environmental claims and liabilities in the Indian insolvency proceedings?
2. How can the existing Indian insolvency regime be modified or enhanced to include environmental duties? What are the key legal and procedural obstacles to addressing environmental duties in the existing Indian insolvency regime?
3. What is the effect of the lack of explicit statutory acknowledgment of the environmental claims on the ecological and community interests protection in the insolvency proceedings?

OBJECTIVES

1. To examine the prevailing situation of the environmental claims by the IBC and how they are treated in contrast to financial claims.
2. To understand missing links and problems related to the identification of environmental responsibilities in the insolvency resolution and liquidation processes.

3. To discuss international good practice and judicial tendencies in green insolvency and compare them with the Indian experience.
4. To put forward certain legal and procedural changes in an attempt to incorporate sustainability and environmental responsibility into the running of the IBC.
5. In order to promote suggestions towards the prioritization of environmental claims, such as the utilization of environmental audits and special funds as part of the insolvency resolution procedure.

REVIEW OF LITERATURE

The current body of research on the topic of green insolvency talks about the oversight of environmental responsibility in the process of insolvency and the global trend of seeking to incorporate concerns of climate in debt settlement models. Research demonstrates that Canadian, US and EU jurisdictions have increasingly included a mechanism of responding to environmental obligations, including prioritization of ecological claims over those of particular creditors, and obligatory cleanup obligations and the acknowledgment of contingent environmental obligations. In spite of such developments, the Indian IBC is still highly concentrated on financial recovery which leaves the environmental stakeholders poorly redressed. The literature also finds a gap in the domestic law: lack of clear avenues to environmental due diligence, regulatory agencies being marginalized in committee decision-making, moving the environmental debts to the waterfall mechanism to be unsecured. The recent judicial statements and commentaries of the policies further stress the necessity of the changes in the statutes, stating that the concept of sustainable development and ecological protection must not be pushed aside during the insolvency proceedings.

RESEARCH METHODOLOGY

This study takes the method of qualitative doctrinal research, which is complemented by the comparative study. The methodology includes:

1. Analysis of statutory legislation regarding the IBC, specific provisions of the Public Liability Insurance Act, 1991, as well as, case law (particularly, Essar Steel Ltd. v. Satish Kumar Gupta, Swiss Ribbons v. Union of India).

2. India and some of the foreign jurisdictions (Canada, USA, UK, Germany, France) critical assessment of regulatory frameworks and judicial rulings.
3. Surveillance of legal literature, official documents (World Bank, INSOL International), and state documents on green insolvency.
4. The study makes use of the purposive sampling to identify landmark cases and statutes so that it is relevant and detailed. The secondary data are taken in the form of law reviews, online databases of law, and official commentaries.
5. The qualitative analysis is explained by the doctrinal character of the study which is oriented to the interpretative knowledge and synthesis of legal texts, the judicial reasoning and the policy documents. The best practices may be assessed through comparative analysis to address the opportunities of adaptation to the Indian context.
6. Examination of statutory provisions under the IBC, relevant sections of the Public Liability Insurance Act, 1991, and applicable case law (notably, Essar Steel Ltd. v. Satish Kumar Gupta, Swiss Ribbons v. Union of India).
7. Critical analysis of regulatory frameworks and judicial decisions in India and select foreign jurisdictions (Canada, USA, UK, Germany, France).
8. Review of legal scholarship, authoritative reports (World Bank, INSOL International), and government publications addressing green insolvency.
9. The research utilizes purposive sampling to select landmark cases and statutes, ensuring relevance and depth. Secondary data is sourced from law reviews, online legal databases, and official commentaries.
10. The qualitative analysis is justified due to the doctrinal nature of the study, focusing on interpretative understanding and synthesis of legal texts, judicial reasoning, and policy documents. Comparative analysis allows evaluating best practices for potential adaptation in the Indian context.

NEED FOR GREEN INSOLVENCY

Green insolvency: the new wave of corporate restructuring and insolvency and thus the growing need to understand environmental, social, and governance (ESG) concerns Nonetheless, as the focus within traditional insolvency models is on financial recovery, the significant environmental interests may be overlooked as an effect, not to mention the fact that it will cause further

environmentally detrimental behaviour of the firm, which will pose a threat to the citizens. The sustainability mainstreaming has prompted the reformation of insolvency laws in such a way that environmental claims may be considered and ranked higher in the hierarchy in case of an economic incident, Reinforcing Sustainability: Conceptualising a Good Corporate Citizen in Financial Distress. Today, governments and businesses, in addition to personal ones, are expected to be responsible to human needs without jeopardizing the stability of the future generations to meet their own needs.[1]

Green insolvency - Enhancing environmental responsibility into the insolvency procedure, including the taking into answer of the longer-term ecological effects in rearranged plans can aid not only responsible corporate conduct, however also sustainable livelihoods and ecologically stable communities. It encourages balance-sheet strained companies to incorporate sustainability in their business models, even during the period of financial re-engineering.[2] That change requires a law that will make the environmental claims equal to that of financial claims, to make companies responsible even after they are broke. In the case of the Orphan Will Association v. (2019), the Canadian Supreme Court. A research done by Grant Thornton Limited,[3] observed that regardless of everything, bankruptcy will never off-load a company of their obligation to abide by the environmental laws thus accepted contribution towards ecological responsibility into the very concept of insolvency.

Lastly, it has also had experience with the Insolvency and Bankruptcy Code (IBC) which gives India some hope and challenges as far as green insolvency is concerned. Although IBC framework is largely restricted to financial claims, professionals indicate that it ought to be modified to permit that the environmental claims have priority in the distribution-or waterfall mechanism. This prioritisation would imply that none of the environmental liabilities would be undone and this will strengthen the principle that polluters pay which stipulates that companies should be punished due to their adverse effect on the ecosystem. Green insolvency may also

[1] IRC Corporate and Commercial Law, available at https://www.irccl.in (last visited Nov. 10, 2024).
[2] Norton Rose Fulbright, Sustainability in Distressed Times: ESG and Insolvency, https://www.nortonrosefulbright.com (last visited Nov. 10, 2024).
[3] Orphan Well Ass'n v. Grant Thornton Ltd., [2019] S.C.C. 5 (Can.), available at https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17454/index.do.

facilitate sustainable corporate landscapes as well and consider the ecological responsibility in the process of economic recovery.[4]

THE INDIAN CONTEXT: GREEN INSOLVENCY IN INDIA

The idea of environmental sustainability has in the recent years increased duly in India and elicits a number of discussions involving the incorporation of environmental issues and perspectives in the financial and legal frameworks.The Insolvency and Bankruptcy code, often denoted as IBC, 2016 is the code encompassing the provisions involved in the resolution of the insolvency aspect of the company. Nevertheless, the code does not have the environmental liabilities that should be paid in the insolvency process. This part of the paper will speak about the structure of IBC and obstacles which it has encountered in putting up such provisions, key judgements and some advice concerning a go green insolvency.

Environmental Compliance and Green Provisions Under IBC

As it stands now the iBC fails to realise the environmental liabilities and claims. The liabilities an claims so stated are not accorded precedence that leaves the regulatory bodies with little to do when businesses go bankrupt or insolvent. The absence of provisions is a blow to the principles of such concepts as polluter pays and sustainable development. According to the polluter pays principle, the producers of production should incur the cost of managing production to ensure that human health or the environment is not harmed.[5]

Although the environmental claim has hardly featured in any of the resolutions plans presented to the courts, the breach of the existing norms of environmental claims is the driving force to two broad types i.e., contingent claims. The RP must ascertain that the value of contingent claims taken to the court through settlement plans is determined and it must also be incorporated into the said plan. The principle and interaction of contingent claims[6] and theory were touched upon

[4] Oxford Univ. Press Journal on ESG Priorities Under India's Insolvency and Bankruptcy Code, https://academic.oup.com/ulr/article/29/1/44/7712447 (last visited Nov. 10, 2024).
[5] Grantham Research Institute on Climate Change and the Environment, What is the Polluter Pays Principle?, London School of Economics and Political Science (Dec. 2021).
[6] Amit Kumar, Ignorance is Bliss: Analysing the Treatment of Contingent Claims Under the Insolvency and Bankruptcy Code, 2016, IndiaCorpLaw (Nov. 2023).

in the case of Essar Steel Limited v Satish Kumar Gupta and Ors[7] that resulted in the finding that the given claims will be integrated with the resolution plan itself.

Another type of environmental claims is a court order to the corporation to pay the claimant. The moratorium however does not allow the courts to execute any orders. The holders of the environmental claim decrees must thus present a claim to the RP. The holders of the decree should be treated as other kinds of creditors according to a recent decision of the Tripura High Court.[8] Environmental claimants are left stranded because, practically speaking, under the waterfall system outlined in Section 53 of the IBC, categories of creditors that fall below the financial creditors rarely receive significant returns, particularly those that fall into the "others" group.

The waterfall approach[9] to the business and claim settlement of the IBC that separates secured and unsecured creditors, has to be used in the business settlement. In Swiss Ribbons v. Union of India,[10] the Supreme Court of India made a decision that unsecured creditors would not under legal obligation to receive money that they would have had in the case that the business were to be liquidated. One instance is that in a case where the company would be valued at 100 units and the security creditors would owe 120 units, the unsecured creditors would not be legally obliged to get any money. Although there have been few instances where environmental claims are raised in cases of poorly complying companies. bankrupt in its turn, EPR is still unrecognized in the matter.[11] The clean slate principle under Section 31 of the IBC does not indicate that the firm would be discharged of all claims or the applicant of successful resolution (SRA) would discharge the EPR responsibilities.[12]

Precedential Value of Green Insolvency

[7] Committee of Creditors of Essar Steel India Limited (through authorized signatory) v. Satish Kumar Gupta and Others, (2020) 8 SCC 531.
[8] Sri Subhankar Bhowmik vs Union Of India, WP(C)(PIL) No.04/2022.
[9] Section 53 of Insolvency and Bankruptcy Code, 2016.
[10] Swiss Ribbons v. Union of India, [2019] 3 SCR 535.
[11] EPR in Insolvency: Quest for a Greener Resolution," IRC Corporate & Commercial Law Blog (Oct. 23, 2023), https://www.irccl.in/post/epr-in-insolvency-quest-for-a-greener-resolution.
[12] Id.

Green insolvency is a relatively new concept that is starting to gain some ground all over the world, yet there are few legal systems that have recognized this specific concept and enacted it accordingly, especially in developing economies. In some jurisdictions where environmental requirements are understood in the context of insolvency law, judicial rulings are beginning to influence future insolvency proceedings that include environmental liabilities, which have an effect on the wider policy and regulatory environment. CIRP has not yet received any environmental claims. In case a company does not fulfill its duty of redressing the pollution or the environmental damage so caused, the financial element and burden becomes the governments and consequently, the people in general. The fact that the environmental claims are not placed under the jurisdiction of the moratorium[13] allows the companies to take responsibilities over the liabilities. In Swiss Ribbons Private Limited & Anr. vs Union of India[14] the Supreme Court gave priority to the financial creditors as opposed to the operational creditors. In case the financial creditors is willing to remain silent on environmental claims, the consequences will be taken upon him and the environmental claims will then be prioritised.

Key Challenges in Incorporating Green Insolvency

The waterfall approach[15] of the code has singled out the secured and unsecured creditors, often with minimal or no restitution of unsecured creditors, including environmental litigants. Environmental claims are very hard to receive their dues, under the dependent environmental claimant or the environmental decree holders. The holders of environmental decrees are classified as other debts and dues and are often simply classified as unsecured creditors. Just like this, contingent environmental claims are under the same classification of doing the same with any remaining debts and dues and this reduces their chances of being compensated. The firm evades the fines of many of the environmental policies due to the waiver of environmental claims in the course of CIRP. This kind of escape does not only contravene the public interest and the responsibility of the business, but also social justice. To begin with, the Code in India mostly dwells on the economic worth of creditors and does not have the explicit legal control

[13] A moratorium is a temporary suspension of an activity or law until future consideration warrants lifting the suspension, such as if and when the issues that led to the moratorium have been resolved. A moratorium may be imposed by a government, regulators, or a business. As per Section 14 of IBC, 2016 no action shall be taken against the company during the moratorium period.

[14] Id.

[15] The waterfall mechanism is a legal provision in India's Insolvency and Bankruptcy Code (IBC) that determines the order in which assets are distributed during a liquidation process. The mechanism is outlined in Section 53 of the IBC.

over the environmental claims that poses difficulties to the agencies to find a remedy under the Code. Second, since the environmental damages cannot be regarded as secured debts or claims, they are relegated at low rates thus lowering the possibilities of recovering them. Thirdly, the National Green Tribunal however highlights the accountability of the environment but it does not have the power to intervene in the IBC cases that are normally adjudicated through the National Company Law Tribunal. Finally, The United Nations Commission on International Trade Law (UNCITRAL) has already come up with rules that are meant to be used to deal with cross-border insolvency, however, these rules do not at the moment deal with the issue of environmental liabilities and therefore, there is a need to have international frameworks that can deal with the issue of green insolvency.

GREEN INSOLVENCY AROUND THE GLOBE

The green insolvency concept is also new to the scene and it is aimed at integrating and amalgamating the environmentally responsible concerns. In different jurisdictions, a sustainable approach to IBC proceedings is already highlighted, and multiple landmark cases and changes in the legislature have already started to open the road. There have been significant amendments and plans of incorporation of environmental claims in the insolvency process in Canada. The Canadian province of Alberta has set up funds and organisations called as Orphan Well Association[16] which deals with the issues related to cleanup of abandoned oil etc. it facilitates the implementation of environmental responsibilities. In the Orphan Well Association v. case. Grant Thornton Ltd.,[17] the Supreme Court of Canada believed that the insolvency firms should not see bankruptcy or insolvency as a means of breaking the rules. Another point that is stressed by the court was prioritisation of the environmental obligations over the creditors claim. The federal environmental laws in the United States affect the environmental liabilities in all aspects including the insolvency proceedings. The Environmental Protection. has been previously established under Response, Compensation, and Liability Act (CERCLA)[18] principles that relate to the green insolvency that does not allow the companies to cover their liability to environment.

[16] The Orphan Well Association works with industry, government and public stakeholders to manage the safety and environmental risks of oil and gas sites that do not have a legally or financially responsible party. These properties are known as "orphans". https://www.orphanwell.ca/ (Last accessed on 10th November, 2024).

[17] Orphan Well Association v. Grant Thornton Ltd, 2019 SCC 5.

[18] The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, authorises the President to respond to releases or threatened releases of hazardous substances into the environment.

Also, the claims are deemed as administrative expenses in U.S and therefore they have greater priority as compared to other claims. As in Apex oil Co.,[19] the U.S Court of Appeals declared that the cleanup orders under CERCLA cannot be discharged because of the current bankruptcy processes. The companies will be obliged to stand liable to remediation in spite of insolvency.

United Kingdom takes green insolvency with utmost seriousness and its jurisdictional value is based on the environment protection act of 1990. The contaminated land is subject to liability even when a company is undergoing the insolvency process. Court in the case of Re Celtic Extraction Ltd.[20] ruled that the managers of the company dealing with the estate of an insolvent company shall adhere to the environmental obligations. This ruling reinstated the need to adhere to the environmental obligation even in the insolvency and bankruptcy processes.

Australia has not acted on any statute or legislation on the concept of green insolvency, but environmental laws continue to influence the insolvency proceedings of industries like mining and construction. The European Union has indeed worked a lot on making sustainability and environmental goals part of the corporate and insolvency frameworks but has yet to come up with an obligatory EU-wide green insolvency framework. The EU Directive on Restructuring and Insolvency of 2019 harmonises member states' insolvency laws but does not impose specific provisions for environmental liabilities in unsolved. However, several EU member states, notably Germany and France, have introduced national reforms designed to align their insolvency laws with broader objectives of sustainability and environmental protection within the European Union.

In Germany, insolvency law prioritises environmental liabilities, particularly in cases with substantial public interest. Accordingly, insole administrators have to ensure that companies involved comply with the requirements of environmental laws rather than be allowed to evade these obligations because they are insolvent. It further aids in giving prominence to environmental responsibilities, hence making it an essential factor in German insolvency proceedings. Likewise, France has embraced "responsabilite environnementale" (environmental responsibility) as part and parcel of its corporate and insolvency legal systems. French judiciary

[19] Re Apex Oil Co., 579 F.3d 734 (7th Cir. 2009).
[20] Re Celtic Extraction Ltd. [2001] Ch 475).

have progressively insisted that firms build their consignment liabilities toward the environment within bankruptcy proceedings; thus this movement builds a tendency toward the acknowledgment and promotion of green insolvency concepts. The adaptation at national levels in Germany and France is indicative of an assertive stance within certain EU countries towards integrating environmental accountability into the framework of insolvency law while the EU develops one wide approach.

THE WAY FORWARD

The uncertainties and gaps listed above make it abundantly evident that environmental regulations were not taken into account by the legislators when they draughted the legislation in 2016. The code had been draughted just when the possibility of environmental regulations intertwined, along with the planets on a single axis at that time (with relationships to the 2015 Paris Agreement); and never mentioned. Therefore, it remains to be seen whether environmental standards would take priority over IBC. But finally the sustainability and environmental claims have been called to account by the enforcement authorities. In light of these developments, we recommend prioritising environmental claims under the waterfall method and explicitly in the code. Second, the CoC must be required to observe the CD's CSR initiatives during the CIRP. A comprehensive environmental audit of the CD should be required by the CoC as a component of the resolution procedure. All current and possible environmental responsibilities, including as pollution cleanup, adherence to environmental laws, and potential environmental hazards, should be identified via such an audit. In-depth environmental due diligence studies assessing the corporate debtor's compliance with environmental regulations and the actions necessary to address any deficiencies found must be submitted by resolution applicants.

Third, money for addressing environmental liabilities should be specifically allocated in the resolution plans. This includes allocating funding for continuing environmental monitoring and management, compliance improvements, and pollution remediation. When developing their business plans, they must also take climate change into account. It is important to prioritise and manage environmental expenses early in the resolution process, as they should be considered a component of the CIRP costs. A thorough long-term plan for environmental sustainability must also be included. Greater legal costs for environmental damages, greater insurance and

reinsurance costs, and even possible insolvency as a result of direct and indirect losses are all consequences of climate change. Fourthly, as businesses develop their corporate strategies, they also need to take climate change into account. This entails calculating carbon footprints, investigating technology advancements to increase energy efficiency, and closely analysing the effects on asset values and company reputation. There is no perfect solution concerning the interaction between insolvency policy and environmental laws.

A workable solution may lie in insurance law, specifically India's Public Liability Insurance (PLI) Act, which may act harmoniously with the IBC. Under Section 31(1) of the Public Liability Insurance Act 1991 in India, the distressed company is given a fresh start, meaning that no new liabilities will be taken into account for the SRA after the resolution plan is approved. This gives the company a clean slate to start with. The idea of obtaining environmental insurance to cover environmental claims seems lucrative. It is implied that the insurance company has no "loss" to pay for the insured when it receives a fresh start because it is no longer liable for any claims resulting from previous environmental liability. Here, a statutory prescription should be added under Section 6 of the PLI Act, allowing the insurer to be sued directly for the payment of claims, based on New South Wales.

PUBLIC LIABILITY INSURANCE ACT, 1991 - POSING IT AS A SOLUTION

There is no perfect solution concerning the interaction between insolvency policy and environmental laws. A workable solution may lie in insurance law, specifically India's Public Liability Insurance (PLI) Act, which may act harmoniously with the IBC. Under Section 31(1) of the Public Liability Insurance Act 1991 in India, the distressed company is given a fresh start, meaning that no new liabilities will be taken into account for the SRA after the resolution plan is approved. This gives the company a clean slate to start with. The idea of obtaining environmental insurance to cover environmental claims seems lucrative. It is implied that the insurance company has no "loss" to pay for the insured when it receives a fresh start because it is no longer liable for any claims resulting from previous environmental liability. Here, a statutory prescription should be added under Section 6 of the PLI Act, allowing the insurer to be sued directly for the payment of claims, based on New South Wales.

Companies that handle hazardous chemicals are required by the PLI Act to obtain insurance coverage against accidents involving hazardous chemicals.

Under the PLI Act, evaluating a claim is rather simple, as the Collector bases the award on the no-fault liability concept. Each district has a Collector who serves as the District Magistrate (and occasionally an Executive Magistrate) and is in charge of a number of governmental and administrative duties. A few quasi-judicial duties, such determining compensation under the PLI Act, are also assigned to the Collector. It is unclear, nevertheless, how a company's new beginning would affect such a public liability insurance plan. According to insolvency law's fresh start principle, a firm that is successfully rescued has a new financial beginning, meaning that all of its prior liabilities are eliminated (except from those determined in the resolution plan). In this case, the business would receive a fresh start and be released from all prior obligations. The insurer would then assert that it is released from its liability that immediately results from the company's liability if the company is not liable for its prior liability. Although this is an unproven situation, such problems might be resolved by a straightforward modification that permits claimants to bring direct lawsuits against the insurance companies.

CONCLUSION

The creation of the international legal system is insolvency law that is environmentally responsible. This has been developed when the majority of the economies are overcoming recessions and attempting to balance between their economies and the sustainability of the environment. Green insolvency can therefore be viewed as the wake up call to take far reaching steps by integrating environmental responsibilities in insolvency as well as restructuring of laws so that the ideas of sustainability would not disappear when corporations pass through financial hardships. The adoption by various jurisdictions, such as Canada, the United States, and even the European countries, of primary importance assigned to environmental claims in insolvency proceedings is increasingly regarded as sufficient to ensure the preservation of human health, ecological quality and societal accountability. These global trends have not yet been taken up by the Insolvency and Bankruptcy Code (IBC) of India 2016 (although it has proceeded to reduce the allegations of the environment) despite the ongoing liabilities on environmental degradation.

Currently the cascade system used by IBC depreciates unsecured creditors even further besides providing less on their claims, which also includes environmental claimants.

Consequently, it offers little relief to stakeholders who are victims of the environmental laxity in a firm. This gap could be closed through the legislative amendments in its favor and to promote the principle of the polluter pays as the way of refusing the company to escape the payments of their environmental debts through insolvency. The IBC would have to be made practically geared towards eco-friendly principles, which can be elaborated, such as by means of compulsory environmental audits in the CIRP; provision of special funds that cover environmental liability in the rescue plans and strict adherence to ESG commitments. The Public Liability Insurance Act, 1991, can be billed as being a remodelled source to fund environmental claims in insolvency cases in which communities and ecosystems would be pulled in the protection.

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