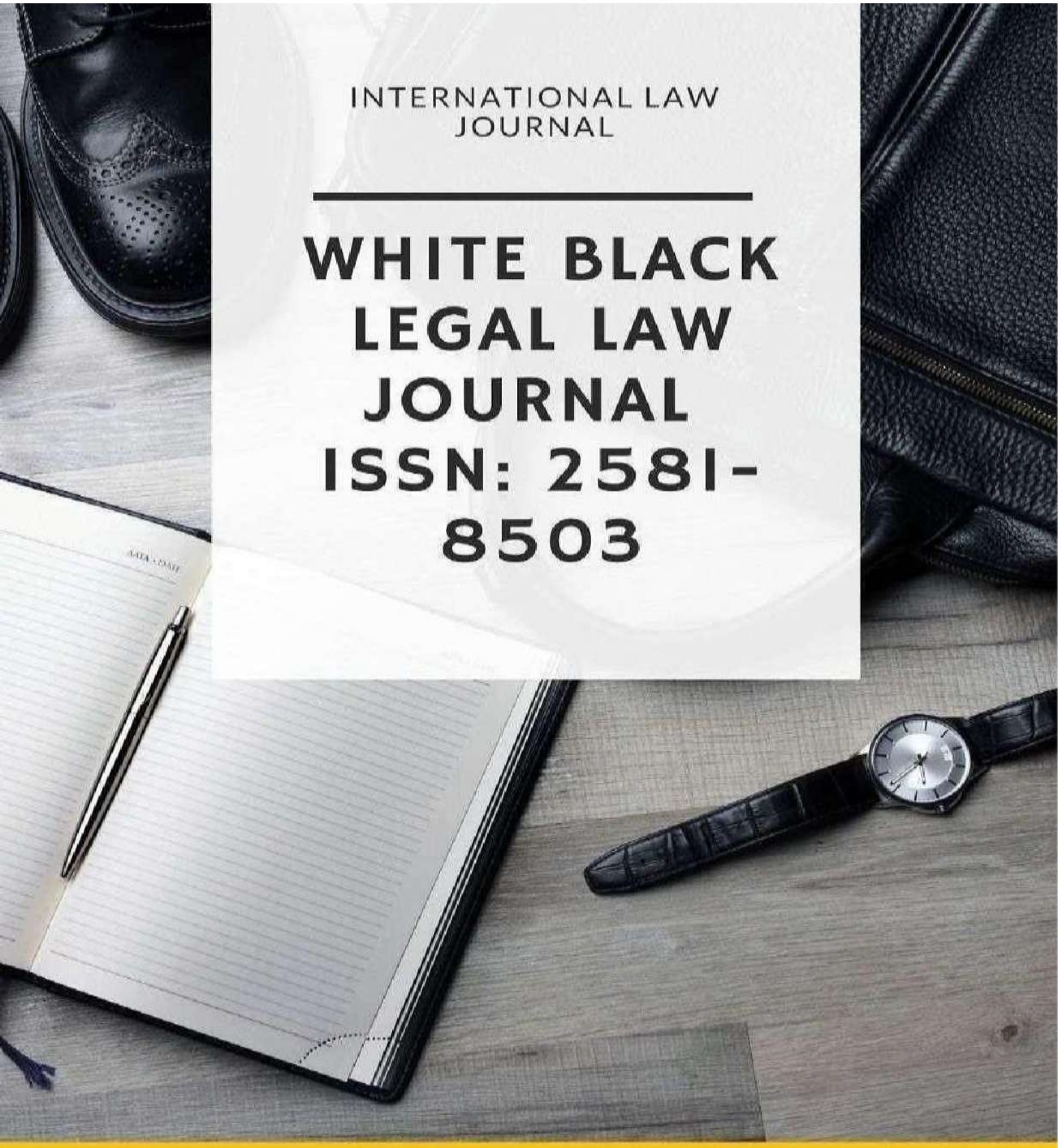

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REFORMING INDIA'S INSOLVENCY REGIME: EVALUATING THE IMPACT OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

AUTHORED BY - ABHIJEET UPADHYAY & KHUSHI CHAUHAN

Abstract

The Insolvency and Bankruptcy Code (IBC) of 2016 is considered one of the major changes in India's financial setup, as it eliminated the previously existing separate insolvency processes and combined them into a single unified, time-bound, and creditor-driven system. Initially, the IBC aimed to bring back the lost value of assets, inspire business ventures, and make credit available; thus, it substituted mechanisms that were not efficient and that were regulated by laws like SICA, RDDBFI, SARFAESI, and the Companies Act. Since the implementation of the IBC, the resolution environment has been completely changed. More than 1194 companies have been brought back to life, and the total money recovered is over ₹3.89 lakh crore, which equals 32.8% of the claims admitted and 170% of the liquidation value. The Code has also had an impact on the behavior of debtors and creditors, as it has stopped over 30,000 insolvency cases, which have been settled before admission, from being filed. On the institutional side, the IBC has led to the creation of the Insolvency and Bankruptcy Board of India (IBBI), the National Company Law Tribunal (NCLT), and Information Utilities to upgrade the supervision carried out by the regulators and to ensure open access. The CIRP in corporate insolvency enables the CoC to take business decisions, thus giving more weight to the creditor-driven approach. But there are still some issues, among them procedural delays, tribunal work not being up-to-date, and the limited number of Information Utilities functioning. The PPIRP brought about in 2021 was an MSME-dedicated, simplified, alternative, debtor-in-possession-based model that provided further flexibility. Judicial interventions, especially in Innoventive Industries, Essar Steel, and Bhushan Power and Steel, led to an improvement in procedural timelines and to a better understanding of the Code's moratorium provisions. In the future, India plans to follow the UNCITRAL Model Law for cross-border insolvency, which will bring India's domestic practice closer to international standards. Even if there are difficulties in implementing it, the IBC is still a major element of India's economic reform that promotes financial discipline, increases recovery effectiveness, and accounts for almost half of all bank

recoveries; thus, it is the main reason why it is a mechanism that changes the insolvency landscape in India.

Introduction

The Insolvency and Bankruptcy Code, 2016, integrates a variety of separate laws of insolvency into a single time-bound process, focused on maximizing value, encouraging entrepreneurship and availability of credit while facilitating professional, creditor-led decisions which balance the interests of stakeholders.

In FY2024–FY2025, recoveries in resolved cases hover around a third of admitted claims, while large cases in Q4 FY2025 recorded recoveries of approximately 70%; resolutions are increasingly outpacing liquidations, reflecting a maturing system despite ongoing delays. The Code has had a strong behavioral impact, evidenced by tens of thousands of pre-admission settlements, which have increased repayment discipline.

Before the IBC, the insolvency system in India was such that the Sick Industrial Companies Act, the Recovery of Debts Due to Banks and Financial Institutions Act, and Debt Recovery Tribunals, the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, and winding up under the Companies Act, were the main components of the regime.

It was slow, fragmented, and led to a situation where companies were heavily indebted, and the amount of money that was recovered from them was low. Besides that, the regime also allowed for opportunistic forum-shopping. The Bankruptcy Law Reforms Committee (BLRC) recommended a combined procedure that would be creditor-driven rather than court or promoter-driven; this finally set the stage for the IBC and its later legislative changes.

1. Key Origins of the Insolvency and Bankruptcy Code

The BLRC had suggested that the resolution of a defaulting firm is a business decision made solely by creditors rather than the court or the promoters of the company. The changes made allowed for the setting of class thresholds for real estate allotted, the continued moratorium status for obligatory licenses and/or supply of goods and services, and gave some clarifications regarding the ineligibility criteria of Section 29A of the IBC.

An additional Section 32A was also created, where the protection of successful applicants from possible claims due to actions taken before the resolution plan was made; thus, new bidders are encouraged, and the resolution process is accelerated.

The Insolvency and Bankruptcy Code (IBC of 2016) has significantly transformed India's financial regulatory landscape. By 2018, non-performing assets (NPAs) in scheduled commercial banks had reached 11.2%, a serious risk to the whole financial system's stability. The urgency for a solid insolvency regime was clear.

The IBC was mainly geared towards maximizing asset value, facilitating entrepreneurial activity, and enhancing credit availability within a unified and time-bound resolution scheme for all insolvencies. As of March 2025, data shows meaningful progress: creditors have estimated recoveries of approximately ₹3.89 lakh crore as a result of resolution plans approved through the IBC. The overall recovery represents 32.8% of all claims, while the recovery vis-à-vis the liquidation value is over 170%, which indicates that the Code works effectively with financial restructuring.

The IBC has successfully revived 1,194 companies through a formal resolution process, making it effectively the primary debt recovery mechanism for banks, accounting for around 48% of all bank recoveries in the financial year 2023-24. The IBC has also had a limiting effect, with over 30,000 cases involving ₹13.78 lakh crore in claims resolved before hearing. This indicates a significant change in the behavior of debtors and creditors to avoid a finding of insolvency.

2. Historical Reference

Before the introduction of the IBC, India’s insolvency framework was highly fragmented, relying on multiple, often conflicting statutes. Key legislation included the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI), the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and relevant provisions within the Companies Act, 2013.

This patchwork approach resulted in significant inefficiencies: suboptimal recovery rates

(averaging just 26%), protracted resolution timelines exceeding four years, widespread forum shopping by debtors, jurisdictional overlaps, and limited protection for creditor rights.[1]

In response to these challenges, the government constituted the Bankruptcy Law Reforms Committee (BLRC) in 2014, chaired by Dr. T.K. Viswanathan. The Committee's 2015 report recommended a unified insolvency law with an emphasis on creditor empowerment, time-bound processes, and value maximization.

The Insolvency and Bankruptcy Code (IBC) is structured into four distinct parts: preliminary definitions and framework; corporate insolvency resolution and liquidation; individual insolvency and bankruptcy; and miscellaneous provisions. Key institutions established by the IBC include the Insolvency and Bankruptcy Board of India (IBBI), which regulates insolvency professionals and related agencies, and the National Company Law Tribunal (NCLT) and its Appellate Tribunal (NCLAT), which serve as adjudicating authorities for insolvency matters.[2]

The IBC also created Information Utilities to centralize financial information, although only one is operational to date. Insolvency resolution for corporate debtors can be initiated for defaults above ₹1 crore (threshold raised in 2020). The Corporate Insolvency Resolution Process (CIRP) enforces strict timelines—180 days, extendable to a maximum of 330 days.

A Committee of Creditors (CoC) comprising financial creditors exercises decision-making power, requiring a 66% majority for the approval of resolution plans. A moratorium under Section 14 stays all legal proceedings and asset transfers once the CIRP commences. If resolution efforts fail, the debtor enters liquidation, with a defined distribution hierarchy prioritizing secured creditors. [3]While the IBC is not without operational challenges, it represents a substantial improvement in India's insolvency framework, replacing inefficiency and ambiguity with a structured, time-bound, and creditor-centric regime.

[1] IBC reset needed: Delays in the resolution process must be addressed, Visionias (July 15, 2025), https://visionias.in/current-affairs/upsc-daily-news-summary/article/2025-07-15/business-standard/economics-macroeconomics/ibc-reset-needed-delays-in-the-resolution-process-must-be-addressed
[2] Shobha Khot, National Company Law Tribunal: Challenges, Delays, and the Way Forward for Effective Corporate Adjudication in India (June 5, 2024), https://www.vintagelegalvl.com/post/national-company-law-tribunal-challenges-delays-and-the-way-forward-for-effective-corporate-adjud
[3] *Supra note 3*

3. Organizational Framework and Institutional Configuration

3.1.Legislative Organization

In the IBC, the organization is based on four more or less independent but interrelated parts: fundamental principles and general provisions; corporate insolvency and liquidation; suspension of property rights; and the rest of the provisions. Such an arrangement allows the Code to deal with the insolvency of different types of legal entities in a uniform manner and also ensures institutional coordination and flow of process.

Besides, the Code goes on to explain the peculiar traits of financial creditors, operational creditors, corporate debtors, and resolution professionals in order to lessen the ambiguities in the area of regulation that prevailed due to the multitude of laws. At the same time, the definitions serve as the starting point for the operational procedures of the Code and for the classification of parties.[4]

3.2.Key Institutions Established Under IBC

There are several new institutions that have been established by the IBC, which have the sole purpose of overseeing and ensuring the smooth execution of the insolvency processes. One of these is the Insolvency and Bankruptcy Board of India (IBBI), which is the primary regulating authority in charge of the Insolvency Professionals, the Insolvency Professional Agencies, the Information Utilities, and the like.

Through the enactment of the Code, the IBBI has manifested the characteristics of responsive governance significantly by the implementation of 122 regulatory amendments and continuous adjustments of operational processes so as to improve efficiency.[5]

The National Company Law Tribunal (NCLT), together with its Appellate Tribunal (NCLAT), is the adjudicator with corporate insolvency expertise. While there are many problems on the ground that the tribunals have to deal with, some of the most significant ones are vacancies, bench overloads, and infrastructural issues, all of which affect the time duration for the resolution.[6]

[4] *Section 21 – Committee of Creditors*, Companies Act Integrated Ready Reckoner (CAIRR), CA2013.com, https://ca2013.com/section-21-committee-creditors/ (last visited Oct. 12, 2025)
[5] Insolvency and Bankruptcy Board Of India (IBBI), https://ibbi.gov.in/en (last Visited Oct. 2, 2025)
[6] Supra note 2

Information Utilities were designed to aggregate financial information and allow creditors to find the data they need to make informed decisions. Despite an institutional framework in place designed to create information utilities, there is currently only one operational information utility, limiting the system's data integration to one authenticated source.

4. Corporate Insolvency Resolution Process (CIRP)

CIRP is the primary resolution process provided under the IBC and is mandated to resolve insolvency within a narrow range of time. The CIRP process can be initiated by a financial creditor, an operational creditor, and a corporate debtor on their own in cases of a default exceeding ₹1 crore (this was increased from ₹1 lakh in 2020). [7]

Once the CIRP starts, the CIRP creates a timeline of 180 days, which can extend to a maximum of 330 days. The idea was that creating a tight timeline would stop the deterioration of assets and the loss of value that was seen under the prior regime. However, empirical conclusions show that almost 78% of ongoing CIRP cases exceed the 270-day time limit given, typically due to delays at the NCLT level.

The Committee of Creditors (CoC), which is comprised entirely of financial creditors, has decision-making authority for a resolution plan with a 66% threshold for the creditor bodies' approval based on a decision.[8] The creditor-centric plan gives stakeholders, substantially exposed to the debtor's financial circumstances, authority to make a commercial decision regarding what happens to the debtor going forward.[9]

5. Classification of Creditors and Recovery Mechanisms

5.1.Financial Creditors and Operational Creditors

The IBC creates a fundamental distinction between financial creditors and operational creditors whose rights and treatment are affected throughout the resolution process. Financial creditors are creditors who have extended loans and/or credit facilities to the entity, including banks,

[7] Section 12 of IBC: Meaning, Amendments & Judicial Interpretations, The Legal School, https://chatgpt.com/c/68eb83d6-4a14-8322-8b3f-29193637add7 (Last Accessed Oct, 2,2025)
[8] Vidushi Puri, Distinction in Treatment of Financial Creditors vs. Operational Creditors under IBC , IBC Laws, (Jan. 9, 2023), https://ibclaw.in/distinction-in-treatment-of-financial-creditors-vs-operational-creditors-by-vidushi-puri/
[9] *Section 21 – Committee of Creditors*, CAIRR: Companies Act Integrated Ready Reckoner (CA2013.com), https://ca2013.com/section-21-committee-creditors/ (last visited Oct. 12, 2025)

financial institutions, other lenders, and bondholders. Operational creditors are suppliers of goods and/or services, employees with unpaid wages, and government authorities to which statutory dues are owed.

The classification, and in which group particular creditors are placed, has considerable implications for stakeholder involvement and recovery.[10] Financial creditors are the exclusive members of the Committee of Creditors, having voting rights based on their financial stake in the process. In contrast, operational creditors are excluded from membership and thus any voting engagement in the Committee of Creditors, but may attend meetings as observers as long as their collective claims exceed 10% of the total debt owed to financial creditors.

5.2.Waterfall Mechanism and Recovery Priorities

The IBC establishes a defined order of distribution for creditors in liquidation, privileging secured creditors while providing some level of protection for other categories of stakeholders. This so-called "waterfall mechanism" has generated considerable judicial debate, and even frivolous discourse, especially in relation to the potential subordination of operational creditors to financial creditors with respect to recovery distributions.

The separation amongst groups of creditors is based on the reasoning of the BLRC that financial creditors have a better skill set in assessing the ongoing sustainability of an organization and are thus more likely to modify the terms of the liability in the context of restructuring. This reasoning has been viewed as potentially creating systemic disadvantage to operational creditors and may be abused by unscrupulous debtors and their related parties. [11]

6. Moratorium Provisions and Asset Protection

6.1.Section 14 Moratorium Framework

The moratorium provision established by Section 14 of the IBC is a central piece of the resolution framework, giving overall protection (in the CIRP context) to the corporate debtor's assets during a CIRP. Upon the commencement of a CIRP, all legal actions, claims against the corporate debtor, and transfers of assets are stayed, thus providing a protected time during

[10] Maheshwari & Co., *Creditor Rights and Committee of Creditors (CoC) Under IBC 2016*, Maheshwari & Co., (Mar. 12, 2025) , https://www.maheshwariandco.com/blog/creditor-rights-and-committee/

[11] Vinod Kothari & Sikha Bansal, SUBORDINATION OF OPERATIONAL CREDITORS UNDER IBC: WHETHER EQUITABLE, Vinod Kothari Consultants (June, 2019), https://vinodkothari.com/wp-content/uploads/2019/06/Subordination-of-OC-under-IBC.pdf

which the resolution process can take place.

Recent amendments have clarified the scope of the moratorium, particularly regarding any subrogation rights against corporate guarantors (the changes of the 2025 amendments unambiguously specify that until the Resolution has been completed, the subrogation rights of the corporate guarantor against the corporate debtor are stayed). These were very valuable clarifications. Previously, these ambiguities complicated and negated the space for asset protection during the proceedings. [12]

7. Judicial Interpretation of Moratorium Scope

Judicial authorities have attempted to provide clarity on what the precise limits of the moratorium are (most notably about criminal proceedings, arbitration matters (typically for public policy reasons), and writ jurisdiction). The pronouncements of the Supreme Court have most generally supported the concept of a moratorium covering all manners of legal circumstances while also acknowledging exceptions as they pertain to statutory authorities seeking to assess the suitability of agencies and members of the community.

The ABG Shipyard case [13]set vital benchmarks on the interaction between the moratorium provisions in the IBC and other statutory regimes, especially customs law. The Supreme Court declared that, once a moratorium is imposed under sections 14 or 33(5), customs authorities have limited jurisdiction to determine the quantum of duty, which cannot then be recovered by way of sale or confiscation.[14]

8. Pre-Packaged Insolvency Resolution Process (PPIRP)

8.1. MSME Specific Framework

The introduction of the Pre-Packaged Insolvency Resolution Process (PPIRP) via the 2021 amendment is a new development specifically designed for Micro, Small, and Medium Enterprises (MSMEs). The PPIRP particularly responds to several common challenges faced by MSMEs, such as limited resources to engage with the processes, difficulties using

[12] PwC, *Key Changes in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025*, PwC India, Aug. 2025, https://www.pwc.in/assets/pdfs/pwc-highlights-ibc-amendment-bill-2025-2.pdf
[13] Civil Appeal No. 7667 of 2021
[14] Adv. Arpit Garg, A Critical Examination of IBC through Moratorium Scope, Creditor Dynamics, Judicial Interpretation, and Resolution Effectiveness , IBC Laws (Aug. 22, 2025), https://ibclaw.in/a-critical-examination-of-ibc-through-moratorium-scope-creditor-dynamics-judicial-interpretation-and-resolution-effectiveness-by-adv-arpit-garg/

technology, and an overall necessity to ensure some continuity of business during financial distress.

The PPIRP process operates on a debtor-in-possession model, allowing current management to retain control of the firm throughout the resolution process. [15]As such, it minimises the traditionally disruptive management change associated with CIRP, without compromising on key protections for all creditors by which they may monitor the process with fit-for-purpose oversight and controls embedded in the process.

Some key aspects of PPIRP include an expedited timeline with base resolution plan submission within two days of commencement of the process; creditor approval thresholds of 66%, extensive lobbying for stakeholder transparency to protect the parties involved; and a firm to complete the process well within a set period that is considerably shorter than CIRP, both demonstrating efficiencies.

The ABG Shipyard litigation had a significant impact in shaping the broad outlines of the interface between the stay provisions under the Insolvency and Bankruptcy Code and other statutes, mainly the customs law. [16]It was held by the Supreme Court that once a stay under sections 14 or 33(5) has come into effect, the customs authorities have very restricted powers to decide the extent of the duty which, thereafter, cannot be collected through the sale or confiscation.

9. Pre-Packaged Insolvency Resolution Process (PPIRP)

9.1.MSME Specific Framework

The establishment of the Pre-Packaged Insolvency Resolution Process (PPIRP) as a result of the 2021 amendment is a new concept that is particularly geared towards Micro, Small, and Medium Enterprises (MSMEs). The PPIRP is primarily targeted at the typical problems that MSMEs encounter, for instance, they have insufficient resources to carry out such processes, they are not familiar with the use of technology, and the overall need for some form of business

[15] Rahul Sundaram, Understanding the Legal Provisions Governing Pre-Packaged Insolvency Resolution Process (PPIRP), IndiaLaw LLP (Dec. 4, 2024), https://www.indialaw.in/blog/insolvency-bankruptcy/understanding-the-legal-provisions-of-ppirp-in-insolvency/

[16] Yasir D. Pathan, Pre-Packaged Insolvency Resolution in India: A Comprehensive Analysis of PPIRP under the IBC, IndiaLaw LLP (Dec. 4, 2024), https://ibclaw.in/pre-packaged-insolvency-resolution-in-india-a-comprehensive-analysis-of-ppirp-under-the-ibc-by-yasir-d-pathan/

continuity in financial troubles.[17]

The PPIRP method is quite different as it is based on the debtor-in-possession model, which means that the current management will be in charge throughout the resolution process. This way, it practically eliminates the traditionally disruptive management change usually taking place in CIRP, but, at the same time, it does not compromise the key rights of all creditors who can supervise the process through proper oversight and controls embedded in the procedure.

The PPIRP features such as the timing of the case being expedited with the base resolution plan submission given within two days from the starting of the process; the 66% creditor approval levels; the thorough lobby for stakeholder transparency to keep the involved parties safe; and the possibility of the firm concluding the process within a pre-agreed term that is significantly shorter than CIRP, are the two most prominent examples of the practice of the efficiencies.[18]

9.2.Interpretations of the Supreme Court and Precedents

The Innoventive Industries case enunciated basic principles related to CIRP timelines, highlighting that the CIRP timelines of 180 days were only an indicative period, and extensions for a further 90 days were also compulsory. The Supreme Court has since tended to apply the principles from this case contemporaneously, modifying the strict timelines required by restarting CIRPS in a way that recognizes advantages and practicalities of a complex case in a reduced time frame – where working examples are created, which reiterate the discipline with which timelines should be approached in smaller-scale cases.

In the Committee of Creditors of Essar Steel, the Supreme Court addressed the concerns relating to the rigidity of the timelines of 330 days, holding the word "mandatorily" as passing the test for the doctrine of arbitrariness in Section 12(1). The Court ruled that timelines can be extended for cases subject to duration of litigation delays, providing flexibility within the statutory constraint, yet still adhering to the time-bound provision of the Code.

The Bhushan Power and Steel case [19]marked a major development in the balance between post-resolution certainty and slow implementation of the post-resolution plan. The Supreme Court

[17] Supra note 16
[18] Supra note 17
[19] 2014 AIR SCW 2473

in May 2025 judges declared the post-resolution plan vulnerable for not complying with statutory timelines for completion and order for liquidation of the company, raising serious questions of future resolution plans and confidence in investors.[2021]

10.Global Comparative Analysis

10.1. Adoption of the UNCITRAL Model Law

The cross-border insolvency framework India proposes is influenced by the UNCITRAL Model Law, which has been adopted in forty-six jurisdictions around the world. The UNCITRAL Model Law's four guiding principles- access, recognition, relief, and cooperation are established frameworks addressing international insolvency coordination.

Examples of countries that have implemented successful UNCITRAL-adapted frameworks are the United Kingdom, the United States, and Singapore. The proposed framework in India evidences an acknowledgement of global best practices combined with domestic needs. [22]

10.2. International Pre-Pack Insolvency Experience

The United Kingdom's pre-packaged administration framework offered a conceptual foundation for the pre-packaged insolvency resolution process in India. However, India's approach rests on a debtor-in-preservation approach as well as specific creditor protections that evidence a domestic market and stakeholder preferences.

The US Chapter 11 framework also offers ideas for a group insolvency and cross-border provisions for India. Accordingly, the proposed amendments consider international experience, whilst being appropriate to the fundamental principles of the IBC.[23]

11.Conclusion

The Insolvency and Bankruptcy Code, 2016, is a monumental accomplishment in the legal and economic framework of India because it harmonized pre-existing (yet mostly disunited) insolvency laws into a coherent, time-bound, debtor-in-possession, creditor-centric law. This

[20] Supra note 8
[21] Mathew John Verghese, Landmark IBC Judgments of 2025, ATB Legal (Sept. 10, 2025), https://atblegal.com/blog/nclt-india/ibc-judgments-2025/
[22] Vishrut Kansal & Mohd Fahad Ansari, *India's Cross-Border Insolvency Framework: Time to Honour Exclusive Jurisdiction Clauses*, IndiaCorpLaw, Apr. 8, 2025, https://indiacorplaw.in/2025/04/08/indias-cross-border-insolvency-framework-time-to-honour-exclusive-jurisdiction-clauses/
[23] Supra note 22

analysis examines the way the Code is constructed, how it works, and evaluates the empirical analysis of its results to ultimately demonstrate how it is a fundamental success in shifting India's approach to financial distress faced by debtors while simultaneously confirming that there are ongoing challenges with implementation.

The quantitative results of the Code are impressive as well. 1,194 companies were resolved, ₹3.89 lakh crore were recovered for creditors, and over 30,000 separate pre-admission settlements with claims of ₹13.78 lakh crore were made. More importantly, the IBC has altered behavior in the overall financial ecosystem by reducing the NPA ratio from 11.2% to 2.8% and improving the credit discipline of borrowers. The fact that the Code has become the main mechanism/process for banks to recover, and contributes 48% of total recoveries, further demonstrates its efficiency compared to other processes.